

## Senate Standing Committee on Economics

### ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 207

Topic: Inquiry into Grocery

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Senator Bushby asked:

Senator BUSHBY: Would you have the power, having conducted the grocery study, if you found there was a competition problem that was impacting on consumers in a certain suburb of Melbourne, to require divestiture, then, of some supermarkets?

Mr Samuel: The remedy area is where it is different. We can conduct market inquiries either with the approval of or at the direction of the responsible minister, which either would be the Treasurer or the parliamentary secretary. That is evidenced by the inquiry we conducted into petrol, which was done at our instance but with the approval of the Treasurer, and the inquiry into groceries, which was done at the direction of the Treasurer. So those inquiries under part 7A of the act can be conducted by the ACCC. They are full market inquiries, as is evidenced by those reports. I am not sure about this. I was not aware that the commission in the UK had the ability to unilaterally invoke certain policy determinations.

Senator BUSHBY: That is what they told me.

Mr Cassidy: I do not think that is right.

Mr Pearson: If I may, I have considered the airport action. They do have to face a court, so they cannot necessarily just impose unilaterally without any challenges.

Mr Samuel: I could be wrong. I stand corrected. I will perhaps take the question on notice, Senator. I did think that issues that were not already encompassed by the law as it stands were matters, then, that had to be dealt with by parliament. They could not necessarily just be unilaterally dealt with by the commission.

Senator BUSHBY: I would appreciate it if you could take that on notice for me. It certainly sounded like that at the remedy end there was a potential there for the Competition Commission to resolve issues in ways that in Australia appear to have festered not through any fault of the ACCC, within certain areas of the community for a long time and in ways that could be quite sophisticated in the way that you could deal with those issues and solve them.

Answer:

Similarly to the ACCC, the Office of Fair Trading (OFT) enforces competition law under the *Competition Act 1998*. If the OFT considers there are problems in a market, it can refer the matter to the Competition Commission (CC) for investigation.

The CC can conduct market inquiries that are similar to those carried out by the ACCC under Part VIIA of the *Competition and Consumer Act 2010*. We understand that the CC cannot initiate inquiries itself, rather the CC responds to references made to it primarily by the OFT as well as sector regulators.

In contrast to the ACCC, the CC can, as an outcome of an inquiry, require the divestiture of a business or assets in a market if it finds that a competition problem exists in that market.

We understand remedial action taken by the CC, including required divestiture, is subject to appeal in the relevant tribunal.