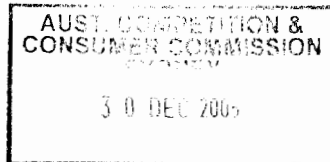


# MALLESONS STEPHEN JAQUES



FILE No:
DOC:
MARS/PRISM

Mr Scott Gregson  
General Manager, Adjudication  
Australian Competition & Consumer Commission  
470 Northbourne Avenue  
Dickson ACT 2602

30 December 2005

Dear Mr Gregson

## **BHP Billiton Iron Ore Pty Ltd - Exclusive Dealing Notification**

### **1 Introduction**

We act for BHP Billiton Iron Ore Pty Ltd ("**BHPBIO**") in this matter.

We enclose a notification in respect of conduct which may fall within the scope of the exclusive dealing provisions of the *Trade Practices Act 1974 (Cth)* ("**TPA**").

Because the notification includes confidential information in its Annexure, we have provided a confidential and non-confidential version of the notification. The non-confidential version may be placed on the Commission's public notifications register, but we ask that the confidential version not be included on that register.

### **2 Background**

BHPBIO is contemplating entering into three mining services contracts (**Mining Services Contracts**) with EWH Newman Mining Pty Ltd ("**HWE Mining**") - each dealing with a separate orebody. Under each proposed Mining Services Contract:

- BHPBIO will offer to supply certain goods and services under the Mining Services Contract (for the purpose of the performance of that contract) to HWE Mining;
- on the condition that:
- HWE Mining acquires goods and services necessary for the provision of mining services (including employees and equipment) from EWH Newman Services Pty Ltd ("**HWE Services**").

As HWE Mining and HWE Services are both subsidiaries of Leighton Contractors Pty Ltd ("**Leighton Contractors**"), the proposed conduct is being notified as a result of a very technical application of the third line forcing provisions of the TPA due to the possible broad interpretation of the provision of "services" under the Mining Services

Contract. The notified conduct will essentially take place between BHPBIO and two related companies which are subsidiaries of Leighton Contractors.

As set out in the notification, BHPBIO considers that the proposed conduct does not result in any diminution in competition, is a result of the technical application of the third line forcing provisions in the TPA and the conduct will result in a net public benefit, for the reason that the services to be provided under the arrangement by BHPBIO benefit HWE Mining under the Mining Services Contract.

Moreover, Leighton Contractors, the parent of the two related entities, has no objection to the notification or the proposed conduct.

### **3 The Notification**

We enclose the following:

- completed Form G in respect of the notification (in confidential and non-confidential versions); and
- cheque for \$100.00 being the relevant fee for lodgement of the notification.

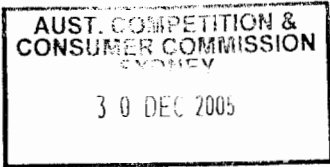
We note that confidentiality is claimed for the Confidential Annexure A to the Form G on the grounds that the information it contains is commercially confidential as goods and services provided under the Mining Services Contract. Given that this information is commercially sensitive, we request that Confidential Annexure A be excluded from the public register.

Please contact me if you wish to discuss this matter.

Yours sincerely



Dave Poddar  
Partner  
Direct line +61 2 9296 2281  
Email [dave.poddar@malleasons.com](mailto:dave.poddar@malleasons.com)



FORM G

Regulation 9

N31499

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 — Subsection 93(1)

EXCLUSIVE DEALING NOTIFICATION

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974 (“the Act”) of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1 (a) Name of person giving notice

BHP Billiton Iron Ore Pty Ltd (“BHPBIO”) (ACN 008 700 981).

(b) Short description of business carried on by that person

BHPBIO is a leading global resources and mining company.

(c) Address in Australia for service of documents on that person

C/-Dave Poddar
Partner
Mallesons Stephen Jaques
Level 60, Governor Phillip Tower
Sydney NSW 2000

2 (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Goods and services which are related to the provision of mining services, including (but not limited to):

- Explosives and explosive accessories;
fuel;
electricity;
water;
mining equipment;
provision of employee services; and
accommodation services.

