



IN STRICTEST CONFIDENCE

To Whom it may Concern

Re: Pernod Ricard (a wholly owned French subsidiary) in Australia Orlando Wyndham (Orlando) AND Globe Wines (Globe) a family company/grape farmer/small business of 38 years standing.

A summary of the Orlando and Globe Contractual Association –

The Globe claims as to Orlando's, False and Misleading, harsh and unconscionable conduct, and its misuse of market power against Globe.

1. Globe has produced premium to ultra premium chardonnay crops in the Hunter region since 1979.
 - 1.1 From 1982 Saltram Wine Estate Pty Ltd (Saltram) entered into three separate Purchase contracts with Globe. Globe's last contract (running from 1989 to 1993) shows that Saltram paid Globe for its Chardonnay crops (at the 11.5 Baume point) between \$2,000.00 to \$1,600.00 per tonne – which equates to a Chardonnay payment, at the 12.5 Baume point, between \$2,200.00 to \$1,800.00 per tonne. (See Saltram's contract and crop pricing pages 13 & 14 – Tab 2)
2. Late in 1993 Orlando negotiated a long-term 10 year supply contract / growers agreement with Globe, for the purchase of its premium Chardonnay crops.
3. From 1994 to, and including, 1998, Orlando purchased Globe premium crops and paid premium prices, in accordance with the grower agreement – Tab 3.
4. Significantly, in 1997 Orlando negotiated with Globe to alter the agreed term for Globe to harvest its crops at 12 baume, by having Globe increase the agreed level to 12.5 baume. This increased the degree of risk to Globes crops. The outcome impacted on Globe, financially (See all points of 14, 15, 23.4, 23.5, & 23.6 this document).
 - 4.1 In exchange, Orlando was to extend Globe's contract for a further 10 years, from 1997 to 2007. Implicit in this undertaking, Orlando was to simply repeat all the existing contractual arrangements in operation in 1997, ie: a premium price offer to be made each year by Orlando to Globe, prior to

harvest, based on the market movement and taking into account crop prices from within the 'reference regions' premium districts – then the crop was to be assessed for any quality defects/deductions under Appendix 2 of Orlando's agreement prior to harvest. In addition Orlando was to provide Globe with two (2) yearly crop payments. *Orlando's senior officers denied the undertaking – until the 2001 Court settlement, even though Orlando's documentation demonstrated that it had acted immediately on Globe's 12 to 12.5 Baume shift, thereby provided Orlando with a cost effective benefit on all Globe's crops from 1996 forward.

5. Significantly, in 1997 Globe's officers advised Orlando of their concerns as to Orlando's plans to transport and process Globe's future crops at Mudgee. This would automatically place Globe's premium white crops well outside the necessary timeframe for the industry's best processing practice. Poor quality wine for Orlando was the inevitable outcome (see Industry best processing practice Tab 4).
 - 5.1 Orlando's grower agreement (clause 6.3) provides for Globe's crops to pass directly into Orlando's control when loaded onto Orlando's trucks at Globe's vineyard. 'Risk in those Products shall pass from Grower to the Company when those Products have been loaded onto the Company's vehicle for transport'.
 - 5.2 Therefore, past that point, Globe has no further responsibility for its crop's good husbandry, with only Baume readings and Mog to be identified at Orlando's weigh-bridge.
 - 5.3 Consequently, Orlando was completely responsible for any deterioration to the Globe crop from that point on.

6. From 1998 Vintage, Orlando elected to ignore 'Industry Best Practice' by transporting and processing Globe's crops at its Mudgee winery.
 - 6.1 Had Orlando's senior officers accepted responsibility for their decision to transport and process Globes crops at Mudgee, the worst outcome for Globe would have been to accept this as a most regrettable logistic decision by Orlando; as Orlando would not be enjoying the best outcomes from Globe's premium crops.
 - 6.2 However, Dr Lester chose instead to transfer Orlando's responsibility to Globe's crops and vineyard. He hereby set up what was to become an effective mechanism for discounting all Globe's future crops.
 - 6.3 Industry Best Practice.
 - A. Orlando's published paper – "Crushing and pressing white grape" – Tab 4.
 - B. "Winegrape Assessment in the Vineyard and at the Winery" by the Grape and Wine Research & Development Corporation – Tab 4.

