

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates

2014 - 2015

**Department/Agency: ACCC**

**Question: SBT 4336**

**Topic: SLC test**

**Reference: Hansard page no. 32-33 - 31 October 2014**

**Senator: Canavan, Matthew**

**Question:**

Senator CANAVAN: I wanted to follow on a little bit with the SLC test questioning, but this one relates to milk in particular. I believe you have had a look at a complaint for exclusive dealing in milk markets in Queensland. This relates to milk processors requiring dairy farmers to only supply them with milk, and not other suppliers. I believe you have come back to the Queensland Dairyfarmers' Organisation and said that unfortunately this type of exclusive dealing would not be a breach, because it would not amount to a substantial lessening of competition. Can you just explain to me why it is not a substantial lessening of competition, when these guys do not have any other options? Queensland is a domestic milk market; they cannot export. If they are required to go to one particular supplier, that really impacts their efficiency, particularly over the year in the way the production systems work in Queensland.

Mr Sims: Yes, I do remember that case, but not absolutely all of the details. I have the slight suspicion my colleague on my right is in the same position.

Mr Bezzi: Yes, unfortunately I am in that same position. We would be certainly happy to take that—

Senator CANAVAN: Take that on notice.

Mr Sims: We are very familiar with it, but it is not top of mind; and if we said something, we might mislead you.

Senator CANAVAN: Can I then ask you: given that you have concluded that it would not meet the SLC test under section 47, any amended section 46 would not give dairy farmers of Queensland relief either—in line with the Harper review?

Mr Bezzi: I think that is a reasonable conclusion.

Mr Sims: I think that is probably right in that case. That is where we got to, yes.

**Answer:**

4336. In 2013, the ACCC investigated allegations that milk manufacturers had engaged in exclusive dealing by acquiring milk from farmers on the condition that farmers do not also supply milk to other parties.

Exclusive dealing breaches section 47 of the *Competition and Consumer Act 2010* (CCA) if the conduct has the purpose or effect of substantially lessening competition in the relevant market. The relevant market in this matter was the market for the purchase by manufacturers of milk from farmers (farm production milk).

To determine if there was a substantial lessening of competition, the ACCC examined the impact of the clause on competition for farm production milk. Following extensive market inquiries, the ACCC formed the view that although some farmers and small milk processors may be negatively affected by the existence of exclusivity

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clauses, these cases are unlikely to amount to a substantial lessening of competition in farm production milk. In particular, the market inquiries indicated that many small milk processors were still able to source sufficient milk to meet their demands at competitive prices. In many cases small processors were growing their business and purchases of farm production milk, despite the existence of the clauses.