

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Budget Estimates
2016 - 2017

Department/Agency: ACCC
Question: BET 292-296
Topic: Recent competition cases
Reference: Written - 6 May 2016
Senators: Penny Wong and Chris Ketter

Question:

The Informed Sources case against five major petrol retailers has now concluded with an agreement that the company will make its price information available to the public at the same time as those retailers.

- 292. When will this information begin to flow to the public?
- 293. What resources has ACCC allocated to monitor compliance with this agreement?
- 294. In light of recent media reports about record-high margins between retailer costs and prices at the pump, will ACCC undertake any further market investigations or action on petrol prices?
- 295. The parliament will soon pass a bill banning excessive surcharges for credit card and other payments – how will ACCC enforce compliance with this ban? Does ACCC have the resources necessary to do this within the current funding envelope?
- 296. Will ACCC resources be diverted from other functions to enforce excessive surcharging bans, or will new resources be needed for this purpose?

Answer:

- 292. Informed Sources has made petrol price information available to the public since 20 May 2016, on its website and through its free MotorMouth app. This is as required by the Undertaking signed by Informed Sources on 21 December 2015.
- 293. ACCC staff with legal, economic or petrol market expertise contribute to monitoring compliance with the Undertaking as required.
- 294. In December 2014, the ACCC was directed to monitor the prices, costs and profits of unleaded petroleum products in Australia for a period of three years. The new monitoring arrangements included the preparation of regional market studies to aim to explain why petrol prices are higher in certain regional locations and explain where profit is being made in the petrol supply chain. The ACCC has released the Darwin report (November 2015) and Launceston report (July 2016), with the Armidale and Cairns market studies currently underway. On conclusion of the four regional market studies, the ACCC will review the overall lessons and how they may apply in other areas.

The ACCC will continue to investigate any issues or allegations of anti-competitive conduct that are escalated through the Commission's process for handling reports of

suspected anti-competitive conduct including those which are identified or raised as part of the regional market studies.

295. The Bill was passed by Parliament on 22 February 2016 and received Royal Assent on 25 February 2016. The new provisions inserted into the *Competition and Consumer Act 2010* (CCA) work in conjunction with the Reserve Bank of Australia's *Standard No 3 of 2016: Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions*, which was published on 26 May 2016. The ban took effect for large merchants on 1 September 2016. The ban will apply to all merchants from 1 September 2017.

The ACCC will enforce the ban in the same way it enforces other provisions of the CCA. If the ACCC is concerned that a merchant has contravened the CCA by imposing an excessive payment surcharge the ACCC will investigate. The amendments to the CCA inserted a new power available to the ACCC: an investigative tool called a Surcharge Information Notice which gives the ACCC the power to require a surcharge participant (eg a merchant or a bank) to provide information or documents to assist the ACCC to assess the costs incurred against any surcharge imposed by a merchant. If the ACCC considers that a merchant has contravened the CCA the enforcement remedies available to the ACCC include the ability to resolve the matter administratively, to issue the merchant with an Infringement Notice, or to take court action seeking a pecuniary penalty. The ACCC can also take action on behalf of a class of persons who have been charged an excessive surcharge, as well as seek injunctions and various non-punitive orders (including community service and probation orders).

296. The ACCC manages its functions within its resourcing allocation. It makes decisions on which matters to investigate and what enforcement action is most effective to address conduct that has the potential to harm the competitive process or result in widespread consumer detriment. The principles and criteria the ACCC takes into consideration in making these decisions are set out in its [Compliance and Enforcement Policy](#), which is published annually on the ACCC's website.