



COMMERCE COMMISSION

Decision No. 426

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

CARTER HOLT HARVEY LIMITED

and

CENTRAL NORTH ISLAND FORESTRY PARTNERSHIP

The Commission: M J Belgrave
M N Berry
P J M Taylor

Summary of Application: The acquisition by Carter Holt Harvey Limited and/or any interconnected body corporate of up to 100% of the shares in or assets of the Central North Island Forestry Partnership.

Determination: Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

Date of Determination: 5 July 2001

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THE PROPOSAL

1. On 30 March 2001, the Commission registered a notice pursuant to section 66(1) of the Commerce Act 1986 (the Act) seeking clearance by Carter Holt Harvey and/or any interconnected body corporate (“CHH”) of up to 100% of the shares in or assets of the Central North Island Forest Partnership (“CNIFP”).

THE PROCEDURES

2. Section 66(3) of the Act requires the Commission either to clear, or to decline to clear, a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. Extensions in time were sought by the Commission or the applicant and a decision on the application was required by Thursday 5 July 2001.
3. The applicant sought confidentiality for specific information contained in the notice, and a confidentiality order was made in respect of this information for a period of 20 working days from the Commission’s determination of the notice. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission’s determination is based on an investigation conducted by its staff and their subsequent advice to the Commission.

THE PARTIES

5. Carter Holt Harvey (“CHH”) is Australasia’s largest forest products company and one of the largest forest products companies in the Southern Hemisphere.
6. CHH’s operations are managed as six business groups – Forests, Wood Products, Panels, Pulp and Paper, Tissue and Packaging. The Forests group has holdings of approximately 332, 000 hectares. The Pulp and Paper group operates, among other things, the kraft pulp assets of the Tasman Pulp and Paper mill. The Wood Products group produces a wide range of timber and plywood products.
7. Fletcher Challenge Forest (“FCF”) and Citic (by virtue of its 100% interest in subsidiary company CITIC New Zealand Limited) each own 50% of the shares of the Central North Island Forestry Partnership (“CNIFP”). FCF manages CNIFP’s operations pursuant to a management agreement. FCF is an international company with operations in New Zealand, Australia, South America, North America, Asia and the Pacific Rim. Citic is an investment branch of the Chinese Government. The CNIFP is in receivership. Its bankers appointed a receiver on 27 February 2001.

OTHER RELEVANT PARTIES

8. The Commission consulted a wide range of parties in relation to this application:
 - The Ministry of Agriculture and Forestry
 - The New Zealand Timber Industry Federation

- Pan Pac Forest Products Limited
- Pukepine Sawmills Limited
- Evergreen Forests Limited
- N.Z. Forest Managers
- Rayonier New Zealand
- Ernslaw One Limited
- Juken Nisho
- Winstone Pulp International Limited
- Norske Skog Tasman Limited
- Mamaku Sawmilling Co Ltd
- Ahead Lumber Limited
- Tachikawa Forest Products (NZ) Ltd
- Cashmore Bros Ltd
- Pederson Holdings
- Waitete Sawmills Limited
- Thames Timber Ltd
- Waverley Sawmills Limited
- Julius Herman Ltd
- Tanner Group
- Feilding Lumber Co Ltd
- Erni's Sawmill & Timber
- R H Tregoweth Ltd
- Kiwi Lumber (Putaruru) Limited
- McAlpines (Rotorua) Limited

BACKGROUND

Forestry in New Zealand

9. New Zealand's planted production forests cover an estimated 1.73m hectares, with 71% situated in the North Island and 29% in the South Island. The Central North Island wood supply region, (refer Appendix A), accounts for approximately 33% of the total area.¹
10. There are approximately 6.2m hectares of natural forests in New Zealand, of which 79% is publicly owned. However less than one percent of the total timber harvest comes from natural forests because of conservation strategies. Most of the natural log harvest comes from the South Island.²
11. The most popular exotic species is radiata pine, with 1.56m hectares planted in this species, of which approximately 1.1m hectares are pruned. The Douglas Fir species is the next most popular species with 86,000 hectares. Other softwood species, which include macrocarpa, cypress and corsican, account for 32,000 hectares, whilst hardwood species such as Eucalyptus account for a further 50,000 hectares.³
12. Planted production forests are generally young with approximately 61% being 15 years or younger. Radiata pine is generally harvested between the ages of 25 and 30 years.⁴

Central North Island

13. The Central North Island ("CNI") wood supply region is defined by district and regional council boundaries (refer Appendix A). The region includes the Bay of Plenty region, the southern half of the Waikato region and the northern part of the Manawatu-Wanganui region. It includes the city of Hamilton to the north, the districts of Ruapehu to the south, and Waitomo to the west.⁵
14. Within the CNI, planted production forests are extensive on the volcanic plateau near Tokoroa, Kawerau, Kaingaroa and the eastern side of Lake Taupo. Smaller forests and woodlots are situated throughout the region, but are more common in the central and eastern regions. Most of the natural forests, found throughout the area are state owned and managed by the Department of Conservation.
15. Planted production forests within the region cover an estimated 569,355 hectares, or approximately 16% of the regions total land area. The following table outlines the age distribution of these forests.

¹ Ministry of Agriculture and Forestry, *A National Exotic Forest Description as at 1 April 1999* (Ministry of Agriculture and Forestry, 2000) 8.

² <http://www.insights.co.nz/natural_forests_r.asp>

³ Op cit note 1

⁴ Ibid

⁵ Ministry of Forestry, *Regional Studies Central North Island* (Ministry of Forestry, 1994) 5.

Table 1: Planted Production Forests in the CNI

Age Class	All Species (ha)	Radiata Pine (ha)
Over 25	51,028	3,122
21-25	100,869	96,000
16-20	103,693	97,780
11-15	90,700	86,357
6-10	84,715	77,581
1-5	138,350	122,364
Total	569,355	516,198

Source: National Exotic Forest Description as at 1 April 1999

16. Table 2 below outlines the age distribution of these forests in the CNI.

Table 2: Age Class Distribution of Pruned and Unpruned Radiata Forests

Age Class	Pruned with production thinning	Pruned without production thinning	Unpruned with production thinning	Unpruned without production thinning
Over 25 years	10,761	6,582	4,268	14,505
21-25	33,467	26,773	10,950	24,810
16-20	29,613	44,760	7,811	15,596
11-15	26,817	46,939	1,171	11,430
6-10	26,716	32,377	5,211	13,277
1-5	34,399	48,779	5,969	33,217
Total	161,773	206,210	35,380	112,835

Source: National Exotic Forest Description as at 1 April 1999

17. A large proportion of the soils within the CNI is of volcanic origin, which provide good sites for forestry. The soils are free draining, and roads are easy to establish and maintain. Approximately 25% of the CNI is covered by natural forests and small areas of scrubland. Most of this land is in reserves administered by the Department of Conservation.

18. In the year to March 31 2000, approximately 10.3m m³ of wood was harvested from the CNI. This figure is forecast to increase to 12m m³ in 2010, and is forecast to remain relatively stable through to 2020.⁶

Log Production

19. The quality of logs from plantation grown trees can be influenced by several different factors: generic selection, silviculture practice, site selection and rotation age. Log quality is generally a function of size (diameter and length), shape (straightness, roundness and taper). Branch related features such as size and distribution, and improvements achieved by pruning are also important features. The branch index of a tree is determined by the mean diameter of the four branches representing the largest

⁶ Ministry of Agriculture and Forestry, *National Exotic Forest Description, National and Regional Wood Supply Forecasts 2000* (Ministry of Agriculture and Forestry, 2000) 72.

branch in each of the four quadrants of a log. The size and distribution of knots in a log affect timber grade outturn.⁷

20. Wood basic density is also an important indicator of wood quality. This is a measure of the mass of dry wood substance per unit volume of green timber and is an important indicator of wood strength. Wood density is measured in units of kg/m³.⁸ Within New Zealand, the Northland and Auckland regions produce high density wood, the Central North Island produces medium density wood, whilst regions further south produce lower density wood.⁹
21. If trees are pruned, the core of the wood containing defects can be restricted to a relatively small cylinder in the butt log (the first log produced from the tree). Thinning will promote rapid growth of clearwood outside the knotty core. In this situation, clear timber or veneer is produced instead of grades containing knots. Pruning is normally conducted in years 5 to 10 of the tree's growth, however this is also dependent on the site.
22. The outerwood of a radiata pine tree is referred to as mature wood. It is mainly sapwood, has a higher density, fewer knots and narrower growth rings. It is used as high quality structural timber, as clear lengths for furniture and decorative boards. The corewood or juvenile wood is mainly heartwood, is of lower density and is less stable than the outerwood. It is used in industrial packaging, as low strength structural timber and in reconstituted products such as MDF and particle board.¹⁰
23. Log quality is a more important issue to the solid wood processing industry than it is to the reconstituted wood industries. This is because the economics of log conversion in solid wood processing are dependent on log size and shape. The grade of timber produced is a function of the defects present. Manufacturers of reconstituted wood products are predominantly supplied from sawmill residues and log size and shape is not a great concern.¹¹
24. Log grade specifications for radiata pine have been developed, and these specifications are based on the characteristics for determining value in processing. The specifications for domestic log grades are outlined below in Table 3.

