



COMMERCE COMMISSION

## Statement of Preliminary Issues

### Matariki Forests / Selwyn Plantation Board

28 June 2011

11.4/12945

#### INTRODUCTION

1. On 22 June 2011, the Commerce Commission (Commission) received an application from Matariki Forests Limited (Matariki) seeking clearance to acquire all of the forestry assets of Selwyn Plantation Board Limited (SPB). The public version of the application can be accessed on the Commission's website at:  
<http://www.comcom.govt.nz/clearances-register/detail/720>
2. This Statement of Preliminary Issues outlines the key competition issues the Commission currently considers will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as the Commission's assessment of the application for clearance progresses. Therefore, the issues highlighted in this Statement of Preliminary Issues are in no way binding on the Commission.
3. The Commission invites interested parties to make comment on the likely competitive effects of the proposed merger.

#### RELEVANT PARTIES

##### **The Acquirer – Matariki**

4. Matariki is owned by a conglomeration of funds and forestry managers including Rayonier, a U.S. based forestry company. Matariki owns or manages exotic forests throughout New Zealand and in particular Canterbury, where it is the largest player in that regional market for the supply of logs.

##### **The Target – SPB**

5. SPB is owned by the Selwyn District Council (60%) and the Christchurch City Council (40%). It is also an owner of exotic forests, all of which are in the Canterbury region where it is the third largest producer of logs.

## **ANALYTICAL FRAMEWORK**

6. In the context of an application for clearance, the Commission must consider whether or not an acquisition substantially lessens competition. The first step of the Commission's analytical framework<sup>1</sup> is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target where aggregation of market share may arise from the proposed acquisition. The Commission then considers the relevant products and geographic regions that constitute close substitutes from both a customer's and a supplier's point of view.
7. The Commission uses a forward-looking type of analysis to assess the degree of any potential lessening of competition in the relevant market or markets arising from a proposed acquisition. Therefore, the next step is to establish the two hypothetical future scenarios:
- with the acquisition in question (the factual); and
  - in the absence of the acquisition (the counterfactual).

The impact of the acquisition on competition is then viewed as the prospective difference between those two scenarios.

8. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
- existing competition - the degree to which existing competitors compete and their ability to expand production in the event that the combined entity raises prices;
  - potential competition – the ability of businesses to readily enter the market and thereafter expand, given an inducement to do so;
  - the countervailing market power of buyers - the potential for a business to be sufficiently constrained by purchasers' ability to exert an influence on price, quality and/or terms of supply; and
  - co-ordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.
9. A comparison of the extent of competition in the relevant markets both with and without the acquisition enables the Commission to assess the degree by which the proposed acquisition may lessen competition. If the lessening is substantial the Commission may not give clearance to the proposed acquisition.

## **PRELIMINARY ISSUES**

10. The proposed acquisition would result in an increase in Matariki's market share in the Canterbury / West Coast region for unpruned sawlogs and pulplogs in the time periods between 2012 – 2015, 2016 – 2019 and 2020 - 2023.

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, January 2004.

11. Of the factors outlined in the previous section, the Commission considers its focus in respect of the proposed acquisition will be on the following areas:

### **Market Definition**

12. In respect of market definition, the Commission will consider whether forests in Canterbury and the West Coast are in the same geographic market.

### **Existing Competition**

13. In its application, Matariki states that the merged entity would have a significant market share during some of the relevant time periods. However, Matariki considers that it would face significant constraints, especially from private forest owners who might bring their harvests forward or by other local competitors who might divert logs into the Canterbury market that would otherwise have been exported. The Commission will test the extent to which the combined entity would be constrained by other forestry owners amending their harvesting plan or diverting logs away from export post acquisition.

14. In respect of sawlogs and pulp-logs, the Commission proposes to consider whether:

- existing competitors would be able and likely to bring forward their harvest and whether doing so would provide strong competition post acquisition; and
- logs that other forest owners had planned to export might be diverted to local production and whether this would constrain the merged entity from exercising market power.

### **Countervailing Power**

15. The Commission will consider whether large purchasers of sawlogs and pulp-logs could credibly threaten to switch suppliers, or import logs from other regions such as Otago or Nelson/Marlborough in order to counteract any exercise of market power by the combined entity.

### **Other Competition Factors**

16. Both Matariki and SBP are supply both sawlogs and pulp-logs. The sawlogs they produce are used in structural timber such as framing, and the pulp-logs are used by local mills to produce MDF and other products. The applicant has submitted that any other purchaser of SBP is likely to export its logs, thus reducing the level of competition in the relevant markets. The Commission will assess whether export of SBP's logs is a likely counterfactual and if so whether the acquisition would result in a substantial lessening of competition relative to that proposition.

17. Matariki has undertaken to "hand back" a significant proportion of its estate to Ngai Tahu. The Commission will assess whether the merged entity would be constrained by the "hand back" of forestry land to Ngai Tahu under Treaty settlement agreements.

### **NEXT STEPS**

18. In line with the Commission's Merger and Acquisitions Clearance Process Guidelines (available on the Commission's website at [www.comcom.govt.nz](http://www.comcom.govt.nz)), the Commission has established a draft timeframe for consideration of the issues and Matariki's application for

clearance. An extension of time was agreed to by the Applicant such that the Commission should make its final decision by **10 August 2011**. However, this timeframe could change. To keep abreast of possible changes in relation to timing and to find relevant documents, visit the Clearance Public Register on the Commission's website at:

<http://www.comcom.govt.nz/clearances-register/>

19. As part of its investigation, the Commission will identify the parties it believes will provide the best information to help it assess the preliminary issues identified above. The Commission will be contacting those parties over the next few weeks.
20. The Commission invites submissions from any other parties who consider they have information relevant to the Commission's consideration of this matter. If you wish to make a submission, please send it to the Registrar, at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference Matariki Forests/Selwyn Plantation Board in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by **4pm on Friday 8 July 2011**. Please clearly identify any confidential information contained in the submission and provide contact details.