Public Competition Assessment
8 March 2005

Futuris Corporation Ltd and AWB Ltd through Elders and Landmark joint acquisition of HiFert Pty Ltd from Western Mining Corporation

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The Australian Competition and Consumer ACCC ('ACCC') announced on 2 March 2005 that it would not intervene in the acquisition by Futuris Corporation Ltd ('Futuris') and AWB Ltd ('AWB') or their subsidiaries Elders and Landmark of a third interest each in HiFert Pty Ltd ('HiFert') from Western Mining Corporation ('WMC').

The ACCC made its decision on the basis of information provided by the parties and from information arising from market inquiries including inquiries in previous matters.

The parties

Futuris Corporation Limited / Elders

Futuris comprises two core divisions: Elders Australia and Air International (which supplies a range of products and systems to the automotive industry) as well as a smaller property division.

Elders is a wholly owned subsidiary of Futuris, providing agricultural services to rural and regional Australia that focus on six principal products through its nationwide (over 400 branches) rural merchandising network. Those products are livestock, wool, agricultural merchandise, real estate, finance and insurance.

Elders and Landmark operate a joint venture called Australian Wool Handlers which handles wool exports post auction.

AWB Limited / Landmark

AWB is Australia's major national grain manager. Its core activities are the pooling, marketing, trading, financing, risk management and logistical management of Australian wheat including exclusive management and marketing of all Australian bulk wheat exports through AWB (International). It is active in the bulk storage and handling market in eastern Australia, expanding its sea chartering business and further developing its international milling capability to secure end-user demand.

AWB Ltd acquired Landmark in August 2003. Landmark is a supplier of farm inputs and is a marketer of wool, livestock and real estate. It is also a provider of finance and insurance packages to primary producers.

Landmark supplies a full range of fertiliser products through its merchandise stores. Landmark has a network comprising 230 company owned locations plus 200 outlets managed by franchisees, agents and affiliate members.

Western Mining Corporation Limited / HiFert Pty Ltd

WMC owns HiFert and Queensland Fertiliser Operations. QFO is a major producer of ammonium phosphate fertilisers from by-products of WMC's mining operations.

HiFert is a subsidiary of WMC. HiFert is an importer and distributor of fertiliser products, including 'straight' or commoditised fertilisers. HiFert procures its fertiliser from overseas suppliers and from local manufacturers (principally Queensland Fertiliser Operations).

HiFert has facilities in Newcastle, Geelong, Portland, Port Adelaide and Port Lincoln. It also has storage facilities in Kadina, Griffith and Brisbane; its storage capacity can be increased during peak seasons by leasing additional storage space.

The transaction

Futuris and AWB, directly or through Elders and Landmark formed a joint venture, ELF Australia Pty Ltd (ELF) owned by the joint venture partners in equal parts. In December 2004 ELF acquired a 66.7% interest in HiFert (with WMC retaining the other 33.3%) such that Futuris, AWB and WMC each have equal shares in HiFert.

The parties advised the ACCC of the transaction and cooperated with its inquiries but did not seek clearance under the informal merger guidelines.

Market Inquiries

The ACCC contacted various competitors, customers and industry bodies as part of its market inquiries and placed information about the acquisition on its web site on 4 January 2005.

Market definition

The ACCC considered that the relevant markets for this matter were:

- The supply (by either manufacture or import of fertiliser) and distribution of fertiliser at wholesale level on the east coast of Australia
- The retail of fertiliser to farmers by suppliers, agents and dealers on a regional and local basis on the east coast of Australia

In this the ACCC accepted the general industry view that three product markets exist for nitrogen, phosphorous and potassium based fertilisers.

Competition issues

Fertiliser used in Australia is sourced from imports or domestic manufacturers, with Incitec Pivot and HiFert being two of the major suppliers on the east coast.

Elders and Landmark as merchandisers currently rely on upstream manufacturers and importers for supplies. As such the joint venture does not change upstream market shares.

However, inasmuch as the arrangements reflect both parties' ability to use their buying power to integrate backward and source alternative supplies, Elders and Landmark have to some extent become new entrants through the joint venture in the upstream market.

At the manufacturer/ supplier level, their involvement could establish HiFert as a stronger domestic rival to Incitec Pivot which holds a market share of over 70% of the east coast supply market, compared to HiFert at about 15%.

