

**THE PARLIAMENTARY STANDING COMMITTEE ON ENVIRONMENT,
RESOURCES AND DEVELOPMENT MET IN THE RECEPTION ROOM, TOWN
HALL, LAUNCESTON, ON MONDAY 19 MARCH 2007.**

Mr GEOFF CAMPBELL, MANAGER, **Mr ANDREW JAKAB**, CHIEF OPERATIONS OFFICER, AND **Mr PHILIP LLOYD**, GENERAL MANAGER, RESOURCES MANAGEMENT GROUP, AUSPINE, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Mr Hall) - Thank you, gentlemen. As you are aware, the hearing is transcribed in *Hansard*. I remind people that the hearings are in a sense public, except where a witness might decide that the evidence they want to give is commercial-in-confidence and in that case we would go into a closed committee. Andrew, I understand you are the first spokesperson for Auspine. I invite you to give a brief overview of the company and its operations so that everybody is clear on what is going on. Then you might expand and talk about the log supply deal as you see it from your point of view.

Mr JAKAB - Good morning, committee members. My name is Andrew Jakab and I am the chief operations officer of Auspine. I will be making the lead submissions on behalf of the company today. Assisting me to my right is my erstwhile manager of Auspine's Tasmanian business unit and the most senior officer of the company residing in Tasmania, Mr Geoffrey Campbell. To my left I am assisted by Mr Philip Lloyd. Philip is the general manager of our resources management group and in this capacity is responsible for the management of Auspine's tree farms that are located in South Australia and Victoria. Additionally, he is responsible for working with business unit managers such as Geoff to assist them in the procurement of external sources of log supply.

It might be useful at this point if I made some brief remarks about Auspine to give people a feel for the sort of company we are. Auspine is a well-established company based in South Australia. It is a vertically integrated timber company and that distinguishes it from many other timber companies, in that Auspine manages the product from virtually the state of the seedling through to the management of that into the land plantation base and the acquisition of land and the management of plantations. We then take the products of our plantations and we add value to those products predominantly in manufacturing facilities located in Tasmania, South Australia and south-west Victoria.

I guess in terms of our land plantation estate we are talking about something that is roughly the size of what Taswood growers and Rayonier manage here in Tasmania, in the order of 46 500 hectares.

Auspine is also integrated in the sense that not only do we grow the log and turn that log into solid wood timber products and run a viable residual woodchip export program out of the port at Portland, but we also have a sales and distribution component to our business whereby we operate principally in the southern markets. For our Tasmanian business and the two mills we have located in Scottsdale our most important customer base is in fact our Tasmanian customers. On that basis we come to this problem in Tasmania as somebody who knows a little bit about plantation management, who has

had over many years a track record of successful silvicultural practices that have led to sustained value-adding and job creation. That is a little bit of an overview of the company.

In the terms of the business of this committee, Mr Chairman, Auspine looks forward to working with this committee in seeking answers about what we say is an unprecedented and wrong decision. This decision is, in our view, unprecedented in Australian history.

We want to know how it is that a company that has been operating in Tasmania for over 35 years employing over 300 Tasmanians, a company that has just doubled its investment in Tasmania, would come to be faced with the closure of its mills when it offered to at least match the price offered by any rival bidder, only to have that wood awarded to a company unable to process the total volume of wood, who represents that it will create up to 100 permanent jobs when and if it was able to complete a new mill capable of processing that wood in 14 months' time.

Sir, the potential value of this committee cannot be underestimated. This committee represents hope. It represents hope for a community demanding answers, hope for hundreds of employees desperate for a reversal of the decision and hope for a company that is in shock. It is our hope that this committee will hear evidence in an open and transparent manner. Too many livelihoods are at stake for the perpetrators of this act to continue to hide behind a veil of commercial confidentiality.

With your permission, Sir, I wish to raise some preliminary issues relevant to the business of this committee that set out Auspine's general attitude to the matters raised in the terms of reference.

People have said that Auspine's 2005 investment into Frenchpine was something of a gamble that apparently did not pay off. Such people are apt to ask who would buy a sawmill without a long-term log supply agreement. Auspine did not gamble with its assets, nor did it gamble with the future of its employees. It is true that Auspine did not have a long-term supply contract when it purchased Frenchpine. What we had, Mr Chairman, was a vision. We had a vision that with further investment underpinned by resource security on fair commercial terms Scottsdale would become a world-class centre of excellence in softwood sawmilling and downstream value-adding. We wanted a partnership with Tasmania to add value to a resource owned by the citizens of Tasmania. That vision was underpinned by a set of beliefs. Please let me outline those beliefs briefly.

1. We believe that our vision would be supported by the sellers of the softwood resource on the basis that a stable and sustainable future for the value adding of softwoods in Tasmania was in their interests as much as ours. They certainly said as much to us.
2. We believe that our vision was consistent with the Forestry Act, which calls on Forestry Tasmania to foster an internationally competitive domestic processing industry.
3. We believed the Government when they said they supported us. We believed the member for Braddon when he said that he would do everything in his power to ensure that Auspine's acquisition of Frenchpine was a success.

4. We believed Forestry Tasmania. We hoped that they would make good their promise publicly in 1998, just prior to the formation of the softwood joint venture to double the pine productive capacity of this State in 10 to 15 years. Never in our wildest dreams did we believe that they would continue an aggressive export program after announcing a shortfall in sawlogs and without first offering the wood to domestic processors at export parity price in domestic lengths.

5. We believed Forestry Tasmania's agent, Rayonier. We believed in and invested millions of dollars in capital upgrades in reliance upon their resource forecasts. I will talk about some of those resource forecasts later. We believed that when a minimum annualised volume of 395 000 tonnes of sawlog was put to tender from 2008 that is how much wood would be actually available to be sold. We did not believe that Rayonier would actively offer crown wood to be sold to overseas business interests to the detriment of existing processors. We believed that when they told us that they wanted to contribute to our success and that they would work alongside us to understand our needs and to provide balanced solutions. We believed that they would make good that promise.

