

# middletons

Melbourne | Perth | Sydney

Our reference  
CBIT.JDAN.1002554

7 May 2010

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## Hand Delivery

Richard Chadwick  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
Level 42, The Tower  
360 Elizabeth Street  
Melbourne VIC 3000



Dear Mr Chadwick

## Notification of Collective Bargaining

We act on behalf of Carter Holt Harvey Australia Limited.

We enclose the following:

1. the Form GA notification under section 93AB of the Trade Practices Act 1974;
2. signed consents for each of the parties to the collective bargaining notification;
3. a supporting submission; and
4. a cheque in the order of \$1000 as payment of the required fees.

We make a claim for confidentiality in respect of the supporting submission as it contains more specific detail of the proposed conduct. In this regard we note that Form GA provides all the necessary details for people to fully understand the nature of the conduct.

Yours faithfully

**Joanne Daniels**  
Partner

encl

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Partner  
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Contact  
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telephone: +61 3 9640 4321  
chris.bitmead@middletons.com

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## Clancy, Sharon

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**From:** Joanne Daniels [Joanne.Daniels@middletons.com.au]  
**Sent:** Tuesday, 11 May 2010 11:59 AM  
**To:** Clancy, Sharon  
**Subject:** Collective Bargaining Supporting Submission

Sharon

I refer to our conversation earlier today.

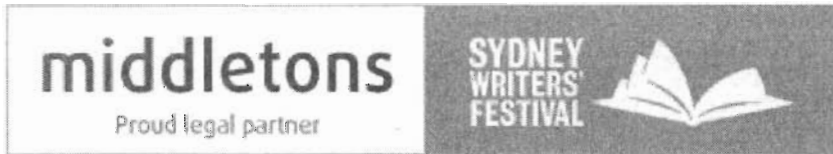
As discussed I have received instructions from Carter Holt Harvey Woodproducts Australia Pty Ltd that they no longer wish to claim confidentiality over the supporting submission annexed to the Form GA Notification of Collective Bargaining.

Please contact me if you have any further queries.

Regards

Jo

**Joanne Daniels | Partner | Middletons**  
Level 25 South Tower, 525 Collins Street, Melbourne VIC 3000, Australia  
**T:** (03) 9640 4380 **F:** (03) 9205 2055 **M:** 0407 735 161  
joanne.daniels@middletons.com  
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# Form GA Notification of collective bargaining

(regulation 71)

## Form GA

Commonwealth of Australia

*Trade Practices Act 1974 — section 93AB*

### NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

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

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.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notice is hereby given under section 93AB of the *Trade Practices Act 1974* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.  
*(Strike out if not applicable)*

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### Section A – general information

##### 1. Applicant

- (a) Name of the applicant:  
*(refer to Direction 1)*

CB00144  
CB00145  
CB00146  
CB00147  
Carter Holt Harvey Woodproducts Australia Pty Limited (ACN 002 993 106) (WPA)

Description of business carried on by the applicant:  
*(refer to Direction 2)*

WPA is an Australasian forest products company, with interests in wood products, pulp, paper and packaging. WPA owns and manages timber manufacturing operations in Australia's "Green Triangle" which spans the border area between the states of South Australia and Victoria.

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?  
(refer to Direction 3)

No

- (d) Address in Australia for service of documents on the applicant:

*C/- Joanne Daniels*

*Partner*

*Middletons*

*L25, 525 Collins Street*

*MELBOURNE VIC 3000*

## 2. Lodged on behalf of

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:  
(refer to Direction 4)

