

Senate Economics References Committee

ANSWERS TO QUESTIONS ON NOTICE

Cooperative, mutual and member-owned firms inquiry

Department/Agency: Australian Competition and Consumer Commission

Topic: Competition, Mergers and Co-operatives

Reference: 29 February 2016

Questions:

1. Australia has highly concentrated markets in retail and banking. Would you agree that there is potential for member-owned businesses to increase the level of competition in these sectors?
2. What reforms are needed to the Consumer and Competition Act (CCA) to assist co-operatives to address the problem of upstream competition?
3. “Does the ACCC have the power to approve exemptions for co-operatives from the relevant test under the merger section of the CCA?”
4. “If yes, what templates exist for approving such exemptions?”
5. “Does the ACCC agree that the issue before the ACCC in such exemption cases would be the veracity of the "Suppliers Access Agreement?”
6. “Does the ACCC agree it should have the power to impose a Supply Agreement to approve such exemptions if required?”
7. “Does the ACCC already make determinations with regard to the above issues?”

Answers:

1. The Australian Competition and Consumer Commission (ACCC) welcomes all forms of competition whether the source is from member-owned firms or otherwise.
2. The ACCC has not identified any issues or problems specific to co-operatives under the *Competition and Consumer Act 2010* (CCA). The ACCC notes that the Government has agreed to recommendations in the Financial Services Inquiry to promote increased competition in financial markets. In addition, current proposed amendments to the CCA, including section 46, should assist all businesses including co-operatives. Any initiatives implemented by the Government to promote competitive markets are supported by the ACCC.
3. The merger laws under the CCA apply to co-operatives in the same way as they apply to other business entities. The ACCC is unable to exempt co-operatives as a whole from the merger section of the CCA. Any exemptions or clearances of mergers must be done on a case-by-case basis.

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As with other business entities, any co-operatives looking to merge have three avenues available to seek clearance of the merger under the merger provisions of the CCA:

- i. Seek informal clearance from the ACCC. This does not give the merger parties legal exemption from section 50 of the CCA but does provide parties with the ACCC's view as to whether the ACCC would challenge a merger on the basis that it was likely to result in a substantial lessening of competition in any market.
 - ii. Apply for formal merger clearance to the ACCC. If granted, this provides merger parties with legal exemption from court action under section 50 of the CCA. No applications for formal clearance have been made to the ACCC since the legislation was introduced in 2007.
 - iii. Apply for legal exemption from court action under section 95AU of the CCA by applying for merger authorisation from the Australian Competition Tribunal. This enables mergers that might otherwise contravene the mergers provision (section 50 of the CCA) to seek exemption on the basis that the public benefit arising from the merger is such that the merger should be allowed to proceed.
4. Parties looking to merge are encouraged to refer to the ACCC's guidelines at <http://www.accc.gov.au/business/mergers/merger-reviews#relevant-guidelines> or contact the ACCC at mergers@acc.gov.au.
 5. The ACCC would require further detail on the features and application of 'Suppliers Access Agreement' in the context of co-operatives in order to respond to this question.
 6. On the basis of the ACCC's response to question five, we are unable to respond to this question based on the information provided.
 7. On the basis of the ACCC's response to question five, we are unable to respond to this question based on the information provided.