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## FACSIMILE TRANSMITTAL SHEET

TO: <b>Cameron Martin</b>	FROM: <b>David Hazell</b>
COMPANY: <b>ACCC</b>	DATE: <b>6/10/2005</b>
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URGENT     FOR REVIEW     PLEASE COMMENT     PLEASE REPLY     PLEASE RECYCLE

Dear Cameron,

Attached is the letter from the TFCA complete with our comments regarding the submission received from some of the more contentious responses to date. We have posted an original copy to you in the mean time.

Kind regards,

A handwritten signature in black ink, appearing to read 'David Hazell', is written over a white rectangular area.

David Hazell

Executive Officer

TFCA

PH: 0417520591

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30<sup>th</sup> of September 2005

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

**Applications for Authorisation A90973 and A90974 lodged  
by the TFCA**

Dear Sir / Madam,

In response to your letter dated the 22<sup>nd</sup> of August 2005, the TFCA have prepared this document in response (and where deemed necessary) to the submissions (attached to the above-mentioned letter) received from industry stakeholders.

In summary, the TFCA can see that the majority of the respondents appear to have misinterpreted the intention of the application for Authorisation and assume that the TFCA will be instigating large and holistic rate fixing and heavy handed, anti competitive practises that will damage the viability of the entire Tasmanian Forest Industry.

The reality of the situation however is that nothing could be further from the truth. The TFCA have applied to the ACCC for Authorisation so that where required and or where there is support – contractors will be able to collectively approach and subsequently negotiate with much larger businesses. There is no reference to price fixing and it is disappointing that some responses distinctly portray an image that the forest contracting fraternity are incapable of negotiating a fair outcome. To assume (as many respondents have done) that the Wood Companies have a mortgage on market intelligence and an understanding of the international market forces is incorrect.

A fair outcome and a functional negotiation platform is the real intention of the TFCA submission. It is not a question of higher rates or a fat and inefficient contracting sector; rather, the TFCA submission proposes a means to collectively negotiate outcomes (if deemed desirable by TFCA members) so that a balanced dialog can take place. The objective is a sustainable forest-contracting sector; the process that is embarked upon to achieve this outcome does not necessarily require a higher contract rate.

Some brief comments have been provided below where deemed necessary:

Forest Enterprises Australia:

- The submission clearly focuses on negative aspects with reference to “ a collusive contractor base not in the best commercial interests of investors...”. The TFCA alternatively believe that a desirable statement would be something like ‘ a sustainable supply chain (including forest contractors) presents a platform for a healthy industry where investors benefit from a vibrant supply chain that is able to invest confidently in new and competitive technologies’.
- The reference within the document that suggest no knowledge of contractors having to push or pull trucks supports a lack of understanding concerning the real issues facing contractors.
- The submission makes a reference to the availability of Government funding for training purposes. The TFCA agree that there are some Government funding initiatives available to forest contractors and indeed, TFCA members use these in some cases. However the point is missed as the primary reason that training and formal traineeships is low within the forest contracting sector is not the cost of the wages for the trainee, but due to the cost of lost production on expensive equipment and also the compounding effect of a productive and experienced employee being only partially productive themselves through the training, coaching and supervisory stage of the traineeship.

Forestry Tasmania:

- Makes the statement that collective bargaining with a single body (TFCA) would inhibit best cost outcomes. This statement assumes a one sided debate and further assumes that every negotiation will include all TFCA members, subsequently missing the point that small regional groups may be more prevalent.
- Further, the statement that the TFCA are not adequately equipped and tasked to administer any collective approach is without foundation.

Rayonier:

- Report makes reference to the TFCA being involved in collective price fixing, which is completely incorrect.

- Although the comments made about the TFCA submission for Authorisation quoting numerous examples from the hardwood industry is in part true, the same need for an exemption is equally applicable for contractors involved within the softwood sector of the industry.
- The Rayonier opinion regarding the silviculture contract task and the seasonality restrictions not allowing any reasonable contract tenure, regardless of lateral thinking and collective bargaining is a typical response generated from the majority of the hirers of the silviculture contractors services and supports the TFCA need for a collective approach to this debate.

