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COMMERCE COMMISSION

Commerce Commission

Decision No. 342

Determination pursuant to the Commerce Act 1986 in the matter of an application involving:

RII WEYERHAEUSER WORLD TIMBERFUND LP

and

CARTER HOLT HARVEY LIMITED

The Commission:

P C Allport
E C A Harrison
E M Coutts

Summary of Application:

The acquisition by RII Weyerhaeuser World Timberfund LP of forestry assets of Carter Holt Harvey Limited in Nelson.

Determination:

Pursuant to s 66(3)(b) of the Commerce Act, the Commission determines to decline clearance for the proposed acquisition.

Date of Determination:

19 February 1999

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BRACKETS**

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FIGURE 1: Map of Forests in Nelson/Marlborough

THE PROPOSAL

- 1 The business acquisition for which clearance is sought under section 66 of the Commerce Act 1986 (the Act) is the proposed acquisition by RII Weyerhaeuser World Timberfund LP (Weyerhaeuser) of forestry assets of Carter Holt Harvey Limited (CHH) in Nelson. The principal assets subject to the proposal are approximately 28,000 hectares of forest, including approximately 9,000 hectares of land subject to Crown Forest License. Certain other associated assets are to be acquired, including a forest nursery, buildings, fire fighting equipment, office equipment and existing contracts relating to the operation of the CHH forests.
- 2 CHH owns the Eves Valley sawmill and chipmill, and also has a retail outlet in Nelson. These businesses are not part of the proposal for which clearance is sought, as CHH intends to continue operating them.

THE PROCEDURES

- 3 The notice was registered on 21 January 1999. Section 66(3) of the Act requires the Commission to clear, or to decline to clear, a notice given under the section within 10 working days, unless the Commission and the applicant who gave the notice agree to a longer period. Two extensions were agreed, bringing the due date for determination to 19 February 1999.
- 4 Weyerhaeuser sought confidentiality for some of the information in the notice, and a confidentiality order was made in respect of that information for a period of 20 working days from the Commission's determination. When the order expires, the provisions of the Official Information Act 1992 will apply.
- 5 The Commission's decision is based on an investigation conducted by staff and their subsequent advice to the Commission.

THE INVESTIGATION

- 6 The Commission contacted the following parties during the investigation:

Flight Anderson Limited
McVicar Timber Group Limited
Merrill & Ring NZ Limited
Ministry of Agriculture and Forestry
Moutere Timber Limited
Nelson Pine Industries Limited
P F Olsen and Company Limited
Prime Pine Limited
Rayonier New Zealand Limited
Taylor Timbers Limited
The New Zealand Timber Industry Federation Incorporated
Timberlands West Coast Limited
South Pine (Nelson) Limited
Waimea Sawmillers Limited

Further information was also obtained from Weyerhaeuser, and from CHH.

THE PARTIES

Weyerhaeuser

- 7 Weyerhaeuser is a limited partnership formed under the laws of the state of Delaware, USA. (A limited partnership in the USA is similar to a special partnership under New Zealand law.) 50% of the partnership is owned by Weyerhaeuser Company, a large forest products company, based in Auburn, Washington State, USA.
- 8 Weyerhaeuser Company, which is listed on the New York Stock Exchange, was founded in 1900 and has extensive forest cutting rights in Canada and the USA. The company's production range includes timber, plywood and particleboard. Other activities include the production of papermaking chemicals, pulp, newsprint, coated and uncoated papers, corrugated containers and containerboard, and the development of residential real estate.
- 9 The other 50% of the limited partnership is owned by institutional investors from North America and Europe, who are represented by UBS Brinson Resource Investments, a division of the Union Bank of Switzerland.
- 10 Weyerhaeuser Company has a wholly owned subsidiary, Weyerhaeuser New Zealand Inc, which has held 51% of the shares in a joint venture which owns forests in Nelson and Marlborough since April 1997. The interest acquired by Weyerhaeuser was formerly owned by Fletcher Challenge Forests. Most of the remaining share of this joint venture is owned by institutional investors who are also represented by UBS Brinson Resource Investments.

