

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

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2015 - 2016

Department/Agency: ACCC

Question: SBT 69-72

Topic: Food and Grocery Code of Conduct

Reference: written - 29 October 2015

Senator: McKim, Nick

Question:

On September 24 2015, the ACCC released a media statement titled “ACCC concerned over implementation of the food and grocery code”, which outlined a range of issues about the approach of supermarkets in implementing the voluntary food and grocery code of conduct.

69 What concerns does the ACCC have about the approach of Aldi and Woolworths to the code?

70 What was outlined in the Grocery Services Agreements to give the ACCC concern?

71 Has any action been taken to alleviate those concerns?

72 Are you convinced about the effectiveness of a voluntary code of conduct?

Answer:

69 & 70 The ACCC was concerned as to the manner in which some retailers, in particular Woolworths and ALDI, had presented new Grocery Supply Agreements (GSA), which might have given the impression that the supplier was not able to negotiate the terms of the GSA.

The Food and Grocery Code of Conduct (the Code) requires retailers to give suppliers the option, within the first six months of signing up to the Code, to vary pre-existing agreements to conform with the Code. The ACCC’s concerns arise in the context of retailer approaches to suppliers providing such an option.

Examples of approaches which the ACCC is concerned might give the impression that the supplier might not be able to negotiate the terms of the GSA include:

- A representation by one retailer that suppliers may be deemed to accept contracts as offered in the absence of a response
- A request by one retailer not to amend or change in any way the terms of an offer for a revised GSA.

The ACCC was also concerned about the low level of detail provided in some GSAs about the circumstances in which certain payments may arise.

Clarification has been provided by some retailers as to the intent of the relevant provisions and the manner in which necessary detail would be

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provided and agreement with suppliers reached should such payments be sought in the future.

71 The ACCC has written to retailers about the manner in which they purport to be giving effect to the Code. The retailers have responded providing the ACCC with their new GSAs and the correspondence they have sent to suppliers offering the new GSAs. The retailers have taken some action to address ACCC concerns including further communications with suppliers and we are currently considering whether matters have been adequately resolved including through meetings with retailers. More generally, the ACCC will continue to monitor compliance with the Code.

72 The Food and Grocery Code of Conduct is the first voluntary prescribed Code under the *Competition and Consumer Act 2010* (CCA). Like mandatory codes, a breach of the Code is a breach of the CCA and the ACCC can take enforcement action against a business that is a signatory to the Code.

The Code complements existing protections for suppliers under the CCA, including the unconscionable conduct provisions. It requires retailers and wholesalers to act in good faith and requires all supply agreements to be in writing. It also has rules relating to unilateral or retrospective variation of grocery supply agreements, payments, termination of agreements, dispute resolution and a range of other matters.

The ACCC expects the general obligation to act in good faith, which has been introduced by the Code, will prove to be a significant step forward for the industry and re-define trading relationships.

The ACCC will also be able to audit retailers and wholesalers to check that they are complying with the Code. This general 'check-up' power is not available outside of conduct covered by prescribed industry codes.