

Senate Standing Committee on Environment and Communications
Answers to Senate Estimates Questions on Notice
Budget Estimates May 2017
Communications Portfolio
The Australian Communications and Media Authority

Question No: 179

The Australian Communications and Media Authority

Hansard Ref: Written, 07/06/2017

Topic: Phoenix companies in telecommunications

Senator Urquhart, Anne asked:

1. What types of complaint data does the ACMA capture with respect to phoenix activity in the telecommunications sector?
2. How many complaints has the ACMA received in relation to companies which were suspected, or found to have engaged in phoenix activity?
3. How many investigations has the ACMA undertaken in relation to companies which were suspected, or found to have engaged in phoenix activity?
4. How many infringement notices, enforceable undertakings, or other penalties, has the ACMA issued to companies which were suspected, or found to have engaged in phoenix activity?
5. What engagement does the ACMA have with ASIC with regards to phoenix activity in the telecommunications sector?

Answer:

1. The Australian Communications and Media Authority (ACMA) does not capture complaint data with respect to phoenixing activity in the telecommunications industry, per se. However, it does occasionally encounter phoenixing (or partial phoenixing) activity, most commonly when investigating (alleged) unauthorised transfers and their consequences.
2. The ACMA does not record complaints about phoenixing activities.
3. The ACMA does not investigate phoenixing activities per se, and cannot take enforcement action against a company for phoenixing.

The ACMA does investigate possible breaches of the Telecommunications Consumer Protections Code and behaviours such as unauthorised customer transfers and related billing issues. These code issues sometimes arise when one telecommunications service provider ceases to operate and its customers are transferred to another telecommunications service provider with a similar name and some or all of the same officeholders.

4. In the past 12 months, the ACMA has not issued infringement notices, accepted enforceable undertakings or imposed other penalties on telecommunications companies suspected of engaging in phoenix activity. Between 2013 and 2015, the ACMA issued a number of formal warnings and directions against companies who appear to have engaged in phoenixing activities - most recently involving corporations trading as Solent and Sure - see: <http://www.acma.gov.au/Industry/Telco/Reconnecting-the-customer/TCP-code/sure-telecom-multiple-breaches-of-consumer-code>.

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The ACMA also worked with the Australian Competition and Consumer Commission (ACCC) to inform the ACCC's subsequent and successful court proceedings against those corporations and their sole director.

5. The ACMA had discussions focussed on phoenixing in the telecommunications sector with:
 - i. The Australian Securities and Investments Commission (ASIC), the ACCC and the Telecommunications Industry Ombudsman (TIO) in December 2014; and
 - ii. ASIC in March 2015.

Otherwise, the ACMA's engagement with ASIC is ad-hoc and matter-specific.