

**Senate Economics Legislation Committee**  
ANSWERS TO QUESTIONS ON NOTICE

**Treasury Portfolio**

Additional Estimates

2016 - 2017

**Division/Agency:** Australian Competition and Consumer Commission

**Question No:** 125

**Topic:** Market concentration and competition

**Reference:** Written

**Senator:** Ketter, Chris

**Question:**

1. Recent analysis published in the Australian Economic Review suggests that more than half of Australia's markets are concentrated. In some of our largest industries, the four biggest firms control more than 80 per cent of the market. Is the ACCC concerned at the level of concentration in Australian markets?
2. Are competition problems more or less common in concentrated markets?
3. Would a fully independent market studies function help the ACCC to identify competition problems before they emerge?
4. Would an increased litigation budget help the ACCC to investigate more competition problems in Australia?
5. Is market concentration one of the factors contributing to the ACCC's concerns regarding the level of competition in the cattle and beef markets?
6. Many of the biggest competitors in Australia's markets are owned by the same institutional investors. The same five institutional investors are the majority owners of all four of the big banks, both the big supermarkets, department stores and petrol retailers. Does this concern the ACCC?
7. The Harper Review concluded that competition policy reform is overdue in Australia. Does the ACCC agree or has the Government done enough in this space? Can you give examples of specific reforms that are not being addressed?
8. What is the ACCC's view on whether ACL applies to activities undertaken for or on behalf of the not-for-profits and charities?
9. Isn't it true that the Interim Report of the ACL Review shows that the ACL already applies to fundraising activities?
10. Can you describe any work the ACCC has done with the ACNC to prepare for or predict the consequences of taking a greater role in monitoring fundraising activity in the charities and not-for-profits sector?
11. The ACCC already takes the lead role in investigating major cases of impropriety in fundraising activities doesn't it?
12. The ACCC would continue to handle investigation into large scale impropriety wouldn't it?

**Answer:**

1. The ACCC would be concerned if market concentration in certain markets led to a decrease in competitive conduct.
2. Competition problems can arise in a various market situations. However, in concentrated markets conduct that has the purpose or effect of substantially lessening competition is more likely to arise when there is market concentration. Equally in concentrated markets there is a greater likelihood that a party will have a substantial degree of market power,

which might be used to engage in anti-competitive conduct for a proscribed purpose (current misuse of market power prohibition under the *Competition and Consumer Act 2010* (CCA)).

The ACCC considers that its use of market studies will assist in the identification of market problems and possible solutions – or alternatively, can confirm that a market is in fact working effectively and that no action is needed.

3. The ACCC is necessarily selective in the matters it pursues and directs its investigative and legal resources towards those matters that will deliver the greatest benefit. Resourcing of the ACCC is a matter for the Government.
4. The ACCC decided to conduct its market study into the beef and cattle industry following issues raised in a number of investigations and the Senate Inquiry into the effect of market consolidation on the red meat processing sector.

The purpose of the ACCC's market study was to:

- Examine competition and transparency in the supply chain
- Consider whether there are impediments to competition and efficiency at various stages of the supply chain in cattle and beef markets
- Identify and investigate any conduct that raises concerns and, if there is a breach of the *Competition and Consumer Act 2010* (CCA), pursue remedies under the Act.

The final report was released in March 2017.

6. The ACCC is cognisant of the corporate structure of businesses when it assesses merger and asset acquisitions. The CCA does not prohibit businesses from attaining market or financial power. The CCA prohibits businesses using this power for an anti-competitive purpose or engaging in conduct that has the purpose or effect of substantially lessening competition in a market
7. The ACCC has previously addressed this question in our submission to the Harper Review.
8. Whether the Australian Consumer Law (ACL) will apply to the conduct of participants in the not-for-profit and charity sectors will depend on the circumstances of the conduct in question. The threshold question which needs to be considered is whether the conduct is undertaken in *trade or commerce*. A number of activities of not-for-profit would be considered in *trade or commerce* and accordingly subject to the ACL.
9. The Interim Report acknowledged that a number of the activities of not-for-profit organisations or charities would be considered in *trade or commerce* and accordingly subject to the ACL.

Some stakeholders have suggested that new obligations be imported into the ACL to capture fundraising activity that is not in trade or commerce. As CAANZ noted in the Interim Report, the trade or commerce threshold is a fundamental concept that underpins the ACL and its objectives and the ACCC considers relaxation of this threshold would remove appropriate filters that exclude representations made in political or public debate.

10. The ACCC has not undertaken any work with ACNC in this regard.
11. The ACCC's role is to enforce the ACL through targeted enforcement action and compliance initiatives. These actions and initiatives are guided by its annually reviewed and published Compliance and Enforcement Policy, which takes into account a number of sources of information and views of stakeholders. Under this policy the ACCC exercises its discretion to direct resources to matters that provide the greatest overall benefit for competition and consumers. In this regard, it is more likely to pursue national conduct by

larger traders rather than more localised conduct. In certain circumstances, the ACCC would therefore investigate allegations of misleading conduct undertaken by charities in the course of fundraising subject to the relevant threshold of conduct undertaken in *trade or commerce* as discussed above.

In the context of the ACL Review, some stakeholders have sought increased clarity over the application of the ACL to fundraising believing the protections afforded under the ACL support deregulation. In the context of the review and in discussions with stakeholders, the ACCC has cautioned against the view that the ACL provides the same protections (including in relation to governance and integrity measures) as currently provided by industry specific legislation or that ACL regulators can replicate the focus and expertise that specialist regulators deliver. Accordingly, the ACCC has expressed the view that governments should consider deregulatory or harmonisation measures on their merits.

12. The ACCC would have regard for its Compliance and Enforcement Policy in investigating any matters of this nature and would be limited to addressing impropriety addressed through the ACL.