

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

AA1000401

Taylors Wines Pty Ltd (ABN 43 007 733 897).

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

Taylors Wines is a family owned winery located in the Clare Valley of South Australia carrying on the business of a wine producer. Taylors Wines has six different ranges (brand labels) all of which represent different wine varieties and blends. The ranges are available at cellar door, online, retail liquor outlets, and at select restaurants, hotels and venue locations.

- (c) Address in Australia for service of documents on the applicant:

c/o: Ms Bronwyn Gallacher
Managing Director
CCL Consultants Pty Ltd
19 Langham Terrace
UNLEY SA 5061

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

The proposed arrangement involves:

- (i) Taylors Wines inviting third party wine suppliers, included but not limited to, Brown Brothers Milawa Vineyard Pty Ltd (ABN 56 005 349 235), McWilliam's Wines Group Ltd (36 000 024 108), and The Yalumba Wine Company and Samuel Smith and Sons (17 007 871 427) (the Wine Group) to take part in joint marketing and promotional arrangements in relation to a supply arrangement between Taylors Wines and Deliveroo Australia Pty Ltd (ABN 73 607 915 640) (Deliveroo) for the purpose of supplying wine products to Deliveroo's customers by way of its website and/or other social media platforms (the Platforms);
 - (ii) The Wine Group inviting Deliveroo to take part in joint marketing and promotional arrangements in relation to certain promotions that the Wine Group intends to offer Deliveroo's customers on the Platforms; and
 - (iii) making and/or giving effect to any contract, arrangement or understanding to implement the joint marketing and promotional arrangements set out in paragraphs 2 (a) (i) and (ii) above.
- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Please refer to paragraphs 2 (a) (i) and (ii) above.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Wines, including but not limited to, red, white, rosé, sparkling and dessert wines.

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:
A five (5) year authorisation is being sought.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Wine producer: Brown Brothers Milawa Vineyard Pty Ltd, 239 Milawa Bobinawarra Road, Milawa, Victoria, 3678, Australia.

Wine producer: McWilliam's Wines Group Ltd, Level 1, 55 Murray Street, Pymont, New South Wales, 2009.

Wine producer: The Yalumba Wine Company, and Samuel Smith, 40 Eden Valley Road, Angaston, South Australia, 5353.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

Wine producer and merchant: Taylors Wines, Suite 2, Shed 72, The Woolstores, 4F Huntley Street, Alexandria, New South Wales, 2015.

4. Public benefit claims

- (a) Arguments in support of authorisation:

(Refer to direction 6)

Please refer to the Attachment. (b) Facts and evidence relied upon in support of these claims:

Please refer to the Attachment.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

Please refer to the Attachment.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

Please refer to the Attachment.

- (b) Facts and evidence relevant to these detriments:

Please refer to the Attachment.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Please refer to paragraph 3 (a) above.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Wine producers.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

Not applicable.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?
Not applicable.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Ms Bronwyn Gallacher
Managing Director
CCL Consultants Pty Ltd
19 Langham Terrace
UNLEY SA 5061

Dated..... 13 OCTOBER 2017

Signed by/on behalf of the applicant


.....
(Signature)

GREGORY JOHN MESSION
.....
(Full Name)

DIRECTOR AND COMPANY SECRETARY
.....
(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.

9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



ATTACHMENT A

Taylors Wines Submission - Application for Authorisation

10 October 2017

Background

Taylors Wines Pty Ltd (ABN 43 007 733 897) are applying for an authorisation from the Australian Competition and Consumer Commission (ACCC) in relation to sections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (Cth) (CCA) to enter to commercial discussions with third party wine suppliers to coordinate joint marketing and promotional arrangements pertaining to a supply arrangement between Taylors Wines and Deliveroo Australia Pty Ltd (ABN 73 607 915 640) (Deliveroo).

Taylors Wines are of the view that creating an opportunity for small wine producers to participate in joint marketing and promotional arrangements for wines, including but not limited to, red, white, rosé, sparkling and dessert wines, to be sold to end customers via the Deliveroo Australia Pty Ltd (ABN 73 607 915 640) (Deliveroo) website and/or other social media platforms (the Platforms), will increase competition, and increase the service offering and choice for consumers. Taylors Wines are of the view that, but for a joint marketing and promotional arrangement, Deliveroo would not opt to enter into a commercial contract with Taylors Wines.

