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# Blake Dawson

Dr Richard Chadwick  
General Manager, Adjudication Branch  
Australian Competition & Consumer Commission  
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**Attention** Ms Joanne Palisi and Ms Erin Donohue

**25 August 2009**

Dear Dr Chadwick

Your reference

## Further Applications for Authorisation Softwood Tasmania Joint Venture

Our reference  
DANP CZE 03 1435 7097

We act for the parties to an unincorporated joint venture known as the "Softwood Tasmania Joint Venture" (STJV), and we enclose a Form A and a Form B authorisation application on their behalf.

**Partner**  
Peter Armitage  
61 2 9258 6119  
Peter.Armitage  
@blakedawson.com

### Previous authorisation

**Contact**  
Chris Evans  
61 3 9679 3452  
Christopher.Evans  
@blakedawson.com

On 17 February 2009, the STJV parties lodged authorisation applications A91120 - 91122 with the Commission, pursuant to which the STJV parties sought authorisation to give effect to relevant provisions of arrangements related to the STJV.

On 29 July 2009, the Commission issued a Final Determination granting authorisation in relation to applications A91120 - A91122 for a period of 10 years.

### Further applications

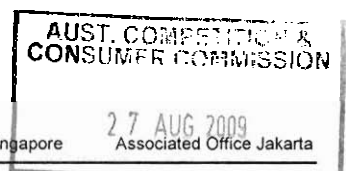
The enclosed applications (**further applications**) relate to the same conduct as applications A91120 – 91122.

However, applications A91120 – 91122 were lodged prior to the commencement of the *Trade Practices Amendments (Cartel Conduct and Other Measures) Act 2009*, which created a new prohibition against the making of, or giving effect to, cartel provisions within the meaning of Division 1 of Part IV of the *Trade Practices Act 1974 (the Act)*. Consequently, while the STJV parties are now authorised to give effect to the STJV arrangements to the extent that doing so may, under s 45, constitute an exclusionary provision or have the purpose or effect of substantially lessening competition in a market, the STJV parties are not authorised to give effect to the STJV arrangements to the extent that this may involve giving effect to cartel provisions.

Therefore, the further applications specifically seek authorisation for the STJV parties to give effect to the STJV arrangements to the extent that this may involve giving effect to a cartel provision.

### Supporting submissions

As noted above, the further applications relate to the same conduct as applications A91120 – 91122.



Therefore, in respect of the further applications, the STJV parties intend to rely on the same submissions as they lodged in support of applications A91120 – A91122.

The STJV parties reiterate their submission in respect of applications A91120 – 91122 that they do not consider that the STJV arrangements give rise to any contraventions of the Act. Specifically, in relation to the new cartel prohibitions, the STJV parties consider that:

- but for the STJV arrangements, they would not be, or would not be likely to be, in competition with each other for the purposes of s 44ZZRD; and
- they would benefit from the protection provided to joint ventures by the application of s 44ZZRP and s 44ZZRO.

However, out of an abundance of caution, the STJV parties are making the further applications as, on a technical construction, it is possible that some provisions in the STJV arrangements may be seen to constitute cartel provisions.

***Timetable for assessment***

In discussions with Commission staff it has been indicated that the Commission would be prepared to assess the further applications pursuant to a streamlined timetable.

Can you please advise at your earliest convenience as to the proposed timetable for the assessment of the further applications.

***Fee waiver***

You notified us in a letter dated 6 August 2009 that the Commission had waived the application fee for the further applications in full. Therefore, there is no application fee accompanying the further applications.

Please contact Peter Armitage or Chris Evans if you have any queries in relation to the further applications.

Yours sincerely



**Peter Armitage**  
Partner  
T 61 2 9258 6119  
peter.armitage@blakedawson.com

**Chris Evans**  
Senior Associate  
T 61 3 9679 3452  
christopher.evans@blakedawson.com

# Form A

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88 (1A) and (1)*

## EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88(1A) of the *Trade Practices Act 1974* for an authorisation to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

- (a) Name of Applicant:  
(Refer to direction 2)

A91185

Forestry Tasmania (TAS 96785B);

Tasmania Softwood Fund Pty Ltd (ACN 088 271 523) (**Tasmania Softwood Fund**); and

Southern Hemisphere Softwood Strategies (ABRN 090 455 057) (**Southern Hemisphere Softwood Strategies**),

in their capacity as participants in the Softwood Tasmania Joint Venture (together, the **Applicant**).

