

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

13 – 14 February 2013

Question: AET 28

Topic: Predatory Pricing – United Service Station, Richmond

Hansard Page: page 119, 13 February 2013

Senator XENOPHON asked:

Senator XENOPHON: ...I want to go to the issue of William and Samira Fares—and you may want to take it on notice. They used to run the United Service station on Marion Road, Richmond—and I moved the Richmond amendment several years ago in relation to that. Senator Wong is smiling, which is always a good thing. Unfortunately, they have closed down their service station because they could not compete with Woolworths. The complaint that Mr Fares put to me not so long ago was that, on many, many occasions, he would be buying fuel at a wholesale level that was actually more expensive than the retail level that was being sold at the service station right next door. He thought the ACCC could not or was not able to assist him. You may want to take it on notice in relation to that case; but, in terms of a broad concept, isn't that prima facie indicative of either predatory pricing or conduct that shows an abuse of market power?

Mr Sims: For it to be predatory pricing, we have to establish that there is an anticompetitive purpose, which is quite a high hurdle. We also have to establish if it is being cross-subsidised from the supermarket and what the relevant cost is between both the supermarket and the petrol, so it gets quite complicated. I think the main focus of our attention now is on the shopper dockets investigation, because that is where we have an explicit and large and continuing cross-subsidy.

Answer:

To establish an allegation of predatory pricing, the ACCC must demonstrate to the Court that the trader involved had a substantial degree of market power or share of market and that it priced below relevant cost for a sustained period for a prescribed anti-competitive purpose such as to eliminate a competitor.

In the context of fuel retailing, the ACCC is asked from time to time to consider allegations of predatory pricing where a larger retailer sells petrol often at prices lower than an independent retailer is able to acquire. There are a number of factors the ACCC must consider in assessing such allegations and importantly whether the retail price in question is lower than the trader's own cost and whether it has undertaken the pricing practices for an anti-competitive purpose rather than other motivations such as meeting market prices.

These are complex matters and the ACCC needs to consider them on a case by case basis with relevant information available. As suggested in the question, the ACCC has had previous communications with William and Samira Fares in relation to concerns raised by the Fares over pricing practices of a competing fuel retailer. Having regard to the information available, the matter was not pursued further.