

# Freehills

# **Gunns Limited Presentation to ACCC**

**Response to applications for  
authorisation A90973 and A90974 lodged  
by the Tasmanian Forest Contractors  
Association Limited**

13 September 2005

Freehills

# Background and industry overview

Freehills

# Guns Limited

- Relevant business operations:
  - woodchip
  - sawmilling
  - plantations
- Other wood companies
- International competitive environment
- Significance of forest contractor services

Freehills

# Gunns and forest contractors

- Harvesting and transport contractors
  - Gunns' history
  - activities and regions
  - previous central rate fixing model
  - introduction of competitive tender process
- Silviculture contractors
  - Gunns' history
  - activities
  - no central rate fixing
  - changes in plantation/silviculture industry

# Current relationships and economic environment

- Nature of existing contractual arrangements
  - Harvesting and transport
  - Silviculture
- Negotiation of contract rates
  - annual reviews
  - relevant factors
  - dealing with unexpected circumstances
  - contractor rate increases (and the economic environment)

Freehills

# Forestry Fair Contracts Code

- History and background
- Purpose of improving fairness of forestry contracts
- Developed following comprehensive industry consultation
- Standard general contract conditions implied into every forestry contract
- Potential for further codes to be developed
- Gunns' standard form contracts

Freehills

# The TFCA

- Role in representing contractors
  - Harvesting and transport
  - Silviculture
- Role in contract negotiation
  - annual review ( if requested by Contractor )
  - rate negotiation ( if requested by Contractor )
  - exceptional circumstances ( if requested by Contractor )



# The TFCFA application for authorisation

Freehills

## Scope of authorisation sought

- Direct and indirect impact on broad range of businesses
- Relates to any term or condition – price and non-price
- Centralised, industry wide price-fixing with involvement of TFCA (rate matrices and price increases)
- Boycott / enforcement mechanism
- Serious *per se* contraventions

# Alleged public benefits

- Gunns notes:
  - TFCA public benefit submissions not substantiated
  - numerous factual inaccuracies
  - selective examples, not representative of realities of Tasmanian forestry industry today

## Alleged public benefits

- Safety
  - comprehensive safety regulation
  - backed up by contractual checks and balances
  - Gunns and contractors take safety very seriously
  - Gunns' safety statistics and observations
  - how will collective bargaining assist?

Freehills

# Alleged public benefits

- Employment and training
  - Australian labour market conditions
  - Tasmanian forestry market conditions (harvest and cartage; silviculture)
  - existing training initiatives/programs
  - how will collective bargaining assist?

# Alleged public benefits

- Transaction costs
  - compare transaction costs
    - current, with standard form contracts and Fair Contract Code
    - likely with collective bargaining / boycott
  - no identified area of transaction cost saving
  - substantial transaction cost increases
  - TFCA membership levels and fees

Freehills

## **Alleged public benefits**

- Industry sustainability/social issues
  - internationally competitive industry
  - cost increases will result in switching to foreign supply
  - hardship for many contractors and other people that rely on the forestry industry in Tasmania

## Collective bargaining – Anti-competitive detriment

- Impact on industry sustainability in face of intense international competition
  - significance of forestry contractor costs
- Consequences of central rate fixing model:
  - artificial inflation of contractor prices
  - disincentive to innovate and invest
  - reduction in price and non-price competition
  - failure to respond to/account for significant differences in contractor operations
- Inefficiencies (including transaction costs)

Freehills



# Collective boycott – Anti-competitive detriment

- Likely use in enforcing rate fixing and other anti-competitive arrangements
- Potential to cause significant harm to Australian businesses
  - supply disruption
  - reputation harm
  - not just wood companies affected
- Lack of justification / public benefit claim

# Conclusion

- No demonstrated market failure in Tasmania
  - appropriate legislative and regulatory framework already exists
- Excessive and distortionary proposal
  - centralised rate fixing
  - collective boycott as enforcement
- TFCFA has not shown public benefit
- Likely to be substantial public detriment
- Authorisation test not satisfied

Freehills

# Questions and closing remarks

Freehills

# Freehills

[www.freehills.com](http://www.freehills.com)