- *WPA, Millicent Road, Mt Gambier, SA 5290, (contact is Peter Smart, Green Triangle Fibre Manager T +61 8 8721 8316, F +61 8 8721 8335, peter.smart@chhwoodproducts.com.au | M +61 418 857 470)*
- *South Australian Forestry Corporation (ForestrySA), Jubilee Highway East Mount PO Box 162 Mount Gambier, South Australia 5290 (contact is Adrian Hatch, Manager Sales, Green Triangle Region, Phone: (08) 8724 2776, Fax: (08) 8724 2760, Mobile: 0407 042 307, E-mail: Hatch.Adrian@forestrysa.com.au)*
- *Hancock Victorian Plantations Pty Limited (HPV), 3rd Floor, 517 Flinders Lane Melbourne, Victoria 3000 (contact is Warwick Williams, In-House Lawyer, Hancock Victorian Plantations Pty Limited, PO Box 40 WENDOUREE 3355 Ph: (03) 5339 0005 Mob: (0418) 370 043 Fax: (03) 5338 2404)*
- *Green Triangle Forest Products (PTC) Limited (GTFP), 8 Monterey Drive, Mount Gambier South Australia 5290 (contact is Laurie Hein of Lot 11, Monterey Drive, PO Box 2249 Mount Gambier, SA 5290 Bus Phone: 08 87262901 Mobile: 0409 679 355)*

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:  
(refer to Direction 5)

*Please refer to annexure 1*

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

No

- (ii) details of the first-mentioned notification, including but not limited to:
  - (A) the name of the applicant; and
  - (B) the date the notification was said to be lodged; and
  - (C) if known or applicable — the registration number allocated to that collective bargaining notification.

*Not Applicable*

## Section B – collective bargaining arrangements

### 3. Proposed collective bargaining arrangements

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:  
*(refer to direction 6)*

*The targets are:*

*Pentarch Forest Products Pty Ltd (ACN 5059 465 879) (**Pentarch**). An appropriate person to contact is Matthew Deretic, National Resource Manager, 03 9621 7942. Pentarch is a subsidiary of Pentarch Holdings Pty Ltd, which generates its income through international trading, specifically in relation to forest products, agricultural products and manufacturing and engineering.*

*MTX Australia Pty Ltd (ACN 128 309 375)(**MTX**). An appropriate person to contact is Ji Kim, Director, 03 9676 9900. MTX are associated with the Matrex Global group which generates its income through international trade specifically relating to forest products.*

*International Timber Solutions Pty Ltd (**ITS**) ABN 97 124 632 444. An appropriate contact person is Debbie Blok, Customer Service and Logistics, Tel: +61 8 87254488, Mob: +61 400 839 741, Fax: +61 8 87254499 ITS is a privately owned company who generates its income through international trading of manufactured forest products.*

*Nelson Pine Industries Limited (**NPI**) (New Zealand Company No 766) . Registered Office Lower Queen Street Po Box 3049, Richmond, Nelson, New Zealand. Nelson Pine Industries Ltd is a New Zealand company, and part of the Nelson Pine Group, which uses Radiata Pine to manufacture medium density fibreboard and laminated veneer lumber in New Zealand.*

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

*The participants propose to supply the targets with timber products for export through Port of Portland.*

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?  
*(refer to direction 7)*

*Yes*

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

*Participants expect to enter into contracts to supply radiata pine logs with the targets. Past contracts with Pentarch have been entered into by ForestrySA, GTFP and HVP. HVP have current contracts with MTX for the supply of Radiata Pine logs elsewhere in Victoria.*

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?  
*(refer to direction 8)*

*Each participant has confirmed that it reasonably expects that their contractual payments with a target will not exceed the relevant prescribed amount in any 12 month period. It is our understanding that the basis upon which each participant, with the exception of WPA, has this expectation is the value of their previous respective contracts with Pentarch.*

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

*It is proposed that the contractual payments by a target to each of the applicants would be a result of the collective negotiation by the participants to this collective bargaining notification.*

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and
  - (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
  - (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
  - (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
  - (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and
  - (vi) details of proposed commencement and duration of contracts to be negotiated with the target:  
*(refer to direction 9)*

*Under the proposed collective bargaining arrangement, the participants propose to collectively negotiate with a target, the price at which the participants supply their plantation timber for export. The participants would also like to negotiate other terms of the supply agreement including quantity and term.*

