



**Australian  
Competition &  
Consumer  
Commission**

PO Box 1199  
Dickson ACT 2602  
470 Northbourne Ave  
Dickson ACT 2602  
ph (02) 6243 1111  
fax (02) 6243 1199  
[www.accc.gov.au](http://www.accc.gov.au)

Our Ref: C2005/1572  
Contact Officer: Hew Atkin  
Contact Phone: (02) 6243 1235

7 October 2005

«Name»  
«Position»  
«Company»  
«Address»

Dear «Sal»

**Applications for Authorisation A90981 – A90983 lodged by BHP Billiton Iron Ore Pty Ltd in relation to the JW4 Joint Venture**

On 20 September 2005 the Australian Competition and Consumer Commission (the ACCC) received applications for authorisation A90981, A90982 and A90983 from BHP Billiton Iron Ore Pty Ltd (BHPBIO) in relation to the JW4 Joint Venture for the mining, processing and sale of iron ore from the Yandi mining site in north-western Western Australia. The iron ore will be sold to purchasers in Japan.

BHPBIO lodged the application behalf of itself and the following companies:

- BHP Billiton Minerals Pty Ltd (BHPBM)
- BHP Billiton Iron Ore Pty Ltd (BHPBIO)
- BHP Billiton Marketing AG (BMAG)
- Itochu Minerals & Energy of Australia Pty Ltd (IMEA)
- Mitsui Iron Ore Corporation Pty Ltd (MIOC)
- Mitsui Itochu Iron Pty Ltd (MII)
- JFE Steel Australia (YD) Pty Ltd (JFE)
- JFE Steel Corporation (JFE Steel).

BHPBIO has lodged this application because it is concerned that certain aspects of the Joint Venture might breach the provisions of the *Trade Practices Act 1974* (Cth) (TPA) which prohibit anti-competitive conduct.

It has sought authorisation to make and give effect to the combination of contracts (the Transaction Documents) which may have the purpose, effect or likely effect of substantially lessening competition (A90982). It has also sought authorisation for the provisions in the Transaction Documents which may be exclusionary provisions to the extent that they require certain participants to supply specified quantities of iron ore to other participants (A90981).



It has also sought authorisation for practices under the Transaction Documents that may constitute exclusive dealing, including minimum purchase requirements, restrictions upon re-supply and supply being conditional on the purchaser acquiring iron ore from other suppliers (A90983).

### **Authorisation**

The ACCC is the Australian Government agency responsible for administering the TPA. A key objective of the TPA is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in a greater choice for consumers in price, quality and service.

The TPA, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft determination for comment.

Further information regarding the authorisation process is available from the ACCC's website: [www.accc.gov.au](http://www.accc.gov.au).

### **The applications**

In summary the arrangements under the JW4 Joint Venture secure a long-term export trading relationship with a purchaser of iron ore in Japan and extend the life of the mining operations situated at the Yandi mining area through the expansion of the current mining operations in that location.

The object of the JW4 Joint Venture is to operate a mine for the extraction of iron ore, for export to Japan.

Authorisation is sought for the combination of contracts (collectively known as the Transaction Documents) being:

- the JW4 Joint Venture Agreement entered into on 21 July 2005 between BHP Billiton Minerals Pty Ltd (BHPBM), ITOCHU Minerals & Energy of Australia Pty Ltd (IMEA), Mitsui Iron Ore Corporation Pty Ltd (MIOC) and JFE Steel Australia (YD) Pty Ltd (JFE) (the JW4 Participants)
- the Management Agreement between the JW4 Participants and BHPBIO entered into on 21 July 2005
- the Sub-lease from BHPBM, MIOC and IMEA (Yandi Participants) to the JW4 Participants for the purpose of carrying out the activities of the JW4 Joint Venture, entered into on 21 July 2005