⁷ *Properties and Uses of Radiata Pine* (Kininmonth and Whitehouse, vol 1, Ministry of Forestry, 1991 5-2.

⁸ Ibid 6-3

⁹ <http://www.insights.co.nz/products_processes_tc.asp>

¹⁰ New Zealand Pine Remanufacturers Association, *New Zealand Pine User Guide* (Neilson Scott Limited, 1996) 10.

¹¹ Op cit note 7 at 5-3.

Table 3: Domestic Log Grade Specifications

Log Grade	Log Type	Small end Diameter (mm)	Maximum Knot (mm)	Sweep Class
P1	Pruned	400+	0	1
P2	Pruned	300-399	0	1
S1	Unpruned	400+	60	1
S2	Unpruned	300-399	60	1
S3	Pruned or unpruned	200-299	60	1
L1	Unpruned	400+	140	1
L2	Unpruned	300-399	140	1
L3	Unpruned	200-299	140	1
Pulp	Unpruned	100	N/a	2

Source: Ministry of Agriculture and Forestry

25. Pruned logs are generally distinguished on the basis of external characteristics. Internal quality characteristics such as the defect core, are not included in the specifications. The quality and potential value of pruned logs can vary greatly, depending on the silviculture regime.¹²
26. The pulp log is a low value product, which is generally produced from the top of the tree or from production thinnings. It is characterised by a high moisture content, high sapwood content and low wood density. It is used, along with wood chips, in the manufacture of MDF and particleboard, and in the manufacture of pulp and paper.
27. Historically, some pulp logs were discarded at the log processing point within the forest. However, environmental regulations now require that all low value pulp logs be removed from the forest. Forest owners must find an outlet for these logs. Forests that are situated close to export ports have the option of either export supply or domestic supply, whichever provides the best economic return to the forest owner.
28. While pulp logs represent a small part of a tree's volume and value, they typically yield approximately 110 m³ to the hectare, so a significant forest area is needed to produce significant quantities of pulp logs.

The Structure of the Log Supply Market

29. The saw log supply market is characterised by several different strategic groups of competitors. The first group involves large vertically integrated, publicly listed forestry companies, that are involved in forest ownership and log production, log trading, and downstream wood processing facilities. These processing operations include sawmilling to produce sawn timber, panel products such as particleboard and MDF, and engineered wood products such as plywood and LVL. Carter Holt Harvey and Fletcher Forests are included within this group, along with the CNIFP, which is not publicly listed. However it is presently associated with Fletcher Forests through its 50% partnership interest.

¹² Ibid 5-19

30. The next strategic group to consider is also characterised by a vertically integrated structure. However, the scale of business operations is considerably smaller than for the first group and these businesses are generally net purchasers of logs. These competitors are involved in downstream wood processing activities including sawmilling, pulp making, MDF and LVL production. This group includes PanPac and WPI within the Central North Island, and Juken Nissho, and Rayonier situated on the East Coast.
31. The next strategic group is characterised by forest ownership or management on a large scale, with no downstream processing activities. These competitors are smaller privately owned or publicly listed companies or partnerships whose core competencies are forest ownership and log production on a smaller scale to the groups identified above. Competitors in this group include NZFM who manage the Crown leases at Lake Taupo and Rotoaira for the MAF, Roger Dickie Forestry, Ernslaw One, Evergreen Forests, Nuhaka Forestry Fund.
32. The next group is characterised by fragmented, smaller scale forestry ownership. Owners include farmers with woodlots on parts of their farms and other private individuals with small blocks of plantation forests. They also include more substantial forests owned by bodies such as local governments or the Corrections Department.

Sawn Timber

33. Timber produced from log processing can be categorised into the following grades:
- Appearance grades;
 - Structural grades; and
 - Industrial grades.
34. Appearance grades are also known as board grades and are used for finishing and in the manufacture of furniture. They include clear lumber, which is free of knots and other blemishes, and which is used for high quality joinery, furniture and mouldings. They also include 'cuttings grades', which are reprocessed to produce shorter clear lengths of timber, which are often finger jointed and edge glued to produce mouldings and furniture.
35. Structural grades or framing grades are used primarily for construction. The main factor influencing these grades is the size and location of knots.
36. Industrial grades of timber are used in packaging for different products such as pallets, and concrete formwork

MARKET DEFINITION

Introduction

37. The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered. 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 any market in terms of section 47(1) of the Act.

38. Section 3(1A) of the Act provides that:
- “ . . . the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”
39. Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*,¹³ *Commerce Commission v Carter Holt Harvey Building Products Limited*,¹⁴ and in the Commission’s *Business Acquisitions Guidelines* (“the Guidelines”).¹⁵ A brief outline of the principles follows.
40. Markets are defined in relation to three dimensions, namely product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.
41. A properly defined market includes products which are regarded by buyers or sellers as being not too different (‘product’ dimension), and not too far away (‘geographical’ dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a “small yet significant and non-transitory increase in price” (the “*ssnip*” test), assuming that other terms of sale remain unchanged.
42. Markets are also defined in relation to functional level. Typically, the production, distribution, and sale of products takes place through a series of stages, which may be visualised as being arranged vertically, with markets intervening between suppliers at one vertical stage and buyers at the next. Hence, the functional market level affected by the application has to be determined as part of the market definition. For example, that between manufacturers and wholesalers might be called the “manufacturing market”, while that between wholesalers and retailers is usually known as the “wholesaling market”.

Relevant Markets

43. The Commission seeks to define relevant markets in a way which best assists the analysis of the competitive impact of the acquisition under consideration. In this instance the principal common activities of the two parties are the production and supply of logs, woodchips and sawn timber.

¹³ (1991) 4 TCLR 473.

¹⁴ Williams J, 18 April 2000, HC, yet to be reported.

¹⁵ Commerce Commission, *Business Acquisitions Guidelines*, 1999, pp. 11-16.

44. The application states that the relevant markets are assumed to be the market in the Central North Island (CNI) for the production and supply of logs, the market in the CNI for the production and supply of woodchips, and the market in the North Island for the production and supply of sawn timber products.

Product Market

45. Current features of production forests are:

- they are dominated by one particular conifer, radiata pine, which accounts for 90% of total planted resource;
- they are young, with 61% being 15 years or younger;
- they are fast growing – the average time to harvest is 28 years;
- they are of a high quality – 62% of the resource has been pruned;
- they are managed under an accord between industry and environmental groups.¹⁶

46. The importance of radiata pine in the CNI is even more pronounced than in New Zealand as a whole, accounting for around 95% of all forests maturing within the next five years. The Commission understands that the ownership spread of “other species” is not markedly different from that of radiata pine, and accordingly it considers that it is not necessary to focus specifically on the other species when assessing the competitive impact of the proposed acquisition.

Previous Commission Decisions

47. In previous Commission decisions the different parts of the log – sawlogs, both pruned and unpruned, and pulp logs- have been placed within the one product market. In Decision 342, which related to an application by RII Weyerhaeuser World Timberland LP for a clearance to acquire plantation forests in the Nelson Marlborough region, the Commission stated:

The Commission notes that there are 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.

48. In that decision the Commission found that the acquisition was likely to lead to dominance being acquired in the broader log supply market. It was not necessary to define narrower product markets for the purposes of a competition analysis.
49. In the decision on CHH/Forestry Corporation of 11 December 1995, the Commission staff report noted:

“Given the characteristics outlined above, we consider that there are arguments for separating sawlogs and pulplogs into discrete markets. However, whether there exists a separate market for pulplogs is considered to be a secondary issue in the assessment of the competition issues raised by this proposal. This is because the entire pulplog production from Forestry Corp’s forest resource is fully committed to FCL until the year 2005 under the Tasman contracts. Accordingly, the principal focus of this report will be the likely competitive effects of the proposal in terms of the production and supply of sawlogs.”

¹⁶ Ministry of Agriculture and Forestry.

Pulp Logs

50. The Commission has considered this issue of whether to include pulp logs in the same market as sawlogs further in the context of the current application. While the supply of each is linked, the two parts of the tree go to different customers who use them for quite different purposes, and each has quite different demand patterns. In other words it is at least possible for a market participant to have substantial market power for one but not the other.
51. The Commission has concluded that it is appropriate in this case to have discrete product markets for pulplogs and sawlogs.