CHH

- 11 CHH, which is listed on the New Zealand and Australian Stock Exchanges, has substantial interests in forests, wood products, pulp and paper, tissue, packaging and building products. A controlling interest (50.2%) is held by International Paper Company, a large USA producer of forest products and paper, which is based in New York.
- 12 CHH owns 21,00 hectares of forests in Nelson, and, since December 1990, it has held a Crown Forestry Licence over 7,500 hectares of State Forest in the region.

BACKGROUND

New Zealand

- 13 Almost all of the wood harvested in New Zealand is now from planted production forests, of which New Zealand has 1.6 million hectares. Most of these forests are of radiata pine (91%) with Douglas Fir (5%) being next in importance. Hardwoods, mainly eucalypts, account for about 3%. Wood from indigenous species now forms a very small part of the total supply.

- 14 Planted production forests are distributed widely in New Zealand, with the greatest concentration being in the Central North Island, which has about one-third of the total.
- 15 The Crown had a major role in the development of planted production forestry for a long period, but Crown plantings ceased in 1990 and the cutting rights to most State Forests have been sold over the past ten years. 93% of planted forests are now privately controlled, either through land ownership or through the holding of Crown leases to cutting rights.
- 16 The boom in plantings from the 1970's onwards means that a large increase in wood supply is expected through the next several decades. Figures compiled by the former Ministry of Forestry indicated that the supply will increase from about 16 million cubic metres in 1997 to about 30 million in 2010, and to about 40 million in the early 2020's. Substantial subsequent increases are expected.
- 17 Of the total planted forests 40% are of trees up to 9 years old, 34% are of trees from 10 to 19 years, while 22% are of trees aged 20 to 29. The balance is of older trees.
- 18 The Commission examined forests in considerable detail in connection with some past decisions, although most of these were about ten years ago. Decisions 224, 226, 227 and 228, all from early 1989, related to the sale of State Forests. The conferences held by the Commission in relation to each of these decisions allowed a broad range of interested parties the opportunity to express their views.
- 19 A more recent Commission decision (un-numbered, December 1995) was that involving the proposal of Carter Holt Harvey to acquire the Crown forestry assets in the Auckland, Central North Island and Hawke's Bay wood supply regions.

Nelson/Marlborough

- 20 Plantation forests in Nelson/Marlborough date back to the early 1900s, but the present forests reflect the first planting boom of 1920s and 1930s, and the second boom of the 1970s and subsequently. At 1 April 1998 the planted forests in the region totalled 167,231 hectares, a level which had increased to 173,610 hectares in October 1998. Nelson/ Marlborough accounts for 10.6% of the New Zealand total. The distribution of the region's forests is shown in the appended map from a June 1997 report by the then Ministry of Forestry, entitled *Regional Studies, Nelson and Marlborough*.
- 21 Ownership of the region's forests can be divided into three groups¹. The following figures show the ownership categories, but make no allowance for the ages of the holdings:

¹ Information from Ministry of Agriculture and Forestry

Two very large owners: Weyerhaeuser NZ Ltd
 CHH

Seven owners, each with more than 1000 hectares
Numerous owners each holding less than 1000 hectares

- 22 The composition of Nelson/Marlborough forests differs a little from that of New Zealand as a whole. Compared with the national average, the proportion of radiata is lower (89%), while Douglas Fir is relatively more important (8%).
- 23 In the year ended 31 March 1998, the volume of wood extracted from the region's forests was 1.439 million cubic metres. 44% of this was of saw logs to be processed in New Zealand, 33% was of saw logs for export while 23% was of logs used for making woodchips (pulp logs)². Of the saw logs processed domestically, most were utilised for the production of sawn timber in the region, but some were supplied to the plywood mill on the West Coast.
- 24 It is estimated by the Ministry of Agriculture and Forestry that about 70% of the region's forest harvest is exported, either directly as logs or chips, or in the form of medium density fibreboard and sawn timber.
- 25 The two major processors of logs produced in the region are Nelson Pine Industries Limited (NPI), and the CHH sawmill. The other sawmillers in the region are collectively the other major processors.

