



15 June 2006

## **Statement of Issues—Victorian Livestock Exchange Ltd’s acquisition of the Sale and Korumburra saleyards businesses**

### **Background**

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (‘ACCC’) in relation to the acquisition of the Sale and Korumburra saleyards businesses (‘the VLE acquisitions’) by Victorian Livestock Exchange Ltd (‘VLE’).
2. A Statement of Issues published by the ACCC is not a final decision about an acquisition nor does it indicate that the ACCC is likely to oppose the acquisition or that it will not ultimately receive approval. This Statement of Issues outlines the issues being considered by the ACCC based on the information it currently has before it, and sets out the areas on which the ACCC requires more information in order to complete a full assessment of the VLE acquisitions.
3. This document provides an opportunity for all interested parties (including shareholders, saleyard users, competitors, the public generally and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide both the parties to the proposed acquisition and other interested parties with the basis for making further submissions to the ACCC.

### **The transaction**

4. On 16 January 2006 VLE announced that it had entered into a conditional agreement with the Svenson owned group of companies to purchase their livestock saleyard operations in Gippsland Victoria. The ACCC received an initial submission from VLE on 21 February 2006 and a further submission on 13 June 2006. The ACCC timeline will be updated to account for VLE’s latter submission and to facilitate the provision of responses to this Statement of Issues. The transaction is being considered under the Merger Review Process Guidelines.

## **The parties**

*Acquirer: Victorian Livestock Exchange Ltd (ACN 078 839 031)*

5. VLE is listed on the Bendigo Stock Exchange (BSX). In its December 2005 financial report, VLE declared total assets of nearly \$18 million and net assets of \$8.23 million. Its interests include:
  - Pakenham saleyard (business and assets)
  - Traralgon saleyard (business and assets)
  - Koonwarra saleyard t/a VLE Leongatha (business and assets)
  - Korumburra saleyard (business only)
  - Yarram saleyard (assets only)
6. VLE provides livestock electronic tag reading services to other saleyards and major pastoral houses in Mortlake, the Alpine region of Victoria and New South Wales and in Powrana and Bothwell in Tasmania. VLE also provides advisory services through VLE Advisory Services Pty Ltd under the auspices of Meat and Livestock Australia and the relevant Departments of Primary Industries.
7. VLE's Koonwarra site is currently undergoing an extensive refurbishment to the value of approximately \$5 million which includes doubling the number of pens available and roofing the entire cattle holding.
8. According to the BSX, VLE acquired the Yarram Saleyard property of David Phelan & Co Pty Ltd on 13 June 2006.<sup>1</sup>

*Targets: Sale and Korumburra saleyards*

9. VLE entered into negotiations in January 2006 with the Svenson owned group of companies to purchase their livestock saleyard operations in Gippsland, namely the businesses of the Korumburra and Sale saleyards,

### Korumburra

10. On 10 March 2006, VLE completed the transaction to purchase the Korumburra based business of the Svenson Group.<sup>2</sup>

### Sale

11. The ACCC understands that the VLE purchase of the Sale based business or business partnership with the Wellington Shire is currently incomplete (as of the date of publication of this Statement of Issues).

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<sup>1</sup> See BSX announcement of 13 June 2006 available at:  
<http://www.bsx.com.au/dataRepository/BSX.VLE.1.1799.1920.pdf>

<sup>2</sup> See BSX announcement of 10 March 2006 available at:  
<http://www.bsx.com.au/dataRepository/BSX.VLE.1.1531.1652.pdf>

### Number of saleyards post-acquisition

12. The ACCC understands that, post-acquisition, VLE will own or operate six Gippsland saleyards (Pakenham, Traralgon, Koonwarra, Korumburra, Sale and Yarram) leaving two other major saleyards at Warragul and Bairnsdale and saleyards at Mernda and Thorpdale.
13. The ACCC seeks more information on these and other saleyards in the region.

### **Market inquiries**

14. On 28 March 2006, the ACCC undertook market inquiries by letters to agents, saleyard owner/operators, livestock buyers (farmers, feedlots, meat processors and abattoirs) and livestock sellers (farmers, feedlots, pastoral companies, stud owners), providers of ancillary services and other interested parties. A market inquiries letter was also posted on the ACCC website seeking comments.

