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5<sup>th</sup> August 2005

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
PO Box 1199  
Dickson ACT 2602

Dear Sir

**RE: Application for Authorisations A90973 and A 90974 lodged by the Tasmanian Forest Contractors Association Ltd. (TFCA)**

Forest Enterprises Australia Ltd (FEA) has received from your office a letter explaining the process the ACCC manages before it makes a determination on the TFCA application.

FEA has been identified in the application as one of the Tasmanian Wood Companies the TFCA is seeking the authorisations to negotiate with on a collective basis.

**Forest Enterprises Australia Ltd.**

Forest Enterprises Australia Ltd is a publicly listed company listed on the ASX, (ASX Code FEA). FEA is a forestry and forest products company with operations in Tasmania, New South Wales and Queensland.

FEA started in 1985 as a private plantation investment company and listed on the ASX as a public company in 2000. FEA current has a market capitalisation of approximately \$175 million. FEA has been raising funds annually through retail Managed Investment Schemes since 1993 and now manages an estate on behalf of its investors of approximately 32,000 hectares (this amount factors in the recent sales until 30 June 2005 - that will be planted in the coming 12 months). The Responsible Entity for the MIS Project is FEA Plantations Ltd. This has a separate Board to protect and manage the interests of our investor growers.

FEA started in Tasmania and until current times had the greater proportion of its assets in Tasmania. Its main area of growth in land assets and area under management is now in NSW and Qld.

In addition to its core business in MIS forestry, FEA now operates a plantation log sawmill in Bell Bay (Tasmania), and is a 50% Joint Venture partner in a woodchip export operation also located at Bell Bay.

A full set of statutory accounts is publicly available on the ASX website, or can be obtained by contact with FEA CFO Mr Fergus Leicester using the letterhead details. We are planning to release our FY 05 accounts on 19 August 2005.

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FEA is most concerned by the application by the TFCA to seek authorisations from the ACCC as disclosed in your letter. In fact the matter came as a surprise to FEA, as the TFCA has not at any time contacted FEA at any time in regard to any of the matters contained in the application.

FEA will recommend to the ACCC, that in its view that the ACCC should deny TFCA the authorisations it seeks through the application process.

It should be noted that FEA is not aware of which contractors it engages that are members of the TFCA, but being an active industry participant for the last 20 years can affirm to the ACCC that the TFCA does not represent the views of all contractors that FEA engages.

### **Forest Harvesting and Transport**

FEA has currently eight forest harvesting operations under contract with various small to medium sized businesses. All of our contractors are managed in a manner to be consistent with the Forestry (Fair Contract Codes) Act 2001. FEA maintains its contractor workforce to harvest plantation and native forest trees for sale to its own related processing operations or other processors within the state. All of the transport functions are considered a part of the harvesting contractors, and this is either conducted by the harvesting contractor or subcontracted to another party by the same contractor.

In general, FEA's contractors have other contracting operations in other industry sectors and with other Wood Processing Companies. FEA is not a party to (nor should it be) to any of the commercial aspects of these relationships. FEA enjoys a sound commercial relationship with its harvesting and transport contractors and is not aware of any outstanding structural issues with the relationships.

In respect to our plantation harvesting operations, these are conducted primarily on behalf of our MIS investors, and all operations to date are of a minor scale, as our estate under management matures further in the coming years FEA will be in a position to engage harvesting and transport capacity. This will be done in a manner to demonstrate efficacy over a wide range of criteria (including price) to our investors through the Independent Board of FEA Plantations Ltd

The forestry sector is an important sector in Tasmania. FEA has made considerable investment with regards to both forest resource and value adding activities for forest estate owners and suppliers; demonstrating a commitment to providing market alternatives. These activities operate in an open market basis. It is not unreasonable for these operations to expect the same with respect to service providers.

