

30 December 2005

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

FILE N
DOC:
MARS/PRISM:

Dear Sir

Exclusive dealing notification on behalf of EWH Newman Mining Pty Limited

1. Introduction

- 1.1 We act for EWH Newman Mining Pty Ltd (ACN 117 135 896) (**EWH Mining**).
- 1.2 We enclose a Form G notification in respect of conduct which could potentially fall within the scope of the exclusive dealing provisions of the *Trade Practices Act 1974 (Cth)* (**TPA**).
- 1.3 We understand that Mallesons Stephen Jaques will be lodging an application in relation to the same matter on behalf of their client, BHP Billiton Iron Ore Pty Limited (**BHPBIO**). In our view, both applications should be considered together.

2. Background to application

- 2.1 EWH Mining is proposing to enter into three mining services arrangements with BHPBIO (**Contracts**). Each of the three Contracts deal with the mining of separate orebodies in the Pilbara region of Western Australia.
- 2.2 Under each Contract, BHPBIO will supply certain goods and services to EWH Mining (for the purpose of performing the mining services under each Contract) on condition that EWH Mining acquire goods and services (including personnel and equipment) necessary to fulfil its obligations under the Contracts from EWH Newman Services Pty Ltd (**EWH Services**) (**Proposed Conduct**).
- 2.3 EWH Mining and EWH Services are both subsidiaries of Leighton Contractors Pty Ltd (ACN 000 893 667) (**Leighton Contractors**). The Proposed Conduct, therefore, will essentially be as between BHPBIO and two related subsidiaries of Leighton Contractors.
- 2.4 In view of the relationship between EWH Mining and EWH Services, the Proposed Conduct is being notified on the basis of a technical reading of the third line forcing

provisions in the TPA – namely, the potential to interpret the term 'services' to be provided under each Contract on a very broad basis.

- 2.5 EWH Mining does not consider that the Proposed Conduct will result in any lessening of competition and, as noted, the notification is made purely on the basis of a technical application of the third line forcing provisions in the TPA.
- 2.6 Further, EWH Mining believes the Proposed Conduct will result in a net public benefit. BHPBIO will be provided with greater certainty in the provision of services for the three orebodies under each Contract.
- 2.7 EWH Mining's and EWH Services' parent company, Leighton Contractors, does not object to the Proposed Conduct.

3. Form G Notification

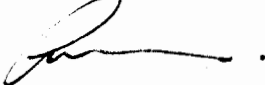
3.1 We have enclosed the following in respect of this notification:

- (a) a completed Form G notification in respect of the Proposed Conduct; and
- (b) a cheque in the amount of \$100.

3.2 You will note that the notification refers to, and claims, confidentiality in respect of Annexure A to the Form G notification (**Confidential Annexure A**). Confidentiality in respect of the document is claimed on the basis that the information contained in the annexure is commercially sensitive and confidential as goods and services provided under the Contracts. Would it please be possible to exclude Confidential Annexure A from the public register.

Thank you for your assistance. Should you have any queries in relation to the above letter or enclosed Form G application, please do not hesitate to contact Goran Galic on (08) 9429 7613.

Yours faithfully
MINTER ELLISON



Contact: Goran Galic Direct phone: +61 8 9429 7613
Email: goran.galic@minterellison.com
Partner responsible: Peter Doherty Direct phone: +61 8 9429 7495
Our reference: GNG:CCP 60-1267376

enclosure

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

N31498

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

EWH Newman Mining Pty Ltd ACN 117 135 896 (**EWH Mining**).

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

EWH Mining is a provider of mining and processing services.

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

c/-Goran Galic
Senior Associate
Minter Ellison
Level 49, Central Park
152-158 St Georges Terrace
Perth WA 6000

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:

EWH Mining is proposing to enter into three mining services arrangements with BHP Billiton Iron Ore Pty Limited (**BHPBIO**) (**Contracts**).

Each of the three Contracts deals with a separate orebody in the Pilbara region of Western Australia – namely, Yandi, Mining Area C and Orebody 25. All three orebodies are located in the same region and utilise substantially common infrastructure.

Under each Contract:

- BHPBIO will supply certain goods and services to EWH Mining for the purpose of performance of the relevant Contract (**BHPBIO Goods and Services**); and
- the BHPBIO Goods and Services will be supplied to EWH Mining on condition that EWH Mining acquire goods and services necessary for the fulfilment of the obligations under the relevant Contract (including employees and equipment) from EWH Newman Services Pty Ltd (**EWH Services**) (**Proposed Conduct**).

Each of EWH Mining and EWH Services are subsidiaries of Leighton Contractors Pty Limited ACN 000 893 667 (**Leighton Contractors**).

It is noted that in the future, it is possible that BHPBIO may exercise an option to acquire all of the shares in EWH Services, as a result of which EWH 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 EWH Mining continuing to acquire the same services from EWH Services, although that entity will now be a subsidiary or related entity of BHPBIO.

[Further details 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:

In EWH Mining's view, 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
- as noted, EWH Services is a related entity of EWH Mining and the Contracts do not lessen competition in any relevant market.

Further, EWH Mining is of the view that the Proposed Conduct will result in a net public benefit because:

- the arrangement will give commercial certainty to BHPBIO as to the ultimate provider of mining services to BHPBIO. This certainty will thereby facilitate the entry into the Contracts by BHPBIO to the benefit of EWH Mining and Leighton Contractors in securing the work from BHPBIO;
- it will allow BHPBIO to provide various goods or services to EWH Mining under the Contract sourced by BHPBIO in a manner which reduces transaction costs and enables more efficient mining operations; and
- it will provide a source of appropriately skilled employees and equipment which will be made available to EWH Mining as part of subcontracting arrangements. As such, the Proposed Conduct will allow EWH Mining to meet BHPBIO's needs more effectively, thereby improving the efficiency of the relevant mining operations.

IN EWH Mining's view, the net benefit to the public of the Proposed Conduct (as outlined above) 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, which is reinforced by the fact that:

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

If either EWH Services and EWH Mining or BHPBIO and EWH Services were not related companies but different business units within the same company, and they engaged in the Proposed 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**

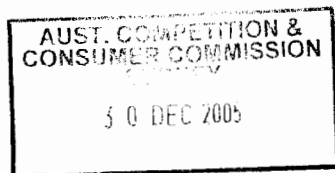
EWH Mining Pty Ltd, a subsidiary of Leighton Contractors, as follows:

Leighton Contractors Pty Ltd
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**

Goran Galic
Senior Associate
Minter Ellison
Level 49, Central Park
152-158 St Georges Terrace
Perth WA 6000

Dated 30 December 2005



Signed on behalf of the person giving this
notice

.....
Gary Ulman,
Partner
Minter Ellison Sydney
signed for and on behalf of

Peter Doherty
Partner
Minter Ellison Perth

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**

CONFIDENTIAL ANNEXURE A

**EXCLUDED FROM
PUBLIC REGISTER**