

Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

HEALTH AND AGEING PORTFOLIO

Inquiry into the Therapeutic Goods Amendment (Pharmaceutical Transparency) Bill 2013

29 April 2013

Question no: 2

Topic: ACCC authorisation

Hansard Page: 35

Senator Di Natale asked:

“The other thing is approval of the codes. Obviously, the Medicines Australia code needs sign-off by the ACCC. Is that what happens with others? Why the difference?”

Answer:

Industry associations may apply for Australian Competition and Consumer Commission (ACCC) authorisation of their codes when the conduct they propose to engage in, or are already engaging in, might constitute conduct prohibited by the competition provisions of the *Competition and Consumer Act 2010* (the Act).

In response to an application, the ACCC can grant immunity from the application of the competition provisions of the Act if it is satisfied that the public benefit from the conduct outweighs any public detriment. Such conduct might constitute the making of and/or giving effect to: a cartel provision; an anti-competitive agreement; a secondary boycott; exclusive dealing; resale price maintenance; dual listed company arrangements that affect competition; and an acquisition that occurs outside Australia.

The ACCC is not able to authorise conduct that might constitute a misuse of market power.

The ACCC advises industry associations to obtain private legal advice on whether conduct they propose to engage in might breach the Act (and therefore whether they should consider applying for authorisation). While the ACCC cannot provide legal advice it is able to provide general guidance on the issues and strongly encourages parties considering making an application for authorisation to discuss the process and its application in advance of lodging.