



Australian
Competition &
Consumer
Commission

28 October 2009

Statement of Issues — Gunns Limited’s proposed acquisition of ITC Timber Pty Ltd

1. Outlined below is the Statement of Issues released by the Australian Competition and Consumer Commission (ACCC) in relation to the proposed acquisition of ITC Timber Pty Ltd by Gunns Limited (**proposed acquisition**).
2. A Statement of Issues published by the ACCC is not a final decision about a proposed acquisition, but provides the ACCC’s preliminary views, drawing attention to particular issues of varying degrees of competition concern, as well as identifying the lines of further inquiry that the ACCC wishes to undertake.
3. In line with the ACCC’s *Merger Review Process Guidelines* (available on the ACCC’s website at www.accc.gov.au) the ACCC has established a secondary timeline for further consideration of the issues. The ACCC anticipates completing further market inquiries by **11 November 2009** and anticipates making a final decision on **25 November 2009**. However, the anticipated timeline can change in line with the *Merger Review Process Guidelines*. To keep abreast of possible changes in relation to timing and to find relevant documents, market participants should visit the Mergers Register on the ACCC’s website at www.accc.gov.au/mergersregister.
4. A Statement of Issues provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

Background

5. On 14 September 2009, the ACCC commenced its review of the proposed acquisition.

The parties

The acquirer – Gunns Limited

6. Gunns Limited (**Gunns**) is an ASX-listed company and is Australia's largest fully integrated hardwood forest products company. Gunns is comprised of three operating divisions:
 - *Forest Products*: including forest plantations, sawmilling and production of timber products and wood chip exports;
 - *Managed Investment Schemes*: offering investors the opportunity to invest in forestry and horticultural development; and
 - *Other businesses*: including wineries, construction and Mitre 10 retail outlets in Tasmania.
7. Gunns manages over 275,000 hectares of freehold land, with 200,000 hectares under plantation. This includes approximately 150,000 hectares of hardwood eucalyptus plantations in Tasmania and 50,000 hectares of radiata pine softwood plantations in South Australia and Victoria.
8. Gunns produces a range of hardwood and softwood timber products including solid timber, decorative veneers and manufactured veneers. Gunns operates eight sawmills in Australia including six hardwood mills (situated in Smithton, Austins Ferry, Launceston, Western Junction and Deloraine in Tasmania, and Manjimup in Western Australia) and two softwood mills (situated in Mt Gambier, South Australia and Scottsdale, Tasmania). Gunns also operates one veneer mill and one veneer panel plant. Gunns' sawmill operations have the capacity to process approximately 950,000 cubic metres of sawlogs per annum.
9. Gunns also supplies wood chips to customers in Japan, Korea, China and Indonesia. Gunns operates four export wood chip facilities and loading ports in Australia (situated in Burnie, Tamar and Triabunna in Tasmania and Portland in South Australia) and currently exports approximately 3.1 million tonnes of wood chips per annum.
10. Gunns also holds a 17.9% shareholding in Forest Enterprises Australia (**FEA**).

The target – ITC Timber Pty Ltd

11. ITC Timber Pty Ltd (**ITC Timber**) is a wholly owned subsidiary of ITC Limited, which in turn is wholly owned by Elders Limited. ITC Limited is a vertically integrated forestry company, with approximately 170,000 plantation hectares under management across Australia.
12. ITC Timber manufactures hardwood timber and value-added timber products for a wide range of applications including construction, flooring and furniture. ITC Timber has four hardwood processing facilities in Australia – two in Victoria (Alexandra and Heyfield) and two in Tasmania (Huonville and Launceston). ITC Timber has the capacity to process approximately 250,000 cubic metres of sawlogs per annum.

13. ITC Timber also holds a 50 per cent share of SmartFibre Pty Ltd (**SmartFibre**), a wood chip joint venture with FEA, formed in 2003. SmartFibre exports plantation hardwood and softwood wood chips for paper and paperboard production, to customers in mainly Japan and China. SmartFibre processes hardwood and softwood timber not suitable for sawlogs into wood chips for export, at its wood chip facility in Bell Bay, Tasmania. SmartFibre also uses residual timber in its wood chip production, sourced from independent sawmills and the joint venture parties' own sawmill operations. It currently exports on average 500,000 tonnes of wood chips per annum.

