

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 10-11 February 2010

Question: aet 79

Topic: ACCC independence

Hansard Page: E6 – E7 (10/02/2010)

Senator JOYCE asked:

Senator JOYCE—Going back to the previous case but not specifically about the case, why would the minister advise representatives of the Franchise Entertainment Group that, while he understood the concerns about this emerging supermarket practice, he would not make any public comment or express any concerns as the ACCC was ‘fiercely independent and won’t act if the commission feels it has been politically pressured to so’? Is that the case?

Senator Sherry—That is a question relating to the minister’s comments. I will take that on notice and ask Minister Emerson. Whether the ACCC can shed any light on it, I do not know.

Mr Samuel—No, but I can observe that the minister correctly states that the ACCC is an independent agency. Except in accordance with the specific provisions of the Trade Practices Act, it does not, cannot and should not accept directions from any member of parliament, be they state or federal, of any political persuasion. The agency must operate independently, in accordance with its responsibilities and powers under the Trade Practices Act.

Senator JOYCE—But is it the case that you will not act if you are politically pressured to do so? Is that what happens?

Mr Samuel—I have not seen the minister’s comments and I cannot comment on what the minister has said but my understanding of the position is that we will not respond to political pressure or attend to political directions. That does not mean to say that we will not investigate a matter if a matter is drawn to our attention at the political level. But we will not accept directions from politicians and will not respond to those directions. We will act in accordance with our responsibilities and duties under the Trade Practices Act.

Senator JOYCE—It is not a matter of you will act or you won’t act; you are independent so the minister can say what he likes.

Mr Samuel—That is correct.

Senator JOYCE—In that case, how can a minister expressing an interest in consumer protection against potentially anticompetitive conduct and the importance of enforcing trade practices laws be counterproductive in terms of the ACCC’s conduct in discharge of the commission’s responsibilities?

Mr Samuel—I am not sure what you mean by the minister being counterproductive.

Senator JOYCE—The minister has said that he cannot comment on an issue because it would put political pressure on you and therefore you would not act. You have

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clearly stated that that is not the case. So how can it be, as the minister has stated, that he cannot comment on things because it puts political pressure on you?

Mr Samuel—You should refer that to the minister. Or it can be taken on notice.

Senator Sherry—I will take that on notice.

Answer:

The ACCC is the independent statutory authority which administers the *Trade Practices Act 1974* (the Act). Under the Act, the Minister is specifically prohibited from giving the ACCC a direction regarding its performance or the exercise of its powers under the restrictive trade provisions of the Act. One of the reasons for the ACCC's independence is to ensure that its decisions are, and are seen to be, separate from the political process.