

Senate Rural and Regional Affairs and Transport References Committee

Written Questions on Notice – Thursday, 16 August
2012
CANBERRA

Inquiry into the Examination of the Foreign Investment Review Board National Interest Test

| Question Number | Page No's. | Witness | Question asked by | Answered |
|------------------------|-------------------|--|--------------------------|-----------------|
| 1A | - | ATO and the Treasury | Senator Milne | 6/9/12 |
| 1B | - | ATO and the Treasury | Senator Milne | 6/9/12 |
| | | | | |
| 1 | - | Australian Competition and Consumer Commission | Senator McKenzie | 14/9/12 |
| 1 | - | Australian Competition and Consumer Commission | Senator McKenzie | 9/10/12 |

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Thursday, 16 August 2012

Questions on Notice – Australian Taxation Office and the Treasury

Written Questions – Senator Milne

1. If the Qatar government compulsorily acquired stock grown and held in Australia by its subsidiary Hassad:
 - A. How would this acquisition be treated by the Australian Tax Office in comparison to if it was exported normally?
 - B. How much tax would be payable in comparison to if it was exported normally?

Rural and Regional Affairs and Transport Reference Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

Foreign Investment Review Board National Interest Test

16 August 2012

Topic: Taxation for stock grown in Australia and acquired by foreign entities.

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Question: 2

Senator Milne asked:

If the Qatar government compulsorily acquired stock grown and held in Australia by its subsidiary Hassad:

- A. How would this acquisition be treated by the Australian Tax Office in comparison to if it was exported normally?
- B. How much tax would be payable in comparison to if it was exported normally?

Answer:

The ATO does not comment on specific taxpayers. In general terms, an Australian agricultural business is subject to tax on its transactions, including if its produce was subject to compulsory acquisition.

This is the case whether:

- the transaction is domestic or international
- the taxpayer is Australian or a foreign resident.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Thursday, 16 August 2012

Question on Notice – Australian Competition and Consumer Commission

Written Question – Senator McKenzie

The question below refers to terms that are used in *Australia's Foreign Investment Policy* (January 2012), as posted on the website of the Foreign Investment Review Board.

1. What is your definition of 'healthy competition' and 'significant producer' in a practical sense?

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Thursday, 16 August 2012

Question on Notice – Australian Competition and Consumer Commission

Written Question – Senator McKenzie

The question below refers to terms that are used in *Australia's Foreign Investment Policy (January 2012)*, as posted on the website of the Foreign Investment Review Board.

1. What is your definition of 'healthy competition' and 'significant producer' in a practical sense?

ANSWER

1. *Australia's Foreign Investment Policy (January 2012)* is a policy document prepared and administered by The Treasury. Accordingly, questions seeking clarification of terms contained within the document should be directed to The Treasury.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Thursday, 16 August 2012

**Question on Notice – Australian Competition and Consumer Commission
(ACCC)**

Written Question – Senator McKenzie

While acknowledging that the terms in the question below refer to a document administered by the Treasury (*Australia's Foreign Investment Policy*, January 2012), the ACCC provides advice and assessments to the Treasury regarding cases before the Foreign Investment Review Board (FIRB). The question below is seeking information about the ACCC's role in FIRB cases.

1. When providing advice or assessments to the Treasury on cases before FIRB, how does the ACCC interpret the terms 'healthy competition' and 'significant producer' in a practical sense?

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT

REFERENCES COMMITTEE

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Thursday, 16 August 2012

Question on Notice – Australian Competition and Consumer Commission (ACCC)

Written Question – Senator McKenzie

While acknowledging that the terms in the question below refer to a document administered by the Treasury (*Australia's Foreign Investment Policy*, January 2012), the ACCC provides advice and assessments to the Treasury regarding cases before the Foreign Investment Review Board (FIRB). The question below is seeking information about the ACCC's role in FIRB cases.

1. When providing advice or assessments to the Treasury on cases before FIRB, how does the ACCC interpret the terms 'healthy competition' and 'significant producer' in a practical sense?

ANSWER

1. The ACCC does not have any formal role under the *Foreign Acquisitions and Takeovers Act 1975*. FIRB routinely consults with the ACCC on transactions which FIRB identifies as requiring assessment on competition grounds as part of its national interest assessment. In responding to these consultations, the ACCC's advice to FIRB is limited to whether or not it considers the proposed transaction is likely to contravene section 50 of the *Competition and Consumer Act 2010* (CCA).

Section 50 of the CCA prohibits mergers or acquisitions that would have the effect, or would be likely to have the effect, of substantially lessening competition in any market in Australia. The ACCC's assessment focuses on whether a merger is likely to increase the market power of one or more market participants to the detriment of consumers and lead to an increase in price, or deterioration in some other aspect of the service offering. The level of market power will be dependent on whether alternative actual or potential supply options are available post-merger to effectively constrain the merged firm. The level at which an increase in market power is likely to become significant and sustainable will vary from merger to merger.

The non-exhaustive list of factors the ACCC must consider are set out in section 50(3) of the CCA and are commonly referred to as the merger factors. The merger factors provide insight into the likely competitive pressure the merged firm will face following the merger and the possible competitive effects of the merger. The merger factors include import competition,

concentration, barriers to entry, the likelihood of the removal of a vigorous and effective competitor, degree of substitutability and others.

The terms 'healthy competition' and 'significant producer' are referred to in the Government's Foreign Investment Policy which is applied by FIRB when reviewing foreign investment proposals. The ACCC does not provide advice to FIRB based on these terms.