

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates 1 - 2 November 2006

**Question:** sbt 120 (ACCC)

**Topic:** Anti-competitive pricing practices of Telstra

**Hansard Page:** E10

**Senator WATSON asked:**

I have some concerns which I would like to use this opportunity to bring before you, Mr Samuel, about some anticompetitive pricing practices of Telstra so far as my own state is concerned. I refer to excessive pricing of the wholesale internet bandwidth into Tasmania. As you well know, the situation in Tasmania is that, because of our geographical location, we have always attracted a sort of premium when buying internet bandwidth, and this has been pretty much accepted. But, in the past three months, one of the largest ISPs has been unable to secure any additional bandwidth from any supplier other than Telstra, and now the Telstra wholesale bandwidth costs represent nearly a fivefold increase compared with the cost previously, which is very significant. The belief in Tasmania is that Telstra has artificially inflated the costs over the link to Tasmania with the intent of limiting competition. This is evidenced by the fact that it is now five times more expensive to transmit the best rate cable than the trans-Pacific link to the west coast of the USA, up to six times more expensive than transmitting the fibre length to Perth, a distance of some 3,000 kilometres, and—wait for it—four times more expensive than obtaining bandwidth to Darwin.

One of the concerns that my constituents have—and they are in the course of preparing a submission to you—is that they have been told that it is going to take approximately six months for you to fully investigate the issue and even longer for a resolution to be reached. But, in the meantime, these people will have lost their customers, and there is the problem of redress. Could you provide some assistance to us? You are there to try and stop this sort of behaviour, but the investigation time length is certainly a real problem. What is the use of getting a result that is just going to be a slap on the hand, maybe in two years time, when their business has been really ruptured?

**Answer:**

The Australian Competition and Consumer Commission (the ACCC) initiated contact with the ISP in question and met with them on 14 December 2006. At that meeting, the ACCC noted that the ISP had not submitted a formal complaint and the ACCC therefore sought details regarding the allegations against Telstra.

On 20 December 2006, the ACCC received a written submission from the ISP regarding this issue. While the submission is still being assessed, it is the ACCC's preliminary view that the service in question is likely to fall within the service description for the Domestic Transmission Capacity Service - a declared service under Part XIC of the *Trade Practices Act 1974* (the Act). On this basis, an ISP, has the option under Part XIC to pursue the arbitration processes for declared services.

In response to concerns about the issue of timeliness, if a dispute over transmission prices were notified to the ACCC under Part XIC, the ACCC has powers to make an interim arbitral determination relatively quickly, pending full consideration of the dispute. Any final arbitral determination could then be backdated to adjust for differences between the interim and final determination. In circumstances where parties are concerned by a significant increase in pricing, the ACCC has on occasion made 'status quo' determinations to mitigate the risk of lengthy arbitration processes unduly affecting parties to the dispute.