

6 May 2010

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BY EMAIL: Teresa.Nowak@acc.gov.au

Ms Teresa Nowak
Adjudication Branch
Australian Competition and Consumer Commission

Dear Ms Nowak

Draft Determination in relation to the Applications for Authorisation lodged by Rio Tinto Aluminium and Ors - A91205, A91206, A91207

We refer to the Draft Determination in relation to the Applications for authorisation lodged by Rio Tinto Aluminium and Ors issued on 22 April 2010 (**Draft**).

This submission is made on behalf of the Applicants in response to the Draft.

Counterfactual

At paragraph 4.30 of the Draft, the ACCC sought further submissions on the likely counterfactual.

As stated in the Applicants' submission in support of the Applications for authorisation, the amended GPS Agreements have been executed by the parties but the amendments will not take effect unless and until the amendments are authorised by the ACCC and approved by the AER pursuant to Rule 9.34.6 of the *National Electricity Rules (NER)*.¹

Should the ACCC not grant authorisation, the GPS Agreements will continue for the time being in their unamended form. However, as some of the provisions of the Interconnection and Power Pooling Agreement (**IPPA**) are incompatible with the operation of National Electricity Market, clause 25.16 of the IPPA will be enlivened.

¹ Submission in support of the Applications, 24 December 2009, page 6.

The Commission will note that Clause 25.16 only applies to the provisions of the IPPA which 'cannot prevail' over the rules relating to the NER. Accordingly it is likely that an arrangement agreed or determined under clause 25.16 and clause 34 would be narrower in its ambit than the amendments presently before the Commission. In addition, there is no guarantee that clause 25.16 and clause 34 would produce a similar outcome to that proposed by the present amendments. For example it would be possible, under the clause 25.16 process, for a party to contend for an outcome which was less flexible than that presently proposed to the Commission. Beyond that, it is difficult to predict the outcome of such a process with any certainty.


Factual amendment

Annexure A to the Submission in support of the Applications the subject of the Draft identified the parent entities of Ryowa II GPS Pty Limited ACN 063 780 058 (**Ryowa II**) as Mitsubishi Corporation and Mitsubishi Materials Corporation. We are instructed that Mitsubishi Materials no longer has any interest in Ryowa Development II Pty Ltd, the holding company of Ryowa II. Ryowa Development II Pty Ltd is now wholly owned by Mitsubishi Corporation.

If you have any questions or require any further information, please contact Margaret Brown on (07) 3119 6388.

Yours faithfully

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