Statement of Issues

20 October 2022

Forestry Corporation of NSW – proposed acquisition of Hume Forests Ltd

Purpose

1. Forestry Corporation of NSW (**FCNSW**) proposes to submit a bid to acquire the assets of Hume Forests Ltd **(Hume**) (the **proposed acquisition**). Through the proposed acquisition, FCNSW would acquire Hume's softwood log plantations in the Tumut/Tumbarumba and Bathurst/Oberon regions.

2. This Statement of Issues:

   - gives the Australian Competition and Consumer Commission's (**ACCC**) preliminary views on competition issues arising from the proposed acquisition,
   - identifies areas of further inquiry, and
   - invites interested parties to submit comments and information to assist the ACCC's assessment of the issues.

3. Statements of Issues do not refer to confidential information provided by the parties or other market participants and therefore may not fully articulate the ACCC's preliminary position.

Overview of ACCC's preliminary views

4. In considering the proposed acquisition, the ACCC applies the legal test set out in section 50 of the *Competition and Consumer Act 2010* (the **CCA**). In general terms, section 50 prohibits acquisitions that would have the effect, or be likely to have the effect, of substantially lessening competition in any market.

5. The ACCC divides its preliminary views into three categories, 'issues of concern', 'issues that may raise concerns' and 'issues unlikely to raise concerns'. In this Statement of Issues there is one issue of concern.

Issue of concern: Increase in concentration in the Tumut/Tumbarumba and Bathurst/Oberon regions

6. The ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition in the supply of softwood logs in each of the Tumut/Tumbarumba and Bathurst/Oberon regions (**the regions**) of NSW. The proposed acquisition will remove Hume as a significant alternative supplier of softwood logs in markets which are already highly concentrated.

7. The proposed acquisition may lead to higher prices or reduced service levels (such as log quality and delivery times) for softwood logs over the long term relative to what would be the case under current or likely alternative ownership.

Making a submission

8. The ACCC invites submissions from interested parties, particularly on the following key issues:

    - the nature and extent of competition between FCNSW and Hume (together, **the parties**), and

    - whether the proposed acquisition is likely to lead to price increases or reductions in service.

9. Interested parties should provide submissions by no later than 5pm on 3 November 2022. Responses may be emailed to mergers@accc.gov.au with the title: Submission re: Forestry Corporation of NSW proposed acquisition of Hume Forests Ltd - attention Marisa Kuhlewein. If you would like to discuss the matter with ACCC officers over the telephone or in person, or have any questions about this Statement of Issues, please contact Marisa Kuhlewein on (07) 3835 4668.

10. The ACCC anticipates making a final decision on 27 January 2023, however, this timeline can change. To keep abreast of possible changes in relation to timing and to find relevant documents, interested parties should visit the Mergers Register on the ACCC's website at www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews.

Confidentiality of submissions

11. The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the CCA. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, please identify any confidential information that is provided to the ACCC. Our *Informal Merger Review Process Guidelines* contain more information on confidentiality.

About ACCC 'Statements of Issues'

12. A Statement of Issues is not a final decision about a proposed acquisition. A Statement of Issues outlines the ACCC's preliminary views and identifies further lines of inquiry.

13. 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.

Glossary of terms

Softwood:	Wood from gymnosperm trees such as pine, cedar and Douglas fir. In Australia, most softwood timber is *Pinus Radiata*.
Softwood logs:	The range of logs produced by a softwood plantation, including conventional sawlog, industrial grade log and pulpwood.
Pulpwood logs:	Small diameter, low grade logs used to manufacture woodchips, 'roundwood' products such as posts and poles, paper, particleboard and medium density fiberboard.
Non-structural (industrial) logs:	Logs that are of non-standard short lengths and/or that have excessive knot or sweep parameters. Used for processing into non-structural timber (such as pallets, fencing and landscaping products).
Structural Sawlogs:	Sections of a tree that are of a suitable size and quality for processing into sawn timber products by a timber mill – structural sawlog is produced in a range of sizes and is typically larger, straighter and with fewer knots and imperfections compared to industrial grade log or pulpwood.

