

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 223

Topic: Cartel Conduct

Hansard Page: Written

Senator XENOPHON asked:

1. Can the Commission indicate if it is still concerned by how the courts have interpreted the word "understandings" in relation to cartel conduct?
2. Can the Commission indicate when we may see the first criminal prosecution for cartel conduct?

Answer:

1. The *2007 Report of the ACCC into the price of unleaded petrol* noted potential limitations in the ability of the *Trade Practices Act 1974* to capture anti-competitive conduct as a result of the judicial interpretation of the term 'understanding' and, in particular, what level of commitment is required between to parties before an 'understanding' will exist. The ACCC remains concerned that the requirement for the existence of some form of assurance or undertaking that one person will act in a certain way allows competitors to avoid the uncertainties of the competitive process without breaching the prohibitions on cartel conduct in the *Trade Practices Act*, for instance, by sharing information about anticipated price rises.

In this context, the ACCC notes that on 8 January 2009, the Treasury released a discussion paper on the meaning of 'understanding' in the *Trade Practices Act*, calling for comment on the adequacy of the current interpretation of the term.

2. The ACCC is unable to indicate when it may commence the first criminal prosecution for cartel conduct. In this regard, the ACCC notes that the cartel provisions are not retrospective and only apply to conduct engaged in on or after July 2009 and that it is not uncommon for a time lag between conduct and ACCC detection.