- 6.4 White wine grapes/crops, especially premium white crops, under best industry practice, should be crushed and chilled within two (2) hours of harvesting, to maintain their premium qualities.
 - 6.5 If these technical and fundamental procedures are increasingly delayed, the premium qualities of the crop, and the resulting wines, are increasingly diminished.
 - 6.6 It takes one hour (minimum) to harvest and load an Orlando truck at Globe's vineyard, depending on adverse weather conditions and machine breakdowns etc.
 - 6.7 It takes three hours (minimum) to drive an Orlando truck from Globe's Vineyard to Mudgee, depending on weather conditions etc.
 - 6.8 Thus Orlando's transportation time from the Hunter to Mudgee, placed Globe's premium white crops well outside Industry Best Practice, that is outside the two hours from 'harvest to crush and chill', which is necessary to produce premium white wines.
 - 6.9 There can be no reinvigoration of premium white crops to reflect their original qualities. Past this time frame, only increasingly diminishing wine quality.
7. Significantly, in 1998 Orlando paid a Hunter Valley winery, Monarch, to crush and chill over 200 tonnes of Globes crop before transporting the juice to Mudgee. Why? Orlando's officers advised that these litres were intended for Orlando's premium wines.
 - 7.1 1997 was the last year Orlando elected to process Globe crops in the Hunter region – with the exception of the 200 tonnes (taken from both of Globe's 1998 & 1999 crops) which Orlando paid to have crushed and chilled in the Hunter region.
 - 7.2 Significantly, Orlando also paid Globe \$1730 a tonne for its 1998 crop. This was a premium crop price.
 - 7.3 Most importantly, during vintage 1998, Orlando's long serving chief winemaker at Mudgee, Robert Paul, advised Orlando (head office) that its Mudgee winery's processing equipment was far from adequate to successfully handle the increased tonnes being delivered to Mudgee for the 1998 vintage.
 - 7.4 Following vintage 1998, Robert Paul was asked by Orlando to list the equipment he would require to process further additional tonnes planned for Mudgee for the 1999 vintage.
8. At the 1999 pre-vintage meeting, in January 1999, Orlando officers for the first time offered Globe crop prices that were well below the accepted market price for quality Chardonnay, thereby clearly contravening the terms and conditions of the grower agreement.
 - 8.1 At that meeting, Orlando also for the first time sought to transfer the responsibility for its past 1998 time delays and processing blunders directly to Globe crop, stating to Globe officers, in words to the effect, "Orlando is not happy with the wine quality outcomes which Globe's 1998 crop provided".

