

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates, 16 February 2006

Question: AT 49

Topic: *Telstra FOIing the ACCC in support of High Court Action*

Hansard Page: Written

Senator CONROY asked:

1. I have some questions about a recent newspaper report concerning Freedom of Information requests lodged against the ACCC by Telstra seeking documents and correspondence referring to s152EB(2) of the *Trade Practices Act*.

I understand that Telstra is collecting this information in preparation for a potential High Court challenge to the telecommunications access regime established under the trade practices act on the ground that it breaches the "just terms" acquisition of property clause of the Constitution.

Has the ACCC sought legal advice on the prospects for success of such a claim?

2. What would be the implications of the success of such a claim for the telecommunications access regime?
3. What would be the implications of the success of such a claim for access regimes monitored by the ACCC in the gas, electricity and transport sectors?

Answer:

1. No.
2. Section 152EB of the TPA provides that if an ACCC arbitration determination results in an acquisition of a person's property the Commonwealth must pay that person a reasonable amount of compensation to the extent that the determination does not adequately compensate for that acquisition. Any claim for compensation is unlikely to be made against the ACCC. The ACCC has no knowledge of any legal arguments Telstra may wish to make to "challenge the telecommunications access regime". As the ACCC understands it, the issue is whether compensation is payable not whether the access regime itself is valid.
3. Section 44ZZN, which mirrors section 152EB, applies to ACCC determinations made under Part IIIA. As above, the ACCC's understanding is that the issue in Part IIIA would revolve around whether compensation is payable not whether the national access regime itself is valid. It is noted that the ACCC arbitration powers relating to the existing gas and electricity access regimes are conferred by state legislation, and not Part IIIA.