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From: Clancy, Sharon
Sent: Friday, 13 March 2015 9:47 AM
To: 'andrew.laming.mp@aph.gov.au'
Cc: Bezzi, Marcus
Subject: Letter from ACCC - Indonesian Council of Ulama and Halal certification [SEC=UNCLASSIFIED]
Attachments: ACCC letter to Dr Andrew Laming MP - MUI.pdf

Dear Dr Laming

Please find attached a letter from the ACCC in response to your query regarding the Indonesian Council of Ulama and Halal certification.

Regards

Sharon

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Dear Dr Laming

Indonesian Council of Ulama – Halal certification

On 19 January 2015 you spoke by telephone with my colleagues from the Australian Competition and Consumer Commission (ACCC), Deputy Chair Michael Schaper and Nigel Ridgway, Executive General Manager, Consumer, Small Business and Product Safety.

During the meeting you referred to a news.com.au article dated 18 October 2013 and titled *Aussie firms paying inflated price to have Halal certification*. You asked the ACCC to consider if the circumstances described in the article raise any issues under the *Competition and Consumer Act 2010* (the Act).

Based on the available information, the ACCC's view is that, if the Act were to apply to the Indonesian Council of Ulama (MUI), it is possible that the MUI may have engaged in conduct in breach of the misuse of market power and resale price maintenance provisions of the Act.

However the ACCC does not propose to pursue this matter further because:

- MUI is an Indonesian organisation and it is not clear that MUI is carrying on business in Australia and is obliged to comply with the provisions of the Act.
- The article was published in October 2013 and the ACCC is not aware of more recent concerns about the issues raised in the article.
- The article suggests that the Department of Agriculture intended to resolve the matter as a trade issue.

In assessing this matter, the ACCC has liaised with colleagues at the Indonesian competition authority, the Komisi Pengawas Persaingan Usaha (KPPU) who have advised that MUI is regarded as a religious council, rather than a business, in Indonesia.

Even if it were clear that the MUI was bound by the Act, there are legal and other practical difficulties involved with an Australian enforcement agency seeking a change in conduct by an Indonesian religious body, or even prosecuting such a body.

The alleged conduct

On the basis of the information in the article, it appears that MUI suspended at least one of its approved Australian certifiers of Halal meat because that certifier charged below the minimum certification fees set by MUI.

ACCC analysis

Section 46 of the Act prohibits the misuse of market power for a proscribed anti-competitive purpose. These purposes are:

- eliminating or substantially damaging a competitor
- inducing the exit or preventing the entry into the market by (potential) competitors
- deterring or preventing competitive conduct by competitors.

As a body that approves Halal certifiers for the purpose of meat imports to Indonesia, it is arguable that MUI has a degree of market power. Through its suspension of the certifier, it is possible that MUI has taken advantage of its market power for the purpose of deterring or preventing the certifier from engaging in competitive conduct in a market.

Section 48 of the Act prohibits resale price maintenance. In particular, suppliers are prohibited from:

- specifying a price that resellers are likely to understand as the price below which goods or services should not be sold or advertised
- withholding supply to a reseller because the reseller had refused or failed to comply with the specified minimum price.

It is possible that, by specifying a minimum certification fee, MUI may have engaged in resale price maintenance, but only if it is bound by Act.

For the reasons set out earlier in this letter and assuming that MUI is bound by the Act, while it is possible that MUI may have engaged in conduct in breach of the Act, the ACCC does not propose to pursue this matter further.

To the extent that this matter raises issue about the trade relationship between Australia and Indonesia, it may be better pursued by the Department of Foreign Affairs and Trade.

I trust this information is of assistance and thank you for raising your concerns with the ACCC.

Should you wish to discuss this matter further, please do not hesitate to contact me on (02) 9230 9130.

Yours sincerely



Marcus Bezzi
Executive General Manager
Competition Enforcement