

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates 14 – 15 February 2007

**Question:**                    **aet 61 (ACCC)**

**Topic:**                      **Anti-Competitive Behaviour**

**Hansard Page:**          **Written**

**Senator FIELDING asked:**

1.      The Australian newspaper on 2 February 2007 noted that the ACCC is auditing the liquor division of Woolworths to ensure it no longer acts in an anti-competitive manner. When is that audit due for completion? Please provide a copy of the final report of the audit.
2.      Is the Commission aware of the case of Graham and Kris Downing who have a small general store in Palmers Island, NSW? It is reported (Grafton Daily Examiner, 12 March 2005) that the Downings have been victims of anti-competitive behaviour from Woolworths, preventing them from getting a liquor licence. This reported anti-competitive behaviour was well after the 2001 behaviour the ACCC pursued and for which Woolworths was fined \$7 million last year. What does the Commission propose to do about this case?
3.      The Australian (2 Feb 2007) also reported the ACCC had also brought court proceedings against Coles' Liquorland division. Will an audit also be undertaken of Coles's Liquorland division? If not, why not? If an audit is to be undertaken, please provide a copy of the final report.

**Answer:**

- 1      The audit is due for completion by 31 May 2007. The ACCC believes that it would be able to provide a copy of the final report to the Senator, subject to any confidentiality claims made by Woolworths and also possibly the need to seek the leave of the Court.
2.      Yes, the ACCC is aware of the case of Graham and Kris Downing from Palmers Island. Kris Downing contacted the ACCC in May 2005 to outline her concerns about Woolworths conduct in objecting to her liquor licence application.

The ACCC officer who spoke to Ms Downing expressed the view that, on the information available, Woolworths' alleged conduct was unlikely to constitute a breach of the Trade Practices Act 1974 as there did not appear to be any contract, arrangement or understanding between Woolworths and a competitor to prevent the supply of liquor to consumers; rather Woolworths' alleged conduct appeared to be unilateral. Despite this preliminary view the ACCC officer requested further information from Ms Downing about the conduct. This further information was not provided.

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3. No audit is to be conducted of the Coles Liquorland division specifically as a result of the ACCC's litigation.

By way of background, the ACCC in its litigation against Liquorland and Woolworths sought a range of orders, including injunctions. In the Liquorland proceedings Justice Giles made injunctions by consent restraining Liquorland from engaging in particular conduct for a period of three years.

In the Woolworths proceedings, Woolworths argued against the utility of the making of injunctions primarily because they claimed that the conduct the subject of the judge's findings was unlikely to be repeated. Justice Allsop decided an audit of Woolworths' liquor business would be appropriate to determine whether he would grant injunctions sought by the ACCC.

Justice Allsop indicated that if the audit revealed that Woolworths' had complied with an internal protocol aimed at preventing further contraventions of the Trade Practices Act he was unlikely to grant injunctions restraining Woolworths from engaging in the particular conduct in the future. On the other hand, if the audit showed that Woolworths had not complied with the terms of its internal protocol then he would be more likely to order injunctions.