Had they also combined their fertiliser merchandising operations Elders and Landmark would have about 30% of the retail market on the east coast. However both parties have insisted that, despite the upstream joint venture, they will continue to compete as retailers.

While barriers to entry to local fertiliser manufacturing are high, access to imports and distribution is less constrained, the major factors being prices, reliable quality, financial risk, plus import and distribution infrastructure.

As with previous matters, the ACCC found that imports can be sourced from various countries and suppliers including several multinational firms with interests in Australia. Domestic fertiliser prices are benchmarked to import parity prices.

The level of fertiliser imports is high. All potassium based fertilisers are imported, as are about 70% of nitrogen-based, and 60% of phosphorous based, fertilisers respectively. Import shares for some individual products such as urea have been over 80% in recent years.

Based on the above, the ACCC considered that it was not likely there would be a substantial lessening of competition in the relevant markets for the supply of fertiliser, while noting that some market responses suggested that competition at that level may become more vigorous.

The weight of market concerns were with the perceived implications of the transaction for competition in the retail market for fertilisers. In essence, some market participants expressed concern that Elders and Landmark would have less incentive to compete and an opportunity to collude through the wholesale joint venture and through their distribution/retail network.

In addition, there was concern that Elders and Landmark will have greater control and knowledge of a significant proportion of their upstream supplies and will be in a position (either individually but more so if acting in concert) to manage wholesale prices, undertake aggressive bundling and retail pricing and eventually increase market share through discounting and acquisitions.

In response, the parties insist that Elders and Landmark will remain competitors at the retail level and the wholesale arrangements will provide a viable, integrated and competitive supply channel as an alternative to current industry arrangements.

The parties also outlined to the ACCC on a confidential basis various measures which have been instituted as part of the structure and operation of the joint venture to ensure that dealings between HiFert as supplier, ELF as purchaser and Elders and Landmark as customers will be kept at arms-length and HiFert will be able to supply other retail customers.

The ACCC took comfort from the fact that WMC will retain a 1/3 interest in HiFert and is expected, because of its own commercial incentives, to ensure that HiFert maximises profit by seeking efficiencies and by increasing its market share including the sale of fertiliser (particularly fertiliser sourced from WMC) to parties other than Elders and Landmark.

The ACCC also noted there was no evidence of Elders and Landmark colluding in the provision of rural merchandise in the past. In fact information from market inquiries and other sources provided evidence of rivalry between Elders and Landmark in fertiliser and the provision of other rural services. Nor did it seem likely that HiFert and Incitec Pivot would accommodate or collude with each other, instead of competing at the wholesale level.

In the event that Elders and Landmark sought to collude by either discounting or increasing prices, market circumstances indicate that they would be constrained by Incitec Pivot and other suppliers being able to counter them at the wholesale level and through dealers, agents and others independents at the retail level.

Elders and Landmark each offers bundled products (including fertiliser) and services as part of their "full service" approach based on efficiencies arising from economies of scope and scale. It is apparent that, prior to the joint venture, both already possessed and exercised the capacity to bundle and cross-subsidise products and services and the ACCC was not persuaded that the creation of the joint venture would significantly alter this capacity.

The ACCC also noted there are other fertiliser retailers providing a bundled range of products and services and also operating in co-operative networks. It is possible that those providers by themselves or in conjunction with fertiliser suppliers would still be able to provide an alternative offer based on bundling and discounts in response to any initiatives undertaken by Elders or Landmark. The ACCC took account of Incitec Pivot holding a large market share at the wholesale level capable of supplying a significant number of retailers and by the assurance from the parties that HiFert will continue to supply third party retailers.

The ACCC accepted industry comment that competition in rural merchandising (and in related areas such as rural financing) is intense and margins are small, with many players attempting to improve market share and revenue yield through bundling, value-adding and vigorous price competition.

In that light, should vigorous competition in the form of a price war emerge at either the wholesale or retail level, market responses indicated that farmers are likely to benefit, other competitors would have the capacity or potential to match the Elders or Landmark offer, imports would provide an alternative source of supply and it was not certain, given the presence of significant rivals, that Elders or Landmark would be able to recoup their losses, or even sustainably increase market share, from an aggressive discounting strategy.

Overall, having considered these various factors, the ACCC formed the view that the joint venture and acquisition was unlikely to result in a substantial lessening of competition in the relevant fertiliser markets and so decided not to oppose the transactions.