



Department of Treasury and Finance  
Government of Western Australia

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Ms Teresa Nowak  
Acting Director Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Ms Nowak

**NORTH WEST IRON ORE ALLIANCE – APPLICATION FOR  
AUTHORISATION – INTERESTED PARTY CONSULTATION**

Thank you for the opportunity to make a submission on this matter. For your information, this letter has been drafted jointly by the Western Australian Departments of Treasury and Finance, Transport and State Development (the Departments).

Third party access to the iron ore railways in the Pilbara is a long held policy objective of the State that was incorporated in the original iron ore State Agreement Acts from the 1960's. However, to date no independent third party has been successful in gaining access to the Pilbara railways.

It is acknowledged that the North West Iron Ore Alliance (NWIOA) is seeking authorisation to collectively negotiate on behalf of the participants with BHP Billiton (BHPB), Rio Tinto (Rio) and Fortescue Metals Group (FMG) on the terms and conditions under which access would be provided. The Departments support the NWIOA application for interim authorisation.

Permitting the NWIOA to collectively negotiate with infrastructure providers may give the represented "junior" firms greater negotiating power, helping to improve the balance between the parties and resulting in a greater probability of access being achieved. This will apply even more so if the proposed iron ore production joint venture between BHPB and Rio proceeds.

Third party access to the Pilbara iron ore railways will ensure economically efficient use of the Pilbara railway infrastructure. Furthermore, access would be beneficial for the Western Australian economy, and the Australian economy as a whole, as it would promote the viability of more mining operations and hence facilitate a greater volume of iron ore exports from a wider range of sources. It does not necessarily follow that existing iron ore producers will lose market share to those entities that gain access. The output of any firm that gains access is likely to substitute for output from less efficient producers in the global iron ore market.

The desired outcome from these collective negotiations is the achievement of an effective access regime. Part IIIA of the *Trade Practices Act 1974* indicates that a regime can be deemed to be effective if it is approved by either the ACCC (for an access undertaking) or the National Competition Council (NCC) (for a State-based (legislated) access regime). If the NWIOA is able to agree a framework for access with an infrastructure provider, it would be best practice for the framework to be submitted to the ACCC (or the NCC) for approval. This regulatory scrutiny is essential to ensure that any access framework agreed by the parties balances their legitimate business interests, facilitates the economically efficient operation of the infrastructure and is generally in the public interest.

The ACCC must also ensure that granting an interim authorisation to the NWIOA does not preclude or hinder any third party that is not represented by the NWIOA from negotiating access arrangements with an Infrastructure provider (it is acknowledged that this issue is less likely to arise for FMG's railway infrastructure as it is covered by the *Railways (Access) Act 1998 (WA)* and the *Railways (Access) Code 2000 (WA)*, which prohibit conduct that would hinder or prevent access).

It would be appreciated if the Departments could be kept informed on the progress of this issue. The relevant contacts are:

- Department of Treasury and Finance - Ms Kim Woods, Senior Policy Research Officer (email: [Kim.Woods@dtf.wa.gov.au](mailto:Kim.Woods@dtf.wa.gov.au));
- Department of Transport – Mr Bruce Chan, Director Land Transport Policy (email: [Bruce.Chan@transport.wa.gov.au](mailto:Bruce.Chan@transport.wa.gov.au)); and
- Department of State Development – Mr Jason Banks, Senior Adviser (email: [Jason.Banks@dsc.wa.gov.au](mailto:Jason.Banks@dsc.wa.gov.au)).

Yours sincerely



Michael Court  
A/EXECUTIVE DIRECTOR  
ECONOMIC

11 February 2010