- 8.2 Because of Globe's previous expressed concerns to Orlando officers as to the poor wine outcomes which would inevitably result from Orlando transporting and processing Globe's 1998 crop at Mudgee, Globe's officers had prepared (from Orlando's own 1998 Mudgee weighbridge 'grower documents) diagrams which showed the destructive time delays experienced by all Orlando's deliveries of Globe's crop to Mudgee in 1998.
- 8.3 Globe's 1998 diagrams on time delays were presented at that meeting (January 1999) to Orlando officers headed by Dr Don Lester. They demonstrated that Globe had the proof that any 1998 poor wine outcomes were Orlando's responsibility [see Tab 4 and 5].
- 8.4 Dr Lester therefore retreated from this approach, deciding to pay Globe the minimum crop price by inappropriately applying clause 4.3 of their agreement. Thus Orlando for the first time paid Globe an interim price, pending the appointment of an 'independent expert' to assess the true market value of Globe's 1999 crop.
- 8.5 Just prior to Vintage 1999 commencing, Robert Paul, Head Winemaker Mudgee, resigned due in a major part to Orlando's non-delivery of the necessary processing equipment promised for vintage 1999. Extensive deliveries of stainless storage wine tanks did arrive, but no new crushing bins or grape presses to avoid crops being left out for hours to deteriorate, yet again creating time delays and processing blunders. – (see points 7.3 & 7.4 this document).
9. Globe's 1999 crop was harvested at premium quality. Globe received no in-field quality deductions whatsoever from Orlando's officers (necessary before harvest commences under the grower agreement)
- 9.1 Most significantly, again in 1999, Orlando paid a Hunter Valley winery, *The Hill of Hope*, to crush and chill approx 200 tonnes of the Globe crop before again transporting the juice to Mudgee. Why? Orlando's officers advised that these litres were intended for Orlando's premium wines. [See "Industry Best Practice" Tab 4; time delay diagrams Tab 5; and revisit Par 7 of this document.] Orlando clearly understood what it was doing, namely, allowing for the down-grading of a contracted, large volume premium Chardonnay crop, which Orlando no longer required after Vintage 1999. [See point 6 of this document].
- 9.2 Following Robert Paul's last minute resignation, Orlando appointed a new head winemaker for Mudgee, with disastrous outcome for Orlando and for its many contracted growers who, like Globe, were financially penalised by Orlando's harsh and unconscionable action in 1999. Orlando visited Globe and others with the effects of what was, in reality, its own decision, its actions and omissions on what was at that time its own crop. This demonstrates why it was necessary for Orlando to

- process premium crops in the Hunter region – to produce premium wines of cause. [See points 6.1, 7 and 9.1 again.]
- 9.3 In 1999, Globe's officers again preserved Orlando's Mudgee weighbridge grower documents and records. These show the destructive time delays experienced by all Orlando's deliveries of Globe crop to Mudgee (see time delay diagrams – Tab 5).
- 9.4 Again, Orlando's time delays and processing were well outside industry best practice.
- 9.5 Record-keeping of juice to wine movements was a shamble.
- 9.6 Many (if not all) of Orlando's contracted crops from Mudgee, Cowra and Globe's crop from the Hunter were lost track of, in part or totally, with disastrous financial outcomes for all growers whose crops were delivered to Mudgee for processing vintages 1998 – 1999 & 2000 respectively.
- 9.7 So significant was the disarray at Orlando's Mudgee winery in 1999 that its new head winemaker was sacked before vintage was completed.
- 9.8 Late in 1999, Orlando again advised Globe that the majority of its 1999 crop had been classified by Orlando, using its finished wine assessments, as no better than commercial in quality.
10. Vintage 2000 was an exceptional premium year for the Hunter region, and published as such.
- 10.1 Globe's 2000 crop was harvested as ultra premium to premium in quality, receiving no in-field quality deductions whatsoever from Orlando's officers. This assessment was necessary before harvest commenced, under the agreement.
- 10.2 Yet again, in 2000, Globe officers kept its Orlando Mudgee weighbridge grower documents and records, which show the destructive time delays experienced by all Orlando's deliveries of Globe crop to Mudgee.
- 10.3 Again Orlando's time delays and resulting processing were well outside industry best practice.
11. Significantly, on 28 February 2000, Orlando's officer, Dr Don Lester, met with Globe's officer – Diane Dewar to discuss:
- 11.1 The unresolved market price for both Globe's 1999 crop, and for the current 2000 crop; and
- 11.2 Orlando's insistent request for Globe to alter its grower agreement, to allow Orlando to value Globe crops, each year, through the use of Orlando's in-house finished wine assessments, under which;
- 11.3 Globe would receive only the guarantee of a base-price before harvest each year;