Sawlogs – Pruned and Unpruned

52. The Commission also considered whether there are distinct markets for pruned and unpruned sawlogs, ie whether one type of log is substitutable for another, for sawmills faced with a *ssnip* for one or other type.
53. Broadly speaking, pruned logs are used to produce appearance grade timber, while unpruned logs are more commonly used to produce timber for construction and industrial uses. The price of pruned logs can be significantly greater than the price of unpruned logs. The Commission understands that in recent months the premium for pruned logs has increased as the Australian market for structural timber has declined markedly, whilst the North American market for mouldings and appearance grade timber is strong.
54. The Commission has been advised that some saw milling operations could adjust their mix of pruned and unpruned logs depending on the strength of the markets for the different downstream products. Sawmills that specialise in one type of input may, however, experience problems in switching to another type of input. These sawmills could require new processing capacity, which could take up to two years to implement. More significantly, they would also face the problem of establishing new markets for their outputs, which could take a considerable time to develop.
55. The Commission is of the view that pruned and unpruned logs have different demand features, which are largely driven by conditions in output markets that justify placing them in separate product markets for the purposes of a competition analysis.

Geographic Markets

56. In order to define the appropriate geographic extent of this market, it is necessary to consider whether a hypothetical monopolist in a particular region could successfully impose a small yet significant non-transitory increase in price (“*ssnip*”) for its supply of logs. If purchasers could switch to other suppliers outside the region in question, the geographic boundary will be expanded until the monopolist could successfully impose a *ssnip*.

57. According to the Commission's *Business Acquisition Guidelines*, the geographic extent of the market will be influenced by the practicality of transporting the product, and in particular, the costs of doing so relative to the value of the product.¹⁷

Where transport costs are high relative to the final value of a product, the Commission will generally adopt a narrower geographic market.

58. In its past analysis of forestry issues, the Commission has divided the market for the production and supply of logs into nine separate geographic markets throughout New Zealand.¹⁸ The forests that are relevant to the current application fall within the market previously defined as the Central North Island.

59. This proposed merger would result in aggregation of forestry resources in the districts of Rotorua, South Waikato, Taupo, and Whakatane, where there is a large concentration of plantation forests. These districts are generally within 100km of the Rotorua district, where there is a concentration of independent sawmills.

Cartage Costs

60. As with previous Commission investigations into this industry, many submitters have contended that the cost of transporting logs remains a major component of the delivered cost, and that this limits the distances that sawmills can go to seek alternative suppliers in the event of a *ssnip*.

61. The basis for the Commission's division of the log market was, in the main, work undertaken by the Commission in the early 1990s which focussed largely on log flows at that time. Since then, the Commission it has been submitted to the Commission that reductions in transport costs have made the earlier market definitions too narrow.

62. The Commission has given careful consideration to the cost of carrying logs and the distances logs users are currently going to source their logs. The Commission notes that the recent increase in diesel prices have contributed to an increase in cartage rates. The Road Transport 'inputs' index of the Producers' Price Index, has increased 23% during the two year period to March 2001, whilst the 'outputs' index has increased 7%,¹⁹ with a significant proportion of that increase occurring since March 2000.

63. The per kilometre cost of transportation reduces as the distance carried increases. The current 'on-highway' rate for a distance of 100km is \$12 to \$16 per tonne.²⁰ A 200km 'cart' would cost between \$22 and \$28 per tonne.

64. The Commission notes that, in the event of a *ssnip*, purchasers could, by increasing their effective outlays on 'cartage' within the range of the *ssnip*, still obtain logs at prices

¹⁷ Op cit note 3, at 13

¹⁸ See Decision 224, Tasman Forestry Limited and the Crown, 11.

¹⁹ Statistics New Zealand, *Hot Off the Press: Producers Price Index*, March 2001 quarter.

²⁰ This rate is dependent upon the purchasing power of the log supplier. CHH in its application stated that the actual on-highway rate for 30km was [] and for 100km was []. Pan Pac submitted that the rate for 40km was [], the rate for 100km was [] and the rate for 200km was []. Fletcher Forests stated that the per tonne rate for a 20km cart is [], whilst the rate for a 160km cart was [].

below the level of the *ssnip* by sourcing their logs from more distant suppliers.²¹ However, there is a limit to the additional distance from which logs can be sourced, and sawmillers would have less incentive to do so, as cartage costs approached the level of the *ssnip*.

65. The cost of transportation will have a different impact on the different types of logs identified in the product markets above – unpruned, pruned and pulp logs.

Unpruned Logs

66. Currently, most unpruned logs are purchased within a 100km radius by these sawmills, although there is some evidence of purchases extending beyond that. Unpruned logs are a lower value product and as such cannot be economically transported as far as pruned logs. The relative transport cost would be higher for lower grade unpruned sawlogs.
67. Most independent sawmilling operations are situated within the South Waikato and Rotorua districts, and are generally within a 100km distance of the boundaries of the merged entity's forests. These purchasers of unpruned sawlogs could obtain supply from independent suppliers' forests in the remaining districts of the CNI wood supply region, which would impose some constraint on the behaviour of the monopolist.
68. The Commission has found little evidence of unpruned sawlogs being transported from the neighbouring East Coast region into this market. There is some evidence that unpruned sawlogs are transported from the Hawkes Bay region into this market. [
-].
69. Sawmills on the 'fringes' of the area of aggregation, such as Pederson Holdings Limited Taupo sawmill, could source more from the Hawkes Bay and Southern North Island regions, which may impose some constraint on the merged entity.
70. However, taking account of the location of most sawmills, the range of unpruned log prices and cartage costs in relation to those prices, the Commission considers it likely that prices could increase significantly before a constraint was imposed by supply from neighbouring regions outside the CNI. For the purposes of analysing the competitive effects of this proposed acquisition, the geographic market is defined as the CNI. It should be noted that the market excludes the Auckland and Hawkes Bay wood supply regions.

Hawkes Bay

71. In a submission to the Commission, Pan Pac stated:

[

].

²¹ The Commission understands that the actual cartage costs are met by the forest owners, who pass them back to the sawmillers as a mark up on log prices.

72. The proposed acquisition will not result in aggregation of forest ownership or management in the Hawkes Bay wood supply region, so the competitive implications for Pan Pac relate only to its []].

73. Pan Pac identified an economic cartage zone, which the north west boundary was [], a distance of approximately []. However the northern boundary it defined is considerably less than []. If a consistent distance of [] was used it would place several large independent plantation forests within the economic cartage zone. These forests include Juken Nissho's Patunamu, Wharerata and Hikurangi Forest Farms. A [] boundary to the south would include a significant part of the Central Hawkes Bay, which contains a large number of smaller forests and woodlots.

74. The Commission believes that supply from these forests would impose a constraining influence on the behaviour of the merged entity.

Pruned Logs

75. As would be expected, high value pruned sawlogs are transported further on average than lower value unpruned sawlogs as the per kilometre transport cost is a smaller proportion of the delivered cost of the log.

76. Sawmills are strategically situated near large plantation forests, so generally, the average cartage distance is not large.²² Generally, wood processing is concentrated within the area around Rotorua. Cartage costs as a proportion of pruned log prices are such that log suppliers in neighbouring regions of Auckland or Hawkes Bay could increase or divert log supply to this area, and this substitution would make the imposition of a *ssnip* unprofitable.

77. The East Coast of the North Island is a region containing a large number of plantation forests. The region contains approximately 143,623 hectares of plantation forests. However, approximately 61% of this is aged about 10 years or younger. There is still a significant volume of forests (50,000 hectare) with trees reaching harvesting age during the period to 2013.

78. There are a number of large forest owners within the East Coast wood supply region. Rayonier have [] hectares in plantation forests which is predominantly *pinus radiata*. Approximately []% of its forest is pruned. There are other corporate entities with significant ownership of plantation forests within the East Coast. These include the Nuhaka Forestry Fund ("Nuhaka") which has several forestry blocks situated south of Gisborne, Evergreen Forests Limited ("Evergreen") which has several plantation forests situated in the East Coast and the Wairoa district of the Hawkes Bay, and Hikurangi Forest Farms.

79. Commission staff have found some evidence of flows of logs, predominantly pruned, from this region into the Central North Island for processing. The distance between Gisborne and Rotorua is approximately 287km by road. The distance to Rotorua is greater

²² A 1993 study by the Ministry of Forestry established that the average 'cart' in the Central North Island was approximately 115km.

from the parts of the East Coast further north, where there are substantial forests. Generally such supply is only possible for higher valued pruned logs. The Commission has found evidence of pruned logs travelling up to 300km. However, such instances did not involve large volumes.

80. The Commission received contrasting submissions on whether logs from the East Coast would constrain the merged entity in the CNI. Some sawmillers argued that the flows of pruned logs from that region were marginal and would not constrain the entity, whereas CHH submitted that flows were substantial and would do so. The Commission notes that there are clearly volumes of wood travelling from the East Coast to the CNI, and considers that supply from neighbouring regions may assist in imposing constraint on the merged entity. However, in the absence of precise information, the Commission has taken a conservative position, and excluded that region from the geographic market under consideration.
81. Having considered the current log flows, transportation costs, the views of the market participants, and the area covered by the CNIFP forests, the Commission considers it appropriate to use an area which includes the CNI, Hawkes Bay and Auckland, as the relevant geographic market for its analysis of the pruned log market. When assessing market power the Commission has, however, taken into account the claims from some sawmillers that they are more constrained in their sources of logs than this analysis suggests.