Other industry participants

Forest Enterprises Australia

14. FEA is an ASX-listed forestry and forest products company. FEA's principal activities include acquiring hardwood and softwood timber from log suppliers for the manufacture of sawn timber and value-added timber products, such as timber veneer, at its saw milling and timber processing facilities situated in Bell Bay, Tasmania. FEA's Bell Bay sawmill has the capacity to process approximately 400,000 cubic metres of sawlog per annum.
15. FEA is also responsible for the establishment and management of approximately 72,000 hectares of hardwood plantations in Tasmania, northern New South Wales and south-eastern Queensland, for over 11,000 investors.
16. FEA holds the remaining 50 per cent share of the SmartFibre wood chip export joint venture with ITC Timber.
17. ITC Timber's parent company Elders Limited holds a 32.7% shareholding in FEA.

Forestry Tasmania

18. Forestry Tasmania is established under the *Forestry Act 1920 (Tas)* and is the manager of Tasmania's state-owned hardwood forests. Forestry Tasmania has statutory responsibility for the management of 1.5 million hectares of State forest land, including approximately 105,000 hectares of plantations comprising both softwood and hardwood species. Of the area managed, 591,500 hectares is available for wood production, with the remainder designated for conservation and recreation.
19. Forestry Tasmania currently harvests native forests and plantations to supply the industry with approximately 300,000 cubic metres of high quality saw and veneer logs per annum. Forestry Tasmania also supplies lower quality logs as pulpwood.

Proposed acquisition

20. Gunns proposes to acquire 100 per cent of the issued capital in ITC Timber and its subsidiaries from ITC Limited. This includes a 50 per cent interest in the SmartFibre wood chip export joint venture.

Market inquiries

21. On 14 September 2009, the ACCC commenced its market inquiries regarding the proposed acquisition. A range of interested parties provided responses, including other suppliers of hardwood timber products, timber wholesalers and retailers, suppliers of pulpwood and residual timber, and industry associations.

Industry background

22. Gunns and ITC Timber manufacture hardwood timber products and wood chips. Hardwood timber products are typically classified as either ‘appearance grade’ or ‘structural grade’ products. Appearance grade hardwood timber products are used in timber flooring, panelling, interiors, joinery and furniture. Structural grade hardwood timber products are typically used for timber framing in residential construction.
23. The primary input for the manufacture of hardwood timber products is hardwood sawlog. Hardwood sawlog suppliers in Tasmania include Forestry Tasmania, private property owners and private plantation owners, which include project growers that are part of Managed Investment Schemes. There are approximately 885,000 hectares of privately owned native forests and 150,000 hectares of plantation forests on private land in Tasmania.
24. Wood chips are used in the manufacture of paper products. The primary inputs for the manufacture of wood chips are pulpwood and residual timber. Pulpwood is produced from native or plantation sawlogs that are not of a sufficient standard to supply to sawmills for the manufacture of timber products. Pulpwood suppliers include Forestry Tasmania, private land owners and private plantation owners (including Managed Investment Schemes).
25. Residual timber is a by-product from the production of timber products or the harvesting of native or plantation forests. Residual timber may be supplied by sawmills and private land owners to a range of customers including wood chip producers, paper manufacturers and the bio-fuel industry. Manufacturers of wood chips typically acquire a combination of both pulpwood and residual timber as inputs into their production process.

Areas of overlap and market definition

26. The operations of Gunns and ITC Timber overlap in relation to the manufacture and supply of appearance grade and structural grade hardwood timber products, and the manufacture and supply of wood chips for overseas customers.
27. Accordingly, Gunns and ITC Timber’s operations also overlap in relation to the acquisition of the relevant inputs for the production of these products. Gunns and ITC Timber both acquire appearance grade and structural grade hardwood sawlog in southern and north-eastern Tasmania (where both parties operate mills producing hardwood timber products).