The parties

FCNSW

14. FCNSW owns and operates more than 230,000 hectares of softwood timber plantations and just under 35,000 hectares of hardwood timber plantations in NSW. FCNSW is the largest producer of softwood logs in NSW with plantations across Bathurst, Bombala, Grafton, Moss Vale, Tallaganda, Tumut and Walcha. It owns in excess of 70% of all softwood plantations in the state.

15. FCNSW manages approximately 93,000 hectares of productive softwood plantation area in the Tumut/Tumbarumba region and approximately 74,000 hectares in the Bathurst/Oberon region.

16. FCNSW is a state-owned statutory corporation under the *State Corporations Act 1989* (NSW), which establishes commercial businesses on behalf of the people of NSW. The objectives of FNCSW are outlined in section 10 of the *Forestry Act 2012* (NSW).[1]

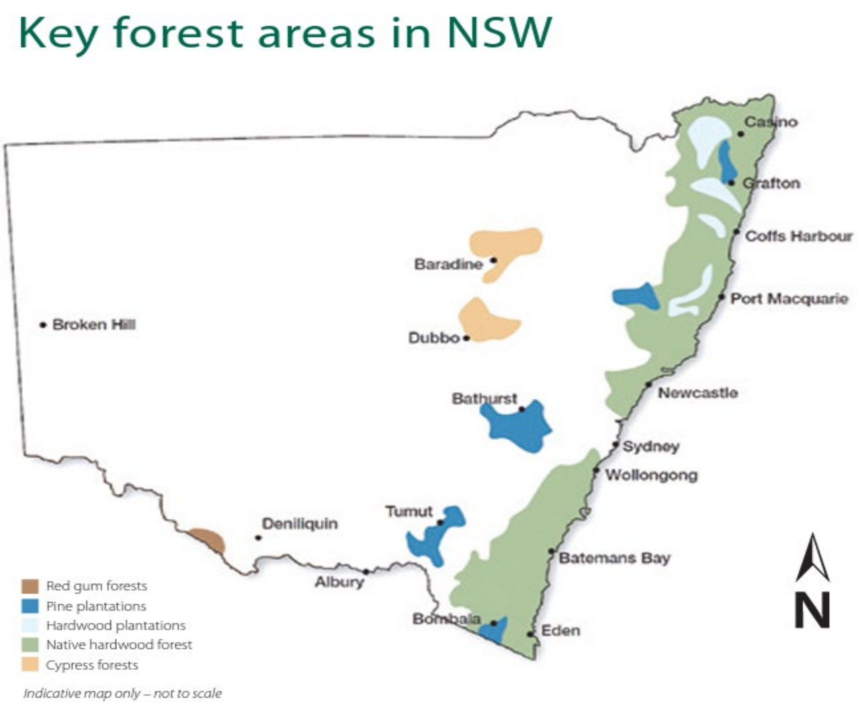
Hume Forests Ltd (Hume)

17. Global fund manager, Global Forests Partners LP (GFP) established Hume, on behalf of investors, in 2004 through the acquisition of existing plantations. Hume's plantations are located between the Tumut/Tumbarumba and Bathurst/Oberon regions of NSW. They comprise approximately 19,000 ha of freehold land, with a net plantation area of approximately 14,000 ha.

18. In addition to the softwood plantation estates, the sale also includes existing agreements relating to its operations. These include customer contracts, forestry contracting agreements and other ancillary assets (such as fire trucks and a storage depot).

19. Figure 1 below identifies forest areas in NSW with softwood plantations in blue. The Bathurst and Tumut plantation regions are identified. The Walcha plantation region is to the north of Bathurst and the Bombala region to the south-east of Tumut.

Figure 1: Map of NSW Forestry regions[2]



[1] Section 10(a)(i), *Forestry Act 2012 (NSW).*

[2] Forestry NSW, *Forests, all about wood*, 2011.

Other industry participants

Softwood Suppliers

20. In addition to FCNSW and Hume, other suppliers of softwood in the Tumut/Tumbarumba region include Snowy Mountains Forests and Southern Cross Forests (both managed by GFP on behalf of investors), ACT PCS, New Forests Murray River Forests and AgriWealth. There are also a number of small-scale plantations in the region.

