

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 30 May – 1 June 2006

Question: bet 37 (ACCC)

Topic: Mergers

Hansard Page: Written

Senator CONROY asked:

- (1) How many mergers has the commission considered since 1 July 2005. How many of these have been opposed by the ACCC. How many were subsequently approved after undertakings were provided?
- (2) Can the ACCC advise how many parties have made use of the revised collective bargaining authorization process to date?
- (3) In view of the time the ACCC needed to spend on the proposed Toll takeover of Patrick Corp, does the ACCC believe that the fixed 40 day limit under the proposed Dawson Bill is too short a period to assess a complex merger proposal?

Answer:

- (1) In the period 1 July 2005 to 30 June 2006, the Australian Competition and Consumer Commission considered 272 merger proposals. Two matters were subsequently resolved through the acceptance of undertakings. Six additional matters were resolved through s87B undertakings during the ACCC's review. Three had concerns expressed on a confidential basis. 26 reviews did not reach a final decision because the mergers proposals were withdrawn
- (2) The ACCC has received one application for authorisation under the streamlined collective process.
- (3) Both the informal and the formal process exist side by side. The ACCC considers that it is not meaningful to compare the time taken to assess a merger proposal under the informal review process directly with the time available for consideration of a formal clearance application. In that regard it should be noted that:
 - a. Under the formal review process, the ACCC has the opportunity to deem 'invalid' any application which does not contain information required by the application form or other information and documents prescribed by the regulations or where the prescribed fee was not paid.
 - b. Under the formal review process acquiring parties have the opportunity to agree to the ACCC taking a longer period (that the prescribed 40 business days) to consider formal clearance applications. In situations involving

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complex or contentious merger proposals there may be incentive for acquiring parties to agree to a longer period for ACCC consideration if there was some chance that it could result in the application for formal clearance being successful.

- c. Under the formal review process the ACCC has the opportunity to extend the prescribed 40 business days (or other agreed period) by an additional 20 business days on the application of the ACCC (after notification by the ACCC to the applicant as to the reasons for the extension).
- d. Under the formal review process contemplated in the Dawson Bill, if the ACCC cannot make a decision regarding the merger within 40 business days and the acquiring parties do not extend the time, the default position is that the merger cannot proceed.