CropLife AUSTRALIA

SUBMISSION TO

COMPETITION POLICY REVIEW DRAFT REPORT

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INTRODUCTION

CropLife Australia (CropLife) is the peak industry organisation representing the agricultural chemical and biotechnology (plant science) sector in Australia. CropLife represents the innovators, developers, manufacturers and formulators of crop protection and agricultural biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnologies that are key to the nation's agricultural productivity, sustainability and food security. CropLife is focused on three key areas of modern farming: crop protection (pesticides), crop biotechnology (GM crops) and industry stewardship.

The plant science industry is worth more than $17.6 billion a year to the Australian economy and directly employs thousands of people across the country. CropLife member companies contribute over $13 million a year to stewardship activities, which ensure their products are sustainably managed for the benefit of users, consumers and the environment.

The Competition Policy Review Draft Report, released in September 2014, quite rightly identified (at page 76) the moratoria on the commercial cultivation of genetically modified (GM) crops in South Australia and Tasmania as examples of state-based regulatory restriction on competition. All regulation should be commensurate with the associated risk, cost and benefit to the community. The current gene technology regulatory system in Australia already imposes a much greater level of regulatory burden on the industry than occurs in some other countries and this burden is exacerbated by unclear and inconsistent market interventions by state governments.

The Productivity Commission recently highlighted the state-based moratoria as being "inconsistent with good policy-making process", noting: "state-based genetically modified (GM) crop regulations in South Australia, Tasmania and the ACT, imply a level of concern about GM crop production that is not supported by the evidence"[1].

Further restrictions on competition in the Australian agricultural sector are posed by globally inconsistent marketing standards imposed by the organic sector that seek to prevent growers (at the threat of legal action) from growing approved GM crops on properties that happen to adjoin those with 'organic certification' status[2].

[1] Productivity Commission 2014, *Relative Costs of Doing Business in Australia: Dairy Product Manufacturing*, Research Report, Canberra

[2] See, for example *Marsh v Baxter* [2014] WASC 187

RECOMMENDATION 1:
A consistent national regulatory scheme for GM Crops to create a clear path to market

Lack of a clear path to market for GM crops acts as an artificial trade barrier

In 2005, the then Australian Bureau of Agricultural Resource Economics (ABARE) reported that Australia's canola growers were suffering an economic loss as a consequence of the state moratoria on the commercial cultivation of GM canola. The report concluded that if the moratoria were to continue, it could result in a loss of $3 billion, in net present value terms, in the period to 2015[3].

Transgenic cotton, soy, maize and canola with productivity enhancing input traits have all been rapidly adopted globally[4]. This rapid adoption of these GM crops can be expected to force downward pressure on their prices in international markets. Given that Australian farmers also compete in these markets, barriers to future Australian commercialisation of GM crops will mean that Australian farmers will receive a reduced benefit from their crop and a concomitant reduction in profit[5]. By facilitating a clear path to market for future crop biotechnology traits, the Australian Government is in the best position to ensure that Australian farmers can remain competitive on the world stage.

A more recent ABARE report in 2008 indicated that the estimated economic benefit to Western Australia from adopting GM canola from 2008-09 for the following ten years would be $180 million in 2006-07 dollars. Over the same period, the benefit to New South Wales farmers (excluding those in the Murray Catchment Area) was estimated to be $273 million and South Australian farmers would receive a benefit of $115 million. While farmers in New South Wales, Victoria, Western Australia and Queensland had the opportunity to be one of the 18 million farmers globally growing GM crops in 2013, South Australian and Tasmanian farmers are **still** denied access to this technology.

By facilitating a clear path to market for current and future crop biotechnology traits, the Australian Government would ensure Australian farmers could remain internationally competitive and become truly sustainable in their farming practices.

In Australia, the Gene Technology Regulator is responsible for approving any dealings with genetically modified organisms (GMOs). Food Standards Australia New Zealand (FSANZ) is required to approve any genetically modified (GM) food ingredient and the Australian Pesticides and Veterinary Medicines Authority (APVMA) regulates those GM crops with inbuilt pest protection. The GM canola and GM cotton crops that are grown in Australia have passed all of these regulatory assessments.

The *Gene Technology Act 2000* (Cth) was intended to establish a national system of regulating GMOs. Despite this intention, most states have implemented legislation to address 'marketing concerns' that are neither consistent nor transparent. This unclear path to market was well demonstrated in 2003 when the Gene Technology Regulator approved GM canola for commercial release and all the canola growing states immediately implemented politically motivated moratoria on commercial cultivation of this crop. This led to years of delays, which reduced the management options for Australian farmers and created real uncertainty about the future of GM crops in Australia. State bans also cost food producers and consumers, with one analysis concluding that nationally, the bans on GM canola cultivation cost growers $157 million per annum[6].