21. In Bathurst/Oberon, the only large supplier in addition to the parties is Plantation Pine Products, which is vertically integrated with Borg (discussed below). There are also a number of small-scale plantations in this region.

22. In north-eastern Victoria, Hancock Victoria Plantations has significant plantations around Shelley and Myrtleford.

Softwood Customers

23. The following customers have operations in the Tumut/Tumbarumba region:

    - Visy is a privately owned paper, packaging and recycling company that operates in the Tumut/Tumbarumba region. Visy requires pulpwood logs for its processing operations. Visy has a significant position in the softwood industry in NSW.

    - Hyne Timber is one of Australia's largest producers of sawn timber products. Relevantly, Hyne acquires sawlogs for use in its mill at Tumbarumba.

    - AKD Softwoods is a producer of framing and construction timber. Relevantly, it acquires sawlogs for use in its mill at Tumut. AKD also owns plantation land in both the Tumut and Oberon regions.

24. The following customers have operations in the Bathurst/Oberon region:

    - ATP NSW is owned by AAM Investment Group. The ACCC understands ATP NSW primarily uses small sawlog for its mill at Bathurst.

    - Highland Pine Products is a 50:50 joint venture between AKD Softwoods and Pentarch Forestry. Highland Pine Products mills timber to be used as house frames and trusses, for which it requires structural sawlog.

    - Plantation Pine Products (PPP) is owned by Borg, a manufacturer of particleboard and medium density fibreboard created using pulpwood. PPP also own softwood plantations in the Bathurst/Oberon region.

    - Australian United Timbers sells a range of timber products, in particular landscaping products. It has a mill at Burraga using non-structural (industrial) logs.

25. Softwood customers outside the two regions may also acquire softwood logs from the regions. Such customers include:

- Capital Battens has a mill in Canberra, and principally sells battens for roof tiles
- Hayters has a mill in Werombi, near Campbelltown, and sells a range of timber products
- Penrose Pine Productions has a mill in Penrose, between Canberra and Sydney, and uses sawlog to produce a range of timber products.

Industry background

Softwood Timber Supply Chain

26. Softwood has a growing cycle of up to about 28 to 32 years to reach sawlog maturity. During this cycle, the plantation is periodically thinned to remove weaker trees and promote the growth of stronger trees. As a result, softwood plantations typically produce a range of log grades:

    - **Pulpwood logs:** Harvested at the first thinning of a plantation at 12-14 years and making up a proportion of subsequent harvests. Pulpwood includes small diameter, low grade logs and is used to manufacture woodchips, ‘roundwood’ products such as posts and poles, paper, particleboard and medium density fibreboard (MDF).
    - **Non-structural (industrial) sawlogs:** Generally produced from larger logs harvested during thinning's or from the treetops at final harvest, used for processing into non-structural timber (such as pallets, fencing and landscaping products) or for exporting as unprocessed logs; and
    - **Structural sawlogs:** Generally harvested at 25-30 years. Generally produced from final ‘clear felling’ and suitable for structural timber production, such as house frames.

27. Customers are mills or processors which refine finished products, as shown in Figure 2 below. There are a range of end uses for softwood timber, from paper to house frames.

Forecast softwood supply shortfalls and impact of the 2019-2020 bushfires

28. A February 2019 research report by the Australian Bureau of Agricultural and Resource Economics (ABARES) identified a likely shortfall of softwood sawlog production in NSW, reaching as much as 3.4 million cubic metres in 2050 (annual Australian demand for softwood logs is approximately 4.5 million cubic metres at present).[3]

