



Forest Industries Association
of Tasmania

January 25, 2006

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

FILE No: C2005/1079
DOC: D061 4676
MARS/PRISM:

Dear Sir

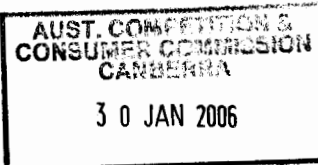
**Re: Pre-decision Conference regarding the ACCC's Draft Determination
in respect to Applications for Authorisations A90973 and 90974 lodged by
the Tasmanian Forest Contractors Association Ltd**

FIAT appreciated the opportunity to participate in the aforementioned pre-decision conference held in Hobart 19 December 2005. FIAT agrees that pre-decision conference minutes circulated by the ACCC reflect the discussions then held.

At that meeting, FIAT became aware that the TFCA had made supplementary submissions by letter dated 30 September 2005 and email dated 19 October 2005. In the submission of 30 September, the TFCA made a number of criticisms of the Symetrics economic analysis. Subsequently FIAT brought these criticisms to Symetrics attention and attaches their response. FIAT submits that the response completely answers the criticisms and maintains its reliance on the Symetrics economic analysis.

As to the submission by email of 19 October, FIAT is concerned that the TFCA challenged, in an argumentative way, a number of issues FIAT raised as part of its objection to the TFCA application. FIAT joins issue with and responds to the TFCA assertions by the further submissions made below.

FIAT also further addresses below one of the matters raised by the TFCA at the conference, and makes concluding submissions as to the disposition of the applications.



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Growth and regrowth for Australia
FIAT Submission to ACCC re Hobart pre-decision meeting

Matter raised in the TFCA Email Alleged Barriers to Exit from the Contracting Industry

The TFCA has asserted that capital cost of contractors logging, silvicultural and cartage equipment is difficult to recover because the equipment is specialised and contractors wishing to exit the industry cannot easily sell their equipment. We disagree with this assertion on two bases as follows:

1) There is a real and active market for used forest equipment throughout Australia. Interstate sales can be facilitated by a variety of means including Internet equipment sale sites such as:

<<http://www.anbonequipment.com/index.htm>>, <<http://www.forestcentre.com.au/>>, <http://www.scanforestry.com/logmax/equipment_used.asp>;

and through trade magazines such as Forest Logger and Sawmiller, and the national Forest and Timber.

2) FIAT strongly maintains that much of the forest contractors' equipment could easily transfer into other industries either within Tasmania or on mainland Australia. For example, the excavator is a very versatile and important part of a contractor's machinery mix. To determine how forest contractors use excavators a survey of 11 contractors operating in the native forest in Southern Tasmania was conducted. In aggregate these contractors supply approximately 500,000 tonnes per annum of native forest timber to industry. These eleven contractors use 32 excavators in their operations, 22 of which are fitted with log forks for debarking, sorting logs and loading trucks, a further 14 have log forks fitted with a hydraulic cut-off saw and can crosscut logs as well. Only four excavators were fitted with processors or felling heads and only one contractor has a purpose built felling machine.

If a basic excavator were fitted with log forks, the forks would add approximately 10% to the capital cost. This proportion is consistent across machine size so larger machines that cost more are fitted with correspondingly larger log forks but the relativity is maintained. A crosscut saw would add a further 10 to 15%.

In the case of cartage, trucks and trailers are easier to transport to other forest regions and thus are more marketable Australia wide and the trucks are more easily converted to other types of cartage such as gravel etc. Within the Tasmanian forest industry by far the most common configuration is a tandem prime mover with a triaxle trailer. Seven of the eleven aforementioned contractors retain regular carriers, and those carriers utilise 16 were trucks fitted with triaxle trailers and only 5 fitted with other types of trailers, totalling 21 trucks. A new triaxle log trailer would cost approximately 30% of a new truck and trailer combination.

It follows that FIAT maintains strongly that the claimed barriers to exit either do not exist or are not significant in the scheme of the contractors industry viewed as a whole.

Matter raised at the Conference-Trucks below safety standard

The TFCA made reference to a safety report on log trucks conducted in the NW Tasmania that was conducted following a fatal traffic accident. The inspection revealed a high incidence of safety defects in the trucks and trailers. The TFCA inferred the poor safety standard was linked to low rates of pay but no evidence was adduced to support this allegation.

The industry supports compliance with regulation and would welcome a more regular monitoring to ensure standards are achieved. However, this is a matter of law, and the enforcement of law, and is remote from the issues germane to these applications for authorisation.

