



Dr Brett Williams

Senior Lecturer, Faculty of Law

Associate, Ross Parsons Centre for Commercial, Corporate and Taxation Law

29 November 2010

Senate Economics Committee (by email to economics.sen@ph.gov.au)

Department of the Senate

PO Box 6100

Parliament House

Canberra ACT 2600

Dear Chair Senator Bushby and Members,

**Re: Senate Economics Committee reference on ACCC Franklins decision – referred
23 November 2010**

I am a Senior Lecturer and an Associate of the Ross Parsons Centre of Commercial, Corporate and Taxation Law at the Faculty of Law of the University of Sydney.

It has come to my attention that the Senate has referred to the Senate Economic References Committee the task of reviewing a particular decision of the ACCC declining to give an informal clearance for the proposed acquisition of Franklins by Metcash

I submit that the Senate Economics Committee should not proceed with this inquiry. In attempting to carry out its task, the Committee would be making a decision which a law of the Australian parliament has delegated to other authorities.

Legislation of the government of the Commonwealth of Australia (*Trade Practices Act*) provides Metcash with a number of options:

Metcash may apply to the ACCC for a formal clearance which the ACCC can give if it is satisfied that the acquisition would not substantially lessen competition;

Metcash may apply to the Australian Competition Tribunal for an authorisation which the ACT can give if it is satisfied that the public benefit arising from the acquisition would outweigh the detriment arising from the acquisition.

Metcash can do nothing and wait to see if the ACCC seeks an injunction from the Federal Court against the proposed acquisition; or

Metcash could seek a declaration from the Federal Court that the acquisition would not substantially lessen competition.

The Australian government has delegated decision making authority to an independent executive agency (the ACCC) specifically because it wishes that the relevant decisions should not be made on the basis of political pressure.



THE UNIVERSITY OF
SYDNEY

Questions about the substance of the legislation could be suitable issues for the Senate Economics Committee. For example the Senate Economics Committee may wish to consider whether the legislation ought to allow the ACCC to take public benefit into account in making clearance determinations.

However, I submit it is inappropriate to use a Senate Committee for the purpose of applying pressure to an independent executive agency upon which legislation has delegated decision making authority.

Yours Sincerely

Brett Williams