

3 September 2015

Dr. Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission

Dear Sir

N98410 - Equestrian Australia – Submission by Equestrian Victoria

We refer to your invitation to provide a submission on the exclusive dealing notification (“Notification”) lodged on 30 July 2015 by Equestrian Australia (EA) with the Australian Competition & Consumer Commission (ACCC) in respect of the conduct described in Part 2(b)(iv) of the Notification (“the Conduct”).

Background Material

Equestrian Victoria (EV) is one of the six State based “Branches” referred to in paragraph 4(b)(ii) of the Notification. As EA has described in that paragraph, EV has a membership of individuals comprising competitors, participants or supporters.

EV organises events, both directly through organising committees and indirectly through the Branches or clubs affiliated with it. In the disciplines of Dressage, Eventing, Show Jumping and Show Horse, the major state and national events conducted in Victoria are organised by EV through organising committees.

The organising committees are either wholly staffed by volunteers or assisted by an Event Management Group, which receives a small honorarium to assist with the detailed administration of the event.

The task of organising events is very substantial. In the larger events, for example the Melbourne International Three Day Event (“MI3DE”) conducted on the Queen’s Birthday weekend in June of each year, in excess of 200 volunteers facilitate the conduct of the event in a large number of roles as stewards, cross country judges, administrators etc. In addition veterinarians must be on site in a supervisory capacity as must medical practitioners and ambulance services.

This particular event, being an Federation Equestrian Internationale, (“FEI”) event, must be supervised by a veterinarian who is accredited by the FEI. Without the presence of such a

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veterinarian the event loses its FEI status and the participants at the senior level in the sport would not gain credits for having competed in an internationally classified event.

With the Olympic disciplines of Dressage, Show Jumping and Eventing, it is through competition in internationally accredited events that competitors qualify for International Rankings and to represent Australia at major competitions such as the Olympics and the World Equestrian Games.

Public Benefit and Anti-competitive effect

EV does not wish to add to the discussion by EA in the Notification, of the Hendra virus (HeV) and the HeV vaccine presently supplied by Zoetis Inc (“Zoetis”).

EV issued a public statement on the 21 January 2015 (**Annexure A**), identifying its position in relation to compulsory vaccination of horses to protect horses and members of the public from HeV and a further statement (**Annexure B**) that day with respect to the recommendation by the EVA for an Indemnity set out in Annexure F to the Notification. That statement was followed by an announcement by EA on 2 February 2015 (**Annexure C**) revoking the relevant by-law and continues to reflect the policy of EV in relation to HeV vaccination.

EV proposes to consider the report of the Review Panel appointed by EA to investigate and report to EA on the HeV vaccine “Equivac HeV” manufactured and supplied by Zoetis. Once that report becomes available to EV, it proposes to consult widely with its membership as to what, if any response, EV should make to it.

Market Definition and Competitive Effect

In Part 5 of the Notification, EA identifies two markets namely:

- (i) The market which existing and potential vaccines for HeV are supplied to accredited veterinarians for administration to horses; and
- (ii) The market in which equestrian events services are supplied to actual and potential entrants.

Section 93(3) of the Competition & Consumer Act 2010 (“the Act”) effectively requires consideration of any anti-competitive effect or purpose of the conduct notified on the one hand and whether the conduct has resulted or is likely to result in a benefit to the public, or whether any benefit to the public that has resulted or is likely to result from the conduct would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct. (In setting out the test in this form, we are not seeking to do more than paraphrase portions of the section. We appreciate that the ACCC will be very familiar with its detail.)

It is EV’s belief that the Conduct will have no adverse effect on competition in either market.

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The market which existing and potential vaccines for HeV are supplied to accredited veterinarians for administration to horses

The Conduct will not require any person, in any circumstances, to use any particular vaccine, or the vaccine of any nominated supplier. Should generic suppliers of Zoetis HeV vaccine enter the market, their entry will not be inhibited in any way by the Conduct.

Alternatively, should a new vaccine enter the market, the conduct will have no impact whatsoever on the use of that, or any other HeV vaccine that may, from time to time be available in Australia.

The presence of alternative sources of the vaccine will be limited only by the ability of suppliers to satisfy the regulator, the APVMA, of the suitability of their product to receive a marketing permit.

The Conduct will not act to constrain the volume of goods or services supplied to or acquired in the market

EV does not believe the Conduct will have any impact on the price that may be charged in the market by any supplier for HeV vaccine.

Thus the conduct will not raise any entry barriers to person wishing to compete in this market, nor will it affect the pricing or volume decisions by either suppliers or acquirers of goods or services in this market.

Accordingly there will be no public detriment arising from any lessening of competition in this market.

The market in which equestrian events services are supplied to actual and potential entrants

There are a number of actual and potential suppliers of equestrian event services. No Event supplier is required to engage in the Conduct. Indeed, the policy of EV is that the Conduct should not be engaged in unless there is no alternative available to the organising Committee.

