

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

Question: sbt 28 (ACCC)
Topic: Mail Contractors: Unconscionable Conduct
Hansard Page: Written

Senator CONROY asked:

- (1) I am advised by mail contractors that tender documents for mail runs/contracts frequently contain errors. For instance, incorrect distance of runs, number of points, and estimated time for delivery.

Australia Post demands that tenderers sign a release that they “haven’t relied on the accuracy of the tender document,” but they have no way of verifying the accuracy. Is this consistent with the requirements of the TPA? Why should not Australia Post be accountable for the accuracy of the tender documents?

- (2) Has the ACCC investigated whether this amounts to a breach of the TPA (misleading and deceptive conduct or unconscionable conduct)?
- (3) What was the outcome of those investigations?
- (4) How many complaints has the ACCC received on this matter?
- (5) Are investigations ongoing?
- (6) Has the ACCC investigated whether Australia Post’s:
- failure to respond to Mail Contractors in writing within a reasonable time,
 - demand for details of any profit a mail contractor may hope to make on a mail contract and
 - demand for prospective mail contractors to provide details of other income in the tender documents
- (7) amounts to unconscionable conduct? Please advise whether these investigations are ongoing.

Answer:

In relation to the requirement by Australia Post for tenderers to sign a release that they “haven’t relied on the accuracy of the tender document” it is not uncommon in commercial transactions for parties to give releases or indemnities that alter or restrict

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contractual risks in respect of a contract. Such practices, without more, are unlikely to contravene the Trade Practices Act.

It is of note that, according to information provided to the Australian Competition and Consumer Commission (ACCC) by the Post Office Agents Association Limited (POAAL), prospective tenderers for Mail delivery Contracts “[do] conduct their own research by actually doing the run so they can assess the distance, time and costs of the run.”

In July 2005 POAAL provided the ACCC with information concerning the experience of a number of mail contractors.

The ACCC examined that material and met with POAAL representatives in September 2005. The purpose of that meeting was to seek further information to substantiate the POAAL complaint.

Following that meeting the ACCC prepared a document that would enable POAAL to seek information from its Mail Contractor members that would provide the necessary substantiation. The ACCC liaised with POAAL on this matter mindful of the concerns the Mail Contractors had of being identified to the trader. This followed a request from POAAL. To date the additional information needed to substantiate the complaint has not been received.

As the initial information provided by POAAL has not been substantiated, the matter has not proceeded to an in-depth investigation. On the basis of the initial information provided, the ACCC is unable to conclude that there has been a contravention of the Trade Practices Act.

Other than the submission made by POAAL the ACCC has not received any complaints on this matter.

In investigations are not ongoing. However, in the event that POAAL is able to provide further information, the matter can be further considered.

In relation to each of the questions asked, the answer is that the ACCC has commenced a threshold consideration of the issues raised and based on the information provided to the ACCC the alleged conduct does not appear to sustain a contravention of the TPA. The ACCC is ready to give this matter further consideration if new corroborating information is provided.