

Our Ref: 49807  
Contact Officer: Natalie Plumridge  
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**Australian  
Competition &  
Consumer  
Commission**

22 April 2015

Barry Fitzgerald  
Chief Executive Officer  
Roy Hill

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**CC:** [bill.hart@royhill.com.au](mailto:bill.hart@royhill.com.au)

Dear Mr Fitzgerald

**Re: Notification N96171 submitted by Pilbara Ports Authority  
(formerly the Port Hedland Port Authority)**

Thank you for your letter dated 5 March 2015 and subsequent telephone discussion between Bill Hart, Andrew Barclay and Australian Competition and Consumer Commission (ACCC) staff on 24 March 2015 in relation to the above notification lodged by the Pilbara Ports Authority (PPA) with the ACCC on 24 September 2012 (the Notification).

The Notification lodged by PPA relates to third line forcing conduct and broadly has the effect of requiring port users at the Port of Port Hedland to use the towage services provided by BHP Billiton Minerals Pty Limited.

You raise concerns with the process being conducted by the PPA to facilitate a second towage operator at the Port of Port Hedland (Port). In particular, you are concerned that, following the withdrawal of Svitzer Australia from the process, there is now no competitive tension in the process, and, in relation to price, that the costs of towage services may increase following the introduction of a second licensee into the Port.

Accordingly, you request that the ACCC require that the PPA:

1. recommence the process for the issue of a second towage licence
2. involve the users of the Port in the negotiation of the terms and conditions of any licence issued to a second operator for the Port, and the terms and conditions of any interface agreement to be executed by the PPA and the two operators at the Port
3. obtain an undertaking from Fortescue Metals Group Ltd, if it is granted the second towage licence, that the price of the services charged will not exceed the current price charged by BHP Billiton (Towage Services) Pty Ltd, and
4. to explain to all port users how the correct amount of towage capacity will be determined for the Port, how that capacity will be allocated between operators, and how the operators will interface with each other.

The ACCC made a decision on 19 December 2013 to allow the Notification to stand. At the time the ACCC made its decision, the PPA committed to providing the ACCC with regular updates on the process to seek a second provider of towage services at the Port. In its Statement of Reasons, the ACCC considered that if the Port is capable of efficiently supporting more than one operator, competition would be likely to deliver benefits by way of lower (or more efficient) prices than would be the case with only one provider. The ACCC maintains this view.

In relation to your specific requests for the ACCC to impose requirements on the PPA, as discussed in the meeting of 24 March 2015, the ACCC's role under the notification provisions of the *Competition and Consumer Act 2010* does not extend to imposing such requirements. The ACCC's role in relation to the Notification is to assess the Notification and it may revoke a notification if it is satisfied that the likely public benefit will not outweigh the likely public detriment from the conduct. If this test is not satisfied, the notification will be allowed to stand. The ACCC may reassess the Notification at any time. The notification provisions of the Competition and Consumer Act do not allow the ACCC to impose conditions on the notifying party or other parties.

I appreciate the concerns you have raised in relation to this matter and the time taken to discuss those concerns with the ACCC. The ACCC is continuing to monitor the progress of the towage procurement process at the Port and encourages Roy Hill to contact the ACCC should you have any further concerns.

This letter has been placed on the ACCC's public register.

Should you have any queries in relation to this matter, please do not hesitate to contact me on 02 6243 1132 or Natalie Plumridge on 03 9658 6523.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized initial 'R' followed by a long horizontal line.

Dr Richard Chadwick  
General Manager  
Adjudication