Concluding submissions

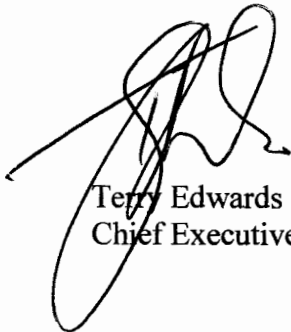
The further submissions of the TFCA have not answered the strong, well-founded and ubiquitous industry objections to the TFCA obtaining the right to engage in collective bargaining or the right to boycott. We welcomed and continue to welcome the TFCA offer to withdraw the application for authorisation to boycott but this does not diminish our still strong objection to their being granted the right to engage in collective bargaining.

As set out in our submission dated August 12, 2005, FIAT strongly maintains that collective bargaining by silvicultural, harvesting and cartage contractors would be seriously detrimental to the viability of many of the forest processing companies and consequently seriously injure the public interest.

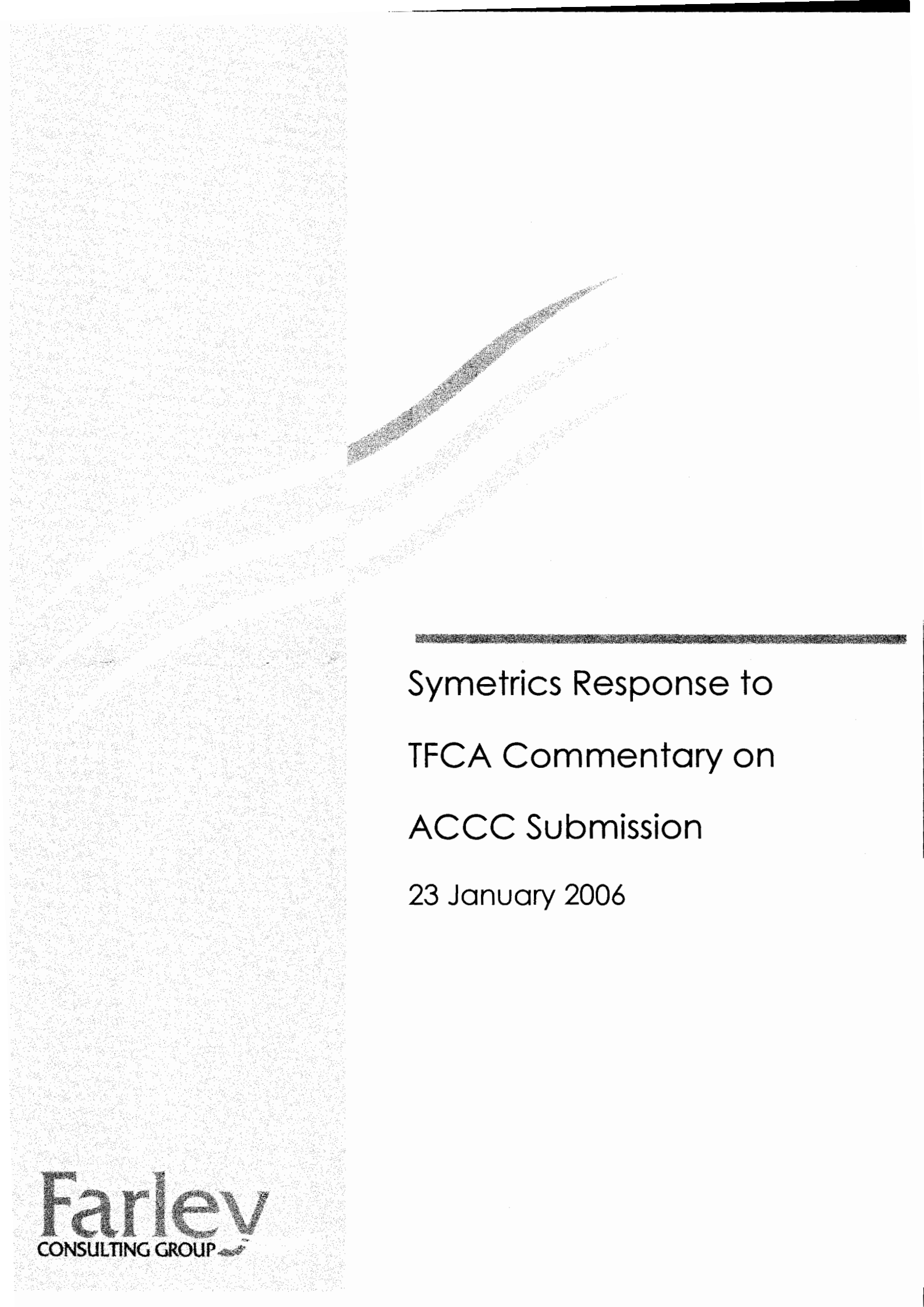
Moreover the TFCA has abjectly failed to discharge its onus to demonstrate that the authorisations sought, if granted, would advance the public interest. No demonstrable public benefit has been shown, but there are demonstrable detriments to the public in the form of reduced competition, innovation and efficiency, and the introduction of rigidity in the market for contractor services which will inevitably deleteriously affect the consumers of those services. The harm to the forest industry flowing or likely to flow from the detriments just mentioned is not something, which should be countenanced or promoted by the ACCC.

