

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission

Question No: 100

Topic: Newcastle Port

Reference: Written

Senator: Whish-Wilson, Peter

Question:

1. The Australian Financial Review recently reported that ACCC Chairman Rod Sims: 'quietly encouraged Glencore to exercise the competition law to challenge the repricing of the Port of Newcastle'.

a. Is this true?

b. Does the ACCC have guidelines or criteria around which companies and industries to engage with in such recommendations? If not, how was the decision made to engage with Glencore?

2. In coming to the conclusion that the 40-60 per cent increase in the price charged by the Port of Newcastle was problematic what research did the ACCC conduct? If any, please provide.

3. Before the recent price increases of concern to the ACCC, how had Port Of Newcastle coal fees changed in real (inflation adjusted) terms in the last 19 years?

4. How do the new prices charged by the Port of Newcastle compare to the prices charged at other Australian ports?

Answer:

1a and 1b. No. The ACCC does not make recommendations to companies or industries on such matters, and so does not have guidelines or criteria for making such recommendations. However, the ACCC publishes on its website the following general guides in relation to arbitration of access disputes under Part IIIA of the *Competition and Consumer Act 2010* (Cth):

- [Arbitrations: a guide to resolution of access disputes under Part IIIA of the Act - a summary guide](#)
- [Arbitrations: a guide to resolution of access disputes under Part IIIA of the Act](#)
- [Guidelines relating to deferral of arbitrations and backdating of determinations](#)

2. This was not the ACCC's conclusion, it was a view reached by the Australian Competition Tribunal in its decision dated 31 May 2016 in relation to *Application by Glencore Coal Pty Ltd [2016] ACompT 6* (<http://www.judgments.fedcourt.gov.au/judgments/Judgments/tribunals/acompt/2016/2016acompt0006>).

3 and 4. The ACCC does not collect this information.