

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 30 May – 1 June 2006

Question: bet 40 (ACCC)

Topic: Dawson Bill

Hansard Page: Written

Senator CONROY asked:

Aim –

Test the ACCC as to whether it believes the Dawson bill needs to be implemented. Because the changes Labor wanted out of the Dawson Bill have already been made by the ACCC Labor sees no need to for the Dawson bill to be passed.

Background –

Collective bargaining is currently prohibited as a form of exclusionary dealing under the TPA but can occur through a process of ACCC authorisation. This is time consuming and expensive and few proposals are rejected. So the Government introduced a streamlined approval process by which a small business can notify the ACCC of the action and gain immunity for three years from any sanctions under the TPA unless the ACCC intervenes in 14 days. This is sought by small business and should be supported. The majority of the Senate Committee recommended that the \$3m threshold for the definition of small business be removed or increased to \$10m.

The ACCC's Streamlined Process outline in December 2005 (now implemented)

In December 2005 the ACCC released its plan for a streamlined collective bargaining process for small business. In this the ACCC undertook to consider an application for authorisation of small business collective bargaining arrangements within certain timetables and provide greater indication of the likelihood of a positive outcome.

Interim authorisation in 28 days (Extract from streamlined collective bargaining process for small business December 2005)

Applicants may seek interim authorisation in relation to their application. Interim authorisation protects the arrangements while the ACCC completes its assessment. In the past the ACCC has been reluctant to grant interim authorisation unless a special case had been made by the applicant.

Under the streamlined process the ACCC will:

- Undertake to provide a response to requests for interim authorisation within 28 days of receiving an application and accompanying information
- Be more likely to give a positive response to any request for interim authorisation where it is limited in coverage and genuinely voluntary
- Be unlikely to oppose a request for interim authorisation where it has the support of the counterparty.

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Questions –

- (1) How have merging parties and big business in general responded to the ACCC's streamlining of the current informal merger clearance process?
- (2) Are you aware of any concerns from big business regarding the new streamlined informal merger clearance process?
- (3) Would you say that the current informal clearance process is working well?
- (4) If the informal process is working well and the merging parties are generally comfortable with the way the ACCC deals with mergers at present, would it be fair to say that the big business concerns that led to the Dawson Committee recommendation for a new formal clearance process have now been dealt with by ACCC?
- (5) In view of the time the ACCC has needed to spend on the proposed Toll takeover of Patrick Corp, would it be fair to say that a fixed 40 day limit would be far too short a period of time for the ACCC to properly consult and respond to a complex merger like the Toll matter?

Answer:

1. The ACCC considers that the business community has generally responded positively to the informal merger review process. The ACCC consulted with the business and trade practices advisory communities in revising its informal clearance processes. In June 2006, its new Merger Review Process Guidelines were released.
2. The ACCC has not had any substantive concerns raised with it in general in relation to the conduct of the informal merger review process.
3. Yes, but a number of criticisms were identified in the report of the Review of the Competition Provisions of the Trade Practices Act (the Dawson Review), released in January 2003, resulting in the Government's acceptance of the report's recommendation that a voluntary statutory clearance process be introduced, to operate in parallel with the existing informal system.
4. The Dawson Review recommended both a formal and informal clearance system.
5. Under the formal merger review process the ACCC can extend the time by a further 20 business days of its own initiative or by a longer period with agreement of the applicant. If the ACCC can't make a decision within this time, the default position is that the merger cannot proceed.