Nelson Pine Industries Limited

- 26 NPI was established in 1984 and has been a wholly owned subsidiary of Sumitomo Forestry Limited of Japan since January 1993. The company manufactures medium density fibreboard (mdf), most of which is exported. The rated capacity of the plant is for the processing of 350,000 cubic metres of wood to produce 220,000 cubic metres of mdf.
- 27 While NPI owns 3,400 hectares of forest in the region, this supplies only a very small part of its needs, and most of the logs from its forest are sold by tender. The company's sources of pulp logs for chipping, and of chips produced by others, are shown in the following table.

%

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- 28 When producing at capacity, NPI has the potential to use most of the pulp wood produced in the region.

² Source: Ministry of Agriculture and Forestry.

Sawmills

29 The regions sawmills can be divided into three categories.³

a) those with an annual production greater than 10,000 cubic metres of sawn timber

CHH
Flight Anderson
McVicar Timber Group
South Pine
Waimea Sawmillers

b) those with an annual production of 5,000 to 10,000 cubic metres of sawn timber

Moutere Timbers
Prime Timbers
Taylor Timbers

c) those with an annual production of 500 to 5,000 cubic metres of sawn timber

Anatoki Sawmill
Renwick Timber & Sawmilling
Korere Milling Company
Northover Bros sawmill
Pigeon Valley Sawmill
Rapaura Timber
Russ Sawmilling
Sixtus, R
Smith, V I & Sons
Southwood Milling

30 The CHH sawmill at Eves Valley is by far the largest in the region.⁴ It has the capacity to process about 317,000 cubic metres of logs annually, and to produce 192,000 cubic metres of sawn timber from this.

Wood chips

31 Six units in the region produce wood chips. The largest of these is the CHH chip mill which is located with the company's sawmill at Eves Valley. The plant's capacity is 190,000 cubic meters of chips a year. This plant is the only one in the region which can produce chips from roundwood. The five other sawmills which produce chips use offcuts from their timber milling.

Log Exports

³ Source: Ministry of Agriculture and Forestry.

⁴ The rated capacity of the md f plant is a little higher in terms of potential wood requirements.

32 In the year ended 31 March 1998 the quantity of sawlogs exported from Nelson was about 475,000 cubic metres.⁵ The three exporters of these logs were Weyerhaeuser [], Rayonier [] and CHH []. The quantity of pulp logs exported is small.

MARKET DEFINITION

33 Section 3(1A) of the Commerce Act provides that:

“...the term ‘market’ is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them”.

34 The Commission’s Business Acquisitions Guidelines provide information on how the Commission approaches the task of market definition. Identification of the relevant markets enables the Commission to examine whether the acquisition would result, or would be likely to result, in the acquisition or strengthening of a dominant position in terms of s 47(1) of the Act in any of those markets.

35 Markets are defined in relation to product type, geographical extent and functional level. The boundaries of the product and geographical markets are identified by considering the extent to which a prospective purchaser would be likely to substitute other products and other geographical regions in response to a change in the relative prices of the products concerned.

36 A properly defined market will include products which are regarded by buyers as being not too different (the ‘product’ dimension) and not too far away (the ‘geographical’ dimension). A market defined in these terms is one within which a hypothetical profit-maximising sole supplier of a product could impose at least a small yet significant and *non-transitory increase in price* (the ‘*ssnip*’ test), assuming other terms of sale remain unchanged. It will also include those suppliers currently in production who are likely, in the event of such a *ssnip*, to shift promptly to offer a suitable alternative product.

37 Markets are also defined in relation to functional level, because it is usual for the production, distribution and sale of products to proceed through a series of levels. For example, the functional level between manufacturers and wholesalers might be called the ‘manufacturing’ market, while that between wholesalers and retailers is usually known as the ‘wholesaling market’. Functional levels may be combined, and it is now common for manufacturers to undertake the wholesaling function within their own organisations. In relation to the Weyerhaeuser application it appears appropriate to combine the product and function dimensions.

⁵ Source: Ministry of Agriculture and Forestry.