- (b) Description of business carried on by Applicant:  
(Refer to direction 3)

The Applicant carries on the business of planting, managing, harvesting and selling softwood from softwood plantations in Tasmania (see the answer to question 3 for further detail).

- (c) Address in Australia for service of documents on the Applicant:

Blake Dawson  
Level 36, Grosvenor Place, 225 George Street  
Sydney NSW 2000  
Attention: Peter Armitage(peter.armitage@blakedawson.com)

### 2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought  
(Refer to direction 4)

This application relies on the submissions filed in support of the Applicant's previous applications A91120-A91122 (**Submission**) and, unless indicated otherwise, defined terms used in this application have the same meaning as those used in the Submission.

Authorisation is sought in relation to the combination of the contracts:

---

- **Joint Venture Operating Agreement between:**
  - Forestry Tasmania;
  - Tasmania Softwood Fund;
  - Southern Hemisphere Softwood Strategies (collectively the **Joint Venture Participants**); and
  - Softwood Tasmania (Operator) Pty Ltd (**Operator**).
- **Management Agreement** between Operator, Timberlands Pacific Pty Ltd (previously Rayonier Australia Pty Ltd) (**Manager**) and the Joint Venture Participants, pursuant to which the Manager was appointed to manage the Joint Venture Assets.
- **Sales Agency Agreements** between each of the Joint Venture Participants and the Manager pursuant to which the Manager was appointed as the exclusive agent of each Joint Venture Participant for the purposes of selling each of their interests in the Forest Products, together, the **Agreements**.

Various other arrangements were entered into pursuant to the Softwood Tasmania Joint Venture, including Deeds of Assumption, Deeds of Cross Charge and Deeds of Priority. A detailed explanation of the various agreements comprising the Joint Venture Arrangements is contained at paragraph 6 of the Submission

(b) Description of those provisions of the contract, arrangement or understanding described above at paragraph 2(a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be cartel provisions: (Refer to direction 4):

- **Joint Venture Operating Agreement**

If the Joint Venture Participants are in competition with each other for the purposes of section 44ZZRD, and the Joint Venture Participants' actions are not undertaken for the purposes of a joint venture (of the type contemplated by sections 44ZZRO and 44ZZRP), then to the extent that the JVOA contemplated, and established the basis for, the giving effect to the provisions of the Management and Sales Agency Agreements, its relevant provisions might constitute a cartel provision.
- **Management Agreement**

If the Joint Venture Participants are in competition with each other for the purposes of section 44ZZRD, and the Joint Venture Participants' actions are not undertaken for the purposes of a joint venture (of the type contemplated by sections 44ZZRO and 44ZZRP), then in agreeing to appoint the Manager as manager of each of their interests in the Joint Venture Assets, the Joint Venture Participants might be giving effect to a cartel provision.
- **Sales Agency Agreement**

If the Joint Venture Participants are in competition with each other for the purposes of section 44ZZRD, and the Joint Venture Participants' actions are not undertaken for the purposes of a joint venture (of the type contemplated by sections 44ZZRO and 44ZZRP), then in agreeing that each of the Joint Venture Participants would:

- o appoint the Manager to sell its share of the Forest Products; and
  - o only sell its share of the Forest Products to customers acquiring the other Joint Venture Participants' shares in the Forest Products,
- each of the Joint Venture Participants might be giving effect to a cartel provision.
- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:
- Forestry management services, and the supply of softwood sawlogs for processing.
- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:
- 10 years.