- 11.4 Then, if Orlando's finished wine assessments of that crop were favourable, Orlando would provide a bonus per tonne on that base price, according to the quality grade reached, which in turn would be decided by Orlando's officers, from its own finished wine assessments.
12. Most significantly, at the 28 February 2000 meeting, Dr Lester advised Globe's officer (in words to the effect) "I have spoken with Brett (head winemaker Mudgee 2000) yesterday and he advised me that the majority of your crop this year has provided premium outcomes, Diane - you will therefore receive a significant bonus on your base price for this year, if you accept Orlando's proposal".
- 12.1 Because of Orlando's behaviour with regard to Globe's 1998 & 1999 crops, and
- 12.2 Because Orlando intended to continue to process Globe future crops at Mudgee.
- 12.3 Globe's officer declined to alter its grower agreement with Dr Lester/Orlando.
- 12.4 Again, late in 2000, Orlando's officers graded the Globe crop, using its finished wine assessments, as commercial grade only. Orlando made no mention of Dr Lester's advice to the Globe officer on 28 February 2000 that "the majority of your crop this year has provided premium outcomes Diane." Nor did Orlando take responsibilities for its recorded time delays or processing problems, which had impacted so heavily on what was Orlando's own crop, given it had already taken charge of it.
13. In October 2003, through their own investigation, the ACCC received fresh evidence, directly from Orlando, which supported Globe's claims as to the Orlando/Globe meeting of 28 February 2000, and Orlando's breaches of the TPA against Globe.
- 13.1 However, the ACCC did not appreciate the significance of this evidence, passing it on to Globe without comment in a letter dated 28 October 2003 (see details following).
- 13.2 Globe identified the importance of the evidence contained within Dr Don Lester's statement to the ACCC, and of the domino effect such evidence would reveal if accepted and investigated by the ACCC.
- 13.3 For Dr Lester's statement clearly showed that he / Orlando had presented at least two contradictory statements to the ACCC, regarding the qualities of Globe 2000 crop, one of which must have been untrue. However, in this instance, Globe can show that both of the Orlando statements were untrue. (See all points 5 and 9 this document.)

- 13.4 The devil can be seen in the detail. Consider Dr Lester's words included in the ACCC's letter to Globe. According to Dr Lester, he had stated to Globe that about 20% of the blocks were likely to be W2 (premium), 32% were probably semi-premium, and 48% would probably be classified as commercial grade. (See ACCC's letter to Globe 28 October 2003, page 5 last Par – Tab 6.)
- 13.5 What Dr Lester was saying to the ACCC is that at the time of his meeting with Globe, on 28 February 2000, Globe's 2000 crop remained unharvested and was therefore still at risk in the blocks. This statement by Dr Lester was untrue. As Dr Lester / Orlando knew, the facts were that on the 28 February 2000, 96.92% of Globes 2000 crop (from Orlando's own records) had been processed by Orlando's officers into wine, and that it was in Orlando's own wine tanks at Mudgee between 11 to 19/02/2000. [See Orlando's grower's statement which shows Globe 2000 crop delivery dates, Tab 7.]
- 13.6 This Orlando grower's statement for the Globe 2000 crop confirms that Orlando's assessment of the Globe 2000 crop (by its head winemaker – Brett McKinnon) was a favourable one based on wine samples taken directly from Orlando's tanks – (NB: This crop had already experienced Orlando's harsh and unconscionable actions i.e. the time delays before processing, demonstrating that only an ultra premium to premium crop could have survived such downgrading and still retain sufficient quality features to provide Orlando with its 28 February 2000 assessment, 20% premium, 32% semi premium and 48% commercial. This confirms Globe officer's statement that Dr Lester had informed her that "the majority of your crop this year has provided premium outcomes Diane". [Revisit 13.4 and 13.5 of this document not of the blocks but in Orlando's tanks.]
- 13.7 A significant question remains: When did Orlando's officers decide to further downgrade Globe's 2000 crop to 100% commercial quality?
Clearly this was for financial gain, directly affecting Globe. The ACCC senior officers did not carefully analyse Globe's and Orlando's public domain documents (as provided to ACCC – 30 January 2003). They did not understand or appreciated what they were looking at in Dr Lesters statement which were carefully crafted to mislead the ACCC. The facts and supporting evidence confirm Orlando's duplicity as to its assessment of the qualities of the Globe 2000 crop. Serious breaches to the TPA were committed.

