

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

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Department/Agency: ACCC
Question: AET 301-304
Topic: Wine Grape Growers
Reference: written - 06 March 2015
Senator: Xenophon, Nick

Question:

I recently met with wine grape growers in the Riverland in South Australia – home to 1045 wine grape growers, representing over 20,679 hectares of vines and producing up to 30 per cent of Australia's annual crush.

The growers I met with are facing crippling below-cost offers for harvest, equating to just 20 cents a bottle of wine.

I note last year the ACCC declined to investigate a complaint from the Murray Valley Winegrowers that the big wineries had abused their market power and indulged in predatory pricing.

- 301. Why did the ACCC decline to investigate this complaint?
- 302. Are there any current investigations on foot?
- 303. Is the ACCC concerned about emerging reports that this year's harvest will see even lower prices for many grape varieties than last year?
- 304. Does the ACCC think it's possible that some winery companies and large grape buyers are using their market power to distort the wine grape market?
 - a. Has the ACCC received any complaints about the above?
 - b. Is the ACCC currently gathering information or conducting market surveillance in this sector, especially in the Riverland and Sunraysia Districts where many wine grape growers are selling grapes at below the cost of production?

Answer:

- 301. The ACCC investigated the complaint but did not consider that the concerns raised met the threshold for predatory pricing. The ACCC also assessed the conduct against the misuse of market power and unconscionable conduct provisions of the *Competition and Consumer Act 2010* (CCA) and Australian Consumer Law (ACL) respectively.

Under the CCA, predatory pricing is where a corporation with a substantial degree of market power is prohibited from *supplying* goods or services for a sustained period below the relevant cost of supply for a proscribed purpose. The conduct complained about did not meet the legal threshold because it concerned the *acquisition* of goods by the wineries from the growers, not the *supply* of goods or services by any of the winemakers. Based on this assessment, the ACCC did not consider that predatory pricing arose in the circumstances.

The ACCC considered that in relation to allegations against three winemakers, adequate evidence had not been provided to allow an assessment of whether the

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conduct was likely to have involved a misuse of market power. The ACCC also found that it was not clear whether, were sufficient evidence provided to make out the alleged conduct, it would have necessarily amounted to a contravention of the relevant provisions.

Two instances of conduct raised in the complaint were identified as warranting further investigation. In relation to both instances the ACCC requested further and specific details of the conduct, which was not forthcoming from the complainant. In the absence of evidence demonstrating that the conduct occurred, the ACCC found that one allegation could not be sustained and the other could not be substantiated.

- 302. The ACCC has assessed a matter on this particular issue and, on the available evidence, did not consider that the conduct did not contravene the CCA.
- 303. Further information would be required to verify the cause for the lower prices and whether the conduct raises any concerns under the CCA.
- 304. The ACCC has not been provided with evidence to substantiate claims of market power on the part of any particular wine maker in a relevant market. Based on a previous assessment of one market, the ACCC considered it unlikely that any one winemaker would have a substantial degree of power in that market.
 - a. The ACCC has received complaints in relation to this issue. The ACCC conducted an assessment of the complaints and did not pursue the allegations for the reasons set out above.
 - b. The ACCC is not currently conducting market surveillance in this sector.