



bhpbilliton

**President - Iron Ore
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30 December 2005

Mr John Feil
Executive Director
National Competition Council
Level 9 / 128 Exhibition Street
Melbourne VIC 3000 Australia

Dear Mr Feil,

Re: FMG Part IIIA Declaration Application

I refer to the Council's Draft Recommendation of 4 November 2005 and BHP Billiton Iron Ore's Outline of Principal Submissions dated 5 December 2005.

I now attach Further Submissions by BHPBIO in response to the Draft Recommendation. These Further Submissions contain information that has only been obtained since the Council published its Draft Recommendation, as well as matters that we have only been able to develop in the time that has elapsed since that date. The Further Submissions address the following issues.

Junior explorers

In its Draft Recommendation, the Council made a number of critical findings in relation to the nature of, and potential for competition in, the market for iron ore tenements and the market for rail haulages services. In reaching these conclusions, the Council indicated that it had relied upon submissions provided to it by "junior iron ore explorers".

BHPBIO notes the following considerations in relation to the Council's reliance on those submissions:

- junior explorers had ample opportunity to provide submissions to the Council in response to its Issues Paper dated 11 March 2005. No junior explorer, however, appears to have provided any submission by the extended due date of 3 June 2005 and any such submission has not been made public (while the submissions of other stakeholders have been made public);
- the first time that BHPBIO became aware that junior explorers had made submissions and that the Council had relied upon those submissions in reaching its conclusions was at the time the Draft Recommendation was published (4 November 2005). That is, no party had any opportunity to respond to or test the submissions of the junior explorers

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prior to the Council publishing its Draft Recommendation, meaning that the Council has relied upon untested and private submissions with no transparency in relation to the information in those submissions; and

- in light of the substantial consequences of declaration for BHPBIO, BHPBIO requested that the Council provide it with further details about the junior explorers. The Council declined to meet this request and has withheld the identity and submissions of the junior explorers.

Accordingly, BHPBIO has been given only four weeks in which not only to respond to all of the complex issues raised in the Council's Draft Recommendation, but to investigate, without any guidance, the identities of the junior explorers and the nature and tenure of their projects in order to provide the Council with adequate and appropriate information in response to these explorers' unpublished submissions.

In light of the above and to ensure that the Council has correct and sufficient information before it prior to making its Final Recommendation, BHPBIO now supplements section 3 of its Outline with the following material:

- an analysis of junior explorers with iron ore tenements that are sufficiently close to the Mt Newman Line as to be affected by declaration; and
- an independent report from Statewide Tenement & Advisory Services Pty Ltd in relation to the likely effect of declaration on the market for iron ore tenements.

Diseconomies from third party access

Paragraphs 2.22 and 2.31-2.45 of BHPBIO's Outline describe the direct impacts and diseconomies of scope that are likely to be imposed upon BHPBIO in the event of third party access to the Mt Newman Line. To date the Council has failed to recognise these significant costs.

In order to ensure that the Council has before it correct and sufficient information on the significant costs of third party access (relevant both to the consideration of criterion (b) and criterion (f) in the Council's Draft Recommendation) prior to making its Final Recommendation, BHPBIO now provides the Council with copies of the four recently sworn affidavits which have been filed in Federal Court Proceeding VID 1641 of 2004. These affidavits contain material to a level of detail which was not previously available, but which bears significantly on the costs of third party access.

Effect of protected contractual rights and the RTA

BHPBIO refers to paragraphs 1.2 and 3.31 to 3.34 of its Outline and provides further information to the Council in respect of the effect of protected contractual rights on the promotion of competition in dependent markets and the effect of the RTA on BHPBIO's ability to exercise any alleged market power to affect competition in those markets adversely.

These Further Submissions and the annexures to them include some information that is confidential to BHPBIO. The relevant information is marked as confidential in the Further Submissions and annexures, and is provided to the Council on the basis that it does not make

that information available to any other person or organisation without the permission of BHPBIO.

BHPBIO trusts that the Council will consider this Further Submission in making its Final Recommendation and reviewing the conclusions reached in its Draft Recommendation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G.P. Hunt', written in a cursive style with a large loop at the end.

Graeme P Hunt

President Iron Ore