

Our Ref: C2005/1078
Contact Officer: Cameron Martin
Contact Phone: 02 6243 1107

9 November 2005

Dear

**Application for authorisations A90973 and A90974 lodged by
the Tasmanian Forest Contractors Association Limited**

I refer to the abovementioned application for authorisations A90973 and A90974 received by the Australian Competition and Consumer Commission (the ACCC) on 30 June 2005.

The Tasmanian Forest Contractors Association Limited (the TFCA) has sought authorisation to allow it to negotiate with various wood companies on behalf of its member forest contractors and, under certain circumstances, allow those members to collectively boycott the wood companies.

The ACCC has issued a draft determination proposing to deny authorisation to A90973 and A90974. A copy of the draft determination is attached to this letter and will also be available on the ACCC's website: www.accc.gov.au.

A summary of the ACCC's reasons, as well as directions on how further submissions may be lodged, is provided bellow.

Summary of reasons

Based on the information provided by the TFCA and interested parties, the ACCC understands that a significant feature of the Tasmanian forest industry is that it requires forest contractors to carry out a wide range of tasks, many of which may be specialised or unique to a certain wood company or to a particular coupe.

In particular, the ACCC understands that the diversity of coupes means that individual forest contracting businesses often compete to differentiate themselves in order to win particular contracts from the wood companies based upon individual skills, experience and available equipment.

The ACCC considers that a natural consequence of this diversity is the need for varied, and flexible, contractual arrangements.

The ACCC is concerned that the proposed collective bargaining arrangements have the potential to result in some detriments to the public, in particular by reducing the current use of 'tailored' contractual arrangements. Increased standardisation of contracts may result in:

- reduced innovation by forest contractors in respect of the services that they provide
- reduced levels of service differentiation between forest contractors and
- the adoption of less effective work practices by contractors.

The ACCC is also concerned that if collective negotiations were to fail and a collective boycott was brought into effect, the potential to harm all market participants, including the forest contractors themselves, the targeted wood companies, and consumers of Tasmanian wood based products, including export markets, would be significant.

On balance, the ACCC is concerned that many of the benefits often found in collective bargaining are less likely to arise in this case. In particular it is not clear that the TFCA's arrangements will lead to transaction cost savings or that the arrangements will lead to more effective input into contracts by forest contractors than is currently the case.

Further submissions

Before the ACCC makes a final decision regarding an application, it provides an opportunity for the applicant and interested parties to make submissions in relation to the proposed authorisation. The processes for providing submissions, both oral and written, are provided below.

Pre-determination conference

In accordance with section 90A of the *Trade Practices Act 1974* (TPA), an interested party may notify the ACCC in writing by close of business on **Friday, 25 November 2005** if that party wishes the ACCC to hold a pre-determination conference in relation to the draft determination. The TPA does not allow the ACCC to extend this deadline.

A pre-determination conference provides the opportunity for interested parties, particularly in the event they are dissatisfied with the ACCC's draft determination, to make oral submissions in response to the draft determination. The TPA requires that the conference be held no later than 30 days after it is requested.

Submissions

The ACCC encourages interested parties to provide written submissions commenting on its draft determination. Unless confidentiality is requested, submissions will be publicly available and placed on a public register for that purpose. If you wish to include information in a submission which is of a confidential nature, it should be clearly marked as such and a claim for confidentiality for the material should also be submitted. You will be informed of the outcome of that claim and, if it is refused, the relevant material will be returned to you if you wish. Material for which confidentiality is granted will not be publicly available, but may be taken into account by the ACCC in making a final decision regarding the application. Guidelines for seeking confidentiality are attached.

If you wish to lodge a submission, would you please address it to:

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

Alternatively, submissions may be faxed to (02) 6243 1211 or emailed to adjudication@acc.gov.au

Submissions should be provided to the ACCC no later than close of business on **Thursday, 1 December 2005**.

If you have any queries or if you wish to discuss any aspect of this application further, please contact Cameron Martin on (02) 6243 1107.

Yours sincerely

Scott Gregson
General Manager
Adjudication Branch

Name	Title	Address
Mr Chris Jose	Partner	Freehills
Mr Kim Creek	General Manager (Operations and Sales)	Forestry Tasmania
Mr Andrew White	Chief Executive Officer	Forest Enterprises Australia
Mr Mike Claridge	Regional Manager	Rayonier
Ms Joanna Hewitt	Secretary	Department of Agriculture, Fisheries and Forestry
Dr David Boxall	Secretary	Department of Employment and Workplace Relations
Mr Mark Addis	Secretary	Department of Infrastructure, Energy and Resources
Mr Trevor Bird	Manager	Forests and Forest Industry Council of Tasmania
Mr Arnold Willems	Supply and Logistics Manager	Norske Skog Paper Mills (Australia) Ltd
Ms Jill Lewis	National Director	Timber Communities Australia
	The General Manager	CFMEU - Forestry and Furnishing Products Division
	The Manager	A & B Nominees Pty Ltd
	The Manager	AW Harvesting Pty Ltd
	The Manager	AUS-AM Harvesting Pty Ltd
	The Manager	Beaumont Pty Ltd
	The Manager	Bennett, TP & Sons Pty Ltd
	The Manager	Blackberry Brothers Logging Pty Ltd
	The Manager	Blue Tier Logging Pty Ltd
	Manager -- Projects	Forest Industries Association of Tasmania
Mr Larry Henderson	Manager	Tasmanian Fibre
Mr Andrew Wye	Branch Secretary VIC / TAS	C/O Transport Workers Union
Mr Bill Noonan	Lawyer	Page Seager
Mr Mark Rapley	Director	SMA Finance Pty Ltd
Mr Mark Sealy		Capitalcorp Equipment Finance
Mr Steve Brumby	Team Leader	Tafe Tasmania Hollybank
Mr Wayne Foss	Principal	Garrotts Accountants and Advisors
Mr Dallas Frost		Elphinstone Engineering
Mr Greame Elphinstone		