

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 February 2006

Question: AT 50

Topic: *ACCC – Petrol pricing case*

Hansard Page: Written

Senator CONROY asked:

The ACCC has talked a lot about cracking down on cartels in the last year or so. I have a number of questions about developments in one of the cases that you have been pursuing involving allegations of petrol price fixing in Geelong.

1. What is the status of that litigation? Is that matter still ongoing?
2. Last November there was substantial press coverage that the ACCC had fabricated evidence in the case? Can the ACCC explain what happened here?
3. The judge in the case, Justice Gray, is reported as criticising the ACCC's approach to the case and said and I quote "it may not be evidence of a closed mind, but its evidence of an attitude". He is accusing the ACCC of prejudging this matter isn't he? That you basically decided these people were guilty and worked backwards. What is the ACCC's response to that?
4. What's going on here? Has the ACCC had any difficulties with Justice Gray in previous cases? Has he taken a set against you?

Answer:

- 1 The litigation phase has concluded and the ACCC is awaiting the Court's decision.
- 2 No evidence was fabricated. A document, referred to as document 9 in the hearing, was discovered by the respondents and used to impugn the ACCC's case, especially the veracity of the ACCC's Annexure B which purported to detail the links between price rises and phone calls between the respondents.

Document 9 was not part of the evidence filed by the ACCC nor was it relied on in developing evidence for the trial. An ACCC officer had done a regression analysis using data that had been inserted into the document for the purpose of the regression. That data had not been relied on in entering information into Annexure B.

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- 3 What Justice Gray said was: "...it may not be evidence of a closed mind, but its evidence of an attitude that says you get a lot of phone calls, you get a lot of price rises. Must be something wrong." The underlined section, which was left out of the press article from which we believe the quote was taken, gives a much different impression of the words used by the judge.

The ACCC disputes any suggestion that it prejudged this or any other case. Its investigations are rigorously managed and decisions to proceed to litigation are made only after exhaustive assessment of the evidence. This includes through the ACCC's internal processes, including consideration by senior management, its Enforcement Committee and then by the full Commission. In addition, litigation is never undertaken without support from the ACCC's lawyers and Counsel.

All these processes were followed in the Geelong matter.

- 4 The ACCC recently appealed a decision by Justice Gray in which the ACCC argued the orders made by him in the first instance were manifestly inadequate. Justice Gray's criticism of the ACCC in his decision was rejected by the Full Federal Court. The Court agreed with the ACCC's concerns over the level of the penalty imposed, noting that the Commission was fulfilling its statutory function at the same time as its duty to the court.