

**Martin, Cameron**

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**From:** Martin, Cameron  
**Sent:** Friday, 6 January 2006 12:13 PM  
**Subject:** Application for authorisations A90973 and A90974 lodged by the Tasmanian Forest Contractors Association Ltd - Pre-Decision Conference

**Attachments:** TFCA PDC minutes.pdf

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

6 January 2006

**Sent by email**

Dear Sir

**Application for authorisations A90973 and A90974  
lodged by the Tasmanian Forest Contractors Association Ltd  
Pre-Decision Conference**

I refer to the above applications for authorisation lodged with the Australian Competition and Consumer Commission (ACCC) on 30 June 2005.

Please find attached for your records, minutes of the pre-decision conference held in Hobart on 19 December 2005 at which you were present.



TFCA PDC  
minutes.pdf (82 KI)

As advised at the conference, the ACCC is seeking submissions from the applicant and interested parties in respect of the draft determination. Submissions should be provided to the ACCC by 30 January 2006.

A copy of this letter and pre-decision conference minutes has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Cameron Martin on (02) 6243 1107.

Yours sincerely

Susan Philp  
Director  
Adjudication Branch

**Australian Competition  
&  
Consumer Commission**

**PRE-DECISION CONFERENCE**

**Minutes**

**Applications for authorisation A90973 and A90974  
lodged by the Tasmanian Forest Contractors Association Ltd**

**19 December 2005**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-decision conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference: Authorisation A90973 and A90974 lodged by  
the Tasmanian Forest Contractors Association Ltd**

19 December 2005  
Mecure Hotel Hobart  
156 Bathurst Street  
HOBART TAS 7000

**Attendees:**

<b>Australian Competition &amp; Consumer Commission</b>	<b>John Martin (Chair)</b> Commissioner  <b>Peter Clemes</b> Regional Director - Tasmania  <b>Susan Philp</b> Director - Adjudication  <b>Cameron Martin</b> Project Officer - Adjudication
<b>Tasmania Forest Contractors Association</b>	<b>David Hazell</b> Executive Officer
<b>Gunns Limited</b>	<b>Bryan Hayes</b> Manager, North West and South East  <b>Ian Blandon</b> Manager, Plantation Division  <b>Peter McDonald</b> Legal Advisor
<b>Forest Industries Association of Tasmania</b>	<b>Terry Edwards</b> Chief Executive  <b>Larry Henderson</b> Manager, Projects  <b>Andrew Abbott</b> Legal Advisor

<b>Forestry Tasmania</b>	<b>Darrel Stringer</b> Senior Manager Strategic Corporate Projects
<b>Norske Skog Paper Mills (Australia) Ltd</b>	<b>Arnold Willems</b> Supply and Logistic Manager

Conference commenced: 10:10am

*Introduction*

**Commissioner Martin** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited the party that called the conference, David Hazell, on behalf of the Tasmanian Forest Contractors Association (the TFCA), to make an opening statement.

*Opening Statements*

**David Hazell**, Executive Officer, TFCA, stated his organisation's disappointment with the ACCC's draft determination, noting that the current situation does not lead to efficient or effective outcomes, and that the findings of the draft determination are contrary to those of an inquiry conducted into the Victorian forest industry and the conclusions reached by the Dawson Committee.

Mr Hazell noted findings from the Victorian inquiry, most notably the finding that forest contractors were often ill prepared for negotiations, have a limited understanding of the negotiating process, poor business skills and were likely to accept unsustainably low contract rates.

Mr Hazell noted that the intention of the authorisation is not to have large bargaining groups, but to have small, regional based bargaining groups.

*Barriers to entry and exit*

Mr Hazell made comments with respect to the ACCC's consideration of the barriers to entry and exit from the wood harvesting and transport markets. Mr Hazell noted that up to 50 per cent of the cost of harvesting equipment is spent on items such as processing heads which cannot be used for other purposes. Mr Hazell stated that transferring of harvesting equipment is not as easy as noted in the draft determination. Mr Hazell also noted that the trailers used for hauling harvested wood cannot be used for other purposes and constitute a significant investment for transport contractors.

Mr Hazell noted that the future market is uncertain and contractors cannot liquidate their equipment, and cannot exit contracts.