3 Apted S., McDonald D., Rodgers H., 2005, 'Transgenic Crops: Welfare implications for Australia' Australian Commodities, vol. 12, no. 3
4 James, Clive 2014. 'Global Status of Commercialized Biotech/GM Crops: 2013'. *ISAAA Brief No. 46*. ISAAA: Ithaca, NY.
5 Apted et al 2005, *Op. Cit.*
6 Norton R.M., Roush, R.T., 2007, 'Canola and Australian Farming Systems 2003-2007'.

New South Wales, Victoria and Western Australia now allow the commercial production of GM canola, however, this was only allowed after at least a five year delay following federal regulatory approval. It is not clear if such a delay will be repeated if future GM crops are introduced in Australia. Several states still have legislative bans on GM technology, maintaining vague 'market considerations' legislation, even in states where GM canola is now commercially produced. CropLife notes that the New South Wales Government announced on 1 June 2011 that it would be extending its *Gene Technology (GM Crops Moratorium) Act* until 2021, 25 years after GM cotton was first commercially grown in that state.

South Australia introduced the *Genetically Modified Crops Management Act 2004* (SA) to ensure that the cultivation of GM crops was regulated in that state. On 8 February 2008, against the advice of its own scientific advisory committee, the South Australian Government decided to extend its moratorium on growing GM canola in South Australia beyond the end of April 2008 when the regulations were due to expire. The South Australian Government has even gone beyond marketing concerns and banned the transport through their state of sealed bags containing GM seed. This intervention means that there is no clear path to market for the developers of GM crops in South Australia, even when licence applicants have satisfied the requirements of the Commonwealth *Gene Technology Act* and it has been clearly demonstrated in other states that effects on trade are negligible.

In January 2014, the Tasmanian Government also extended its moratorium on GM crops in direct contradiction to both consultants' reports sourced by the Government on the issue of market benefit from GM-free status[7,8]. With both reports concluding that there was little to no indication of a price premium generated by GM-free status, the decision was clearly political and not based on actual scientific and economic evidence[9]. Without access to the latest technologies, Tasmanian farmers will miss out on the environmental and economic benefits GM crops are already bringing to mainland states and farmers across the globe. The Government's own commissioned report states that over the past decade, Tasmania's agricultural sector has suffered a $40 million net farm-gate loss due to this moratorium[10]. The situation in Tasmania is a prime example of how important decisions that affect the competitive future of an entire sector, with far-reaching implications for the environment and the state economy, should not be made solely on political and ideological grounds.

GM crops are intensively studied and rigorously regulated in Australia - all regulation should be commensurate with the associated risk, cost and benefit to the community. CropLife supports the continued use of science based risk assessment as the basis for sensible decision making. It is a key principle of good governance that governments should only intervene in a market where there is demonstrated market failure. State government moratoria on commercial production of GM crops have, however, never identified any such failings.

The anti-competitive nature of regulation of GM crops by state governments creates uncertainty that acts as a major disincentive for private investment and as a brake on technological innovation in the sector. This uncertainty is exacerbated by the fact that the legislation is often written so that it prevents the Minister from granting a licence unless certain conditions are met. It does not, however, compel the Minister to grant a licence if an application meets these same conditions. As a result, there remains a very real possibility that a company would invest significantly in bringing a technology to market in Australia with data to address all the federal and state regulations and still be unable to sell its product commercially.

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7 FreshLogic 2013, *An attitudinal assessment of key domestic market gatekeepers to gauge perception of and attitudes towards Tasmania, GM crops and food grown in areas that allow the cultivation of GM food and non-food crops*, Hawthorn VIC.

8 Macquarie Franklin 2012, *Market Advantage of Tasmania's GMO-free Status*, Devonport TAS.

9 http://dpipwe.tas.gov.au/Documents/Final%20Report_v.final_16-12-13.pdf

10 Macquarie Franklin, *Op. Cit.*

This sort of significant disincentive to private investment in Australian agricultural biotechnology is counter-productive if Australia wishes to have a modern, sustainable and profitable agriculture sector in the future. Perhaps ironically, this situation is also a large threat to the otherwise highly successful public investments by state governments in developing GM crops.

The failure to implement a consistent national regulatory scheme has created crippling uncertainty in the agricultural biotechnology industry in Australia and completely undermined the effective regulation of GM crops. Both of these issues need to be addressed if Australia is to continue to have a competitive and productive food industry with safe and affordable food choices available to everyone.

The Australian Government should recognise that evidence to date has demonstrated that GM crops do not pose any risks to human health and the environment that cannot be identified and managed, and consequently the state and territory moratoria on these crops is anti-competitive and in no way commensurate with the risk.

