

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 2 June – 4 June 2009

Question: bet 151

Topic: Component Pricing Legislation

Hansard Page: Written

Senator Bushby asked:

1. A practice of many restaurants and bars is to impose a surcharge at weekends and/or on public holidays. Will the addition, for example, of a 10 percent surcharge to the customer's total bill represent a breach of the new component pricing regulations, as 'single price' as not provided to the consumer at the time that the representation as to price was made? How is the ACCC advising to resolve this type of industry issue?
2. What about purchasing goods with a credit card where there are multiple options for payment but the consumer chooses to pay with a credit card? Will the credit card fee be included in the price?

How will this affect pricing of the motor vehicle industry, as much advertising is done with a disclaimer – "plus delivery and statutory charges." Will this now be unacceptable under s.53C of the *Trade Practices Act 1974* (Cth).

Answer:

1. Section 53C of the *Trade Practice Act 1974* (the Act) requires that where a representation is made with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services, the single price for the goods or services must also be specified in a prominent way and as a single figure.

Due to the requirements of the legislation, the question of whether a restaurant surcharge needs to be included in a single price will depend on whether it is quantifiable at the time the price representation is made. This will come down to the way in which the surcharge is applied. If, for example, a restaurant adds a 10 per cent surcharge to all menu items, then the value of the surcharge is quantifiable at the time the representation is made and as such must be included in a single total price for each item. However, if the surcharge is applied as a flat fee per customer or per table, its value is not quantifiable at the time of the representation and as such, while it must be clearly represented to consumers that the surcharge applies, it cannot be included in a single price.

The ACCC has provided guidance on its website and in articles provided to the restaurant and hotel industry explaining the clarity in pricing amendments and their possible application to the industry. While the ACCC has advised industry that in certain circumstances (as outlined above) a single total figure inclusive

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of a surcharge must be provided, it is not the ACCC's role to prescribe the way in which that is done (ie a restaurant may use a different menu, blackboard or other means as it sees fit).

2. Where there are multiple purchase options available to a consumer, the decision to pay by credit card (and to incur any applicable fee for that decision) is, for the purposes of the Act, treated as an 'optional extra' and as such the credit card fee does not need to be included in a single price representation.

If, for example, a customer can pay by cash, EFTPOS or credit card, with a 2% surcharge applied where the credit card is used, it is possible for the customer to obtain the product or service without incurring the cost of the surcharge and as such the surcharge does not need to be included. If, however, credit card is the only accepted method of payment and the 2% surcharge is applied, the surcharge would not be optional and, as it is also quantifiable, would need to be included in a single price representation.

Motor vehicle advertising

In the ACCC's view, dealer delivery and compulsory statutory charges are quantifiable for the purposes of a price representation made in relation to an on-road vehicle and as such must be reflected in a single (total) price representation.

On that basis, the use of "plus delivery and statutory charges" is not, in the ACCC's view, acceptable in relation to the supply of a motor vehicle.