### **Statement of Issues**

15. As a result of market inquiries, the ACCC has identified a number of areas on which it requires more information to complete its competition assessment of the VLE acquisitions. These areas are detailed below:

#### **A. The market**

16. In assessing the effect of the acquisitions on competition, the ACCC must decide on the relevant market, which should include the specific good or service under review and any viable alternatives that customers (or users) can use.
17. VLE has submitted that the relevant market is the South Eastern Australian sector of the national livestock selling market. The ACCC seeks comment on whether or not this is an accurate view of the relevant market.
18. The ACCC's preliminary view is that the relevant product market for the purposes of assessing the VLE acquisitions is the market for the provision of saleyard and saleyard services in the Gippsland region. Market inquiries suggested that the relevant product market is complementary to the provision of regular livestock auction services by auctioneers and agents. Based on current information, the ACCC needs to decide whether or not saleyards and saleyard services are sufficiently distinct from livestock auction services generally. The ACCC understands that livestock auction services compete with other selling methods such as direct, contracted and electronic sales.
19. In addition, the responses regarding the geographic scope of the relevant market suggest that this market is predominantly local for livestock sellers and agents, and regional or trans-regional for livestock buyers (and possibly other users).
20. The ACCC seeks further information in relation to the definition and contestability of the relevant market, in particular whether the alternative methods of sale (paddock sales, direct selling, over-the-hooks and over-the-

scales) are close or remote substitutes for auction services and for saleyard services and whether Gippsland saleyards actively compete with:

- a. only nearby yards;
- b. all other saleyards located in the Gippsland region (for example, independent operators such as Warragul, Bairnsdale, Mernda and Thorpdale) or all saleyards in Victoria; and/or
- c. alternative regional or state-wide methods of sale

taking into account additional transport costs, time, convenience and risk of damage or deterioration to the condition of livestock.

21. VLE has suggested that the feedlot industry competes with the saleyard industry as producers throughout Victoria and southern New South Wales sell cattle to feedlots in preference of selling them through saleyards. The ACCC seeks comments on this view.
22. The ACCC also seeks comment as to whether or not saleyard services for different livestock (for example, cattle or sheep) are largely identical for the purposes of assessing competition in the relevant markets.

## **B. Barriers to entry**

23. Responses from market participants varied with respect to the height and cost of barriers to entry and expansion in the provision of modern saleyard services. Some of the barriers identified included:
  - a. Land, construction and technology costs;
  - b. Practical difficulties with yard design, operation and availability of land to refurbish existing facilities;
  - c. Achieving sufficient throughput and economies of scale;
  - d. Regulatory and related barriers (such as planning and environmental requirements, road access, animal health and OH&S regulations)
24. The ACCC understands from market responses that the total cost of establishing a modern greenfield saleyard operation would be between \$5 – 8 million. The ACCC invites comment on the precision of these figures.
25. The ACCC seeks more information regarding the level of minimal throughput required to establish a new saleyard facility and elaboration of regulatory and related barriers to entry and expansion (actual and perceived).
26. In addition the ACCC seeks comment on the likelihood of new operators entering the market or of new saleyards being opened in competition with VLE post-acquisition.

### **C. Countervailing power**

27. Several market participants indicated that some users of saleyard services do possess a degree of countervailing power in their dealings with VLE. Sellers (vendors) and agents are said to possess countervailing power as they are well informed about the market and agents are able to influence their clients' choice of selling method and to a lesser extent, saleyard location. Similarly, it appears that buyers regularly travel to more than one saleyard and between regions and so have access to alternatives.
28. The ACCC seeks comment on whether or not saleyard users (ie sellers, agents, buyers or others) may be placed at any disadvantage following the acquisition (and possible closure) of either of the Korumburra or Sale saleyards. If so, please specify the type of disadvantage and costs associated and whether these can be overcome by switching to a competitive alternative.
29. The ACCC is interested in further information to determine whether there are other saleyards or alternative methods of selling that users can switch to (or other actions that users can take) that are likely to constrain VLE from increasing prices or decreasing the quantity and/or quality of services post-acquisition.

### **D. Prices and profit margins**

30. The ACCC understands that payment for saleyard services takes the form of deductions from the gross returns from livestock sales. The ACCC seeks views on whether the amount of saleyard fees/dues is seen as significant by users and what increase in that amount would lead to users switching to another yard or alternative method of selling.
31. The ACCC seeks information on what would be likely to constrain VLE from increasing its prices or changing its level of services post-acquisition if Warragul, Bairnsdale, Mernda and/or Thorpdale saleyards are not seen by users to be strong or effective competitors (see paragraph 20).
32. Comment is also sought on whether or not there are features of the market that may make it difficult for saleyard users to switch to alternative methods of selling, even though such services may be cheaper or more convenient.

### **ACCC's future steps**

33. The ACCC will finalise its decision on this matter after it considers further market responses invited by this Statement of Issues.
34. The ACCC now seeks submissions from market participants on each of the issues that have been raised in this Statement of Issues not limited to, but including the areas outlined above on which the ACCC requires more information, and any other matters that may be relevant to the ACCC's assessment of this matter.
35. Submissions are to be received by the ACCC by no later than **30 June 2006**. The ACCC will consider the submissions received from the market including submissions from the parties in light of the issues it has identified and, in

conjunction with information and submissions provided by the parties, make a final decision as to an appropriate course of action to take to resolve any competition concerns that are identified.

36. The ACCC intends to make public its decision in July 2006. A public Competition Assessment for the purpose of explaining the ACCC's decision will be published on the ACCC website in due course.