



Protocol for the Collection and Dissemination of Industry Data

Revised August 2019 ver 6

1. Role of FWPA

- 1.1 Forest and Wood Products Australia ('FWPA') (ABN 75 127 114 185) is funded by a Log Levy which is paid by growers, processors and importers of the timber industry ('Industry'). These funds are then matched by the Federal Government to support research and development and other projects undertaken by FWPA on behalf of the Industry.
- 1.2 The FWPA manages an on-line data portal ('On-Line Data Portal'), which is operated by the FWPA Nominee as set out in Paragraph 6.

2. Objectives of information exchange

- 2.1 Some members of the FWPA ('Contributing Companies') have requested that FWPA compile aggregate statistical information ('Consolidated Aggregated Data') of relevance to the Industry. This data is to be used by each Contributing Company in pursuit of the following efficiency enhancing objectives:
- a) assessment of own corporate performance against industry;
 - b) analysis of demand trends;
 - c) analysis of product lifecycles; and
 - d) verification of the accuracy of other external data sources.

3. Protocol Objectives

- 3.1 FWPA and Contributing Companies are committed to ensuring that their businesses are conducted in accordance with all applicable legal and regulatory requirements. These include obligations arising under the *Competition and Consumer Act 2010* (Cth) ('CCA'). This Protocol Agreement ('Protocol') is designed to assist FWPA and the Contributing Companies to comply with the CCA in the submission, compilation and analysis of industry data.

4. CCA Parameters

- 4.1 The Contributing Companies may be regarded as 'competitors' in relation to:
- a) the cultivation and growth of plantation and native forest timbers;
 - b) the processing or treatment of plantation or native forest timbers; and/or
 - c) the wholesale sale and distribution of plantation and native forest timber.

4.2 Accordingly, the Contributing Companies must not:

- a) make or give effect to a contract, arrangement or understanding with a competitor that contains a provision that has:
 - i. the purpose or likely effect of fixing, controlling or maintaining prices (or discounts, allowances, rebates or credits) in relation to the supply or acquisition of goods or services by any one of those competitors;
 - ii. the purpose of restricting outputs in the production and supply chain including, relevantly, preventing, restricting or limiting the production of goods, the capacity to supply services, or the supply of goods or services to persons or classes of persons, by one or more of those competitors;
 - iii. the purpose of allocating between them customers, suppliers or territories; or
 - iv. the purpose of bid rigging.
- b) make or give effect to a contract, arrangement or understanding with a competitor that contains a provision that has the purpose of preventing, restricting or limiting the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons; or
- c) make or give effect to a contract, arrangement or understanding or engage in a concerted practice that has the purpose or likely effect of substantially lessening competition in any market in Australia.

4.3 Arrangements or understandings do not need to be in writing, nor legally enforceable. Accordingly, Contributing Companies may reach an understanding if, through communicating with each other, they each have an expectation of how the other will act. Where there is communication between competitors, subsequent *parallel conduct* by those competitors may be indicative of a mutual expectation as to their behaviour, and thus an arrangement or understanding between them.

4.4 Contributing Companies must act in accordance with the procedures established in this Protocol and must not discuss with any other Contributing Company:

- a) the price (including any discount, rebate or credit) or other terms on which any of them will acquire plantation or native forest timbers or other goods and services to any persons;
- b) whether any of them will or will not supply goods or services to a particular person or in particular places;
- c) whether any of them will or will not acquire goods or services from a particular person;
- d) the composition of their respective customer bases;
- e) current or forecast production volumes or capacity;
- f) whether any one of them will or will not participate in any tender;
- g) the terms on which any one of them will bid in any tender; or

h) the way in any of them will respond to the information provided under the Protocol.

4.5 Nothing in this Protocol should be seen as authorising FWPA or Contributing Companies (or their officers, employees or agents) to operate in a manner which contravenes the CCA.

4.6 The aggregated information including aggregated historical pricing data provided to the Contributing Companies is not authorised or otherwise recommended by FWPA. Each Contributing Companies must make its own independent strategic decision about pricing.

5. Information to be Collected

5.1 The Contributing Companies may provide to the FWPA Nominee the following industry data in accordance with the procedures established in the Protocol:

- a) historical monthly product sales volumes (m³) ('Historical Sales Volumes') and historical monthly product sales values (\$) ('Historical Sales Values') and historical monthly price data (\$) ('**Historical Average Price Data**')
- b) occupational health and safety ('Occupational Health and Safety Data'); and
- c) any other data as notified in writing by the FWPA after consultation with Contributing Companies.

5.2 Subject to the exclusions outlined in Paragraph 7 and 8.1, other forms of industry data may be provided to the FWPA Nominee in accordance with the Protocol upon the completion of the following process:

- a) the nomination of a new form of industry data;
- b) consideration of that nomination by FWPA, subject to the receipt of accordant legal advice; and
- c) subject to FWPA being satisfied that the nomination is legally compliant, FWPA will consult with all contributing companies to determine the level of interest. Provided a minimum of 3 companies agree to participate, then FWPA will proceed to establish the new form of industry data.

