

Alert

CORPORATE & COMMERCIAL

ACCC Targets Unfair Contract Terms for Agribusiness

By Sandy Donaldson & Marianna Danby

The ACCC's crackdown on unfair contract terms may impact you if you're involved in the wine or agribusiness industries.

The newly established ACCC Agricultural Unit has fired at its first target by initiating proceedings against the Mitolo Group Pty Ltd (Mitolo), which is the largest potato wholesaler in Australia.

The ACCC is seeking court declarations that certain standard form supply contracts terms Mitolo has entered into with its potato farmers contain unfair contract terms and are in breach of the mandatory Horticulture Code which came into full effect to protect growers on 1 April 2018 under the *Competition and Consumer Act 2010*.

You can read the ACCC release outlining the types of terms the ACCC seeks to establish as being void in more detail at <https://www.accc.gov.au/media-release/action-against-mitolo-for-alleged-unfair-contract-terms>.

The ACCC highlighted Mitolo's pricing terms. It also alleges that Mitolo's restraint clause which prevents farmers from selling their farm unless the prospective purchaser first enters into an exclusive potato farming agreement with Mitolo is an unfair contract term.

This form of restraint is common in many wine and agri-business supply contracts. Its intention is to protect the party acquiring produce if there is a change of owner to ensure the

continuation of supply. The ACCC has indicated that these are considered to be "**egregious**" terms and unfair contracting practices in the agri-business sector which it wishes to address on a larger scale and phase out. Unfair contractual terms may be declared void by a Court and also breach relevant industry codes.

Grower contracts with processors are exempt from the Horticulture Code so contracts for the supply of grapes to a winemaker will be exempt, but may still contain unfair contract terms. If a winemaker is a signatory to the Wine Industry Code, then it will be bound by its provisions and must abide by the minimum requirements for wine grape purchase agreements in any case.

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In 2016 changes were made to the Australian Consumer Law to extend the law to protect business to business dealings from unfair contractual terms. These protections are afforded to contracts between businesses if one of them employs fewer than 20 people and the up-front price payable does not exceed \$300,000 (or up to \$1 million for contracts running for more than a year).

One of the conditions which must be satisfied for a contract term to be considered unfair is that it must *“not be reasonably necessary to protect the legitimate interest of the party advantaged by the term”*. It may be that in many cases, particularly an agreement for the supply of wine grapes, that a restraint clause on the sale of the grower’s property could be considered reasonably necessary to ensure the continuation of supply.

The ACCC action in relation to the Mitolo contracts is likely to have broad application to those within the wine and agribusiness. We urge you to review your current supply contracts and contact us if you have any queries.



MORE INFO

Sandy Donaldson Director

p: +61 8 8124 1954

sandy.donaldson@dwfoxtucker.com.au



MORE INFO

Marianna Danby Lawyer

p: +61 8 8124 1833

marianna.danby@dwfoxtucker.com.au

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 8124 1811 e: info@dwfoxtucker.com.au dwfoxtucker.com.au

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