28. Gunns and ITC Timber (through SmartFibre) both acquire hardwood pulpwood and residual timber in north-eastern Tasmania for their respective wood chip operations in Tamar and Bell Bay.¹

Market definition

29. The ACCC's preliminary view is that the relevant markets for consideration of the proposed acquisition are:
- the national market for the manufacture and supply of appearance grade hardwood timber products;
 - the national market for the manufacture and supply of structural grade hardwood and softwood timber products;
 - the global market for the manufacture and supply of wood chips;
 - the north-eastern Tasmanian market for the acquisition of appearance grade hardwood sawlog;
 - the north-eastern Tasmanian market for the acquisition of structural grade hardwood sawlog;
 - the southern Tasmanian market for the acquisition of appearance grade hardwood sawlog;
 - the southern Tasmanian market for the acquisition of structural grade hardwood sawlog;
 - the north-eastern Tasmanian market for the acquisition of native and plantation hardwood pulpwood; and
 - the north-eastern Tasmanian market for the acquisition of residual timber.
30. With respect to the acquisition markets in Tasmania, the ACCC's market inquiries to date indicate that substitution possibilities are limited for suppliers of each of the types of timber referred to above, due to differences in the characteristics and value of these products. In addition, while some acquirers of timber, such as Gunns, purchase and process many different types of timber, market inquiries to date indicate that other timber processors would not readily switch their demand, and associated production, marketing and distribution processes, in response to small changes in the relative price of such timber inputs. Transportation costs also appear to limit the viability of transporting hardwood sawlog, pulpwood and residual timber beyond a distance of approximately 200 kilometres, such that mills in north-eastern Tasmania do not appear to compete with mills in southern Tasmania for the acquisition of timber inputs.

¹ The ACCC notes that there appears to be very limited overlap in the operations of Gunns and ITC Timber (through SmartFibre) in the acquisition of softwood pulpwood, and therefore considers this issue unlikely to pose competition concerns.

The ACCC invites industry participants to comment regarding the proposed market definitions.

Statement of issues

31. For the purposes of this Statement of Issues, the issues in this matter are divided into three categories, 'issues of concern,' 'issues that may raise concerns requiring further analysis' and 'issues unlikely to pose concerns.' In this matter, one issue raised below is categorised as an issue of concern, two issues are categorised as issues that may raise concerns requiring further analysis, and two further issues are categorised as issues that are unlikely to pose concerns.

Issues of concern

Acquisition of pulpwood in north-eastern Tasmania

32. The ACCC's preliminary view is that the proposed acquisition is likely to have the effect of substantially lessening competition in the market for the acquisition of pulpwood in north-eastern Tasmania, where both Gunns and ITC Timber (through SmartFibre) acquire pulpwood for their respective wood chip operations in Tamar and Bell Bay.
33. There are generally three sources of pulpwood available to Gunns, SmartFibre and other acquirers of pulpwood in north-eastern Tasmania:
- Forestry Tasmania;
 - internal supplies from the acquirer's plantation and Managed Investment Schemes; and
 - private land and private plantation owners.
34. Forestry Tasmania is the largest supplier of pulpwood in the region. The ACCC considers that Forestry Tasmania has the ability to guarantee sufficient volumes of pulpwood to a prospective entrant to wood chipping. However, potential sponsorship by Forestry Tasmania would not assist a prospective entrant in overcoming other barriers to entry such as sunk costs, lead times, access to suitable export facilities and regulatory approvals (including environmental approvals). It also appears that a material proportion of the demand for pulpwood in the region is supplied by private land and private plantation owners. The ACCC considers that smaller private land and private plantation owners are unlikely to have countervailing power.
35. The ACCC considers that following the proposed acquisition, suppliers of pulpwood in north-eastern Tasmania would face a significant reduction in the number of independent buyers of pulpwood available to them. The ACCC understands that, in recent years, SmartFibre has directly and indirectly sourced significant volumes of pulpwood from private land and private plantation owners.

