

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 9 August 2006

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a potential business acquisition.

EXECUTIVE SUMMARY

1. EXECUTIVE SUMMARY

1.1 Hancock Natural Resource Group, Inc. ("**Hancock**") seeks clearance to acquire shares and assets owned by Carter Holt Harvey Ltd ("**CHH**") and its subsidiaries, relating to forestry estates located in Northland/Auckland, the Central North Island ("**CNI**") and Nelson. Hancock manages forest estates primarily in the CNI and Hawkes Bay. Hancock is currently participating in a competitive tender process for the forests and is required to submit an unconditional bid by [].

1.2 Hancock is a "timberland investment management organisation" ("**TIMO**"). It develops and manages globally diversified timberland portfolios for public and corporate pension plans, high net-worth individuals, and foundations and endowments. If successful, Hancock will structure the acquisition by negotiating the transaction itself, and then substituting as purchaser an investment vehicle (the ultimate investors in which are its investor clients) for which it (or a subsidiary) is appointed manager prior to completion. Hancock will then manage the relevant forestry assets on behalf of the purchaser post-acquisition.

The markets

1.3 The only material aggregation that will occur is in the following markets (as defined in previous Commission decisions, making time adjustments):¹

- (a) The production and supply of unpruned sawlogs in the CNI, for the periods 2006–2010, 2011–2015 and 2016–2020 ("**unpruned sawlog markets**");
- (b) The production and supply of pruned sawlogs in the CNI, Auckland and Hawke's Bay, for the periods 2006–2010, 2011–2015 and 2016–2020 ("**pruned sawlogs markets**"); and

¹ Refer [11.2]–[11.3] for a summary of these decisions.

- (c) The production and supply of pulplogs in the CNI, for the periods 2006–2010, 2011–2015 and 2016–2020 ("**pulplog markets**").

Competition analysis

- 1.4 Following the acquisition (if Hancock is the successful acquirer), Hancock will obtain the estimated market shares set out in **Table 1**.²

Table 1: Summary of pre- and post-acquisition market shares

Market		Hancock market share		Post-acquisition 3 firm CR	Safe harbours satisfied?
Product	Period	Pre-acquisition	Post-acquisition		
Unpruned sawlogs	2006–2010	[]%	[]%	[]%	No
	2011–2015	[]%	[]%	[]%	No
	2016–2020	[]%	[]%	[]%	No
Pruned sawlogs	2006–2010	[]%	[]%	[]%	Yes
	2011–2015	[]%	[]%	[]%	Yes
	2016–2020	[]%	[]%	[]%	Yes
Pulplogs	2006–2010	[]%	[]%	[]%	Yes
	2011–2015	[]%	[]%	[]%	Yes
	2016–2020	[]%	[]%	[]%	Yes

- 1.5 In all of the pruned sawlogs and pulplogs markets, Hancock post-acquisition will have less than 40% market share and the three largest suppliers will together have less than 70% market share. The acquisition will therefore fall within the Commission's safe harbours in respect of those markets.³
- 1.6 In the unpruned sawlogs markets, the safe harbours will not on their face be satisfied. However, Hancock will manage less than []% of the total market in each time period. In addition, in its previous forestry decisions the Commission has utilised two other quantitative analyses to assess the competition effects of an acquisition. In this case:
- (a) Applying the test of whether total supply into the market exceeds total domestic demand, available CNI supply will exceed CNI demand in all periods by between []m³ and []m³.
- (b) Applying the test of whether the total supply in the market from sources other than Hancock (excluding long-term contracts) will exceed total demand (excluding demand met by long-term contracts), non-contracted supply from sources other than Hancock will be sufficient by itself to meet non-contracted demand in all periods, and there will be surplus supply from these non-Hancock parties of between []m³ and []m³ over all periods.
- 1.7 For these reasons, Hancock will not gain any significant ability to influence the competitive dynamic of the unpruned sawlogs market as a result of the acquisition. Accordingly, the acquisition will not be likely to substantially lessen competition in any market.
- 1.8 A number of additional factors also point against the acquisition substantially lessening competition in any market:
- (a) *Unpruned sawlogs*: the surplus supply analysis proceeds on the conservative assumption made by the Commission in previous decisions that producers will

² Figures for **Table 1** are derived from **Table 6**, **Table 9** and **Table 12** in **Appendix 1**.

³ Commerce Commission, *Mergers and Acquisitions Guidelines* (2004) at 25.

export 32% of non-committed supply. This estimate of export volumes fails to take into account the likelihood of diversion of exports to CNI processing facilities in the event that local prices were to increase.

- (b) *Pruned sawlogs*: as well as the potential acquisition falling within the safe harbours, it will remain possible post-acquisition for all non-committed demand in the market to be met entirely by non-committed supply from parties other than Hancock in all time periods, with a significant surplus of non-committed supply. As a result, Hancock will not obtain any significant influence in the market as a result of the acquisition.
- (c) *Pulplogs*: as well as the potential acquisition falling within the safe harbours, the market is characterised by significant countervailing power by CHH, who will continue to operate over []% of the pulplog processing facilities in the CNI.

1.9 For the foregoing reasons, Hancock does not consider that the acquisition will be likely to substantially lessen competition in any market.

OUTLINE / TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
1. Executive Summary	1
The markets	1
Competition analysis	2
Table 1: Summary of pre- and post-acquisition market shares	2
OUTLINE / TABLE OF CONTENTS.....	4
PART I: TRANSACTION DETAILS.....	7
2. The business acquisition.....	7
3. Notice given by Hancock.....	7
4. Confidentiality.....	8
5. Details of the Participants	8
Acquirer	8
Target	8
6. Interconnected and associated parties.....	9
Hancock	9
Carter Holt Harvey Limited.....	9
7. Beneficial Interests.....	9
8. Links between participants	9
9. Business activities of each participant.....	9
Hancock	9
CHH.....	10
The counterfactual	11
10. The reasons for the proposal.....	11
PART II: IDENTIFICATION OF MARKETS AFFECTED.....	12
11. Horizontal Aggregation.....	12
Market Definition	12
Product Dimension	12
Geographic Extent	12
Functional level	13
Time dimension.....	13
Conclusion regarding market definition	13
Current competitors in the markets.....	13
<i>Market overview.....</i>	<i>13</i>
<i>Vertically Integrated Competitors.....</i>	<i>14</i>
Tenon	14
Weyerhaeuser New Zealand Inc.....	14
Pan Pac Forest Products Limited	15
Winstone Pulp International	15
<i>TIMOs.....</i>	<i>16</i>
Kaingaroa Timberlands Limited	16
Matariki Forestry Group	16
<i>Other Competitors.....</i>	<i>16</i>
Ernslaw One Group.....	16
Juken New Zealand Limited.....	17
12. Differentiated Produce Markets	17
Extent Of Product Differentiation	17

13. Vertical Integration	18
14. Previous Acquisitions and Commission Notification	18
PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION	19
15. Existing Competitors in Market	19
Unpruned sawlogs	19
<i>Existing competitors</i>	19
<i>Market Shares</i>	19
<i>Supply and Demand Analysis</i>	19
<i>Surplus Supply and Residual Demand Analysis</i>	20
Hancock's existing supply contracts	20
CHH Contracts	20
Pruned sawlogs.....	22
<i>Existing Competitors</i>	22
<i>Market Shares</i>	22
<i>Supply and Demand Analysis</i>	22
<i>Surplus Supply and Residual Demand Analysis</i>	22
Hancock's existing supply contracts	22
CHH Contracts	23
Pulplogs.....	23
<i>Existing Competitors</i>	23
<i>Market Shares</i>	23
<i>Supply and Demand Analysis</i>	23
CHH Contracts	24
16. Conditions to expansion by existing competitors.....	24
Imports from overseas	24
Imports from other geographic markets.....	25
Smaller Owners.....	25
Export Diversion.....	25
17. Conclusions on constraint by existing competition on exercise of unilateral market power	25
18. Market characteristics facilitating or impeding coordination	26
No co-ordination in any relevant market.....	26
Table 2: Scope for co-ordinated market power.....	26
Table 3: Detection of deviation from co-ordination	27
Table 4: Ability to retaliate.....	27
19. No evidence of price co-ordination, price matching or price following.....	27
20. No risk of co-ordinated behaviour.....	27
PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION	28
21. Conditions of Entry	28
PART V: OTHER POTENTIAL CONSTRAINTS.....	29
22. Constraints on Market Power by the Conduct of Acquirers.....	29
Unpruned Sawlogs.....	29
Pruned Sawlogs	29
Pulplogs.....	29
Table 5: Demand for Pulp Logs	30
23. Constraints on Market Power by the Conduct of Suppliers	30
APPENDIX 1: MARKET SHARE ANALYSIS	32
1. Unpruned Sawlogs	32
Table 6: Future Wood Flows for Unpruned Sawlogs in the CNI Market Share Analysis.....	32

Table 7: Future Wood Flows for Unpruned Sawlogs in the CNI Supply and Demand Analysis	33
Table 8: Future Wood Flows for Unpruned Sawlogs in the CNI Surplus Supply and Residual Demand Analysis.....	34
2. Pruned Sawlogs.....	36
Table 9: Future Wood Flows for Pruned Sawlogs in the CNI, Auckland and Hawke's Bay Market share analysis.....	36
Table 10: Future Wood Flows for Pruned Sawlogs in the CNI, Auckland and Hawke's Bay Supply and demand analysis.....	37
Table 11: Future Wood Flows for Pruned Sawlogs in the CNI, Auckland and Hawke's Bay Surplus Supply and Residual Demand Analysis	38
3. Pulplogs.....	40
Table 12: Future Wood Flows for Pulplogs in the CNI Market Share Analysis.....	40

PART I: TRANSACTION DETAILS

2. THE BUSINESS ACQUISITION

2.1 Clearance is sought in respect of the possible acquisition by Hancock Natural Resource Group, Inc ("**Hancock**") or a nominee⁴ of:

- (a) all of the shares in four Carter Holt Harvey Limited ("**CHH**") subsidiaries, namely, NZ Forest Products Limited, AHI Group limited, Carter Holt Harvey Equities (No 12) Limited and Carter Holt Harvey Forest Holdings Limited ("**CHH Subsidiaries**"). The CHH Subsidiaries hold assets (either directly or through further subsidiaries) of the nature described in the following sub-paragraph; and
- (b) forestry assets (including freehold property, non-freehold land interests, the standing timber on that land, plant and equipment, business contracts, licenses and consents) not owned by the CHH Subsidiaries but owned by other companies in the CHH group of companies,

(together, the "**Assets**"). The forest estates relating to the Assets are located in Northland and Auckland, the Central North Island and Nelson.