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

*It is proposed that the participants will negotiate the price at which they supply their plantation timber to a target for subsequent export.*

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and
- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
- (A) details of the events that would trigger any such activity; and
  - (B) details of the process that would be followed in undertaking any such activity; and
  - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
  - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

*(refer to direction 10)*

*The participants are not proposing to engage in conduct which relates to an exclusionary provision. In the event that an agreement cannot be reached with a target, individual agreements will be pursued by the participants of the group for the supply of their plantation timber.*



## **Section C – public detriments**

### **4. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) 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 11)*

*Please refer to Annexure 2*

### **5. Public detriments**

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

*Please refer to Annexure 2*

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

*Please refer to Annexure 2*

## **Section D – public benefits**

### **6. Public benefit claims**

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

*Please refer to Annexure 2*

## **Section E - authority**

### **7. Contact details**

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

<i>Name</i>	<i>Joanne Daniels</i>
<i>Address</i>	<i>Middletons L25, 525 Collins Street MELBOURNE VIC 3000</i>
<i>Contact telephone number</i>	<i>03 9640 4380</i>

*(refer to direction 12)*

Dated..... 5 May 2010 .....

Signed by/on behalf of the applicant

.....  
(Signature)

**Joanne Daniels**

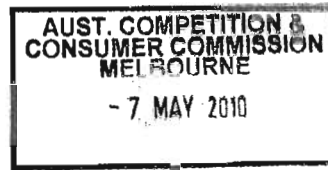
(Full Name)

**Middletons**

(Organisation)

**Partner**

(Position in Organisation)



## DIRECTIONS

1. Where the notice is given 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.
2. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which notification is given.
3. A collective bargaining notification can not be lodged by a trade union or a trade union representative.
4. Where the applicant will be a participant in the collective bargaining arrangements (rather than a representative of participants) the name of the applicant must also be included. Where those persons are corporations, list the corporation's name and address.
5. The applicant, in lodging a notification on behalf of others, must obtain their consent to do so and provide proof of that consent.
6. Where the target is a corporation, provide the corporate name.
7. The collective bargaining notification process is only available to parties that reasonably expect to make one or more contracts with the target about the supply or acquisition of goods or services the subject of the notification.
8. The value of the contract to be collectively negotiated between the target and each participant is not to exceed \$3 million (or such other amount as is prescribed by the regulations) per participant in any twelve month period.
9. To the extent that the collective bargaining arrangements have been reduced to writing, provide a true copy of the arrangement. To the extent that the collective bargaining arrangements have not been reduced to writing, provide a full and correct description of the key terms that have not been reduced to writing.
10. In simple terms an exclusionary provision exists where the proposed contract, arrangement or understanding is made by businesses (at least two of whom are competitors) for the purpose of preventing, restricting or limiting the supply of services to particular persons or classes of persons by all or any of the parties to the contract, arrangement or understanding.

In the context of collective bargaining, an exclusionary provision(s) may include contracts, arrangements or understandings (whether currently in existence or to be made or arrived at during the term of the notification) between collective bargaining participants to limit or restrict their dealings with the target including contracts arrangements or understandings to:

- (a) withhold the supply of goods or services from the target; or
- (b) refuse or decline to acquire the goods or services of the target;

whether such conduct was absolute, limited or subject to certain terms or conditions. This is sometimes referred to as a collective boycott.

11. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
12. The notification must be signed by a person authorised by the applicant to do so.

# Annexure 1

Consent Forms

## CONSENT FORM

Consent to be a party to the collective bargaining arrangement

I, Warwick Williams

care of 3rd Floor, 517 Flinders Lane Melbourne, Victoria

on behalf of Hancock Victorian Plantations Pty Ltd


on this 5<sup>th</sup> day of May 2010,

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Carter Holt Harvey Woodproducts Australia Pty Ltd in respect of the Targets identified in the Form GA submitted by Carter Holt Harvey Woodproducts Australia Pty Ltd and dated 5 May 2010.


