

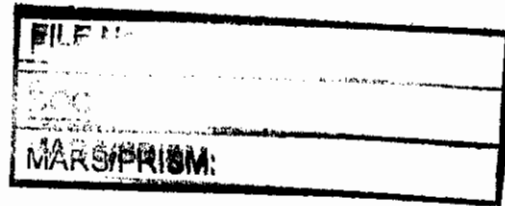
Rayonier

Asia Pacific

Tasmania

12 August 2005

Scott Gregson
A/g General Manager
Adjudication Branch
ACCC
PO Box 1199
Dickson ACT 2602



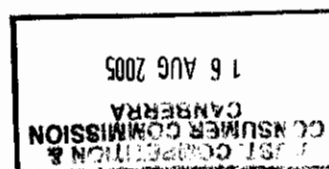
Dear Scott

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

Please find attached Rayoniers response to this application.

Yours sincerely

Mike Claridge
Regional Manager
Rayonier Australia Pty. Ltd



**RESPONSE TO THE TASMANIAN FOREST CONTRACTORS ASSOCIATION LTD'S
AUTHORIZATION APPLICATIONS A90973 & A90974**

1. RAYONIER AUSTRALIA PTY LTD

Rayonier is an international supplier of timber, high performance specialty cellulose fibres and wood products, with 2.2 million acres of timberland and real estate in the United States and Australasia. Rayonier will, from October 2005, be the fifth largest forestry management company by area in Australasia. In Tasmania, the Company is the manager of a 46,000ha softwood forest joint venture formed between Forestry Tasmania and GMO Renewable Resources in 1999. Rayonier employs 13 people, based in Launceston, to manage the Tasmanian estate and all harvesting and marketing functions.

2. THE TFCA'S APPLICATION

The TFCA's application is made pursuant to section 88(1) of the *Trade Practices Act 1974*. The TFCA seeks authorization to make and give effect to contracts, arrangements and understandings that are in breach of section 45 of the *Trade Practices Act 1974*. Specifically, the TFCA seeks for its members to be able to engage in collective boycotts against five forestry companies, one being Rayonier, in the event of a bargaining process failing to achieve a "fair" outcome.

In order for the Commission to grant the TFCA's application, it must be satisfied that the contract, arrangement or understanding would result, or be likely to result, in such a benefit to the public that would outweigh the detriment to the public constituted by the lessening of competition that would result. It is Rayonier's submission that the TFCA's application fails to disclose any public benefit that would flow from the authorization. Rayonier further submits that even if the application were to disclose a public benefit, that public benefit would not outweigh the detriment to the public constituted by the resultant lessening of competition.

Before dealing with substantive issues arising from the application, Rayonier makes the following general observations:

- At page 4 of the application the TFCA states that it is not its intention to collectively negotiate individual prices with the wood companies, but rather to initiate and negotiate general terms and conditions. The remainder of the application, however, is clearly

focused on the perceived need for the TFCA to engage in price negotiations, indeed the issue of price underpins the entire application.

- The TFCA purports to be “representative” of Tasmania’s forestry contractors and yet it acknowledges that the “vast majority” of its membership base rests with the harvesting and transport sectors. There is no real quantification of the TFCA’s representative capacity, such that there can be no assurance that should the application be granted, Rayonier will not be required to engage in two tiered negotiations – one with TFCA members and one with non-members.
- Rayonier is only involved in the softwood industry. Accordingly, the article quoted at page 11 of the application and relating to the profitability of the hardwood industry is not reflective of Rayonier’s position. It should be noted that, currently, returns to softwood growers are poor. For the first time since commencing operations in Tasmania in 1999, it is not financially viable for Rayonier on behalf of the soft wood joint venture to invest in new areas of softwood plantations.
- The application makes direct reference to conduct engaged in by other wood companies, principally Gunns Ltd, but makes no direct reference or criticism of Rayonier. As will be disclosed below, none of the criticisms contained in the TFCA’s application, and leveled at wood companies apply to Rayonier.

3. RAYONIER’S SILVICULTURE CONTRACTS

The TFCA seeks long term, comprehensive, written silviculture contracts.

