

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 30 May – 1 June 2006

Question: bet 121 (ACCC)

Topic: Futures Exchange and ASX merger

Hansard Page: E63

Senator SHERRY asked:

What has changed in the last seven years that would lead to the approval of their merger?

Mr Samuel—Back in 1999, when you examine the determination then made, and I think even in the media release, it was anticipated that, while there were two monopolies, those two monopolies would engage in increasingly competitive behaviour with each other. It was therefore, if you like, the counterfactual—that is, not permitting the merger would result in a competitive marketplace between the SFE and the ASX, and therefore to have allowed the merger to proceed would have resulted in a substantial lessening of that anticipated competition. As it turned out, over the seven-year period there has been minimal competition between the two monopolies. Therefore, we concluded that the anticipated competition that led to the rejection of the merger back in 1999 had not taken place and was not anticipated to take place in the context of what we were examining at this point. There was not anticipated to be competition. Therefore, the merging of two monopolies would not lead to a substantial lessening of competition in the relevant markets.

Senator Sherry- Could you give me a bit more detail on those planned regulatory changes?

Answer:

The key reasons for the ACCC's 1999 decision to oppose the merger between the ASX and the SFE were as follows:

*"In the absence of the merger, the ASX and the SFE are likely to compete strongly in the future. This is especially the case for new products. With new financial instruments being continually devised and, with the market expanding rapidly, the scope for competition between them is likely to increase substantially, especially with the proposed regulatory changes to the Corporations Law. At present the SFE cannot offer equities trading as a separate licence is required, nor can it offer independent electronic clearing and settling services for shares as the ASX's CHES system is the only such facility approved under the legislation. The proposed regulatory changes will allow each exchange to offer the full range of exchange trading services for financial instruments without any distinction between shares and futures."*¹

The legislative changes upon which the ACCC's 1999 decision relied commenced in March 2002.² However, the competition anticipated by the ACCC has not eventuated and is unlikely to eventuate in the foreseeable future, particularly because of the existence of network effects in the relevant markets.

¹ ACCC public register - <http://www.accc.gov.au/content/index.phtml?itemId=475754>

² *Financial Services Reform Act 2001* (Cth).