36. Post acquisition, there would remain only one significant wood chip manufacturer independent of the merged entity acquiring pulpwood in the relevant area, Artec Pty Ltd (**Artec**). The ACCC understands that Gunns and SmartFibre are each other's closest competitors for the acquisition of pulpwood in the relevant region and that Artec generally acquires a relatively lower quality pulpwood for the manufacture of a lower grade wood chip. Other acquirers of pulpwood do not currently acquire significant volumes of pulpwood and appear unlikely to do so in the foreseeable future.
37. The ACCC also considers it unlikely that new entry and/or expansion in the manufacture of wood chips would provide an effective competitive constraint on the merged entity. Notwithstanding the example of SmartFibre's entry in the manufacture of wood chips in 2003, market inquiries indicated that sunk costs, lead times, access to suitable export facilities and regulatory approvals (including environmental approvals) are likely to limit any constraint provided by the threat of entry in the foreseeable future.
38. The ACCC understands that SmartFibre's pulpwood purchasing activity constrains the prices that Gunns has been able to achieve for the acquisition of pulpwood from suppliers in the region. Gunns' 50 per cent ownership of SmartFibre would remove this independent competitive constraint, including by giving Gunns access to competitively sensitive information regarding SmartFibre's pulpwood purchasing arrangements (including prices and volumes). This change in the availability of independent customers of pulpwood would be relevant for actual and potential suppliers of pulpwood to both SmartFibre and Gunns in north-eastern Tasmania.
39. It also appears possible that the merged entity and the other 50 per cent owner of SmartFibre, FEA, may independently recognise a mutual incentive for the merged entity to assume responsibility for purchasing the pulpwood SmartFibre requires from independent suppliers, having regard to Gunns' existing purchasing volumes and contacts.
40. The ACCC is therefore concerned that the proposed acquisition is likely to lead to a significant and sustained reduction in prices being paid to independent pulpwood suppliers in north-eastern Tasmania.

The ACCC invites industry participants to comment and provide information in relation to:

- the private land owners and private plantation owners that supply pulpwood to Gunns, SmartFibre and other buyers in north-eastern Tasmania, including details of any contractual arrangements between private land owners for supply of pulpwood to Gunns and SmartFibre, in particular, the duration of these contracts, volumes, how prices are negotiated and any exclusive supply arrangements;
- the extent to which the merged entity would be in a position to reduce the price it pays to private land and private plantation owners for pulpwood in a sustainable manner, without effective competitive constraint. In providing comment on this issue, you may wish to address:
 - how the proposed acquisition would affect the ability of pulpwood acquirers to reduce the prices paid to suppliers of pulpwood in north-eastern Tasmania, including as a result of the merged entity having access to competitively sensitive information of SmartFibre (in terms of the volumes and prices its pulpwood acquisitions);
 - the ability of potential alternative buyers of pulpwood (for example wood chip manufacturers, paper manufacturers and rotary veneer mills including Artec, Australian Paper and Ta Ann) to expand the volumes of pulpwood they acquire;
 - the ability for private land owners to withhold supply in the event of a sustained decrease in the price paid for pulpwood; and
 - how demand for pulpwood is expected to change in the future, including in light of Gunns' proposed pulp mill in Bell Bay, Tasmania.
- the extent to which SmartFibre's entry into wood chip production in 2003 has affected or influenced the price paid for pulpwood to suppliers in north-eastern Tasmania, relative to the price paid for pulpwood in other regions of Tasmania and the prevailing wood chip price;
- the relevant barriers to entry and/or expansion in the manufacture of wood chips, including sunk costs, lead times, access to suitable export facilities, regulatory approvals (including environmental) and the likelihood of new entry and expansion; and
- the extent to which there may be a reduction in future demand for native pulpwood from private land owners in light of international customer preferences, and the timeframe over which this change may occur.

Issues that may raise concerns requiring further analysis

Acquisition of residual timber in north-eastern Tasmania

41. The ACCC's preliminary view is that the proposed acquisition may raise competition concerns in relation to the acquisition of residual timber in north-eastern Tasmania, where both Gunns and ITC Timber acquire residual timber for their respective wood chip operations in Tamar and Bell Bay.
42. The ACCC understands that a significant proportion of SmartFibre's residual timber requirements are supplied by FEA and ITC Timber. Nevertheless, the ACCC considers that suppliers of residual timber in this region, including independent sawmill and private land and private plantation owners would face a reduction in the number of actual and potential independent buyers of residual timber available to them. The ACCC notes that there are a number of alternative independent buyers available to residual timber suppliers in this region including Les Walkden Enterprises, Australian Paper, Artec and potential bio-fuel customers.
43. The ACCC is concerned that the proposed acquisition may lead to a significant and sustained reduction in the prices paid to independent residual timber suppliers in north-eastern Tasmania and is seeking further information on this issue.