Pulp Logs

82. A pulp log is a low value, bulky product (approximately \$50 m³), which has high relative transport costs. These characteristics suggest narrow geographic markets.
83. Demand for pulp logs is concentrated within the South Waikato and Kawerau districts of the CNI. The two large purchasers are CHH, for its pulp mills at Kinleith and Kawerau, and Norske Skog, for its paper plant at Kawerau. These two purchasers have annual requirements of approximately [] m³ of pulp logs. The Pan Pac mill situated near Napier ([]m³) and the WPI mill near Ohakune ([]m³) are also significant users of pulp logs, which places further pressure on supply.
84. Demand for pulp logs from within the area of aggregation exceeds potential supply and this results in purchasers relying on supply from other districts within the CNI, and in some cases from outside the CNI to satisfy demand. Norske Skog have informed the Commission that []

].

85. The ability of these large users to source from the south and the south east is reduced because of the presence in those regions of WPI and the Pan Pac mill. WPI sources its pulp logs from []

]. Currently, Pan Pac sources approximately []

].

86. Pan Pac and WPI have an advantage relative to Norske Skog, in respect to supply from the regions within which their pulp mills are situated. If a hypothetical monopolist supplier of pulp logs in the South Waikato, Whakatane and Taupo districts increased its prices by a *ssnip*, this would allow for some supply side substitution to the Norske Skog mill, from areas that were previously marginal. This would include some districts south of Taupo and some areas of the King Country where forest owners would be indifferent as to whether they supplied WPI, Pan Pac or Norske Skog. However, forests in the Hawkes Bay would get a better net return from supplying the Pan Pac pulp mill and forests significantly closer to the WPI mill would get a better net return from supplying that mill.
87. In a recent Commission decision, which related to the merger of two large pulp mills, the geographic market for pulp fibre supply in the CNI was considered.²³ Pulp fibre is an input into the pulp making process and includes pulp logs and wood chips. In that decision the Commission stated:²⁴
- A relatively narrow geographic market is supported by the observation that logs tend to be processed on a regional basis. Log and chip exports tend to pass through regional ports.
88. The Commission concluded that the geographic market for the purchase of pulp fibre was the CNI as defined in Decision 213. However, Decision 213 related to the utilisation of logs, which included sawlogs and pulp logs. In subsequent Commission decisions,²⁵ the geographic market for log supply was expanded to include the Waitomo, Otorohanga and Waipa districts of the CNI, and the remaining districts in the Auckland and Hawkes Bay wood supply regions. These later decisions also related to a log supply market.
89. The product dimension of the market has been defined as pulp logs for the current analysis, which is a narrower product dimension than previous Commission decisions. Decision 424 related specifically to purchase of pulp fibre (includes wood chips), and can be distinguished on that basis.
90. On the basis of information available, the Commission considers that the CNI wood supply region (excluding Auckland and Hawkes Bay) is the appropriate geographic market to conduct a competition analysis in respect to the supply of pulp logs.

Conclusion

91. The Commission concludes that the relevant log markets for analysis are:
- the production and supply of pruned sawlogs in the CNI, the Auckland wood supply region and the Hawkes Bay wood supply region;
 - the production and supply of unpruned sawlogs in the CNI; and
 - the production and supply of pulplogs in the CNI.

Woodchips

²³ Decision 424, Carter Holt Harvey Limited and Norske Skogindustrier ASA

²⁴ Ibid 16

²⁵ Decision 224, Tasman Forestry Limited and The Crown. Carter Holt Harvey Limited and Forestry Corporation of New Zealand Limited, 11 December 1995.

92. Woodchips are obtained from two sources: as a by-product from sawmilling, or from the chipping of pulplogs using specialist equipment. The major end use for woodchips is in pulp production and the manufacture of medium density fibreboard and particle board.

93. In the current application it is stated (at paras 9.14 and 9.15):

In the 1995 Clearance, the Commission found that the relevant market for woodchips is the CNI. Woodchips are generally expensive to transport from the point of production. Given that transport costs in 2000 are similar to costs in 1995, the Applicant agrees that the CNI is the appropriate market.

94. Aggregation in this market only arises because woodchips are a by-product of sawmills. CNIFP does not operate any specialist wood-chipping plants. However, both its Waipa sawmill and Kaingaroa processing plant produce woodchips.

95. The Commission accepts that woodchips form a distinct product market, and that the relevant geographic dimension of the market for the consideration of the current application is the Central North Island (excluding Auckland and the Hawkes Bay wood supply regions).

Sawn Timber

96. As the application notes, CHH operates as a producer and a supplier in the market for sawn timber products and operates saw mills at several locations. CNIFP operates a saw milling operation at Waipa.

97. In previous decisions (Decisions 213 and 249A) the Commission placed the production and supply of sawn timber into North Island and South Island markets. The Commission at the time accepted there might have been an argument for a national market, but that the narrower market would not affect the overall conclusion.

98. That remains the Commission's position. The Commission therefore considers that it is appropriate to use the conservative, North Island market as being appropriate for its analysis in this case.

Overall Conclusions on Market Definitions

99. For the reasons discussed above, the Commission concludes that the relevant markets for the consideration of the application are those for:

- the production and supply of pruned sawlogs in the CNI, the Auckland wood supply region and the Hawkes Bay wood supply region;
- the production and supply of unpruned sawlogs in the CNI;
- the production and supply of pulplogs in the CNI.
- the production and supply of woodchips in the Central North Island; and
- the production and supply of sawn timber in the North Island.

COMPETITION ANALYSIS

Introduction

100. The competition analysis assesses competition in the relevant markets in order to determine whether the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of **dominance**.

The Dominance Test

101. Section 47(1) of the Commerce Act prohibits certain business acquisitions:
- “No person shall acquire assets of a business or shares if, as a result of the acquisition, -
- That person or another person would be, or would be likely to be, in a dominant position in a market; or
- That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.”
102. Section 3(9) of the Commerce Act states:
- “For the purposes of sections 47 and 48 of this Act, a person has ... a dominant position in a market if that person as a supplier ... of goods and services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-
- The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
 - The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
 - The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”
103. The test for dominance has been considered by the High Court. McGechan J stated:²⁶
- “The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute.”
- ...
- “Dominance includes a qualitative assessment of market power. It 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*.”
104. Both McGechan J and the Court of Appeal, which approved this test,²⁷ stated that a lower standard than “a high degree of market control” was unacceptable.²⁸ The Commission has acknowledged this test in its Business Acquisitions Guidelines (page 21):
- “A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction.
- “A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse

²⁶ *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406, 441

²⁷ *Commerce Commission v Port Nelson Ltd* (1996) 3 NZLR 554, 573

²⁸ *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406, 440

impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability.”

105. The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not so satisfied, clearance must be declined. The dominance test is applied in the following section.

Market Concentration

106. An examination of concentration in a market is often an indicator of whether a merged firm may or may not be constrained by others participating in the market, and thus the extent to which it may be able to exercise market power.

107. The *Business Acquisitions Guidelines* specify certain “safe harbours” which can be used to assess the likely impact of a merger in terms of s 47 of the Act -

“In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:

the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;

the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.” (p 17)

108. These safe harbours recognise that both absolute levels of market share and the distribution of market shares between the merged firm and its rivals are relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The Commission went on to state that:

“Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours.”

109. Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by s 47 of the Act), market share alone is not sufficient to establish a dominant position in a market. Other factors intrinsic to the market structure, such as the extent of rivalry within the market and constraints provided through possible market entry, also typically need to be considered and assessed.

The Market for the Supply of Unpruned Sawlogs in the Central North Island

110. Within this market, about 78% of plantation forests are concentrated within the districts of Rotorua, South Waikato, Taupo and Whakatane, which are all within approximately 100km of each other. This is the reason for the high concentration of wood processing operations within these districts. The remaining forests are dispersed through out the Central North Island wood supply region, with the Ruapehu, Western Bay of Plenty, and Waitomo districts being the next largest areas.

111. The main purchasing group that would be exposed to the pricing behaviour of the merged entity, would be independent sawmills located within the market. These sawmills are generally concentrated within the Rotorua, South Waikato, and Taupo districts, but are dispersed as far as Te Kuiti to the west. These 16 sawmills consumed approximately [] m³ of unpruned sawlogs in the most recent annual period, of which Carter Holt Harvey and the CNIFP supplied approximately [] m³.
112. Market share figures have been calculated for all major suppliers of sawlogs into this market. Age class distribution figures were obtained from these suppliers, and market shares were calculated by reference to aggregate figures contained within the *National Exotic Forest Description* (“NEFD”) publication.²⁹ Market shares were calculated by conversion of the land area of production forests into future woodflows.³⁰ The figures were then adjusted to produce an estimate for unpruned sawlogs. These market shares are outlined below in 4.

