

Our Ref: A90973 & A90974  
Contact Officer: Cameron Martin  
Contact Phone: 02 6243 1107

6 July 2005

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Dear

**Applications for Authorisations A90973 & A90974  
lodged by the Tasmanian Forest Contractors Association Ltd**

The Australian Competition and Consumer Commission (the ACCC) has received two related applications for authorisation from the Tasmanian Forest Contractors Association Ltd (the TFCA) on behalf of its member forest contractors to allow them to collectively negotiate the terms and conditions of their contracts with a number of wood companies operating within Tasmania.

The purpose of this letter is to seek your comments in relation to the TFCA's proposal as a potentially interested party.

*The authorisation process*

By way of background, the ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the TPA). A key objective of the TPA is to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The TPA, however, allows the ACCC to grant immunity from the TPA for anti-competitive conduct in certain circumstances.

One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any detriment to the public including that constituted by any lessening of competition. The ACCC conducts a comprehensive public consultation process before making a decision to grant or deny authorisation.

### *TFCA application for authorisation*

Broadly, the TFCA has sought authorisation on behalf of its member forest contractors to allow them to collectively negotiate (A90974), within their respective contracting groups, the terms and conditions of contracts for the provision of forest contracting services to five Tasmanian wood companies: Gunns Ltd; Forestry Tasmania; Forest Enterprises Australia Ltd; Rayonier Ltd; and Norske Scog.

In addition to the collective bargaining arrangements, the TFCA has also sought authorisation to allow its members to engage in collective boycotts (A90973), if after a prescribed collective bargaining and mediation period, contract negotiations have not been finalised with the wood companies.

Authorisation has sought by the TFCA for the proposed arrangements for a period of 10 years.

A copy of the TFCA's applications and their supporting submission is attached and can also be viewed by following the 'Authorisations' link on the ACCC website: [www.accc.gov.au](http://www.accc.gov.au)

### *Request for substantive submissions*

To assist the ACCC in assessing the TFCA's applications you are invited to provide comments and submissions. In particular, your view is sought as to the likely benefits to the public and the potential effect on competition of the proposed arrangement.

In this respect I note that the TFCA has submitted that the following public benefits are likely to flow from the proposed arrangements:

1. Improved occupational health and safety standards for forest contractors and their employees.
2. Increased retention of skilled workers and improved training for new employees.
3. Reduced transaction costs from conducting negotiations as a group rather than individually.
4. Improvements in social wellbeing for forest contractors.
5. Improvements in the viability of the timber industry in Tasmania.

If you intend to provide a submission in relation to the TFCA's applications for authorisation, I would be grateful if you could do so by close of business, **Friday 5 August 2005**.

### *Interim authorisation*

The TFCA has also requested that the ACCC grant 'interim' authorisation to the proposed arrangements. In simple terms, interim authorisation allows parties to engage in the proposed conduct while the ACCC considers the substantive merits of the application.

The ACCC has previously stated that it is unlikely to grant interim authorisation where to do so would permanently alter the competitive dynamics of the market or inhibit the market from returning to its pre-interim state if authorisation is later denied, unless there are special circumstances.

The ACCC is also seeking comments from interested parties regarding the TFCA's request for interim authorisation. I note that ACCC generally seeks to complete its assessment of an application for interim authorisation within one month of receiving the application. With this in mind, should you plan to make comment on the application for interim authorisation, I would appreciate if you could do so by close of business, **Wednesday 20 July 2005**.

*General information*

The ACCC asks for submissions to be in writing so that they can be made publicly available. Submissions are placed on a public register and may also be placed on the ACCC's website. The ACCC may, where appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Should you lodge a submission with the ACCC you may request that information included in the submission be treated as confidential and not placed on the public register or the ACCC's website. The ACCC may take confidential information into account during its assessment of an authorisation application. Guidelines for seeking confidentiality are attached for your information (attachment A).

Should you wish to lodge a submission, please address it to:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au), or by facsimile on 02 6243 1211.

As is the ACCC's practice in these matters, the ACCC has written to a cross section of interested parties seeking their views on the applications including government departments, the five wood companies and a sample of TFCA members. However, the list of interested parties the ACCC has consulted is not exhaustive. Of course the ACCC would be happy to receive a submission from any TFCA member or other interested party who has not been formally consulted.

Should you have any queries or if you wish to discuss any aspect of this matter please do not hesitate to contact Cameron Martin on (02) 6243 1107.

Yours sincerely

Scott Gregson  
A/g General Manager  
Adjudication Branch

## Attachment A

### GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation or notification is very public, transparent and consultative. The Trade Practices Act 1974 (the TPA) requires the ACCC to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the TPA to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the TPA, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "Restriction of Publication Claimed" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "Restriction of Publication of Part Claimed" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the TPA.

Name	Title	Address	Sal
Mr John Gay	Managing Director	Gunns Limited 58 Cimitiere Street LAUNCESTON TAS 7250	Mr Gay
Mr Laurie Wilson	Chairman	Forestry Tasmania 79 Melville Street HOBART TAS 7000	Mr Wilson
Mr Andrew White	Chief Executive Officer	Forest Enterprises Australia Level 1, 233B Charles Street LAUNCESTON TAS 7250	Mr White
	The General Manager	Rayonier 33 George Street LAUNCESTON TAS 7250	Sir/Madam
Ms Joanna Hewitt	Secretary	Department of Agriculture, Fisheries and Forestry GPO Box 858 CANBERRA ACT 2601	Ms Hewitt
Mr David Borthwick	Secretary	Department of the Environment and Heritage GPO Box 787 CANBERRA ACT 2601	Mr Borthwick
Dr David Boxall	Secretary	Department of Employment and Workplace Relations GPO Box 9879 CANBERRA ACT 2601	Dr Boxall
Mr Mark Paterson	Secretary	Department of Industry, Tourism and Resources GPO Box 9839 CANBERRA ACT 2601	Mr Paterson
Mr Kim Evans	Secretary	Department of Primary Industries, Water and Environment GPO Box 44 HOBART TAS 7001	Mr Evans
Mr Scott Gadd	Secretary	Department of Tourism, Parks, Heritage and the Arts 22 Elizabeth Street HOBART TAS 7000	Mr Gadd

Mr Mark Addis	Secretary	Department of Infrastructure, Energy and Resources GPO Box 936 HOBART TAS 7001	Mr Addis
Mr Rob Woolley	Chairman	Forests and Forest Industry Council of Tasmania Level 5, 2 Kirksway Place HOBART TAS 7004	Mr Woolley
	The General Manager	Norske Skog Boyer Mill BOYER TAS 7140	Sir/Madam
Ms Jill Lewis	National Director	Timber Communities Australia PO Box 289 DEAKIN WEST ACT 2600	Ms Lewis
	The General Manager	Furniture Industry Association of Australia PO Box 2071 Hotham Hill, VIC 3051	Sir/Madam
	The General Manager	CFMEU - Forestry and Furnishing Products Division 125 Port Road Hindmarsh SA 5007	Sir/Madam
Mr Russell Hansen	The Chief Executive Officer	The Wilderness Society PO Box 188 Civic Square, ACT, 2608	Mr Hansen
Mr Don Henry	Executive Director	The Australian Conservation Foundation Floor 1, 60 Leicester St Carlton, Victoria 3053	Mr Henry
Mr David Goldthrop	Chief Operating Officer	Australian Paper 307 Ferntree Gully Road (Private Bag 87) Mt Waverley, Victoria 3149	Mr Goldthrop