### 3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

**Forestry Tasmania (TAS 96785B)**

79 Melville Street Hobart, Tasmania – 7000

Forestry Tasmania is a corporation wholly owned by the State Government of Tasmania. It is responsible for the management of approximately 1.5 million hectares of forest land in Tasmania and the sustainable production and delivery of forest products.

**Tasmanian Softwood Fund Pty Ltd (ACN 088 771 523)**

Level 2, 33 George Street, Launceston TAS 7250

Tasmania Softwood Fund is an investment vehicle with a specified mandate to invest funds on behalf of its investors in forestry assets.

**Southern Hemisphere Softwood Strategies (ABRN 090 455 057)**

C/- Dobson Mitchell & Allport  
59 Harrington Street  
Hobart TAS 7000

Southern Hemisphere Softwood Strategies is an investment vehicle with a specified mandate to invest funds on behalf of its investors in forestry assets.

**Softwood Tasmania (Operator) Pty Ltd (ACN 089 242 231)**

33 George St, Launceston TAS 7250

Softwood Tasmania (Operator) was appointed by the Joint Venture Participants to manage and operate the Softwood Tasmania Joint Venture on their behalf pursuant to the JVOA.

**Timberlands Pacific Pty Ltd (ACN 074 313 401)**

22 Cameron Street, Launceston TAS 7250

Timberlands Pacific is a forest products company whose activities include the management of forestry resources and sales of forest products. Timberlands Pacific was, in turn, appointed to manage the Joint Venture Assets.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

There are no other parties or persons on whose behalf this application is made.

**4. Public benefit claims**

- (a) Arguments in support of application for authorisation (Refer to direction 6):

The arguments in support of this application for authorisation are set out in the Submission.

- (b) Facts and evidence relied upon in support of these claims:

The facts and evidence relied on by the Applicant in support of these arguments are set out in the Submission.

**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions) (Refer to direction 7):

The Applicant submits that there are two relevant markets:

1. an Australian market for the supply of forestry management services;
2. a market for the supply and acquisition of softwood and hardwood sawlogs that includes Tasmania and parts of Asia, particularly Korea.

A description of the relevant markets is contained in the Submission. However, the Applicant makes the following additional comments in relation this question.

*Forestry Management Services*

Every forestry asset/plantation needs to be managed, from the planning stage through to the harvest. While the skills required to manage different types of asset classes (eg softwood or hardwood) vary to a limited degree, the basic skills required for management of an asset class are readily transferable.

Notwithstanding the above, the services are almost always provided by an entity related to the asset owner (or by the asset owner itself). Where assets are owned by a joint venture, it is common for the joint venture to obtain forestry management services from one of the joint venture participants (or an entity related to one of them).

The key asset owners (and therefore providers of forestry management services) are:

- **Public sector**
  - Forestry Plantations Queensland
  - Forests NSW
  - VicForests
  - Forestry SA

Forest Products Commission (WA)

Forestry Tasmania

- **Private sector**

Hancock Victorian Plantations Pty Ltd

Auspine Limited

Murray River Forests Pty Limited

Gunns Ltd

Forestry Enterprises Australia

Great Southern Limited

ITC Limited

Forestry Corp

Timberlands Pacific Pty Ltd<sup>1</sup>

P F Olsen (Aus) Pty Limited<sup>2</sup>

*Supply and acquisition of softwood and hardwood sawlogs – product market*

- 5.1 Softwood and hardwood sawlogs are processed in timber mills to produce softwood and hardwood timber. While these timbers do have different functional applications, the Applicant submits that the sawlogs are substitutable from both the perspective of the mill operator and the forest owner.
- 5.2 Substitution by the forest owner is possible through the replacement of a harvested crop (be it a plantation or native forest) with either hardwood or softwood trees; rotation lengths to the next harvest (ie the amount of time it takes from planting to harvesting) for both hardwood and softwood are similar.
- 5.3 While most hardwood sawlogs have traditionally come from native forests (as opposed to plantations), and are unsuited to a purpose built softwood mill, newer processing plants can be (and are being) built to process both hardwood and softwood sawlogs. The most recent example is FEA's new Tasmanian mill. As hardwood plantations mature in Australia, hardwood sawlogs (well suited to these new mills) will become increasingly available. There are more than 100,000 ha of hardwood plantations in Tasmania alone, most of which will produce at least some sawlogs as well as the more traditional pulp logs.