Table 4: Future Wood Flows for Unpruned Sawlogs in the Central North Island (m³)

Forest Owner	2001-2003		2004-2008		2009-2013	
CHH	[]	[]	[]	[]	[]	[]
CNIFP	[]	[]	[]	[]	[]	[]
Merged Entity	[]	[]	[]	[]	[]	[]
FCF	[]	[]	[]	[]	[]	[]
NZFM	[]	[]	[]	[]	[]	[]
WPI	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]	[]

Source: individual suppliers and NEFD

113. Between 2001 and 2013, the merged entity would have a market share within the Commission’s safe harbour guidelines. The next largest competitor, Fletcher Forests, would have more than 15% of woodflows in each of the periods, while the merged entity’s share would remain under 60%. Throughout this period the ‘other’ category accounts for reasonable volumes with figures of [], [] and [] respectively. This ‘other’ category is fragmented and characterised by woodlots and small plantation forests.

²⁹ These figures were verified by the Ministry of Agriculture and Forestry.

³⁰ A conversion ratio of 457 m³ per hectare was used. This was calculated from the total recoverable volume figures (“TRV”) contained in the Ministry of Agriculture and Forestry publication, *National Exotic Forest Description Regional Yield Tables 1995*. The conversion related to trees that were 25years old, and was a weighted average of the different tending regimes.

Constraint from Existing Competition

Fletcher Forests

114. The most likely alternative supplier to purchasers within the market is Fletcher Forests. A large proportion of its internal wood supply is situated within the Rotorua, Taupo and Whakatane districts, which are within about 100km of a concentration of independent sawmillers. Its estimated internal demand for unpruned sawlogs will exceed its estimated supply for the period to 2003, although this will improve during the period to 2008. This net supply position will continue to improve during the period to 2013. However, during the next two years, Fletcher Forests may have difficulty supplying third parties, because of the need to meet internal demand.
115. Fletcher Forests has an active log trading division, which purchases significant quantities of sawlogs from third parties to supply its internal and external customers³¹. Not all of Fletcher Forest's supply from its own forests is consumed internally, even though its overall demand may exceed its internal supply. Third party purchases are made to increase its supply, and to maximise transport efficiencies for its customers. However the impact of such purchases on Fletcher's net supply is not clear, and the Commission considers it appropriate to regard Fletcher's as having a net shortfall in supply in the short term.
116. Fletcher Forests has established relationships with overseas customers and it has an investment in export infrastructure. In the most recent financial period, Fletcher Forests exported approximately [] m³ of logs to Asian markets. The Commission considers that maintenance of customer relations in those markets would set some limits on the volumes that could be diverted to domestic supply.

New Zealand Forest Managers

117. The next largest competitor to the merged entity would be New Zealand Forest Managers who manage the Crown lease forests situated at Rotoaira and Lake Taupo. New Zealand Forest Managers is currently supplying [] m³ of sawlogs. However, it has no internal consumption requirements so it will be a net supplier for the whole period to 2013.
118. NZFM are presently producing about [] m³ of sawlogs from these forests, with approximately []% being exported to the Asian markets. It does have the ability to divert some of this export supply back to this domestic market if it was faced with increased demand. Approximately []% of NZFM's forests are pruned.

³¹ In the most recent financial year FCF exported approximately [] m³ sawlogs, supplied its external customers with approximately [] m³, and supplied its own wood products division with approximately [] m³.

Winstone Pulp International

119. Winstone Pulp International is involved the ownership of plantation forests and also downstream timber processing activities. Its forests are situated in the Ruapehu District of the CNI. It is currently harvesting approximately [] m³ pa of sawlogs. However, this is expected to increase to [] m³ pa by 2004.
120. Winstone Pulp International's own operations currently consume approximately []% of its sawlog supply. The remaining []% is sold externally to small sawmills. As its forests mature, its potential supply of sawlogs will increase during the period 2003 to 2013. This increased supply will exceed its internal demand and it will become a net supplier of sawlogs to the market from 2008.

Rayonier

121. Rayonier has a number of plantation forests situated within the Ruapehu and Otorohanga Districts of the CNI, and on the western boundary of the market in the district of Stratford. These forests have the potential to produce [] m³ during the period to 2003. This potential supply will increase to [] m³ during the period to 2008 and increase to [] m³ during the period to 2013.

Pan Pac

122. Pan Pac is a significant forest owner within the Hawkes Bay region. However it is an integrated operation with a downstream sawmilling operation, which is a large consumer of its unpruned log supply. It currently produces [] m³ of unpruned sawlogs, and uses about []% internally. It exports about []% of its supply, which could be available for diversion back to its sawmill operation. Pan Pac also purchases unpruned sawlogs from external suppliers including []].

Evergreen

123. Evergreen has forests situated in the Waikato and Franklin districts of the Auckland wood supply region. Some of these forests are approximately 150km from Rotorua. A large proportion of unpruned sawlogs from these forests are supplied to []]. Evergreen has the potential to increase supply over the next two years, however it is the Commission's view that the increment would not be sufficient to constrain the merged entity.

Small forest owners

124. The next group of plantation forest owners within this market are generally small. However this group collectively accounts for a reasonable volume: [] m³ for the period to 2003, [] m³ for the period to 2008, and [] m³ for the period to 2013. This group includes small wood lots situated on farms, small plantation forests owned by private individuals and larger forests owned by central and local governments.

125. In the period ending 2003, small private forest owners will have a potential supply of sawlogs of [] m³, while other central and local government plantation forests will have a potential supply of [] m³.
126. Some sawmillers have questioned the quality of sawlogs produced by private owners and farms. It was alleged that silviculture was inadequate and that there were problems accessing these woodlots and smaller forests, especially during winter months, because of inadequate roads.
127. Mr Mike Halliday, the President of the New Zealand Farm Forestry Association, which represents a significant number of these smaller owners, stated that []
[]
].
128. Mr Halliday acknowledged []
[]
].
129. Mr Peter Clark, a forestry consultant with PF Olsen Limited, stated that []
[]
].
130. []
[]
]
131. The Commission acknowledges that there are some problems associated with supply of sawlogs from small forest owners. However, during the period under analysis, potential supply from this ownership group is reasonable, and this group has access to intermediaries who can facilitate the supply of sawlogs to the market. It is the Commission's view that notwithstanding some problems associated with supply from this source, supply from this group will impose some constraint on the merged entity during the period under analysis.

Export Diversion

132. In the year ending 31 March 2000, approximately 5.9m m³ or 32% of total log production was exported.³² Approximately 2.9m m³ (47%) was exported through the Port of Tauranga, and 0.3m from the Port of Napier (5%). This significant level of

³² Ministry of Agriculture and Forestry, *Estimate of Roundwood Removals from New Zealand Forests Year ended 31 March 2000*.

exports raises the issue of whether any market power can be exercised in the supply of unpruned logs if export supply can readily be diverted to the domestic market.

133. The applicant has submitted that there is little difference in price between export and domestic logs, which makes suppliers indifferent as to whether they sell logs for export or in New Zealand. It submitted that any attempt by the merged entity to raise domestic prices would be constrained by the ability of other suppliers diverting export logs to the domestic market at attractive prices.³³

134. The Commission has found evidence of a general price relationship between the delivered price of domestic grades and the *job* prices of export grades of logs.³⁴ Large independent exporters have acknowledged that export logs could be diverted back to the domestic market if market conditions were attractive. Fletcher Forests stated [

].

135. Fletcher Forests stated that it [

].

136. Rayonier stated that [

].

137. New Zealand Forestry Managers stated [

]. It currently exports from the Ports of Tauranga and Napier.

138. It is the Commission's view that export sales by competitors have the potential to provide an ongoing competitive constraint. However, the independent supply and demand position over the next two years shows that there will be reliance on the merged entity, after factoring in export diversion of non essential supply contracts.

Constraint from Potential Competition

139. A potential entrant could enter by purchasing a mature or near mature plantation forest within this market. The cost of such a purchase would depend upon the age and size of the forest, with the forest being valued by the discounted future cashflows the

³³ See paragraph 15.7 of Carter Holt Harvey's application.

³⁴ The export log grade specifications are different to domestic log grade specifications. The differences relate to small end diameter, knot size and sweep class.

forest will produce. A potential entrant to this market who wishes to establish a new plantation forest, is not able to supply sawlogs until the forest matures at an age between 25 and 30 years.³⁵

140. In effect the time dimension of the market limits the ability of new entrants to provide a constraint. The Commission has placed little weight on the constraint provided by new entry in these circumstances.

Countervailing Power of Purchasers

141. Generally, the independent purchasers of sawlogs in this market are fragmented and do not possess a large degree of countervailing power. Fletcher Forests through its wood processing operations would be likely to purchase a significant quantity of sawlogs from the merged entity, because of the location of its processing facilities relative to the CNIFP's forests. Fletcher Forests would have a degree of countervailing power, because it would be in the merged entity's economic interest to place that volume of sawlogs.