### *Rate tables*

Mr Hazell made comments about section 7.14 of the draft determination in relation to rate tables. Mr Hazell asked the Commission to explain how the proposed arrangements would dampen innovation and reduce the incentive to innovate. Mr Hazell then gave an account of legal advice that he had received which indicated that the arrangements proposed by the TFCA would not affect the competitive process of negotiation and were unlikely to cause either a substantial lessening of competition and did not have the purpose of substantially lessening competition and would therefore not breach the *Trade Practices Act 1974* (the Act).

Mr Hazell stated that he did not agree with section 7.15 of the draft determination in relation to indexing tables. Mr Hazell noted that any adjustment under this process would take place after the competitive tender process.

### *Contract terms and conditions*

Mr Hazell disputed the draft determination at section 7.7 (lost efficiencies from collusion) where it was noted that there is a high degree of negotiation involved in forest contracting. Mr Hazell noted that there is no negotiation of terms and conditions, contracts are generic and will only differ in the schedules in terms of price and duration. Mr Hazell produced contracts for Commission staff to examine. Mr Hazell noted that the contracts could not be taken away from the conference.

**Darrel Stringer** of Forestry Tasmania, noted that his organisation did not want the contracts viewed by its competitors.

**Commissioner Martin** invited the other participants to make comments on the contract claims made by Mr Hazell.

**Arnold Willems** of Norske Skog noted that contracts use common templates so that they are compliant with the Forestry Fair Contracts Code (the FFCC) and also to reduce the transaction cost involved in contract formation. Mr Willems noted that the schedules of the contracts can differ significantly based on the equipment used and other factors.

**Terry Edwards** of FIAT stated that it is normal for contract differences to occur only in the schedules.

**Bryan Hayes** of Gunns noted that the FFCC affects the way in which forest contracts must be formed. Mr Hayes noted that the schedules will differ in respect of the price, term of the contract, insurance and other items.

**Arnold Willems** noted that shorter term contracts are likely to be similar and that a few examples of contracts are unlikely to be representative of all forest contracts.

**Bryan Hayes** noted that the two contracts that Mr Hazell provided to Commission staff are not representative of contracts entered in to by Gunns.

**David Hazell** noted that the documents represented a random sample, and that the schedules are by-and-large the same.

#### *Price adjustment*

Mr Hazell then continued his address. Mr Hazell made comments with respect to section 8.15 of the draft determination, which relates to price adjustment mechanisms used by wood companies. Mr Hazell noted that some wood companies do not have price adjustment and others will use systems that increase as a proportion of CPI. Mr Hazell noted that this can lead to a deterioration of margins over time.

Mr Hazell noted that fuel price mechanisms that use retail prices as a basis are flawed as forest contractors ultimately do not pay excise or GST. A move in the base price of petrol without a more appropriate adjustment mechanism is likely to be greater than a move in the retail price. Mr Hazell noted that the effectiveness of current fuel price mechanisms is questionable and can lead to further erosion of margins.

Mr Hazell noted with respect to the draft determination at section 8.19, that the TFCA had not put in place a requirement to report back to its membership, that this had been an oversight, and could have been overcome by imposition of a condition.

#### *Safety*

Mr Hazell commented on safety, (section 8.27 of the draft determination) particularly in respect of contractors choosing between complying with relevant safety laws and supporting the ongoing cost of business. Mr Hazell produced a safety report conducted on trucks in the Hampshire area following a fatality. The report found 42 minor defects and 13 major defects with trucks in the area. Mr Hazell noted that this demonstrated a compliance issue with truck owners and noted that businesses may be unable to comply as they are struggling for cash flow.

Mr Hazell noted with respect to improved safety standards (section 8.28 of the draft determination) that this assertion fails to track the improvements in technology which has improved worker safety. Mr Hazell noted that fewer contractors operate on the forest floor and this has reduced the severity of accidents.

#### *Collective boycott*

Mr Hazell noted that the ACCC should consider granting authorisation without boycotts. Mr Hazell further noted that the TFCA would be withdrawing its application for collective boycotts.

#### *Silviculture*

Mr Hazell made comments in respect of section 8.23 of the draft determination relating to silviculture.

