

Update: CCW & Accolade PSA discussions

CCW Members Meeting
14 February 2024



PSA Update: Agenda

- Welcome - Aden Brock – Acting Chair
- Update from PSA Negotiations Independent Facilitator – Stephen Strachan
- Update from Accolade Wines – Joe Russo, Chief Supply Chain Officer
- Q&A for Accolade Wines
- Current PSA: Key Elements (Andreas Clark – interim Managing Director)
- Accolade’s Position on the Current PSA (Jason Duldig – CCW legal adviser)
- CCW’s Responding Position (Jason Duldig)
- Proposal for a new PSA (Andreas Clark)
 - How Did We Get Here
 - Current State of Play
 - What’s Next
- Member Feedback and Q&A (Aden Brock)

Welcome & Housekeeping

- The CCW Board acknowledges that discussions regarding the PSA is a sensitive topic
- Be respectful to the speakers
- Opportunity at the end of the meeting to ask questions
- Bad behavior will not be tolerated

Current PSA: Key Elements

Agreement to Supply & Volume:

- Requires CCW to sell to Accolade all grapes supplied to CCW by its members under existing contracts
- Accolade to accept all grapes if a grower has undertaken to supply to CCW all grapes produced by the grower, or all grapes grown on a particular piece of land or of a particular variety
- PSA does not oblige Accolade to buy grapes from CCW where the grapes are not the subject of an existing contract unless Accolade has first approved CCW entering into a new contract with the relevant member

Current PSA: Key Elements

Term & Termination:

- PSA will continue for each vintage year until terminated under clause 10
- PSA may only be terminated:
 - for material breach of a material provision (sale and purchase of grapes; payment terms; assignment); or
 - by mutual agreement at any time.

Current PSA: Key Elements

Pricing & Payment:

- Accolade to inform CCW of the prices that Accolade expects to pay by no later than 15 January
- Accolade and CCW to discuss proposed prices and use best endeavours to agree upon prices which are *competitive market prices*
- Regard is to be had to prices paid by Accolade for the preceding vintage and any variations from the WDA in the Riverland for the previous and current vintage
- Accolade not to pay less than minimum prices which CCW, after consulting and with Accolade's agreement, has contracted with its members to pay
- If CCW and Accolade are unable to reach agreement on price, the price will be a *fair and competitive market price* determined by an expert, having regard to:
 - The long-term nature of the PSA;
 - The volume of grapes to be supplied; and
 - Prices paid by other winemakers.
- Optional true-up based on average prices in the Riverland as published by Wine Australia
- Grape payments made over 3 equal installments, ending on 30 September

Current PSA: The Accolade Position

Term and Grower Contracts

- Accolade accepts that the PSA continues unless terminated in accordance with the termination provisions or under law.
- However, the underlying grower contracts only continue to be relevant to the PSA if and to the extent that they have been approved by Accolade.
- Since 2014 at the latest (given 15 years maximum duration of the original grower contracts from execution of the PSA), any obligation on Accolade to purchase grapes arises only to the extent that Accolade has approved the ongoing underlying grower contracts.
- Accolade's approval of new (including 'renewed') grower contracts is required to be provided in accordance with the contractual notice provisions – i.e. in writing by an authorised representative of Accolade.
- An agreement that one party is forever bound would require the clearest language in support. Instead, there are express provisions to the contrary supporting Accolade's interpretation. For example:
 - Accolade to first approve new member contracts;
 - Grapes to meet Accolade's '*reasonable commercial requirements as to quantity*'

Current PSA: The Accolade Position

Term and Grower Contracts (cont)

- Since expiry of the original 5, 10, and 15 year contracts, Accolade has agreed on a year-by-year basis to buy certain quantities of grapes at certain prices “*in a manner broadly consistent with the PSA*”
- Accolade denies that it approves the CCW contracts by Accolade printing all contract Schedule 1's from its system and providing them to CCW to forward to each contract holder annually in July to confirm the grape supply.
- Accolade gave written notice in 2022 that it does not approve any new or renewed contracts. From that date at the latest it is asserted that CCW is not entitled to renew, amend, or enter new grower contracts.
- On that basis, if Accolade stopped printing Schedule 1s in 2022, the grower contracts have been extended until no later than 2037 (for those on 15 years terms).

