

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Estimates 22-23 October 2008

Question: sbt 6

Topic: Collective Bargaining – Owner Drivers, Qld (ACCC)

Hansard Page: Written

Senator BUSHBY asked:

1. The CFMEU has made application to the ACCC for approval to conduct collective bargaining for owner drivers in Southern QLD:

- Will the ACCC consider the possibility of contractors being coerced to use a union as a bargaining agent? What measures would be taken to ensure this won't happen in the event of the application being approved? What powers does the ACCC have to address anti-competitive behaviour of this sort?
- What effect would such an arrangement have on competition and prices, given its potential to allow unions to control prices across a broad range of the economy?
- What would be the implications of such an arrangement for the rights of independent contractors to act outside of the authority of unions under IR laws?

2. Presumably, if a manufacturer was to advertise its product as being lower than the average cost of similar products in the market, and that representation as to the lower cost was accurate, the ACCC would be satisfied that the advertisement did not break the law and have no reason to intervene.

- Would the ACCC respond differently if a trade body promoted the interests of its members generally by using the same average price advertisement for the same type of product but the price of many of the individual member products was in fact higher than the average price?
- What if a manufacturer with higher than average product costs were to advertise using its association with, membership of, and effective endorsement by the trade body advertisement promoting the product on the basis of lower costs?
- What, if any, actions would the ACCC take in respect of the advertising by the trade body and by its individual members to ensure that consumers are not misled? What powers does the ACCC have to address anti-competitive behaviour of this sort?

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Answer:

1. As of 28 November 2008, the ACCC is assessing the CFMEU's application for authorisation. Under the CFMEU's proposal, CFMEU members will be free to choose whether to participate in the proposed collective arrangements or not. As part of its assessment, the ACCC will consider whether participation in the collective bargaining arrangements is genuinely voluntary for both the members of the bargaining group and the targets with whom the group wishes to negotiate.

The ACCC may deny authorisation if it is not satisfied that the likely public benefit resulting from the conduct will outweigh the likely public detriment constituted by any lessening of competition.

The *Trade Practices Act 1974* (the Act) permits the ACCC to grant authorisation subject to conditions. The ACCC can impose conditions to ensure that the authorised arrangements are in the public interest or continue to be in the public interest over the period of the authorisation. The ACCC may revoke an authorisation once granted if it considers that the public benefit generated by the arrangements no longer outweighs the detriment.

In the absence of authorisation, both collective bargaining and collective boycotts raise serious concerns under the Act. The ACCC has a range of enforcement actions available to it to deal with businesses which engage in anti-competitive conduct which breaches the Trade Practices Act.

The ACCC is currently assessing the public benefit and public detriment from the proposed arrangements. As part of its assessment the ACCC will consider the impact of the proposed conduct on competition and prices in the relevant market/s.

2. Section 52 of the Act prohibits misleading and deceptive conduct. Section 53 of the Trade Practices Act prohibits various forms of misrepresentation including misrepresentation as to price.

Whether or not the scenarios referred to would be considered misleading or deceptive in contravention of these provisions would depend on the representations made and the underlying facts.

Should the ACCC receive concerns in relation to scenarios such as those referred to in the question, the ACCC would assess the matters raised and where appropriate undertake investigations. Where ACCC investigations uncover possible contraventions of the Act it may resolve in a number of ways from administrative resolution to court enforceable undertakings and ultimately litigation.