Taylors Wines are seeking an authorisation from the ACCC for a period of five (5) years. In addition, an interim authorisation is sought in order to allow Taylors Wines to commence commercial discussions with third party wine suppliers.

Taylors Wines

Taylors Wines is a family owned winery located in the Clare Valley of South Australia carrying on the business of a wine producer and merchant. Taylors Wines has six different

ranges (brand labels) all of which represent different wine varietals and blends. The ranges are available at cellar door, on-line, retail liquor outlets, and at select restaurants, hotels and venue locations.

The Wine Group

Brown Brothers Milawa Vineyard Pty Ltd (ABN 56 005 349 235), McWilliam's Wines Group Ltd (36 000 024 108), and The Yalumba Wine Company and Samuel Smith and Sons (17 007 871427) (the Wine Group) operate independently as small wine producers and merchants, The Wine Group has expressed an interest in relation to participating in the joint marketing and promotional arrangements with Taylors Wines to service Deliveroo Australia Pty Ltd (ABN 73 607 915 640) (Deliveroo).

Deliveroo

Deliveroo operates an online platform providing a delivery service, as well as marketing and order taking, allowing it to provide end customers with food orders from restaurants that do not normally offer a delivery service. Current competitors include, but are not limited to, UberEats, UberRush, Menulog, Foodora, EatNow and MealPal.

Customer feedback has indicated that customers would like Deliveroo's product offerings to include wine, so that customers can pair wine with their food selections.

Authorisation of Conduct

The authorised conduct would involve:

- (i) Taylors Wines inviting the Wine Group to take part in joint marketing and promotional arrangements in relation to a supply arrangement between Taylors Wines and Deliveroo for the purpose of supplying wine products to Deliveroo's customers by way of its website and/or other social media platforms (the Platforms);
- (ii) The Wine Group inviting Deliveroo to take part in joint marketing and promotional arrangements in relation to certain promotions that the Wine Group intends to offer Deliveroo's customers on the Platforms; and
- (iii) making and/or giving effect to any contract, arrangement or understanding to implement the joint marketing and promotional arrangements set out in paragraphs 2 (a) (i) and (ii) above.

Proposed Joint Marketing and Promotional Arrangements

The types of joint marketing and promotions would include ‘percentage off’ sales during particular time periods (i.e. happy hour sale), consumer competitions, featuring different wine varietals, featuring specific food and wine pairings, and hosting wine tasting events (i.e. sporting and social media celebrities visiting the homes of end consumers and hosting a wine tasting event).

A wine list will be determined by Deliveroo in consultation with Taylors Wines. The proposed wine list will be updated from time to time with Deliveroo providing a 30 days’ prior written notice period of any changes. However, the price points of these wines will be determined by Deliveroo and the selected liquor retailers, and not determined by Taylors Wines and the Wine Group.

The proposed joint marketing and promotional arrangements will be achieved via the joint creation of a marketing plan for the promotion of Taylors Wines and the Wine Group’s wines, co-funding any agreed marketing and promotional expenses in relation to the marketing, sale and delivery of Taylors Wines and the Wine Group’s wines, and conducting face to face performance review meetings every three (3) months.

The proposed joint marketing and promotional arrangements with Taylors Wines and the Wine Group will drive incremental sales, create a strong brand association between Deliveroo, and Taylors Wines and the Wine Group, and educate end consumers about food and wine matching to create a positive and responsible relationship for food and wine occasions.

This proposed arrangement for inclusion in promotions is voluntary and non-exclusive.

Future participants of the Wine Group

Since the number of third party wines suppliers participating in joint marketing and promotional arrangements may vary from time to time, Taylors Wines requests that its authorisation include future participants, specifically smaller wine producers and merchants. Taylors Wines could advise the ACCC by way of written correspondence every six (6)

months from the date of the authorisation coming into effect, should a third party wine supplier/s differ from the participants of The Wine Group identified in this submission.

Time Period

Taylors Wines seeks an authorisation for a period of five (5) years.