I on behalf of Hancock Victorian Plantations Pty Ltd confirm that:

- (a) we expect to enter into one or more contracts with one or more of the Targets; and
- (b) the total value of the transactions conducted with a Target will not exceed the relevant proscribed amount under the *Trade Practices Act 1974*.

Signed for Hancock Victorian Plantations Pty Ltd by an authorised officer in the presence of: )  
)

  
Signature of witness

Malcolm Tonkin  
Name of witness  
(please print)

  
Signature  
Warwick Williams  
Name of officer  
(please print)

In - House Lawyer  
Office held  
(please print)

## CONSENT FORM

Consent to be a party to the collective bargaining arrangement

I, **Brian Farmer**

of **Jubilee Highway East, Mount Gambier, South Australia**

on behalf of **ForestrySA**

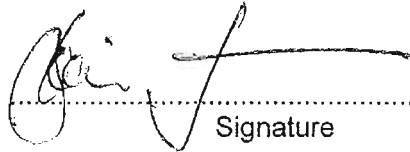
on this **7<sup>th</sup>** day of **May 2010**

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Carter Holt Harvey Woodproducts Australia Pty Ltd in respect of the Targets identified in the Form GA submitted by Carter Holt Harvey Woodproducts Australia Pty Ltd and dated 5 May 2010.

I on behalf of ForestrySA confirm that:

- (a) we expect to enter onto one or more contracts with one or more of the Targets; and
- (b) the total value of the transactions conducted with a Target will not exceed the relevant proscribed amount under the *Trade Practices Act 1974*.

Signed for **ForestrySA** by an authorised officer )  
in the presence of: )



Signature



Signature of witness

Catherine Allen  
Coordinator Executive Support

Name of witness  
(please print)

Name of officer  
(please print)

Brian Farmer  
Chief Executive

Office held  
(please print)

## CONSENT FORM

Consent to be a party to the collective bargaining arrangement

I, Laurie Hein

of 8 Monterey Drive Mt Gambier South Australia

on behalf of Green Triangle Forest Products (PTC) Ltd

on this 5<sup>th</sup> day of May 2010,

consent to be a party to the collective bargaining arrangement notified to the Australian Competition and Consumer Commission by Carter Holt Harvey Woodproducts Australia Pty Ltd in respect of the Targets identified in the Form GA submitted by Carter Holt Harvey Woodproducts Australia Pty Ltd and dated 5 May 2010.

I on behalf of Green Triangle Forest Products (PTC) Ltd confirm that:

- (a) we expect to enter onto one or more contracts with one or more of the Targets; and
- (b) the total value of the transactions conducted with a Target will not exceed the relevant proscribed amount under the *Trade Practices Act 1974*.

Signed for Green Triangle Forest Products )  
(PTC) Ltd by an authorised officer in the )  
presence of:

*M D Ellis*

Signature of witness

*Mark Donald Ellis*

Name of witness  
(please print)

*Laurie James Hein*

Signature

*Laurie James Hein*

Name of officer  
(please print)

*Managing Director*

Office held  
(please print)

# Annexure 2

Supporting Submission



# Supporting Submission

## Commercial In Confidence

### 1. Short Description of the Conduct

1.1 As set out in the Form GA, Carter Holt Harvey Woodproducts Australia Pty Ltd (**WPA**), South Australian Forestry Corporation, Hancock Victorian Plantations Pty Ltd and Green Triangle Forest Products (PTC) Pty Ltd (**GTFP**) (together, the **Participants**) wish to collectively bargain with companies which seek to export softwood logs grown in the area known as the "Green Triangle" which spans the border of southwest Victoria and southeast South Australia (as shown in figure 1), principally through the Port of Portland.

### 2. Background to the Participants who will be Collectively Bargaining

2.1 WPA conducts the following business operations in the Green Triangle:

- (a) the manufacture, distribution, and sale of wood products; including particleboard, mouldings, flooring, LVL I-beams as well as treated and untreated sawn timber.
- (b) the export of softwood woodchips from the Port of Portland.

