

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 30 May – 1 June 2006

Question: bet 35 (ACCC)

Senator CONROY asked:

- (1) On the issue of the competition notice that is currently in place against Telstra, what stage is this process currently up to?
- (2) During the last round of Senate Estimates I asked you whether the ACCC believed that Telstra's increasing its Wholesale Line Rental charges was related to Telstra's 'half price broadband' offer. I think at that time you told us to stay tuned. Does the fact that the ACCC has only issued a competition notice in relation to wholesale line rental mean that it has decided that these two issues are unrelated?
- (3) Can we expect future action on these issues? Further competition notices?
- (4) And what is the potential headline figure for the total penalty Telstra could potentially be subject to?
- (5) When did the ACCC issue this competition notice?
- (6) How many days have passed since then?
- (7) What is the maximum per day fine that can theoretically be imposed on Telstra as a result of this competition notice?
- (8) That headline figure would look pretty good in a share prospectus wouldn't it? You're not under any pressure to resolve this before the government proceeds with the privatization of Telstra are you?
- (9) Telstra have initiated legal action in the Federal Court on administrative law grounds on this issue, haven't they?
- (10) How would a Telstra success in this legal action impact the Competition Notice?
- (11) What course of action would the ACCC take if Telstra is successful in this legal action?
- (12) How long will the ACCC allow this competition notice to run for before it initiates court action? Telstra have clearly indicated that they don't intend to change their conduct this time – we're not going to have to wait 12 months again until the ACCC decides whether to go to court are we?
- (13) What factors will the ACCC be taking into account when it is deciding whether to test its claims on this competition notice in court?

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(14) The resources of the ACCC aren't a factor here are they?

Answer:

1. The ACCC is continuing to investigate the matter.
2. The ACCC considers that the matters are not directly related.

While the ACCC has reason to believe that Telstra's line rental increases contravene the competition rule, the ACCC has decided that there is insufficient material for it to form the requisite reason to believe that Telstra's broadband pricing contravenes the competition rule at this stage.

3. The ACCC is continuing to assess the relativities between Telstra's wholesale and retail broadband pricing and will take further enforcement action if it has reason to believe that Telstra's conduct contravenes the competition rule.
4. Pecuniary penalties only apply if it is established to the standards required by the Courts that Telstra has engaged in anti-competitive conduct while the Part A competition notice was in force.

The competition notice came into force on 13 April 2006 and, unless revoked earlier, will remain in force until 12 April 2007. The maximum penalties prescribed under the Trade Practices Act 1974 for a contravention of the competition rule are:

- \$10 million for each contravention; plus
 - \$1 million for each day the conduct continues for the first 21 days; plus
 - \$3 million for each day the conduct continues beyond the first 21 days.
5. The ACCC issued the Part A competition notice to Telstra in relation to the line rental price increases on 12 April 2006.
 6. As at 31 October 2006, 202 days have passed since the competition notice was issued to Telstra.
 7. The maximum penalties prescribed under the Trade Practices Act 1974 for a contravention of the competition rule are:
 - \$10 million for each contravention; plus
 - \$1 million for each day the conduct continues for the first 21 days; plus
 - \$3 million for each day the conduct continues beyond the first 21 days.
 8. The ACCC is not in a position to comment on share prospectus issues as they are in no way related to its investigation of this matter.

The ACCC is an independent statutory authority and therefore its decision regarding whether to issue proceedings in relation to the competition notice does not relate to any Government decision regarding the privatisation of Telstra.

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9. On 1 May 2006, Telstra issued proceedings against the ACCC in the Federal Court of Australia (New South Wales District Registry) seeking relief under the Administrative Decisions (Judicial Review) Act 1977, the Judiciary Act 1903 and the Trade Practices Act 1974.

Telstra is seeking a review of the following decisions and conduct of the ACCC:

- (a) the decision to issue a consultation notice to Telstra;
- (b) the decision to issue a Part A competition notice to Telstra; and
- (c) the conduct of the ACCC in making each of the above decisions.

The ACCC is defending Telstra's ADJR challenge.

The matter was heard in August 2006 and judgement has been reserved.

10. As the proceeding is currently before the Court, the ACCC is unable to comment on the matter
11. As the proceeding is currently before the Court, the ACCC is unable to comment on the matter.
12. The ACCC has not reached a decision regarding whether to issue proceedings in relation to the competition notice.

The level of evidence required to determine whether to issue proceedings is of a higher threshold than that required to issue a competition notice. The threshold for the issuing a competition notice is whether there is reason to believe a contravention of the competition rule has occurred or is occurring. The court will only impose a penalty if it is satisfied that a contravention has occurred.

The ACCC is continuing to gather detailed evidence.

The decision regarding whether to issue proceedings will be made when the ACCC has sufficient evidence to determine what further action (if any) is appropriate.

13. The ACCC's decision on whether to issue proceedings will take account of the evidence obtained from its investigation as well as any action taken by Telstra in response to the competition notice.
14. No. The ACCC considers this to be a priority matter and sufficient resources have been allocated to progress the matter further.