Further, in the case of purpose built mills, it is feasible to invest in the necessary milling and associated processing facilities to enable substitution of input material. Depending on the mill, this can be relatively low cost such was the case with FEA's original saw mill in Tasmania. This mill regularly cut both softwood and hardwood sawlogs.

*Supply and acquisition of softwood and hardwood sawlogs - geographic market*

- 5.4 Sawlogs are exclusively purchased by saw mills. Accordingly, given the weight and size of sawlogs, haulage is a very significant component of the costs faced by saw mill. As a result, saw mills tend to be established in reasonable proximity to forests.

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<sup>1</sup> Being managers that do not own forestry assets.

<sup>2</sup> Being managers that do not own forestry assets.

5.5 While this means that it would not be competitive to seek to supply sawlogs from Tasmania to mainland Australia (as the cost of transport from the importing port to the mills would make the price of the Tasmanian sawlogs prohibitive), the same proposition does not hold true with respect to east Asia.

5.6 East Asia must import a significant proportion of most forest products (including softwood sawlogs) and, as such, accepts a significantly higher delivered log cost than Australian softwood sawmills. This price differential covers the large sea transport cost.

In particular, sawlogs have historically been exported from Tasmania (and elsewhere in Australia, as well as from many other countries, including New Zealand, North America and Russia) to Korea, which is one of the three biggest Asian importers (along with China and Japan). As Korea does not have a sufficient supply of domestically sourced logs to meet demand, it has developed substantial sawlog processing infrastructure, and supplies processed timber throughout Asia.

5.7 It is also of note that the price for various grades of sawlog (hardwood and softwood) in Asia is set according to an international pricing benchmark, supporting the submission that the geographic market is not limited to Tasmania. Tasmania has periodically benefited from significant sales into Asia, especially when local demand is lower than that in Asia.

5.8 While the Softwood Tasmania Joint Venture is firmly focused on supporting the Tasmanian timber industry, it still anticipates that it will make sales to Asia from time to time. Following its inception in 1998 and until relatively, the Joint Venture sold more than 100,000 tons of sawlogs to Korea annually.

## 6. Public detriments

(a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets (Refer to direction 8):

The Applicant does not consider that any public detriment arises from the Joint Venture Arrangements. This is discussed further in the Submission.

(b) Facts and evidence relevant to these detriments:

The facts and evidence relied on by the Applicant in support of these arguments are set out in the Submission.

## 7. Contracts, arrangements or understandings in similar terms

(a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

(b) Is this application to be so expressed?

Yes.

Each other proposed contract, arrangement or understanding in similar terms to the Joint Venture Arrangements for the purposes of subsections 88(13), (14) and (15) of the Act, being each other proposed contract, arrangement or understanding in similar terms to those Joint Venture Arrangements that may be made between each person who is an existing or continuing party to the Joint Venture Arrangements.

(c) If so, the following information is to be furnished:



- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms (Refer to direction 9):

Not applicable as no variation to the arrangement nor any other contract or arrangement has been made or understanding has been arrived at in similar terms to the Joint Venture Arrangements as at the date of this application.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties (Refer to direction 10)

Not applicable

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Businesses that invest in forestry plantations or assets or are involved in the management or marketing of forestry products.

## 8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the Trade Practices Act 1974)?

Yes. This application deals with a matter relating to the Softwood Tasmania Joint Venture.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes, the Applicant has also submitted a Form B with this Form A.

- (c) If so, by whom or on whose behalf are those other applications being made?

Please refer to 8(b).

