



Forest Industries Association
of Tasmania

21 July 2005

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

Dear Sir

**RE: Applications for Authorisations A90973 and 90974 lodged by the Tasmanian
Forest Contractors Association Ltd**

The Forest Industries Association of Tasmania (FIAT) has been provided with a copy of the applications for authorisations numbered A90973 and A90974 lodged by the Tasmanian Forest Contractors Association Ltd ("the TFCA") by which the TFCA in summary seeks authorisation from the ACCC to substantially reduce competition in the market for the services of its members, which primarily consist of contractors engaged in the logging component of the timber industry.

The FIAT is a company formed in 1983 (previously the Tasmanian Timber Association) to represent the interests of its members who are predominantly processors of forest products. Those processing activities include producing veneers, hardwood and softwood sawing, production of wood panels, manufacture of pulp and paper and the export of woodchips. Our members are also engaged in a diverse range of forest management activities in both native forests and plantations ranging from site preparation, planting, silvicultural management and harvest.

The objectives of FIAT are as follows: -

1. Provide a focus for policy formulation and for representing the views of the state's forest based industries to community decision makers and to the public;
2. Develop and co-ordinate "industry service functions" — notably training and education, timber marketing, research and industrial relations — and other matters which need to be addressed on an industry-wide basis.

Of those Companies named as proposed parties in the TFCA application all except Forestry Tasmania are members of FIAT.

It is important to understand that given the structure of the operational supply chain in the Tasmanian forest industry the impacts of these applications will be considerably broader than the immediate impact on the named Company's as the true impact will be felt on all wood processing facilities who would be required to accept any increased costs with little capacity to recover those costs in a very competitive marketplace. This is particularly true in the export markets (both within Australia and overseas) where there is little or no capacity to influence prices for products.

As FIAT were not notified of these applications we have not had time to liaise with our full membership on these applications given the extremely short time allowed for response to the application for Interim Authorisation. We will consult more widely in preparing our response to the Application for Authorisation.

FIAT opposes the grant of:

interim authorisation; and

final authorisation;

sought by the TFCA under the applications.

FIAT will provide in due course a detailed submission opposing the final authorisation sought and makes the following submissions opposing the interim authorisation sought.

FIAT submits that:

- the TFCA does not make out any proper case for the grant to it of immediate permission to engage in the uncompetitive conduct covered by the authorisations. The relevant paragraph, no.2, seeks permission “to engage in the conduct as detailed within this submission”, including, for example, a collective boycott of the provision of contractor services to the Wood Companies, but seeks to justify this only on the very limited basis of an alleged need “to engage in consultation with its membership base” over some apparently lengthy period of time that will be “required to effectively brief all members adequately”. That very limited basis does not in any way justify or require the grant of interim authorisation as sought or at all;
- if the applications for authorisation are considered as a whole there is no case therein made out that would justify the taking by the TFCA of any immediate otherwise illegal action to alleviate some pressing need or to achieve some substantially important short term goal. Rather, the applications attempt to paint a picture in which the industry of which the TFCA and its members form part has undergone some form of structural change which is alleged, on the basis of what appears to be fundamentally flawed economic analysis, to have put the members of the TFCA in some position of competitive disadvantage. The allegations of competitive disadvantage are and will continue to be denied, but, even if they are made out, the submission does not reveal any occasion for the undertaking of any immediate action prior to the determination by the ACCC of the application on its merits;
- if interim authorisation is granted it is likely that the competitive dynamics of the market for contractor services will be permanently altered and the market will be strongly inhibited from returning to its pre-interim state if authorisation is later denied, because:

- i. the grant of interim authorisation will strongly encourage the TFCA and its members to engage in anti-competitive conduct at least to the extent authorised, and probably further than that; and
 - ii. the grant of interim authorisation is likely to be perceived by the TFCA and its members as evidencing merit in the application for authorisation, which should not be permitted to occur prior to the determination of the application on the merits by the ACCC;
 - iii. interim authorisation may be utilised by the TFCA and its members for collateral and illegitimate purposes, such as representations to government in summary to amend the code which applies under the *Forestry (Fair Contract Codes) Act 2001*, or to amend or enact other legislation, on the basis that the interim authorisation evidences a view of the ACCC in summary that the applications for authorisation have merit;
 - iv. the grant of interim authorisation will engender expectations and cement an attitude in the minds of the members of the TFCA which may not be expunged by the ultimate failure of the application for authorisation, with the result that conduct permitted under the interim authorisation is continued against the Wood Companies even after the failure of the applications, notwithstanding that the conduct is illegal.
- The ACCC ought not, it is submitted, facilitate or encourage otherwise illegal conduct, or anticompetitive conduct, but should leave free competition to operate, as it does presently, in the relevant market, namely the market for the services of the members of the TFCA, and others providing the same or similar services.

Yours Sincerely

Terry Edwards
Chief Executive