

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

26 February 2014

Question: AET 1510-1515

Topic: Fuel docket (ACCC)

Written: 6 March 2014

Senator XENOPHON asked:

In regards to the ACCC decision to take Federal Court action against Coles and Woolworths over fuel shopper docket schemes which offer 'bundled 8c and 14c' discounts.

1506. Can you ACCC advise of what declarations, costs and other orders it will be seeking?

1507. Had Coles and Woolworth's sought advice from the ACCC about whether these 'bundled' schemes would breach its undertaking to voluntarily limit fuel discounts that are linked to supermarket purchases to a maximum of 4 cents per litre?

I also understand Woolworths has sought a declaration regarding a proposed future fuel discount offer which the ACCC has said it would consider a breach of its December shopper docket undertaking.

1508. Can the ACCC provide details about this proposed discount offer?

Regarding the ACCC's investigation into fuel docket, I understand you have found the fuel savings offers could have long-term effects on the structure of the retail fuel markets, as well as the short-term effect of increasing general pump prices.

1509. Will the ACCC be making public the detailed findings of this investigation? Did the investigation find that Coles and Woolworths were engaging in anti-competitive behaviour?

1510. Has the ACCC given advice to Government on both the long and short-term effects of those offers? What recommendations have been given to address these effects?

1511. Has the ACCC analysed the effectiveness of divestiture laws in the United States and Europe? What were the results of these findings? To what extent can these outcomes be applied to Australia?

Answer:

1506. The ACCC is seeking declarations that Coles and Woolworths' conduct of offering the bundled '14c and 8c' discount is in breach of paragraph 10 of each parties' court enforceable undertaking. The ACCC is also seeking an order directing Coles and Woolworths to comply with the terms of the undertaking, an order for costs, and such further orders as the Court deems appropriate.

1507. The ACCC does not provide advice to third parties about their compliance with the *Competition and Consumer Act 2010* (Cth) (CCA), rather it investigates whether the CCA has been breached. The ACCC has had many confidential discussions with the parties about the scope and terms of the undertakings.

1508. Woolworths did commence an action seeking a declaration from the court in respect of a future offer. This action has been discontinued. Woolworths is now offering a 4 cents per litre discount for customers who spent \$30 in a Woolworths supermarket, together with a

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4 cents per litre discount for customers who purchase more than \$5 of goods in the petrol station. In order to qualify for the petrol station discount, it is not necessary to purchase goods in the supermarket.

1509. The ACCC has made public its concerns about fuel docketts and their effect on competition at the time it accepted the court enforceable undertakings and said:

‘Some fuel retailers had complained that they simply could not afford to match the supermarkets’ fuel discounts of 8 cents or more, because those discounts were being funded from markets that were separate and unrelated to the fuel retailing markets. By removing the funding by supermarkets and limiting the supermarket offers to a maximum of 4 cents per litre, the ACCC considers that other fuel retailers will be able to compete on a more level playing field.’

1510. The ACCC has advised the Government on the outcome of the investigation. The ACCC accepted the section 87B undertakings from Coles and Woolworths to address the ACCC’s concerns in respect of the effect of fuel docket offers. Further recommendations for reform may be outlined by the ACCC in the context of the Government’s Competition Review following the outcome of the matters presently before the Court and ongoing monitoring of the undertakings.

1511. Australia’s competition law, the CCA, provides for divestiture following a merger that has the effect or likely effect of substantially lessening competition, in contravention of section 50 of the CCA. This power allows the ACCC, or any other person, to apply to the Federal Court for a divestiture order that secures the disposal of all or any of the shares or assets acquired in contravention of section 50 of the CCA.

Internationally, some countries have the scope to seek divestiture for breaches of competition law other than for anti-competitive mergers, such as attempts to monopolise or abuse of dominance.

In 2002, the ACCC made a submission to the Senate Legal and Constitutional References Committee Inquiry into the *Trade Practices Act 1974* (TPA) on the issue of a general divestiture power. At the time, the ACCC did not support an open ended divestiture power but instead supported the potential for a limited extension of the existing divestiture remedy to breaches of section 46 of the TPA. The ACCC, did not however, actively pursue such an amendment during the ‘Dawson Review’ of competition law. The Review ultimately found that expanding the availability of divestiture orders in Australia would be inappropriate.