

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

10 – 11 February 2010

Question: aet 3

Topic: Unit Pricing

Hansard Page: Written

Senator XENOPHON asked:

1. Can the ACCC indicate how much money the Commission was allocated to promote unit pricing?
2. Can the Commission provide a break down of how the money was spent?
3. Has the Commission done any work on assessing whether or not consumers understand how unit pricing works? What were the findings?
4. In relation to the mandatory code on unit pricing, can the Commission tell us how many complaints it has received regarding possible breaches of the Code?
5. Has the Commission undertaken any monitoring of its own regarding compliance levels with the Code by the supermarkets covered by the Code?
6. Has the Commission taken any action in relation to possible breaches of the Code? What remedies or undertakings has the Commission secured in relation to those possible breaches?
7. In relation to possible breaches of the Code, is the Commission able to indicate the types of circumstances where it would consider taking the supermarket involved to Court?

Answer:

1. The ACCC was allocated approximately \$1 million for the 2009-10 financial year to administer the Unit Pricing Code of Conduct (the Code).
2. To date, the ACCC has spent a total of \$313,924 on unit pricing related activities. This figure comprises of ACCC staff wages, legal costs, publications and educational materials, travel and other expenses. This does not include indirect costs including facilities and equipment.

For the period leading up to the end of this financial year (30 June 2010), ongoing unit pricing related costs will include wages and travel expenses to ensure ongoing compliance with the Code.

Contingent legal expenses have not been incurred as the ACCC has not been required to take enforcement action to date.

3. No. The ACCC has focussed on ensuring compliance with the Code.

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4. From 1 July 2009 (when the Code came into effect) to 30 November 2009 (just prior to the Unit Pricing Code becoming enforceable), the ACCC received 85 complaints and inquiries about unit pricing. Out of the 85 complaints and inquiries:
- 69 calls related to queries from industry regarding the application and implementation of the Code. All these questions were successfully resolved.
 - 13 calls were received from the general public in relation to unit pricing concerns, including the display and consistency of unit prices. These issues were closely monitored.
 - 3 calls related to requests for unit pricing information/material.

From 1 December 2009 (when the Code became enforceable), the ACCC received 50 complaints and inquiries regarding the Code. Out of the 50 complaints, 30 complaints were investigated. More information about the outcomes of these investigated matters is outlined in the answer to question 6. The remaining complaints and inquiries were not pursued further as they were unlikely to raise a concern under the Code.

5. From 1 July 2009, the ACCC commenced its monitoring of the retail grocery market to assess current levels of compliance and, where appropriate, to provide retailers with the ACCC's view regarding the application of certain provisions of the Code.

During this period the ACCC raised concerns with one major supermarket retailer that their display of unit pricing information did not in our view comply with the requirements set out in the Code. As a result of these concerns being raised, the supermarket retailer undertook to amend the display of these in-store price tickets to ensure that the unit pricing information provided on their ticketing complied with the Code's display requirements.

In November 2009, the ACCC conducted its first National Unit Pricing Code survey in order to:

- provide the ACCC with a national snapshot of the level of compliance in the market prior to 1 December, when the Code became enforceable
- identify any trends of non-compliance in the marketplace
- enable the ACCC to effectively target further compliance measures towards the key areas of non-compliance.

The survey included the major supermarket chains (Woolworths and Coles), smaller vertically integrated supermarkets (ALDI and Franklins) and a range of independent grocery retailers (Foodworks, Foodland, Supabarn and the IGA

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network) that were regulated by the Code. Where appropriate, the survey included in-store pricing as well as print and on-line advertising.

The survey results indicated that major supermarket chains and smaller vertically integrated supermarkets had achieved a higher level of compliance than some of the independent stores. As a result of the survey and in response to letters sent by the ACCC to independent retailers across the country that were likely to be regulated by the Code, the ACCC became aware that a small number of independent stores were unable to achieve compliance by the 1 December 2009 deadline. In response to this, the ACCC promptly identified the reasons for non-compliance in each instance and has continued to monitor these retailers to ensure that compliance is achieved as soon as possible. Most stores are almost completely compliant.

The ACCC is currently undertaking a second national unit pricing survey. The preliminary results of this survey indicate that there has been an improvement in the level of compliance across all sectors of the market.

In addition to conducting formal market surveys, the ACCC has continued to investigate complaints it receives regarding potential breaches of the Code. Please refer to the answer to question 6 for further details regarding these investigations and enforcement outcomes.

6. Since 1 December 2009, the ACCC has received 50 complaints and inquiries regarding the Code from consumers, consumer advocates and grocery retailers. The ACCC has investigated 30 of these matters, 12 of which have been resolved administratively. The remaining matters are currently under investigation. Of the 30 matters that either have been or are currently being investigated:

- 16 matters involve in-store pricing by grocery retailers
- 12 matters involve print advertising by grocery retailers
- 5 matters involve on-line advertising by grocery retailers.¹

The ACCC has not pursued further enforcement action in relation to these particular matters as it was more appropriate to either:

- draw the possible contravention to relevant parties' attention and provide information to ensure rectification and future compliance where the possible contravention appeared accidental, of limited detriment to consumers and of limited gain to the business concerned;
- or

¹ Please note that some matters involve a combination of in-store, print and/or on-line pricing.

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- deal with the matter informally where a business has promptly and effectively corrected a possible contravention and has implemented measures to prevent recurrence. For example, the ACCC has requested in some instances that retailers promptly publish appropriate corrective notices in the newspaper or catalogue in which unit pricing errors originally appeared. This action draws consumers' attention to the errors that appeared in the publication and reconfirms the retailer's commitment to the Code.
7. In line with the ACCC's Enforcement and Compliance Policy, the ACCC gives enforcement priority to Code related matters that demonstrate one or more of the following factors:
- conduct of significant public interest
 - conduct resulting in a significant consumer detriment
 - conduct demonstrating a blatant disregard for the law
 - conduct involving national issues
 - conduct detrimentally affecting disadvantaged or vulnerable consumer groups
 - conduct involving a significant new or emerging market issue
 - conduct that is industry-wide or is likely to become widespread if the ACCC does not intervene
 - whether ACCC action is likely to have a worthwhile educative or deterrent effect; and / or
 - the person, business or industry has a history of previous contraventions of the Code or the *Trade Practices Act 1974*, more generally.