5.3 Contributing Companies will only be entitled to input and receive the relevant industry data upon acceptance of the terms and conditions of this Protocol, which shall be deemed to have occurred upon the Contributing Company submitting relevant data to the FWPA Nominee, and shall be deemed to be continuing while such Contributing Company continues to submit such data.

5.4 Other FWPA or non-FWPA members will only be entitled to input and receive the relevant industry data upon acceptance of the terms and conditions of this Protocol, which shall be deemed to have occurred upon submitting relevant data to the FWPA Nominee, and shall be deemed to be continuing while they continue to submit such data.

6. Procedures for the Data Collection and Dissemination

6.1 Contributing Companies must submit the relevant data for the agreed period to the FWPA Nominee within five working days after the end of that period ('Input Data') in accordance with Paragraph 8.

Where the agreed period involves monthly data or quarterly data aggregated and presented quarterly, then the Contributing Companies must submit the relevant data ('Input Data') to the FWPA Nominee within five working days after the end of each quarter (or month for Historical Sales Volumes), in accordance with paragraph 8. A 'Quarter' shall be defined as:

- Quarter 1 - January to March
- Quarter 2 - April to June
- Quarter 3 - July to September
- Quarter 4 - October to December

6.2 The FWPA Nominee is:

Haines Muir Hill
888 Doncaster Road
Doncaster East Victoria 3109
Email: dcaskey@hmf.com.au

6.3 The FWPA Nominee will aggregate the Input Data and provide the Consolidated Aggregated Data to each Contributing Company in accordance with Paragraph 8, within ten working days of the end each period for which the data is submitted. At no time will there be a direct exchange of Input Data covered between the Contributing Companies. For the avoidance of doubt, Input Data of a Contributing Company will only be shared between that Contributing Company and the FWPA Nominee. FWPA will have no access to any Input Data, and each Contributing Company will have no access to the Input Data of other Contributing Companies. The FWPA Nominee is bound to keep all Input Data confidential in accordance with the terms of its engagement with FWPA, and will only use the Input Data for the purposes set out in Paragraph 8.

7. Prohibited data exchanges

7.1 No data will be disseminated from which information on the following kind may be extrapolated or derived:

- a) on transactions by particular customers or suppliers; or
- b) on future, current or recent prices paid by particular customers and suppliers or aggregated data related to future or current prices.

8. Form and content of data

8.1 Subject to Paragraphs 5 and 7.1, Historical Sales Volumes, Historical Sales Values, and Historical Average Price Data and other types of Sensitive Data (other than Occupational Health and Safety Data) will be submitted to the FWPA Nominee through an electronic form created for the Contributing Company by the FWPA Nominee and confirmed in writing by the FWPA. This data provided by a Contributing Company will be aggregated

with other data received by the FWPA Nominee (**Consolidated Aggregated Data**). Consolidated Aggregated Data will be disseminated to Contributing Companies through the Contributing Company's dedicated log in area within the On-Line Data Portal. The Contributing Companies and the FWPA acknowledge that:

- a) The Consolidated Aggregated Data including the Consolidated Aggregated Historical Sales Volumes, Consolidated Aggregated Historical Sales Values and, if relevant, the Consolidated Aggregated Historical Average Price Data and other types of Sensitive Data, will comprise aggregate industry quarterly or monthly figures in accordance with Clause 6.1 and 6.2 and will not illustrate individual historical average prices of Contributing Companies, market shares or volumes held by Contributing Companies in any category(s);
- b) The FWPA Nominee must not distribute Consolidated Aggregated Historical Sales Volumes, Consolidated Aggregated Historical Sales Values and/or, if relevant, Consolidated Aggregated Historical Average Price Data and other types of Sensitive Data for any given period in accordance with Clause 6.1 in respect to those categories and / or geographic areas in which less than three (3) Contributing Companies have submitted data; and
- c) The FWPA Nominee must only distribute the Consolidated Aggregated Historical Sales Values (\$) and Consolidated Aggregated Historical Average Price Data as a total for the Quarter, in arrears (i.e. not broken down by month).

8.2 Occupational Health and Safety Data will be submitted to the FWPA Nominee through an electronic form created for the Contributing Company by the FWPA Nominee and confirmed in writing by the FWPA. Consolidated Aggregated Data will be disseminated to Contributing Companies through the Contributing Company's dedicated log in area within the On-Line Data Portal.

9. FWPA Membership

9.1 The collection and dissemination of industry data which is governed by the terms of this Protocol is a program funded by a combination of log levies paid by the Forest and Wood Products industry and matching Commonwealth funding. The program is managed by the FWPA and the On-Line Data Portal is only intended for use by members of the FWPA. All levy payers are entitled to be members of the FWPA which is free except in the event the FWPA is wound up for any reason each member is liable to pay \$1.00 towards the winding up costs.

10. Participation

10.1 To achieve the efficiency-enhancing objectives and justify the resources needed to produce the Consolidated Aggregated Data, Contributing Companies must provide quarterly Input Data (or monthly for Historical Sales Volumes and Historical Sales Values) for the previous 2 year period or any other period as agreed in writing by the FWPA.

10.2 Please nominate the person responsible for providing the Input Data from your organisation

Name:.....

Title:

Contact Details:

(Note: This contact information will be provided to the FWPA Nominee)