

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Supplementary Budget Estimates 1 - 2 November 2006

Question: sbt 110 (ACCC)
Topic: Competition Notice
Hansard Page: Written

Senator CONROY asked:

1. I have a number of questions about the Competition Notice currently in place against Telstra with respect to basic access pricing.
2. Can the ACCC confirm that Telstra informed the ACCC of its intention to raise the basic access price on 28 October 2005?
3. Can you also confirm that Telstra notified wholesale customers on Nov 2?
4. The company then proceeded to raise its prices on 1 December is that correct?
5. Why then did the ACCC wait until 22 December 2005 to issue a consultation notice on this issue? Why did it take 2 months?
6. Why did the ACCC then wait until 12 April 2006 to issue a competition notice alleging new and distinct breaches? Why did it take a further 4 months from the issue of the consultation notice for the ACCC to issue a competition notice?
7. Isn't the rationale of Part XIC to allow a rapid response from the ACCC to anti-competitive conduct?
8. Isn't this the second Competition Notice in as many years that has been imposed and then been allowed to remain in place for almost a year without enforcement action from the ACCC? It's been more than 12 months since Telstra advised the ACCC of its intentions to raise its price in this way?
9. Has Telstra changed its behaviour in response to the ACCC's competition notice?
 - a. So the conduct that the ACCC believes to be anti-competitive is still occurring, and has been occurring for the past 12 months?
10. Why is it taking the ACCC so long to initiate enforcement proceedings in this matter? Does the ACCC believe that it is anti-competitive or not?

Answer:

2. Yes. Telstra briefed the ACCC about the proposed price increase on 28 October 2005.
3. Yes, it is the ACCC's understanding that Telstra notified wholesale customers around this time.
4. Telstra increased its HomeLine Part line rental price from \$26.95 (incl. GST) to \$31.95 (incl. GST) effective from 1 December 2005. HomeLine Part is a retail plan that offers local calls and line rental only, allowing customers to pre-select other calls with another

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carrier or carriage service provider.

Telstra increased its Home Access wholesale line rental price from \$24.50 (excl. GST) to \$27.60 (excl. GST) effective from 5 December 2005.

5. After receiving complaints from Telstra's wholesale customers in November 2005, the ACCC commenced its investigation into Telstra's Home Access and HomeLine Part line rental increases.

Once the ACCC carried out market inquiries and gathered initial evidence in the investigation, the ACCC was in a position to consider whether to issue a Consultation Notice.

A Consultation Notice provides the carrier or carriage service provider with an opportunity to make a submission to the ACCC.

However, issuing a Consultation Notice does not definitely mean that the ACCC will ultimately issue a Part A Competition Notice.

6. The ACCC is of the view that the Competition Notice does not allege new and distinct breaches from the Consultation Notice.

In the current investigation, the time taken was required to enable the ACCC to give full and proper consideration to all relevant factors, as it is required to do by statute, before it could issue a Competition Notice.

The matter is highly complex. It involves thorough analysis of costing, pricing and revenue data involving a range of fixed voice services and a range of customer types. As a misuse of market power investigation, the matter also involves thorough application of the caselaw on s.46, and the associated legal and economic concepts, to costing, pricing and revenue data.

The ACCC does not take a decision to issue a Competition Notice lightly. Obtaining the necessary material in order to ensure that the ACCC has a proper basis on which to issue a Consultation Notice will on a number of occasions necessarily be time-consuming.

- 7. The object of the Part XIC access regime is set out in s.152AB(1) of the TPA - to promote the long-term interests of end-users of carriage services or of services provided by means of carriage services.
8. There is a different threshold required to issue a notice (reason to believe) to that required to prove a contravention (to establish to the Federal Court's satisfaction on the balance of probabilities, having regard to *Briginshaw* principles, such as the consequences/penalties flowing from a finding of a contravention).

It can be noted from the terms of the competition notice, that the allegations under investigation involves a complex taking advantage of market power with a number of likely effects on competition:

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- by substantially preventing or hindering Telstra's Rivals from competing for Lower Spend Customers in the Retail Fixed Voice Services Market, as such customers cannot be supplied at a price which enables Telstra's Rivals to recover the Total Cost of supplying Fixed Voice Services;
- by raising the costs of Telstra's Rivals, and thereby:
 - substantially reducing the incentives of Telstra's Rivals to engage in competitive activity to acquire new Retail Customers and to retain existing Retail Customers; and / or
 - resulting in higher Retail Prices for Fixed Voice Services than would otherwise be the case in a competitive market;
- by substantially increasing the barriers which prevent or hinder Telstra's Rivals from entering into or expanding within the Retail Fixed Voice Services Market, in at least one or more of the following respects:
 - adversely affecting the capacity of Telstra's Rivals to generate or to maintain sufficient business to develop and to take advantage of economies of scale and scope; and
 - reducing the ability of Telstra's Rivals to expand product offerings and to invest in or to deploy new infrastructure and / or alternative technology in order to develop and to supply new and innovative products (particularly in the form of facilities-based competition) which may, in the long run, result in more efficient delivery of services;
- by threatening the viability of at least some of Telstra's Rivals; and by substantially preventing or hindering Telstra's Rivals from supplying Fixed Voice Services to Retail Customers at a competitive price by means other than a bundle which includes Local Services (for example, on a "pre-selection" basis to Retail Customers acquiring Telstra's HomeLine Part product).

The evidence needed to substantiate the allegations relates to the profitability of a subset of retail customers (Low Spend Customers), rather than the entire customer base, and to the impacts on product offerings and new investments

The ACCC has been in frequent contact with complainants and other industry players in order to obtain the data needed to assess the allegations and obtain evidence as to the effect on competition. For a variety of reasons, this data takes time to extract and analyse. For these reasons and as stated at the time the ACCC issued the notice, further action will depend on a number of factors.

9. Telstra has not altered the list wholesale price of Home Access or the retail price of HomeLine Part. However, since the issue of the Part A competition notice, the ACCC has declared a wholesale line rental service under Pt XIC and issued indicative prices in relation to the wholesale price for Home Access.

The Part A competition notice states that the ACCC has reason to believe that Telstra has engaged, and is engaging, in at least one instance of anti-competitive conduct of a kind described in the notice. That conduct has been continuing since December 2005.

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10. See answer to Question 8 above.

Approved by Minister's Office:

Signature:

Date: