



Fortescue welcomes unanimous High Court decision to uphold rail access appeal

Perth, September 14, 2012: PERTH, 14 September: Fortescue Metals Group (Fortescue) welcomes today's decision by the High Court of Australia to remit its rail access application back to the Australian Competition Tribunal (ACT) for fresh consideration. Fortescue is confident that upon remittal the ACT will declare the relevant railways for third party access.

The High Court upheld Fortescue's appeal against the decision of the Full Federal Court that Fortescue and other third parties could not gain access to Pilbara rail lines operated by Rio Tinto.

The decision does not affect Fortescue's current expansion plans, which utilise the company's existing rail infrastructure.

It is a most welcome development in Fortescue's long running battle for third party access to essential infrastructure in the Pilbara.

The High Court ruling requires the ACT to make a fresh decision in Rio Tinto's appeal against the decision by the Federal Treasurer Wayne Swan in 2008 when he declared Rio Tinto's Hamersley and Robe railway lines for a period of 20 years to 2028.

In an earlier decision, the ACT had determined that Fortescue could not have access to the Hamersley line and that access to the Robe line would be limited to a period of 10 years to 2018.

Fortescue first made application to the National Competition Council under Part IIIA of the Trade Practices Act (now the Competition and Consumer Act 2010) for a recommendation that the Hamersley railway line be declared in November 2007. A further application was made in respect of the Robe railway in January 2008.

In today's decision the High Court has settled the interpretation of the two key principles for declarations for access to infrastructure, criteria (b) and (f) under section 44H(4) of the Act. Under these provisions, third party access can be granted if it is uneconomical for anyone to develop another facility (criterion (b)) and access to the service would not be contrary to the public interest (criterion (f)).

While the High Court did not accept Fortescue's submissions that the appropriate test for criterion (b) was a social test, the company is confident that the evidence will support a declaration based on the High Court's preferred private profitability test.

Fortescue Chief Executive Officer Nev Power said that this was a welcome development in the long running battle for access and Fortescue would put a strong case to the ACT that the Treasurer's declarations should stand.

"We remain committed to the principle of third party access and are proud to operate our own railway on an open access basis carrying third party ore." Fortescue transports iron ore on behalf of BC Iron, its 50/50 JV partner in the Nullagine Joint Venture.

Mr Power said that third party rail access would help smaller miners to develop deposits without duplicating expensive and unnecessary rail infrastructure to generate export revenue for Australia.

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