

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10-11 February 2010

Question: aet 8

**Topic: ACT Government – Supermarket Competition Policy
Implementation Plan**

Hansard Page: Written

Senator BUSHBY asked:

1. What is the ACCC's view on the competition principles which underpin the ACT Government's supermarket competition policy implementation plan which was released by the ACT Government on 22 January 2010?
2. Are the Supermarket Competition Factors which are included in the ACT Government's ACT Supermarket Competition Policy Implementation Plan consistent with competition principles applied by the ACCC under the Trade Practices Act, and are they consistent with the findings of the ACCC's Grocery Inquiry?
3. What consultation or discussions took place between the ACT Government and the ACCC, and when did they take place? Who initiated those discussions?
4. What is the likelihood that an alternative source of wholesale supply could be established in the ACT?
5. What problems exist in the grocery supply chain in the ACT?

Answer

1. The ACT Government's Supermarket Competition Policy Implementation Plan indicates that its Supermarket Competition Policy was developed in the context of the ACCC's 2008 inquiry into the competitiveness of retail prices for standard groceries (ACCC's Grocery Inquiry). To this end, the aim of the policy to achieve a competitive and diverse supermarket sector is not inconsistent with the findings of the ACCC's Grocery Inquiry.

However, the Supermarket Competition Policy Implementation Plan also states that the Government's endorsement of the recommendations of the Martin *Review of ACT Supermarket Competition Policy* provides a detailed framework for delivering the market competition and diversity sought under the Supermarket Competition Policy.

At its appearance before Senate Estimates on 22 October 2009, the ACCC noted that some of the recommendations of the Martin Review were not consistent with the findings of the ACCC's Grocery Inquiry and not consistent with the principles of competition and opening up markets to competition. Specifically raised were recommendations 6 and 8, which were related to facilitating the

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entry of new supermarket competitors and wholesale suppliers through the specific exclusion of particular operators.

2. 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.

While some of the 'supermarket competition factors' included in the ACT Government's Supermarket Competition Policy Implementation Plan appear similar to factors considered by the ACCC in applying sections of the TPA, the legal tests to be met may not be the same and, therefore, the different factors to be considered are not necessarily directly comparable.

For example, the ACCC assesses mergers and acquisitions under section 50 of the TPA. Section 50 prohibits mergers and acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market. Accordingly, the ACCC assesses mergers and acquisitions on this basis. Section 50(3) of the TPA provides a non-exhaustive list of matters to be taken into account when assessing whether a merger or acquisition would be likely to substantially lessen competition.

Some of the 'supermarket competition factors' appear similar to factors considered by the ACCC in determining whether a merger or acquisition would result in a substantial lessening of competition in a market, however, the Implementation Plan does not apply a "substantial lessening of competition" test as such.

At its appearance before Senate Estimates on 22 October 2009, the ACCC noted that some of the recommendations of the Martin Review were not consistent with the findings of the ACCC's Grocery Inquiry and not consistent with the principles of competition and opening up markets to competition. The Supermarket Competition Factors themselves do not necessarily refer specifically to those recommendations.

3. No consultation or discussion took place between the ACT Government and the ACCC in relation to the ACT Government's supermarket competition Policy Implementation Plan.
4. The ACCC's Grocery Inquiry indicated that it was impossible to comment definitively on the exact conditions needed in the wholesale grocery market to allow a second large wholesaler to compete against Metcash.

While not specifically referring to the ACT, the ACCC identified that there were substantial barriers to entry to setting up a new wholesale operation on either a national or state-wide basis.

The ACCC considered that for a new wholesaler to be profitable it would need to attract a significant number of retailers to ensure that significant volumes were passing through the wholesaling operation. To achieve this, a wholesaler would most likely need to attract the larger 'chains' of independent retailers and

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not simply individual retailers. This may be difficult for a new wholesaler to do. An alternative would be for an independent chain to break away from Metcash and set up their own wholesaling operation.

While not making any finding specifically on the ACT, the ACCC concluded that a wholesaling operation run on a state-wide basis rather than a national operation may more easily achieve the economies of scale required.

5. During the ACCC's Grocery Inquiry, the ACCC did not identify specific problems with the grocery supply chain in the ACT.