## 9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the Applicant seeking authorisation to provide additional information in relation to this application:

Mr Peter Armitage  
Partner  
Blake Dawson  
Level 36, Grosvenor Place, 225 George Street  
Sydney NSW 2000

Dated 25 August 2009

Signed by / on behalf of the Applicant

Peter Armitage

(Signature)

PETER ARMITAGE

(Full Name)

PARTNER, BLAKE DAWSON

(Organisation and Position)

## DIRECTIONS

Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, Applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the Applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the Applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which authorisation is sought.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details —

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
  7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
  8. Provide details of the detriments to the public, including those resulting from any lessening of competition, which may result from the proposed contract, arrangement or understanding. Provide quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in

which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

10. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, and descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.

# Form B

Commonwealth of Australia

*Trade Practices Act 1974 — subsection 88(1A) and (1)*

## AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88(1A) of the *Trade Practices Act 1974* for an authorisation to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provisions within the meaning of section 45 of that Act).

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### 1. Applicant

(a) Name of Applicant:

*(Refer to direction 2)*

A91186

Forestry Tasmania (TAS 96785B);

Tasmanian Softwood Fund Pty Ltd (ACN 088 771 523) (**Tasmania Softwood Fund**); and

Southern Hemisphere Softwood Strategies (ABRN 090 455 057) (**Southern Hemisphere Softwood Strategies**),

in their capacity as participants in the Softwood Tasmania Joint Venture (**together, the Applicant**).

(b) Short description of business carried on by applicant:

*(Refer to direction 3)*

The Applicant carries on the business of planting, managing, harvesting and selling softwood from softwood plantations in Tasmania (see answer to question 3 for further detail).

(c) Address in Australia for service of documents on the Applicant:

Blake Dawson  
Level 36, Grosvenor Place, 225 George Street  
Sydney NSW 2000  
Attention: Peter Armitage([peter.armitage@blakedawson.com](mailto:peter.armitage@blakedawson.com))

### 2. Contract, arrangement or understanding

(a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:

*(Refer to direction 4)*

---

This application relies on the submissions filed in support of the Applicant's previous applications A91120-91122 (**Submission**) and, unless indicated otherwise, defined terms used in this application have the same meaning as those used in the Submission.

Authorisation is sought in relation to the combination of contracts:

- **Joint Venture Operating Agreement** between:
  - Forestry Tasmania;
  - Tasmania Softwood Fund;
  - Southern Hemisphere Softwood Strategies (collectively the **Joint Venture Participants**); and
  - Softwood Tasmania (Operator) Pty Ltd (**Operator**)
- **Management Agreement** between the Operator, Timberlands Pacific Pty Ltd (previously Rayonier Australia Pty Ltd) (**Manager**) and the Joint Venture Participants, pursuant to which the Manager was appointed to manage the Joint Venture Assets.
- **Sales Agency Agreements** between each of the Joint Venture Participants and the Manager pursuant to which the Manager was appointed as the exclusive agent of each Joint Venture Participant for the purposes of selling each of their interests in the Forest Products,

together, the **Agreements**.

Various other arrangements were entered into pursuant to the Softwood Tasmania Joint Venture including Deeds of Assumption, Deeds of Cross Charge and Deeds of Priority. A detailed explanation of the various agreements comprising the Joint Venture Arrangements is contained in paragraph 6 of the Submission.

- (b) Description of those provisions of the contract, arrangement or understanding described above at paragraph 2(a) that are, or would or might be, cartel provisions:

*(Refer to direction 4)*

- **Joint Venture Operating Agreement**

If the Joint Venture Participants are in competition with each other for the purposes of section 44ZZRD, and the Joint Venture Participants' actions are not undertaken for the purposes of a joint venture (of the type contemplated by sections s 44ZZRO or 44ZZRP), then the relevant provisions of the JVOA pursuant to which each of the Joint Venture Participants agree to sell their shares in the Forest Products on the same terms and conditions, including as to price, might constitute a cartel provision.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Supply of softwood sawlogs for processing

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

10 years

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### 3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

#### **Forestry Tasmania**

79 Melville Street Hobart, Tasmania – 7000

Forestry Tasmania is a corporation wholly owned by the State Government of Tasmania. It is responsible for the management of approximately 1.5 million hectares of forest land in Tasmania and the sustainable production and delivery of forest products.