Rayonier has written contracts with *all* of its silviculture contractors, all of which comply with the Forestry Fair Contracts Code 2003. Rayonier currently engages 13 silviculture contractors, 7 of which have had consecutive contracts with the Company since it commenced operations in Tasmania in 1999. The contracts vary according to the individual contractors concerned and the work to be performed. Generally, the contracts with silviculture contractors are for relatively short terms.

Most of Rayonier’s silviculture contracts provide for a range of services to be provided by the silviculture contractor. In some cases, however, the contractor’s crew simply lacks the

capacity to perform certain operations and so the contract must be restricted to those functions that are within the capability of the crew.

Silvicultural work includes site preparation, tree planting, pruning, weed control, supervision, inventory and mapping services. By its very nature, silviculture work is seasonal. For example, replanting work must be done in winter. Rayonier's silviculture requirements "peak" during replanting season. Far more labour is required for replanting than for any of the other silviculture activity. Rayonier has neither the need nor the financial capacity to maintain "peak" labour levels at other times of the year.

In addition to seasonal factors, Rayonier's silviculture needs are also affected by the areas available to be tended at a particular time. Market factors such as the prices charged by some contractors and the availability of funding also impact on the Company's silviculture requirements.

It is Rayonier's submission that long term contracts are simply not appropriate to silviculture. Given the fluctuations in available work (driven by seasonal changes), areas available and investment decisions, Rayonier submits that its current approach is fair and reasonable to all parties.

4. RAYONIER'S HARVESTING CONTRACTS

The TFCA seeks long term written contracts

Rayonier has written contracts with all of its harvesting contractors. Rayonier currently has contracts with 10 harvesting contractors, 7 of which it has had contracts with since 1999. Of the remaining contractors, two have been contracted to the Company since 2002 and the remaining one has been used on a short-term basis at his request.

All of Rayonier's harvesting contracts comply with the Forestry Fair Contracts Code 2003, and follow the Code's wording.

All of Rayonier's harvesting contracts have annual indicative volumes and weekly cutting lists are set to allow these volumes to be reached. Weekly cutting lists are based on annual volume divided by 48 weeks to allow for public holidays and other non-productive days.

All Rayonier's harvest contracts have a rate matrix. All matrices have been provided by the contractor and are based on the particular contractor's cost of production. Rates are reviewed as per the rate review table according to the contract terms. Rayonier undertakes extensive market indexing which it uses to help set base rates.

By its willingness to enter into long term written contracts and comply with the Forestry Fair Contracts Code 2003, Rayonier has shown its preparedness to deal fairly with its contractors. Rayonier, however, does not accept responsibility for contractors meeting minimum revenue targets. It is up to the contractor to ensure that its own operation is efficient and profitable. Rayonier believes that its harvesting contracts allow contractors to achieve revenue targets.

5. RAYONIER'S CARTAGE CONTRACTS

The TFCA seeks long term written contracts

Rayonier has long term written contracts with all of its cartage contractors and all contracts comply with the Forestry Fair Contracts Code. Rayonier currently has four cartage contractors. Three of the contracts have been in place since 1999 and the fourth came into effect in 2004.

All cartage contracts have rates agreed to at the start of the contract. The rates are adjusted by mutually agreed review tables and in accordance with the contract. Most cartage contracts have a fuel adjustment clause built into them. Some older contracts do not have a fuel adjustment clause, but the clause will be inserted when the contracts are renewed. Nevertheless, Rayonier has given these contractors fuel rate increases.

6. OCCUPATIONAL HEALTH & SAFETY

The TFCA submits that the ability to collectively bargain will result in improved safety for forest contractors.

Rayonier refutes this.

Rayonier considers worker safety to be of utmost importance, and its occupational health and safety program reflects this.

