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**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates, 1 to 4 June 2004

**Question: Bud 19**

**Topic: ACCC – Meetings with Telstra**

**Hansard Page: E23**

Senator Lundy asked:

I am trying to get a feel for this. I think we can make some reasonable assumption that the notice issued on Friday was expected by Telstra, given the discussions that had already have taken place. Following receipt of that notice did Telstra then contact the ACCC? I want the detail about the nature of that approach and the subsequent organising of meetings.

**Mr Samuel**—I cannot remember the exact date.

**Senator LUNDY**—You can take that on notice. I am trying to understand what happens next in the chain of events once a competition notice has been received—what obligation is there on the ACCC to respond to what I presume would be rather focused attention, on behalf of Telstra, to try and resolve the issue, including the meetings on Sundays, who was called in and things like that. I would like you to detail the attendances at meetings and what communication by phone or email occurred and provide any documentation relating to those exchanges.

Answer:

Following receipt of the Competition Notice, Telstra contacted the ACCC by telephone. There were several telephone conversations and exchanges of correspondence between the ACCC and Telstra in the week that followed the issue of the Notice. Principal discussions about the Notice, Telstra's revised pricing protocols and progress of negotiations between Telstra and its wholesale customers took place in meetings between the ACCC and Telstra on the 26 and 29 March 2004.

A chronology of the exchange of correspondence and meetings between the ACCC and Telstra is set out in the following table. These exchanges are in addition to the numerous telephone conversations between the ACCC and Telstra.

19 March 2004	<b>TELEPHONE</b> Graeme Samuel, Chairman ACCC to Ziggy Switkowski, CEO, Telstra	ACCC Chairman advises Telstra CEO that a Competition Notice has been issued to Telstra. A copy of the Notice will be faxed to Telstra.
19 March 2004	<b>COMMISSION NOTICE ISSUED TO TELSTRA</b>	Competition Notice served on Telstra by registered post.
19 March 2004	<b>LETTER</b> Michael Cosgrave General Manager- Telecommunications ACCC to Paul Paterson- Director Legal & Regulatory, Telstra  <b>By Fax: 12.20pm</b>	Enclosing a copy of the Competition Notice.

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19 March 2004	<b>LETTER</b> Michael Cosgrave, ACCC to Paul Paterson, Telstra  <b>By Fax: 4:31pm</b>	Advises Telstra of transposition error in Competition Notice issued earlier this day
22 March 2004	<b>LETTER</b> Michael Cosgrave, ACCC to Paul Paterson, Telstra <b>By fax: 5:27pm</b>	ACCC requests that Telstra provide it with weekly reports on the uptake of Telstra BigPond ADSL services.
22 March 2004	<b>LETTER</b> Mallesons Stephen Jacques on behalf of Telstra, to Graeme Samuel, ACCC <b>By fax: 10.03am</b>	Telstra requests that ACCC provide Telstra with a Statement of Reasons pursuant to <i>Administrative Decisions Judicial Review Act (Cth) 1977</i> setting out the findings made by the ACCC on material question of fact, referring to the evidence or other material on which those findings were based; and the reasons for the decision by the ACCC to issue a Competition Notice.
25 March 2004	<b>LETTER</b> Michael Cosgrave, ACCC to Paul Paterson, Telstra <b>By Fax: 11:37am</b>	ACCC advises Telstra that, given the ACCC continues to have a reason to believe that Telstra is engaging in at least one instance of anti-competitive conduct, it will continue to investigate the matter to determine whether further enforcement action is appropriate. In making this determination, the ACCC will consider progress of negotiations between Telstra and Wholesale access seekers. ACCC requests that Telstra provide this information by 29 March 2004.
25 March 2004	<b>LETTER</b> Paul Paterson, Telstra to Michael Cosgrave ACCC <b>By Fax: 4:47pm</b>	Telstra confirms arrangements for a meeting with the ACCC at the ACCC's Melbourne office at 8.45am 26 March 2004, to discuss the ACCC's views regarding Telstra's current prices, and to update the ACCC on the state of the market and progress of negotiations with its wholesale customers.
25 March 2004	<b>LETTER</b> Paul Paterson, Telstra to Michael Cosgrave ACCC <b>By Fax: 7:57pm</b>	Telstra requests a meeting between senior Telstra and ACCC staff. Telstra advises the ACCC that it is reaching agreement with substantial numbers of wholesale customers.

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26 March 2004	<p><b>MEETING</b></p> <p><b>9:00-9:30am</b> <b>ACCC Melbourne</b></p> <p><b>Attended by</b> <b>ACCC</b> Michael Cosgrave, David Ablett - Director, Enforcement-Telecommunications ACCC</p> <p><b>TELSTRA:</b> Paul Paterson, Patrick Jeffers</p>	<p>Discussion about Telstra's pricing and status of negotiations with Telstra's wholesale customers.</p> <p>The ACCC remains concerned that Telstra's conduct is anti-competitive.</p> <p>Telstra rejects the ACCC's assertions that agreements between Telstra and wholesale customers were reached under duress.</p> <p>Notwithstanding that the ACCC's role is to identify anti-competitive conduct and not to provide guidance or clearance of pricing, the ACCC advises Telstra that it will, of course, evaluate Telstra's new wholesale prices.</p> <p>In terms of Telstra's request for guidance as to the ACCC's concerns with Telstra's pricing, the ACCC considered that the Competition Notice provides Telstra with sufficient guidance.</p> <p>Telstra requests a meeting with senior ACCC representatives.</p>
26 March 2004	<p><b>LETTER</b></p> <p>Paul Paterson, Telstra to Michael Cosgrave, ACCC <b>By fax: 9:46am</b></p>	<p>Telstra formalises its request for a meeting on 29 March 2004 with senior ACCC representatives, including Commissioners, about the revised broadband wholesale pricing that Telstra proposed to release to market, and to brief the ACCC as to outcomes of current negotiations with wholesale broadband customers</p>
26 March 2004	<p><b>LETTER</b></p> <p>Paul Paterson, Telstra to Michael Cosgrave, ACCC <b>By fax: 9:10pm</b></p>	<p>Telstra advises the ACCC that it was disappointed with the ACCC's position as per the meeting earlier this day.</p>
29 March 2004	<p><b>MEETING</b></p> <p><b>11:15am</b> <b>SYDNEY ACCC</b></p> <p><b>Attended by</b> <b>ACCC:</b> Graeme Samuel, Ed Willett - Commissioner, Michael Cosgrave, Ken Wallis - Director Telecommunications, David Ablett</p> <p><b>TELSTRA:</b> Bill Scales-CEO, Bruce Akhurst, Paul Paterson, Deena Shiff, Alexis Harden</p>	<p>Telstra presents Wholesale DSL Pricing Options:</p> <p>a) Growth; and b) Protected Rates.</p> <p>ACCC advises that it will consider Telstra's pricing options.</p>
31 March 2004	<p><b>TELSTRA RELEASES Third ROUND PRICING: GROWTH &amp; PROTECTED RATES OFFERING</b></p>	