It is also true that the sector activity is subject to many influences outside the control of processors. The cyclical nature of the domestic building industry drives activity (and profitability) in sawmills. In regard to export fibre sales it has always fluctuated driven by the international pulp and paper price as well as any effect of volatility in the Australian Dollar – particularly with respect to the US Dollar. These commercial drivers are well understood by the contracting community in Tasmania.

The effect of a successful application of TFCA is hard to consider as commercially sensible as it assumes that FEA has a significant element of control in being able to manage wood flows in the longer term without having to manage the dynamics that drive pricing and demand in domestic



and export timber and pulp and paper markets. It also incorrectly assumes that FEA can dictate price in these markets where in reality FEA has to meet the pricing drivers in competitive markets where it is not a dominant seller. I noted with interest that the TFCA claims that that FEA is likely to be a larger player in the future, in the forest products market FEA is very much a minimal market share. It is also a fact the majority of our estate will mature in about five years time and this will be in three states and it should not be assumed that this is all in Tasmania.

Of greater significance to FEA is the effect on the MIS investors, and the function of the Responsible Entity. Growing trees is a long-term commitment by growers/investors and the potential of a collusive contractor base in harvesting and transport is not in the best commercial interests of investors and also in terms of the contracting community.

### **Silvicultural Contractors**

FEA engages a variety of services from approximately 30 Silvicultural contractors to establish and maintain its plantations under management. The range of contract activities include but are not limited to nursery operations, cultivation, planting, fertilising, spraying, shooting, mapping and monitoring for pests and diseases.

FEA secures funding for these operations on an annual basis through FEA Plantations Ltd releasing a Product Description Statement (PDS). This is released on an annual basis and the location of the plantation works is distributed between Tasmania, New South Wales and also Queensland. The important that FEA would like to emphasise is that there is no particular certainty that the funding will be available in a consistent flow from one year to the next as it will vary depending on a variety of factors, including:-

- Tree establishment, is essentially an agricultural process, timing of operations is reliant on weather.
- Underpinning this is the ability of FEA to secure a land base to establish new plantations. This varies in area from year to year and in the location of the operations (ie Queensland, Tasmania, or New South Wales).

FEA has no current commercial disputes or issues with its contractors, and similar to harvesting and transport most of these businesses also substantially contract to other businesses. Given the seasonal and short-term nature of the activity and the year on year nature of the securing of the capital to fund these operations it is difficult for FEA to see how it can commercially and practically offer any contractual commitment beyond what it does already.

### **Public Benefit**

I wish to make some comments to the TFCA's points as being pertinent to the public benefit.

### **Occupational Health and Safety**

In examining the application from the TFCA, I read with some interest the concerns raised with OH & S.

Any serious commercial enterprise (large and small) ensures that its obligations with respect to OH&S are actively managed. FEA is in the process of implementing ISO 14002 in its forestry business and a key element is safety management.



FEA has a process in engaging a contractor has a Safety Management System (SMS) that verifies a contractor's awareness of its obligations and ability to manage risk within its business.

In addition FEA also engages expert assistance to assist its contractors to monitor their compliance to ensure that they are managing their safety processes in a professional manner. This is done at no direct cost to the contractor, but allows FEA to understand and manage a supplier that may not be operating to minimum legal standards.

In review of the application I was puzzled by the use of the anecdotal example of the pushing or pulling of trucks as this not only clearly breaches safety regulations but also breaches many environmental aspects of permitted forestry activities.

### **Employment and Training**

Workforce succession is an incredibly relevant issue in all industries as well as the public sector, and this is particularly true in most parts of industries that operate in rural and regional Australia.

The presumption that higher rates will lead to greater training opportunities pre-supposes that Contractors will pass on collectivised rate increases for the benefit of workers is flawed. The current application before the ACCC is for the benefit of the owners of Companies in business and not for the direct benefit of workers in Forest Industries.

