

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 316-319

Topic: Section 46

Hansard Page: Written

Senator BOSWELL asked:

316. How many successful actions has the ACCC taken under section 46?
317. How many of these actions involved the supply of agricultural products to a market in which there are only a few buyers?
318. In your view is section 46 designed to tackle the situation that concentration among buyers leads to strategies to push prices below long run average costs?
319. Does the ACCC still see the need for the addition of an "effects" test to section 46 as it did in its submission to the Dawson review?

Answer:

316. 11 (including 2 as the Trade Practices Commission)
317. Nil
318. Section 46 of *Competition and Consumer Act 2010* (CCA) is designed to address unilateral misuse of a substantial degree of market power by a firm, for an anti-competitive purpose. Section 46 provides the capacity to restrain anti-competitive below cost pricing designed to eliminate or substantially damage a competitor, to prevent entry of a person into the market, or to deter or prevent a person from engaging in competitive conduct.
319. In 2002 the ACCC recommended consideration of an effects test within subsection 46(1) of the *Trade Practices Act 1974* to the Dawson Review. The ACCC notes that a number of provisions in the CCA use the 'effect' or 'likely effect' of conduct as the gauge for whether a firm has acted anti-competitively. Equally, a number of provisions in the CCA capture anti-competitive conduct by reference to the purpose of the firm. The ACCC notes that the possible addition of an 'effects' test to subsection 46(1) was supported and opposed in a number of submissions to the Dawson Review and rejected by the Review Panel on the basis that it could discourage legitimate competitive practices. This is a policy question for the Treasury.