14. Vintage 2001 was a very difficult vintage across all the wine regions, due to extreme weather conditions.
 - 14.1 The majority of the Australian crush was harvested early, and below the preferred baumes. This was done to limit the onset of associated degease which accompanies such weather conditions.
 - 14.2 The Globe crop was no exception, Globe's officers were prepared for crop deductions associated with Baume drops below the 12.5 baume point, together with crop quality deductions covered then by Orlando – Globe agreement (never an issue between the parties prior to this time).
 - 14.3 Orlando's officers remained responsible for all quality deductions to be identified in the field, upon inspection prior to harvest. [See clause 7.3.1 growers agreement – Tab 3.]

15. Orlando's officers gave Globe their 'authorisation' for harvest to commence on the 2 of February 2001, Globe commenced to harvest that very night.
 - 15.1 The following day, 3 February 2001, Dr Lester halted Globe harvest, in clear breach of the grower agreement, he had given authorisation to commence harvest on 2 February 2001. [See grower agreement, clause 6.8 – Tab 3.] "The company shall not after it has given it authorisation for the harvesting of the products reject or refuse to accept from the grower delivery of any of the products in a particular vintage".
 - 15.2 Refer to the second part of the sentence in Clause 6.8, "unless there has been a substantial deterioration in the quality or condition of the products, or any of them, between the date on which the company notified the grower of the authorisation and the time of delivery. Refer to Clauses 6.8.1 and 6.8.2. Clearly the circumstances described in these clauses cannot be applicable, for the time frames necessary to invoke these clauses simply did not exist. Globe's Ken and Marie blocks final inspection was only completed on 1 February, the day before harvest commenced, and according to Orlando's agreement, all blocks should be inspected prior to harvest being authorised.
 - 15.3 Dr Lester continued his harsh and unconsciable conduct. On that very day when he cancelled Globe's right to complete its harvest, he forbade Globe to use any of Orlando's grape bins delivered to Globe vineyard for that night's harvest.
 - 15.4 He did this because if Globe had access to Orlando's bins, the Globe's bin-trailors would be operational, and Globe's officers could rely on clause 6.7 of the agreement.
 - 15.5 Clause 6.7 provides Globe with the right to give Orlando a mandatory twelve (12) hours notice to accept Globe's crop deliveries or to face serious consequences.

- 15.6 Refer to clause 6.3 – “the company will supply bins for the transport of these products and arrange and bear the cost of transportation”. This is a clear example of Orlando’s harsh and unconsciable action and misuse of its market power.
- 15.7 Consequently, Dr Lester / Orlando allowed the harsh weather conditions at the time to continue to impact on Globe’s crop – by holding the Globe harvest up over a further five days, while Orlando’s officers used the time to conduct additional in-field inspections, which should have been conducted prior to harvest authorised. Thus, Orlando, through these actions, could reject Globe’s crop outright, due to the advancing degease levels. It was all over bar the shouting for Globe’s crop. No one would be the wiser as to how this ‘peski’ grower’s crop was eliminated. Stand up and challenge Orlando ‘for a fair go’ and survive – not likely! [See Dr Lester’s crops rejection letter 6 January 2001, Tab 8.]
16. The Consequences of the behaviour of Orlando’s officers, – they had Globe in a chock-hold.
- 16.1 In 1996 Orlando had arranged with Globe to assist in changes to its crop delivery methods – from dumpster trucks to bins on flat top trucks.
- 16.2 Orlando would provide the bins if Globe purchased a number of trailers which were designed to accept Orlando style bins only.
- 16.3 Without bins for its trailers, and with Globe’s 2001 crop in a highly perishable state, open to wipe out within 3 to 5 days due to the extremely harsh weather conditions, impacting on the Hunter region over that 2001 harvest, Globe was between a rock and a hard place.
- 16.4 Every other winery was scrambling to get its growers crops in, while Orlando, with knowledge of these extreme weather conditions and their impact on Globe’s crop, left Globe’s crop out there to perish. [See Dr Lester’s letter to Globe 2 February 2001. Page 2, Par 2 – Tab 8.] “Recent weather events have done nothing to improve this out-look rather they have further encouraged the development of fungal rots which is of concern”. [Page 2 Par 6]. “... not delay harvest, which could impact on the grape quality, which is not in either of our best interests”.
- 16.5 After five days in check-mate, with Globe trying to reason with Orlando’s officers, Globe’s Managing Director, Diane Dewar rang directly to Orlando’s officer in charge, Dr Don Lester, to beg him to allow Globe to use a few of Orlando bins, so that the Globe trailers could become operational. Globe’s crop was literally perishing before its eyes.