RECOMMENDATION 2:
The National Standard for Organic and Biodynamic Produce to be brought into line with the rest of the world to accommodate low level accidental presence of GM organisms and remove artificial barriers to agricultural competitiveness

A barrier to agricultural competitiveness is Australia's inconsistent national standard for organic and biodynamic produce

Australia's current National Standard for Organic and Biodynamic Produce (National Standard) does not align with international standards and is inconsistent with other Australian Government policies regarding food labelling and thresholds. This is both a policy and regulatory matter that needs immediate action by the Government.

The National Standard prohibits a number of materials and substances from use in organic systems, including pesticides and GM crops. The majority of prohibited products and techniques are permitted if they are accidently introduced at a low level. However, organic certifiers currently implement a zero tolerance regime for GM crops being present on organic farms or in organic products. This is both out of step with the principles the Government brings to other areas of regulation relating to biological systems and entirely out of step with regulations in other similar jurisdictions. By way of example:

- In the United States and Canada, organic certification is 'process-based' and relies on organic growers having processes in place to meet the standard. The presence of prohibited residues/crops does not automatically invalidate the certification of an organic farmer.
- In Europe, organic standards are product based and permit up to 0.9 per cent of approved GMOs in organic food products.
- Guidelines for organic production that have been produced by Codex are process-based as in the United States and Canada.

It is noteworthy in what is a highly competitive market that products approved under these international standards can be imported into Australia as 'organic' products, despite the fact they could contain the adventitious presence of GMOs at very low levels.

Australian organic producers are being forced to certify their produce using an entirely product based system that has no threshold for adventitious presence. Thresholds recognise that there could be some accidental mixing of GM commodities and non-GM commodities due to the reality of agricultural supply chains and global trade.

The current National Standard is also out of line with Australian Government policies regarding food labelling, which allow for a 1 per cent threshold for the accidental presence of an approved GM food ingredient. This threshold recognises that occasionally, accidental presence of a GMO will occur at very low levels and low level thresholds prevent this occurrence from becoming either a trade irritant, or a dispute between neighbours. Thresholds also exist in virtually every Australian grain standard for the unintended presence of a range of things, including insect legs, cracked grain, weed seeds and other crops.

CropLife considers it critical for Australian agriculture and for the Australian agricultural biotechnology industry, that the National Standard is modernised to accommodate low level accidental presence of GMOs. The current situation undermines both organic and GM crop farmers, the credibility of Australian Government regulation and the coexistence framework of the Australian farming sector.

Activist groups in Australia are attempting to utilise the organic marketing standards and the associated threat of legal action as an anti-competitive tool against those growers who choose to adopt modern agricultural innovations. For example, in the recent case of *Marsh v Baxter*,[11] the organic farmer, Mr Marsh, sought a permanent injunction to restrain Mr Baxter from ever again growing a GM canola crop in paddocks adjacent to Mr Marsh's property.

In what was a victory for common sense, Justice Martin of the Supreme Court of Western Australia held that Mr Baxter was not to be held responsible as a broad acre farmer merely for growing a lawful GM crop and choosing to adopt a harvest methodology that was entirely orthodox in its implementation. Justice Martin also held that the reaction of the organic certification body was an unjustifiable reaction to what had occurred.

To avoid activist groups seeking to promote further anti-competitive behaviour through abuse of Australia's organic marketing standards, there is an urgent need for direct Government intervention to promote competitive behaviour both domestically and with regard to imported certified organic products.

CONCLUSION

Maintaining the competitiveness of agricultural production systems will not be achieved by limiting the options for farmers to manage their businesses. There is a wide variety of farming systems and circumstances throughout Australia. Competitiveness will only be delivered by enabling farmers to make management choices and decisions that best suit their individual circumstances. For some farmers, this may mean adopting organic production systems to leverage high-value specialty markets. For other farmers this may mean adopting innovative new agricultural chemical products or genetically modified crops for agronomic purposes. National harmonised regulatory settings must continue to allow farmers to make decisions in the best interests of their own business. This will mean allowing farmers to adopt any of a range of farming systems, or a combination of them.

Genetically modified crops are currently major contributors to the domestic and international competitiveness of Australia's food production systems. The benefits that they generate for farmers, other users, consumers and the environment far outweigh any real or imagined risks associated with their adoption or use. These tools are currently assisting to produce nutritious, healthy, affordable and disease free food for Australian and overseas consumers.

CropLife and its members are committed to supporting all farming systems in Australia by providing farmers with the innovation, technologies, tools and products that they need to ensure competitive and profitable farming practices.

[11] [2014] WASC 187