

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

No. M155 of 2011

BETWEEN: THE PILBARA INFRASTRUCTURE PTY LTD
(ACN 103 096 340) & ANOR
Appellants
and
10 AUSTRALIAN COMPETITION TRIBUNAL &
ORS
Respondents

No. M156 of 2011

BETWEEN: THE PILBARA INFRASTRUCTURE PTY LTD
(ACN 103 096 340) & ANOR
Appellants
and
20 AUSTRALIAN COMPETITION TRIBUNAL &
ORS
Respondents

No. M157 of 2011

BETWEEN: THE PILBARA INFRASTRUCTURE PTY LTD
(ACN 103 096 340) & ANOR
Appellants
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APPELLANTS' CHRONOLOGY

Part I: Certification for internet publication

40 The appellants certify that this chronology is suitable for publication on the internet.

Filed on behalf of the Appellants by
DLA Piper
Solicitors
Level 17, 140 William Street
Melbourne VIC 3000

Telephone: 03 9274 5470
Fax: 03 9274 5111
DX: 147 Melbourne
Email: simon.uthmeyer@dlapiper.com
Ref: Simon Uthmeyer

Part II: Chronology

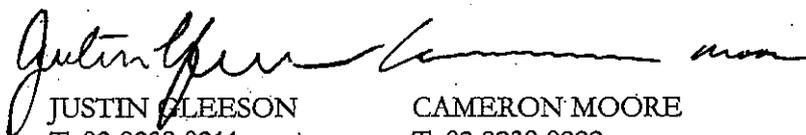
| Date | Event | References |
|-------------------|---|---------------------------------------|
| 13 July 1963 | State agreement pursuant to which the Hamersley railway was to be constructed (ratified by the <i>Iron Ore (Hamersley Range) Agreement Act 1963</i> (WA)) | T[123], [126] (and Sch 1 of that Act) |
| 18 November 1964 | State agreement pursuant to which Robe railway was to be constructed (ratified by the <i>Iron Ore (Robe River) Agreement Act 1964</i> (WA)) | T[123], [130] (and Sch 1 of that Act) |
| 16 November 2007 | First appellant (TPI) made application to the National Competition Council (NCC) under s 44F of the <i>Trade Practices Act 1974</i> (Cth) (now the <i>Competition and Consumer Act 2010</i> (Cth)) (Act) for a recommendation that the service provided by the use of the Hamersley railway and associated infrastructure (Hamersley service) be declared | T[15] |
| 18 January 2008 | TPI made application to the NCC under s 44F of the Act for a recommendation that the service provided by the use of the Robe railway and associated infrastructure (Robe service) be declared | T[18] |
| 29 August 2008 | NCC published its final recommendations that the Hamersley service and the Robe service be declared | T[20] |
| 27 October 2008 | Treasurer of the Commonwealth of Australia, the Hon Wayne Swan MP, pursuant to s 44H of the Act, declared the Hamersley service (Hamersley declaration) and the Robe service (Robe declaration), each for a period of 20 years commencing on 19 November 2008 and expiring on 19 November 2028 | T[22] |
| 13 November 2008 | Rio Tinto respondent entities (Rio Tinto) applied to the first respondent (Tribunal) pursuant to s 44K of the Act for review of the Hamersley declaration and of the Robe declaration | FCAB A3 |
| 28 September 2009 | Tribunal review hearing commenced, with TPI and the second appellant (together, Fortescue), Rio Tinto, the BHP Billiton respondent entities (BHPB) and the NCC as parties | FCAB B308 |
| 5 October 2009 | Tribunal began to receive evidence | FCAB B275 |
| 19 November 2009 | Conclusion of main body of evidence received by the Tribunal. Assurance given by the President of the Tribunal, during exchange with Senior Counsel for Fortescue, that additional evidence proposed to be received by the Tribunal early in 2010 would be only from expert modellers and that the Tribunal would not receive further evidence generally updating the factual matrix for its decision | FCAB B309 |