Independent Supply and Demand

142. The market shares shown in Table 4 indicate that the merged entity's share will be within the Commission's safe harbours. However, a proportion of the woodflows from parties other than the merged entity would be consumed by the downstream operations of these parties, and would not be available to independent sawmillers. The likely effect of this internal consumption is outlined below in Table 5.

³⁵ The harvesting age is determined by factors such as site location.

Table 5: Estimated Independent Supply and Estimated Demand by Independent Sawmills

Supplier	2001-2003		2004-2008		2009-2013	
		Unpr		Unpr		Unpr
FCF		[]		[]		[]
NZFM		[]		[]		[]
WPI		[]		[]		[]
Other		[]		[]		[]
Total		[]		[]		[]
Demand						
FCF		[]		[]		[]
WPI		[]		[]		[]
Independent SM		[]		[]		[]
Exports ³⁶		[]		[]		[]
Total		[]		[]		[]
Net Independent Supply		-[]		[]		-[]

Source: NEFD and suppliers

143. Through its log trading business, Fibre Solutions, the merged entity is also a significant purchaser of third party logs. In the most recent financial period it purchased 1.3m m³ of logs from third party suppliers.³⁷ It has the ability to purchase significant third party volume, with the effect of increasing its market power in relation to independent sawmills.
144. The analysis in Table 5 relates specifically to supply independent of the merged entity within the CNI wood supply region.³⁸ It shows that in two of the three periods analysed, independent purchasers would be reliant on the merged entity for supply.

Conclusion on the Market for the Supply of Unpruned Sawlogs in the Central North Island

145. The merged entity would have levels of market shares within the Commission's 'safe harbour' guidelines, during the period under analysis. However, when the independent supply and demand positions are considered, there would be a significant reliance ([] m³) by independent purchasers on supply from the merged entity during the period to 2003.

³⁶ Approximately 32% of log production is exported. A proportion of this supply would be committed to maintain long term relationships. For the purposes of this analysis, it is assumed that 10% of log supply would be committed in such a way.

³⁷ Carter Holt Harvey Annual Report 2000, 32.

³⁸ Sawn timber produced from unpruned logs is exported to predominantly to Asia and Australia. Exports to these markets have generally been stable over recent years, and the short term outlook is for little growth. As with pruned logs, the Commission has assumed the persistence of current (flat, for unpruned) demand conditions in the short term.

Stumpage Sales

146. CHH have submitted that that the stumpage it sells to independent producers should be included when assessing potential independent supply. It argues that:
- the owner of stumpage can sell wood produced from that stumpage to whoever he or she pleases []
-]...Concluded stumpage sales remove wood flows from CHH's control, and put it into the hands of independent suppliers who have purchased the stumpage...Once a stumpage sale has been concluded...the woodflow from the stumpage sold belongs to whoever purchased the stumpage.
147. The Commission believes that, in the absence of stumpage sale volumes, the merged entity would have considerable pricing discretion over independent purchasers of unpruned logs in this market in the short term. However, the Commission accepts that stumpage sales by CHH add to the available independent supply volume. In assessing the impact of stumpage sales, the Commission has only taken into account the stumpage volumes for which the harvest is still in progress.
148. CHH has advised the Commission that harvest of stumpage comprising [] cubic metres of unpruned sawlogs is in progress. This volume meets almost all of the shortfall identified by the Commission in Table 5 above, although such volumes will come onto the market in the earlier part of the period in question. However, the Commission notes that demand in this market has been soft in the recent past. The greater volumes coming onto the market early in the period are likely to mean some harvesting is deferred until towards the end of this period.
149. There is a small shortfall over the final five year period to 2013 which will not be affected by current stumpage sales. However, the shortfall is not significant on an annual basis.
150. The Commission sought independent verification of CHH's stumpage figures from parties identified as the purchasers of the stumpage. The Commission also sought details of recent stumpage purchases by CHH.
151. The Commission considers that, on the basis of its inquiries, it is reasonable to assume that the shortfall in supply identified in Table 5 will be met by the additional volumes available through CHH stumpage sales.

The Market for the Supply of Pruned Sawlogs in the Central North Island

152. The main purchasing group that would be exposed to the pricing behaviour of the merged entity would be independent sawmills located within this market. These sawmills are generally concentrated within the Rotorua, South Waikato, and Taupo districts, but are dispersed as far as Te Kuiti to the west and Thames and Tauria to the North. These independent sawmills consumed approximately [] m³ of pruned sawlogs in the most recent annual period, of which Carter Holt Harvey and the CNIFP supplied approximately [] m³. It is this figure that is important to the analysis, as it is the volume of logs that would be exposed to the pricing behaviour of the merged entity.

153. Market share figures have been calculated for all major suppliers of pruned sawlogs into this market. Age class distribution figures were obtained from these suppliers, and market shares were calculated by reference to aggregate figures contained within the *A National Exotic Forest Description* (“NEFD”) publication.³⁹ Market shares were calculated by conversion of the land area of production forests into future woodflows.⁴⁰ The figures were then adjusted to produce an estimate for pruned sawlogs. These market shares are outlined below:

Table 6: Future Wood Flows for Pruned Sawlogs in the Central North Island (m³)

Forest Owner	1999-2003		2004-2008		2009-2013	
CHH	[]	[]	[]	[]	[]	[]
CNIFP	[]	[]	[]	[]	[]	[]
Merged Entity	[]	[]	[]	[]	[]	[]
FCF	[]	[]	[]	[]	[]	[]
NZFM	[]	[]	[]	[]	[]	[]
Pan Pac	[]	[]	[]	[]	[]	[]
WPI	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]	[]

Source: individual suppliers and NEFD

154. These market share figures show that the merged entity would be just outside the Commission’s ‘safe harbour’ guidelines during the period to 2003, with a market share of []. However, the merged entity’s relative market share will decrease over the remaining time period, and its competitors’ shares will increase, and the merged entity’s share would fall within ‘safe harbour’ guidelines.
155. Table 7 below analyses independent supply of pruned logs in this market to determine whether such supply could satisfy the demand of the independent sawmills.

³⁹ These figures were verified by the Ministry of Agriculture and Forestry.

⁴⁰ A conversion ratio of 457 m³ per hectare was used. This was calculated from the total recoverable volume figures (“TRV”) contained in the Ministry of Agriculture and Forestry publication, *National Exotic Forest Description Regional Yield Tables 1995*. The conversion related to trees that were 25years old, and was a weighted average of the different tending regimes.

Table 7: Estimated Independent Supply and Estimated Demand by Independent Sawmills

Supplier	2001	2002	2003	2004	2005	2006	2007	2008
FCF	[]	[]	[]	[]	[]	[]	[]	[]
NZFM	[]	[]	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]	[]	[]	[]
Demand								
FCF	[]	[]	[]	[]	[]	[]	[]	[]
PanPac	[]	[]	[]	[]	[]	[]	[]	[]
WPI	[]	[]	[]	[]	[]	[]	[]	[]
ISM ⁴¹	[]	[]	[]	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]	[]	[]	[]
Net Position	[]	[]	[]	[]	[]	[]	[]	[]

Supplier	2009	2010	2011	2012	2013
FCF	[]	[]	[]	[]	[]
NZFM	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]
Demand					
FCF	[]	[]	[]	[]	[]
PanPac	[]	[]	[]	[]	[]
WPI	[]	[]	[]	[]	[]
ISM	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]
Net Position	[]	[]	[]	[]	[]

Source: NEFD and independent suppliers

156. The analysis in Table 7 above shows that for the period to 2005, independent demand for pruned logs will exceed supply by [] m³, or []% of supply. Independent purchasers of pruned logs would be reliant upon the merged entity for this marginal supply. Relatively few pruned logs are exported, so the Commission has not allowed for a residual flow of exported pruned logs to meet export commitments.
157. During the period to 2005, Fletcher Forests' internal demand for pruned sawlogs is estimated to exceed its internal supply. It will be a net purchaser of pruned sawlogs, notwithstanding the fact it also purchases from third parties to maximise transport efficiencies.⁴² It will have to rely on third party purchases to satisfy its internal demand. In addition, the stumpage sales by CHH have yielded relatively few pruned logs to meet this shortfall, even in the short term.

⁴¹ The analysis assumes a growth in demand of 15% for the period to 2002, based on a range of submissions made to the Commission. Demand is generally a function of the macroeconomic conditions in the relevant export market. Such conditions are difficult to forecast in the medium to long term.

⁴² In the most recent financial year FCF exported approximately [] m³ sawlogs, supplied its external customers with approximately [] m³, and supplied its own wood products division with approximately [] m³.