16.6 To achieve the use of Orlando's bins (under this pressure from Dr Lester) Globe's officer was given no option but to ask Orlando to release Globe from its 2001 crop obligations – to salvage what was left of its diminishing crop, income and solvency.

- No time to consult with or bring in experts (as per the grower agreement).
- No time to seek, receive or act on legal advice, pertaining to Orlando's breaches of contract.
- No time to find (let alone negotiate) with other buyers.
- No time to negotiate transporting and processing costs for that crop which Globe then had to fund.

16.7 Orlando had executed a coup de gras. At the eleventh hour, Orlando achieved what it sought – non delivery of Globe's 2001 crop. Through a display of corporate thuggery, Globe came to the brink of bankruptcy.

16.8 The capital loss to Globe was between \$700,000 to \$1,000,000, resulting from the harsh and unconscionable conduct of Orlando's officers in 2001. Globe is still struggling to survive.

17. After vintage 1999 and through to mid 2001, Globe's legal representative battled with Orlando's officers and in-house legals, to secure the appointment of an independent expert, to provide a fair market price ruling required under the grower agreement, firstly for Globe's 1999 crop, then, as time progressed, its 2000 crop, and finally, in sheer desperation, for its 2001 crop. To no avail.

18. Mid 2001, Globe filed a claim in the NSW Supreme Court against Orlando for breaches of contract.

18.1 The business day before to the matter was heard, Orlando offered to settle. The agreement was noted in principle before the court.

18.2 Orlando paid \$140,000 to Globe legals for its unpaid expenses. This included a minimal fee for Mr Bob Ellicott QC who had done everything to assist Globe financially, and whose strategy and clear insight into Orlando thuggery never wavered. That Globe survived 2001 'to fight another day', was Mr Ellicott's victory for Globe.

18.3 A new grower agreement was settled. This reflected the original agreement and related to vintage 2002 onwards. The agreement was deemed to have commenced as at 1997, expiring 2007, so as to fulfill Orlando's 1997 commitment to Globe. [See point 4 of this document and Clause 8.1, grower's agreement – Tab 3.]

18.4 Orlando agreed to an independent expert's market price determination for Globe crops, for vintages 1999, 2000, and in principle for 2001.