Current PSA: The Accolade Position

Volume & Price

- Accolade is only required to purchase grapes from CCW if the grapes meet Accolade's "reasonable commercial requirements as to quantity, variety and quality"
- Accolade does not accept that Accolade must pay the same rate for those grapes above Accolade's reasonable commercial requirement to quantity.
- Accolade's position is that for any grapes beyond its reasonable commercial requirements, Accolade will offer materially different (nominal) prices.
- Agreeing a quantity of grapes under the Proposed PSA gives both parties security for multiple vintages and an opportunity for CCW to look to sell excess quantity elsewhere

Current PSA: The Accolade Position

Moving forward under the current PSA:

- Growers will roll off the Agreement as their terms come to an end and Accolade will not accept fruit from those Growers – **the underlying Grower contracts do not run into perpetuity**
- Any volume delivered above and beyond the reasonable commercial requirements of Accolade in a vintage where tonnage has not been capped will be paid an amount much less than the amount agreed.

Current PSA: The CCW Position

Term and Grower Contracts:

- It is arguable that the existing grower contracts contain an 'option to extend' and operate as a variation to extend the original contract (i.e. not a 'new' contract by way of 'renewal' as asserted by Accolade).
- Arguable that Accolade approved the CCW contracts by Accolade printing all contract Schedule 1's from its system and providing them to CCW to forward to each contract holder annually in July to confirm the grape supply.
- CCW maintains the position that assignment of an existing contract is not a 'new' contract that requires approval.

Current PSA: The CCW Position

Volume & Price:

- The PSA is clear about the requirement to take all grapes the subject of an existing contract (subject to meeting quality standards).
- CCW does not agree that Accolade can pay different prices for grapes *beyond its reasonable commercial requirements*
- The concept of different prices based on volume is outright rejected by CCW

Proposal for a new PSA

How Did We Get Here

- As part of the resolution of the V23 pricing dispute, it was agreed that CCW and Accolade will meet in good faith and use **best endeavours** to achieve a potential new PSA
- Working Group formed with representatives of both parties. Group has convened on 5 occasions since December 2023. Meetings facilitated by an independent third-party
- Timeline agreed for CCW/Accolade meetings, Grower meetings and CCW Board meetings
- Longstop Date of 24 May 2024 to achieve a new PSA

Proposal for a new PSA

Current State of Play

- Over the course of the past 5 meetings between CCW and Accolade, both parties have actively engaged in good faith negotiations.
- Whilst both parties have taken a firm position on the items of greatest significant, there has been a willingness on both sides to make reasonable concessions where appropriate to do so.
- **Note:**
 - The subject matter of the discussions is confidential.
 - Discussions have occurred on a *without prejudice* basis. Communications cannot be used by the other party as evidence in court. This means that parties can speak openly about the matters and explore options without the risk of the other party using that information against them later.

Proposal for a new PSA

Current State of Play: Pricing

Three pricing models have been explored by the parties:

| | | |
|--------------------------|---|--|
| Fixed Pricing | <ul style="list-style-type: none"> • Fixed Price for 3-year period. • Fixed Pricing re-negotiated every 3 years with outcome to apply for years 4 to 6 (and so on), or revert to a Fair Market Price for year 4 onwards | <ul style="list-style-type: none"> • <i>Accolade</i>: proposed that V24 pricing would apply for V26 – V28. • <i>CCW</i>: Fixed price model rejected. |
| Cost + | <ul style="list-style-type: none"> • A 'basket' of costs would be agreed (e.g. labour, water, electricity, harvesting), and a fixed % margin would be added to the cost. • One price offered for all grapes irrespective of varietal, one lump sum paid to CCW • CCW to then allocate payment out to growers based on volume and varietal | <ul style="list-style-type: none"> • <i>Accolade</i>: argued that this model would assure that grower costs are covered • <i>CCW</i>: model rejected as it does not work with argi commodities, cost modelling not acceptable to CCW, overly complex and not tested in wine industry |
| Fair Market Price | <ul style="list-style-type: none"> • Price to be determined for each vintage • <i>Accolade</i> to notify <i>CCW</i> of prices by 10 December based on prices likely to be realised for fruit of equivalent quality and Baume from the Riverland • Potential for true-up mechanism to adjust final price (-/+) based on published WDA, with possible tolerance • WDA to exclude <i>CCW</i>/<i>Accolade</i> volume | <ul style="list-style-type: none"> • Parties are actively exploring the FMP price model, with modelling being reviewed from earlier vintages • Parties discussing cap and collar mechanism with acceptable tolerance range for true-up • True-up could be up or down based on published WDA (ex <i>CCW</i>/<i>Accolade</i> volume) – assessing risk |