- [] m³;
- In the year ending 1 April 2003, [] m³;
- In the year ending 1 April 2004, [] m³;
- In the year ending 1 April 2005, [] m³;

158. From 2006, independent supply of pruned logs would exceed demand. Independent purchasers would not have to rely on the merged entity for their purchasers and this would be a constraining factor on the merged entity.⁴³ From 2011 to 2013 there is a projected deficit in independent supply, which is significant in 2012. However, the Commission considers there is a high degree of uncertainty as to levels of demand at that time.

Constraint from Potential Entry

159. A potential entrant to this market who wishes to establish a new plantation forest, is not able to supply sawlogs until the forest matures at an age between 25 and 30 years.⁴⁴ So this time dimension of the market limits the ability of new entrants to provide a constraint.

160. Furthermore, for an entrant to produce pruned sawlogs, the trees must be pruned between years 5 and 10, to ensure that 'clear wood' is developed around the core of the tree. The decision to produce pruned logs is made 20 years before the tree is harvested. This further limits the ability of an entrant to enter the market within a two year time period. In these circumstances, the Commission has placed no weight on the likelihood of new entry.

Countervailing Power of Purchasers

161. Generally, the independent purchasers of sawlogs in this market are fragmented and do not possess a large degree of countervailing power. Fletcher Forests through its wood processing operations would be likely to purchase a significant quantity of sawlogs from the merged entity, because of the location of its processing facilities relative to the CNIFP's forests. Fletcher Forests would have a degree of countervailing power, because it would be in the merged entity's economic interest to place that volume of logs.

⁴³ In practice, purchasers make purchases in a manner which best maximises transport efficiencies. Notwithstanding that a vertically integrated company has a net supply position, it will purchase from suppliers that are close to its processing facility.

⁴⁴ The harvesting age is determined by factors such as site location.

Undertaking to Divest

162. CHH have provided the Commission with an undertaking pursuant to s.69A of the Commerce Act. The undertaking seeks to address the concerns of the Commission as identified above in para.158.

163. The undertaking provides that:

In the event that CHH acquires the shares and/or assets of CNIFP, CHH will complete the following divestments to third parties not associated with, or an interconnected body corporate of CHH:

(a) [

].

164. The undertaking also provides that CHH will report on divestments made in compliance with this undertaking.

165. The Commission considers that this undertaking deals with its outstanding concerns about the market for pruned logs. CHH has sought confidentiality for the details of the undertaking. The Commission considers that, given the commercial sensitivity of the undertaking, it is appropriate that the details of it remain confidential.

Conclusion on the Market for the Supply of Pruned Sawlogs

166. The Commission considers that the shortfall in independent supply of pruned logs identified at Table 7 gives rise to potential concerns about the merged entity acquiring or strengthening dominance in this market. However, the Commission considers that these concerns are dealt with by the undertakings provided by the applicant.

167. On the basis of the undertaking provided by the applicant, the Commission is satisfied that the proposed acquisition will not result in a dominant position being acquired in this market.

New Zealand Timber Industry Federation

168. The New Zealand Timber Industry Federation (“NZTIF”) made a number of submissions to the Commission in respect to the proposed acquisition. It stated [

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169. The Commission notes the concerns that have been expressed about quality and availability of supply from smaller forests. However, there is a wide range of forest sizes within the 'other' category, and the Commission considers that it is difficult to provide a precise estimate of this effect on independent supply. The Commission has not discounted supply from this sector for that reason.
170. The Federation argued that factoring in a growth rate of 30% in independent demand per annum was appropriate, particularly in view of the buoyant conditions in the American market for mouldings and appearance grade timber. The applicant's estimate of growth was zero. On the basis of the range of submissions made to it, and given the uncertainty about the slowdown in that market, the Commission considered the Federation's estimate to be high. As mentioned in the footnote to Table 7, the Commission has factored in a 15% rise in independent demand in the first year on the basis of existing demand continuing in the short term. Beyond that period, the Commission considered it difficult to predict demand trends with any certainty. In effect, the Commission has factored in a modest rise in demand over the whole of the period in question, which it considers an appropriately conservative approach in the absence of precise information.
171. Commission staff have analysed this issue and have established that the independent sawmills in the region have a current annual demand for pruned and unpruned sawlogs of [] m³. The Commission has considered independent demand for pruned sawlogs at paragraphs 155 to 166 above, based on the figures in Table 7. The Commission has considered independent demand for unpruned sawlogs at paragraphs 142 to 151 above, based on the figures in Table 5. As discussed in those paragraphs the Commission considers that the shortfalls identified in the Tables give rise to valid grounds for concern. However, taking into account stumpage sales in the case of unpruned logs, and the divestment undertakings provided by CHH in relation to pruned logs, the Commission considers that the proposed acquisition will not result in a dominant position being acquired in either market.

The Market for the Supply of Pulp logs in the Central North Island

Market Concentration

172. The largest purchasers of pulp logs in this market are the four pulp mills; Carter Holt Harvey's Kinleith and Kawerau mills,⁴⁵ Pan Pac's mill at Napier and Winstone's mill at Ohakune. The Norske Skog paper plant situated at Kawerau is also a significant user of pulp logs. The estimated future market shares of suppliers of pulp logs are outlined below in Table 8.

Table 8: Future Wood Flows for Pulp logs in the Central North Island (m³)

⁴⁵ This figure includes woodchips.

Forest Owner	2001-2003		2004-2008		2009-2013	
CHH	[]	[]	[]	[]	[]	[]
CNIFP	[]	[]	[]	[]	[]	[]
Merged Entity	[]	[]	[]	[]	[]	[]
FCF	[]	[]	[]	[]	[]	[]
NZFM	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]
Total	[]	[]	[]	[]	[]	[]

Source: *individual suppliers and NEFD*

173. During the whole period, the merged entity would have market shares within the Commissions 'safe harbour' guidelines.
174. Table 9 below, outlines the independent supply and demand position in respect to pulp logs.

Table 9: Estimated Independent Supply and Estimated Demand for Pulp Logs

Supplier	2001-2003		2004-2008		2009-2013	
	Pulp		Pulp		Pulp	
FCF	[]		[]		[]	
NZFM	[]		[]		[]	
Other	[]		[]		[]	
Total	[]		[]		[]	
Demand						
Norske	[]		[]		[]	
WPI	[]		[]		[]	
Total	[]		[]		[]	
Net Independent Supply	[]		[]		[]	

175. The analysis shows that in each of the time periods analysed, future independent supply of pulp logs will exceed independent demand.

Constraint from Existing Competition

176. The large consumers of pulp logs are pulp and paper mills situated at Kinleith (CHH), Kawerau (Norske Skog and CHH) and Ohakune (WPI). If the merged entity attempted to increase its pulp log prices by a *ssnip*, it would face some constraint by suppliers like Fletcher Forests and NZFM and other small and medium sized suppliers situated within the area. Fletcher Forests have an [

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177. Currently there are between [] m³ of pulp logs exported each year through the Port of Tauranga. The merged entity would be responsible for a significant portion of this volume. However, Fletcher Forests currently exports about [] m³ and this volume could be diverted to the domestic market, which would have a further constraining effect on the behaviour of the merged entity.
178. Pan Pac made a submission to the Commission stating []].

Constraint from Potential Competition

179. As with pruned and unpruned sawlogs, the time dimension of the market limits the ability of new entrants to provide a constraint. The Commission has placed little weight on the constraint provided by new entry in these circumstances.

Countervailing Power of Purchasers

180. Norske Skog are a large purchaser of pulp logs, which it uses in its paper making processes. Currently, it purchases about [] m³ from [], so it would be exposed to the merged entity for this volume. However, [] m³ is actually used by Norske Skog. The remaining [] m³ is consumed by CHH's pulp mill at the Kawerau site. It is presently involved in a joint venture with CHH at the Kawerau site, which purchases the fibre requirements (pulp logs and wood chips), for CHH's pulp mill and Norske Skog's paper mill. The joint venture purchases a large volume of pulp logs and has considerable countervailing power in respect to the behaviour of CHH's fibre trading division.
181. []].
182. If the merged entity did increase its prices by a *ssnip*, Norske Skog could obtain alternative supply. However it would be faced with increased transport costs, which may not be an attractive option because of the low value of pulp logs. Currently, Norske Skog purchase 80% of its requirements from within a 150km radius of its production site. However, the Commission considers that Norske Skog has sufficient countervailing power for this not to be a major concern.
183. The Commission is satisfied that the proposed acquisition will not result in a dominant position being acquired in this market.

The Market for the Supply of Sawn Timber in the North Island

Market Concentration

184. Carter Holt Harvey currently operates four sawmills within the North Island, which produce sawn timber. All of its mills are located within the Central North Island because of the high relative cost of transporting sawlogs, an input into the production process. The CNIFP currently has a sawmilling operation at Waipa, near Rotorua, and a wood processing facility situated at Mt Mangana. The estimated market shares for the market for the supply of saw timber in the North Island are outlined below in Table 10.