- 18.5 Very significantly, Orlando agreed that the use of its finished wine quality assessments would not be part of, and therefore would not appear in the new grower agreement. Orlando finally accepted that it was not industry practice in 1997; and that it was clearly not the intent of the original agreement, and would never have been agreed to by Globe. [See clause 12.2 and 12.3 of this document.]
19. In 2001, Orlando decided to prohibit Globe the use of finished wine assessments as evidence to any expert pursuant to the agreement. It inserted in its 2001 ongoing grower agreement with Globe. "The grower will not rely upon the quality of wine produced from those grapes in any expert determination pursuant to this agreement". [See Clause 4.1.2.2(e) grower's agreement– Tab 3.]
- 19.1 ACCC officers, on the 30 January 2003, advised Globe that this clause likewise also prohibited Orlando as joint signee from such usage.
20. The 2001 independent expert price determination was conducted to provide Globe with the fair market price for its crops 1999, 2000 and in principle for the 2001 crop.
- 20.1 Orlando was obliged to pay Globe \$667,893.93 on 01/10/01, for its loss of crop income which Orlando had withheld from Globe over 3 years.
- 20.2 This Orlando payment went directly to Globe's bankers (the NAB) to prevent their foreclosure on Globe's vineyard.
21. For Orlando's 2002 pre-vintage crop offer to Globe, Orlando's officers returned to their previous (1999-2000-2001) pricing misconduct – that of taking an arbitrary 15% price deduction each year, from the previous year's base price. [See a clear misuse of Clause 4.3 agreement – Tab 3.]
- 21.1 This arbitrary crop pricing practice has been applied to all Globe crops following the 2001 experts assessment – *effectively rendering Globe's 1997/2001 court settlement contract with Orlando 'commercially worthless'.
22. In 2002, new independent expert was required by Orlando to determine the fair market prices for Globes 2002 crop.
23. In their submissions to the 2002 independent expert, Orlando's officers supplied false and misleading evidence by identifying Globe's 1999, 2000 & 2001 crops as evidence of Globe's vineyard's (so termed by Orlando) poor inherent qualities. [See Orlando's 2002 submission to the expert, specifically pages 5 to 12 – Tab 9.]

- 23.1 To achieve the outcome Orlando required, its officers provide false statements concerning where responsibility lay for the finished wine assessments, by claiming these outcomes could be traced to Globe's vineyard and crops, (stating in words to the effect,) "the inherent qualities of Globe's vineyards are traditionally poor, and therefore Globe's crops can only produce commercial and bulk wine outcomes". Orlando's senior officers also had Globe's 2002 crop/wine samples evaluated by industry experts. However, the relevant questions must be asked: Did this 2002 crop, like Globes 1999 & 2000 crops, experience Orlando's harsh time delays before processing commenced at Mudgee? Did Orlando keep the samples of each of Globe's blocks separately? Were the wine samples the result of part of Globe's crop being blended with another's growers crop deemed to be of similar quality by Orlando – a common Orlando process? This is where the ACCC could have accessed. The truth in labeling documentation, (required under law), as Orlando each year must record all crop deliveries to each winery and where such product ends up.
- 23.2 In its 2002 submission, Orlando demonstrated its harsh and unconscionable conduct by providing finished wine assessments as false and misleading evidence, which in turn influenced the 2002 expert's findings. This points up Orlando's capacity to misuse its market power.
- 23.3 Orlando chose to back up its conduct with documents – manufactured to cover-up Orlando's responsibility for the deterioration of Globes 'Premium 1999 & 2000 crops. [See "Risk in those Products shall pass from the Grower to the Company when those products have been loaded onto the companies vehicle for transportation", Clause 6.3 "Growers Agreement", Tab 3. Industry Best Practice, Tab 4. Time delay diagrams, Tab 5 Points 6, 7 and 9.1 this document.] This documentation shows Orlando was solely responsible for the down-grading of Globes 1999 & 2000 crops, and likewise undoubtedly its 2002 crop. Orlando's conduct breached the TPA, and demonstrates Orlando's intent since 1999 to crush, deprive and manipulate Globe out of its rightful entitlements under the agreement.
- 23.4 The facts remain in 2001 Orlando simply had to formalize their 1997/2001 undertakings with Globe if Orlando's officers did not want to go see themselves in court.
- 23.5 In 1997, it was Australian industry practice that the quality of a growers crop was valued firstly on their district's rating. Because Globe was recognised as producing premium Chardonnay crops, Orlando's 1993 agreement with Globe allowed for other premium districts to be listed in the Orlando agreement so as to afford Globe's crops access to those districts' crop prices. This pricing formula is also demonstrated through Orlando's actions in pricing Globes crops from 1994 to and including 1998.