3. NOTICE GIVEN BY HANCOCK

3.1 This notice is given by:

Hancock Natural Resource Group, Inc
 C/- Hancock Natural Resource Group Australia
 PO Box 387
 Romsey, VIC 3434
 AUSTRALIA
 (Courier to 279 Sheltons Road,
 Newham, VIC 3442
 AUSTRALIA)

Attn: Karl Kny
 Managing Director Australasia
 Ph +61 3 5427 0131
 Fax +61 3 5427 0132

3.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Russell McVeagh
 Barristers & Solicitors
 P O Box 8
 Level 30, Vero Centre
 48 Shortland Street
 Auckland

Attn: Andrew Peterson/Andrew Fincham
 Ph: (09) 367 8315 / (09) 367 8039

⁴ The nominee will be a an investor-client of Hancock, with the forests managed either by Hancock or by a party interconnected with Hancock.

Fax: (09) 367 8596

4. CONFIDENTIALITY

- 4.1 Confidentiality is sought in respect of all items deleted from the public version of this application ("**confidential information**"). The items are indicated in the confidential version in bold square brackets ("**[]**").
- 4.2 In respect of the confidential information, a confidentiality order is sought under s 100 of the Commerce Act 1986 ("**Act**"), and confidentiality is claimed under s 9(2)(b)(ii) of the Official Information Act 1982, on the grounds that the information is commercially sensitive and valuable information which is confidential to the participants, and disclosure of it is likely to give unfair advantage to competitors of Hancock and/or unreasonably to prejudice the commercial position of the persons involved.
- 4.3 Hancock requests that it be notified of any request made to the Commission under the Official Information Act for release of the confidential information, and that the Commission seeks its views as to whether the information remains confidential and commercially sensitive, at the time responses to such requests are being considered.

5. DETAILS OF THE PARTICIPANTS

Acquirer

- 5.1 The proposed acquirer is Hancock Natural Resource Group, Inc (details above) or a nominee.⁵

Target

- 5.2 The assets are to be sold by CHH and its subsidiaries. CHH head office details are as follows:

Carter Holt Harvey Limited
640 Great South Road
Manukau
Auckland
Telephone: (09) 262 6000
Facsimile: (09) 262 6089

- 5.3 All correspondence and notices in respect of this application should be directed at first instance to:

Bell Gully
Barristers and Solicitors
PO Box 4199
Level 21, Vero Centre
48 Shortland Street
Auckland
Telephone: (09) 916 8621
Facsimile: (09) 916 8801

Attention: Phil Taylor/Torrin Crowther

⁵ Ibid.

6. INTERCONNECTED AND ASSOCIATED PARTIES

Hancock

- 6.1 Hancock Natural Resource Group, Inc is a registered investment adviser and wholly owned subsidiary of Manulife Financial Corporation.
- 6.2 A copy of the most recent annual report of Manulife Financial Corporation is available online at:

www.manulife.com/corporate/corporate2.nsf/Public/annualreports.html

Carter Holt Harvey Limited

- 6.3 CHH was formerly a public company listed on the New Zealand and Australian Stock Exchanges and was previously majority owned by United States-based forest products conglomerate, International Paper Company. In August 2005, Rank Group Investments Limited launched a takeover offer for 100% of CHH's ordinary shares. Rank Group successfully completed the takeover in the first quarter of 2006.
- 6.4 A copy of the most recent CHH annual report (year to 31 December 2005) is available from the Companies Office website⁶ or from CHH. Updated details on CHH's current and likely future structure are available from CHH or Bell Gully.
- 6.5 Further details can be provided by CHH if the Commission wishes.

7. BENEFICIAL INTERESTS

- 7.1 Neither Hancock nor CHH holds any relevant beneficial interests.

8. LINKS BETWEEN PARTICIPANTS

- 8.1 Other than the contractual timber supply arrangements described in this notice, there are no links between Hancock and CHH that might affect markets in New Zealand.

9. BUSINESS ACTIVITIES OF EACH PARTICIPANT

Hancock

- 9.1 Hancock is a "timberland investment management organisation" ("**TIMO**"). It develops and manages globally diversified timberland portfolios for public and corporate pension plans, high net-worth individuals, and foundations and endowments.
- 9.2 Hancock acts for investor clients in identifying and completing forest plantation acquisitions, and then manages these plantations following the acquisition. Hancock typically structures its acquisitions by negotiating the transaction itself, and then substituting an investment vehicle as the purchaser (the ultimate investors in which are its investor clients) prior to completion. At this point the nature of the investment vehicle, the identity of Hancock's investors who will invest in the investment vehicle, and the mechanics for transferring the CHH Assets to the investment vehicle have not been settled. However, at the time of acquisition and subsequently, Hancock will act as manager of the investment vehicle.
- 9.3 Hancock (or one of its subsidiaries) manages the following forestry assets:

⁶ www.companies.govt.nz.

- (a) *TEAL 3*; TEAL 3 consists of 5,600 hectares of forestry assets in Tahorakuri Forest. Hancock manages these assets according to a contractual investment management structure.
- (b) *Tiaki Plantations Company ("Tiaki")*; Tiaki is an investment vehicle used to acquire forestry rights over approximately 36,000 hectares of forestry assets, including parts of the Tarawera, Matahina, Ngamotu, Rangitaiki, Swan, Mangawhio, Pethybridge, Putauaki, Rerewhakaaitu, Waiohau, Wharetoto, Rainbow Ngatapa and the Taupo Hunt Club forests.⁷ Tiaki is owned by United States and Australian investors. Hancock is contracted with each of the investors to manage their investments. Hancock representatives comprise a majority of directors on the board.
- (c) *OTPP New Zealand Forest Investments Ltd ("OTPP NZ")*; OTPP NZ is a wholly owned subsidiary of the Ontario Teachers' Pension Plan ("**OTPP**"), which is one of Canada's largest financial institutions investing to secure retirement income for teachers. OTPP has invested in New Zealand forestry assets through OTPP NZ, acquiring part of the Fletcher Challenge Forests forestry estate. Hancock subsidiary Prudential Timber Investments, Inc ("**Prudential**") (incorporated in the United States) is the investment manager of these forestry assets (total estate as at 1 January 2006 was 50,400 hectares) on behalf of OTPP NZ. There is only one investor in OTPP NZ and the board is appointed by this investor. Hancock has no representation on this board.
- (d) *Viking Global New Zealand Ltd ("Viking")*; Viking is a subsidiary of Viking Global Timber Fund, LLC, which is a US based investment fund owned by North America-based investors and several foreign pension fund trusts. Viking also invested in New Zealand forestry assets by acquiring some of the assets of Fletcher Challenge Forests. Hancock subsidiary Prudential is the investment manager of Viking locally (total estate as at 1 January 2006 was 3,900 hectares).

9.4 Hancock is not vertically integrated. It only manages forestry assets.

CHH

9.5 CHH is a wood fibre products company and carries on business activities in forests, wood products, pulp and paper, packaging and building supplies. The sale process involves substantially all of CHH's forestry interests.

9.6 Two of the CHH Subsidiaries the subject of the sale also own the following companies:

- (a) Carter Holt Harvey Forest Holdings Ltd owns Ataidar Forests Ltd, Carter Holt Harvey Forests Ngatihine Ltd and Carter Holt Harvey Northland Forests Ltd, the last of which in turn owns Carter Holt Harvey EBOP Holdings Ltd. Carter Holt Harvey EBOP Holdings Ltd owns eleven forestry companies, being: Houpoto Te Pua Forest (No 2) Ltd, Houpoto Whituare Forest (No 2) Ltd, Matangareka Forest (No 2) Ltd, Nukutere Forest (No 2) Ltd, Orete Forest (No 2) Ltd, Otanemutu Forest (No 2) Ltd, Potikirua Forests (No 2) Ltd, Torere 64 Forest (No 2) Ltd, Torere 65 Forest (No 2) Ltd, Tunapahore 4B Forest (No 2) Ltd and Tunapahore B2A Forest (No 2) Ltd.
- (b) NZ Forest Products Ltd owns NZ Forest Products Kinleith Forests Ltd and 50% of each of Mangakahia Forest Ltd and Mangakahia Forest Management Ltd

⁷ Obtained from canterbury.cyberplace.org.nz/community/CAFCA/cafca04/may04.html.