6. We believed our vision would be supported by other stakeholders. We believed that when we expanded in Tasmania this would be taken as a sign of commitment that we were in this for the long haul and that our commitment to industry self-rationalisation is a necessary precursor to the development of international competitiveness.

7. We believed, as the Premier also eventually came to believe, that a fair way to resolve commercial disputes regarding the allocation of a crown resource would be to engage the services of a suitably qualified mediator. We believed that the Government would have and could have responded to Auspine's calls for mediation much earlier than it eventually did.

8. We believed that Forestry Tasmania would cherish its own sustainable forest management principles. These principles state that and I quote directly:

'An activity is socially sustainable if it conforms to the ethical values and social norms or does not exceed a community's tolerance of change. Forestry Tasmania is a government business enterprise and is accountable to the people of Tasmania for managing State forests in a way that meets sustainability objectives'.

9. Finally, when it was clear that our belief system was not shared by those who could have benefited from those beliefs, when all else fails, when it was all said and done, we believed in one final thing; we believed that the Forestry Act of Tasmania actually meant something. We believed that treating employment as an important consideration meant exactly that - not a cursory consideration, not a contrived and self-serving box-ticking exercise by a detached board who did not have the decency to wait for the socioeconomic impact statement flagged by the Premier but an earnest and genuine consideration of the devastating impact on local employment, and not just Auspine's employment but all local employment, should Scottsdale's mill be denied long-term access to logs. In short, whilst we came to understand that our vision was not shared and that our beliefs were not necessarily shared, we never dreamed in our worst nightmares that our employees and their families and community could be sold out easily with a mere eight weeks' notice.

On the subject of our workers who are represented here today, I want to dispel some of the popular mythology that they are somehow pawns of this company. The last seven weeks have demonstrated what we have long known: our workers are intelligent, committed and tenacious people, committed to their jobs, their families and their local community. I can assure you that they will tenaciously defend their jobs without our prompting. Softwood sawmilling in Scottsdale sustains their livelihoods. They do not want politically expedient assistance packages. They do not want to pack up and chase the big bucks in the mining sector; they do not want to sell out or be sold out. They want to do what they do best. They want to add value to this State's resource in a town that has sustained generations of timber workers and the businesses that rely on the fruits of their labour.

That, Mr Chairman, can only happen if this decision is reversed. To suggest that this company could and that our employees would allow themselves to be used as pawns is an insult to all concerned, including the union that vigorously protects their rights. We are in this together. Do not expect any of us to give up without a fight. As Eva Down put it the other day, do not treat us like dumb sawmillers.

Mr Chairman, I turn now to Auspine's view of section 12A(1) of the Forestry Act. It is our view that the wood in question is produced on State forest, as stated at page 95 of the Forestry Tasmania 2005-06 Annual Report. This fact has two consequences for the purposes of the Forestry Act. Firstly, under section 8C(2), Forestry Tasmania is charged by Parliament with the exclusive management and control of all forest products on State forests, including the selling of those products. Secondly, as the wood is obtained from State forest, it is crown wood as defined by section 4 of the act. It being crown wood, section 12A of the Forestry Act requires that Forestry Tasmania treat the employment derived from the sale of crown wood as an important consideration when Forestry Tasmania is examining options for competing claims for the wood.

During 2006 Auspine put Forestry Tasmania squarely on notice of its view that employment and other social considerations were relevant to any decision that Forestry Tasmania might make, particularly by its letter of 1 December 2006. At no time did Forestry Tasmania say that it would take into account employment or other social considerations. Auspine served a freedom of information application on Forestry Tasmania in February 2007. One of the classes of information sought was information relating to the decision to enter into the contract with FEA. Incredibly, Forestry Tasmania's response to that request was that it had no such information. In other words, there is apparently nothing in the records of Forestry Tasmania relating to the decision to enter into the contract with FEA and Forestry Tasmania. Forestry Tasmania apparently does not consider that the decision was made by any agent of Forestry Tasmania. If the position was that the decision was taken by its agent the information of Rayonier would be Forestry Tasmania's information for the purposes of the FOI application. It is on the public record that if FEA builds a new facility at Bell Bay it estimates that about 100 new jobs will be created. On the other hand, if Auspine's mills are forced to close by reason of the decision over 300 direct jobs will be lost and according to independent advice the devastation to Scottsdale and the shire of Dorset communities will be enormous.

The decision is wrong on employment and other social grounds particularly when it is understood that Auspine always offered to match FEA on price and other non-price commercial terms. It seems that Forestry Tasmania takes the view that the obligations imposed upon it by the Parliament in terms of the act were not relevant in the circumstances and that it was entitled to leave others to decide what is to happen with the crown wood in question produced on State forests in the State of Tasmania.

This failure to take responsibility occurred despite the clear and mandatory terms of the act. The community is entitled to expect that Forestry Tasmania will abide by the act and to ensure that where public forest resources are an issue proper regard is had to the employment and wider social implications of any decision. Whatever private contractual arrangements Forestry Tasmania may have made with other commercial entities or parties, the act does not permit Forestry Tasmania to contract out of the obligations and responsibilities imposed upon it by Parliament. To suggest that a private contract can override the terms of the act is to fall into an obvious error. To make that suggestion would be no different in kind to suggesting that the Deputy Commissioner of Taxation is somehow able to contract out of his obligations under the Income Tax Assessment Act, so relieving a private citizen from the obligation to pay income tax. It is simply not legal. Parliament is the sovereign body, not Forestry Tasmania or those with whom it has commercial relationships. Forestry Tasmania remains charged with public responsibilities under the act, notwithstanding the joint venture and even though it is a government business enterprise.

Mr Chairman, the second part of the terms of reference for this committee calls for inquiry into the process that led to the log supply decision. Critically, the inquiry is to be made by reference to other relevant laws of the State or Commonwealth or any other agreement. I would now like to raise briefly the other laws that in Auspine's submission are relevant to this inquiry. I shall start with some of the relevant Commonwealth laws.