Table 10: Estimated Market Shares for the Supply of Sawn Timber in the North Island

Supplier	Output (000m ³)	Market Share (%)
CHH	[]	[]
CNIFP	[]	[]
Merged Entity	[]	[]
FCF	[]	[]
Tachikawa	[]	[]
Pan Pac	[]	[]
Other	[]	[]
Total	2,450	100%

Source: MAF Statistical Release, *Annual Production of Rough Sawn Timber*, and suppliers.

185. The proposed acquisition would result in the merged entity having a market share of []. The next largest competitor, Fletcher Forests would have a market share of approximately []. These levels of market shares are within the Commission's 'safe harbour' guidelines.

Constraint from Existing Competitors

186. There are approximately 338 saw milling operations in New Zealand, with 60% (205) of them being situated within the North Island. Within the North Island, the largest concentration of saw milling operations are within the Central North Island. Saw milling operations range in size from small portable saw milling operations to very large producers of sawn timber. Within the North Island, 136 mills (66%) produce less than 2000 m³ of sawn timber, 29 mills produced less than 20,000 m³, whilst 31 mills (15%) produced over 20,000 m³. These larger mills were responsible for 90% of total output in the North Island.⁴⁶

187. The sawn timber market is currently experiencing a modest level of growth. Since the early 1990's the apparent consumption of sawn timber has increased from 429m³ (per 000 capita) to 622m³ in 2000. However the five-year moving average for consumption is relatively stable, which reflects the cyclic nature of demand. The structural grades of timber are the predominant grades consumed in the New Zealand

⁴⁶ Ministry of Agriculture and Forestry, *Statistical Release: Annual Production of Rough Sawn Timber, Year Ended 31 March 2000*.

domestic market. Other grades sold domestically include appearance grades, used in mouldings and joinery, and cuttings grade.

188. The merged entity would control sawmilling operations, which produce a range of sawn timbers, but predominantly structural grades. Each of these operations have large relative capacities. The largest cost a sawmilling operation faces is the cost of the log []% of total costs. There is a reasonable level of fixed costs in a sawmilling operation, through the reasonably capital intensive nature of production. There would be some economic advantages from a large scale. However there are several large independent sawmilling operations that could offer effective competition to the merged entity in the production of the lower value structural, cuttings and packaging grades of sawn timber. These competitors include Fletcher Forests, Pan Pac, WPI, Tachikawa, and Juken Nissho. Smaller sawmilling operations have different cost structures to the larger corporates. These smaller competitors will also offer effective competition to the merged entity in the production of higher value grades of timber such as appearance grades.
189. Approximately 40% of sawn timber production is exported. The main markets are Australia (structural grades), Asia (industrial grades) and North America (appearance grades). Domestic suppliers to these markets would have the ability to divert supply back to domestic markets if market condition encouraged such behaviour. If the merged entity attempted to increase prices in the domestic market, an export diversion strategy would provide further constraint on the competitive behaviour of the merged entity.

Constraint from Potential Competition

190. An entrant into this market would require capital to invest in the necessary plant and equipment, access to logs, competencies in sawmilling through the hire of skilled labour and also in selling and marketing.

Capital Cost

191. The capital cost of investing in a sawmilling operation is very much dependent upon the scale of the operation. Sawmilling operations range from small portable saw mills to large scale operations, which produce significant quantities of sawn timber. Portable sawmills range in price from US\$2,500 to US\$35,000, whilst small mills producing under 10,000m³ would cost up to \$5m. Medium sized mills producing under 50,000m³would cost up to \$20m, whilst large scale operations can cost up to \$40m. There is not a significant level of sunk cost in this investment. The plant and equipment generally has long economic lives, and there is an active market for used equipment.
192. The capital cost of entry into this market on a small or medium scale is not considered to be a barrier to entry. However, investment in a large scale sawmilling operation would require significant capital expenditure and could be regarded as a moderate barrier to entry.

Access to Logs

193. An entrant to this market would require access to the needed input, sawlogs. Unless the saw milling operation was backwardly integrated into forest ownership, the entrant would have to access supply from the market for the supply of sawlogs. The Commission considers that on the basis of the analysis at paras 142 to 166 above that there would be sufficient independent supply of sawlogs and that access would not be a barrier to entry.

Countervailing Power of Suppliers and Purchasers

194. The merged entity would be a vertically integrated business involved in forest ownership, log production, wood processing and distribution. It would be a net supplier of logs, with all of its internal demand be satisfied by internal supply. Notwithstanding this, large integrated companies do purchase from third parties to maximise transport efficiencies. The merged entity would also be integrated forward into the distribution of sawn timber. Internal purchases would be a significant part of its domestic business. However there are some large independent distribution channels that would be able to exert a degree of countervailing power on the behaviour of the merged entity.

Conclusion on the Market for the Supply of Sawn Timber in the North Island.

195. The merged entity would have a market share that is within the Commission's safe harbour' guidelines. It would face effective constraint in the market by both large and small independent competitors. Barriers to entering the market are not large, and this would be a further constraining factor on the behaviour of the merged entity.

The Market for the Supply of Woodchips in the Central North Island

Market Concentration

196. Woodchips are produced as a residue from the saw milling and log producing processes, and are also produced by conversion of logs, generally pulp logs, into chips. Woodchips are used as an input into the pulp making process and also in the production of fibreboard. The proposed acquisition will result in aggregation of business activity in the supply of woodchips because of aggregation in the sawmilling market. The level of aggregation would be reasonably significant because of the scale of the CNIFP's sawmilling and log processing operations. The estimated market shares for the supply of woodchips are outlined below in Table 11.

Table 11: Estimated Market Shares for the Supply of Woodchips in the Central North Island

Supplier	Output (000m³)	Market Share (%)
CHH	[]	[]
CNIFP	[]	[]
Merged Entity	[]	[]
FCF	[]	[]
Other	[]	[]

Total	1930	100
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Source: Carter Holt Harvey and other suppliers.

197. The proposed acquisition would result in the merged entity having a market share of approximately []. The next largest competitor would be Fletcher Forests with a market share of []. These levels of market shares are within the Commission's 'safe harbour' guidelines.

Constraint from Existing Competition

198. Woodchips are a commodity and price is an important competitive factor. Woodchips are part of the residue from the conversion of a sawlog into sawn timber. The conversion ratio for sawn timber is approximately 55%, so maximising the return from the residue is important in recovering maximum value from the sawlog.
199. The structure of this market is characterised by several large suppliers of woodchips and a large number of smaller suppliers. The scale of supply is a function of the scale of log production and sawmilling. The merged entity would be the largest supplier, however it would face effective competition from the next largest competitor, Fletcher Forests and from the fragmented, but collectively significant independent sawmills.
200. If the merged entity attempted to exercise market power by raising its price for woodchips by a *ssnip*, it is the Commission's view that it would be constrained by independent suppliers diverting export supply to the domestic market, or by increasing the production of woodchips by increasing the processing of logs not suitable for sawmilling.

Constraint from Potential Competition.

201. All of the domestic suppliers of woodchips in this market produce them either as a by-product of the sawmilling process, or as a by-product of the log production process. Likely entry into this market is by entry or expansion in either of these markets. There are no significant barriers to entering this market.

Countervailing Power of Suppliers and Purchasers

202. Suppliers are log suppliers and in the large corporate companies, this function is generally integrated. Purchasers of woodchips in this market are concentrated, and include CHH's pulp mills situated at Kinleith and Kawerau, and Norske Skog's paper plant situated at Kawerau. These purchasers account for a significant proportion of total production and have a significant degree of countervailing power. Notwithstanding the fact that the two pulp mills would be owned by the merged entity, CHH's internal business units operate at arms length, and these large purchasers are important customers of the woodchip suppliers.

Conclusion on the market for the Supply of Woodchips in the Central North Island

203. The merged entity would have a market share of [], which is inside the Commission's 'safe harbour' guidelines. It would face effective competition from Fletcher Forests and other smaller suppliers of woodchips. It would also face considerable countervailing power from the highly concentrated purchasers of woodchips.

OVERALL CONCLUSION

204. The Commission has considered the impact of the acquisition on the following markets:
- the production and supply of unpruned sawlogs in the Central North Island;
 - the market for the production and supply of pruned sawlogs in the Central North Island, the Auckland wood supply region and the Hawkes Bay wood supply region
 - the production and supply of pulplogs in the Central North Island;
 - the production and supply of woodchips in the Central North Island; and
 - the production and supply of sawn timber in the North Island.
205. Having regard to the various elements of section 3(9) of the Act, and all other relevant factors, including the divestment undertakings provided by CHH, the Commission is satisfied that the proposed acquisition would not result, or be likely to result, in any person acquiring or strengthening a dominant position in any market.

DETERMINATION OF NOTICE OF CLEARANCE

206. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by Carter Holt Harvey Limited and/or any interconnected body corporate of up to 100% of the shares in or assets of the Central North Island Forest Partnership.

Dated this day of July 2001

John Belgrave
Chair