23.6 When Orlando finally formalized Globe's 1997 grower agreement in 2001, Orlando's officers were obliged to place what had been the existing 1997 crop pricing formula into the 1997/2001 agreement, so as to honor their 1997 commitment to Globe. [See reference region clauses 2.20, 4.1.3.1, 4.2.3 – agreement Tab 3.] Thus Orlando's clear intent was to be seen to intend to use its past 1997 pricing formula with all Globe's future crops. After Orlando's harsh actions on 1999, 2000 and 2001, Globe would settle for nothing less because Globe had Orlando's documentation which showed Orlando's officers had operated under the 1996/1997 mutual agreement which enabled Orlando to enjoy considerable financial benefits over 1996, 1997, 1998, 1999, 2000, and in fact to this present day. Why did Orlando throw in the towel on the Supreme Court steps in 2001? Why indeed?

24. All the facts pertaining to these matters are to be found in both Orlando and Globe's public domain documentation. The originals were provided to the ACCC's officers on 30 January 2003, for their investigation of Globes claims.

25. The ACCC advised Globe that Orlando's senior officers 'harsh and unconsciable, false and misleading conduct, this misuse of market power, are only a contractual matter. This excuse for a brush-off by the ACCC is outrageous and implicit in this ACCC's advice. Globe should take this giant International French Company Pernod Recard/Orlando back to court if Globe is looking for justice.

25.1 It was a miracle of tenacity which enabled a small family business to defend itself against an international Goliath in 2001, and survive, The ACCC knows that to attempt to do so again would be suicidal.

What the ACCC is actually saying to all grape growers is – do not stand up to be counted. The ACCC will not stand to defend you.

26. In January 2003, after trying all feasible contractual avenues with Orlando in 2002, Globe recognized that it was time to approach the big industry watch-dog, the ACCC.

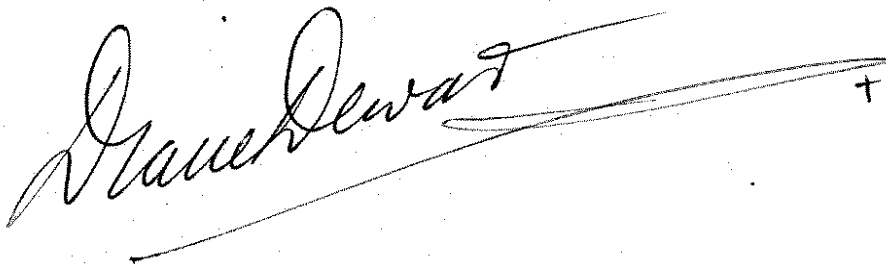
27. Early in 2003 the ACCC provided an undertaking to a Federal Minister and then passed the same undertaking on to a small business operator, Globe, stating more than once, in words to the effect that the ACCC would investigate thoroughly Globe's claims against Orlando. Implicit in such a statement is without fear or favour – "a fair go for all".

27.1 With such an undertaking provided by the ACCC's senior officers to a Federal Minister on Globe's behalf, went the obligation in good faith, to follow wherever such evidence leads without such a commitment any investigation would be a sham.

When ACCC officers are provided with proof that serious breaches to the TPA have been committed by a large international company / Orlando, against an industry Minnow / Globe, having the proof, might and mandate to address and challenge these breaches (be it on behalf of one grower only but for the good of many growers), then to choose not only to ignore the issues, and to confirm to the Federal Minister that no such evidence exists, is to be inculpated in the acts themselves. [See Mr Samuel's letter to Mr Abbott MHR 12 January 2005 and Globe's reply to Mr Abbott 16 February 2005 - Tab 10.]

What does it take to have the ACCC, Australia's ace industry watchdog, bark, let alone bite on behalf of the Australian small business community? Not good enough ACCC!!

[* Additional details on these matters are available - as shown under points 4.1, twice in 15.7 and 21.1]

A handwritten signature in cursive script, reading "Diane Dewar". The signature is written in black ink and is positioned above a horizontal line that extends across the page. A small cross-like mark is visible at the end of the line.

Diane Dewar