Forestry Tasmania and the sellers act together to sell the wood. Collectively, the sellers have approximately 90 per cent of the softwood sawlog available for sale in Tasmania. The result of the sellers acting together for the purposes of sale is that there is a substantial lessening of competition in the market for the sale of softwood sawlogs in Tasmania. Further, the manner in which the sellers have conducted themselves results in the price that they charge for the sawlogs being fixed. The sellers decide what price they will sell at and there is no opportunity for the purchasers to deal with the sellers separately. Also, the buyers have no opportunity to deal with the sellers separately, as there would be in a properly constructed and competitive market. The sellers' monopolistic conduct is perhaps best exemplified by the 2005 tender process. There were express terms in the request for tender that only one price could be offered for any one parcel of wood and that direct contact with the sellers was forbidden. The tender conditions contained many other uncommercial terms, perhaps the most startling of which was that the sellers reserved the right to reduce volumes without any corresponding reduction in price.

The Trade Practices Act does provide a basis for parties engaged in certain properly constructed joint venture arrangements to fix prices. However, in the case of the 2005 tender, the tender conditions expressly provided that the sellers were not selling as part of any joint venture but had decided to market their separate interests in the wood 'for the sake of expediency'. This conduct by the sellers is clearly contrary to sections 45 and

45A of the Trade Practices Act. Additionally, whenever one seller offers wood for sale that offer is on condition that the wood is also purchased from the other two sellers. Under the Trade Practices Act this behaviour is known as 'third-line forcing', and that is contrary to section 47(6) of the Trade Practices Act. The conduct of the sellers in breach of the Trade Practices Act has caused Auspine and others who acquire timber from the sellers loss and damage in that they have been deprived of the opportunity to acquire timber in a properly constructed competitive market.

I would now like to turn to the other laws and agreement that are relevant to the work of this committee. Throughout 2006, until 27 November 2006, the sellers and Auspine conducted themselves on the basis that the question between them was not whether there would be a future long-term log supply to Auspine but rather what the terms of that supply would be. The sellers encouraged Auspine to believe that this was their position and Auspine acted accordingly. Further, under the terms of the supply agreement assigned to Auspine by French Enterprises, Auspine acquired a right to a two-year extension to that agreement on terms for which volume and price were to be agreed. It was not legally open to the sellers to depart from that state of affairs that they had induced Auspine to adopt as the basis of its dealings with them or to unilaterally determine that the two-year extension afforded by the existing contract was not available. Yet this is precisely what the sellers purported to do on 27 November 2006 when they wrote informing Auspine that they had received an unsolicited offer from another party and that there would be supply to one but not both of the mills. As a result of receiving the Rayonier letter of 27 November 2006, Auspine had no economic option but to do everything it could to secure supply in the changed circumstances in an attempt to save its Tasmanian business and the livelihood of those who depend on it.

As a result of the seller's conduct, Auspine has been deprived of the opportunity to secure long-term supply and of the two-year extension to the French Enterprises agreement. These circumstances have the potential to jeopardise Auspine's Tasmanian business and the livelihoods of the many families who depend on that business.

Additionally, the sellers have acted in breach of an implied obligation of good faith and fair dealing with Auspine. The breach of this obligation arises because the sellers did not give Auspine adequate notice of their intention to award FEA the wood so as to enable Auspine to have the best opportunity to put in place transitional arrangements to deal with the changed circumstances in which it found itself.

The fact that the sellers have not acted in a manner consistent with their obligation is illustrated by the bizarre circumstances we now find ourselves in, where FEA has no need for the vast majority of wood from 1 April 2007 because it does not have the processing capacity to handle it, whereas Auspine has been forced to try to source that wood from remote areas of the State in an attempt to keep operations going as best it can for as long as it can on the basis that this unsustainable supply of wood might allow.

Mr Chairman, with your indulgence this morning I would like to make one final submission. It is our view that the conduct of Forestry Tasmania, Taswood Growers and Rayonier should be viewed in an historical context. Auspine believes that quite apart from the circumstances in the 18 months leading up to the decision Auspine, and indeed the industry, it has been fundamentally misled on the question of future availability of log resources.

One of the most basic functions of a plantation manager is to accurately model sustainable wood flows into the future. This is a core business activity for any plantation manager. Customers rely on this information, as indeed do shareholders. For example, Mr Lloyd on my left performs this task with respect to Auspine's softwood plantations in the green triangle region. Phil's resource forecasts underpin the immediate sales and operational planning processes and medium to long-term capital procurement and market planning processes with respect to our South Australian manufacturing business units. In Tasmania, however, Auspine is totally reliant on the resource forecasts of the appointed manager, Rayonier. This makes the veracity of such representations to us absolutely critical.

Mr Chairman, if I could direct the attention of members to a series of charts that we have produced -

CHAIR - Would you like to table those, Mr Jakab?

Mr JAKAB - I would, Mr Chairman, please.

CHAIR - Thank you.

Mr JAKAB - We have prepared a graphical picture of the representations made to us at various points in time about resource availability going forward.

I will go through this pretty quickly, but we thought that a graphical picture would give members a sense of the prevailing trends which avoids the need to decipher pages and pages full of numbers. The first series of graphs before you depicts the total softwood resource availability. When I say the total resource that includes softwood sawlogs, pulp log, and prune log - all of the products that one could hope to market in solid wood form from the plantations.

You will see the first graph shows, for example, that regarding Taswood, in 1998 at the time of the formation of the joint venture or shortly before, it was predicted that the availability from Forestry Tasmania would exceed 600 000 tonne per annum out to the year 2008-09, with an increase to 700 000 tonne from the year 2009-10. These resource forecasts were updated in 2002 and you will see there that there is a green line that depicts an apparent increase in the available wood supply going forward, with a decrease occurring from 2009-10. You will note already that there is starting to be a substantial difference in the resource forecasts that are occurring from time to time.