(the other 50% is owned by GFP Mangakahia Forest Venture Ltd).

The counterfactual

9.7 CHH is selling the Assets in a competitive tender process, for which unconditional bids are due on []. Hancock submits that the relevant counterfactual scenario, in the event it is unsuccessful in this tender process, is the acquisition of the Assets by another party, which may or may not have existing forestry or sawmilling assets and who may or may not appoint Hancock as its investment manager.

10. THE REASONS FOR THE PROPOSAL

10.1 Hancock considers that this potential acquisition would add value to its timberland program, namely increasing the global geographic diversification of its portfolio.

10.2 Hancock believes that global geographic diversification can add considerable value to a timber land program. Good empirical evidence demonstrates that returns from timberland in the different investable regions of the world are only poorly correlated. This lack of interregional correlation suggests that a risk-efficient portfolio would consist of investments in multiple regions and provide exposure to timberland of differing species and age classes. Whilst Hancock structures what it considers to be core timberland portfolios involving investments in the United States, it believes that exposure to timberland outside the United States (Canada, South America, Australia or New Zealand) makes sense since such diversification mitigates timber price and timberland asset value risks through exposure to the broad array of major timber and timberland markets.

10.3 Hancock's acquisition strategy focuses on large timberland properties and favours complex deals that offer attractive returns for investors. Hancock intends to manage the CHH Assets to maximize investor returns, an approach which it calls Hancock Forestry TM. Hancock Forestry TM includes careful consideration of market timing of harvest and of the investments made in such activities as fertilization and genetically improving planting stock. In New Zealand Hancock is a member of the Stand Growth Modeling and Plantation Management research cooperatives.

10.4 Hancock intends to manage the Assets based on the following principles:

- (a) ensure alignment of interests with investors through the service supply chain;
- (b) seek to protect and secure investor assets to minimise risk;
- (c) enhance the value of investors timberland through the appropriate application of silvicultural technologies; and
- (d) provide a high level of environmental stewardship. Seek and maintain third party certification on all properties as part of a structured, disciplined environmental management system.

10.5 The Assets will increase the area of timberland managed by Hancock. Hancock currently manages around 94,000 hectares of timberland in New Zealand, 244,000 hectares in Australia and more than 1.3 million hectares in total worldwide. Hancock will bring its skills and ability in the effective management of timberland to the Assets.

PART II: IDENTIFICATION OF MARKETS AFFECTED
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11. HORIZONTAL AGGREGATION**Market Definition**

- 11.1 Product overlap exists between Hancock and CHH in the production and supply of unpruned sawlogs, pruned sawlogs and pulplogs.
- 11.2 The Commission most recently considered an acquisition involving the forestry market in Decision 467 (*Fletcher Challenge Forests Limited/Central North Island Forest Partnership*, 14 August 2002) ("**Fletcher Challenge/CNIFP**"). The Commission granted clearance for the acquisition by Fletcher Challenge Forests Limited ("**FCF**"), through its wholly owned subsidiary Kaingaroa Timber Company Limited, from CITIC New Zealand Limited (BVI) (in receivership) and Forestry Corporation of New Zealand Limited (in receivership) (together "**the Vendors**") of the operating assets of the partnership between the Vendors known as the Central North Island Forest Partnership ("**CNIFP**").
- 11.3 The Commission's analysis in *Fletcher Challenge/CNIFP* generally followed its earlier analysis in Decision 426 (*Carter Holt Harvey Limited/Central North Island Forestry Partnership*, 5 July 2001) ("**Carter Holt/CNIFP**"). The Commission granted a clearance for Carter Holt Harvey to acquire up to 100% of the shares in or assets of the CNIFP, "subject to undertakings by CHH to divest the right to harvest and own without limitation the wood produced from such harvest, pruned trees situated in the CNI comprising [sic: comprising] certain volumes of pruned sawlogs during the years ended 1 April 2002 to 2005".
- 11.4 The Commission's approach to market definition was virtually the same in *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP*, and was consistent with the approach that the Commission has taken to identifying relevant markets in the forestry industry for the past decade.

Product Dimension

- 11.5 The approach adopted in *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP* is suitable for assessing the competition implications of the proposed acquisition and, accordingly, in the product dimension, the relevant markets are unpruned sawlogs, pruned sawlogs and pulplogs. The Commission also considered the downstream markets for woodchips and sawn timber; however, there is no aggregation in either of these markets as a result of the acquisition.

Geographic Extent

- 11.6 The Commission has previously classified forestry assets in New Zealand into ten geographic regions: Northland, Auckland, Central North Island ("**CNI**"), East Coast, Hawke's Bay, Southern North Island, Nelson/Malborough, West Coast, Canterbury and Otago/Southland. The CNI includes the Bay of Plenty region, the southern half of the Waikato region and the northern part of the Manawatu-Wanganui region.
- 11.7 In *Fletcher Challenge/CNIFP*, the Commission, taking a conservative approach, regarded the CNI as forming the boundaries of markets for unpruned sawlogs and pulplogs. However, again on a conservative basis, the boundary of the relevant market for pruned sawlogs was considered to include Auckland and Hawke's Bay in addition to the CNI.

- 11.8 The forests and the Assets are within the Northland, Auckland, Central North Island ("CNI") and Nelson/Marlborough geographic market boundaries. Hancock's existing forestry assets are located solely within the CNI and Hawke's Bay (other than some very small holdings close to the Auckland/CNI boundary) and, accordingly, the geographic markets that Hancock has assessed, on a conservative basis, as relevant to the competition analysis for the acquisition are the following:
- (a) The market for unpruned sawlogs in the CNI;
 - (b) The market for pruned sawlogs in the CNI, Auckland and Hawke's Bay; and
 - (c) The market for pulplogs in the CNI.
- 11.9 This is consistent with the Commission's approach in *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP*.

Functional level

- 11.10 The appropriate functional level is the production and supply of each product, that is, the sale of products from forestry companies to timber processing facilities.

Time dimension

- 11.11 In *Fletcher Challenge/CNIFP* the Commission recognised that each firm's production will vary with the age of the forest and thus a firm's market share can vary over time. It undertook a forward-looking analysis by assessing separately the periods 2003–2005, 2006–2010 and 2011–2015. Hancock considers such an analysis to be sensible given the reasonably low demand- and supply-side substitutability between timber harvested in different years (although there is some supply-side substitutability, with forest owners able to harvest trees some years earlier or later than normal). For the purposes of this analysis the timeframes have been adjusted to show a forward-looking analysis for the next 15 years and the relevant timeframes are therefore 2006–2010, 2011–2015 and 2016–2020, with an average annual figure for each time period used as a reference for each.

Conclusion regarding market definition

- 11.12 Hancock therefore submits that, consistent with *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP*, the relevant markets for the purpose of the acquisition are as follows:
- (a) The production and supply of unpruned sawlogs in the CNI, for the periods 2006–2010, 2011–2015 and 2016–2020 ("**unpruned sawlog markets**");
 - (b) The production and supply of pruned sawlogs in the CNI, Auckland and Hawke's Bay for the periods 2006–2010, 2011–2015 and 2016–2020 ("**pruned sawlog markets**"); and
 - (c) The production and supply of pulplogs in the CNI, for the periods 2006–2010, 2011–2015 and 2016–2020 ("**pulplog markets**").

Current competitors in the markets

Market overview

- 11.13 There have been many changes in forest ownership over the last 3–5 years. Large vertically integrated forest owners such as CHH, Tenon (formerly Fletcher Forests) and

Weyerhaeuser have been divesting their interests in forest operations or disaggregating their business units to separate forest operations from processing businesses.⁸ This trend is increasing the availability of "free" volumes of wood (such increase not being offset by the increase in domestic processing capacity). Indeed, since the closing of the Rainbow Mountain mill greater volumes are released for independent processors or must be exported.

- 11.14 Another major trend has been the acquisition of large forest holdings by international investors and institutional funds. TIMOs have emerged as the major players in the ownership and distribution of forest assets. Other major plantation owners comprise a range of trust and investment management organisations and some wood processors including: Rayonier New Zealand, Juken New Zealand Limited, and Ernslaw One Limited. A large number of farm foresters, Maori corporations and investment groups also comprise a significant proportion of plantation forest ownership. Further details of these competitors is provided below.

Vertically Integrated Competitors

Tenon

- 11.15 Tenon Limited (formerly Fletcher Challenge Forests Limited) is a New Zealand based company with offices also located in the USA and China. Tenon uses wood processing and distribution systems to supply high quality products (including finished mouldings, laminated products, and appearance building components) into markets in North America and Asia. Tenon owns processing facilities in Taupo, close to environmentally certified forests in the CNI.⁹
- 11.16 Tenon sold its extensive forest assets in February 2004 to focus on the value added segments of the industry, namely processing, marketing, distribution and forest management activities.¹⁰ The forests and related assets were purchased by Kiwi Forests Group Ltd ("**Kiwi**") in two stages. Kiwi on-sold the forestry rights to OTPP, Viking and Tiaki. The CNI forestry assets that were sold to Kiwi include East Woodlands Limited, Northwest Woodlands Limited and South Woodlands Limited, which own an estate or interest in 71,017 hectares of freehold land in the CNI; 49,588 hectares of leasehold land in the CNI; and forestry rights and various associated assets.
- 11.17 As a result, Tenon is no longer materially involved in the ownership or management of forest assets in New Zealand.

