

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2015 - 2016

Department/Agency: ASIC

Question: SBT 82-91

Topic: Transurban market manipulation

Reference: written - 30 October 2015

Senator: Xenophon, Nick

Question:

82. In 2013 Dr John Goldberg gave evidence in the form of a 33 page submission (148.1-supplement) to the Senate Economic References Committee about the failure of ASIC to act in the case of market manipulation that was occurring in the security price of the toll road operator Transurban.

a) Is ASIC aware that the total liabilities of the Transurban Group have increased from \$8.906 billion in financial 2014 to \$15.243 billion in financial 2015 as a result of taking out a non-recourse loan of \$6.605 billion collateralised against intangible and unrealisable assets?

83.

a) Is ASIC aware of the key role played by the use of intangible assets as collateral for borrowings? In 2014, the total assets were \$14.86 billion of which \$10.386 billion or 70% were intangible and unrealisable. In 2015 the total assets were \$21.23 billion of which \$17.32 billion or 82% were intangible and unrealisable. In one year alone, Transurban has been able to increase its intangible assets by approximately \$7 billion on the basis of “concession assets” and “goodwill”?

b) Is this of concern to ASIC?

84.

a) Is ASIC aware that insolvency was avoided in 2015 by adding the proceeds of the non-recourse loan to the cash flows from financing activities, which allowed it to claim \$1.249 billion as its final cash at bank in 2015?

b) Is this of concern to ASIC?

85.

a) Is ASIC aware that the cash flow and cash at bank of Transurban in financial 2014 relied heavily on what was akin to a Ponzi scheme? For example, between 2013 and 2014, 394 million new securities were issued and sold at an average price of \$6.8 per security. This raised \$2.696 billion of so called “free cash” which accounted for 93.6% of its total cash flow, part of which was used to pay distributions? Investors buying new securities would have been unaware that their security purchases were helping to fund these distributions. Without this contribution of “free cash” only \$83m of cash flow would be available to pay

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back total liabilities of \$8.906 billion in 2014, corresponding to a solvency ratio of less than 1%.

b) Does ASIC agree that without these funds obtained through what was akin to a Ponzi scheme, Transurban would have been almost insolvent in 2014?

86. Is ASIC aware that this apparent Ponzi scheme is a form of market manipulation and an alleged contravention of section 1401 of the Corporations Act 2001? Was the Australian Securities and Investments Commission (ASIC) aware of this contravention through a submission (148.1-supplement) to the Senate Economic References Committee into ASIC in 2013?

87. What level of scrutiny is given to how states spend federal money?

88. How is it ensured that federal money used to award contracts by state governments is being spent appropriately?

89. What measures are in place to ensure federal funds for state based infrastructure projects are not being awarded to business involved in market manipulation or utilisation of what are akin to Ponzi schemes?

90. Was the agency aware of any cost-benefit analysis carried out to justify expenditure on the NorthConnex tunnel?

91. Dr Goldberg has previously argued that traffic forecasts by private road infrastructure projects are typically designed "to maximise toll revenue even if this initiative means poor to impossible traffic conditions for road users." And that the traffic forecasts 'are in effect workbacks' from some desired outcome for the project designed to encourage equity investment, particularly from institutions such as superannuation funds" (See Courier Mail, 4 September 2010)

a) What measures are in place to ensure federal funds for state based infrastructure projects are not being based on allegedly manipulated traffic forecasts?

Answer:

ASIC is not in a position to discuss publicly whether it has examined the balance sheet changes of individual companies. ASIC never comments on operational matter and that includes whether or not it is investigating or not a particular company.