The following year Taswood looked at their information and purported to present another resource forecast and they did not change the resource forecast of the year 2002; they maintained the extra wood was in fact available. Now Auspine relied on this information to make investment decisions. In 2005, lo and behold, you will see a red line depicting a situation where Auspine was provided with availability forecasts from Rayonier for the purposes of a tender process and you will see the yawning gap that exists between the red line and the green line. It is on this basis that Auspine feels that it was misled.

The following page is based on the assessment that Auspine did by reviewing Forestry Tasmania's annual reports to understand an estimated harvest volume. When you look at

why the bottom or the red line is low you will see that that is the case because in the preceding years, as depicted by the purple line, there was in fact a cut rate that was higher than the projected resource forecasts. That is of immense significance because in those years the dollar was low and Rayonier was active in the export market.

Those graphs depict a situation with respect to the total available wood. I now turn to the subject of particular interest to this company and that is softwood sawlog availability, and again we start with the pre-joint-venture forecasts by Forestry Tasmania of 1998. In 1998, we see a flat line between 450 000 and 500 000 tonnes of softwood sawlog being available from 2007 to 2013. In 2002, Taswood, via its agent Rayonier, produced a resource forecast that indicated that softwood sawlogs would exceed 550 000 tonnes out to the year 2009. It would then drop off in the year 2010 below the sustainable figures from 1998, such that it was below 450 000. In 2003 Taswood Growers again reaffirmed this resource forecast, and again Auspine used this information as the basis of investment decisions in capital at its Scottsdale mill.

In 2005 a very different picture emerges again. We go to tender and, lo and behold, an availability forecast, as depicted by the red line, indicates a drop in resource for each year from 2008, a drop in the resource availability from the resource projections that were contained in the 2002-03 and 1998 forecasts. These are not insignificant or minor hiccups. These are massive downward trends in the availability of softwood sawlogs.

Ladies and gentlemen, if we are serious about value adding in the State of Tasmania, we need to understand as processes what the resource availability is going forward. Banks need to know this information, boards of directors need to know this information and shareholders need to know this information. Employees make their own investment decisions for their own livelihoods on the basis of this information, following the company's investment into its sawmills.

Finally, the last graph on this page depicts the situation that we are confronted with today where we see a 2007 resource contract that indicates that the baseline volume of softwood sawlog is not in excess of 450 000 but below 350 000 tonnes out to the year 2013, below any of the resource forecasts in previous years. These forecasts are consistent with downward trends in the softwood estate standing timber valuations contained in Forestry Tasmania's annual reports. These valuations have been decreasing, notwithstanding the increases that the sellers and Rayonier have been able to achieve in domestic and export prices for log from the Taswood estate.

Committee members should also be alert to the fallacy in the argument that the present resource shortfall is a consequence somehow of decisions to reduce plantings in the late 1980s and the early 1990s. You will have heard this in the media from time to time. This is false. Softwood is a 30-year rotation crop. It follows that the consequences of such decisions, if they occurred, would be felt in the latter part of the next decade and the early part of the decade after that, not this decade.

Mr Chairman, it is our submission that the over-cutting of mature trees in the early part of this decade, particularly for the export market, was a major contributor to the problem that I have outlined to you today.

It has been said that Auspine was unreasonable in negotiations. Can I just say, now that you have been confronted with this information, in these circumstances Auspine believe that not knowing what logs we would be supplied with from one year to the next reduced significantly the commercial value of the log deal being offered to us by Rayonier. Although Rayonier admitted to its difficulty in predicting future wood flows, it still maintained an expectation that they should be awarded a premium log price in these circumstances. We differed on this and we differed on many things during our negotiations. But, Mr Chairman, when negotiations get tough, it is time to devote even more resources and effort to their resolution. It is a time to accept that a mediator might just bring some objectivity to the areas in dispute. Difficulties in negotiations have never been a valid excuse to initiate military conflicts, nor are difficulties in negotiations involving a crown resource, a valid excuse to abandon a community and weaken a willing investor that has a track record of creating and maintaining jobs.

Sir, with that said, I would welcome any questions from you and your colleagues.

CHAIR - Thank you, Mr Jakab. If you would not mind encapsulating for the committee just what resource you have available at the moment and where you see the current offers from the State and Federal governments? Where is that going, if you would not mind just clarifying that?

Mr JAKAB - Certainly, Mr Chairman. Please excuse me while I refer to my notes.

CHAIR - Yes.

I might just add I think you also have a joint venture with Forestry Tasmania and the Dorset Council. Do you have a bit of additional resource there as well?

Mr CAMPBELL - There is a joint venture of a very small plantation and we are probably talking one week's supply at one of the mills.

Mr JAKAB - One week's supply at one of the mills. I think there is a residual deal that was done in the time of French Enterprises.

Mr CAMPBELL - There was a joint venture with Auspine some years ago with Forestry Tasmania for a very small plantation. We also have a further plantation of our own at North Scottsdale. It is a larger plantation but still nowhere near being sustainable for either of the mills.

CHAIR - And also one with the Dorset Council? Do you have a joint venture arrangement with them as well?

Mr CAMPBELL - I am not familiar with the joint venture with the Dorset Council.

CHAIR - Okay. You can go back to the original question then.

Mr JAKAB - I think, Mr Chairman, we can get the detail of these arrangements.

CHAIR - If you wouldn't mind.

Mr JAKAB - We will supply that for the committee.

CHAIR - Thank you.

Mr JAKAB - We would suggest that our lack of precise knowledge of these arrangements is indicative of the inconsequential nature of the volume that is supplied by these arrangements. We are talking about a mill that is currently processing 385 000 tonnes per annum which sustains and has sustained a maximum employment level of 313 jobs. That is with two shifts operating on each of the sites at Ling Siding and Tonganah.

I can say, Mr Chairman, with regret that even if Auspine was supplied the 290 000 tonnes that was awarded to FEA, 290 000 tonnes is a fair way short of the 385 000 tonne that sustains a two-shift arrangement on both of our sites. This would cause massive difficulty unless supplementary volumes were available.

