

AUSTRALIAN COMPETITION TRIBUNAL

JUSTICE FINKELSTEIN, President
PROFESSOR D. ROUND, Member
MR G. LATTA, Member

No. ACT 5 of 2006
No. ACT 3 of 2008
No. ACT 4 of 2008
No. ACT 5 of 2008

APPLICATION BY FORTESCUE METAL GROUP LTD

**APPLICATION BY ROBE RIVER MINING CO PTY LTD and
OTHERS**

APPLICATION BY HAMERSLEY IRON PTY LTD and OTHERS

**APPLICATION BY BHP BILLITON IRON ORE PTY LTD and
ANOTHER**

MELBOURNE

10.18 AM, WEDNESDAY, 30 SEPTEMBER 2009

Continued from 29.9.09

DAY THREE

On the evidence to date there has been no third party use of track or haulage services, so all the usage is Fortescue self-usage in respect of track and haulage. As to the port, the state agreement imposes access obligations on Fortescue's port facilities. That's done by clause 18 of the state agreement, and so the access obligations under
5 clause 18 are shown by the definition in clause 18.1A to include the use by persons of the services provided by port facilities and additional infrastructure. So it's an open access port. Again, under clause 18.7, there is an affirmative obligation to promote that access and attract customers to it. The evidence as to non-Fortescue usage of the port is that Atlas are temporarily using the Fortescue port for their
10 Pardoo ore export product. That's currently at a million tonnes a year.

I say temporarily. I think the evidence shows because they have allocations at Utah Point they're going there as soon as they can. On the evidence, the other – well, the indicator of future usage, not current usage, is the Nullagine ore. Nullagine is north
15 and perhaps a bit northeast of the Cloudbreak Christmas Creek tenements. BC Iron has those tenements. In June of this year, a joint venture was announced between BC Iron and Fortescue. It's not otherwise in the evidence, but I will provide to the tribunal a copy of the June quarterly report, published by BC Iron – June 2009. And on the front page of that, the first item under Highlights.

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MS ZEGARAC: Excuse me, your Honours, this is my case so I would like to speak as well.

HIS HONOUR: Sorry?

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MS ZEGARAC: This is my case.

HIS HONOUR: This particular case?

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MS ZEGARAC: Yes, this particular case is - - -

HIS HONOUR: Don't think it is.

MS ZEGARAC: - - - my case – my case.

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HIS HONOUR: Okay. Well, you just sit – you just sit down at the back and have a listen.

MS ZEGARAC: No, I would like to speak as well. It's my case.

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HIS HONOUR: You can speak later on.

MS ZEGARAC: No, during the hearing I want to speak and I want all of these documents – discovery of all of these documents. It's my case. My name is Slavica
45 Zegarac. It's my case.

HIS HONOUR: I think you might be in the wrong courtroom.

- MS ZEGARAC: No, I'm not. Are you Finkelstein J?
- HIS HONOUR: Yes, that's me.
- 5 MS ZEGARAC: Yes, that's my case.
- HIS HONOUR: I should have said no.
- MS ZEGARAC: That's my case.
- 10 MR ARCHIBALD: It would have been the correct answer.
- MS ZEGARAC: I have tried to tell the gentleman but - - -
- 15 HIS HONOUR: This one here?
- MS ZEGARAC: - - - but he saw me and ignored me, so he didn't want to come to talk to me. I'm sorry, this is my case.
- 20 HIS HONOUR: Yes. Well, you might think it's your case, but - - -
- MS ZEGARAC: No, no, it is my case.
- HIS HONOUR: - - - but - but - I know, but it's not really.
- 25 MS ZEGARAC: I'm sorry, it's my case.
- HIS HONOUR: Yes.
- 30 MS ZEGARAC: It's my cases.
- HIS HONOUR: More than one?
- MS ZEGARAC: All of the four is my case.
- 35 HIS HONOUR: Well, can I tell you that these people are paying a lot of money for their barristers to do a lot of talking - - -
- MS ZEGARAC: Yes, I know all about it. I know all about it - - -
- 40 HIS HONOUR: Do you?
- MS ZEGARAC: How the money goes and the insurance and all this stuff; I know all about it.
- 45 HIS HONOUR: Yes, yes.

MS ZEGARAC: I'm sorry, this is my case.

HIS HONOUR: Okay. Well, how about - - -

5 MS ZEGARAC: So I need to know what's going on here. Why I wasn't let know to come here as well.

HIS HONOUR: Okay. Well, if you sit down and listen - - -

10 MS ZEGARAC: No, no, I want to speak as well. I need to know what's going on here, so can you please let me know what's going on in here, because I wasn't told to come.

