

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates, 1 to 4 June 2004

Question: Bud 73

Topic: Telstra Behaviour

Hansard Page: E29

Senator Lundy asked:

In terms of access to information, recently during Senate Estimates I asked Telstra a question regarding the sale of information about their network. I had heard and have subsequently been advised that Telstra sell information relating to their network infrastructure to competitors. What would be the ACCC's view on behaviour by Telstra whereby they sell information and data sets about their network that would enable faster decisions for competitive investment being sold on a commercial basis?

Mr Cosgrave – I would preface my subsequent comments by saying that those allegations are new to me. I must not have read that part of the transcript. But Telstra, in fact all carriers, have obligations under the Telecommunications Act in relation to the provision of network information in certain circumstances. Those obligations exist, I think, via certain schedules to the Telecommunications Act. I think – and I would need to confirm this on notice – that those provisions involve an arbitration mechanism, which tends to suggest that some payment for provision of information is expected. The arbitration mechanism is by private arbitration. In the absence of an agreement as to an arbitrator, arbitration is by the ACCC. But certainly no arbitrations of that sort have come to us in the seven years those provisions have been in operation

Senator Lundy – Are the data sets defined for the purpose of any involvement the ACCC have, or is it based on what complaint you receive and then conducting an arbitration?

Mr Cosgrave – Our role is simply a reserve arbitral role, in the event that the parties cannot reach agreement as to an arbitrator. The data sets required of all carriers in relation to network information are – and again I would want to confirm this to you – according to my recollection, fairly general in nature.

Answer:

Carriers are obliged by Part 4 of Schedule 1 of the *Telecommunications Act 1997* to provide network information to requesting carriers. This information is intended to assist a requesting carrier to undertake planning, maintenance or reconfiguration of that carrier's network. Indeed, a carrier is not obliged to provide network information unless that information is to be used for these purposes by a requesting carrier.

The type of information that must be provided includes, inter alia, information relating to the volume and characteristics of traffic over a carrier's network, likely changes to facilities that may effect the use by a requesting carrier of the carrier's

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network and information on factors that may effect the quality of the service provided by a requesting carrier to its customers that arises from the use of the carrier's network.

Clause 27 of Part 4 sets out a process for determining the terms and conditions under which carriers are to comply with these obligations. Carriers may agree on terms and conditions or agree to their determination by an arbitrator appointed by the parties. Failing such agreement, the ACCC is to be the arbitrator.

Clause 27 contemplates that terms and conditions include a charge for network information as clause 27(5) obliges the ACCC to have regard to any Ministerial pricing determination made under clause 28 in relation to price-related terms and conditions relating to the network information obligations.

The ACCC has not been required to form a view on pricing principles for the sale of network information as no disputes have been brought to it for arbitration, nor, to its knowledge, has the Minister for Communications, IT and the Arts issued a pricing determination.