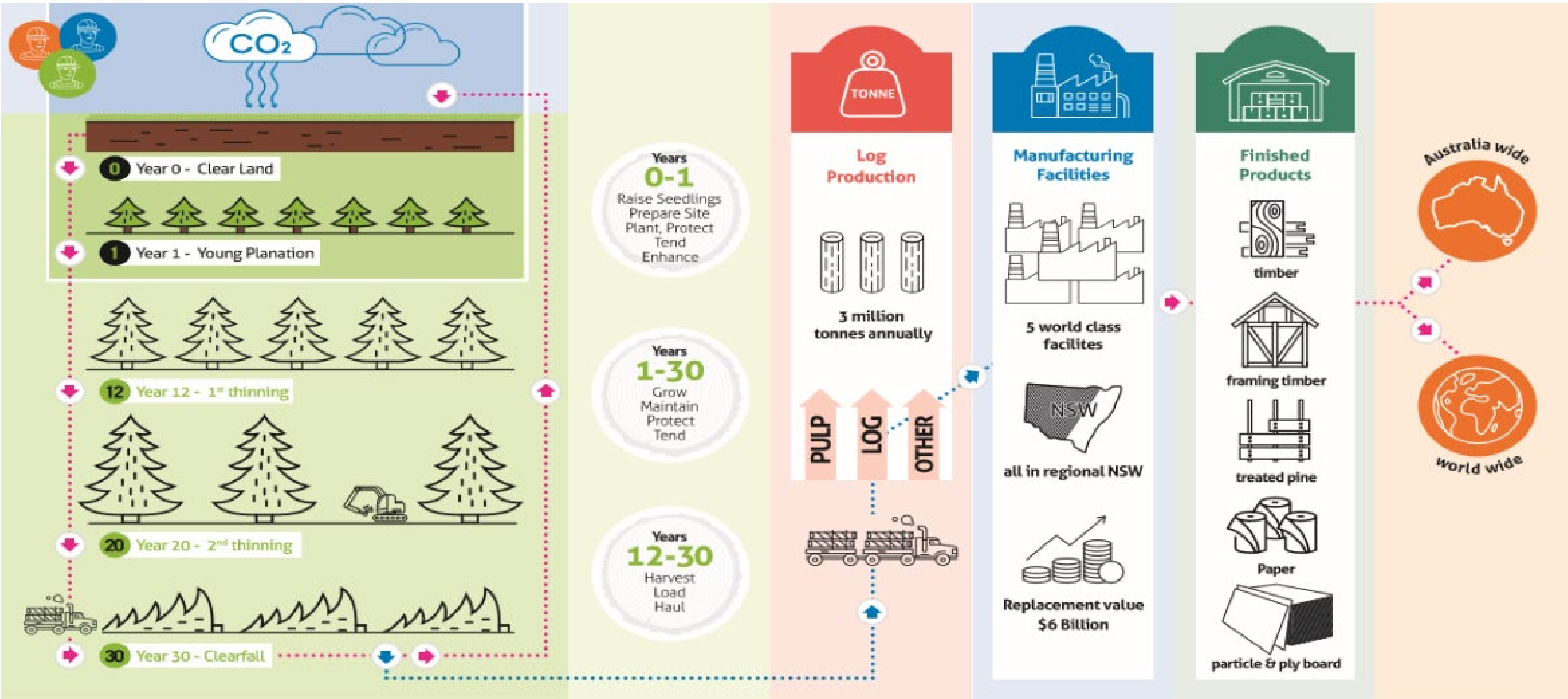
[3] Whittle, I, Lock, P & Hug, B 2019, *Economic potential for new plantation establishment in Australia: outlook to 2050*, ABARES research report, Canberra, February.

29. Extreme bushfires impacted NSW in 2019-20. Over five million hectares across NSW were affected by the fires, including significant areas of softwood plantation in the Tumut/Tumbarumba region.[4]

30. Consequently, wood supply has fallen significantly. Market participants submit there is an undersupply relative to current strong demand for downstream softwood timber products.

[4] NSW Department of Planning and Environment, Understanding the effects of the 2019-20 fires 30 August 2021.

Figure 2: Softwood timber supply chain[5]



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[5] Softwoods Working Group, *Presentation to Cootamundra-Gundagai Council*, 11 May 2018.

Previous ACCC decisions

31. On 20 May 2021, the ACCC announced it would not oppose New Forests Asset Management Pty Ltd proposal to acquire the softwood plantation assets of Global Forests Partners LP in the Green Triangle region of south-west Victoria. The ACCC concluded the acquisition would be unlikely to result in a substantial lessening of competition.