The ACCC invites industry participants to comment and provide information in relation to:

- the sawmills and private land and private plantation owners that supply residual timber to Gunns, SmartFibre and other buyers in north-eastern Tasmania, including details of any contractual arrangements between sawmills or private land owners for supply of residual timber to Gunns and SmartFibre, in particular, the duration of these contracts, volumes supplied, how prices are negotiated and any exclusive supply arrangements;
- the extent to which the merged entity would be in a position to decrease the price it pays for residual timber to independent sawmills or private land and private plantation owners in a sustainable manner, without effective competitive constraint. In providing comment on this issue, you may wish to address:
 - how the proposed acquisition would affect the ability and incentive for residual timber acquirers to reduce the prices paid to suppliers of residual timber in north-eastern Tasmania, including as a result of the merged entity having access to competitively sensitive information of SmartFibre (in terms of the volumes and prices of its residual timber acquisitions);

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- the potential alternative buyers of residual timber (for example, wood chip manufacturers, paper manufacturers and bio-fuel customers), and the ability of these buyers to expand the volumes of residual timber which they acquire; and
- the extent to which SmartFibre's entry into wood chip production in 2003 has affected or influenced the price paid for residual timber to suppliers in north-eastern Tasmania, relative to the price paid for residual timber in other regions of Tasmania and the prevailing wood chip price.

Acquisition of appearance grade and structural grade hardwood sawlog in southern Tasmania

44. The ACCC's preliminary view is that the proposed acquisition may raise competition concerns in relation to the separate markets for the acquisition of appearance grade and structural grade hardwood sawlog in the southern region of Tasmania, where both Gunns and ITC Timber acquire hardwood sawlogs for their hardwood mills in Austins Ferry and Huonville.
45. The majority of appearance grade and structural grade hardwood sawlog in the relevant area is supplied by Forestry Tasmania. The ACCC considers that Forestry Tasmania has the ability to guarantee sufficient volumes of hardwood sawlog to a prospective entrant to hardwood sawmilling. However, potential sponsorship by Forestry Tasmania would not assist a prospective entrant in overcoming other barriers to entry, such as sunk costs and regulatory approvals (including environmental approvals). It also appears that a material proportion of the demand for appearance grade and structural grade hardwood sawlog in the region is supplied by private land and private plantation owners. The ACCC considers that smaller private land and private plantation owners are unlikely to have countervailing power.
46. Although the ACCC understands that ITC Timber currently sources its entire requirement of appearance grade and structural grade hardwood sawlog in southern Tasmania from Forestry Tasmania, it considers that the proposed acquisition is likely to result in the removal of a significant potential acquirer of hardwood sawlog available to private land and private plantation owners in this region. While there are smaller alternative buyers in this region, the ACCC requires further information about the ability of these alternative buyers to significantly increase the volumes of appearance grade and structural grade hardwood sawlog they acquire.
47. The ACCC is therefore concerned that the proposed acquisition may lead to a significant and sustained reduction in prices paid to independent hardwood sawlog suppliers in the region and is seeking further information on this issue.

The ACCC invites industry participants to comment and provide information in relation to:

- the private land and private plantation owners that supply hardwood sawlog in this region, including details of any contractual relationships between private land owners for the supply of hardwood sawlog to buyers in this region, in particular, the duration of these contracts, volumes supplied, how prices are negotiated and any exclusive supply arrangements;
- the alternative buyers of appearance grade and structural grade hardwood sawlog in the region and their ability to increase purchases from private land and private plantation owners;
- the ability of sawmills to switch between appearance grade and structural grade hardwood sawlog in response to small changes in relative prices;
- the extent to which private land and plantation owners that supply hardwood sawlog in this region rely on ITC Timber as a potential acquirer of hardwood sawlog; and
- how future demand for appearance grade and structural grade hardwood timber products may change.