#### Department of Employment and Workplace Relations:

- Assumes incorrectly that the TFCA intend or at least could initiate collective bargaining simultaneously between all Wood Companies and utilising all three proposed sectors being harvesting, transport and silviculture. This simply is an unrealistic opinion and one that regardless of the physical restrictions does not fit within the TFCA submission.
- Their submission goes to further explain that the public benefits, particularly the TFCA reference to improved OH&S (due to contractors being forced to 'push the envelope' by having to balance economic survival with a duty of care responsibility), is in their opinion not relevant due to existence of State and Federal Legislation. The whole tone of the latter part of the submission attempts to water down the TFCA argument on this or a similar basis. The real point is however missed because they have failed to take any consideration of the effects of an industry where in certain circumstances the abuse of market power distorts a fair and regulated process.

#### Norske Scog:

- Assumes that the TFCA will automatically be collectively bargaining with them and that they currently have good relationships with their contracting sector, and as a result they do not see the need or indeed any gain from a third party such as the TFCA intervening. The key point they miss however is that should the TFCA members not wish to collectively bargain (at a given period) or that they feel there is no need, then the TFCA or groups of TFCA contractors will not initiate collective bargaining with the relevant Wood Company.

Forest Industries Association of Tasmania (FIAT) and Symetrics:

- FIAT make reference in the opening page of their submission that they "note that the harvesting, cartage [transport], and silviculture sectors have attracted and continue to attract capital and investors". This observation needs to be clarified; firstly due to the nature of these contracting services, as capital in the form of new and productive equipment is imperative if a contractor is to be able to achieve a high percentage of available work hours and achieve the productivity outputs required. Yes capital has been invested intermittedly across particularly, the harvesting and transport sectors for this reason. It is however worth noting that the high fixed costs of the necessary equipment are often the demise of contractors when contract volumes are cut (as per the existing market) and frequently 'lock' contractors to their business with no easy way of exiting due to high monthly repayments and rapid depreciation of specialised equipment. The TFCA have witnessed decreasing levels of capital investment in the last 12 months particularly due to poor financial returns, high debt to equity ratios, shortening contract tenures, an over supply of contractors and market instability. The second point the TFCA wish to point out regarding this statement from FIAT, is that for every new investor attracted into the contracting sector in the last 18 months there has been more established (long term) contractors leaving the industry. At a point in late 2004, dialog between SMA Finance (Hobart) and the TFCA, realised 9 harvesting contractors that openly had their businesses on the market. Anecdotally there were several others that stated if they could get the right price for their business they would also exit the industry.
- Symetrics, page 9 makes reference to a strong interdependence between processors (Wood Companies) and contractors. This is assuming however a balanced or reasonable supply and demand. An unregulated market has resulted indirectly in an oversupply of contractors to the demand required from processors. Subsequently this scenario has voided any interdependence as a form of reasonable protection encouraging balanced negotiation. This same scenario also negates the statement made further into the same page where the document quotes " So the motivation of the timber processors in negotiating with contractors is to maintain the contractors viability and to provide profits for future investment". If only this was the case (it should be) as the TFCA would not be forced to seek Authorisation from the ACCC.
- The Symetrics report makes several references, comparing the Tasmanian Forest Contractors situation to that of an employer and employee relationship. Presumably this is due to a lack of reference material and academic literature regarding the relationship between a principal hirer and a contractor.

None-the-less, the comparison is not comparable due firstly to specific industrial awards, AWA's and other statutory provisions that are available to employees that are not to small business operators such as forest contractors. Secondly, because an employee within a business will not have the same risks as a small business operator i.e. should things go wrong, be faced with the prospect of financial losses and or the loss of personal assets that are frequently put up to financiers as borrowing security for expensive plant and machinery.