The WPA Group of Companies<sup>1</sup> services both domestic and export markets, including to the USA, Japan, the Middle East and South East Asian markets.

2.2 The South Australian Forestry Corporation manages South Australia's state-owned plantation resource, including:

- (a) 84,000 ha of Radiata Pine in the Green Triangle and Ranges regions; and
- (b) the production of logs which are used to produce sawn timber, pulp and paper, particleboard, veneer and posts.

2.3 Hancock Victorian Plantations Pty Limited is a privately owned timber plantation company that conducts the following operations:

- (a) managing approximately 245,000 hectares of land across Victoria, including 50,000 hectares of native vegetation for conservation;
- (b) annually supplying approximately three (3) million tonnes of softwood (pine) and 300,000 tonnes of hardwood (eucalypt) to sawmillers, panel producers and pulp and paper mills in Australia and overseas; and
- (c) managing 20,700 hectares of Radiata Pine plantations in the Green Triangle region.

2.4 GTFP conducts the following operations in the Green Triangle:

- (a) manages approximately 22,000 net hectares of Radiata Pine plantations producing approximately 500,000 tonnes of logs annually which are sold to sawmillers and pulp and paper mills in Australia and overseas.

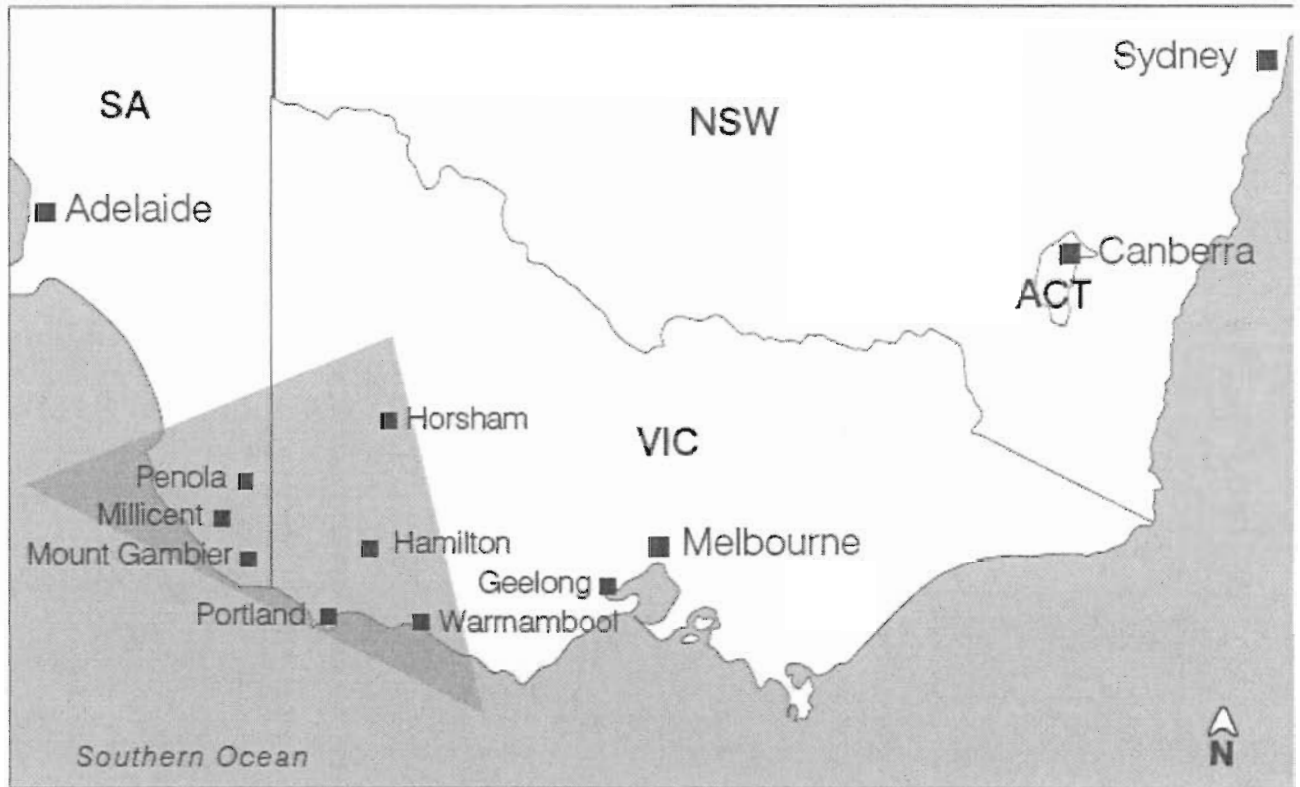
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<sup>1</sup> WPA Group of Companies means Carter Holt Harvey Woodproducts Australia Pty Ltd ABN 93 002 993 106; Carter Holt Harvey Woodproducts (Southern Region) Pty Ltd ABN 29 130 911 269; Carter Holt Harvey Woodproducts (Central and Northern Regions) Pty Ltd ABN 38 091 574 060; and Carter Holt Harvey Woodproducts (Distribution) Pty Ltd ABN 53 087 418 460.