32. The ACCC found that the relevant markets were already highly concentrated. However, the ACCC concluded the acquisition was unlikely to substantially lessen competition in any market. In reaching this decision, the ACCC noted the contracting practices, long-term supply cycles and OneFortyOne holding the largest share of plantation area in the region post-acquisition meant that the acquisition was unlikely to interfere with competitive dynamics in the market for log supply.

The proposed transaction

33. FCNSW proposes to acquire the assets of Hume. The target is being sold in a competitive bid process.

Future with and without the acquisition

34. In assessing a proposed acquisition under section 50 of the CCA, the ACCC considers the effects of the acquisition by comparing the likely future state of competition if the acquisition proceeds (the 'with' position) to the likely future state of competition if the acquisition does not proceed (the 'without' position) to determine whether the proposed acquisition is likely to substantially lessen competition in any relevant market.

35. On the basis of the information currently available, the ACCC considers the future without the proposed acquisition will be the status quo or acquisition by an alternative buyer. Hume is being sold in a competitive bid process so there may be a range of potential alternative owners.

36. The ACCC is considering whether alternative bidders may be likely to convert the Hume plantation estate into agricultural land. There are likely a range of factors which inform such decisions, including the suitability for and productivity of the land in agricultural use and the cost of rehabilitation relative to replanting. This is an issue the ACCC will explore further in its review.

Areas of overlap and relevant markets

37. FCNSW and Hume overlap in the supply of softwood logs in the Bathurst/Oberon and Tumut/Tumbarumba regions of NSW.

38. The ACCC has not formed a concluded view on market definition. Its preliminary view is that the relevant markets are for the supply of softwood logs in each of the Tumut/Tumbarumba and Bathurst/Oberon regions of NSW.

Product dimension

39. The ACCC's preliminary view is that the relevant product market is for the supply of softwood logs. This is the area of overlap between FCNSW and Hume in each of the regions.

40. However, the ACCC is considering whether there may be separate markets for the supply of softwood pulpwood logs, softwood non-structural (industrial) sawlogs and softwood structural sawlogs

41. There are a range of sub-categorisations market participants use for softwood logs. For example, the KPMG Australian Pine Log Price Index refers to small sawlogs, intermediate sawlogs, medium sawlogs, large sawlogs, preservation logs, pulplogs and salvage logs. On the other hand, some market participants use distinctions such as large and small sawlog, industrial sawlog, pulplog and veneer log.

42. On the supply side, distinctions between the different categories are determined by the size of the tree, the relevant segment of the tree and the quality of the tree, amongst other factors.

43. On the demand side, the ACCC understands some customers are limited to specific categories of timber, while others may use one or more, subject to price. For example, some sawlog customers require large, high-quality logs for structural timber and cannot use other categories of softwood. Others, such as pulpwood log customers, can use higher quality softwood, subject to price. Accordingly, there may be asymmetric substitution between the softwood categories.

Geographic dimension of the market

44. The ACCC's preliminary view is that there are likely to be separate geographic markets for the Tumut/Tumbarumba and Bathurst/Oberon regions.

45. High transport costs relative to the product value mean that customers have a strong preference to source softwood locally. Although this preference will likely vary across the different product types and will be stronger for lower value pulpwood than higher value sawlog. The ACCC considers that plantations geographically close to each other are likely to be close competitive constraints on each other, whereas those further away are likely to be weaker constraints.

46. Due to the present undersupply of softwood logs, customers have recently been sourcing structural sawlog from distances of up to 800 km, and softwood pulpwood logs from up to 500 km away. Some customers have sourced significant volumes of softwood over far greater distances than they have historically done so.

47. As the bushfires destroyed softwood trees, these supply and demand conditions may be persistent for the next decade or more. Customers may therefore have to continue sourcing softwood logs from greater distances than they have historically done so. This may suggest the geographic dimension of the market has permanently expanded.