#### **Tasmanian Softwood Fund Pty Ltd (ACN 088 771 523)**

Level 2, 33 George Street, Launceston TAS 7250

Tasmania Softwood Fund is an investment vehicle with a specified mandate to invest in funds on behalf of its investors in forestry assets.

#### **Southern Hemisphere Softwood Strategies (ABRN 090 455 057)**

C/- Dobson Mitchell & Allport  
59 Harrington Street  
Hobart TAS 7000

Southern Hemisphere Softwood Strategies is an investment vehicle with a specified mandate to invest in funds on behalf of its investors in forestry assets.

#### **Softwood Tasmania (Operator) Pty Ltd (ACN 089 242 231)**

33 George St, Launceston TAS 7250

Softwood Tasmania (Operator) was appointed by the Joint Venture Participants to manage and operate the Softwood Tasmania Joint venture on their behalf pursuant to the JVOA.

#### **Timberlands Pacific Pty Ltd (ACN 074 313 401)**

33 George Street, Launceston TAS 7250

Timberlands Pacific is a forest products company whose activities include the management of forestry resources and sales of forest products. Timberlands Pacific was, in turn, appointed to manage the Joint Venture Assets.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

There are no other parties or persons on whose behalf this application is made

### 4. Public benefit claims

- (a) Arguments in support of authorisation:

*(Refer to direction 6)*

The arguments in support of this application for authorisation are set out in the Submission.

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(b) Facts and evidence relied upon in support of these claims:

The facts and evidence relied on by the Applicant in support of these arguments are set out in the Submission.

## 5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*(Refer to direction 7)*

The Applicant submits that there are two relevant markets:

1. an Australian market for the supply of forestry management services;
2. a market for the supply and acquisition of softwood and hardwood sawlogs that includes Tasmania and parts of Asia, particularly Korea.

A description of the relevant markets is contained in the Submission. However, the Applicant makes the following additional comments in relation this question.

### *Forestry Management Services*

Every forestry asset/plantation needs to be managed, from the planning stage through to the harvest. While the skills required to manage different types of asset classes (eg softwood or hardwood) vary to a limited degree, the basic skills required for management of an asset class are readily transferable.

Notwithstanding the above, the services are almost always provided by an entity related to the asset owner (or by the asset owner itself). Where assets are owned by a joint venture, it is common for the joint venture to obtain forestry management services from one of the joint venture participants (or an entity related to one of them).

The key asset owners (and therefore providers of forestry management services) are:

- **Public sector**
    - Forestry Plantations Queensland
    - Forests NSW
    - VicForests
    - Forestry SA
    - Forest Products Commission (WA)
    - Forestry Tasmania
  - **Private sector**
    - Hancock Victorian Plantations Pty Ltd
    - Auspine Limited
    - Murray River Forests Pty Limited
    - Gunns Ltd
-



Forestry Enterprises Australia

Great Southern Limited

ITC Limited

Forestry Corp

Timberlands Pacific Pty Ltd<sup>1</sup>

P F Olsen (Aus) Pty Limited<sup>2</sup>

*Supply and acquisition of softwood and hardwood sawlogs – product market*

- 5.1 Softwood and hardwood sawlogs are processed in timber mills to produce softwood and hardwood timber. While these timbers do have different functional applications, the Applicant submits that the sawlogs are substitutable from both the perspective of the mill operator and the forest owner.
- 5.2 Substitution by the forest owner is possible through the replacement of a harvested crop (be it a plantation or native forest) with either hardwood or softwood trees; rotation lengths to the next harvest (ie the amount of time it takes from planting to harvesting) for both hardwood and softwood are similar.
- 5.3 While most hardwood sawlogs have traditionally come from native forests (as opposed to plantations), and are unsuited to a purpose built softwood mill, newer processing plants can be (and are being) built to process both hardwood and softwood sawlogs. The most recent example is FEA's new Tasmanian mill. As hardwood plantations mature in Australia, hardwood sawlogs (well suited to these new mills) will become increasingly available. There are more than 100,000 ha of hardwood plantations in Tasmania alone, most of which will produce at least some sawlogs as well as the more traditional pulp logs.