- The Symetrics observation on page 15, is correct by applying the effect of the *real* price of the timber products (noted within the TFCA submission) incorporating inflationary influences over a period of time and the assumption that the TFCA have neglected to incorporate this is correct as our tables used *nominal* changes only. However, even when this is taken into consideration, there were still marked increases in the prices of sawn timber commodities, when during the same period, it is quoted that "contractor rates remained static". Alarminglly this statement is made without considering the *real* change in contracting prices (which would clearly quantify a significant decrease in contracting rates over the same period). Subsequently to argue that the TFCA did not take into consideration the *real* value, and then in the same paragraph quote contractors rates being static in the *nominal* sense is disappointingly misleading to the reader.
- The statement contained within the Symetrics report on page 17, reads "the matching of different job tasks with varying degrees of difficulty with a tendered rate is in fact price fixing given the limited nature of negotiations between contractor and wood company envisaged in the TFCA proposal" shows a clear misunderstanding of the process. The TFCA proposed in the example quoted that the bargaining process would focus on the (difficulty) matrix only. The individual price negotiation that takes place between the contractor and the Wood Company would not change and contrary to what the Symetric report claims, natural market forces and competition will be unaffected for this reason. The only difference would be that contractors in normal individual negotiations with a Wood Company would now have a (difficulty) matrix where they need to negotiate / tender for a multitude of different job conditions and not a limited one or limited price structure that currently exists in the main - a structure that unreasonably expects contractors absorb within their costing the extremes of difficulties presented.
- The Symetric report, also on page 17, makes reference to the TFCA collectively negotiating minimum revenue target clauses. Three points must be made here. Firstly the suggestion within our report

was provided (amongst others) as possible examples only. Secondly should the relevant TFCA committee intend to collectively negotiate a like clause to this one, then the objective is to provide enough security within the contracts that can be afforded, obvious conditions such as external market influences would need to be considered. Thirdly, the Victorian Government has just legislated a similar clause within the Victorian Owner Drivers and Forestry Contractors Act 2005.

- On page 18 of the report, reference is made to how the productivity effects of the existing negotiation process results in innovation and investment in new technologies such as bigger trucks. The TFCA agree with this point and have made reference to it within our own submission. Our concern conversely is when a contractor invests in technology to gain the competitive edge, as per the example of a bigger truck. The Wood Company in return reaps the benefit of a more competitive rate, only then to unreasonably deny any assistance to the contractor, by building suitable roading infrastructure to accommodate the larger and more efficient unit. This abuse of market power occurs because the Wood Company has the cheaper rate structure (locked in with the contractor) and current contracts afford little or no protection for the contractor when infrastructure deteriorates, subsequently the TFCA example of a difficulty matrix (where prices are still independently submitted by the relevant contractor) at least offers some protection.
- The 'Case Study One' on page 19 is a deliberate distortion of the TFCA process suggesting that the intention is to achieve a 55% increase in rate because that is what has been achieved by the sawmill sector of the industry. Firstly the TFCA collective bargaining process is about improving the sustainability of the forest-contracting sector. How this achieved is for each individual committee to discuss and ultimately the outcome of the collective bargaining process will decide. Price rises are not the only means to achieve this result, better processes and or volume adjustments can equally create efficiencies for both parties. It is both ludicrous and misleading to suggest a price increase of 55% is the TFCA intention.
- The 'Case Study Two' on page 20 also suggests that a price increase is the only net effect of collective bargaining with the TFCA, which is clearly incorrect.