Mr Hazell noted that the submissions of the wood companies that silviculture work is varied, seasonal and requires differing skills are correct. Mr Hazell noted, however, that there is an absence of security for silviculture contractors that leads to low rates of

retention. Mr Hazell noted an example of a silviculture business that hires six workers for every one worker retained. Mr Hazell gave another example of a silviculture business which issued 400 group certificates in a year.

Mr Hazell stated that contract certainty in silviculture contracts could lead to transaction cost savings.

Mr Hazell then made comment on the Managed Investment Scheme (MIS) funding arrangements for silviculture. Mr Hazell noted that funding changes are no different to those that occur for harvesting and transport and could be covered in long term contracts by issuing contracts pursuant to volume requirements and market fluctuations.

#### *Closing remarks*

Mr Hazell noted that the TFCA believe that it is imperative that the ACCC grant authorisation to the proposed arrangements. Mr Hazell noted that contractors currently have no choice but to accept current contracts given their financial burdens.

**Commissioner Martin** opened the conference for discussion of topics raised by Mr Hazell.

**Bryan Hayes** of Gunns stated that he agreed with the ACCC's decision to date. Mr Hayes noted that the draft determination had not covered as many of the detriments of collective bargaining as it could have. Mr Hayes noted that collective bargaining can lead to anti-competitive outcomes at the local and national levels. Mr Hayes noted that the proposed arrangements constituted a centralised price fixing arrangement.

Mr Hayes stated that collective bargaining reduces the potential for innovation by reducing competitive forces. Mr Hayes noted that the Tasmanian industry formerly had a central rate fixing model which did not work and was abandoned 15 years ago.

In respect of the Victorian inquiry referenced by Mr Hazell, Mr Hayes submitted that the findings of the review of the Victorian industry are not relevant to the Tasmanian industry, given the differences between the two industries.

In respect of other matters raised by Mr Hazell, Mr Hayes noted the following:

- Gunns has in place a voluntary fuel price adjustment mechanism which most of its contractors have adopted
- current arrangements have not been an impediment to investment, as investment has increased to its highest level for some time
- standard form contracts are commercially attractive to business as they reduce transaction costs
- Gunns has rate indexation of 70 per cent of CPI, and that together with fuel price adjustments and ad hoc rate adjustments has meant that contractor rates have outstripped CPI. Mr Hayes noted that CPI is not the only measure of changing costs and that interest rate changes and improvements in the efficiency of equipment will also effect the cost of business operations.

Mr Hayes noted with respect to the Hampshire inspections, that Gunns are disappointed in the results, but do not believe that compliance is a matter of money but is required by law. Mr Hayes noted that Gunns encourages the safety regulator to inspect vehicles at its weigh stations. Mr Hayes noted that Gunns does not have the technical knowledge to inspect the vehicles itself and seeks assistance from the regulator to ensure compliance.

Mr Hayes then asked Mr Ian Blandon to speak on behalf of Gunns in relation to Silviculture.

**Ian Blandon of Gunns** stated that Silviculture contractors have a high turnover of staff. Mr Blandon noted that planting and fertilising are tasks that require high labour and low capital. Mr Blandon noted that this is similar to the horticulture industry which also has a high degree of staff turnover.

Mr Blandon noted that some areas of silviculture have high capital requirements, such as site clearing and aerial spraying. Mr Blandon noted that combining these disciplines into a single, super contractor, would be, in his opinion, unworkable.

Mr Blandon noted in respect of Mr Hazell's comments that MIS funding is no different to harvesting and transport funding, that certainty in MIS funding is low, and that continuity of funds is not good from one year to the next.

Mr Blandon noted that ongoing reviews of MIS by the ATO and ASIC leads to uncertainty as to available funding. In this respect, Mr Blandon noted that, when the '13 month rule' was removed from MIS, activity was reduced by 70%. Mr Blandon also noted that MIS is currently under review by DAFF.

Mr Blandon noted that Gunns currently tenders on a block by block basis which promotes competition on rates.

**Commissioner Martin** asked Mr Bryan Hayes if the withdrawal of collective boycotts would change his view on the collective bargaining arrangements.

Mr Hayes stated that the evidence clearly shows the benefits of individual negotiations and that these may be lost under collective bargaining.