You asked originally, Mr Chairman, what was the sort of resource that was out there that was available. We are yet to confirm these figures. We have been supplied information by the Premier through Forestry Tasmania that indicates, along with our own information, that in 2007 the maximum available wood that we would be able to source to sustain our operations would be 352 800 tonnes. That would include us resolving an impending deal between Auspine and Forestry Tasmania for wood out of Strahan. Those figures also include 50 000 tonnes from King Island for 2007. Flinders Island is also included and we have estimated that Flinders Island is potentially available to contribute 50 000 tonnes in 2007. I hasten to add that we have not done a deal on this wood yet. We continue to look at the options that are available. One impediment that I would bring to the attention of this committee is the logistic problem and the large haulage distance that makes the economic purchase of this wood a difficult proposition commercially.

Mr GREEN - Can I have some of clarification, Mr Chairman?

CHAIR - Yes.

Mr GREEN - You are saying 280 000 tonnes is the contract?

Mr JAKAB - The FEA contract as has been stated publicly is for 290 000 tonnes.

Mr GREEN - On the last graph that you showed us it was about 330 000 or 340 000 as the -

Mr JAKAB - Mr Green, that is because there are other customers that Rayonier supplies. In fact, there is an export market that Rayonier supplies.

Mr GREEN - Okay, fair enough. As you were discussing the graph it gave me the impression that that was the FEA.

Mr JAKAB - Sorry if I gave the committee that impression. On the last page of the graph the purple line indicates the total sawlog that has been contracted from 2007. Included in that is the 290 000 tonnes that was allocated to FEA and denied to Auspine. That is our understanding gleaned from public reports and information.

I hope that goes some way to answering the question about 2007 availability. From 2008 through to 2011 we estimate that availability will drop to between 250 000 and 280 000 tonnes. Again, you have a situation where a couple of mills in Scottsdale presently processing in the order of 385 000 tonnes, and probably capable of processing upwards of 400 000 tonnes, in some years can achieve a maximum of 250 000 tonnes, if everything goes right and all the private sources of wood that the Premier has identified want to sell to Auspine. We are working earnestly to try to achieve that but there is no obligation for those people to sell to Auspine.

Mrs RATTRAY-WAGNER - Thank you for that overview, Andrew. It was very extensive and obviously took some time to put together. You spoke about the purchase of the Frenchpine establishment. Can you tell this committee whether there were any discussions and, if so, what level of detail you went into with Rayonier when you were purchasing that second mill in Scottsdale?

Mr JAKAB - In the years prior to 2002 we made it clear to Rayonier that we felt there was an opportunity for some industry self-rationalisation. We felt the best way to achieve international competitiveness for the domestic processing industry would be some self-rationalisation within the industry. We talked about the extent to which Auspine and Frenchpine might, for example, do a joint venture. We talked about Frenchpine purchasing Auspine and we also talked about the option that eventuated, and that was Auspine acquiring Frenchpine. These were discussions that occurred over a protracted period and involved different interests, but in the end we felt that our acquisition of Frenchpine was the right thing for us as a business in Tasmania that wanted to stay here for the long haul. Clearly, Mr French came to a similar conclusion with respect to his own interests in the processing assets of French Enterprises. These things were canvassed with Rayonier. We did not have a tripartite discussion but Rayonier was aware that the parties were involved in discussions from time to time about the extent to which they could rationalise their operations in a way that would promote international competitiveness.

Mr GUTWEIN - Mr Jakab, could you spell out a time line from when the tender was originally advertised and your impressions of any key dates along the way?

Mr JAKAB - Chronologically, I guess there was a starting point to the events of 2005 when the tender document was served on the industry participants. It is probably worthwhile remembering that on 6 October 2004 the Government publicly said it was pleased to protect timber workers jobs in Tasmania. Thereafter on 8 June 2005, Rayonier advised Auspine of a plantation resource review and a sales plan and that contracts would be awarded by 23 December 2005. I think Auspine started to become cautious about this process when we saw the nature of some of the propositions being put to us in the tender process. In fact, we were so concerned that on 1 July 2005 we wrote to Rayonier asking 56 individual questions of clarification regarding the tender process and we proposed at that time what we thought would be a fair and merit-based process, remembering at this time Auspine had not settled any arrangement or process to acquire the processing assets of Frenchpine. We asked those 56 questions in a rather voluminous letter, but we became even more concerned when Rayonier responded to Auspine on 1 July using many one-line or even one-word answers covering two pages. Admittedly some of the questions could simply be answered with a yes or no, but there were other questions that were quite concerning to us and required a more thoughtful response. On 15 July

Rayonier formally issued invitations to tender. Auspine prepared a bid for that tender process on the basis that we had not at that stage purchased Frenchpine. We now know, having purchased Frenchpine, that they also independently prepared a bid. I think the next key date would be 28 September 2005, the closing date for tenders, when both Auspine and Frenchpine independently submitted conforming and non-conforming tenders to Rayonier.

Mrs RATTRAY-WAGNER - Could you clarify that, please?

Mr JAKAB - Certainly. It is reasonably common commercial practice for a seller in a bidding process to say, 'If you want to buy this resource or participate in this process, for it to be conforming you have to fit in with our rules'. These rules are expressed in either a call document, a tender document or a conditions-of-tender statement. Often sellers also say, 'You are welcome to put in a non-conforming bid, a bid that doesn't meet all of our rules, but please understand that we are under no obligation whatsoever to consider any or all of that bid'.

Mrs RATTRAY-WAGNER - Can I expand that out then? What relationship do conforming and non-conforming tenders have with your statement, 'Auspine also offered to match any non-priced terms'? Is that something that mixes together or is that something completely separate?

Mr JAKAB - I guess what we are talking about here is the 2005 tender process. What you have just referred to relates to a process initiated on 27 November 2006 after it became apparent that FEA was also competing for the resource. Rayonier wrote to us and said, 'These are the new rules of the game. We are not just talking to you'.

Mrs RATTRAY-WAGNER - Thank you. I just wanted to clarify where they fitted in the picture relative to each other.