Proposal for a new PSA

Current State of Play: Payment Terms

| | | |
|-----------------------------|--|--------------------------------|
| Accolade Offer 1 | <ul style="list-style-type: none">• 8 equal installments each month commencing in April | CCW: Rejected |
| Accolade Offer 2 | <ul style="list-style-type: none">• 3 equal payments, with final payment by 30 September (in accordance with SA legislated payment terms for grapes) | CCW reserved position on this |
| CCW counter proposal | <ul style="list-style-type: none">• 2 payments, with final payment to be made by 30 June | Accolade currently considering |

Proposal for a new PSA

Current State of Play: Volume

| | | |
|-----------------------------|---|--|
| Accolade Offer 1 | <ul style="list-style-type: none"> 150,000 cap on maximum tonnage | CCW: Rejected |
| CCW counter proposal | <ul style="list-style-type: none"> Uncapped tonnes | Accolade: Rejected |
| Accolade Offer 2 | <ul style="list-style-type: none"> 150,000 cap on maximum tonnage | CCW: Rejected |
| CCW counter proposal | <ul style="list-style-type: none"> 185,000 cap on maximum tonnage, with allowed tolerance for excess (e.g. 5%) | Accolade: Rejected |
| Accolade Offer 3 | <ul style="list-style-type: none"> 167,500 cap on maximum tonnage, with allowed tolerance for excess (e.g. 5%) Dependant on acceptable varietal mix – may require new plantings | <ul style="list-style-type: none"> Currently being discussed by the parties. CCW maintains its position on 185,000 cap on maximum tonnes |

- Parties also discussing ability for varietal mix to be locked for a fixed cycle (eg 3 years)
- Accolade to notify CCW in year one of changes to the varietal allocation for year 4-6.
- Changes (up or down) per varietal not to exceed agreed threshold (eg 5%)

Proposal for a new PSA

Current State of Play: Term

| | | |
|-----------------------------|---|---|
| Accolade Offer | <ul style="list-style-type: none"> • PSA to end at the expiry of 'approved' grower contracts • New PSA would have the effect of rescinding the current 5, 10 and 15 year rolling agreements with growers, and replacing it with set contracts of 3, 4 or 5 year terms | CCW: Rejected |
| CCW Counter Proposal | <ul style="list-style-type: none"> • PSA term to align with term of grower contracts • If grower contracts are extended, term of PSA would also extend | Accolade: Rejected. Perpetual and unsustainable for Accolade and the industry |
| Accolade Offer 2 | <ul style="list-style-type: none"> • 10 year term, with option to renew for further 3 years by mutual consent | CCW: Rejected |
| CCW Counter Proposal | <ul style="list-style-type: none"> • 10 year term, with 2 options to renew for further periods of 5 years each by mutual consent • Parties to enter into good faith contract extension discussions in year 7.5 | Parties considering this proposal |

Proposal for a new PSA

Current State of Play: Other Matters

- A range of additional matters are also being considered, including:
 - Grape Quality Specifications
 - Termination Rights
 - Security for Payment
 - Indemnity (e.g. damage caused to winery equipment by MOG)
 - Resolution of Disputes

Proposal for a new PSA

What is Next?

- Further meeting(s) between CCW and Accolade to discuss terms of proposed PSA
- CCW Board Meeting to discuss revised PSA
- Third Grower Meeting
- Member vote on Special Resolution at AGM:
 - required quorum at a general meeting consists of 50 members present in person or by proxy and entitled to vote at the meeting
 - a Special Resolution is a resolution which is passed by a two-thirds majority at a general meeting of members
- Longstop Date of 24 May 2024



Member Feedback and Q&A