With respect to training there are well structured and comprehensive training programs in place for new entrants into the Forest Industry. These have been largely developed by funding from Government as well as historical levies from wood processing companies. Contractors that engage employees nowadays have the same opportunity to access Federal and State training assistance programs as any other employer in any other sector.

Tasmania in recent years has enjoyed a period of strong growth (consistent with other parts of Australia), and a subsequent falling of the official unemployment rate. In general most industries are witnessing difficulty in retaining skilled workers. In a buoyant employment market, the movement of skilled labour to more lucrative, or less demanding types of employment circumstances, will occur as opportunities arise.

I sincerely fail to see how the objectives of the current TFCA application will halt this process.

### **Transaction Costs**

Invariably the circumstances surrounding the management of the discussions between a individual contractor and a company is usually a complex one.

The financial and business management issues that confront a contractor are usually individual to that contractor and are not able to be addressed collectively. I would suggest that collectivising rate negotiations will lead to greater transaction expenses as another tier of decision making, and will not assist at all in the addressing of a contractors issue with a Wood processing company.

It is a requirement in the Forestry (Fair Contract Codes) Act 2001 that annual meetings occur to discuss all of the matters that the TFCA is seeking to address. In the event of the application being successful these meetings will still have to occur.



At present there is no restriction to a contractor bringing representation or assistance to any meeting and this may include financial and legal advice as well as a contractor being assisted by the TFCA.

It is important to remember that Contractors are business people. At meetings with contractors there are usually discussions on productivity and its effect on price and volume relationships.

Innovative contractors will and do negotiate effectively to enhance their competitive position and the current application will only restrict the competitive advantage progressive contractors.

## **Social**

I believe it is beyond the scope of the application before the ACCC and beyond the professional competence of FEA to speculate or comment on the mental health of some business people in the forest industry.

## **Industry Sustainability**

It is true that the capital requirements and financial competence to secure funding for a forest contracting business is more complex than in previous decades. The increasing level of mechanisation to boost productivity to maintain or increase competitive advantage affects everyone in business and is not unique to the forest industry.

Industry sustainability is a matter beyond the scope of the application of the TFCA. Ultimately Australian forest products will need to be competitive against imports in domestic markets and internationally competitive in export markets. Ultimately these drivers will determine the structure and the capacity of sectors to meet these competitive forces. They affect the management decisions of wood processing companies like FEA - as markets ebb and flow with the economic cycle as they also affect contractors.

Protection of contractors of the commercial impacts of these cycles and the “way of life” of the owners of small and medium sized companies is more likely to lead to greater instability in their economic circumstances, which is in contrast to what the TFCA hopes to achieve with this application.

## **Summary**

FEA is a company that engages a variety of contractors to fulfil a wide range of tasks including those in harvesting transport and silviculture. FEA has enjoyed a great deal of harmony with its contractor suppliers and recognises the benefit that FEA enjoys from having lengthy relationships with stable competent and safe suppliers.

Ultimately we can only offer length of tenure commensurate with that of our funding to conduct operations, raw material supply and more importantly that of the commitment of markets (customers). In terms of pricing FEA operates its forest products into highly competitive and efficient markets and is not able to dictate price in these markets as is suggested by the TFCA.



FEA meets regularly with its suppliers to address concerns over changing circumstances. An example of this is the rising costs of transport fuels that affect many parts of the domestic and international economy. If FEA did not make regular adjustments we could not physically operate our business.

FEA believes that the current application is anti – competitive and collusive in its intent. The TFCA represents only a part of the forestry contracting community the application is designed to serve the benefit the owners of contracting companies though regulatory protectionism.

FEA is also sceptical of the logic used by the TFCA in the benefit of anti-competitive behaviour to the general public.

It is FEA Ltd's assertion that protectionism to a part of the contracting community is not in the contractors or the industry benefit.

FEA strongly urges the ACCC to deny the application.

Yours Faithfully

**Andrew White**  
**CEO**  
**Forest Enterprises Australia Ltd.**