Product and Function Markets

- 38 Weyerhaeuser suggests that the relevant product and function markets are those for (a) the production and supply of saw logs, and (b) the production and supply of pulp logs.
- 39 In Decision 213 of November 1997, which related to North Island forests, the Commission noted the distinction between two types of end-use for logs: (a) sawn timber and veneer and (b) pulp (via woodchips).
- 40 Decision 224 considered whether the production and function markets should be for the production of all logs, or whether the market should be divided into categories such as exotic and indigenous logs. The Commission concluded that, because the production of indigenous logs was relatively small, the focus should be on the exotic (plantation) forests. The Commission further considered whether there should be additional sub-division into markets for sawlogs and pulp logs, peeler logs and veneer logs and pruned logs and unpruned logs. The Commission found that virtually all New Zealand forests produced a variety of types of logs, that there were difficulties in distinguishing between the log grades and that there was a large degree of substitutability between types of logs, and concluded that all logs formed part of the same market. *Pinus radiata* forests over 20 years old were considered of particular importance.
- 41 In a report by Commission investigators in December 1995, relating to a proposal involving Carter Holt Harvey and the Crown, the investigators noted that there may be arguments for separating the markets for saw logs and pulp logs. However, their report concluded that in the circumstances of that matter no decision was needed on whether the two categories should be considered separately.
- 42 The product market definition was reviewed in relation to the present application on the basis of the views expressed by Weyerhaeuser and the views of other industry participants.
- 43 There are no official standards for log grades, although the system used in the industry for export logs and for logs for domestic processing is widely understood by market participants. The main elements of the grading system are the length of the log, the diameter of the log at its narrow end, and the size of branches (which result in knot holes in sawn timber). The degree of straightness is also a factor. Some other characteristics of logs can vary according to their source, and some users make quality distinctions based on density or other factors which are not necessarily reflected in the grade designations. There can be small differences in the grade definitions used by different log suppliers, such as for the maximum size of branches.
- 44 While it would be possible in principle to plant a forest with the intention of producing pulp logs, this would generally be uneconomic. The usual sources of wood which is to be chipped for making pulp are the tops of trees (which are thinner and less dense than the lower parts of the trunk) and logs or parts of logs which are deformed (insufficiently straight). Another important source of material for chipping is the offcuts generated by sawmills. A minor source of pulp logs is young thinned trees. Pulp wood is therefore mainly a by-product or a waste product.

- 45 Pruned logs are considerably dearer than unpruned logs and are required, or strongly preferred, for some applications. There are differences in the characteristics of *Pinus radiata* and Douglas Fir. Douglas Fir is preferred for some applications, although for other applications the two species appear to be substitutable. As noted above, characteristics, such as particular density levels, may be sought by some users.
- 46 The Commission notes that there may be arguments in favour of adopting a number of product market definitions for logs. However, for the purposes of this decision, the Commission considers that a broad definition is appropriate, and has adopted a single product market for logs. Within that market, the Commission considers it necessary to examine the age structures of forest holdings. The Commission has not found it necessary to examine the markets for processed forest products, such as sawn timber, wood chips and fibreboard.

Geographic Markets

- 47 Weyerhaeuser suggests that, while Nelson/Marlborough was considered to be the relevant geographic market when the Commission last considered South Island forests, (in 1989), the reduction in transport costs in recent years, and the evidence of log flows between the South Island West Coast and Nelson/ Marlborough, justify concluding that the two regions should be regarded as being in the same geographic market.
- 48 In Decision 213 of November 1987 (which related to North Island forests) and in Decision 224 the Commission noted that logs were not transported large distances, because of freight costs, and concluded that there were several geographic markets. In Decision 224 four geographical markets were defined for the North Island, and five for the South. The South Island markets included “Nelson/Marlborough” and “Westland”. The Decision noted that the nine geographic regions were generally accepted by the participants at the conference. The Commission further noted that the geographic markets were “not absolutely rigid”, and that there were some log flows between regions, although these made up only a very small percentage of total production.
- 49 In relation to Nelson/Marlborough, the Commission noted in Decision 224 that transporting logs from Canterbury would have added as much as 60% to the then current price of logs, and that there was in any case a shortage of exotic logs in both Westland and Canterbury.
- 50 Weyerhaeuser pointed out in the application that Timberlands West Coast currently transports [] of its log production to other regions: [] to Canterbury and [] to Nelson/Marlborough. However, log production in Westland is very much smaller than that in Nelson/Marlborough, and only [] of the logs milled in the latter region were supplied from Westland.
- 51 The volume of logs available in Westland is substantially greater than that demanded by processors in Westland. Consequently, forest owners in that region, of which Timberlands West Coast is the largest, must reduce their stumpage prices sufficiently to offset the higher cost of transporting logs from Westland to Nelson/Marlborough or

to Canterbury. Transporting logs to Nelson cost about \$6 per tonne more than transporting them to Canterbury.

