

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates – 25–26 February 2009

Question: aet 90

Topic: Gene Patenting

Hansard Page: E35 (26 February 2009)

Senator JOYCE asked:

Senator JOYCE—Could I just put one question on notice before you go there. Monsanto and gene patenting is an issue that is been brought to life through domination of the marketplace by the capacity of someone to get themselves into a position of gene patenting and we have the experiences in the United States. Have these issues been brought to your attention and is there any current investigation about certain arrangements or peculiar arrangements that Monsanto has beguiled, wheedled, inveigled people into that has brought about a complete dislocation of a true marketplace in the sale and production of seed and the receipt of seed?

Mr Cassidy—Senator, I think you were putting that question on notice?

Senator JOYCE—Yes, I am. You can take it on notice but just tell me: have you had any cursory investigations?

Mr Cassidy—We have had some involvement with that issue, so that is taken on notice.

Senator JOYCE—Thank you.

Answer:

Section 51 of the *Trade Practices Act 1974* (the Act) lists a number of exceptions to the operation of Part IV of the Act, including patents and copyright. Subsection (3) of the that section exempts licences with regard to patents (and other things) in certain circumstances, but not with regard to conduct that may fall within sections 46, 46A or 48.

The ACCC has recently considered a number of third line forcing notifications relating to Monsanto and gene modified canola crops. Monsanto has developed patented technology which can be used in the production of genetically modified Canola seeds (ROUNDUP READY Canola) to produce canola plants that exhibit tolerance to the herbicide active ingredient glyphosate, the active ingredient in the Roundup brand of agricultural herbicides.

Monsanto licenses Commercial Seed Producers (CSPs) to develop and sell the ROUNDUP READY Canola seeds. The CSPs engage commercial growers to grow the canola plants and produce the seed. The seeds are subsequently sold to Technology Service Providers (TSPs) for on-sale to growers (ie farmers).

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A number of notifications were lodged in April 2008 in respect of third line forcing conduct by various parties, including Monsanto, in contractual arrangements for the distribution of ROUNDUP READY Canola.

The ACCC was satisfied that the public benefits outweighed the possible public detriments arising from the conduct and decided not to take any further action with respect to the notifications, which were allowed to stand in April 2008. In particular, the ACCC considered that growers are able to acquire the seeds from their choice of provider (TSP). The TSPs set the price of the seed for which the price of conventional canola seeds is likely to constrain the price of the ROUNDUP READY Canola. Growers are able to choose to deliver to any grain handler who is authorised by Monsanto. No concerns have been raised with the ACCC regarding the notifications.

There are strong regulatory requirements which Monsanto and others involved in handling the ROUNDUP READY Canola must meet regarding the use of the ROUNDUP READY Canola. Monsanto submitted that the implementation of various licence agreements will assist Monsanto to meet these obligations.

At the time of lodging the notifications, only one grain handler, Riverland Oilseed Pty Ltd was authorised by Monsanto to receive and crush grain produced using ROUNDUP READY Canola. However, Monsanto advised that after the initial growing season virtually all Australian grain handlers would be offered a licence by Monsanto to accept ROUNDUP READY Canola. No further notifications have been received at this time.

Further details of the notifications are available on the ACCC website.