

Australian Competition and Consumer Commission

Answers to questions on notice following public hearing on 14 October 2016

(answers received 4 November 2016)

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House Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Australian Competition and Consumer Commission annual report 2014-15

Department/Agency: Australian Competition and Consumer Commission

Question: HEC-01

Topic: Budget

Reference: 14 October 2016

MP: Coleman (Chair)

Hansard page number: 11

Question:

Mr KEOGH: Can you explain what the reappropriation of \$11.6 million was from 2013-14 to 2015-16 for the litigation contingency fund?

Mr Sims: I am going to pass to others, here, because I may or may not remember that. I do not remember reallocation, but what I do remember is top-up from government. I may be misremembering back then. I do not know whether Rayne or Marcus has a better view?

Mrs de Gruchy: It would have been the number of cases that added up to that amount of money. I think there were two cases that were involved in that time. I do not recall, at the moment, which ones they were.

Mr KEOGH: It was money being brought forward from 2013-14? I do not understand how that money was—

Mr Sims: We will have to take that on notice.

Mr KEOGH: Yes, if you can provide an explanation for that.

Mr Sims: In essence, the money comes from government plus that \$1 million a year from our budget.

Mr KEOGH: How much has been spent from that fund in the last year?

Mr Sims: We may have to take that on notice unless somebody has that off the top of their head? I do not think it has cost us much in the last year. I do not think we have lost—

Mr Bezzi: I think we paid costs to ANZ. We lost a case in the full court of the Federal Court against ANZ. **Mr Sims:** Yes.

Answer:

The reappropriation of \$11.6m in 2015-16 was to ensure that the ACCC had sufficient available funds to cover court costs in the event of a litigation loss. The 2013-14 appropriation was placed under temporary quarantine in 2015-16 as the Appropriation Act had been included for repeal in the *Omnibus Repeal Day (Spring 2015) Bill 2015*.

The funding was originally appropriated in 2013-14 and reappropriated in 2015-16 (as above).

The total settlement of litigation expenses for 2015-16 was \$4.296m.

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Department/Agency: Australian Competition and Consumer Commission

Question: HEC-02

Topic: NBN Monitoring

Reference: 14 October 2016

MP: Conroy

Hansard page number: 17

Question:

Mr CONROY: No; Mr Sims, I am familiar with that program and I do not have a line of questioning for the second part, around access to the network for the smaller ISPs. On the first one, which is where I am interested in going, I have a massive issue in my electorate in that we have the highest number of fibre-to-the-node rollouts in the country, and a lot of people are dissatisfied with the speed. Their experience is that the ISP blames the NBN, and the NBN blames the ISP. How far along have you progressed in those investigations?

Mr Sims: I would have to take that on notice I think, in terms of a specific area. I am aware that a number of specific areas have come to our attention and we have inquired about them, but I would have to take a specific one on notice, and we would certainly get back to you. I would just add again though that our NBN monitoring program—if we can get that up and running—will answer that question completely and precisely.

Answer:

The ACCC has concluded a public consultation on ISPs' advertising practices and will report in late 2016 on steps that could be taken to improve consumer access to information regarding broadband speeds. We are also seeking government funding to implement a monitoring program which would enable the ACCC to inform consumers directly about the speeds being delivered in practice and assist in identifying whether shortfalls are due to the access network or the ISP.

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Department/Agency: Australian Competition and Consumer Commission

Question: HEC-03

Topic: NBN Overselling

Reference: 14 October 2016

MP: Conroy

Hansard page number: 17

Question:

Mr CONROY: Yes, I agree. On a related issue, are you looking at inappropriate incentives—or inappropriate sales methods—that ISPs are providing? For example, I have had ISPs pressure pensioners in my electorate to sign up to packages that are clearly inappropriate, such as 1,000 gigabytes a month downloads for someone who literally just wants email access to get photos of their grandkids. Is that the sort of practice that you are looking at specifically?

Mr Sims: Not that I am aware of. I sit on the communications committee, I take a close interest in investigations in that area and we have a range of things we are looking at but I am not aware of that particular issue. We have had inappropriate sales practices across a large number of sectors, but I will take that on notice—unless Mr Gregson has any knowledge of that.