52 The Commission found a range of views on the degree of influence which log supplies from Westland have on market conditions for logs in Nelson. A number of market participants thought that the influence was small. [

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54 Weyerhaeuser further noted that some pruned logs from Nelson/Marlborough are transported to Westland for processing. These logs are mainly of a particular type which are used in the plywood plant in Greymouth. However, the quantity of logs supplied from Nelson-Marlborough to Westland in 1998 was only [] of the logs produced in Nelson-Marlborough.

55 [] pointed out that the issue of increased processing capacity in Westland has been raised periodically, and that were such a development to occur, the supplies now sent to Canterbury and Nelson-Marlborough would be unlikely to be available. However, the Commission is not able to assess the likelihood of such a development.

56 The Commission acknowledges that log transport costs appear to have fallen in recent years, and that there is some trade in logs in both directions between Nelson/Marlborough and Westland. However, the cost of transport between the two regions is still relatively high in relation to the value of logs, particularly for pulp logs and for unpruned saw logs, and industry participants do not appear to be in general agreement that the two regions should be considered to be one geographic market. The actual flow of logs is small in terms of the Nelson/Marlborough region's log production and usage. In the Commission's view, the constraint provided by Westland is likely to be limited. Accordingly, the Commission concludes that the relevant geographic market is Nelson/Marlborough.

Conclusion on Market Definition

57 For the purpose of analysing the competition issues arising from the proposed acquisition, the Commission concludes that the relevant market is that for the supply of logs in Nelson/Marlborough.

COMPETITION ANALYSIS

- 58 Section 66(3) of the Act, when read in conjunction with s 47(1) of the Act, requires the Commission to give clearance for a proposed acquisition if it is satisfied that the proposed acquisition would not result, and would not be likely to result, in a person acquiring or strengthening a dominant position in a market. If the Commission is not so satisfied, clearance must be declined.
- 59 In *Port Nelson Limited v Commerce Commission* [] 3 NZLR 554, the Court of Appeal approved the following dominance standard, adopted by McGechan J in the High Court:
- ...dominance involves more than high market power; more than mere ability to behave “largely” independently of competitors; and more than power to effect “appreciable” changes in terms of trading. It involves a high degree of market control.
- 60 Section 47(3) of the Act provides that “a person is associated with another person if that person is able, whether directly or indirectly, to exert a substantial degree of influence over the activities of the other”. In the Commission’s view, Weyerhaeuser Company is able to exert a substantial degree of influence over RII Weyerhaeuser World Timberfund LP, and over the joint venture in which its subsidiary Weyerhaeuser New Zealand Inc holds a controlling interest. All of these persons are therefore interconnected, and their market power should be aggregated in considering the likely effects of the proposal. Weyerhaeuser accepts this view.
- 61 The Commission found concerns on the part of some sawmillers in the region about the likely effect of the proposal on their ability to obtain logs on acceptable terms.
- 62 Several market participants indicated to the Commission their belief that logs supplied to independent sawmillers in Nelson/Marlborough have customarily been more expensive than logs available to saw millers in other regions of New Zealand, even though most of the timber which they produce is sold to other regions within New Zealand, or in export markets, at prices which are the same as those received by producers elsewhere. Of those who expressed this view, some indicated they considered the higher log prices resulted from the market power of the log suppliers, while some suggested that it at least partly reflected quality differences in logs sourced from different regions. Of those who expressed the latter view, none were able to estimate how much of the price difference which they considered to exist was attributable to what they saw as market power of the suppliers, and what was attributable to the perceived value of quality differences.
- 63 Detailed information to test these assertions on Nelson log prices was not readily available. Figures on regional prices for comparable grades of logs are not compiled by the Ministry of Agriculture and Forestry or by The NZ Timber Industry Federation.
- 64 Further information was provided to the Commission by Weyerhaeuser on regional log prices. In Weyerhaeuser’s view, a region which is a net importer of logs, because of greater processing demand and/or the proximity of an export port, will have higher prices than one in which supply and demand are in balance or in which there is a net export of logs.