(b) **Description of the conduct or proposed conduct:**

BHPBIO proposes to enter into three arrangements (“**Contracts**”) with EWH Newman Mining Pty Ltd (ACN 117 135 896) (“**HWE Mining**”), pursuant to which:

- BHPBIO will supply or offer to supply explosives, fuel, accommodation services and other goods or services related to the provision of mining services;
- on the condition that;
- HWE Mining acquires employees, equipment and/or mining services, together with any other necessary goods or services for the provision of mining services to be provided to BHPBIO, from EWH Newman Services Pty Ltd (ACN 117 136 053) (“**HWE Services**”).

The three Contracts each deal with a separate orebody, namely Yandi, Mining Area C and Orebody 25. All orebodies are located in the same region and utilise (to a greater or lesser extent) common infrastructure.

HWE Mining and HWE Services are currently both subsidiaries of Leighton Contractors Pty Ltd (ACN 000 893 667) (“**Leighton**”).

It is noted that in the future, it is possible that BHPBIO may exercise an option to acquire all of the shares in HWE Services, as a result of which HWE Services will cease to be a subsidiary of Leighton and will become a subsidiary or related entity of BHPBIO. If this were to occur, the Contract with BHPBIO may possibly continue in force with HWE Mining continuing to acquire the same services from HWE Services, although that entity will now be a subsidiary or related entity of BHPBIO.

More detailed information on the relevant goods and services which are the subject of this notification are set out in Confidential Annexure A.

**Reasons why the benefit to the public from the proposed conduct will outweigh any detriment to the public:**

The proposed conduct will not amount to a substantial lessening of competition in any of the relevant markets for the goods or services in question because:

- competition in the relevant markets for the relevant products and services is vigorous and intense. There are a number of other competing participants who are able to supply the goods and services which form the subject of this notification; and
- HWE Services is currently a related entity of HWE Mining and the Contracts do not lessen competition in any relevant market.

The proposed conduct will result in a net public benefit because:

- the additional commercial certainty for BHPBIO created by the arrangement will facilitate the entry into the Contracts by BHPBIO to the benefit of HWE Mining and Leighton in securing the work from BHPBIO. The additional commercial certainty arises because BHPBIO will have certainty as to the ultimate provider of mining services to BHPBIO; and
- it will allow BHPBIO to provide various goods or services to HWE Mining under the Contracts sourced by BHPBIO, thereby reducing transaction costs and enabling more efficient mining operations; and
- it will provide a source of appropriately skilled employees and equipment which will be made available to HWE Mining as part of subcontracting arrangements, such that the proposed conduct will allow HWE Mining to meet BHPBIO's needs more effectively, thereby improving the efficiency of the relevant mining operations.

For the reasons set out above, the proposed conduct will give rise to a net benefit to the public, which will outweigh any possible detriment which might be considered to arise.

In addition, it is noted that the proposed conduct amounts to a very technical application of the third line forcing provisions of the Act. The technical nature of the application is only reinforced by the fact that:

- currently, HWE Services and HWE Mining are related companies with a common parent, namely Leighton; and
- in the future, if BHPBIO exercises its option to acquire the shares in HWE Services, these companies will be related for the purposes of the Act.

If either HWE Services and HWE Mining or BHPBIO and HWE Services were not related companies but different business units within the same company, and they engaged in the conduct described in this notification, they would not be engaging in third line forcing conduct.

**3 (a) Class or classes of persons to which the conduct relates**

Consumers of goods and services related to mining which acquire, in particular, mining employee services and mining equipment.

**(b) Number of those persons —**

- (i) At present time: One
- (ii) Estimated within the next year: One

**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses**

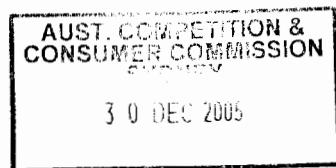
EWB Mining Pty Ltd, a subsidiary of Leighton, as follows:

Leighton Contractors Pty Limited  
472 Pacific Highway  
St Leonards NSW 2065

**4 Name and address of person authorized by the person giving this notice to provide additional information in relation to this notice**

Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 60, Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

Dated 30 December 2005



Signed on behalf of the person giving  
this notice



.....  
Dave Poddar  
Partner  
Mallesons Stephen Jaques

## DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
- 2 If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
- 3 In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
- 4 If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
- 5 In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
- 6 In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

## NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practice Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act ("the prescribed period") unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

**EXCLUDED FROM  
PUBLIC REGISTER**

**FORM G**  
Regulation 9

**CONFIDENTIAL ANNEXURE A**

[Confidential information removed]

**EXCLUDED FROM  
PUBLIC REGISTER**