

SENATE STANDING COMMITTEE ON ECONOMICS QUESTION
(Supplementary Budget Estimates 20 October – 21 October)

Question: SBT 185

Topic: Drake Supermarket in QLD

Senator Xenophon asked:

Senator XENOPHON—I want to rush on with a couple of other issues. I have written to the commission about this matter. In May 2010 Drake Supermarkets, which is a South Australian based company, opened a new store in Caboolture in Queensland. Within a week of opening Coles placed 10 per cent discount vouchers on the windscreens of the cars parked in the Drake supermarket car park. The offer was valid for three weeks, but only for the three Coles supermarkets in the immediate vicinity, as I understand it. We have corresponded with the ACCC and the ACCC's view was that there was not enough evidence to prove that this was an act of predatory pricing. Given that the voucher was only promoting discounts at stores in the immediate vicinity, it was not a state-wide discount, does the ACCC consider that that offer was done with the intent of taking away business from Drake, and in a sense to harm it because an across the board 10 per cent discount was not something that presumably would be sustainable across the whole state?

Mr Bezzi—I am not familiar with the particular matter you have raised—

Senator XENOPHON—There has been correspondence with the commission about it.

Mr Bezzi—Certainly, but speaking in general terms there are elements that we would need to satisfy in considering any predatory pricing issue. The amount of time the offer is open would certainly be a critical element. Let us assume that the 10 per cent meant that the offer involved the sale below cost by Coles—and that is a big assumption but let us assume that. The issue would be whether or not the month was a period that meant that they were in breach of the law, and I suspect that a month might be a bit too short.

Senator XENOPHON—I think Mr Drake probably would have been able to cop it if it was across the whole state, but it was just for those three supermarkets in his area. Perhaps the commission could get back to me in relation to that.

Answer:

The relevant provision of the *Trade Practices Act 1974 (TPA)* prohibits businesses with substantial market share from engaging in sustained below cost pricing engaged for anti competitive purposes such as elimination of a competitor. More general provisions prohibit firms with substantial market power from using that power for the same anti-competitive purposes. The provisions involve a number of complex aspects that require careful consideration of the facts of each matter.

Inherent in your question is an assumption that conduct engaged in for the purpose of maintaining or gaining market share is equivalent to a prohibited purpose. The law is a bit more complicated than this noting that attempts to attract customers is a normal part of the competition process. The law, and the ACCC, looks for conduct that goes beyond attempting to gain customers at the expense of an existing or new competitor in the market and, rather, for conduct undertaken with the intention to remove a competitor as an effective competitive constraint.

It is for good reason that the law stops short of prohibiting conduct that may be part of the normal competitive process. The ACCC would hope that the introduction of a competing supermarket would lead to competitive responses from incumbents. This is what competition is about and leads to benefits for consumers. Rather, the law is aimed at preventing conduct that would have detrimental impacts on competition.

In the matter the subject of your query, in terms of assessment against the prohibitions in the TPA, the ACCC noted the limited duration (in the context of the conduct in question) of the promotion and the absence of evidence of anti-competitive purpose. The ACCC invited the provision of further information or documents if available.