Mr Gregson: I should say it is a particular area of interest to the ACCC, both on the consumer enforcement side, which has perhaps a little less, and in our communications area that feeds the communications committee that Mr Sims was referring to. We work closely with the department, who gets some on-the-ground information, as well as together with, to some extent, the other telco regulators such as ACMA.

We have seen some sporadic issues coming through with respect to promotion of the NBN. We try and follow those through. We have learnt from other rollouts of policies and big initiatives that it is an area to hit the ground running with, so we try and deal with those issues when they come up. The specific issue of overselling is not one that is on my consciousness, but we can check and see whether that is in the data and whether it is one of the issues that we are tracking.

Answer:

The ACCC actively monitors various sources to ascertain whether inappropriate sales practices are being used in this sector, including complaints and enquiries to our Infocentre, and broader market information through regular engagement with industry participants, consumer advocates, the Australian Communications and Media Authority and the Telecommunications Industry Ombudsman.

We are not specifically aware of complaints involving mis-selling of large quota plans. We do not consider selling these plans to the mass market would necessarily involve mis-selling. Due to recent market developments, large data download quotas are being offered at more economical prices, and can meet a range of consumer needs.

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Department: Australian Competition and Consumer Commission
Question: HEC-04
Topic: Disruptive competition in the financial sector
Reference: 14 October 2016
MP: Coleman
Hansard: Page 27

Question:

CHAIR: Mr Sims, you made some comments—and then I think your colleagues did—in relation to some other industries and talked about ALDI's impact in the supermarket industry, and I think Uber came up in the context of your previous concerns about the taxi industry. I think it is fair to say that the banking industry has not had a similarly disruptive player enter. I was wondering whether you had a view on what the specific characteristics of the banking sector are that perhaps make it more difficult for those disruptive players. And are there any particular steps you think could be taken to level the playing field somewhat?

Mr Sims: I will ask Mr Bezzi to comment, and we may want to take that on notice, because that is a really important question. I guess my first answer is that I would hope that the Productivity Commission would have that front and centre in the study they are doing. Secondly, I do see more disruptive activity swirling around in the financial sector. I am hoping it is about to take off, because disruptive technology is in a sense just another word for more competition, which is great; we think this is terrific. In other industries it is I hope just starting, or I hope it is as much a technology issue, and an issue of people coming up with the ideas, as it is a barrier to entry in the sector. But whether it is a barrier will be something the Productivity Commission looks at, but it is something we are watching. Particularly if we get a decent section 46 we would be able to now act and we just want to see whether the trajectory of these technological advances can take off. There is a lot of talk. We have not seen much action. We are hoping for it.

CHAIR: Yes, reflecting on that, if you could take that on notice and come back to us with any further thoughts it would be appreciated, because I think it is a particularly important issue that the committee is looking at.

Answer:

In line with the Government's response to the Financial System Inquiry recommendation 30 to implement periodic reviews of competition in the financial sector, the ACCC would welcome any study or inquiry conducted by the Productivity Commission.

As previously answered at the Committee Hearing, the Australian Securities & Investments Commission (ASIC) has primary responsibility for consumer protection issues in relation to financial services. The ACCC works closely with ASIC on the investigation and enforcement of financial service consumer protection matters under the Australian Consumer Law (ACL). The ACCC has jurisdiction for the enforcement of anti-competitive conduct prohibitions in the *Competition and Consumer Act 2010* (CCA).

The ACCC's primary role is to investigate and enforce the CCA. In this role the ACCC receives various complaints and reports from businesses and consumers which raise competition concerns involving the broader financial sector.

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The investigation of anti-competitive agreements and conduct, including misuse of market power and cartel agreements is a priority for the ACCC.

The ACCC has seen in recent years that the entry by ‘disruptors’ to some industries has led to increased competition and innovation which has led to key benefits for the market and consumers. The ACCC notes reports of a number of new businesses and practices which have been directly developed for the financial sector. Some of the businesses or disruptors may have the capacity to change current business practices and deliver increased competition, such as peer to peer lending or mobile wallets. Disruptor businesses can be small businesses entering the market or large businesses leveraging into a different market.