Gunns Limited:

- Multiple references are made within the Gunns Limited submission regarding the TFCA process as 'Rate Fixing' or 'Rate Fixing Models'. This assumption appears to be a deliberate attempt to discredit the TFCA application. For example, on page 3 of their submission contained within the Executive Summary, particular reference is made to "the harm caused by centralised rate fixing models for contractors more than a decade ago. The similar model now proposed by the TFCA...". The models that they refer to have also been referenced within the TFCA submission (p.15, 7.1 History). The point to make here is that the difficulty matrixes proposed by the TFCA today are distinctly different to those of 10-15 years ago. **There is no** collective price fixing proposed within the current difficulty matrix proposal, prices are still negotiated on an individual contractor by individual contractor basis with each of the relevant Wood Companies. This is a fundamental difference because it does not influence competition and subsequently innovation or production advancements. The TFCA matrix example has been designed so that a contractor in negotiation with the relevant Wood Company has a template to ensure they are able to obtain an individually negotiated price for the task required, as opposed to a limited price structure that is expected to fit an extremely wide variety of job tasks and difficulty. To even suggest that the TFCA are attempting to price fix like to 'bad old days' is misleading and absolutely incorrect.
- Page 7 of the Gunns Limited submission states that the TFCA are "seek[ing] to collectively negotiate matters that will fix, maintain or control contract prices". Reference is also made to section 11 of the TFCA application for Authorisation. Once again the TFCA must state that these initiatives **are not price fixing initiatives**, an example of one of these supposed price fixing initiatives was covered in the previous paragraph.
- Within the Gunns Limited response section 6.6. - 'Current relationship between Gunns and its forest contractors and the economic environment'. The statement is made where Gunns claim that the majority of contracts with transport and harvesting service providers are written, long term and 'evergreen' contracts. Although the TFCA is aware of some 'evergreen' contracts they certainly seem to be more of a minority than the majority. Equally where written and long-term contracts are claimed to be the trend by Gunns, from the TFCA perspective there are less written contracts and shorter contract tenure available to contractors today. An example of this is the TFCA has recently received information from Gunns contractors that the Wood Company is to cut short any existing 'evergreen' contracts.



- The same section of the report goes onto claim that 8 separate factors are individually negotiated into contract rates including weather conditions, gradient of the land, and timber conditions such as rot and charcoal etc. The next paragraph then reads that contract price variations due to unexpected circumstances are negotiated on an individual basis. The later is true to an extent; because a process is available to negotiate an individual case however the negotiations process is frequently one sided. The first section however suggesting that multiple attributes are considered at the time of submitting a price is misleading and cannot occur due to the contractor not knowing where the job sites are in advance. The way Gunns have worded this section of the report is misleading as it conjures a view of fair negotiation encompassing multiple facets of the job when it simply is not and cannot be the case.
- The first paragraph on page 16 of the Gunns Limited report makes reference to "Gunns [in most cases] conduct[ing] an annual review of each harvesting and transport contractor[s] performance", quoting several aspects of the performance review process. Although this is a requirement within the Forestry Fair Contracts Code 2003, the TFCA have on authority from its membership that Gunns themselves will infrequently initiate this process. The contractors more often than not request it and this can take several request before a meeting is scheduled. Secondly, the requirement within the Act /Code stating that the *Principal must take minutes of each meeting held under this clause and deliver a draft copy to the other parties within 7 days of the meeting*, has to the knowledge of the TFCA, never been complied with by Gunns Limited.

In summary it was to be expected that the Wood Companies and their representative bodies were going to respond to the TFCA application for Authorisation in the manner they generally have. Unfortunately however, their submissions contain gross exaggerations of possible detrimental outcomes and none of them reflect the possible benefits of an industry collectively communicating (between relevant stakeholders) and working together. The TFCA application does not have to be about rate increases as there are many ways to afford further efficiencies. Additionally to suggest that by giving the TFCA and its membership Authorisation the industry will be destroyed by subsequent loss of productivity and competitive rate structures is without foundation and not reflective of the TFCA submission. Finally, several documents make reference to the TFCA submission containing much anecdotal evidence, this in part is correct, however when taken in context where the effected contractors fear retribution from speaking out and or providing hard data, the TFCA's role is difficult.

Please do not hesitate to contact me, the undersigned should you require any additional information or clarification on any of the above points.

Yours Sincerely,



David Hazell  
Executive Officer  
TFCA  
Ph: 0417520591

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