The Age of Trees

- 65 In considering the extent of the market power of the merged entity and of the other forest owners, an important issue is the age profile of their forest holdings. A representative of the Ministry of Agriculture and Forestry said that for a considerable period the emphasis in the industry had been to use genetic improvement to improve growth rates and tree form. When this view prevailed, many radiata pine trees which were felled were in the 20 to 25 year age group. In more recent years the need to align wood quality with its intended end-use has been given a greater weight, and the trend towards cutting trees at a young age has been reversed. While young trees are suitable for the production of pulp, timber from young trees has a higher proportion of core wood, which is more likely to have undesirable features if the wood is to be used for construction purposes. According to MAF, it is now considered desirable to wait until radiata pine trees are in the 25 to 28 year bracket before felling them, or even delaying the cut until age 30, to improve the quality of the sawn timber. Practical techniques to test the density of logs are in the field trial stage, and when these become generally available they may have a considerable impact on the marketing of logs. (Douglas Fir trees mature more slowly than radiata pine, and are felled at somewhat older ages.)
- 66 In addition to product quality targets, the age at which trees are felled can be significantly influenced by the prices available to forest owners for logs, and by the forest owners' cash-flow requirements. Forecasts prepared by the former Ministry of Forestry were published in *Regional Studies: Nelson & Marlborough* in June 1997. These used six modelling scenarios. Three of these scenarios reflected differing ages for felling radiata pine: the base cut scenario was for a target rotation age of 28 years, the early cut scenario was for a target rotation age of 25 years, while a late cut scenario with a target rotation age of 35 years. There were three scenarios for different levels of new forest planting. Use of the different scenarios would result in both differences in annual production volumes and in differences in the mix of logs produced (pruned logs v unpruned logs and saw logs v pulp logs).
- 67 In the earlier Commission decisions on forestry referred to above, the Commission examined the age profiles of the forests concerned, and placed weight on those above 20 years for radiata pine, which were likely to be milled within the next several years.
- 68 Another indication of market shares is provided by the cutting intentions of forest owners. [

] The data showed that the combined Weyerhaeuser/CHH share would range from [] over the next few years. In the Commission's view, this provides a likely floor to the range of cutting volumes proposed on the basis of projected market conditions, but the ownership of the resource, particularly that of radiata forests aged 20 and above, is more significant. As indicated in paragraph 80 below, the latter figure is [], and the Commission regards this as indicating the likely upper end of the range of market share indicators.

Views of other industry participants in the region

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77 The key measures which require examination are the proportion of forest holdings which Weyerhaeuser would control if the proposal were to proceed, and the age of these holdings. There is some scope for forest owners to vary the age at which trees are felled, but most are cut at between 25 and 30 years.

78 A submission received by the Commission from the New Zealand Timber Industry Federation Inc stated that there had been reductions in the average age at harvest in recent years, because forest owners sought to achieve earlier cash flow. The Federation said it had come to be accepted as the conventional wisdom that good sawlogs could be produced after 25 years or less. However, according to the Federation, serious problems have been experienced in recent years with the use of “juvenile wood” and in particular with timber produced from trees aged 20 to 25 years. The Federation stated that it has adopted 29 years as “the correct minimum age for a mature sawlog”.

79 In terms of the total planted production forest holdings of 173,610 hectares in Nelson/Marlborough, Weyerhaeuser controls [] while CHH has [], a total of []. The next largest owner, Rayonier, has [].

80 For trees aged 20 years or more, Weyerhaeuser and CHH have [] and [] respectively, a total of []. Rayonier’s share is []. On both measures, that is, total holdings, and radiata pine holdings aged above 20 years, the proposal would result in combined market shares which are outside the safe harbours defined in the Commission’s *Business Acquisition Guidelines*. (It is noted however, that were the wider geographic market definition proposed by Weyerhaeuser to be used, the proposal would still be outside both safe harbours.)

