



Australian
Competition &
Consumer
Commission

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Our Ref: C2005/1861
Your ref: PVR:EW:67396
Contact Officers: Cameron Martin / Ilona Balint
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25 January 2006

Mr Peter van Rompaey
Partner
Home Wilkinson Lowry Lawyers
PO Box 3
Collins Street West
Melbourne VIC 8007

Dear Mr van Rompaey

Application for authorisation A90992 lodged by the Australian Nurserymen's Fruit Improvement Company Limited

I refer to the above mentioned application for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 14 November 2005.

Request for further information

The ACCC is in the process of assessing the Australian Nurserymen's Fruit Improvement Company's (ANFIC) application, but requires further information in order to complete its assessment, in particular:

1. information as to where ANFIC intends to seek royalties in the supply chain (i.e. is it proposed that royalties be paid to ANFIC solely by the grower, or will the nominated market agents also pay royalties to ANFIC);
2. background information on the way in which fruit growers currently sell their harvested fruit into downstream markets and the royalty management systems in place;
3. to what extent do the exclusive rights afforded by section 11 of the *Plant Breeder's Rights Act 1994* allow ANFIC to direct production and marketing of fruit varieties for which it owns the Plant Breeder's Rights (PBR);



4. does ANFIC, on behalf of its member nurserymen, intend to market only varieties for which its members own the PBR or does it intend to enter into arrangements with other PBR owners to market their varieties on their behalf; and
5. if ANFIC does intend to coordinate the production and marketing of varieties other than those for which its members hold the PBR, provide details of how these arrangements will take place.

Interested party consultations

In addition, the ACCC has received six submissions in relation to ANFIC's application from interested parties. Copies of these submissions are enclosed for your information and have been placed on the ACCC's public register.


The ACCC requests that you respond to the above questions and, if you wish, respond to the attached interested party submissions by close of business **Friday, 10 February 2006**. Responses should be addressed to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to adjudication@acc.gov.au, or by facsimile on 02 6243 1211.

If you have any questions in relation to this letter please do not hesitate to contact Cameron Martin on 02 6243 1107 or Ilona Balint on 02 6243 1113.

Yours sincerely



Susan Philp
Director
Adjudication Branch