

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 & 17 February 2005

Question: Add 2

Topic: ACCC – Optus-Foxtel Undertakings

Hansard Page: Written

Senator Conroy asked:

1. There have recently been some reports that the ACCC is investigating whether Optus is complying with the terms of the undertakings it gave to secure the commission's approval of its content deal with Foxtel in 2002. Can the ACCC confirm that an investigation is underway?
2. Does the investigation relate to whether Optus is fulfilling its commitment to continue to spend money on new Australian Drama programs?
3. Why did the Commission seek that undertaking as part of the deal?
4. When is the investigation expected to be completed?
5. Has the ACCC investigated compliance with any of the other undertakings that underpinned the Foxtel-Optus deal? For example are you satisfied that rival cable operators like TransACT and Neighbourhood Cable have been able to purchase pay TV content at "fair and reasonable terms"?

Answer:

1. The ACCC has been examining whether Optus is in compliance with the undertakings provided to the Commission as part of the Foxtel-Optus content supply agreement.
2. The examination partially related to whether Optus continues to comply with clause 6 of its undertaking, in relation to expenditure on new Australian drama programs. The examination also covered clause 5 of its undertaking, in relation to Optus's commitment to provide two channels with programming sourced predominantly from non-Foxtel or Foxtel-related entities.
3. The ACCC does not seek undertakings from parties. Rather, parties may choose to offer undertakings which are aimed at restructuring the relevant proposal in such a way as to address the competition concerns presented by the proposal. Optus offered the undertaking to alleviate concerns it would reduce spending on new Australian drama programs.

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 & 17 February 2005

4. The examination has recently been completed, with the Commission finding that it did not have cause to believe that Optus was in breach of its undertakings.
5. The Commission has examined one other instance of compliance by Optus. This involved a channel change proposed by Optus in 2004, where Optus was proposing to substitute the Boomerang channel for the CNNfn in its channel line-up. The ACCC found that the circumstances of the replacement of CNNfn fell within the release provisions and accordingly no further action was taken.

The Commission has not been required to examine any other instances of compliance by Foxtel, Optus, Telstra or Austar. With regard to Foxtel's undertaking to supply content to other infrastructure operators, the Commission notes that various circumstances have led to certain infrastructure operators (e.g. TransAct) no longer offering Foxtel's service. This does not mean there has been a failure to comply with the undertaking.