



**Morgan Sawmill Jamestown –
Application for authorisation AA1000539
Interim authorisation decision
12 February 2021**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted conditional interim authorisation in respect of application for authorisation AA1000539 lodged by Morgan Sawmill Jamestown¹ (**Morgan Sawmill**) on 18 December 2020.
2. Interim authorisation is granted to enable Morgan Sawmill, SA Pine Pty Ltd (**SA Pine**), KSI Sawmill², PalletCo SA Pty Ltd and Harvestco Hills Pty Ltd and any new or other business that acquires unprocessed timber logs from ForestrySA³ (**the Group**) to form a collective bargaining group to negotiate the following terms and conditions with ForestrySA concerning the supply of logs from the Mount Lofty Reserve in South Australia:
 - period of supply
 - log volumes
 - delivery and collection locations
 - log specifications
 - the rate at which logs would be collected (m³ or tonnes per week)
 - incidental matters (e.g. when fire affected logs would be rejected, measurement methodology, insurance requirements, payment terms, security).
3. The ACCC has specified as a condition of the interim authorisation that Morgan Sawmill must, at least 14 days prior to any new member⁴ engaging in conduct in reliance on this interim authorisation, provide to the ACCC:
 - the business name of and contact details for the new member, in a form that can be placed on the public register, and
 - on a confidential basis, the quantity (m³) of logs that were (or, for 2021, are projected to be) processed, harvested or otherwise dealt with by that member in 2019, 2020 and 2021, and the quantity of logs (m³) that were (or, for 2021, are projected to be) acquired from ForestrySA in 2019, 2020 and 2021.
4. Interim authorisation is not granted for the Group to:
 - discuss prices per grade of log, or
 - enter into or give effect to log supply agreements with ForestrySA.

¹ Edward John Morgan as trustee for the Ed Morgan Family Trust and Luke Laurence Morgan as Trustee for the Luke Morgan Family Trust, trading as 'Morgan Sawmill Jamestown'.

² KSI Sawmill means: The KSI Sawmills Unit Trust, ABN 11 657 678 273.

³ The South Australian Forestry Corporation, trading as 'ForestrySA'.

⁴ In this context, 'new member' means any party other than Morgan Sawmill, KSI Sawmill, PalletCo SA Pty Ltd and Harvestco Hills Pty Ltd.

5. For the avoidance of doubt, this interim authorisation does not prevent the members of the Group from seeking to negotiate with ForestrySA individually, nor does it compel ForestrySA to negotiate with the Group.
6. The ACCC grants interim authorisation in relation to Division 1 of Part IV of the Act and section 45 of the Act.
7. Interim authorisation commences immediately and remains in place until it is revoked, the date on which the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

The application for authorisation

8. Morgan Sawmill is seeking authorisation for it and other timber processors and harvesters that source timber from ForestrySA to form a collective bargaining group to negotiate terms and conditions (including price) with ForestrySA concerning the supply of logs from the Mount Lofty Reserve in South Australia. Morgan Sawmill is seeking authorisation because this conduct may involve a cartel conduct, as described in Division 1 of Part IV of the Act and/or may substantially lessen competition in breach of section 45 of the Act.
9. ForestrySA directly negotiates with customers whose log supply agreements are nearing an end and this can result in new contracts if those negotiations reveal a clearly competitive log price by reference to ForestrySA's benchmarking. If negotiations do not reveal a clearly competitive log price, then ForestrySA undertakes an open 'request for proposal' or tender process, going to the market for bids on the available log parcel.
10. Morgan Sawmill considers that the ability for the Group to collectively bargain with ForestrySA will increase the likelihood of securing long-term log supply agreements because the Group will be able to place more attractive bids seeking larger parcels of logs.

The authorisation process

11. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Request for interim authorisation

12. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation prior to the ACCC's final determination. This allows the parties to engage in the proposed conduct while the ACCC is considering the substantive application.
13. Morgan Sawmill requests interim authorisation for the following reasons:
 - The Group is mindful that it is unable to participate in collective discussions concerning the terms of a possible supply agreement in the absence of authorisation. Interim authorisation will enable the Group to form a strategy before meeting with ForestrySA.
 - It is common industry practice for the negotiation of terms for upcoming log supply agreements to begin up to a year before current agreements expire. Morgan Sawmill and KSI Sawmill's current log supply agreements will expire in June 2021.
 - Authorisation would allow smaller processors to compete for relatively large log bundles offered by ForestrySA, increasing competition in the supply of timber products in South Australia.

- Authorisation would result in net public benefits by enabling efficiencies and better certainty for the Group and ForestrySA (by enabling longer term contracts).

Consultation

14. The ACCC invited submissions from a range of potentially interested parties including major competitors, suppliers, relevant industry associations, consumer groups, state and federal government.⁵
15. Public submissions were provided by:
- Midway Limited** (Australia's largest woodfibre processor and exporter) – Midway advises it has 'no issues with this proposal', noting the challenges for a small player to compete for softwood in SA.
 - SA Small Business Commissioner** –The Commissioner supports both the substantive application and request for interim authorisation and notes that small processors of saw logs in SA have experienced and continue to experience extreme difficulties in negotiating reasonable terms and continuity of log supply.
 - ForestrySA** – ForestrySA opposes interim authorisation. It considers that a net benefit to the public is best achieved through any interested customers, including the members of the Group, continuing to individually compete for the future supply of logs from ForestrySA's Mount Lofty Ranges estate. ForestrySA considers that the market for its products is relatively active and competitive and does not warrant the collective bargaining arrangements proposed.
16. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the [ACCC's website](#).

Reasons for decision

17. In granting interim authorisation, the ACCC notes that:
- There is some urgency to the request for interim authorisation due to the expiry of some existing log supply agreements in June 2021. Additionally, a parcel of logs from the Mount Lofty Reserve will become available for forward contracts from July 2021, with negotiations and agreements to be established over the coming five months. Interim authorisation will allow the Group to advance discussions as to the terms they would collectively seek from ForestrySA and begin negotiations with ForestrySA before current log supply agreements expire.
 - Interim authorisation does not permit discussion of prices per grade of log or allow the Group to enter into or give effect to any jointly negotiated log supply agreements and therefore, interim authorisation is unlikely to materially alter the competitive dynamics of the market.
 - Morgan Sawmill must notify the ACCC of any new members joining the Group so that the ACCC can assess whether this addition is likely to alter the competitive dynamics of the market.
 - ForestrySA is not obliged to negotiate with the Group or accept any collective proposal put to it.

⁵ A list of the parties consulted and the public submissions received is available from the ACCC's public register <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/morgan-sawmill-jamestown> .

Reconsideration of interim authorisation

18. The ACCC may review the interim authorisation at any time.
19. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.