Acquisition of appearance grade and structural grade hardwood sawlog in north-eastern Tasmania

48. The ACCC's preliminary view is that the proposed acquisition may raise competition concerns in relation to the separate markets for the acquisition of appearance grade and structural grade hardwood sawlog in the north-eastern region of Tasmania, where both Gunns and ITC Timber acquire hardwood sawlogs for their hardwood mills in Western Junction, Deloraine and Launceston.
49. The majority of appearance grade and structural grade hardwood sawlog in the relevant area is supplied by Forestry Tasmania. The ACCC considers that Forestry Tasmania has the ability to guarantee sufficient volumes of hardwood sawlog to a prospective entrant to hardwood sawmilling. However, sponsorship by Forestry Tasmania would not assist a prospective entrant in overcoming other barriers to entry, such as sunk costs and regulatory approvals (including environmental approvals). It also appears that a material proportion of the demand for appearance grade and structural grade hardwood sawlog in the region is supplied by private land and private plantation owners. The ACCC considers that smaller private land and private plantation owners are unlikely to have countervailing power.
50. Although the ACCC understands that ITC Timber currently sources its entire requirement of appearance grade and structural grade hardwood sawlog in north-eastern Tasmania from Forestry Tasmania, it considers that the proposed acquisition is likely to result in the removal of a significant potential acquirer of hardwood sawlog available to private land and private plantation owners in this

region. While there are smaller alternative buyers in this region, the ACCC requires further information about the ability of these alternative buyers to significantly increase the volumes of appearance grade and structural grade hardwood sawlog they acquire.

51. The ACCC is concerned that the proposed acquisition may lead to a significant and sustained reduction in prices paid to independent hardwood sawlog suppliers in the region and is seeking further information on this issue.

The ACCC invites industry participants to comment and provide information in relation to:

- the private land and private plantation owners that supply hardwood sawlog in this region including details of any contractual relationships between private land owners for the supply of hardwood sawlog to buyers in this region, in particular, the duration of these contracts, volumes supplied, how prices are negotiated and any exclusive supply arrangements;
- the alternative buyers of appearance grade and structural grade hardwood sawlog in the region and their ability to increase purchases from private land and private plantation owners;
- the ability of sawmills to switch between appearance grade and structural grade hardwood sawlog in response to small changes in relative price;
- the extent to which private land and plantation owners that supply hardwood sawlog in this region rely on ITC Timber as a potential acquirer of hardwood sawlog; and
- how future demand for appearance grade and structural grade hardwood timber products may change.

Issues unlikely to pose concerns

52. The ACCC considers that the proposed acquisition is unlikely to pose competition concerns with respect to:
- the national market for the manufacture and supply of appearance grade hardwood timber products;
 - the national market for the manufacture and supply of structural grade hardwood and softwood timber products; and
 - the global market for the manufacture and supply of wood chips.
53. The ACCC considers that the existence of significant competitors in each of these supply markets is likely to provide an effective competitive constraint on the merged entity.

54. Although the ACCC is of the preliminary view that the above issues are unlikely to pose competition concerns, the ACCC will accept further submissions from market participants with regard to the above issues and will further consider possible competition concerns if it considers that such an assessment is warranted.

ACCC's future steps

55. The ACCC will finalise its view on this matter after it considers market responses invited by this Statement of Issues.
56. The ACCC now seeks submissions from industry participants on each of the issues identified in this Statement of Issues and on any other issue that may be relevant to the ACCC's assessment of this matter.
57. Submissions are to be received by the ACCC no later than **11 November 2009**. The ACCC will consider the submissions received from the market and the merger parties in light of the issues identified above and will, in conjunction with information and submissions already provided by the parties, come to a final view in light of the issues raised above.
58. The ACCC intends to publicly announce its final view by **25 November 2009**. However the anticipated timeline may change in line with the *Merger Review Process Guidelines*. A Public Competition Assessment for the purpose of explaining the ACCC's final view may be published following the ACCC's public announcement.