



**Australian
Competition &
Consumer
Commission**

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Our Ref: N31498
Contact Officer: Tim Scott
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10 January 2006

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

Dear Mr Galic,

EWH Newman Mining Pty Ltd: Notification of Third Line Forcing Conduct and Claim for Confidentiality (N31498)

I refer to the above third line forcing notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 30 December 2005, and the claim for confidentiality in respect of some of the information provided in the notification.

Confidentiality

In relation to the information for which confidentiality was sought, I consider sufficient public information has been provided to enable a proper assessment of the notification. Noting your concerns, as a person authorised to make a decision for and on behalf of the ACCC in relation to such a request, I advise that the information for which confidentiality was sought has been excluded from the public register.

Notification

As you would be aware, legal immunity provided by the notification will commence on 13 January 2006.

The notification details three proposed arrangements whereby BHP Billiton Iron Ore Pty Ltd (“BHPBIO”) will enter into mining services contracts with EWH Newman Mining Pty Ltd (“EWH Mining”) in each of which BHPBIO will offer to supply



EWH Mining with goods and services related to the provision of mining services on condition that EWH Mining acquires goods and services (including employees and equipment) necessary for the provision of mining services from EWH Newman Services Pty Ltd ("EWH Services"), a related company of EWH Mining.

As EWH Mining does not appear to be the party engaging in the proposed third line forcing conduct, it is questionable whether it was necessary for it to lodge a notification. The notification process provides protection for the party which proposes to engage in the proscribed conduct. Nevertheless, the ACCC is proceeding to consider the notification

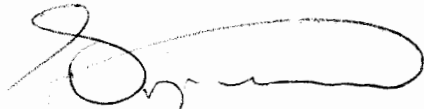
The notification provides sufficient detail regarding the goods and services that BHPBIO will provide to EWH Mining under each of the proposed contracts. However, it does not provide details of the "mining services" that EWH Mining will provide to BHPBIO. In addition, the notification describes the goods and services that EWH Mining must acquire from EWH Services as "employees, equipment and/or mining services, together with any other necessary goods and services for the provision of mining services".

To aid the ACCC's assessment of the notification, I ask that EWH Mining provide more detailed descriptions of:

- the services that it will provide to BHPBIO; and
- the goods and services (including employees) that it must acquire from EWH Services as a condition of BHPBIO supplying goods and services under the terms of the contracts.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Tim Scott on (02) 6243 1221.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch