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NO.

FORTESCUE METALS GROUP'S APPLICATION FOR DECLARATION OF SERVICES PROVIDED BY THE MOUNT NEWMAN RAILWAY LINE OWNED BY THE MOUNT NEWMAN JOINT VENTURE (THE MT NEWMAN SERVICE)

On 13 June 2004, Fortescue Metals Group applied to the National Competition Council (NCC) for declaration of the Mt Newman Service owned by the Mount Newman Joint Venture in the Pilbara region of Western Australia. The application was made pursuant to Part IIIA of the *Trade Practices Act 1974* (TPA).

On 24 March 2006, the NCC delivered its final recommendation. Subsection 44H(9) of the TPA provides that:

If the designated Minister does not publish under subsection (7) within 60 days after receiving the declaration recommendation, the designated Minister is taken, at the end of that 60-day period, to have decided not to declare the service and to have published that decision not to declare the service.

As the 60 day period has now expired, by operation of the statute, it is taken that a decision not to declare has been taken and published.

Subsection 44K(2) of the TPA further provides that:

If the designated Minister decides not to declare a service, an application in writing for review of the designated Minister's decision may be made by the person who applied for the declaration recommendation.

An application for review must be made within 21 days after publication of the designated Minister's decision (s44K(3)) and the review by the Australian Competition Tribunal is a re-consideration of the matter (s44K(4)).

I do not propose to provide any additional comment on this matter, which may be subject to further review processes.

The NCC's final recommendation is available on the NCC's website (www.ncc.gov.au).

CANBERRA
23 May 2006

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