Weyerhaeuser New Zealand Inc

- 11.18 Weyerhaeuser Company is an international forest products company operating in five major business segments: Cellulose Fibre and White Papers, Containerboard Packaging and Recycling, Real Estate, Wood Products and Timberlands.¹¹ The last of these involves the growing and harvesting of trees in five different countries, including New Zealand.
- 11.19 In 1995 Weyerhaeuser Forest Products International was founded to acquire and manage timberlands and related manufacturing operations outside of North America. Weyerhaeuser New Zealand Inc ("**WNZI**") is the New Zealand division of Weyerhaeuser Forest Products International, with offices located in Richmond, New Zealand. WNZI is

⁸ New Zealand Trade and Enterprise "New Zealand softwood log industry profile" available at www.marketnewzealand.com/MNZ/aboutNZ/sectors/14373/15451.aspx.

⁹ Obtained from www.ubd.co.nz/company-profiles/206718275/.

¹⁰ Obtained from canterbury.cyberplace.org.nz/community/CAFCA/cafca04/feb04.html.

¹¹ Obtained from Weyerhaeuser Company in Brief www.weyerhaeuser.com/aboutus/WeyerhaeuserInBrief.pdf

100% owned by Weyerhaeuser New Zealand Holdings Inc, which in turn is 100% owned by Weyerhaeuser (BVI) Limited.¹²

- 11.20 WNZI was established in 1997 when Weyerhaeuser acquired a 51% share in the Nelson Forests Joint Venture with another group of pension fund investors, RII New Zealand Forests I Inc, a timber investment fund advised by Global Forest Partners. WNZI is the managing partner in New Zealand and operates approximately 76,000 hectares of forest in the Nelson/Marlborough region. Approximately 90% of the logs harvested are sold to third parties in New Zealand or offshore. WNZI also manages a pruned-log sawmill that exports clear lumber to North America and treated lumber to Australia.¹³
- 11.21 In February 2006 the Nelson Forests Joint Venture announced its intention to sell its New Zealand assets.¹⁴

Pan Pac Forest Products Limited

- 11.22 Pan Pac is owned by Japanese companies Oji Paper Company Limited (87%) and Nippon Paper Industries Company (13%). Pan Pac operates forest, lumber and pulp divisions.
- 11.23 Pan Pac Forests is the major forestry company in the Hawkes Bay with a total planted forest area of 32,500 productive hectares.¹⁵ Pan Pac has freehold ownership of the Tangoio Forest, as well as Crown Forestry Licences for four Hawkes Bay ex-state forests (Esk, Mohaka, Gwavas and Kaweka).
- 11.24 The forest division harvests and transports over 1 million tonnes of logs each year and, of this production, about 70% is utilised by the Pan Pac pulp and lumber divisions. The remaining 30% is either sold domestically or exported through the Port of Napier.
- 11.25 As well as managing its own forests, Pan Pac's forest division also contracts out its harvesting and marketing services to independent forest owners, as well as purchasing wood from other forest owners. Pan Pac states that it aims to continue as the preferred log purchaser in Hawkes Bay.

Winstone Pulp International

- 11.26 Winstone Pulp International ("**Winstone**") is owned by PMI Nominees Limited (51%), a nominee company located in the Virgin Islands, and Perfect Match Nominees Limited (49%), a nominee company located in Hong Kong. Winstone is based near Ohakune in the Central North Island and has operated for 26 years in forestry, milling and manufacturing of pulp and sawlogs for local and overseas markets. It is one of New Zealand's leading integrated forestry companies, producing New Zealand Pine cut timber for end user applications and processing by-products for export as pulp. The Company employs 300 staff and has built a strong export-focused business maximising regional resources.¹⁶

¹² Fact Sheet: Timberlands www.weyerhaeuser.com/aboutus/facts/2.1_TimberlandsOverview.pdf

¹³ Fact Sheet: Weyerhaeuser Forest Products International
www.weyerhaeuser.com/aboutus/facts/2.2_WYForestProductsInternational.pdf

¹⁴ *Nelson Forests Joint Venture to Sell New Zealand Assets* News Release February 12 2006
www.weyerhaeuser.com/popups/frameset.asp?bodyFrame=/popups/pressReleases.asp?id=06-02-10_NelsonForestsJointVenturetoSellNewZealandAssets.

¹⁵ All information obtained from www.panpac.co.nz.

¹⁶ Source: preliminary information from www.winstonepulp.co.nz—future website not yet operating.

TIMOs*Kaingaroa Timberlands Limited*

- 11.27 In October 2003 the receiver of the Central North Island Forest Partnership ("**CNIFP**") sold the forest related assets of CNIFP to the KT ("Kaingaroa Timberlands") Partnership, an entity controlled by the non-profit Harvard Management Company, part of the endowment fund of Harvard University ("**Harvard**"). The KT partnership is New Zealand's second largest forest owner, with 189,000 hectares of ex-CNIFP forests.¹⁷ The acquisition from the CNIFP included the CNI forests and related assets (including the former Kaingaroa state forest of 142,000 hectares).¹⁸
- 11.28 GMO Renewable Resources Ltd ("**GMO RR**") manages the assets of the KT Partnership in New Zealand. GMO RR manages a total New Zealand portfolio of approximately 240,000 hectares, also including Glenburn Station (Wairarapa coast), Toropapa Forest (Hawkes Bay—a joint venture with Rayonier and the Te Awahohonu Trust), and the cutting rights of Nuhaka Forest (East Cape).¹⁹

Matariki Forestry Group

- 11.29 Matariki Forestry Group ("**Matariki**") is ultimately owned by Rayonier Inc and RREEF Infrastructure Investments, the global infrastructure arm of Deutsche Asset Management. In 2005 Matariki purchased 94,300 hectares of forest from CHH. Matariki also purchased Rayonier's existing plantation forest assets, being approximately 48,000 hectares of plantation forest and 30,000 hectares of free hold land. The successful completion of these transactions saw the consortium become the owner of the third largest forest plantation, by area, in New Zealand.²⁰
- 11.30 Rayonier Inc is a United States forest products company with over 75 years' experience in the industry, including (through subsidiary Rayonier New Zealand Ltd) over 17 years in New Zealand. It owns forests in New Zealand and the United States and provides management and marketing services to other forest owners in New Zealand and Australia.²¹
- 11.31 In April 2006 Rayonier reduced its holdings in the consortium by selling part of its stake to Australian entity, AMP Capital Investors.²² Rayonier reduced its timber investment holding from 49.7% to 40.0%.

Other Competitors*Ernslaw One Group*

- 11.32 The Ernslaw One Group consists of two companies, Ernslaw One Limited ("**EOL**") and Oregon Group Limited ("**OGL**"). Both companies are 80% owned by Callander Limited, 10% owned by Habacus Pte Limited and 10% owned by Shiang Yang International Limited. Callander Limited is a Malaysian company controlled by members of the Tiong family.

¹⁷ Palmer, H "Brave New World: Is there any such animal as an ideal forest owner – listed or not?" *NZ Forest Industries*, April 2004 14 at www.findarticles.com/p/articles/mi_hb213/is_200404.

¹⁸ "October 2003 decisions" <http://canterbury.cyberplace.org.nz/community/CAFCA/cafca03/oct03.html>
www.nzfoa.org.nz/forestry_bulletin/summer_2004/a_new_era_in_the_new_zealand_forest_industry.

²⁰ Rayonier/RREEF consortium buys CHH forests 18 July 2005 at www.nzfoa.org.nz/news/rayonier_rreef_consortium_buys_chh_forests.

²¹ *Ibid.*

²² "Rayonier selling part of NZ stake", *New Zealand Herald*, 29 April 2006.

- 11.33 Both EOL and OGL have headquarters in Auckland. Ernslaw One's core business is forestry and timber processing. Oregon Forestry tends to focus on investment activities complimentary to the Ernslaw Group's forestry interests. The two companies work under the overriding philosophy of reinvesting internally generated funds into their long-term forestry development activities.
- 11.34 EOL made its first investment in New Zealand in November 1990, as the first successful bidder for Crown forests under the Government's forest asset sale programme. The company purchased five crown forestry licences granting cutting rights to plantation forests in the Coromandel, Manawatu and Otago regions. EOL also bought the Conical Hill Sawmill, a large employer in the West Otago area. In 1994 a contractual arrangement was made with the Ford family of Oamaru, which has enabled the development of a nursery capable of producing 10 million Douglas fir seedlings each year.²³ Since 1990 EOL's forest estate has grown from 23,500 hectares to more than 84,000 hectares, it is now the fourth largest forest owner in New Zealand, behind Carter Holt Harvey, Kaingaroa Timberlands and Matariki.²⁴
- 11.35 The most recent forest purchase by EOL occurred in October 2004 when it acquired forestry assets including three Crown Forestry Licences, five forestry rights, a lease of the Waipaoa forest and other assets. These assets comprised a total of 33,000 hectares of forest on Crown land.²⁵ EOL bought these assets with a view to finding new markets for its products in China.²⁶

Juken New Zealand Limited

- 11.36 Juken New Zealand Ltd ("JNZL") is a joint venture company 85% owned by Wood One International Limited, a major Japanese housing material manufacturer, and 15% owned by Yusho Nakmoto. Wood One International Limited manages the overall forestry operations and timber manufacturing.
- 11.37 JNZL first purchased forests in New Zealand in 1990 and in the 10 years to March 2000 JNZL had invested NZ\$293.5 million in New Zealand Forests. This investment sees JNZL owning and managing approximately 75,000 hectares of forest in the Northland, East Coast and Southern regions of the North Island.²⁷
- 11.38 JNZL is a major wood products manufacturer and has invested NZ\$324 million in mills, purchasing a "Triboard" mill at Kaitia and two laminated veneer lumber plants in Masterton and Gisborne.

