

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2017 - 2018

Division/Agency: Australian Competition and Consumer Commission

Question No: 49

Topic: Market Studies Power

Reference: Written

Senator: Ketter, Chris

Question:

1. A number of overseas jurisdictions give their competition regulators an autonomous market studies power. This allows them to identify competition problems before they take hold. Does the ACCC have a formal market studies power (including powers to compel evidence)?
2. Does the absence of full market studies power prevent the ACCC from identifying competition problems before they become more significant?
3. Rod Sims has said that the absence of a formal market studies power limits the ACCC's ability to undertake these studies. For the studies you have undertaken – into the cattle and beef industry, for example – did these studies identify any serious competition problems?
4. I understand your market study into the cattle and beef industry identified serious concerns in regards to bid rigging in cattle auctions and serious intimidation of farming families. How widespread were these serious competition challenges?
5. Would the ACCC be able to identify more competition problems in Australia if it had a market studies power?

Answer:

1. The ACCC uses formal price inquiry powers to conduct market studies when directed to do so. The ACCC can self-initiate market studies and when we do so we rely on the voluntary provision of information. However, if possible breaches of the *Competition and Consumer Act 2010 (CCA)* are identified through this market study, it can compel evidence from parties to inform an investigation.
2. The ACCC considers its self-initiated market studies can assist in the identification of market problems and possible solutions, or alternatively, can confirm that a market is in fact working effectively and that no further action is needed.
3. The ACCC decided to conduct its market study into the beef and cattle industry following issues raised in a number of investigations and in the Senate Inquiry into the effect of market consolidation on the red meat processing sector.

The ACCC's study identified certain issues which risk damaging transparency, competition and efficiency in the cattle and beef industry. Specifically, there are shortcomings in price reporting, the independence and auditing of carcase grading, and concerns about anti-competitive conduct affecting competition in saleyard auctions.
4. As identified in the responses to question 3, the market study identified certain issues. The Final Report made 15 recommendations, which encompass:

- Improving price information by requesting that buyers publish price grids for over-the-hooks sales, to make it easier for producers to compare price offers. The vast majority of cattle are sold over-the-hooks.
- Expanded reporting of historical prices to make it easier for producers to compare the price paid for cattle sold through saleyards, paddock sales and over-the-hooks.
- An increase in the frequency of AUS-MEAT's random and unannounced audits of cattle grading and trimming in processing plants.
- The introduction of an independent dispute resolution process to apply across the industry.
- The prioritisation of objective carcase measurement technology to increase the accuracy and transparency of carcase value assessments.
- The introduction of buyers registers and auction reports for major saleyards to increase the transparency of bidding at auctions and lessen the potential for collusive behaviour.

During the course of the market study, we heard specific allegations of cartel and other anti-competitive conduct involving saleyards, which we will assess separately.

5. The ACCC's 2014 submission to the Harper Review proposed that the formal price surveillance powers under Part VIIA of the Competition and Consumer Act 2010 (CCA) be amended to allow the ACCC to self-initiate a formal market study. Currently, the ACCC requires a referral from the Minister to hold a price inquiry under Part VIIA (section 95H). However, without relying on the formal price surveillance powers of Part VIIA, the ACCC can (and does) self-initiate market studies.

On page 35 of the Australian Government's response to the Competition Policy Review (November 2015), it notes the ACCC's market studies function and supported the continuation of the ACCC's role in conducting market studies, including under Ministerial direction, "as it can better inform [the ACCC's] broader enforcement and regulatory work."

The ACCC considers that its use of market studies provides a number of benefits to governments, businesses and consumers. Market studies assist in the identification of market problems and possible solutions-or, alternatively, can confirm that a market is in fact working effectively and that no action is needed. The identification of important problems and the appropriate response is essential to maximising the benefits for Australians from the resources available to the ACCC.