| Date | Event | References |
|------------------------|---|---|
| 1 December 2009 | Fortescue filed and served its closing submissions on the law and economics and its statement of facts | FCAB B268, B269 |
| 3, 7, 18 December 2009 | Fortescue delivered its closing address to the Tribunal | FCAB B310 |
| 23, 24 February 2010 | Tribunal received additional evidence from expert modellers | FCAB B58, B59, B75, B76, B303, B304, B305 |
| 23 March 2010 | Fortescue delivered a presentation to the 13 th Annual Global Iron Ore and Steel Forecast Conference (March presentation) | FCAB B254 |
| 17 May 2010 | Tribunal by letter copied to the parties' solicitors requested assistance from the NCC, pursuant to s 44K(6) of the Act. The Tribunal requested that the NCC prepare a report which updated the information before the Tribunal regarding junior miners mentioned in specified affidavits | FCAB B248 |
| 17 May 2010 | Tribunal wrote to the parties' solicitors noting that the Tribunal had requested the NCC to provide the report within 10 days and stating further that the Tribunal assumed the report would be uncontroversial (but that the parties would have 48 hours following receipt of the report to advise the Tribunal of any errors or more complete up-to-date information) | FCAB B249 |
| 3 June 2010 | NCC provided its report on the junior miners to the Tribunal | FCAB B251 |
| 4 June 2010 | Tribunal wrote to the parties' solicitors inviting any comments from the parties by 8 June 2010 if a party detected any errors in the NCC report or had available to it more complete up-to-date information | FCAB B252 |
| 8 June 2010 | Solicitors for BHPB provided the Tribunal with comments on the NCC report (which comments were confined only to information about the junior miners) | FCAB B255 |
| 8 June 2010 | Solicitors for Rio Tinto wrote to the Tribunal providing the Tribunal with comments on the NCC report. Unlike the NCC and BHPB, Rio Tinto did not confine its comments to junior miners. Rio Tinto provided the Tribunal with information concerning Fortescue and its operations, including proposed future operations referred to in the March presentation | FCAB B253 |
| 30 June 2010 | Tribunal made its determination to set aside the Hamersley declaration (Hamersley determination) and delivered its Reasons, reflecting information about Fortescue's proposed future operations as referred to in the March presentation provided to the Tribunal by solicitors for Rio Tinto | FCAB A5, A6, FC[127] |

| Date | Event | References |
|------------------|---|-------------------------------|
| 30 June 2010 | Tribunal made its determination to vary the Robe declaration to limit it to the period until 19 November 2018 (Robe determination) and delivered its Reasons | FCAB A5, A6 |
| 28 July 2010 | Federal Court of Australia (Gordon J) made orders extending the time within which applications for judicial review of the Tribunal determinations were required to be filed | FCAB A12 |
| 13 August 2010 | Fortescue made applications to the Full Court of the Federal Court of Australia (Full Court) for judicial review of the Hamersley determination (VID 616 of 2010) and of the Robe determination (VID 687 of 2011) | FCAB A7, A8 |
| 13 August 2010 | Rio Tinto made application to the Full Court for judicial review of the Robe determination (VID 686 of 2010) | FCAB A9 |
| 14 October 2010 | Federal Court of Australia (Kenny J) made orders joining BHPB as a party in VID 616, 686 and 687 of 2010 (subject to the power of the Court to direct the nature and extent of BHPB's participation in the proceedings) and granting the NCC leave to intervene in VID 616 and 686 of 2010 (on the condition that the NCC would bear its own costs and no party would seek an order for costs against it) | FC[24], [25] FCAB A13, A14 |
| 29 October 2010 | Fortescue filed a notice of contention in VID 616, 686 and 687 of 2010 | FCAB A10 |
| 29 October 2010 | Rio Tinto filed a notice of contention in VID 686 of 2010 | FCAB A11 |
| 21 February 2011 | Full Court review hearing | FC (p3) |
| 4 May 2011 | Full Court (Keane CJ, Mansfield and Middleton JJ) delivered Reasons for dismissing applications by Fortescue in VID 616 and 687 of 2010 and granting the relief sought by Rio Tinto in VID 686 of 2010, ordering the parties to confer and file minutes of orders in light of the Reasons | |
| 16 May 2011 | Full Court (Keane CJ, Mansfield and Middleton JJ) made orders dismissing Fortescue's applications in VID 616 and 687 of 2010 and allowing Rio Tinto's application in 686 of 2010 (setting aside the Robe determination and the Robe declaration) and ordering Fortescue to pay seventy-five per cent of Rio Tinto's party/party costs in each of the Full Court proceedings | |
| 31 May 2011 | Fortescue filed applications for special leave to appeal from the judgments and orders of the Full Court in VID 616, 686 and 687 of 2010 (M42, M43 and M44 of 2011) | |
| 1 June 2011 | NCC filed application for special leave to appeal from the judgments and orders of the Full Court in VID 616 and 686 of 2010 (M45 and M46 of 2011) | |
| 10 June 2011 | NCC filed applications for leave to intervene in special leave applications by Fortescue (M42, M43 and M44 of 2011) | |

| Date | Event | References |
|-----------------|--|------------|
| 28 October 2011 | Special leave granted to Fortescue by the High Court of Australia to appeal from the judgments and orders of the Full Court in VID 616, 686 and 687 of 2010. The applications by the NCC for special leave to appeal (M45 and M46 of 2011) referred to an enlarged Bench | |

Dated: 25 November 2011



JUSTIN GLEESON

T: 02 8239 0211

F: 02 9210 0645

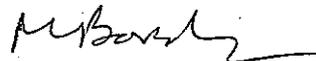
justin.gleeson@banco.net.au

CAMERON MOORE

T: 02 8239 0222

F: 02 9210 0648

cameron.moore@banco.net.au



MICHAEL BORSKY

T: 03 9225 8737

F: 03 9225 8395

mborsky@vicbar.com.au