

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates 1 - 2 November 2006

Question: sbt 118 (ACCC)

Topic: Writing to Internet Service Providers (ISPs)

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Senator CONROY asked:

Moving on. What action has the ACCC taken on this issue? You say you have written to the ISPs. Have you given any specific warnings, and if so, to whom?

Mr Cosgrave—**We have given warnings to a number of companies. I would have to take on notice the specific companies, but I am aware of at least half a dozen pieces of correspondence on that issue.**

Answer:

A number of ISPs have been warned that Internet Service providers claiming that consumers can reach 'up to' a certain download/upload speed may be in breach of section 52 of the *Trade Practices Act 1974* (the Act) if such a claim cannot be substantiated or if the factors affecting the attainment of such speeds are not made clear in the advertising.

The ACCC has raised the issue with: Telstra, Optus, Internode, Adam Internet, A & R Computer Services, RawNet, YourHub Internet, Wideband Networks, Kern Internet, Exetel, People Telecom, iiNet, Vintek, Westnet and TPG Internet, as well as the Internet Industry Association.

One ADSL2+ provider has altered its advertisements to address the Australian Competition and Consumer Commission's (the ACCC's) concerns. Another ADSL2+ provider has changed the information provided in its advertising, addressing the ACCC's concerns. The ACCC is currently corresponding with a number of other ISPs, with the aim of seeking corrections to their advertising, but is unable to comment further as these matters have not yet been finalised. The ACCC's enforcement strategy on this issue takes an industry wide approach rather than just warning particular ISPs.

To this end, the ACCC is currently preparing an information paper. This paper will present the ACCC's position on advertising of throughput speeds, and will be publicly available. This information paper will include a checklist for industry. The purpose of this paper is to facilitate industry compliance with the Act, by clearly outlining the ACCC's position on the use of headline speed claims.

The information paper will detail the ways in which the impression conveyed by an advertisement may mislead or deceive consumers. In the paper the ACCC will identify three related concerns: that ISPs have a reasonable basis (e.g. appropriate network tests) to believe the "up to" speed is achievable (as a maximum) by consumers; that the advertisement accurately conveys the speed or range of speeds consumers can actually expect; and that the factors affecting the attainment of speeds is provided.

Although the ACCC is taking a compliance approach, the ACCC will consider enforcement action against companies that breach the Act. The ACCC intends to compliment the release

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of the information paper by engaging with the industry. Having put the industry on notice, the ACCC will approach providers of ADSL2+ and draw their attention to any specific concerns of the ACCC regarding their advertising. It will be explained to ISPs that this is part of an industry-wide approach and that non-compliance with the Act could result in enforcement action.