Mr BOOTH - Andrew, it seems obvious from what you have said that on the optimistic predictions of the availability of alternative resources that the mill itself will not be able to function on that alone. But, even if it were available, once it is harvested within about a three-year period there would be virtually nothing left to provide a future for you. Is that a fair comment? Would you like to give us some sort of indication of how long that lifeline of alternative supplies may last? Secondly, did anybody purport during this period of negotiations to be able to assist your endeavours, to guarantee you an outcome in terms of the negotiations with Rayonier - the Premier, the Forest minister or anybody within the Government?

Mr JAKAB - I think at this point I am confronted with two questions. If I could perhaps - through you, Mr Chairman - respond to Mr Gutwein.

CHAIR - Sure. I might have cut him off at the pass; I am sorry.

Mrs RATTRAY-WAGNER - Sorry, I probably did that with my question.

Mr JAKAB - It is easy enough to get back to where we were. The point was that 28 September 2005 was an important checkpoint because Auspine and Frenchpine submitted their independent conforming and non-conforming bids. That is where we

were. What would be interesting to committee members is that in this particular process a sum of money was required to be paid for a bid. That is, for the privilege of putting in a bid we had to pay what became a 'non-refundable tender fee'. It is good if you can get it.

Mrs RATTRAY-WAGNER - Is that usual practice in a contract?

Mr JAKAB - It can occur, but in the circumstances that I am about to describe I think it is unusual. It is unusual because on 21 October we received notification from Rayonier that the tender process was concluded and that there were no successful bids. We were also advised in subsequent correspondence that we were not entitled to a refund of our tender fees.

Mr GREEN - Is it commercial-in-confidence to mention the sum of money you are talking about?

Mr JAKAB - I believe it would be, but I think it is a moot point really. I think the issue is that if you complete a tender process without awarding the wood to anyone, what is unusual is not the fact of the tender fee but the fact that the tender fee was not refunded. That is, what work has been done or what consideration contractually has been provided for that tender fee to be withheld by Rayonier. In any event, you will possibly recall that on 31 October Auspine announced the purchase of Frenchpine. Notwithstanding the fact that we had purchased Frenchpine and were looking forward to a collaborative relationship with Rayonier as their largest single customer domestically, Rayonier still refused to refund the tender fee. I only say this because it is not the fact of the amount of money that is important here, it is the conduct. It is the type of things you can get away with when there is not sufficient competition in a properly constructed market.

Thereafter important events occurred very quickly. Before Christmas 2005 Auspine went to great lengths to put to Rayonier a number of offers that we believed fairly reflected the commercial circumstances that both parties found themselves in following the acquisition of Frenchpine. There were many offers. There were rejections of our offers. There were calls for us to return to the negotiating table as soon as possible, when we hadn't left the negotiating table. One of the things that was an interesting sideline in the chronology was that on 17 January 2006 it was reported that the Malaysian timber company, Ta Ann Holdings, would invest \$60 million in Tasmania on two new mills for the value-adding of hardwood, principally we understand in rotary veneer mills, and that Forestry Tasmania provided that company with resource for up to 20 years - it was reported - with a predetermined basis for pricing and an option to expand production capability further. At this point we were wondering what was wrong with us being Australians.

The next important checkpoint is that Rayonier advised us on 2 March and announced publicly that it would suspend negotiations until the conclusion of the Tasmanian State election campaign on 20 March, in our view effectively aligning a commercial process to a political process, and then arguing that the reason they were doing this was that the process had become politicised. We had difficulty understanding that. In any event, following that, Auspine published a full-page advertisement in the Launceston *Examiner* and the Hobart *Mercury* indicating our position at that time. We foreshadowed and took some lengths to advise the community and stakeholders that we felt that we were being

treated unfairly at that point. We felt that it was inappropriate to walk away from negotiations just because of an election campaign. - The advertisement was underpinned by our fear that, come the end of December 2006, we may be without logs because of the difficulties we were having in negotiations.

A rally occurred in Scottsdale on 9 March. Interestingly, at that rally and with Auspine's agreement, there were calls for the assistance of a conciliator. You will recall that the rally resolved, quite independently of Auspine although Auspine indicated its agreement, to call on the parties to restart negotiations with the assistance of what was termed to be a conciliator.

The next significant event, in Auspine's thinking, would have occurred after we had a meeting with the Premier. We met with the Premier on 27 July in Hobart. We felt that at that stage that we had received a warm reception from the Premier. We felt that he listened to us and had an understanding of the sorts of frustrations we were confronted with. Unfortunately for us, the Premier at that stage was still non-committal on the question of the Government's support for the facilitation of a mediator. The Government was reluctant to get involved in the export situation. Auspine has always argued that to be given the opportunity of matching or participating in wood purchases that are destined for the export market you have to do more than simply say that if Auspine wants the export wood they can buy it. We actually have to know where it is, what it looks like, try to get it cut into lengths that would suit the domestic market and if we are told the export price we can match it. We can match it because that is consistent with promoting domestic processing.

At all times we were prepared to do that. If this committee hears that that is not the case I would be asking to be shown the offer, shown where we were given a properly constructed offer to Auspine that allowed Auspine to match an export price for softwood sawlogs in domestic lengths.

We had that meeting with the Premier and negotiations entered a new phase on or about 4 or 5 December, when negotiations resumed.

That was important to us because finally negotiations resumed on the footing that the tender conditions were not the stipulated basis for negotiations. Auspine had said, 'Look, you cannot have it both ways. If you want to complete and finalise the tender process as you did back in 2005, when you are negotiating one on one with us, the status quo as in the existing contract should form the basis of future negotiations'.

In September Rayonier agreed with this position and we negotiated from that point. However, we had other difficulties from September and there were continuing issues between the parties. Auspine wanted to know, for example, a bit about some of the sellers. It might surprise the committee to learn that the sellers of the softwood are nominated to be companies other than GMO and Forestry Tasmania. Certainly Forestry Tasmania was nominated as a seller but two other companies and not GMO were also nominated to be sellers.