81 Weyerhaeuser pointed out that because the production of logs by other forest owners is forecast to grow at a faster rate than the log production of it and of CHH, the log production controlled by Weyerhaeuser and CHH will fall in the next several years. While this is so, the figures provided by Weyerhaeuser indicate that the reduction in the percentage of total logs produced in Nelson/Marlborough by the two companies would be only from [] to [] between 1998 and 2005. However, the quantity of logs produced by forest owners other than Weyerhaeuser and CHH would grow substantially in absolute terms over that seven year period, from [] to [] tonnes, a rise of []. This increased volume is large compared to the [] tonnes currently milled by the small and medium sized mills in the region.

82 As Weyerhaeuser pointed out in its application, there are numerous small forest owners in Nelson/Marlborough. The log supply available from these smaller owners is large in relation to the quantity milled by firms in the region other than

Weyerhaeuser, Carter Holt Harvey and Rayonier. The small owners produced [] tonnes of saw logs in 1998, a quantity which is comparable to that used by the independent millers (that is, excluding the CHH Mill). However, the three major firms themselves compete for logs offered by small forest owners, and are substantial purchasers. Some offerings are not suitable for other sawmills. For example, in some cases the quantity offered may be too large for a small or medium sized sawmill. Some tenders are on a stumpage basis, which means that the buyer must arrange for the extraction of the logs (which may involve road construction), the preparation of the logs and their transport to the sawmill. While it would be possible for a sawmiller to arrange for contractors to undertake these tasks, the small to medium sized sawmillers generally prefer to buy prepared logs.

- 83 A possibility which is open to sawmillers is to acquire their own forests to ensure their log supplies. However, while there are cases where this has been done [] the long term nature of such an investment, and the capital required mean that it would generally not be considered feasible.
- 84 Most of the sawn timber produced in Nelson/Marlborough is either sold to other regions in New Zealand, or is exported, at prices which in both cases must compete with timber produced in other regions. This imposes a ceiling on the prices which Nelson/Marlborough mills can pay for logs if they are to continue in business. As noted above, precise price comparisons for logs are difficult to make, because of the existence of different log grades and differences in log quality as perceived by some buyers, and because of differences in the timing of price reviews by log sellers.
- 85 The Commission concludes that some competitive constraint would be faced by Weyerhaeuser because of the increased production expected from other forest owners, the possibilities for purchasing logs in Westland and the limits imposed by the need for processors in Nelson/Marlborough to sell their products outside the region. However, it is the Commission's view that these constraints would not be sufficient to offset the market power which is likely to result from the high degree of market concentration for logs, in terms of both total forest holdings and holdings of trees 20 years and older, which would be the consequence of the proposal.
- 86 NPI will continue to require much of the of the pulping grade material which will be produced in the region. The proposal would increase the concentration of ownership of this material to some extent. There would also be increased concentration in respect of the supply of sawlogs required by the region's sawmills. Even though, as noted above, relatively substantial quantities of logs are produced by the region's small forest owners, this source is not necessarily a practicable one for all of the requirements of small and medium sized millers. The largest remaining log supplier, Rayonier, has a relatively small market share. In the Commission's view, the effect of the proposal would be to increase Weyerhaeuser's market power for the supply of logs to a high level.

Effect of Proposed contract for log supply to the CHH Eves Valley Mill

- 87 Weyerhaeuser and CHH have indicated that they propose to enter into an agreement which is intended to maintain the supply volumes to the CHH mill at levels equivalent to those achieved in recent years, and to apply an agreed price negotiating process. [

] The Commission has considered what effect this intended contract should have on its assessment of the proposal. It concluded that it did not diminish its concerns.

CONCLUSION

- 88 The Commission has considered the likely impact of the proposal in the relevant markets, which is that for the supply of logs in Nelson/Marlborough.
- 89 Having regard to the factors set out in section 3(9) of the Act, and the other relevant factors, the Commission is not satisfied the proposal would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in any market.

DETERMINATION ON NOTICE SEEKING CLEARANCE

- 90 Accordingly, pursuant to section 66(3)(b) of the Commerce Act 1986, the Commission declines clearance for the acquisition by RI Weyerhaeuser World Timberfund LP of the forestry assets of Carter Holt Harvey Limited in Nelson.

Dated this day of February 1999

P C Allport
Chairman