### 3. The Green Triangle

- 3.1 The "Green Triangle" is a region located in southwest Victoria and the southeast of South Australia encompassing Warrnambool, Horsham and Mount Gambier, and also includes the regional centres of Portland, Hamilton, Naracoorte, Bordertown, Millicent and Penola. Figure 1 contains a basic map of the Green Triangle.

Figure 1: Map of Green Triangle



Source: Government of South Australia, *Green Triangle Region Freight Action Plan*, 2009.

- 3.2 The log production from the Green Triangle comprises predominantly plantation timber (as opposed to native forest). The plantations have historically been predominantly softwood plantations (*Pinus radiata*), with approximately 162,000 hectares currently planted (DAFF, 2007). More recently hardwood plantations (*Eucalyptus globulus*) have been established, with approximately 160,000 hectares planted. The Participants are only interested in trading softwood logs.
- 3.3 The volume of softwood logs harvested from the Green Triangle is approximately 2.94 million tonnes per annum (DAFF, 2007). The logs harvested from the Green Triangle are graded into the following classifications:
- (a) preservation logs;
  - (b) sawlogs; and
  - (c) pulpwood.
- 3.4 Some low quality logs (comprising low quality sawlogs and pulpwood) are either exported outside of Australia to China and Korea or sold domestically.

- 3.5 There are approximately 150,000 tonnes of low quality softwood logs exported from the Green Triangle per annum. There are approximately 400,000 tonnes of pulpwood logs and 2,450,000 tonnes of sawlogs sold domestically.
- 3.6 The conduct only relates to the export of low quality logs from the Green Triangle. The conduct does not relate to the export of other grades of logs (such as sawlogs) nor to any logs sold domestically.

