

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10-11 February 2010

Question: aet 58

Topic: ACCC's Grocery Inquiry Report – Milk

Hansard Page: Written

Senator RONALDSON asked:

The ACCC's grocery inquiry report (*Key Points*, page 228) said:

The retail price of milk has increased at a significantly faster rate than CPI over the last five years. However, the rate of increase in the price of private label milk sold through supermarkets, which makes up 55 per cent of all supermarket milk sales, has been significantly below CPI.

And:

The bargaining power of the major supermarket chains (MSCs) means that increases in production costs are not being fully reflected in the wholesale or retail price of private label milk.

Yet, elsewhere in the report (Section 15.7), the ACCC dismissed the whole idea of a "water bed effect".

1. Milk market deregulation was supposed to reduce the price of milk to consumers, how does the ACCC explain the fact that "the retail price of milk has increased at a significantly faster rate than the CPI over the last five years", as stated in the ACCC's grocery inquiry report (page 228)?
2. Why hasn't an increasing demand for milk over the past five years and shortages of supply, resulted in an increase in price for farmers in Western Australia?
3. Is the existence of home brand (private label) milk itself evidence for a "water bed effect", given that Woolworths and Coles are able to use their market power to demand home brand milk at a price below which the processor can sell its own milk and at a unsustainable prices for farmers, particularly those in Western Australia?
4. Why are the processors selling milk to the supermarkets at less than the cost of their own branded product, lower than the price of and in competition with, their own branded product?
5. Is this in any way related to access to shelf space and the placement on the shelves, of branded milk in the supermarkets?
6. Does this result in the wholesale, retail and processor prices of drinking milk not covering increases in production costs for farmers?

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7. Has the ACCC analysed the impact of unsustainable pricing on milk production in each State of Australia, most particularly, Western Australia?
8. Does the ACCC have any plan to investigate whether this might constitute a misuse of market power by Woolworths and Coles? Why not?
9. Given that the price of branded milk has risen faster than that for the supermarket chains' private label milk, is that not evidence for the "waterbed effect" - that processors are being forced to increase their prices at a faster rate for their own branded product than Woolworths and Coles for their private label milk?
10. Given that the ACCC still has prices surveillance powers, has it investigated whether Woolworths and Coles home brand label milk prices are being cross-subsidised by increased retail prices by the processors for other milk-based products, such as ice cream, yoghurt and cheeses?
11. Section 49 (the anti-price discrimination provision) of the *Trade Practices Act 1974* was repealed on the recommendation of the Hilmer Report, on the untested assumption that section 46 (misuse of market power provisions) would apply. Given that s46 was gutted by the High Court decision in the *Boral Besser Masonry v. ACCC* case in 2003 and that the ACCC has not taken a s46 case since, does the ACCC now consider that the reintroduction of anti-price discrimination provisions to the *Trade Practices Act* would be beneficial to levelling the playing field in competition?
12. Is permeate being used to top up milk volumes in Western Australia?
13. Does the use of permeate to 'top up' fresh milk volumes dampen market forces on the shortage of supply, for sourcing raw milk from WA dairy farmers?
14. Why does milk have the highest differential price between home brand and branded product in supermarkets?

Answers

1. The role of the ACCC is to ensure compliance with the *Trade Practices Act 1974* (TPA), which is designed to encourage fair trading and discourage unlawful anti-competitive conduct through a specific set of competition and consumer rules.

As part of its regulatory functions the ACCC undertakes specific pricing inquiries and price monitoring only as directed by the Minister. The ACCC undertook monitoring of the dairy industry in 2000 following deregulation. It also considered milk prices as part of its broader 2008 inquiry into the competitiveness of retail prices for standard groceries (Grocery Inquiry). The ACCC has not been given a role in either ongoing monitoring or regulation of milk prices.

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The Grocery Inquiry identified that the retail price of milk had increased significantly faster than the CPI over the five year period to March 2008. In particular, retail milk prices as measured by the Australian Bureau of Statistics' milk price index increased by about 10 per cent in the nine months to March 2008. The Grocery Inquiry noted that a significant contributor to the increase in the retail price for milk over this period was the increase in the farm gate price. The farm gate price of milk, which at the time contributed between 25 per cent and 44 per cent of the end retail price, increased by upwards of 40 per cent in the 12 months to March 2008 on the back of strong growth in world demand for dairy products and reduced domestic supply.

2. The ACCC's 2008 Grocery Inquiry, while not specifically focusing on Western Australian farm gate milk prices, identified that the national average farm gate price increased by upwards of 40 per cent in 2007-08 on the back of strong growth in world demand for dairy products and reduced domestic supply. Farm gate prices in 2007-08 ranged from 42 cents per litre up to 53 cents per litre across all Australian states. This compared to a national average farm gate price of approximately 33 cents per litre in 2006-07.
3. During the course of the ACCC's 2008 Grocery Inquiry, the ACCC received mixed evidence of the extent to which processors increased the price of branded products to offset cost increases associated with providing private label products. Some processors indicated that they did not engage in this practice. However, others indicated that increased costs for branded products have been able to be recovered in a 'more timely manner' and that prices of branded products have sometimes been increased to offset overall cost increases, both for branded and private label products.
4. In evidence provided to the ACCC's 2008 Grocery Inquiry, milk processors indicated that their key considerations in deciding whether to tender to provide private label milk to retailers included available production capacity, ability to meet customer specifications and source necessary raw materials and financial return.

The prices at which processors sell milk to their customers is a commercial decision for them. Generally speaking, suppliers of goods and services are free to set their own prices and provided that that they do this independently it is unlikely to raise concerns under the TPA.

5. Please refer to the response to Question 4.
6. Please refer to the response to Question 4.
7. No such analysis has been undertaken. As part of its regulatory functions the ACCC undertakes specific pricing inquiries and price monitoring as directed by the Minister. The ACCC does not have a role in either ongoing monitoring or regulation of milk prices.

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8. Please refer to the response to Question 7. However the ACCC will consider information providing evidence of misuse of market power by any corporation.
9. During the course of the ACCC's 2008 Grocery Inquiry, the ACCC received mixed evidence of the extent to which processors increased the price of branded products to offset cost increases associated with providing private label products. Some processors indicated that they did not engage in this practice. However, others indicated that increased costs for branded products have been able to be recovered in a 'more timely manner' and that prices of branded products have sometimes been increased to off-set overall cost increases, both for branded and private label products.
10. No. As part of its regulatory functions the ACCC undertakes specific pricing inquiries and price monitoring only as directed by the Minister. The ACCC does not have a role in either ongoing monitoring or regulation of milk prices.
11. In relation to ACCC action concerning allegations of misuse of market power, the ACCC has commenced three proceedings for alleged contraventions of section 46 since the High Court of Australia's decision in Boral on 7 February 2003. These are as follows:
 - *ACCC v Mr John Lincoln Knight and Mr Iain Kenneth Ross*
 - *ACCC v Cement Australia Pty Ltd & Ors (proceedings ongoing)*
 - *ACCC v Cabcharge Pty Ltd & Ors (proceedings ongoing)*

Whether or not price discrimination prohibitions should be re-introduced into the TPA is a policy matter for the Australian Government.

12. The composition of milk is governed by FSANZ under the Food Standards Code. Accordingly, this is not a matter that the ACCC can provide comment on.
13. Please refer to the response to Question 12.
14. The price at which supermarkets sell milk to their customers is a commercial decision for them. Generally speaking, suppliers of goods and services are free to set their own prices and provided that that they do this independently it is unlikely to raise concerns under the TPA.