Further, in the case of purpose built mills, it is feasible to invest in the necessary milling and associated processing facilities to enable substitution of input material. Depending on the mill, this can be relatively low cost such as was the case with FEA's original saw mill in Tasmania. This mill regularly cut both softwood and hardwood sawlogs.

*Supply and acquisition of softwood and hardwood sawlogs - geographic market*

- 5.4 Sawlogs are exclusively purchased by saw mills. Accordingly, given the weight and size of sawlogs, haulage is a very significant component of the costs faced by saw mill. As a result, saw mills tend to be established in reasonable proximity to forests.
- 5.5 While this means that it would not be competitive to seek to supply sawlogs from Tasmania to mainland Australia (as the cost of transport from the importing port to the mills would make the price of the Tasmanian sawlogs prohibitive), the same proposition does not hold true with respect to east Asia.
- 5.6 East Asia must import a significant proportion of most forest products (including softwood sawlogs) and, as such, accepts a significantly higher delivered log cost than Australian softwood sawmills. This price differential covers the large sea transport cost.

In particular, sawlogs have historically been exported from Tasmania (and elsewhere in Australia, as well as from many other countries, including New Zealand, North America and Russia) to Korea, which is one of the three biggest Asian importers (along with China and Japan). As Korea does not have a sufficient supply of domestically sourced logs to meet

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<sup>1</sup> Being companies that do not own forestry assets.

<sup>2</sup> Being companies that do not own forestry assets.

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demand, it has developed substantial sawlog processing infrastructure, and supplies processed timber throughout Asia.

- 5.7 It is also of note that the price for various grades of sawlog (hardwood and softwood) in Asia is set according to an international pricing benchmark, supporting the submission that the geographic market is not limited to Tasmania. Tasmania has periodically benefited from significant sales into Asia, especially when local demand is lower than that in Asia.
- 5.8 While the Softwood Tasmania Joint Venture is firmly focused on supporting the Tasmanian timber industry, it still anticipates that it will make sales to Asia from time to time. Following its inception in 1998 and until relatively, the Joint Venture sold more than 100,000 tons of saw logs to Korea annually.

## **6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2(c) and the prices of goods or services in other affected markets:

*(Refer to direction 8)*

The Applicant does not consider that any public detriment arises from the Joint Venture Arrangements. This is discussed further in the Submission.

- (b) Facts and evidence relevant to these detriments:

The facts and evidence relied on by the Applicant in support of these arguments are set out in the Submission.

## **7. Contract, arrangements or understandings in similar terms**

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

Yes.

Each other proposed contract, arrangement or understanding in similar terms to the Joint Venture Arrangements for the purposes of subsections 88(13), (14) and (15) of the Act, being each other proposed contract, arrangement or understanding in similar terms to those Joint Venture Arrangements that may be made between each person who is an existing or continuing party to the Joint Venture Arrangements.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

*(Refer to direction 9)*

Not applicable as no variation to the arrangement nor any other contract or arrangement has been made or understanding has been arrived at in similar terms to the Transaction Documents as at the date of this application.

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- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Business that invest in forestry plantations or assets or are involved in the management or marketing of forestry products.

**8. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

Yes. This application deals with a matter relating to the Softwood Tasmania Joint Venture and the Participants.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Yes, the Applicant has also submitted a Form A with this Form B.

- (c) If so, by whom or on whose behalf are those other applications being made?

Please refer to 8(b).

**9. Further information**

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Mr Peter Armitage  
Partner  
Blake Dawson  
Level 36, Grosvenor Place, 225 George Street  
Sydney NSW 2000

Dated 25 August 2009

Signed by / on behalf of the Applicant

Peter Armitage  
.....  
(Signature)

PETER ARMITAGE  
.....  
(Full Name)

PARTNER, BLAKE DAWSON  
.....  
(Position in Organisation)

## DIRECTIONS

Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
  6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.  
  
Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
  8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
  9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in
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which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