12. DIFFERENTIATED PRODUCE MARKETS

Extent Of Product Differentiation

- 12.1 In *Fletcher Challenge/CNIFP* the Commission found that there was some differentiation in terms of quality for all the products. The amount of available clearwood affects the price payable for pruned and unpruned sawlogs and density is an important factor for sawlogs and pulplogs used for some purposes. The Commission concluded, however, that consistent with its decision in *Carter Holt/CNIFP*, although the products are

²³ www.thelumberbank.co.nz/index.php?section_id=2.

²⁴ www.converge.org.nz/watchdog/07/04.htm: The fightback against Ernslaw One & Rimbunan Hijau The East Coast; Coromandel; Papua New Guinea THE FIGHTBACK AGAINST ERNSLAW ONE 1/ THE EAST COAST

- Catherine Delahunty

²⁵ Obtained from canterbury.cyberplace.org.nz/community/CAFCA/cafca04/sep04.html#_Toc92127659

²⁶ "Anger builds as forestry jobs axed", *New Zealand Herald*, 1 October 2004.

²⁷ Obtained from www.investnewzealand.govt.nz/common/files/juken.pdf.

differentiated to some extent, the products are not so differentiated as to affect the market definition.

13. VERTICAL INTEGRATION

- 13.1 The potential acquisition will not result in any additional level of vertical integration between firms at different functional levels of any market. However, it will reduce vertical integration relative to the status quo, with CHH's forestry ownership and processing businesses becoming separated.

14. PREVIOUS ACQUISITIONS AND COMMISSION NOTIFICATION

- 14.1 There have been no Commission applications for clearance by either CHH or Hancock in the past three years.

- 14.2 However, Hancock has informally advised the Commission on a confidential basis of two previous acquisition in New Zealand, as follows:

- (a) *Tahorakuri*. In 2005, Hancock entered into an agreement to acquire from Phemus Corporation ("**Phemus**") and other related parties forestry assets in New Zealand and the United States. In New Zealand, Hancock acquired from Phemus all of the shares in CNI Timber Holding Company, which in turn through its wholly owned subsidiary, CNI Timber Operating Company Ltd, owns a 13 year forestry right (expiry 2016) to cut standing timber from approximately 6,420 hectares in Tahorakuri Forest in the CNI ("**Tahorakuri**"). The forest was previously managed by UBS Global Asset Management (New York), Inc (now Global Forest Partners LP). That management terminated on completion of the acquisition. Ownership of the entities acquired by Hancock passed to the New Zealand Superannuation Fund ("**NZ Super**"). Hancock now manages the Tahorakuri forestry assets pursuant to an existing management agreement: see [9.3(a)].
- (b) *Viking/OTPP*. In 2005, Hancock acquired 100% of the issued and outstanding common stock and preferred stock of Prudential(see [9.3(c)]), and certain other assets relating to the business from Pramerica Asset Management, Inc ("**Pramerica**"). As a result of the acquisition, Hancock provides investment management via Prudential for:
- (i) the commercial forests in New Zealand owned by OTPP NZ for the OTPP: see [9.3(c)]; and
 - (ii) Viking, the New Zealand subsidiary of Viking Global Timber Fund, LLC: see [9.3(d)].

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION
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15. EXISTING COMPETITORS IN MARKET**Unpruned sawlogs**Existing competitors

- 15.1 The existing competitors in this market are KT, Winstone, Matariki, and a number of other smaller independent competitors.

Market Shares

- 15.2 Market share figures have been calculated for all major suppliers of sawlogs in the relevant markets. The market share figures were calculated using Hancock's knowledge of the industry, with reference to aggregate figures contained within the *National Exotic Forest Description National and Regional Wood Supply Forecasts ("NEFD forecasts")*.²⁸ The figures were then benchmarked to the *Harvesting Intentions Study*, which updated the NEFD forecasts in May 2004.²⁹ The *Harvesting Intentions Study* found that the NEFD forecasts overstated the harvest intentions for radiata pine in the first time period and accordingly this has been taken into account in the market share analysis. As the Commission noted in *Fletcher Challenge/CNIFP*, forecast market share figures are estimates only as production is variable due to factors such as the weather.

- 15.3 A table showing the market shares of all participants in the unpruned sawlog market is attached at **Appendix 1, Table 6**.

- 15.4 The combined market share would be []% in the first time period, []% in the second time period and []% in the third time period. The three firm concentration ratios are []% in the first time period, []% in the second time period and []% in the third time period. These market shares would be outside the Commission's safe harbours in each of the three periods.

Supply and Demand Analysis

- 15.5 As noted by the Commission in *Fletcher Challenge/CNIFP*, market shares are insufficient themselves to establish whether competition in a market has been lessened.

- 15.6 In *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP* the Commission noted that the major forestry owners are vertically integrated and so consume some of their own production. Consequently the Commission considered the extent to which woodflows are committed to particular uses and therefore the extent to which the merged entity would be able to control or influence the flow of wood to parties such as the independent saw millers.

- 15.7 The acquisition does not involve a vertically integrated purchaser or result in any vertical integration. Accordingly, the merged entity would not be in a position to consume any of its own supply internally. The merged entity would have a commercial and economic incentive to sell its products to processors and would not be in a position to exercise

²⁸ Ministry of Agriculture and Forestry, *National Exotic Forest Description National and Regional Wood Supply Forecasts* (2000), www.maf.govt.nz.

²⁹ Ministry of Agriculture and Forestry, *Harvesting Intentions Study - Central North Island* (May, 2004), Paul Lane and Geoff Cameron, www.maf.govt.nz.

market control over the price of its products. Hancock therefore submits that a more appropriate analysis involves considering supply and demand that includes the supply from the merged entity and, following the Commission's earlier approach, takes into account vertically integrated operators' own downstream demand (for example, Winstone).

- 15.8 The supply and demand analysis for future wood flows for unpruned sawlogs in the CNI is attached at **Appendix 1, Table 7**. When this approach is adopted there would be an overall surplus of supply over domestic demand of []m³ in the first time period, []m³ in the second time period and []m³ in the third time period.

Surplus Supply and Residual Demand Analysis

- 15.9 In the event that the Commission's approach in *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP* was followed (which, for the reasons set out above, Hancock does not believe is appropriate), the parties to the proposed transaction have long term supply contracts with vertically integrated producers and independent saw millers and Hancock submits that these contractual commitments should be taken into consideration for the purposes of the supply and demand analysis.

Hancock's existing supply contracts

- 15.10 The entities on behalf of which Hancock manages the forestry assets have the following existing supply contracts:

- (a) *CHH Agreement*. Tiaki Plantations Company ("**Tiaki**") is required to sell pruned and unpruned pine saw logs to CHH. The agreement runs until []. The price is to be [].
- (b) *Tenon Agreement*. OTPP New Zealand Forest Investments Limited ("**OTPP**") is required to sell pruned and unpruned pine saw logs to Tenon Industries Limited ("**Tenon**"). The agreement runs until []. The price is [].
- (c) *Tenon Agreement*. Viking Global New Zealand Limited ("**Viking**") is required to supply pruned and unpruned pine saw logs to Tenon. The agreement runs until []. The price is determined [].

CHH Contracts

- 15.11 CHH has indicated that it will require the successful purchaser of the assets to execute a number of log supply agreements with CHH to supply its wood products and pulp and paper businesses and to take over responsibility for meeting certain other existing log supply contracts. The relevant CHH contracts are as follows:³⁰

- (a) *Kawerau Sawmill Saw Log Supply Agreement*. Under this agreement Hancock would be required to supply [] tonnes of [] unpruned sawlogs from the CNI Estate to CHH's Kawerau Sawmill. The agreement will run for an initial fixed term of [] years with CHH having the option to extend the agreement for a further [] years. The price for the logs is to be []

³⁰ In relation to the minimum supply obligations for each contract, slightly different figures apply for the "Initial Period" running until 30 June 2007.

]. []].

- (b) *Putaruru Sawmill Log Supply Agreement.* Under this agreement Hancock would be required to supply [] tonnes of [] unpruned saw logs from the CNI Estate to CHH's Putaruru Sawmill. The terms of the agreement []].

].

- (c) *Tokoroa Plywood Mill Saw Log Supply Agreement.* Under this agreement Hancock would be required to supply [] tonnes of [] unpruned sawlogs (along with [] tonnes of [] pruned saw logs) from the CNI Estate to CHH's Tokoroa Plywood Mill. The terms of the agreement []].

].