48. However, the ACCC understands that prior to the bushfires, transporting softwood logs over these distances was relatively rare. Market participants have submitted to the

ACCC that the current long transport distances for some supply is uneconomic and unsustainable.

49. The ACCC has not formed a final view on the appropriate geographic dimension of the market/s and will explore this issue further.

The ACCC invites comments from market participants on its preliminary views about the definition of the relevant market(s). In particular, market participants may wish to comment on the following:

- Whether it is appropriate to consider a ‘softwood logs’ product market, or whether a narrower categorisation may be more appropriate.
- To what extent can sawmills and wood processors substitute between the product categories the ACCC is considering (pulpwood, non-structural (industrial) sawlog and structural sawlog). For example, can pulpwood logs be substituted with non-structural (industrial) sawlogs, and vice versa.
- Whether the geographic boundary of softwood supply has permanently expanded given ongoing supply constraints and, therefore, whether the ACCC should consider a broader geographic market definition.
- Whether sourcing softwood over longer distances than has historically occurred is sustainable and, if not, how ongoing supply constraints will affect customers.
- What transport costs are involved in transporting softwood logs and typical per tonne per kilometre costs.
- Whether plantations geographically proximate to a customer facility are stronger competitors to supply that customer than plantations at longer distances.

Issue of concern: Increase in concentration in the Tumut/Tumbarumba and Bathurst/Oberon regions

50. The ACCC’s preliminary view is that the proposed acquisition is likely to substantially lessen competition in each of the regions due to the material increase in concentration in already highly concentrated markets. Competition effects may play out over the very long term given the nature of this industry. In this context, the proposed acquisition may represent a significant and permanent structural change in the industry.

51. The ACCC’s preliminary views are that:

    - FCNSW is the dominant softwood log supplier in each region and throughout NSW
    - price and non-price competition between plantations can play out over both the short-to-medium term (in this case up to 10 years) and the long term

- the proposed acquisition removes a material competitor to FCNSW and may have a significant effect on competition in both the short-to-medium term and the long term
- there is no prospect of meaningful entry or expansion providing competitive constraint in the short-to-medium term as new plantations take many years to reach maturity
- FCNSW's dominant position in the relevant markets is likely to be enduring. Softwood plantation areas in the relevant markets have been relatively steady over time and there is a low prospect of a material expansion in the long term
- large customers likely have some buyer power, but this would not prevent competitive harm from occurring
- downstream import competition may constrain softwood log prices in some circumstances
- FCNSW's statutory obligations may restrain it from exercising market power to a degree, until any privatisation of FCNSW, or amendment that lessens FCNSW's statutory obligations.

FCNSW is the dominant softwood log supplier in the two regions and throughout NSW

52. The supply of softwood logs in the two regions is already highly concentrated. FCNSW is the dominant supplier of softwood in each region. Estimates from market participants suggest it accounts for over 60 per cent of the plantation area in the Tumut / Tumbarumba region and over 75 per cent of the plantation area in the Bathurst / Oberon region. Market participants have submitted that FCNSW acts as a price leader with its prices influencing the market more broadly.

53. Hume is the only alternative of significant size in the Bathurst/Oberon region and one of the few alternatives of significant size in the Tumut/Tumbarumba region. It is therefore an important competitor to FCNSW.

54. Post-acquisition, three or four forestry owners of similar size to Hume would remain in the Tumut/Tumbarumba region. These are (in order of plantation area from largest to smallest): Snowy Mountains Forests, ACT Forests, Southern Cross Forests and New Forests Murray River Forests. These plantations will likely continue providing some competitive constraint in this region post-acquisition.

55. Competitive constraint within the Bathurst/Oberon region is more limited. In the Bathurst/Oberon region, market feedback indicates that post-acquisition the remaining plantation area would be held by the vertically integrated Plantation Pine Products and a range of small-scale plantation owners. Plantation Pine Products is likely to direct pulpwood to its related entity, Borg, and is therefore unlikely a constraint with respect to pulpwood.

56. Following the bushfires, customers have sought softwood logs from further afield than has historically been the case. Hancock Timber in Victoria is supplying significant volumes of timber to at least one customer in the Tumut/Tumbarumba region.