The draft determination should be confirmed without amendment and the applications thereby be refused.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Terry Edwards', written over the typed name and title.

Terry Edwards
Chief Executive



Symetrics Response to
TFCA Commentary on
ACCC Submission

23 January 2006

Introduction

This paper provides Symetrics response to the commentary provided by the Tasmanian Forest Contractors (TFCA) dated 30 September 2005 in response to the earlier submission to ACC in relation to the collective bargaining proposal put forward by TFCA.

The responses are made in the sequence raised by TFCA.

Response

Page 9

The Symetrics report, on Page 9, makes the following comment on the interdependence between the forest contractors and processors.

"The TFCA submission claims in several places that the contractor's bargaining power is weak and that contractors are disadvantaged in negotiation. However, the current structure of the forest industries reveals a strong interdependence between processors and contractors. The processors are reliant upon the contractor's investments modernising the way in which the contractors work. The consequence is that the 5 major processors need a healthy supply of contracted services. This can only be ensured if contract rates are adequate. The contractors are as much a part of the forest industry as the timber processors and the health of the industry is no more than the health of the sum of its parts. So the motivation of the timber processors in negotiating with contractors is to maintain the contractors viability and to provide profits for further investment. This investment has occurred on a relatively large scale to the benefit of all parties. The contractors, in particular, have made substantial efficiency gains from this investment in new technologies thereby reducing operating costs and potentially improving bottom lines even if contract rates have remained fairly stable over time. The vision of the timber processors exploiting small contractors in the negotiating process appears to be false."

The critique of TFCA claims that as a result of free market forces an oversupply of contractors has been created and undermined interdependence "as a form of reasonable protection". The critical point is however, on the claimed scenario that the industry requires rationalisation and the oversupply should be removed by the operation of market efficiency principles. These, Symetrics believes, are closer to both the content and spirit of the removal of anti-competitive practices in Australia. The TFCA proposal to protect the oversupply, by collective negotiation, is not consistent with the spirit and content of market efficiency principles.

P10

The TFCA report is in error in maintaining a distinction between the relationships involving contractors and the forest industry and employee/employer relationships. The key issue argued by Symetrics on page 10 is that the principles of Agent/principal theory apply to both types of relationships.

P15

The Symetrics report on page 15 applies constant prices to a table originally provided by TFCA to demonstrate timber price increases. The TFCA submission admits that real and not nominal prices are relevant. However they have provided no evidence for the statement that there has been a real decrease in contracting prices, relative to the costs of providing services. We would question the relevance of contractor rates without any reference to technical change, market trends and cost savings available each of which will have contributed to a change in real returns to the sector.

P17

The potential price fixing impact of infrequent tendering on task and difficulty matrices is identified by Symetrics on page 17 and questioned by the TFCA. The basis of the Symetrics analysis on this point is that tendering results in less efficient outcomes than individual bargaining and tendering in its most limited form is an anti-competitive practice. Symetrics on the balance of the arguments finds that individual bargaining has the potential to achieve more efficient outcomes in this industry than price tendering.

The inclusion of minimum revenue target clauses by TFCA in any negotiation is included as an option for negotiation. A goal to negotiate a secure revenue benchmark is anti-competitive, unrealistic and eschews the issue of the need for industry restructuring.

P18

The TFCA to Symetrics argument (p18) about productivity effects resulting from existing negotiation processes is in itself cultivating an anti-competitive culture within the industry. The TFCA argue that investment in technology to gain a competitive edge is in some way a concern to the industry and consumers of the product. This jars with the policy and processes of promoting competition in the industry.

P19

Case Study One on p19 of the Symetrics report merely provides an indication of the potential impact of the application of the TFCA approach. Symetrics agrees with this TFCA comment in that price rises are not the only means of achieving the outcomes sought. Quantity adjustments are equally important but the problem with the TFCA argument is its failure to recognise the interdependence of demand and supply in pricing. It is not feasible to separate supply and demand when analysing price effects. Price adjustments will produce quantity adjustments and vice versa, the result may be a drop in the welfare of TFCA members. Case study two attracts similar comment and attracts the same response.