15.12 **Appendix 1, Table 8** is a supply and demand table that takes into account existing contractual commitments in order to calculate the surplus supply and residual demand. We have then calculated whether the surplus supply from vertically integrated parties, other forest owners and imports is able to satisfy the residual demand. The following factors should be taken into account in reviewing this analysis:

- (a) The supply that would be acquired by Hancock from CHH pursuant to the sale has been removed from the analysis.
- (b) As CHH would retain its downstream processing capabilities, its residual demand (after existing contractual supply commitments have been taken into account) has been included in the analysis.
- (c) Consistent with the assumption adopted by the Commission in *Fletcher Challenge/CNIFP* it has been assumed that producers will export 32% of the unpruned sawlog supply that is not committed to a long term supply contract.³¹ This assumption is likely to be conservative in that export prices for New Zealand processing grade wood are lower than can be achieved through local sales, meaning that export diversion is likely to occur in response to any increase in price.
- (d) Import volumes are assumed to remain constant. The analysis may therefore also be conservative in that the figures do not take account of what the Commission, in *Fletcher Challenge/CNIFP*, regarded would be the larger volumes of wood that could be "imported" into the CNI from other North Island forestry regions in the relevant years.
- (e) The analysis assumes that supply of unpruned sawlogs from other producers remains reasonably constant. Again, this is a conservative assumption as, in *Fletcher Challenge/CNIFP*, the Commission predicted that the supply of unpruned sawlogs from smaller producers (eg farmers) is likely to increase.

15.13 The analysis indicates that CHH, Red Stag and the independent sawmills would not be reliant on the merged entity for supply in any of the three time periods, with residual (i.e. non-committed) supply from other forests sufficient to meet all New Zealand residual demand in all time periods, and produce a surplus of []m³ in the first time period, []m³ in the second time period and []m³ in the third time period.

³¹ In **Appendix 1, Table 7** we account for 32% of total CNI log supply for exports. For the residual supply and demand analysis in **Appendix 1, Table 8** it seems more appropriate to consider what is practically available for export once the obligations under the existing supply contracts have been taken into account.

- 15.14 As a result, Hancock does not consider that the potential acquisition would give rise to a substantial lessening of competition in the unpruned sawlog market. In addition:
- (a) There will remain a number of existing competitors in the market that will continue to act as a competitive constraint.
 - (b) The overall surplus in the market means that there is an economic incentive for Hancock to sell its unpruned sawlogs.
 - (c) The threat of export diversion of unpruned sawlogs (discussed in further detail at [16.6]) reduces the likelihood of the merged entity increasing prices by a *ssnip*.

Pruned sawlogs

Existing Competitors

- 15.15 The existing competitors in the pruned sawlogs market are KT, Winstone, Matariki, Pan Pac and a number of other smaller independent competitors, which collectively amount to a significant competitive presence.

Market Shares

- 15.16 A table showing the market shares of all participants in the pruned sawlog market is attached at **Appendix 1, Table 9**. The combined market share would be []% in the first time period, []% in the second time period and []% in the third time period. The three firm concentration ratios would be []% in the first time period, []% in the second time period and []% in the third time period. The market shares would therefore be well within the safe harbours in all time periods.

Supply and Demand Analysis

- 15.17 The supply and demand analysis for future wood flows for pruned sawlogs in the CNI, Auckland and Hawkes Bay is attached at **Appendix 1, Table 10**. When supply and demand for the whole market is analysed on this basis, there would be an overall surplus of supply over demand of []m³ in the first time period, []m³ in the second time period and []m³ in the third time period.

Surplus Supply and Residual Demand Analysis

Hancock's existing supply contracts

- 15.18 The entities on behalf of which Hancock manages the forestry assets have the following existing supply contracts:
- (a) *Tenon Industries Limited Agreement*. Under this agreement Tiaki is required to supply pine pruned saw logs to Tenon. The agreement runs until []. The price is [].
 - (b) *CHH Agreement*. See [15.10(a)].
 - (c) *Tenon Agreement*. See [15.10(b)].
 - (d) *Tenon Agreement*. See [15.10(c)].

CHH Contracts

- 15.19 If successful, Hancock would be required to execute a *Tokoroa Plywood Mill Saw Log Supply Agreement* with CHH (described at [15.11(c)]). Under this agreement Hancock would be required to supply [] tonnes of [] pruned saw logs (along with [] tonnes of [] unpruned sawlogs) from the CNI Estate to CHH's Tokoroa Plywood Mill.³² The terms of the agreement relating to duration, price and on-selling []].
- 15.20 The calculations of surplus supply and residual demand again take into account the factors noted at [15.12]. However, they do not account for 32% exports. This is because pruned sawlogs tend to be higher quality and are typically consumed by sawmills within New Zealand, whereas lower quality unpruned logs are exported overseas.
- 15.21 The analysis is attached in **Appendix 1, Table 11**. The analysis indicates that CHH, Red Stag, Tenon and the independent sawmills would not be reliant on the merged entity for supply in any of the three time periods, with residual (i.e. non committed) supply from other forests sufficient to meet all New Zealand residual demand in all time periods, and produce a surplus of []m³ in the first time period, []m³ in the second time period and surplus supply of []m³ in the third time period.
- 15.22 Once again, Hancock does not consider that the potential acquisition would give rise to a substantial lessening of competition in any of the relevant pruned sawlog markets, due to strong existing competitors and the overall surplus in the market means that there is an economic incentive for Hancock to sell its pruned sawlogs. This surplus is predicted to increase further in the future. As described further at [16.2], the threat of increased imports from other geographic markets would also constrain the merged entity.

Pulplogs

Existing Competitors

- 15.23 The existing competitors in the pulplog market are KT, Matariki, Winstone and a number of small producers, which collectively amount to a significant competitive presence.

Market Shares

- 15.24 A table showing market shares for all participants is attached at **Appendix 1, Table 12**. The combined market share would be []% in the first time period, []% in the second time period and []% in the third time period. The three firm concentration ratios would be []% in the first time period, []% in the second time period and []% in the third time period. The market shares would be within the safe harbours in all three time periods.

Supply and Demand Analysis

- 15.25 In *Fletcher Challenge/CNIFP*, the Commission considered that an analysis of supply and demand of pulplogs was not relevant, because of the particular structure of the market. In particular, Fletcher Challenge was not a user (purchaser) of pulplogs itself and there were just a few large purchasers of pulplogs. Such purchasers tended to have long term supply arrangements. The entities on behalf of which Hancock manages the forestry assets have the following existing supply contracts:

³² Refer note 30.

- (a) *Norske Skog Tasman Limited Agreement.* Tiaki is required to supply pine pulpwood to Norske Skog Tasman Limited. The agreement runs until []. The price is determined [].
- (b) *CHH Pulp & Paper Agreement.* Tiaki is required to supply pine pulpwood to CHH Pulp & Paper. The agreement runs until []. The price is determined [].
- (c) *Tenon Agreement.* OTPP is required to sell pine pulpwood to Tenon. The agreement runs until []. The price is determined [].
- (d) *Tenon Agreement.* Viking is required to supply pine pulpwood to Tenon. The agreement runs until []. The price is determined [].

CHH Contracts

15.26 If successful, Hancock would be required to execute the following log supply agreements with CHH:

- (a) *Kinleith Pulp Log Supply Agreement.* Hancock would be required to supply radiata pulplogs, billetwood and binwood from the Kinleith working circle to CHH Pulp & Paper Ltd's ("**CHH Pulp & Paper**") Kinleith Pulp and Paper Mill. The initial fixed term of the contract will run until [] with []. The base price per tonne []. CHH Pulp & Paper [].
- (b) *Eucalyptus Pulp Log Supply Agreement.* Hancock would be required to supply eucalyptus logs from the Kinleith working circle to CHH Pulp & Paper's Kinleith Mill log yard. The agreement would be for []. The base price per tonne []. CHH Pulp & Paper [].
- (c) []

15.27 Hancock considers that the potential acquisition is unlikely to give rise to a substantial lessening of competition in the pulplogs market because CHH has a high degree of countervailing power due to their high market share of pulpwood purchases in the CNI—refer [22.3] et seq. As evidence of this power, CHH has proposed that there be a [] price review of the contracted pulpwood price based on the market price of pulp logs in the CNI.

16. CONDITIONS TO EXPANSION BY EXISTING COMPETITORS

Imports from overseas

16.1 There are currently no imports from overseas of any of the products relevant to the acquisition because of the costs involved in transportation.

Imports from other geographic markets

- 16.2 As noted at [15.12(d)], the Commission regarded imports of unpruned sawlogs from forestry regions outside the CNI as likely to increase, and as such provide greater availability of logs. Imports from the Hawke's Bay and East Coast regions already occur for pruned logs, and would easily be able to increase for pruned logs. The processing facilities in the CNI are the closest and most obvious customers for surplus supply out of these regions. Similarly, the availability of pruned sawlogs and pulplogs from the East Coast and Northland will be increasing and these may also be imported into the relevant markets. The merged entity is likely to be constrained from raising prices by the threat of increased imports from other geographic regions.
- 16.3 The ability to import logs from other geographical regions is enhanced by the practice of "backloading", that is, loading logging trucks carrying unpruned logs from the CNI with pruned logs on the return journey, thereby reducing the average transportation cost per load.
- 16.4 The relatively high value of pruned sawlogs relative to other logs also increases the feasibility of imports.