**Peter McDonald, legal advisor for Gunns**, noted with respect to Mr Hazell's comments on whether the conduct was in fact a breach of the Act, that this was irrelevant as the authorisation process requires that the public benefit test is satisfied.

**Andrew Abbott, legal advisor for FIAT** noted that, despite Mr Hazell's comments, the TFCA need to satisfy the public benefit test for authorisation to be granted.

**Arnold Willems of Norske Skog** stated that he agrees with the ACCC's draft determination and also noted that Norske Skog had made a detailed submission to the ACCC on the matter.



Mr Willems noted that Mr Hazell's comments in respect of the Victorian inquiry did not apply to Norske Skog. Mr Willems noted that Norske Skog contractors are encouraged to bring in outside advisors when negotiating contracts. Mr Willems noted that Norske Skog has had in place a fuel price adjustment mechanism for 20 years and that the mechanism removes excise and GST when calculating rate changes.

Mr Willems noted that Norske Skog has maintained a number of its contractors over a long period and that this would not be possible if contractor earnings were too low. Mr Willems noted that Norske Skog contracts are for five years. Mr Willems noted that its contracts meet the requirements of commonwealth and state law.

Mr Willems noted in respect of the proposed rate tables, that it would be difficult for wood companies and forest contractors to be objective on a coupe by coupe basis. Mr Willems noted that degrees of difficulty would be difficult to determine. Mr Willems noted that under the current system they infrequently have issues.

Mr Willems noted that the use of standard contractual templates allows Norske Skog to reduce transaction costs and ensure compliance with relevant laws.

Mr Willems noted that having a CPI index at 70 per cent reflected that not all components are affected by movements in CPI, with items such as lease agreements having fixed terms for five years.

Mr Willems noted that Norske Skog had submitted information to the ACCC on the dramatic improvement in safety standards amongst its forest contractors. Mr Willems noted that Norske Skog work closely with its contractors to improve safety standards and noted that it is good business practice as it will help to reduce worker's compensation costs. Mr Willems refuted Mr Hazell's claim that a lack of money reduces safety standards. Mr Willems noted that mechanisation had also helped to improve safety and that Norske Skog encourages its contractors to adopt safer equipment.

Mr Willems noted that silviculture is seasonal. Mr Willems noted that Norske Skog does not seek funding under MIS. Mr Willems noted that the Boyer mill competes with the rest of Norske Skog's assets for capital and cannot give year on year assurity to silviculture contractors. Mr Willems noted that retention of staff in silviculture is low.

**Terry Edwards of FIAT** noted that he agreed with the previous speakers from the wood companies in relation to the draft determination. Mr Edwards noted that FIAT had provided the ACCC with a submission that detailed the complex inter-relationship between participants in the wood products industry and demonstrated that this structure would be ill served by collective bargaining arrangements. Mr Edwards submitted that the wood companies' relationships with their markets would not improve under the proposed arrangements.

Mr Edwards stated that the TFCA had not put anything forward that had not already been submitted earlier. Mr Edwards stated that he does not agree with Mr Hazell's comments that the ACCC had not considered his arguments and noted that these had been addressed within the draft determination.

Mr Edwards noted in respect of the Victorian inquiry mentioned by Mr Hazell, that the findings are not relevant to the Tasmanian industry and that the Tasmanian industry has legislation such as the Forestry Fair Contracts Code that differentiate it from other states.

Mr Edwards stated that forest contractors are not ill informed in negotiations. Mr Edwards noted that claims made about barriers to entry and exit do not change the arguments put forward in the draft determination.

Mr Edwards noted that the TFCA had criticised its economic expert in the draft determination and that it would be putting a further submission to the ACCC with respect to the TFCA's comments.

Mr Edwards noted with respect to the TFCA's proposed withdrawal of its collective boycott application that this would not change its current submission and that there would still be resistance to the proposed collective bargaining arrangements. Mr Edwards noted that the withdrawal would not remove the concern over collective bargaining.

**Darrel Stringer of Forestry Tasmania** noted that they support the ACCC's draft determination. Mr Stringer noted that Forestry workers have moved from being company employees to contractors and that this has led to efficiency gains. Mr Stringer stated that a collective bargaining process may result in the loss of these efficiencies.