57. However, high transport costs relative to the value of the product means sourcing timber from these further afield regions is an inefficient alternative to supply from each of the Tumut/Tumbarumba and Bathurst/Oberon regions. Supply from these regions further afield may therefore be a weak competitive constraint compared to local competitors.

58. Market feedback indicates it is not viable to import softwood logs from Tasmania or overseas.

Price and non-price competition between plantations plays out over the long term

59. The ACCC understands that competition occurs gradually over long periods of time on price and non-price terms. Plantations and customers react to supply and demand conditions in their contract negotiations. There tends to be limited direct head-to-head competition in relation to specific contracts given the nature of the industry.

60. Plantations generally do not compete with one another to supply specific customers. Rather, customers compete to secure contracts from plantations through requests for proposal tenders or bi-lateral negotiations.

61. The industry is also characterised by infrequent tendering and large, long-term contracting, in particular by FCNSW. The ACCC understands that a significant proportion of FCNSW's softwood log in the two regions is committed under long-term contracts. Some market participants refer to long and short-term contracts, and spot transactions.

62. Each new contract has reference to recent outcomes (to the extent market participants have visibility of such outcomes) and other market conditions. For example, market participants indicated plantations and customers have reference to existing supply agreements and the Australian Pine Log Price Index (PLP) when determining what they will accept or offer respectively for softwood.[6] The PLP presents data from a survey of price outcomes for large plantation owners, including Forestry Corporation and Hancock Timber.

63. The ACCC has also received submissions suggesting plantation owners may also respond to one another by timing when and how they market their softwood to maximise returns. This may include contracting well in advance of the timber reaching maturity, harvesting timber early or deferring harvest. However, there are economic implications to early or late harvests, as the timber will not be at optimal harvest age and therefore may not maximise returns over time (subject to prices achieved in the short term).

64. Market feedback has strongly indicated that in the current undersupply conditions, customers consider they are price-takers. Base prices for timber contracts have increased significantly, in addition to price increases as a result of annual indexation for inflation and transport costs. This may suggest plantation owners are exercising

[6] KPMG, Australian Pine Log Price Index (Stumpage), December 2020.

market power at present. If this is indeed the case, any further lessening of competition could be significant to the competitive process in this industry.

65. A number of customers raised strong concerns that FCNSW may use Hume's uncontracted softwood to meet its existing contractual commitments. This would deny other customers access to Hume's volumes, at a time when the market is supply constrained. On this issue, the ACCC's preliminary view is that while this is an understandable concern for market participants, unfavourable allocations of Hume's softwood logs does not necessarily reflect a loss of competition between FCNSW and Hume.

66. The ACCC will continue exploring the nature and extent of competition in these regions. In light of the severe softwood supply shortages in New South Wales and the nature of the industry, the ACCC is considering these issues with a long-term time horizon of 25 years or more.

There is no prospect of meaningful new entry or expansion providing competitive constraint in the foreseeable future

67. New plantations take decades to reach maturity such that new entry will not impact market conditions except in the very long term. Entry or expansion would only have effects once the softwood reaches maturity at between 12-14 years for pulpwood and industrial grade logs, and 28-32 years for sawlogs.

68. There also appear to be significant barriers to entry for the supply of softwood logs, even in the very long term. There has been limited new entry and no material increase in softwood timber plantation area in the last decade in NSW. Entry barriers include the high cost of purchasing land for plantations, which reflects the value of the land under alternative agricultural use. Long lead times between planting and harvest may also introduce risk for plantations without contractual commitments from a customer.

69. Carbon credits may improve the profitability of plantations and facilitate new entry. To date, the existing programs do not appear to have significantly impacted the size of the softwood plantation estate.

70. The ACCC is, therefore, considering whether existing plantation estate is more likely to be replanted after harvest than agricultural land being converted to plantations. This may suggest new entry of significant scale is unlikely and existing plantation owners, such as Hume, will be the only significant competitors even in the very long term.

