



Fortescue Metals Group Ltd

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Media Release

High Court rail victory for Fortescue

Perth: September 24, 2008: Fortescue Metals Group (“Fortescue” “ASX:FMG”) has moved one step closer to negotiating third party rail access to the BHP Billiton Iron Ore’s Mt Newman and Goldsworthy rail lines, after the High Court today ruled the rail track services provided by the railways are not excluded, by the 'production process' exemption, from coverage under Part IIIA of the Trade Practices Act.

“This is a great victory for Fortescue,” said Fortescue Executive Director Operations Graeme Rowley. “But it has been a long running saga and an unnecessary waste of significant time and money that could have easily been avoided if BHP Billiton Iron Ore (BHPBIO) had simply agreed to negotiate rail access on commercial terms.

“Arguments that this is a disincentive to rail investment and, as a result, no-one will do it are rubbish. Fortescue has done it. We have built a railway under conditions of open access and negotiated access can provide both parties with a superior outcome compared to a regulated regime and that has always been our goal” Mr Rowley said.

The unanimous High Court ruling upholds previous decisions by the Federal Court and the Full Federal Court on the issue. Fortescue applied to declare the Newman railway line in 2004.

As a result of the High Court ruling, the decision on whether the Mt Newman railway should be declared now rests solely with the Australian Competition Tribunal. The Tribunal is currently receiving submissions from the parties and is expected to hear the matter around March/April next year.

If the Australian Competition Tribunal rules that the Newman line should be declared, BHPBIO will be compelled to negotiate third party access terms with Fortescue.

“Efficient, third party railway access will enable companies to utilise the vast natural resources located in the Pilbara to generate economic and social benefits for the region, Western Australia and Australia.”

“It will avoid the stranding of assets or the imposition of unnecessary duplication costs and inflation, which costs smaller miners, costs the state and ultimately costs the community. Today’s ruling is not only a win for economic and social development, it is also a win for commonsense,” Mr Rowley said.

The High Court decision also overturned the 1999 decision in *Hamersley Iron Pty Ltd v National Competition Council* where the Federal Court found that the 'production process' exemption applied to exclude the Hamersley railway from coverage under Part IIIA.

Today’s decision also has application for the Goldsworthy, Robe River and Hamersley declaration applications and “Fortescue is hopeful that today’s decision will encourage early commercial access negotiations on these lines, rather than another unnecessary and expensive legal exercise,” Mr Rowley said.

The New Force in Iron Ore

In June the National Competition Council released a draft recommendation to declare those lines. Its final recommendation (which is confidential until Treasurer Wayne Swan releases his decision on the matter) has been presented to Mr Swan for his decision.

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About Fortescue Metals Group Ltd:

Fortescue Metals Group Ltd is the New Force in Iron Ore, with over 4.2 billion tonnes of resources, including 1.562 billion tonnes of reserves, already delineated from less than 20% of its 40,000 square kilometres of tenements, the largest holding in the Pilbara – refer announcement dated 31 May 2006 for JORC classification details.

The company has been developing The Pilbara Iron Ore and Infrastructure Project since mid-2003 and commenced shipping ore from Port Hedland in mid May 2008. It achieved project completion in mid July 2008. The company has off-take commitments for its entire initial production target of 55 million tonnes of iron ore per annum and has accumulated commitments for additional expansion tonnages of some 100 million tonnes per annum.

Fortescue has successfully completed two major capital raisings with A\$504 million of equity raised in July 2007 and A\$3.3 billion through a combination of debt and equity, raised in August 2006.

Fortescue is listed on the Australian Stock Exchange under the code FMG and is included in the S&P/ASX 100 and MSCI Asia-Pacific indices.

For more information on Fortescue, visit www.fmgl.com.au.