Smaller Owners

- 16.5 In *Fletcher Challenge/CNIFP*, the Commission recognised that supply of logs from smaller owners such as farmers is predicted to increase considerably and would be available to independent purchasers.

Export Diversion

- 16.6 As noted above, due to the significant differential between export pricing and local market prices, and the excess of supply over demand in New Zealand generally and the CNI specifically, it is likely that in response to any attempted increase in price by the merged entity existing competitors would direct export supply of local processing grade logs to New Zealand to defeat any such attempted price increase.
- 16.7 As noted at [11.13], with the closure of the Rainbow Mountain mill, there is likely to be an increase in the proportion of logs being exported which would otherwise be able to be diverted to domestic processing if there was any attempted price increase.

17. CONCLUSIONS ON CONSTRAINT BY EXISTING COMPETITION ON EXERCISE OF UNILATERAL MARKET POWER

- 17.1 Hancock is currently constrained in each of the relevant markets in which it competes and will remain constrained. None of the factors that generate that intensity of competition would be altered as a result of Hancock acquiring CHH. In summary, these factors are:
- (a) There are strong existing competitors in each of the relevant markets.
 - (b) There is an overall market surplus of supply over demand.
 - (c) The threat of export diversion for unpruned sawlogs.
 - (d) The threat of imports from other geographic markets for pruned sawlogs.
 - (e) The existence of long term supply contracts for pulplogs and the strong countervailing power of key purchasers.

18. MARKET CHARACTERISTICS FACILITATING OR IMPEDING COORDINATION

No co-ordination in any relevant market

18.1 Currently the markets do not exhibit signs of co-ordination, principally due to:

- (a) the presence of fringe competitors;
- (b) the current flow of imports and the threat for this to increase; and
- (c) the countervailing power of acquirers.

The acquisition does not affect any of these factors and therefore cannot be said to facilitate co-ordination.

18.2 **Table 2–Table 4** comment on each of the market characteristics set out in the Commission's *Mergers and Acquisitions Guidelines*:

Table 2: Scope for co-ordinated market power

Feature	Comment
<i>High seller concentration</i>	Mixed, but a number of smaller competitors in each market.
<i>Undifferentiated product</i>	Yes.
<i>Static production technology</i>	Relatively static.
<i>Speed of new entry</i>	Establishment of a new forest is relatively slow, although trees can be harvested some years earlier or later than normal. Entry is more likely to occur in a timely manner through acquisition.
<i>Fringe competitors</i>	There are a number of fringe competitors including Matariki and Winstone.
<i>Acquisition of an unusually vigorous or effective competitor</i>	No.
<i>Price elastic market demand</i>	Relatively inelastic. Importantly, supply is also relatively inelastic. It is unlikely that suppliers would agree to reduce quantity harvested, having already sunk most of the timber production costs.
<i>History of co-ordinated conduct</i>	No.
<i>Countervailing power of acquirers</i>	Yes.
<i>Existence of excess capacity</i>	Yes.
<i>Industry associations/fora</i>	Yes.

Table 3: Detection of deviation from co-ordination

Feature	Comment
<i>Seller concentration</i>	Yes, but a number of fringe competitors.
<i>Frequent sales</i>	Yes.
<i>Vertical integration</i>	Hancock is not vertically integrated.
<i>Growth in demand</i>	No.
<i>Cost similarities</i>	Yes.
<i>Multi market contact</i>	Yes.
<i>Price transparency</i>	Regional aggregated prices are published, although generally not prices for individual agreements.

Table 4: Ability to retaliate

Feature	Comment
<i>Credibility of threats to abandon collusion</i>	Credible — over time, the presence of ageing unharvested trees due to any alleged collusion increases the incentive to deviate from any cartel.
<i>Availability of excess capacity</i>	High due to "reserves" of unharvested trees due to any alleged collusion, but "release" to market will not be instantaneous—necessary to arrange harvesting in advance.
<i>Profit incentive from collusion</i>	Low: most costs of forest production already sunk.
<i>Ability to disadvantage by dumping in deviator's allocated section of market</i>	Straightforward due to shortage of demand and high "reserves" capacity of potentially unharvested trees.

19. NO EVIDENCE OF PRICE CO-ORDINATION, PRICE MATCHING OR PRICE FOLLOWING

- 19.1 Hancock is not aware of any past or current co-ordination of its activities with other competitors in the New Zealand forestry markets.

20. NO RISK OF CO-ORDINATED BEHAVIOUR

- 20.1 In *Fletcher Challenge/CNIFP* it was not considered likely that co-ordinated behaviour would occur in the unpruned sawlog, pruned sawlog and pulplog markets. There is no reason to believe that this conclusion would change as a result of the acquisition. There is no evidence of price collusion between Hancock and CHH, or between any other competitors in the relevant markets. Every quarter, each purchaser will meet with each of the forest owners separately, in relation to the price of logs, so purchasers of logs would be able to detect any attempt at price coordination. The existence of several other competitors in the market also limits the ability of the larger participants to collude.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

21. CONDITIONS OF ENTRY

- 21.1 As Hancock considers that its post acquisition behaviour will be entirely constrained by existing competition, and by acquirers, it does not consider the issue of potential competition further in this application.

PART V: OTHER POTENTIAL CONSTRAINTS
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22. CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS**Unpruned Sawlogs**

22.1 In *Fletcher Challenge/CNIFP* and *Carter Holt/CNIFP* the Commission considered that purchasers were generally fragmented and do not possess a large degree of countervailing power. However, in *Carter Holt/CNIFP*, the Commission recognised that Fletcher Forests purchased a significant volume of sawlogs from the merged entity and would have a degree of countervailing power. Similarly, CHH would continue to purchase a significant volume of unpruned sawlogs in the CNI. CHH would have a degree of countervailing power, as the merged entity will not be vertically integrated and will be required to sell all of its logs to third party processors.

Pruned Sawlogs

22.2 Tenon is likely to purchase a significant volume of pruned sawlogs from the merged entity. Tenon will have a degree of countervailing power, because the merged entity will be required to sell all its logs to third parties, as it will not have its own downstream processing operation.

Pulplogs

22.3 The only purchasers of pulplogs are all significant firms with a large degree of countervailing power. As noted at [15.25], in *Fletcher Challenge/CNIFP*, the Commission considered that an analysis of supply and demand of pulplogs was not relevant, because of the particular structure of the market. In particular, Fletcher Challenge was not a user (purchaser) of pulplogs itself and there were just a few large purchasers of pulplogs. Such purchasers tended to have long term supply arrangements.

22.4 The major purchasers of pulplogs are currently:

- (a) CHH pulp and paper mill at Kinleith;
- (b) CHH pulp and paper mill at Kawerau;
- (c) CHH cartonboard mill at Whakatane;
- (d) Norske Skog;
- (e) Winstone Pulp International pulp and paper mill at Ohakune;
- (f) SGA Hygiene; and
- (g) Laminex Group.

22.5 These parties purchase significant quantities of pulplogs, and as such, have a significant degree of countervailing market power against suppliers. Even if the supply arrangements to these large users were not long term commitments, they could impose considerable constraints on suppliers of pulplogs.

22.6 Further details of these pulplog contracts are provided at [15.25] above. Hancock considers that, even in the absence of long-term contractual commitments, each of the purchasers would have significant countervailing power. In particular, Hancock considers that CHH will remain in an extremely strong position as a purchaser of pulp logs in the CNI and thus exert a large amount of countervailing buyer power. This can be seen from the demand analysis set out in **Table 5** below.

Table 5: Demand for Pulp Logs

Processor	Location	Volume ('000m ³)		
CHH	Kinleith	[]		
	Kawerau	[]		
	Whakatane	[]		
	Ramsey	[]	[]	[]%
Norske Skog	Kawerau		[]	[]%
Winstones	Tangiwai		[]	[]%
SGA Hygiene	Kawerau		[]	[]%
Laminex Group	Taupo		[]	[]%
			[]	100.0%

22.7 As the Commission recognised in *Fletcher Challenge/CNIFP*, an additional constraint is imposed on the pricing decisions of the merged entity by CHH's ability to satisfy its pulp fibre requirements by utilising pulplogs or woodchips. The Commission noted the ready availability of woodchips. Woodchips continue to be readily available.

23. CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

23.1 The primary supply-side constraints operating on TIMOs such as Hancock, occur by virtue of the fact that the funds on whose behalf Hancock manages forestry assets generally do not own the land; rather they own the trees and secure the rights to harvest the standing timber from parties such as Kiwi Forests Group Ltd ("**Kiwi**") and Tarawera Land Company Ltd ("**Tarawera**").

23.2 The terms of these harvest rights differ as between the different forest estates. However, a [] proportion of the current estate and [] of the estate to be acquired is in the form of forestry rights (or similar), with a common feature of these forestry rights that [

]. [

].

23.3 The result of these terms is that [].

This Notice is given by Hancock Natural Resource Group, Inc

The company hereby confirms that:

- (a) all information specified by the Commission has been supplied;
- (b) all information known to the applicant/s which is relevant to the consideration of this application/notice has been supplied; and
- (c) all information supplied is correct as at the date of this application/notice.

The company undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated 9 August 2006

Signed by Hancock Natural Resource Group, Inc

Dan Christensen, CEO

I am an officer of the company and am duly authorised to make this application/notice.