Large customers likely have buyer power

71. A small number of sawmills and wood processors account for a significant proportion of demand for softwood in the Bathurst/Oberon and Tumut/Tumbarumba. For example, the only customers for pulpwood within each of the Tumut/Tumbarumba and Bathurst/Oberon regions are Visy and Borg respectively.

72. Such customers may have buyer power given their significant size. However, the ACCC's preliminary view is that even if there is buyer power, it is not sufficient to prevent the proposed acquisition from resulting in competitive harm. Price and non-price outcomes for customers will likely be better with competition than without.

Downstream imports may constrain prices to a degree

73. Imports of downstream softwood timber products (e.g. paper, particleboard, structural timber etc.) may impose some constraint on upstream softwood log prices. To the extent downstream imports constrain prices for end products, this may impact what customers are able to pay for softwood logs.

74. The ACCC understands this constraint varies year to year depending on supplies in foreign countries and from product to product depending on Australian standards. At present, imports for some products are limited due to international supply and shipping constraints.

75. However, to the extent there is such a constraint, the ACCC's preliminary view is that it is not sufficient to prevent a substantial lessening of competition. Even if this constraint is significant, price and non-price outcomes for customers will likely be better with competition than without.

FCNSW's statutory obligations may constrain restrain it from exercising its market power until privatisation

76. The ACCC is considering the extent to which FCNSW's statutory obligations restrain it from exercising market power.

77. There may be some evidence of such a constraint at present. Market participants submitted FCNSW generally offers softwood at lower prices than other plantation owners, which may be a result of its statutory mandate. It is unclear at this stage precisely why FCNSW may price below other market participants or whether the ACCC can have confidence such pricing will continue in future.

78. However, it is unclear to what extent the ACCC can rely on FCNSW's statutory obligations to prevent competitive harm. FCNSW is a state-owned corporation and, as such, has one of its four principal objectives to operate as "a successful business and, to this end … operate at least as efficiently as any comparable business". Achieving competition objectives is not a statutory obligation of FCNSW.

79. The statutory obligations are also subject to amendment, or abolition if FCNSW is privatised. It is unclear if or when FCNSW will be privatised.

The proposed acquisition removes a material competitor to FCNSW and may have a substantial impact on competition in the long term

80. Taking the above analysis into consideration, the ACCC's preliminary view is that the proposed acquisition is likely to substantially lessen competition due to effects on competition in the long term.

81. FCNSW has a dominant position in the supply of softwood logs in NSW and there are few competitors of significant scale in the Tumut/Tumbarumba and Bathurst/Oberon regions. The proposed acquisition will reduce choice for customers and may affect price and non-price outcomes for softwood log contracts in the long term.

82. As discussed above, the ACCC's preliminary view is that possible constraint from buyer power, downstream imports and FCNSW's statutory obligations, are unlikely to be sufficient to prevent a substantial lessening of competition.

83. The ACCC will explore the likely effect of the proposed acquisition on competition further.

The ACCC invites comments from market participants on its preliminary competition assessment outlined above. In particular, market participants may wish to comment on:

- Examples of plantation owners directly constraining one another with respect to price or service offerings to customers.
- How competition plays out in this industry.
- Whether and via what mechanisms prices reflect competition between plantations, including whether it is necessary for plantations to tender timber at similar times for such competition to occur.
- Whether Hume and FCNSW are likely to conduct tender processes for uncontracted timber at similar times in future.
- The competitive significance of an opportunity to bid for the Hume volumes to competition in this industry, including, in particular, whether this lost opportunity removes competitive tension between the merger parties.
- Whether and, if so, why FCNSW prices below other market participants.
- The role of downstream imports with respect to contractual outcomes for the upstream supply of softwood logs, including whether referencing downstream import competition has constrained price or service offerings in contractual negotiations.

ACCC's next steps

84. As noted above, the ACCC now seeks submissions from market 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. Submissions are to be received by the ACCC no later than 3 November 2022 and should be emailed to mergers@accc.gov.au

85. The ACCC will finalise its view on this matter after it considers submissions invited by this Statement of Issues.

86. The ACCC intends to publicly announce its final view by 27 January 2023. However, the anticipated timeline may change in line with the Informal 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 to explain its final view.