- the Deeds of Cross Charge entered into by each of the JW4 Participants securing all moneys which each participant may become liable to pay to the manager and/or any other JW4 Participant in favour of each other, entered into on 21 July 2005
- the Domestic Sales Agreements between each of the JW4 Participants and the Yandi Participants entered into on 21 July 2005 under which each of the JW4 Participants separately agree to sell their share of the iron ore produced by the JW4 Joint Venture to the Yandi Participants
- the Export Sales Agreements entered into on 21 July 2005 between:
  - BMAG, MIOC and IMEA (as vendors of finished iron ore products produced on behalf of the participants in the Yandi Joint Venture (Yandi Vendors)) and JFE Steel
  - BMAG, IMEA and MII (as vendors of finished iron ore products produced on behalf of the participants in the Mount Newman Joint Venture (Newman Vendors)) and JFE Steel
  - BMAG, IMEA and MIOC (as vendors of finished iron ore products produced on behalf of the participants in the Mount Goldsworthy Mining Associates Joint Venture (Goldsworthy Vendors)) and JFE Steel.
- the Deed of Undertaking entered into on 21 July 2005 between BMAG, IMEA, MII, MIOC and JFE, pursuant to which procedures are set out for the calculation of the aggregate quantity of products that JFE Steel will purchase annually pursuant to the Export Sales Agreements
- the Novation Agreement between BHPBIO in its capacities as agent for both the JW4 and Yandi Joint Ventures, and Henry Walker Eltin (HWE), which novates the current contract for various services in relation to the Yandi mining operations.

Further details on the agreements are contained in BHPBIO's applications, supporting submission and non-confidential attachments which are available from the ACCC's website: <http://www.accc.gov.au/content/index.phtml/itemId/709776>

### **Request for submissions on applications for authorisation**

As a potentially interested party you are invited to make a written submission to the ACCC regarding the likely public benefits and effects on competition of the arrangements for which authorisation is sought.

In support of its application, BHPBIO claims that the JW4 Joint Venture will result in a range of public benefits, including:

- increased employment and investment, particularly in the remote regions of north-western Western Australia
- the opportunity for Australian industry to secure long-term structured transactions ahead of other international competition
- increased efficiencies, export-revenue and government royalties

- key long-term commercial benefits to the Australian industry and the economy by encouraging long-term relationships based on mutual trust, friendship and understanding between key participants in the Japanese steel industry and a key Australian export market.

BHPBIO also claims that there is no public detriment arising from the proposed arrangements. It states that the agreements relate almost entirely to the export segments of the market and there will be little, if any, effect on competition in any domestic market.

To assist the ACCC in its consideration of the application it would be helpful to obtain your comments on BHPBIO's claims. Please note, the ACCC recommends that you access a copy of the supporting submission before making your own submission.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be treated as confidential and not placed on the public register. If confidentiality is granted in respect of information the ACCC may take it into account, even though not publicly available. Guidelines for seeking confidentiality are attached (Attachment A).

If you wish to lodge a submission, please address your submission to:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Submissions can also be lodged by email to: [david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)

Please ensure that your submission reaches the ACCC by **cob Friday 28 October 2005**. If you do not intend to make a submission but are still interested in receiving further correspondence in relation to the applications for authorisation, I would appreciate you providing an email address.

Should you have any queries or if you wish to discuss any aspect of the applications for authorisation please contact David Hatfield on (02) 6243 1266.

A copy of this letter will be placed on the public register.

Yours sincerely



Scott Gregson  
General Manager  
Adjudication Branch

## ATTACHMENT A

### GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the ACCC assesses applications for authorisation is very public, transparent and consultative. The *Trade Practices Act 1974* (TPA) requires the ACCC to maintain a public register in respect of authorisation applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The ACCC is required under the TPA to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the ACCC may still grant confidentiality where, in the ACCC's view, it is desirable to do so.

The ACCC also has the discretion, under s89 of the TPA, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The ACCC expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the ACCC:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the ACCC deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the ACCC denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the ACCC will specify a period in which they can request the return of such material. Upon response, the ACCC will return the original material and destroy all associated copies. The ACCC will not consider this material when reaching its decision.

If the ACCC does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the ACCC pursuant to its powers generally under the TPA.