### **Port Operations**

- 3.7 All logs exported from the Green Triangle must be exported through the Port of Portland, as the costs of transporting the logs by rail or truck to another port for export are prohibitive.
- 3.8 Pentarch Forest Products Pty Ltd (**Pentarch**), MTX Australia Pty Ltd (**MTX**), International Timber Solutions Pty Ltd (**ITS**) and Nelson Forest Industries Limited (**NFI**) have each expressed interest in purchasing low quality logs from the Participants, and the Participants are confident there are a number of further prospective customers. Collectively the prospective customers are referred to as the Targets.
- 3.9 Pentarch is currently the only company providing export log operations at the Port of Portland. MTX currently exports logs through the Newcastle, NSW port and Melbourne, Victoria port.
- 3.10 The Participants (with the exception of WPA) have each had a supply agreement for the export of logs with Pentarch at various times in the last 4 years. These agreements cover the trade of logs from the Participants to Pentarch at the Port of Portland.
- 3.11 As Pentarch is the only company exporting logs out of the Port of Portland each of the Participants has had no choice but to enter into a supply agreement with Pentarch. Individually, each Participant does not have sufficient volume to make a supply agreement commercially viable for any new entrant to enter the market and begin exporting logs out of the Port of Portland, and none of the Participants are able to make a sufficient volume available to maintain Pentarch's current operations. It follows that each of the Participants are price-takers with no commercially viable alternative and, consequently, have no countervailing power.
- 3.12 Each of the Participants wish to continue to sell their logs for export from the Port of Portland but wish to negotiate their supply agreements on commercially more favourable terms. It is understood by the Participants that MTX, ITS and NFI are interested in commencing log exporting operations at the Port of Portland if there was sufficient volume to make it commercially viable.
- 3.13 The collective volume of all the Participants is likely to make it commercially viable for a new entrant such as MTX to commence operations at the Port of Portland, and allow the Participants to negotiate between the two competing log exporters for better supply arrangements. However, there is unlikely to be sufficient volume for two log exporters to operate from the Port of Portland.

### **4. Notified conduct**

- 4.1 The notified conduct is proposed to be the Participants collectively negotiating in relation to the supply of raw timber products for export out of the Port of Portland with the Targets, on such matters as the price, term and other relevant conditions to the supply agreement.
- 4.2 Each Participant would enter into separate agreements with the log exporter who offers the best terms.

- 4.3 Although it is arguable that the conduct does not involve a breach of the cartel provisions of the *Trade Practices Act 1974 (TPA)*, the Participants wish to be beyond reproach in respect of the collective negotiations and to ensure that there is no basis for any argument that the conduct may be construed as falling within the prohibition of making or giving effect to a cartel provision and/or making a contract or arrangement or arriving at an understanding that has the purpose or effect of substantially lessening competition. Accordingly, the Participants wish to notify the conduct under section 93AB of the TPA.

## 5. Competition issues

- 5.1 We submit that the Commission should not serve an objection notice because the conduct in question will result in public benefits that significantly outweigh the public detriments, if any, ensuing from the conduct.

### **Public detriments**

- 5.2 The collective negotiation by the Participants relates solely to the supply and export of low quality softwood logs out of the Port of Portland. The collective bargaining will not affect the Participants' supply of timber products within Australian markets.
- 5.3 There are few if any public detriments associated with the proposed conduct for the following reasons:
- (a) the proposed collective bargaining conduct is entirely voluntary and each party may elect to withdraw from the negotiations at any time and negotiation individually with either of the Targets;
  - (b) the proposed conduct will have no further or consequent impact on any market in Australia as all of the logs the subject of the proposed conduct will be exported; and
  - (c) the proposed conduct will have little to no impact on any market outside of Australia because in each of the countries to which log export is likely the percentage of logs the subject to conduct as compared to the consumption of logs in that country will be very low.
- 5.4 Therefore, any detriment (if any) resulting from the proposed conduct will be outweighed by the significant public benefits discussed below.

### **Public benefits**

- 5.5 We submit that the notified conduct is pro-competitive and will generate a number of public benefits, including:
- (a) the introduction of competition in respect of the export of low quality softwood logs from the Port of Portland; and
  - (b) the Participants expect that the introduction of competition in respect of the export of logs from the Port of Portland will result in better outcomes for the bargaining group, including better pricing and service delivery.

These public benefits will not be achieved without the proposed collective bargaining taking place.

## 6. Conclusion

- 6.1 There will be little to no anti-competitive detriment arising from the conduct, as outlined at sections 5.2 to 5.4 above.

- 6.2 There will be significant public benefits arising from the introduction of competition in respect of the export of low quality softwood logs from the Port of Portland.

#### References

DAFF, 2007. Australia's Plantation Log Supply 2005-2049, Bureau of Rural Sciences, Department of Agriculture, Fisheries and Forestry, Australian Government.