

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 2

Topic: Competition Impact of Planning Objections

Hansard Page: Written

Senator XENOPHON asked:

1. Has the Commission done any work on the possible competition impact of parcels of land or “land banks” held by different supermarket chains?
2. Has the Commission done any work on the possible competition impact of planning objections lodged by the supermarket chains or shopping centre landlords against competitors or possible competitors?
3. Would the Commission be concerned if planning objections were being used in a coordinated manner to prevent or reduce the level of competition a particular market?
4. While we’re on the topic of planning objections, is the Commission aware of planning objections being made by Sydney Airport against a company seeking approval to build a sizable car park near the airport?

Answers:

1. The ACCC assesses the acquisition of assets pursuant to section 50 of the *Trade Practices Act 1974* (TPA). Section 50 of the TPA prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in a market.

The ACCC takes the view that the acquisition of 'greenfield sites' by supermarket chains – including the purchase of land or acquisitions of leasehold interests in land or shopping centre sites – falls within the scope of section 50 and examines such transactions where they are likely to raise competition concerns.

In this regard, the ACCC takes the view that such acquisitions are unlikely to raise competition concerns unless:

- § the site is in a built-up area where there is limited availability of alternative sites for potential competitors in the local market
- § the proposed supermarket operator already has a significant presence in the local market, and
- § if the proposed supermarket did not open on the site, then an alternative competitive supermarket would be likely to open on that site.

The ACCC has made clear its views on this point in the *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* (2008).

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This view has been reiterated to supermarket chains and significant retail landlords to ensure that market participants are well aware that the ACCC considers section 50 applies to the acquisitions of such sites, as well as the acquisition of existing supermarket businesses.

2. A key finding of the ACCC's 2008 inquiry into the competitiveness of retail prices for standard groceries was that zoning and planning regimes act as an artificial barrier to new supermarkets establishing in areas with a, likely unintended, consequence of potentially impacting on competition between supermarkets to supply consumers.

The inquiry also found that planning processes provide the opportunity for incumbents to 'game' the planning system through objections and appeals to frustrate or prevent potential competitors. This finding was based on evidence provided to the inquiry that retailers regularly lodged planning objections to prevent competitive entry where the retailers had a commercial interest, be it an existing or planned future interest, to protect.

The ACCC recommended that all appropriate levels of government consider ways in which zoning and planning laws, and decisions in respect of individual planning applications, should have specific regard to the likely impact on competition between supermarkets in the area. Particular regard should be had to whether a proposal would facilitate the entry of a supermarket operator not currently trading in the area.

The Australian Government referred the anti-competitive impacts of state and local zoning and planning laws to the Council of Australian Governments (COAG). COAG announced on 7 December 2009 that it had agreed to ensure a continued focus on the competitive benefits of appropriate planning and zoning systems. COAG also agreed to a performance benchmarking exercise of the planning and zoning systems of the States and Territories to be undertaken by the Productivity Commission in 2010.

3. Yes. The ACCC's 2008 inquiry into the competitiveness of retail prices for standard groceries found that planning processes provide the opportunity for incumbents to 'game' the planning system through objections and appeals to frustrate or prevent potential competitors.

Planning objections, successful or otherwise, drain significant resources from the party proposing the development and can be used to delay and frustrate entry as well as creating disincentives to explore development opportunities in the first instance.

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4. Yes. The ACCC is aware of media reports that state Sydney Airport has lodged objections with the Botany Bay Council regarding Park & Fly's application to build a 16 storey building which includes car parking for Sydney Airport.