The main tenets of Rayonier's health and safety program are set out below:

- Rayonier has a comprehensive health and safety management system comprised of a documented health and safety plan, and supported by an integrated computer data base which manages all health and safety business activities.
- Rayonier undergoes annual independent audits of its safety management systems – at its last independent audit it scored 95.2%. The audits are conducted by “*Australia Working Safely*” with the express purpose of monitoring the Company's progress on occupational health and safety and identifying areas for improvement. Assessing the Company's management of contractor health and safety is a key component of this audit.
- In all of its agreements with forest contractors, Rayonier imposes stringent occupational health and safety requirements on both itself and the contractors. Annexed* is a copy of the relevant schedule from the standard form contract used by Rayonier.
- Rayonier requires all of its contractors to undergo annual safety management system audits conducted by an independent auditor. Rayonier provides feedback and suggests improvements to its contractors after each audit. When Rayonier initiated contractor system audits in 2000, the average score for all harvesting and transport crews was 56.1% and for silvicultural crews was 55.7%. At the most recent audits, the harvesting and transport crews' average score was 87.7% and the silvicultural crews' average score was 84%.
- Prior to any work commencing on a coup, Rayonier conducts pre-harvest meetings on site and conducts a safety check. The purpose of the meeting is to ensure that the

contractor fully understands the task to be undertaken, the methodology to be adopted, controls on the site, access issues and safety issues.

- Rayonier also conducts field safety audits with the principal contractor, on site within two weeks of a new crew starting. Audits are undertaken once every two months at a minimum and no prior warning of the audit is provided to the contractor. Rayonier can, and on occasions, does, shut down operations as a result of contractors failing field safety audits.
- Rayonier provides monthly individual performance reviews to *each* of its contractors. The monthly performance reviews detail, amongst other things, the contractors' health and safety statistics for the previous month and the year to date.
- Rayonier provides general monthly updates to *all* of its contractors. The monthly updates cover a range of issues relevant to contractors, including occupational health and safety issues.

The effectiveness of Rayonier's occupational health and safety program is borne out by the significant reduction in lost time due to injury that has occurred since it commenced operations in Tasmania in 1999. Annexed* is a copy of the lost time statistics for the three year period July 2002 to June 2005. Those statistics demonstrate a reduction in lost time due to injury in excess of 80% for harvesting and cartage contractors and in excess of 60% for silviculture contractors.

In its application, the TFCA asserts at page 25 that "*the conditions of roads are deteriorating as wood companies reduce expenditure*". The TFCA goes on to imply a link between road condition and worker safety. Rayonier has had no accidents caused as a direct result of road conditions since commencing operations in Tasmania in 1999.

In addition to worker safety forming an integral part of Rayonier's corporate philosophy, the Company owes both common law and statutory duties to ensure the occupational health and safety of forest contractors - *Workplace Health and Safety Act 1995 (Tas.)*, *Forest Practices Code (Tas.)* and *Workers Compensation and Rehabilitation Act 1988 (Tas.)*.

It is Rayonier's view that the proposed arrangement by the TFCA will have no bearing at all on the health and safety of forest contractors engaged by Rayonier. Collective negotiation

and the ability to engage in secondary boycotts will in no way enhance or improve Rayonier's health and safety record or the health and safety of forest contractors generally. It is Rayonier's submission that the TFCA has failed to disclose any public benefit that will flow from the proposed authorization.

7. INCREASED RETENTION OF SKILLED WORKERS AND IMPROVED TRAINING FOR NEW EMPLOYEES

The TFCA submits that the ability to collectively bargain will lead to retention of skilled workers and improved training for new employees.

Rayonier refutes this.

The TFCA provides no evidence to support its submission in this regard. There is no nexus between the conduct sought to be authorized and the outcome the TFCA submits will occur. In Rayonier's submission, certainty of employment and rates of pay (as provided for under its contracts) lead to retention of skilled workers and improved training for new employees. It is Rayonier's submission that there is no basis disclosed in the TFCA's application to justify any departure from the status quo.

8. REDUCED TRANSACTION COSTS FROM CONDUCTING GROUP NEGOTIATIONS

The TFCA submits that the ability to collectively bargain will reduce transaction costs.

As mentioned above, there is no evidence provided in the application as to the exact level of industry representation possessed by the TFCA. It seems apparent on the face of the application that the TFCA is not particularly representative of silviculture contractors, and no precise figure is given for its representative capacity in the harvesting and cartage industries. It appears likely that if the TFCA's application is granted Rayonier would be required to duplicate its negotiation activities in order to negotiate with members and non-members of the TFCA. Quite clearly such an outcome would increase rather than reduce transaction costs.