We wanted to understand if those companies had standing - that is to say, if those companies did not perform their contractual obligations, did they have adequate title to the wood and did they have the means and capacity to pay damages in the event that such

damages were awarded for non-performance. You may think this was a hard line to take but in the circumstances where Auspine was talking about wanting a 20-year log supply deal, we wanted some comfort that the people that we were in fact dealing with were able to make good their commitments on any contract.

We were concerned, for example, that in negotiations Rayonier wanted to control and have the ultimate say on what the weekly log order was. Now, let us be clear; we are the purchaser or the customer, and the supplier is saying to us that they want to tell us what we are ordering. That is not normal; it is unusual. We understood they probably wanted to do that out of an abundance of caution because they were concerned about their resource availability and forecasting processes so we offered some flexibility of up to, plus or minus, 20 per cent on the weekly order.

So we understood that from time to time there might be difficulties with certain bush, certain arrangements, certain haulage distances, the plethora of issues that people like Auspine do understand because we do manage plantations ourselves. We sought to provide some comfort for Rayonier. I think with issues like that and issues with the fact that it was considered that a 20-year deal was beyond the realms of contemplation for the board, we had difficulties and negotiations did hit a stalemate in late October/November last year. At that point Auspine again called for mediation. We again felt that with the objective assessment and involvement of somebody who was used to dealing with protracted commercial disputes involving some complex legal questions and some complex operational questions a resolution could be found.

CHAIR - Mr Jakab, can I just mention to you that we have a little over 10 minutes remaining for you to give evidence. I am aware that Mr Booth still has a question pending and also Mr Harriss and Ms Thorp have questions so if you can encapsulate.

Mr JAKAB - I am sorry, Mr Chairman. I went a bit far with that chronology. I guess the last significant event that I think would be known to everyone present and is that on 27 November we were advised that another player was in the ring, that negotiations had been occurring with this other player at the time we were under the impression that we were the only player and that Rayonier wanted to do a deal with us. Finally, we at that point realised that the landscape for Auspine in Tasmania had changed forever. Not only was there a reduced volume of log down to 290 000 tonnes but there was also now another competitor from whom Rayonier were saying they had received a proposal and they were quite prepared to do a deal with them. At that point Auspine basically came to a conclusion that we had no other option but to offer Rayonier whatever they wanted. When the decision to award the wood to FBA was announced, to our surprise it was a 10-year deal. Rayonier had informed us that the preference of their shareholders was for a maximum seven-year deal with a preference for a term shorter than that. It is true that at one particular point we were told the board might contemplate maybe 10 years if we could demonstrate a value proposition, but it was very clear to us what the preference was. So when we were on our knees we told Rayonier we would fit in with what they wanted. We offered them seven years. We offered prices that were attractive and we said they could have the higher of these prices or they could accept a situation where Auspine was prepared to match the price of any other bona fide bidder. And that is an offer. People say that is not a commercial offer but that is a commercial offer. It is a commercial offer that the sellers were capable of relying upon.

I think that really concludes the chronology.

CHAIR - Move on with your question.

Mr BOOTH - Andrew, in terms of sustainable log supply for the two mills you need at Scottsdale, it appears to me that even with the most optimistic predictions of the Government with regard to available alternative supply, that is going to get you through to 2010, with about a 30 per cent reduction in availability.

Mr JAKAB - I am sure there is more wood available after 2010. What I am suggesting is that the forecasts that we were talking about out to 2010 would represent a reduction to the available volumes to about between 250 000 and 280 000, and that is if we got all the remaining unallocated wood in Tasmania. In fact there is some prospect that after 2011 and, Mr Chairman, if I could call on the assistance of my colleague, after 2011 there is some more wood available in the south that may come on stream.

Mr GREEN - Does that include Norske Skog as well?

Mr JAKAB - There is in the south significant wood but that wood is not mature and will not be mature for our purposes until the year -

Mr LLOYD - We are currently taking some of that wood but it is on an increase in availability profile and it will continue to increase after 2011, subject to what Norske Skog make decisions about in their own interests.

Mr GREEN - How many tonnes are we looking at?

Mr LLOYD - It is almost an 18 000 hectare resource, so it would be in the order of hundreds of thousands of cubic metres, potentially, of sawlog.

Mr BOOTH - Would it give you the right diameter mix?

Mr LLOYD - Potentially?

Mr BOOTH - Yes. Also, at any stage did anybody from the Government, either the Premier or any government representative, report to Auspine that they would get you the contract or the wood that was available, and therefore you were induced in that sense to go ahead with the purchase of Frenchpine?

Mr JAKAB - We were never given a cast-iron guarantee that we relied on when we purchased Frenchpine. What we relied on were those things I talked about in my opening submissions, and finally, I guess a last line of defence for us was the existence of the Forestry Act that created certain obligations for the sale of State forest and crown wood.

Mr HARRISS - Mr Chairman, I would like to raise two matters that are related. First, you indicated to the committee that under section 12A of the Forestry Act the corporation of forestry, as defined there, cannot contract out of legislatively imposed obligations. My question is have you sought legal advice about that? Then I contend that it may be that you cannot contract out of legislatively imposed obligations, but those obligations arise

only from conferred powers and functions. If those powers and functions are contracted away, as it seems they were in 1999, so too is any obligation contracted away. Have you obtained legal advice as to that position, bearing in mind the contention I put to you? On the matter of Rayonier being Forestry Tasmania's agent, I would like to discuss that a little, and then probably also look at the notion of the reduced wood supply, because I think they are tied together.

Mr JAKAB - The answer is Auspine has received advice on this question. We have contemplated the proposition that you put. We maintain our position that the Forestry Act does apply. Regarding the act of entering a joint venture and the act of appointing an agent, if those acts put Forestry Tasmania in a position where it could not comply with its obligations pursuant to the Forestry Act, then those acts in and of themselves are not valid acts under the law.

