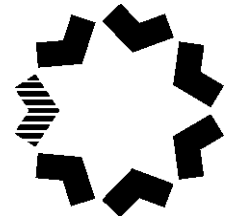


# National Competition Council

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**MEDIA RELEASE**

**4 November 2005**

## **National Competition Council Releases draft recommendation on declaration of West Australia's Mt Newman Railway**

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The National Competition Council (NCC) today released a draft recommendation that the service provided by BHP Billiton's Mt Newman railway line be declared under Part IIIA of the *Trade Practices Act 1974*.

A final decision to declare the service would provide Fortescue Metals Group Limited (FMG) and other third parties with a legally enforceable right to negotiate access to the Mt Newman railway line.

Today's draft recommendation will be followed by a further public submissions period before the Council makes its final recommendation to the designated Minister, the Hon. Chris Pearce, Parliamentary Secretary to the Australian Government Treasurer. The Minister will decide whether or not to declare the service and has 60 days in which to do so.

### **A decision to declare the Mt Newman service will not automatically result in FMG gaining access.**

A decision by the Minister to declare the Mt Newman service will entitle FMG to seek access either through an agreement negotiated with BHP Billiton or, in the absence of an agreement, through arbitration by the Australian Competition and Consumer Commission (ACCC). The ACCC has the power to impose access terms, or refuse access if it finds that BHP Billiton cannot be appropriately compensated for the costs associated with providing access to its Mount Newman facility.

Today's draft recommendation is in response to an FMG application, received by the Council in June 2004, seeking declaration of 295 kilometres of the Mt Newman railway line running from Mindy Mindy, in the Pilbara, to Port Hedland. FMG seeks declaration of the railway and related infrastructure only – declaration would not give access to BHP Billiton's locomotives and ore cars.

BHP Billiton, as provider of the Mt Newman service, has opposed FMG's application.

Where access to essential infrastructure is necessary to compete in markets that depend on the infrastructure, and it is uneconomical to duplicate the infrastructure, an organisation may apply to the Council to declare the service under Part IIIA of the *Trade Practices Act 1974*.

Part IIIA of the *Trade Practices Act 1974* recognises that failure to enable a third party to access privately or government owned essential infrastructure can pose a bottleneck that impacts adversely on competition in other markets.

## The Draft Recommendation

In making a draft recommendation to declare the Mt Newman railway, the Council must be satisfied that a service (in this case access to the Mt Newman railway) meets all of the following criteria outlined in the *Trade Practices Act 1974*:

- a) That access (or increased access) to the service would promote competition in at least one market (whether or not in Australia) other than the market for the service
- b) That it would be uneconomical for anyone to develop another facility (in this case the Mt Newman railway) to provide the service
- c) That the facility is of national significance, having regard to:
  - i The size of the facility or
  - ii The importance of the facility to constitutional trade or commerce or
  - iii The importance of the facility to the national economy
- d) That access to the service can be provided without undue risk to human health or safety
- e) That access to the service is not already the subject of an effective access regime
- f) That access (or increased access) to the service would not be contrary to the public interest

The draft recommendation – that the Mt Newman service should be declared – reflects the Council’s view that, on the basis of the available evidence, the statutory criteria for declaration have been met.

In formulating its draft recommendation that the Mt Newman service be declared, the Council has reached the following conclusions relating to each of the criteria.

- a) That access (or increased access) to the service would promote competition in at least one market (whether or not in Australia) other than the market for the service**

The Council is satisfied that the possible granting of FMG access to the Mt Newman railway line would promote competition in the markets of rail haulage and iron ore tenements.

The Council therefore concludes that access to the service would promote competition in at least one market other than the market for the service.

- b) That it would be uneconomical for anyone to develop another facility (in this case the Mt Newman railway) to provide the service**

On balance of submissions received to date, the Council is satisfied that it would be uneconomical to develop another facility to provide the Mt Newman service, in particular given the small amount of rail capacity that FMG or other third parties are likely to require.

Declaration of this service, resulting in shared use of the Mt Newman railway, will produce costs associated with interfacing the rail operations of BHP Billiton and FMG. The Council notes however that, should the Minister declare the service, the ACCC arbitration process available to both parties is designed to ensure the costs of providing access are passed on to FMG or any other third party seeking access.

- c) That the facility is of national significance, having regard to:**
- i The size of the facility or
  - ii The importance of the facility to constitutional trade or commerce or
  - iii The importance of the facility to the national economy

The Council is satisfied that the Mt Newman facility is nationally significant in relation to its size, its importance to constitutional trade or commerce and its importance to the national economy.

- d) That access to the service can be provided without undue risk to human health or safety**

Use of the service will be regulated by relevant State rail safety legislation. In addition, access terms can impose minimum standards for skills, training, maintenance and communications. Accordingly, the Council is satisfied that access to the Mt Newman service can be provided without undue risk to human health or safety.

- e) That access to the service is not already the subject of an effective access regime**

There is no access regime in place that covers track services to the Pilbara. The Council is therefore satisfied that access to the Mt Newman service is not the subject of an effective access regime.

- f) That access (or increased access) to the service would not be contrary to the public interest**

The Council believes the benefits of declaration include the promotion of competition in the Pilbara rail haulage and tenements markets and the economic and environmental benefits of avoiding unnecessary duplication of rail infrastructure.

The Council is therefore satisfied that declaration would not be contrary to the public interest.

All interested parties are invited to make submissions pertaining to the Council's draft recommendation to declare the Mt Newman service. Submissions should be directed to: The Executive Director, National Competition Council, GPO Box 250B Melbourne 3001.

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**See also:**

Fact sheet: Regulation of Access to Infrastructure

Diagram: Process for declaration of a service

Copies of the Council's draft recommendation will be available at [www.ncc.gov.au](http://www.ncc.gov.au)

**For further information:**

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