Rayonier is content to bargain with the TFCA if requested to do so by a forest contractor. If, however, an individual contractor wishes to negotiate directly with Rayonier, then Rayonier submits that both parties should have the ability to do so. In Rayonier's submission, collective bargaining could result in less favourable contract terms for contractors as the existing flexibility to deal with contractors on an individual and case by case basis would be impossible. Collective negotiation would, in many instances, remove many of the benefits achieved by contractors by prior negotiation and years of goodwill between the contractors and Rayonier.

9. IMPROVEMENTS IN SOCIAL WELL-BEING

The TFCA submits that the ability to collectively bargain will lead to improvements in social well-being

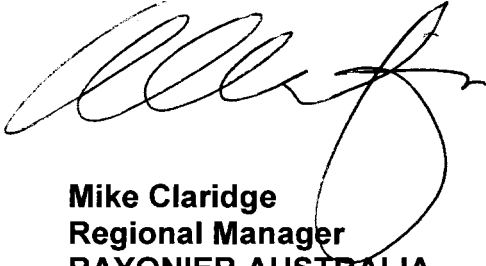
Again, there is no evidence cited or nexus drawn to establish that the TFCA's application will produce this outcome. It is Rayonier's submission that there is no basis disclosed in the application to justify the granting of the authorization on this basis.

10. SUMMARY

In summary Rayonier submits that the TFCA's proposed arrangements :

- (a) will not improve occupational health and safety standards for forest contractors and their employees;
- (b) will not lead to increased retention of skilled workers and improved training for new employees;
- (c) will not reduce transaction costs of contract negotiations, but will, in fact, increase those costs;
- (d) will not lead to improvements in social wellbeing for forest contractors; and
- (e) will not lead to improvements in the viability of the timber industry in Tasmania.

For these reasons, Rayonier submits that no public benefit can be shown to flow from the proposed authorization and that the TFCA's application should be refused.

A handwritten signature in black ink, appearing to read 'Mike Claridge', written over the typed name and title.