The Forestry Act in Tasmania does contemplate joint ventures, there is no secret about that, but nowhere does it say that if you get into a joint venture, the requirement to consider employment is waived. It does not create exclusions. The mere presence of Rayonier, or whoever else, does not create lawful exclusions for Forestry Tasmania pursuant to its obligations under the act.

Mr HARRISS - I am thinking about that answer, Mr Chairman. It is really important that this committee establishes whether the Forestry Act has been complied with in this recent negotiation.

So you do not accept that powers and functions can, by an appropriately robust contract, be contracted away, and if you contract away those powers and functions, with them goes the obligation imposed by the Forestry Act?

Mr JAKAB - I refer to what I said earlier, by way of example. If that proposition was somehow valid it could mean that the Commissioner for Taxation could enter a private contract and say that he is not going to charge this person tax because he has entered a private contract. It might be a lawful private contract but insofar as it removes an obligation for the Commissioner for Taxation to collect taxes, that would be patently illegal. The simple proposition is that the Parliament is sovereign, the law is sovereign, and a contract between parties must conform with the law.

Mr HARRISS - Then Mr Chairman, to tie in with that is the supply going forward, the reduced supply. Your words were something to the effect that there is this fallacy that the availability had been impacted by the reduced plantings. You indicated further that softwood is a 30 to 40-year rotation proposition. But would it not be a reasonable contention that to preserve the sustainability of the supply going forward, if in fact plantings had been reduced, to allocate the wood on a sustainable basis and a reduction in that allocation would be necessary?

Mr JAKAB - We agree that in the course of managing wood flows from a plantation it is necessary to 'smooth' volumes - what we call 'smoothing'. That is, there will be naturally in any one year more or less than a baseline of volume but if you are managing for sustainability you will work out what the threshold minimum is and you will park some wood, potentially, when there is a peak so that when there is a trough you can maintain a smooth volume input to your customers.

We do that internally with wood from the green triangle to our Tarpeena sawmill. It does not seem to be a problem there. What we are talking about here is where there has been a peak in availability; there has been an over-cutting, even in those circumstances. Why? Because wood has been exported.

Mr GREEN - Is there much variation in the quality of logs from various sections of the resource? For example, does the wood from around Mathinna and those sort of places meet your specifications?

Mr JAKAB - It depends on the management practices that particular coupes have undergone. Our understanding is that the softwood plantations in Tasmania have been managed by regional managers and there have been some differences in the way regional managers have in fact managed their particular areas of responsibility in the past. So I guess the short answer is yes. But there is, in our view, a reasonable basis to predict what you have and where it is and when that will be available.

If I could continue to answer the question, I was -

CHAIR - If you can wrap that one up and then Ms Thorp has the last question.

Mr JAKAB - Certainly. Mr Harriss asked me a question about the 'smoothing' and the question of reduced plantings. What we are saying is that reduced plantings cannot account for the shortfalls that I have shown you on the graphs. Reduced plantings will account for shortfalls later on potentially but certainly not for the shortfalls that we have demonstrated to you on the graph. We think that other things account for those shortfalls.

Ms THORP - I think that we share an understanding of the structure of Taswood growers and subsequently the role of Rayonier in the process - that is, the development of sales plans. Could you clarify for me, given what we understand Rayonier's role to be, what you see as the role of Forestry Tasmania in any negotiations and do you think that level is appropriate?

Mr JAKAB - My answer is that Forestry Tasmania's level of involvement must be such that it is able to conform to its legal obligations. If Forestry Tasmania, for example, believes that its sales and marketing agent or its plantation management agent is acting in a manner inconsistent with the Forestry Act or, for that matter, section 38 of the Government Business Enterprises Act which requires that the board of a government business enterprise is to ensure that the ministerial charter is complied with, if the agent is acting contrary to that and it is a fifty-fifty joint venture, as this one is, then Forestry Tasmania must revoke its assent to those actions in order to properly perform its functions under law.

Ms THORP - I want to see if we share an understanding here as well. My understanding is that should either of the two joint venture partners disagree with any element of the sales plan, they have to be unanimous in their criticism or whatever of that sales plan. And then there needs to be an agreement on the part of the sales agent to that disagreement before anything can be really looked at.

Mr JAKAB - I am not aware of the mechanisms that Forestry Tasmania has got itself into or entered into on a contractual basis with its sales agent, its plantation management agent or manager and its joint venture partner. The joint venture document, you recall, is not a public document which, by the way, leads to another question - which joint venture are we talking about? Are we talking about a production joint venture between GMO and Forestry Tasmania or are we talking about a second joint venture that was entered into, as we understand it, that was for the purposes of selling and marketing the wood? But in any event it comes back to this: just because Forestry Tasmania has entered into obligations with GMO or Rayonier pursuant to a joint venture agreement, whether it be for production or selling, at all times those obligations must be consistent with its obligations under law. It cannot just wave a contract around and say I have a contractual obligation. Yes, you do, I am sure you do, but that is only valid insofar as it complies with law because the Parliament is sovereign.

Mr BEST - Just on that, you are aware that the agreement in 1999 was actually separate legislation. Are you trying to tell us that you do not think that is part of any legislation? What you are saying is that it is just something that they have entered into. I am saying to you that that is actual legislation that is governing this whole joint venture.

Mr JAKAB - We understand that the Forestry Act contains provisions for joint ventures.

Mr BEST - Not the act but the legislation in 1999 for joint ventures.

Mr JAKAB - Yes. We understand that there is legislation providing for joint ventures.

Mr BEST - That is what they are governed by.

Mr JAKAB - Nowhere in that legislation, in our understanding, is there a waiver of other aspects or obligations contained in the Forestry Act. It does not say, for example -

Mr BEST - Well, I put it to you then that you do not understand that part of the legislation.

Mr JAKAB - I take that on notice.

Ms THORP - What is your understanding of any overriding powers of the American-Australian free trade agreement given that one of the joint venture partners is an American company and given their supremacy, if you like, of agreements made under the American-Australian free trade agreement? Do you see this as having an impact here?

Mr JAKAB - I have no advice on that, sorry Ms Thorp.

THE WITNESSES WITHDREW.