The ACCC would be concerned if businesses with a substantial degree of market power engage in a misuse of market power which impacts disruptor businesses entering or operating in a market.

The ACCC has received various complaints from businesses in or associated with the financial sector, which raised allegations of anti-competitive conduct. The ACCC investigated these issues and in some cases took court action. For example, the ACCC in 2007 took action against ANZ alleging that in seeking to limit the level of refund Mortgage Refunds could provide to customers in respect of ANZ home loans was a form of price fixing proceedings. The Federal Court in 2012 decided that ANZ and Mortgage Refunds were not competitors and the action was dismissed. The ACCC appealed the decision and in 2015 the Full Federal Court dismissed the ACCC’s appeal.

In 2015, the Federal Court found that Visa engaged in anti-competitive conduct by restricting retailers, hotels and restaurants from offering services offered by Dynamic Currency Conversions (DCC), which is a service that competes with Visa’s currency conversion services and gives international cardholders a choice to complete a transaction in their home currency. Visa Worldwide implemented and maintained a moratorium by making changes to the Visa rules which prohibited the further expansion of the supply of DCC services on Point of Sale (POS) transactions on the Visa network by its rival suppliers of currency conversion services in many parts of the world, including in Australia.

These two cases are recent examples of litigation taken by the ACCC to address concerns about anti-competitive practices which have arisen in the financial sector. The ACCC continues to investigate other serious examples which involve allegations of cartel conduct in the sector.

However, there are a number of other examples of conduct which is not anti-competitive and which we believe does not contravene the CCA. The examples have included restrictions on new entrants offering new technological solutions, preventing businesses offering new competitive mortgage brokering services and allegations of de-banking in the remittance and digital currency trading sectors.

The ACCC has looked at these allegations closely and has not found any evidence that banks or other financial institutions have engaged in conduct which contravenes the CCA.

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The ACCC continues to have concerns about these types of allegations. Some businesses have advised the ACCC that they are unwilling to provide evidence or provide further information for fear of retribution. Banks and other financial institutions are integral to the ongoing operations of many businesses. Operating in a sub-optimal environment is better than not operating at all.

Other allegations against the financial sector involve conduct which is not 'pro-competitive'.

There are many businesses which continue to innovate and offer new services in the financial sector. Sometimes these businesses flourish, but in other instances, these businesses do not for a range of reasons:

- barriers to entry
- regulatory environment
- entrenched positions of incumbent firms
- vertical integration along the supply chain
- unwillingness of parties to take chances on new products or services
- the difficulty and unwillingness of retailers and other merchants to switch service providers, and
- the difficulty and unwillingness of consumers to switch service providers.

To achieve increased competitiveness in the market, the ACCC believes it is important to understand the current level of competition across the market and whether there are any impediments to competition.

The ACCC recognises that the Productivity Commission's expertise as an economic regulator and inquiry body is well placed to identify and examining any concerns about competition in the market.

The Productivity Commission in October 2016 released a draft report *Data Availability and Use*. The draft report makes a number of recommendations to give consumers greater access to their own data. Providing consumers with increased access to their own data will enable consumers to make more informed decisions. Adopting the recommendations proposed by the PC in relation to data availability and use will address some of the concerns about competitive conduct in the banking and financial sector. The Competition and Markets Authority in the United Kingdom has recently concluded a market inquiry into competition in the banking sector. One of the initiatives they have proposed is the introduction of enhanced consumer access to their data to facilitate greater switching and competition. This proposal is similar to that proposed by the PC and is known as 'open banking'.

There are some key questions which the ACCC has about competition in the market, these include:

- the level of competition at the retail and wholesale level, including the level of competition for technical services that facilitate retail and wholesale transactions and services;
- Whether the barriers to entry are appropriate and whether there are opportunities to reduce these barriers;

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- Whether the risks are balanced appropriately with the right regulatory framework;
- Whether there are incentives or other mechanisms for banks and other financial institutions that would be appropriate to increase competition;
- How portability of account numbers could facilitate greater competition.