

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 5

Topic: Sale of Franklins Stores

Hansard Page: Written

Senator Williams asked:

1. I want to talk about the case surrounding the sale of the Franklins stores. Could you summarise for me the reasons for the ACCC blocking a sale to METCASH.
2. Can you confirm that on the 14th of December 2010, the ACCC had a teleconference with Woolworths to discuss the purchase of 22 Franklins stores.
3. Is it true that in that teleconference the ACCC favoured Option 2 "*which was for Woolworths to join with equity partners to fund SPAR's purchase of Franklins AND Woolworths would pick up a number of stores at a later time*"?
4. If that is true, why would the ACCC support a Woolworths option when Woolworths already has the largest share of supermarkets in NSW?
5. After the teleconference, did Mr. Samuels speak to the ACCC commissioners, and if so, what was agreed upon?
6. Woolworths contacted SPAR in January this year. Did any officer of ACCC have any contact with Woolworths on this matter between the 14th of December last year and the end of January this year?
7. Did Mr. Samuels personally speak with Woolworths Chief Financial Officer Mr. Pocket during this period to talk about option 2?
8. By shutting METCASH out of the process, is the ACCC effectively promoting any other bidder?

Answer:

The ACCC is of the view, and has alleged in legal proceedings in the Federal Court of Australia, that the proposed acquisition would, or would be likely to, substantially lessen competition in the NSW/ACT market for the supply of wholesale packaged groceries to independent supermarket retailers, in breach of section 50 of the *Competition and Consumer Act 2010*.

In particular, in its Statement of Claim the ACCC has alleged that if the acquisition proceeds:

- Franklins's wholesale operation will cease to offer supply to retailers

- the number of suppliers to the independent wholesale grocery market capable of supplying large format supermarkets will be reduced from two to one
- Metcash will shut down its closest competitor for the supply of wholesale packaged groceries to independent supermarket retailers
- new entry into, or expansion by an existing competitor within, the wholesale grocery market is unlikely because barriers to entry into the independent wholesale grocery market will remain high.

If the Proposed Acquisition does not proceed:

- the Franklins wholesale assets are likely to be acquired by a third party who would be likely to continue to operate them in competition with Metcash; and/or
- most or many of the Franklins Stores are likely to be sold to persons or entities who are not committed to an existing source of supply for Wholesale Packaged Groceries.

Accordingly, if the Proposed Acquisition does not proceed, competition in the Independent Wholesale Grocery Market is not likely to be substantially lessened because:

- the number of suppliers to the Independent Wholesale Grocery Market will not be reduced
- Metcash will not be in a position to shut down its closest competitor for the supply of Wholesale Packaged Groceries to the Independent Supermarket Retailers, and it is likely that any other owner of the Wholesale Assets will continue to operate those assets
- barriers to entry into the Independent Wholesale Grocery Market will be lowered as a consequence of Franklins wholesale volumes not being tied to Metcash and the likelihood of new entry or expansion by an existing competitor will be increased.

The ACCC can confirm that a telephone call between representatives of the ACCC and Woolworths took place at the request of Woolworths on 14 December 2010. The contents of the telephone call were the subject of submissions and evidence in the recent litigation in relation to Metcash's proposed acquisition of Franklins from Pick n Pay, for which judgment is pending. It is therefore not appropriate to comment further.