This Notice is given by Hancock Natural Resource Group, Inc

The company hereby confirms that:

- (a) all information specified by the Commission has been supplied;
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Dated 9 August 2006

Signed by Hancock Natural Resource Group, Inc



Dan Christensen, CEO

I am an officer of the company and am duly authorised to make this application/notice.

APPENDIX 1: MARKET SHARE ANALYSIS
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1. UNPRUNED SAWLOGS

**Table 6: Future Wood Flows for Unpruned Sawlogs in the CNI
Market Share Analysis**

	2006–2010		2011–2015		2016–2020	
	Annual Average (000m ³)	% Market Share	Annual Average (000m ³)	% Market Share	Annual Average (000m ³)	% Market Share
Hancock	[]	[]	[]	[]	[]	[]
CHH	[]	[]	[]	[]	[]	[]
Total post-acquisition	[]	[]	[]	[]	[]	[]
Matariki	[]	[]	[]	[]	[]	[]
KT	[]	[]	[]	[]	[]	[]
Winstone	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]
Imports Auckland	[]	[]	[]	[]	[]	[]
Imports East Coast	[]	[]	[]	[]	[]	[]
Imports Hawkes Bay	[]	[]	[]	[]	[]	[]
Imports Southern North Island	[]	[]	[]	[]	[]	[]
Total CNI	[]	100.0%	[]	100.0%	[]	100.0%

Table 7: Future Wood Flows for Unpruned Sawlogs in the CNI Supply and Demand Analysis

Supply	2006–2010 Annual Average (000m³)	2011–2015 Annual Average (000m³)	2016–2020 Annual Average (000m³)
Hancock	[]	[]	[]
CHH	[]	[]	[]
Total post-acquisition	[]	[]	[]
Matariki	[]	[]	[]
KT	[]	[]	[]
Winstone	[]	[]	[]
Other	[]	[]	[]
Imports	[]	[]	[]
Total Supply	[]	[]	[]
<i>Less: exports @ 32% of CNI production</i>	[]	[]	[]
Total supply available to domestic market	[]	[]	[]
Demand			
CHH	[]	[]	[]
Winstone	[]	[]	[]
Red Stag	[]	[]	[]
Independent sawmills	[]	[]	[]
Total Demand	[]	[]	[]
Surplus (Deficit) of Supply over Demand	[]	[]	[]

**Table 8: Future Wood Flows for Unpruned Sawlogs in the CNI
Surplus Supply and Residual Demand Analysis**

SURPLUS SUPPLY AVAILABLE FROM PARTIES OTHER THAN HANCOCK

	2006–2010 Annual Average (000m ³)	2011–2015 Annual Average (000m ³)	2016–2020 Annual Average (000m ³)
KT			
Supply	[]	[]	[]
Less: Contract – Red Stag	[]	[]	[]
Less: Contract – CHH	[]	[]	[]
Supply less contracted for demand	[]	[]	[]
Less: 32% exports	[]	[]	[]
Surplus supply	[]	[]	[]
Winstone			
Supply	[]	[]	[]
Less: Winstone's demand	[]	[]	[]
Supply less demand	[]	[]	[]
Less: 32% exports	[]	[]	[]
Surplus supply	[]	[]	[]
Matariki			
Supply	[]	[]	[]
Less: Contract – CHH	[]	[]	[]
Supply less contracted for demand	[]	[]	[]
Less: 32% exports	[]	[]	[]
Surplus supply	[]	[]	[]
Other			
Supply	[]	[]	[]
Less: 32% exports	[]	[]	[]
Surplus supply	[]	[]	[]
Imports			
Supply	[]	[]	[]
Surplus supply	[]	[]	[]
TOTAL SURPLUS SUPPLY	[]	[]	[]

RESIDUAL DEMAND

	2006–2010 Annual Average (000m ³)	2011–2015 Annual Average (000m ³)	2016–2020 Annual Average (000m ³)
Red Stag			
Demand	[]	[]	[]
Less: Contract – KT	[]	[]	[]
Residual demand	[]	[]	[]
CHH			
CHH's demand	[]	[]	[]
Less: Contract – Hancock	[]	[]	[]
Less: Contract – New Entity	[]	[]	[]
Less: Contract – KT	[]	[]	[]
Less: Contract – Matariki	[]	[]	[]
Residual demand	[]	[]	[]
Independent sawmills			
Demand	[]	[]	[]
Less: Contract – Tenon – Contract for Tahorakuri logs	[]	[]	[]
Residual demand	[]	[]	[]
TOTAL RESIDUAL DEMAND	[]	[]	[]

OUTSTANDING RESIDUAL SUPPLY (EXCLUDING HANCOCK/CHH)	[]	[]	[]
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2. PRUNED SAWLOGS

Table 9: Future Wood Flows for Pruned Sawlogs in the CNI, Auckland and Hawke's Bay Market share analysis

	2006–2010		2011–2015		2016–2020	
	Annual Average (000m ³)	% Market Share	Annual Average (000m ³)	% Market Share	Annual Average (000m ³)	% Market Share
Hancock	[]	[]	[]	[]	[]	[]
CHH	[]	[]	[]	[]	[]	[]
Total post-acquisition	[]	[]	[]	[]	[]	[]
Matariki	[]	[]	[]	[]	[]	[]
KT	[]	[]	[]	[]	[]	[]
Winstone	[]	[]	[]	[]	[]	[]
Pan Pac	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]
Imports East Coast	[]	[]	[]	[]	[]	[]
Total CNI	[]	100.0%	[]	100.0%	[]	100.0%

**Table 10: Future Wood Flows for Pruned Sawlogs in the CNI, Auckland and Hawke's Bay
Supply and demand analysis**

Supply	2006–2010 Annual Average (000m³)	2011–2015 Annual Average (000m³)	2016–2020 Annual Average (000m³)
Hancock	[]	[]	[]
CHH	[]	[]	[]
Total post-acquisition	[]	[]	[]
Matariki	[]	[]	[]
KT	[]	[]	[]
Winstone	[]	[]	[]
Pan Pac	[]	[]	[]
Other	[]	[]	[]
Imports	[]	[]	[]
Total Supply	[]	[]	[]
Demand			
CHH	[]	[]	[]
Winstone	[]	[]	[]
Tenon	[]	[]	[]
Red Stag	[]	[]	[]
Pan Pac	[]	[]	[]
Independent sawmills	[]	[]	[]
Total Demand	[]	[]	[]
Surplus (Deficit) of supply over demand	[]	[]	[]

**Table 11: Future Wood Flows for Pruned Sawlogs in the CNI, Auckland and Hawke's Bay
Surplus Supply and Residual Demand Analysis**

SURPLUS SUPPLY AVAILABLE FROM PARTIES OTHER THAN HANCOCK

	2006–2010 Annual Average (000m³)	2011–2015 Annual Average (000m³)	2016–2020 Annual Average (000m³)
KT			
Supply	[]	[]	[]
Less: Contract – Red Stag	[]	[]	[]
Less: Contract - Tenon	[]	[]	[]
Surplus supply	[]	[]	[]
Winstone			
Supply	[]	[]	[]
Less: Winstone's demand	[]	[]	[]
Surplus supply	[]	[]	[]
Pan Pac			
Supply	[]	[]	[]
Less: Demand	[]	[]	[]
Surplus supply	[]	[]	[]
Other			
Surplus supply	[]	[]	[]
Imports			
Surplus supply	[]	[]	[]
TOTAL SURPLUS SUPPLY	[]	[]	[]

RESIDUAL DEMAND

	2006–2010 Annual Average (000m ³)	2011–2015 Annual Average (000m ³)	2016–2020 Annual Average (000m ³)
CHH			
Demand	[]	[]	[]
Less: Contract – New Entity	[]	[]	[]
Residual Demand	[]	[]	[]
Red Stag			
Demand	[]	[]	[]
Less: Contract - KT	[]	[]	[]
Residual demand	[]	[]	[]
Tenon			
Demand	[]	[]	[]
Less: Contract – KT	[]	[]	[]
Less: Contract for Tahorakuri logs	[]	[]	[]
Less: Contract – Hancock (including Prudential)	[]	[]	[]
Residual demand	[]	[]	[]
Independent sawmills			
Demand	[]	[]	[]
TOTAL RESIDUAL DEMAND	[]	[]	[]

OUTSTANDING RESIDUAL SUPPLY (EXCLUDING HANCOCK/CHH)	[]	[]	[]
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3. PULPLOGS

Table 12: Future Wood Flows for Pulplogs in the CNI
Market Share Analysis

	2006–2010		2011–2015		2016–2020	
	Annual Average (000m ³)	% Market Share	Annual Average (000m ³)	% Market Share	Annual Average (000m ³)	% Market Share
Hancock	[]	[]	[]	[]	[]	[]
CHH	[]	[]	[]	[]	[]	[]
Total post-acquisition	[]	[]	[]	[]	[]	[]
Matariki	[]	[]	[]	[]	[]	[]
KT	[]	[]	[]	[]	[]	[]
Winstone	[]	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]	[]
Imports Northland	[]	[]	[]	[]	[]	[]
Imports Auckland	[]	[]	[]	[]	[]	[]
Imports East Coast	[]	[]	[]	[]	[]	[]
Imports Hawkes Bay	[]	[]	[]	[]	[]	[]
Imports Southern North Island	[]	[]	[]	[]	[]	[]
Total CNI	[]	100.0%	[]	100.0%	[]	100.0%