**Mike Claridge
Regional Manager
RAYONIER AUSTRALIA**

Dated Friday 12th August, 2005

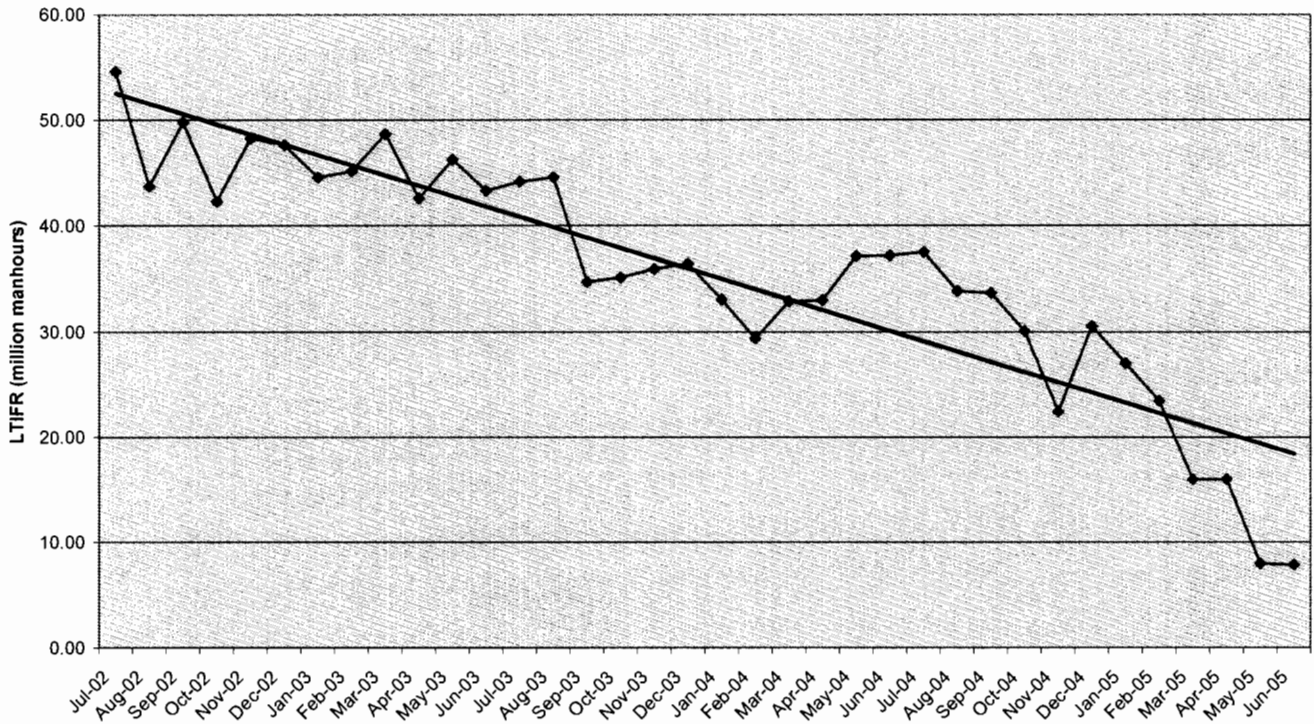
SCHEDULE 4

Occupational Health & Safety Requirements

1. The Contractor must have and implement a documented comprehensive Work Place Safety Management Plan in respect of all Services carried out under this Agreement and in respect of all work sites where such Services are performed.
2. The Contractor must ensure that as a minimum the Work Place Safety Management Plan contains provisions for:
 - (a) identifying hazards which may arise in the workplace and in carrying out work activities;
 - (b) assessing the risk associated with those hazards;
 - (c) implementing appropriate measures to control that risk.
3. The Workplace Safety Management Plan will include a fitness to work policy.
4. The Contractor must forward the Workplace Safety Management Plan to the Principal before commencing the Services and must ensure that the Services are performed by the Contractor and persons under its control in accordance with the plan.
5. The Contractor must comply with such instructions as the Principal may from time to time give regarding the content and performance of Work Place Safety Management Plan and the reporting of information regarding the plan which reporting shall occur monthly for review and audit by the Principal or its lawfully appointed agents for compliance with the plan and instructions.
6. The Contractor must attend any meetings, seminars, or inductions concerning occupational health and safety as required by the Principal from time to time.
7. The Contractor must:
 - (a) report all accidents, incidents, and near miss incidents to the Principal, as well as any other appropriate authority, within 24 hours of their occurrence and in accordance with procedures prescribed by the Principal;
 - (b) ensure that all plant, equipment, machinery, vehicles and tools are in a safe working condition and the Contractor must not permit the use of equipment that is damaged or does not meet prescribed safety standards.
 - (c) By the 7th of the month following, provide a monthly safety report, detailing all personnel statistics for work which has occurred on Softwood Tasmania (Operator) Pty Ltd land managed by the Principal. A template will be provided for this purpose.
8. Prior to the start of harvesting in a new coupe, the Principal will prepare a Forest Operations Safety Plan as defined by the Tasmanian Forest Safety Code. This does not remove any responsibility from the Contractor to carry out risk assessment to identify risks arising from either the work method or the location. All risk assessments shall meet the requirements of the Forest Safety code, be fully documented and explained to all employees and visitors to the site.
9. It is the contractors responsibility to decide on the most appropriate and safe method of carrying out the task required. The Principal may impose constraints specifying what may not be done or targets specifying desired outcomes; without limiting the above, it is the contractors responsibility to ensure the task is carried out in a safe method while meeting all constraints and outcomes. The contractor has the absolute right, and is obligated; to refuse to carry out any work the contractor considers to be unsafe.

The graphs below show the rolling average since July 2002 of Lost Time Injuries (LTI) where 8 hours lost in the next shift is deemed to be a LTI (Industry Standard by FT). The graphs are calculated by adding the total manhours for the last 12 months and dividing this by total LTIs for the same time frame.

LTIFR Harvesting since July 2002



LTIFR Silviculture since July 2002

