

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates – 25–26 February 2009

Question: aet 70

Topic: Gunn's Pulp Mill

Hansard Page: E124 (25 February 2009)

Senator ABETZ asked:

Senator ABETZ—Is ASIC currently undertaking an inquiry into Gunns and its disclosures and comments about Mr Garrett's decision of 5 January 2009?

Mr D'Aloisio—Senator, the issue of what specific inquiries or investigations ASIC conducts are for it, and I am not really in a position to answer that question.

Senator ABETZ—I do not want to ask about the detail of the inquiry. Mr Garrett made noises basically indicating that there should be such an inquiry, and I am wondering whether there is an inquiry taking place. I do not want to know about the details and where it is at.

Ms Gibson—We do not have any current inquiry or discussion in relation to Gunns' disclosures that I am aware of, Senator.

Senator ABETZ—You are not aware of any?

Ms Gibson—There is nothing current, no.

Senator ABETZ—I will get right to the point. Today we had disclosures that Minister Garrett made a decision in relation to Gunns pulp mill. He made that announcement publicly at 12.30 pm on 5 January 2009 and we have had disclosures today revealing that in fact private and favoured organisations and people were told by the minister of his impending announcement and the detail of that prior to the company being notified and of course prior to the public announcement. I am just wondering whether ASIC has a view on that behaviour. It has the potential, I would have thought, to substantially distort the market.

Mr D'Aloisio—Senator, I think you will appreciate that we will not be drawn into that issue in terms of its facts. I would rather stay with the general propositions—that is, that if parties have got inside information and that information is used in an improper way and not disclosed to the market then there are other provisions of the Corporations Act that could apply in relation to that behaviour. But I am speaking generally and certainly cannot speak in relation to this case.

Senator ABETZ—Could provisions of the Corporations Act theoretically apply to a minister who has disclosed market sensitive information to third parties, before telling the company and the open market.

Mr D'Aloisio—Again Senator, it is a question of looking at the law, the relevant minister, the legislation that applies and what occurred. While we are happy to take it on notice and have a look at it, it is certainly not an issue I would wish to be drawn into in expressing a view this evening.

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Senator ABETZ—Would you mind investigating that matter for me and coming back to the committee?

Mr D'Aloisio—We will assess whether we can and what we can do in conducting inquiries and come back to the committee.

Senator ABETZ—It just seems to me a very, very unhealthy code of conduct for any minister to be undertaking.

Senator CAMERON—The senator has asked Mr D'Aloisio to take certain acts. Now he wants to editorialise on it and to try and pre-empt what the chairman does. I think that is totally inappropriate.

Senator IAN MACDONALD—Mr D'Aloisio, can you—

CHAIR—Senator Macdonald, that was a point of order.

Senator IAN MACDONALD—I was told at another committee there is no such thing as a point of order in these committees.

CHAIR—That is not my view, and I think Senator Abetz had the call.

Senator ABETZ—I will withdraw the question and allow Senator Macdonald to ask a question.

Senator IAN MACDONALD—Mr D'Aloisio, Senator Abetz asked if you could report back to him and the committee. Could I suggest that if the facts are as Senator Abetz outlines them that perhaps you would be taking other actions irrespective of this committee to ensure the law is upheld?

Mr D'Aloisio—I am keeping my comments general and I want to be helpful. But these are very serious issues that have been raised and, as ASIC has a regulatory authority, I would like to take that on board. We will assess and come back to the committee if our inquiries require us to go any further. If they then require us to go into some form of investigation we will let you know and take action as we the commission then consider appropriate.

CHAIR—Thank you.

Senator IAN MACDONALD—My point is: first of all, do not wait to come back to the committee. Obviously you do not need me to say this. If you find wrongdoing you will pursue your legal course.

Mr D'Aloisio—Absolutely.

CHAIR—I think we can take that as read, Senator Macdonald. Senator Abetz have you finished your questions?

Senator ABETZ—But you would agree with me that these are serious issues, at least in the abstract, and you can have a look at the actual detail.

Senator Sherry—Mr D'Aloisio has indicated it has been taken on notice. Adjectives and descriptions are your words, no-one else's.

Senator ABETZ—Minister, your overanxiousness to defend the minister is applaudable, but Mr

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D'Aloisio—

CHAIR—Senator Abetz, we have a lot of questions.

Senator ABETZ—Mr D'Aloisio actually mentioned the words 'serious issues'. I took a note of them. I have just confirmed them, and for the minister to assert that I used that terminology is factually wrong—the *Hansard* will bear it out. The chairman used those words.

Senator Sherry—The question has been taken on notice.

Answer:

The Chairman of ASIC wrote to the Chairman of the Senate Economics Committee on 9 April 2009 advising that ASIC has completed its inquiries and, on the basis of those inquiries, is satisfied that it need not take the matter further and, for example, conduct any investigation. In other words, ASIC is not satisfied that a breach of the Corporations Act may have occurred.

Necessarily, if other information emerges, ASIC reserves the right to reopen the inquiry as it would do in the usual way in any other matter. However, ASIC believes the prospect of that, from our inquiries, will be remote.

Broadly, section 1043A of the Corporations Act prohibits a person with price sensitive information about a listed entity that is not generally available from communicating that information to another person, if the insider knows or ought reasonably know that the other person would or would be likely to deal in the relevant financial products of the entity.

ASIC's inquiries were focused on this section and in our view, it is the only relevant section of the Corporations Act which could apply.