Public Benefit

Customers and potential customers of Deliveroo will be given the option to purchase wine from the Platform, thereby creating will increase the customer base of Taylors Wines and the Wine Group.

The proposed joint marketing and promotional arrangement will provide an opportunity to educate consumers about wine and food pairing. This superior product knowledge will enhance Deliveroo's customer service and the consumer buying experiences.

Joint marketing and promotional arrangement between Taylors Wines and the Wine Group will ensure that economies of scale and scope can be achieved in order to cater for the consumer tastes of Deliveroo's customer base.

Finally, the proposed marketing and promotional arrangement may encourage other small wineries to enter into similar marketing and promotional agreements, therefore further promote competition.

Public Detriment

Taylors Wines are of the view that there are not any observable public detriments associated with the proposed arrangement, since the proposed conduct is limited in its application.

Taylors Wines and the Wine Group will be establishing a Code of Conduct to ensure that discussions at the face to face meetings are only about the joint marketing and promotional arrangements, and do not extend to discussions about competition in another market/s.

Other Observations

Deliveroo will ensure that wine is sold, distributed, delivered, supplied, advertised and promoted responsibly in accordance with any applicable guidelines relating to the responsible

service of alcohol, including the Alcohol Beverages Advertising Code and the Australian Association of National Advertisers Code of Ethics.

Deliveroo drivers are required to comply with relevant state based liquor licensing laws, including Responsible Service of Alcohol (RSA).

Taylor's Wines market share of the national bottle still wine market is approximately 2.6%, Brown Brothers 3.3%, McWilliam's Wines 2.5%, and Samuel Smith & Sons 2.1% (data sourced from IRI Australian Scan Sales). This data is representative of the current industry market shares in relation to table wines. Accordingly, the proposed joint marketing and promotional arrangement, based on the market share of Taylor's Wines and the Wine Group, will not have a notable impact on competition. Rather, it will provide an opportunity for these small wine producers to offer their product offerings to a new market segment.

Table 1: Market Share National Bottle Still Wine Market as at 6 August 2017

	Dollars (000s) Share of Total Bottled Still Wine
Total Bottled Still Wine	100.0
Private Label	27.1
Treasury Wine Estates	17.6
Other Manufacturers	11.1
Accolade Wines	8.8
Pernod Ricard	8.7
Brown Bros Pty Ltd	3.3
Casella Wines	2.8
Taylor's Wines	2.6
McWilliams Wine	2.5
Delegat Australia	2.4
Casama Fine Wines	2.3
Samuel Smith & Sons	2.1
Australian Vintage	1.8
Giesen Wines	1.6
Negociants Ltd	1.4
Warburn Estate	1.3
De Bortoli Wine	1.2
Vintage House Wine and Spirits	0.4
Moet Hennessy	0.4
Inglewood Wines	0.3
Aria Wine Co	0.2
Tyrrell's Wines	0.1
Cumulus Estate	0.1
Robert Oatley Vineyard	0.0
Cheviot Bridge Pty Ltd	0.0

Interim Authorisations

Taylors Wines is seeking an interim authorisation for the proposed arrangement in relation to section 91(2) of the CCA. Taylors Wines are of the view that an interim authorisation would be appropriate since the likelihood of the proposed arrangement resulting in any significant competitive harm to competitors offering wines in the delivery service market is highly unlikely. In fact, the proposed arrangement will create an opportunity for a collective group of small wine producers to offer their products to an existing customer base. But for the proposed arrangement being put into effect, such sales would otherwise be captured by a large wine producer. Finally, it is essential that Taylors Wines and the Wine Group be granted an interim authorisation in order to commence discussions about the proposed launch of the new customer service offering.

Conclusion

Taylors Wines are of the view that there are a number of notable public benefits that would be associated with the proposed arrangement, and there are not any observable public detriments associated with the proposed arrangement. As a result, Taylors Wines considers the criteria for authorisation as per section 90 of the CCA are satisfied. Furthermore, Taylors Wines are of the view that it would be appropriate for the ACCC to grant an interim authorisation for the proposed arrangement, whilst Taylors Wines application is being considered by the ACCC, to enable commercial discussions to progress, pending a final determination.

ATTACHMENT B
Joint marketing plan

CONFIDENTIAL