

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates 2014
3 June to 5 June 2014

Department/ Agency: Australian Competition and Consumer Commission

Question: BET 3657-3661

Topic: Eggs

Reference: Written – 17 June 2014

Senator: Rhiannon

Question:

3657. May I please have an update on how many complaints about untruthful labelling of free-range eggs the ACCC has received in the past year?
3658. How many actions is or has the ACCC taken against such producers? Where is each of them up to, or what were the outcomes?
3659. The ACCC is currently taking action against the Australian Egg Corporation Limited and two egg producing companies for attempting to induce egg producers to cull hens or dispose of eggs to reduce the amount of eggs available on the market:
- a. Is the ACCC aware of this being a systemic practice in the past?
 - b. Is this attempted cartel behaviour indicative of more consumers moving away from cruelly produced eggs to free-range eggs, with a resulting oversupply of non-free-range eggs?
 - c. Where is this action up to?
3660. Has the ACCC been approached for advice to inform the recent agreement by state and territory ministers to draft a national standard for free-range eggs? If so, what was the advice given?
3661. Would the ACCC recommend the minimum 1500 hens per hectare, as widely expected by consumers?

Answer:

3657. In the period 1 July 2013 to 20 June 2014, the ACCC received 34 contacts in relation to free range egg concerns.
3658. The ACCC has provided details in previous questions on notice. For completeness, details are provided below.

Since 2011, the ACCC has taken a number of enforcement actions against producers for misleading advertising in respect of free range claims, including:

- The Court found that the Western Australia wholesaler, C.I. & Co Pty Ltd, and its two directors misled the public by labelling and selling cartons of eggs labelled 'free range' when a substantial proportion of the eggs were not free range. One individual was ordered to pay a penalty of \$50,000 for the conduct. The Court also ordered injunctions and costs. (*Media release 'Court penalises wholesaler for "cruel deception" on free range eggs' dated 4 February 2011*).
- Rosemary Bruhn (Rosie's Free Range Eggs) was penalised \$50,000 for falsely representing that eggs supplied to business customers were free range when a

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substantial proportion were cage eggs. The Court also ordered injunctions, corrective advertising and contribution to ACCC costs. (*Media release 'SA supplier penalised \$50,000 for egg substitution', dated 5 September 2012*).

- In December 2013, the ACCC instituted two separate proceedings against egg suppliers, Snowdale Holdings in WA, and Pirovic Enterprises Pty Ltd in NSW, over alleged misleading 'free range' representations and associated words and images. The ACCC alleges that the eggs supplied by each of Snowdale and Pirovic were produced by hens that were not able to move about freely on an open range each day. (*Media release 'ACCC institutes proceedings against free range egg producers', dated 10 December 2013*). These matters remain before the Court and no findings have been made to date.

3659. a. The ACCC's action against Australian Egg Corporation Ltd (AECL) and other respondents alleges conduct:

- from November 2010, where in AECL member publications, the AECL board encouraged its members to reduce egg production, in order to avoid oversupply which would affect egg prices
- in February 2012, where the AECL held an 'Egg Oversupply Crisis Meeting' attended by egg producers in Sydney, allegedly seeking a coordinated approach by egg producers to reducing the supply of eggs, in response to a perceived oversupply of eggs.

The ACCC's action against AECL does not concern conduct prior to 2010 and we cannot comment on past practices.

b. The ACCC is unable to comment on the motive of those engaged in alleged cartel behaviour.

c. The proceedings against AECL and other respondents is still before the Court. The First Directions Hearing in this matter was held on 26 June 2014. The next Directions hearing is on 19 August 2014.

3660. The ACCC has not been approached for advice in relation to the draft national standard.

3661. The ACCC does not have a view on a specific maximum stocking density for free range eggs.

The ACCC considers that the term free range eggs, means that hens have regular access and move freely about on an outdoor range for a substantial proportion of each day. If hens do not access or move around freely on an outdoor range for significant periods of time, the ACCC believes that the eggs should not be labelled free range.

The ACCC understands that there are a number of farming conditions that impact on whether hens are able to, and do, move freely on an open range each day. The conditions (and their impact) vary between producers and no single condition of itself is conclusive. The relevant conditions include:

- the internal stocking density of sheds

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- the conditions of the internal areas the hens are housed in
- the number, size and location of any openings to an outdoor area
- the time of the day and how regularly the openings are opened
- the size and condition of the outdoor area, including any shaded areas, the presence of food, water and different vegetation and ground conditions
- the stocking density of any outdoor area
- whether the hens have been trained or conditioned to remain indoors.