In relation to some events, it has been possible to obtain the services of an FEI accredited vet with an appropriately equipped hospital. This is not always possible especially as the Werribee Veterinary Hospital and the Ballarat Veterinary Hospital both have stated that they will not admit horses from Northern NSW or Queensland, or horses that have been in contact with horses from that region, unless they have received an HeV vaccine.

Further, EV has no knowledge of a vet seeking to apply the guidance of the EVA to any competitions other than that relating to any discipline other than Eventing.

In these circumstances, EV does not believe that there will be any public detriment resulting from a lessening of competition in this market either.

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Public Benefit

EV refers to Part 4 of the Notification and in particular sub-part (vii) "Economic Effects: Liability and Indemnity" and wishes to supplement the matters set out by EA with the following.

The events that surrounded the organisation of the MI3DE held on the Queen's Birthday weekend in June 2015, provide an example of the difficulty which can arise and the benefits to the public which can flow from the conduct.

In or about January 2015 organisation of the 2015 Melbourne Three International Day Event to be at the Werribee Park National Equestrian Centre in Werribee, Victoria was returned to EV as a consequence of a contract between EV and a third party having been terminated by mutual agreement.

An organising committee was established to undertake the substantial task of getting the event prepared in approximately 4 months rather than the usual 8-12 months that such a task consumes.

This occurred at the time that EV had made the statement annexed hereto marked "A" as to its HeV policy.

On or about 20 February 2015 Dr. Nathan Anthony, the President the Equine Veterinarians, (EVA, a special interest professional group of the Australian Veterinarian Association, AVA), and the FEI vet appointed to preside over the event Dr. Kirsten Neil, advised the chair of the organising committee they would not participate in the Event or authorise its conduct unless horses that had come from north of Forster in New South Wales or from Queensland had been vaccinated against HeV and an Acknowledgement and Indemnity was provided¹. He stated that this requirement was imposed consistent with the policies of the EVA².

This event is particularly important as a national event in which riders gain relevant points by which they are assessed for eligibility to represent Australia in international events.

The events committee was confronted with two choices:

- (a) it could impose the requirement demanded by the FEI vet and provide the indemnity sought; or
- (b) it could cancel the event.

It did not have the capacity to seek to find a different FEI vet who may not impose these conditions.

¹ A copy of the form of Acknowledgement and Indemnity is annexure F to the Notification

² A public statement of the EVA is annexure D to the Notification

The event committee was aware that advice had been received from the insurance brokers to EA that if it provided the indemnity but did not follow the directions of the FEI vet as to steps taken to ameliorate the risk posed by the possibility of HeV infection to a horse or person, the committee may not be protected by the indemnity insurer and thus would be exposing their personal assets in the event that there was an HeV related incident.

If the event was cancelled, it would deprive the riders who entered the competition, the opportunity to compete and obtain or improve their International rankings and would remove from the Australian equestrian calendar one of the major Eventing competitions for 2015 a year preceding the next Olympic games.

The only practical alternative left to the organising committee was to advise of the requirement of the FEI vets and to advise riders with horses from north of Forster in New South Wales and from Queensland that, absent exceptional circumstances (such as a horse having had an adverse reaction or some other medical reason each of which would be considered on a case by case basis by the FEI vet) any horses brought to the event would need to be vaccinated with an HeV vaccine³.

Such a step both protected participants in and persons attending the event and enabled the event committee to proceed with the organisation of the event without causing an unacceptable exposure of their personal position.

No participant in the event complained to the organising committee about the requirement being imposed in these circumstances and the event proceeded without incident.

These circumstances demonstrate that there is a benefit to the public flowing from the Conduct, where it arises from the requirement of the organising committee needing the services of a supervising vet to ensure the safety of the horses, rider and spectators at a completion; the vet requires the vaccination of all horses from North of Forster or thereabouts and Queensland against HeV and there are no other alternatives reasonably available.

Conclusion

It is now well settled that s.93 of the Act requires a balancing of detriment and benefit. Where there is little or no public detriment constituted by a lessening of competition in any relevant market, there is no requirement for more than a relatively small public benefit (see *Re Medicines Australia Inc* [2007] AComT 4 at [127])

Here, there will be no anticompetitive detriment and there will be very real public benefits flowing from the Conduct.

In this context, EV draws the attention of the ACCC to the fact that this is NOT a Notification of the conduct of the EVA as a body or of the veterinarians individually. EV and

³ This was done by a notice on the Entry Form, a copy of which is annexed (Annexure D)

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the Victorian organising committees are consumers of the veterinary services at Victorian Events and do not have the power to control the terms upon which they are supplied.

Should you have any questions in relation to any aspect of this submission, or the Notification, please do not hesitate to contact the undersigned at david@shavin.com.au or on 03 9225 7970.

Yours faithfully

David Shavin QC
Vice Chair
Equestrian Victoria