Mr Stringer noted that changes in policy in Victoria over time may have brought about a lessening of innovation. Mr Stringer noted that three agencies regulate the industry in Victoria and that the situation is not well suited for supporting a solid industry.

Mr Stringer noted that he agrees with Mr Blandon in respect of MIS funding. Mr Stringer noted that silviculture funding is dependent upon MIS.

#### *Rate matrixes*

**David Hazell** also provided comment with respect to the proposed rate matrix. Mr Hazell noted that the rate matrixes will not lead to a lowest common denominator approach and that price will still be individually negotiated.

Mr Hazell noted that the rate fixing model that formally existed in Tasmania did not promote innovation and efficiency, but that the proposed arrangements are very different to that model. Mr Hazell stated that the competitive process for pricing will remain.

**Commissioner Martin** noted that ACCC's general position on rate schedules as against providing frameworks and advised Mr Hazell to view the Royal Australian Institute of Architects authorisation.

**David Hazell** noted that the TFCA model does not provide a fixed price and will not create uniformity in price. Mr Hazell noted that the proposed table does not contain any calculators or fixed formulas. Mr Hazell noted that some businesses may wish to tender

a single price for all possible coupe types if they desired, and that how the table is filled out is up to negotiation between the wood companies and the forest contractor.

Mr Hazell noted with respect to the increase in contractor rates as against CPI quoted by Gunns, that changes may be attributed to the rise in fuel cost. Mr Hazell noted that the real issue is whether the adjustments reflect the additional costs that have been incurred by forest contractors. Mr Hazell noted that the TFCA does not consider that the adjustments have increased sufficiently to reflect the increased cost.

Mr Hazell noted with respect to silviculture variation that not all areas of silviculture are subject to major variation and that plantation and fertilising are not the only areas of silviculture that require a high level of labour. Mr Hazell noted that tasks such as pruning and fire fighting also required a high level of labour and that it is these tasks that could be co-ordinated.

Mr Hazell noted that MIS funding does lead to some uncertainty for funding of plantations and noted that collective bargaining would help address these problems more equitably.

**Commissioner Martin** raised the issue of safety, asking Mr Hazell whether he believed that safety had improved.

**David Hazell** noted that there was no question that safety had improved, but that most of this could be attributed to better use of technology and that improvements could still be made.

**Terry Edwards** stated that there has been no information put forward to suggest that there is a link between collective bargaining and the standard of vehicle maintenance and that the poor survey results from Hampshire could equally be attributed to any number of factors.

**Arnold Willems** noted that Norske Skog has undertaken a significant review of safety procedures and that they are working with their contractors to insure that improvements continue.

**Bryan Hayes** noted that contractors are required to provide monthly reports of vehicles under their contracts. Mr Hayes noted that the Hampshire survey may point to a number of drivers providing misleading information. Mr Hayes noted that it is the contractor's responsibility to ensure the safety of their vehicle, and that Gunns does not have the technical expertise or facilities to determine whether a vehicle is mechanically sound.

**David Hazell** noted that financial capacity impacts on a contractor's ability to maintain their equipment and comply with safety standards.

**Bryan Hayes** noted that, by law, and under contract, forest contractors must maintain their vehicles to appropriate safety levels.

*Closing statements*

**David Hazell** noted that the TFCA embarked on the application for authorisation because the TFCA's members are struggling financially.

**Bryan Hayes** noted that there was a degree of difficulty matrix under the old rate model, and that it was the experience of Gunns that contractors would migrate to the top bracket, regardless of the actual difficulty of the coupe.

Mr Hayes noted that he has no problem with Mr Hazell instructing his members to have regard to differences in coupe type during contract negotiations. Mr Hayes noted however, that the model proposed by the TFCA is highly anti-competitive and that he objects to it being imposed upon the wood companies.

**Arnold Willems** noted that it is critical that contract negotiations are undertaken on an individual basis and not carried out collectively.

**Commissioner Martin** then called for any further comments. No further comments were made. Commissioner Martin closed the conference by noting that the ACCC would be providing a further opportunity for parties to make written submissions in respect of its draft determination and that the ACCC would be writing to those who attended the conference to provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 12pm