



New Class Exemption to Allow Collective Bargaining

Groups of small business are now allowed to get together to collectively negotiate with a, usually larger, supplier or customer without breaching Australian competition laws. ¹

This Determination, made by the Australian Competition and Consumer Commission (ACCC), came into effect on 3 June 2021.

This is likely intended to be useful in concerning practices identified by the ACCC resulting from the bargaining power imbalance between growers and winemakers. ² However, it may also be utilised far more broadly across the wine supply industry.

How it works

Eligible businesses will be able to form a collective bargaining group. Members of such a group will be exempt from the application of competition laws regarding collective bargaining. These laws would otherwise prevent two or more competitors jointly negotiating with a supplier or customer about terms, conditions or prices. The exemption extends to the conduct of a joint tender process by eligible businesses in a collective bargaining group.

To be eligible to join a bargaining group each business must have an aggregated turnover of less than \$10 million in the most recent financial year prior to joining the group (using the same method required to determine turnover for 'small business entity' under Australian taxation laws).

A bargaining group seeking to make use of the class exemption simply needs to lodge a one-page *Collective Bargaining Class Exemption Notice Form* with the ACCC. It also needs to provide the form to any supplier or customer that the group proposes to bargain with (target business).

It is voluntary to join and voluntary to negotiate with a bargaining group. Therefore, a target business can choose whether or not to enter into negotiations with such a group.

Alternatives

Although similar exemptions have previously been available on a case by case basis, lodging the above form will provide automatic protection at no cost.

The other pathways of 'authorisation' and 'notification', which remain available for businesses who do not meet the class exemption criteria, involve making a formal application to the ACCC for approval. This approval may be subject to conditions and the applications also attract fees of \$1,000 to \$7,500.

Some limitations

Care still needs to be taken to not breach competition laws in other ways.

The class exemption will not protect sharing of information beyond what is reasonably necessary to facilitate the negotiations with a target business. For example sharing information about a businesses intended product prices, where not reasonably necessary for negotiations, is still likely to breach competition laws.

Also, collective boycotts are not protected. It will still be a breach of competition laws if a group of businesses get together and all refuse to supply or purchase from a particular supplier or customer.³

If the ACCC believes the bargaining group's activities will substantially lesson competition it can withdraw the benefit of the class exemption from particular businesses, although it cannot do so retrospectively.

¹ Contained in the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010;

² ACCC's Final Report – Wine Grape Market Study of September 2019;

³ However, 'authorisation' and 'notification' pathways remain available for such conduct;

Your thoughts

WISA is keen to hear your thoughts on suitable collaboration areas within the wine supply industry and what benefits you perceive might be gained from the ability to collectively bargain.

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