HIS HONOUR: No, that's okay, but if you - - -

15 MS ZEGARAC: It's not okay.

HIS HONOUR: No, no, let me finish. What I was going to suggest was, if you listen then you will be able to work out what the case is all about.

20 MS ZEGARAC: I know.

HIS HONOUR: Well, you don't know.

25 MS ZEGARAC: I do. I don't know what they are doing here. I suppose, taxation or whatever they're doing here, I don't really know, but a lot of my companies are going to liquidation – companies – bogus companies that don't exist.

HIS HONOUR: Are they?

30 MS ZEGARAC: Yes.

HIS HONOUR: Well, this is not a case about liquidation of companies.

35 MS ZEGARAC: It doesn't matter. That's why I'm here to find out what it's all about.

HIS HONOUR: It's about - - -

40 MS ZEGARAC: What it's all about. I'm asking you.

HIS HONOUR: Okay. Well, it's about trains. Trains.

45 MS ZEGARAC: Trains. Yes, I know. You keep on changing the companies name every single time you have the hearing. I know. How many times has it been changed?

HIS HONOUR: The name? No, no.

MS ZEGARAC: Yes.

5 HIS HONOUR: But do you own any trains?

MS ZEGARAC: Excuse me, that's your obstruct language – how?

HIS HONOUR: Locomotives.

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MS ZEGARAC: It doesn't matter. I understand what you said; however, it is my case. All these companies, bogus companies that are created in my name, under my name, they don't exist, and this is all designed to get the money from the insurance from the government.

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HIS HONOUR: Yes, I don't think they're after insurance in this case.

MS ZEGARAC: Well, what is it in this case then?

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HIS HONOUR: This is about trains.

MS ZEGARAC: No, no, no, no.

HIS HONOUR: Yes, yes.

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MS ZEGARAC: No, no.

HIS HONOUR: I promise.

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MS ZEGARAC: They're not real trains.

HIS HONOUR: Yes, no - - -

MS ZEGARAC: It's just called that.

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HIS HONOUR: No, no, I saw one.

MS ZEGARAC: I'm sorry. I'm sorry. I know how does it all go. They keep on changing names, and I have attended your last hearing. I don't know if you remember me. I was sitting there.

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HIS HONOUR: No, I didn't - - -

MS ZEGARAC: Yes, I heard – I heard what's going on. That time it was BHP and something else. Yes, they just keep on going on and on and on, and keep on changing it, and changing it; and Amcor and – I have the whole list of them, but

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probably there is another list which I don't even know. So I'm sorry, this is my case and I want to speak.

HIS HONOUR: Well, you can't speak. I can do this deal - - -

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MS ZEGARAC: I want to know what's going on and why I'm not invited. All these people, who are they? Who are they?

HIS HONOUR: They're my friends.

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MS ZEGARAC: I know the term for the friends. Yes, yes. They're all friends who are in it for the money. Apart from friends – you're calling them your friends, who are they? They're talking for my case, they're representing me. I don't even know who they are.

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HIS HONOUR: I promise it's not your case.

MS ZEGARAC: It's my case.

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HIS HONOUR: No, no, no. It's not. Really it's not.

MS ZEGARAC: I have the proof, it's my case. It's my case. And – no, no, this is my case, and I have every right – every right to be a party to my case.

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HIS HONOUR: If it was your case then you would have a right to be a party.

MS ZEGARAC: It is my case.

HIS HONOUR: No, this is other – this is other people's cases.

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MS ZEGARAC: I am saying it is my case, and it's been changed – the companies' names have been changed numerous times, and this is my case; and the gentleman that was just talking, he was talking everything that happened. Yes.

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SECURITY OFFICER: Sorry, your Honour.

HIS HONOUR: Yes.

SECURITY OFFICER: Mrs Zegarac - - -

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MS ZEGARAC: No, no, I'm talking for myself.

SECURITY OFFICER: Mrs Zegarac - - -

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MS ZEGARAC: I have no representative in here.

SECURITY OFFICER: Mrs Zegarac, please look at me. I have someone outside to talk to you. Please leave the courtroom.

MS ZEGARAC: I am talking to the Honourable judge, and - - -

SECURITY OFFICER: Can you please come outside with me?

MS ZEGARAC: No. No, you have no right to - - -

SECURITY OFFICER: You need to come outside with me.

MS ZEGARAC: No. You have no right to do this to me. This is my case. So - - -

SECURITY OFFICER: It's not your case, Mrs Zegarac. You're mistaken. Please leave - - -

MS ZEGARAC: - - - can you please tell me - - -

SECURITY OFFICER: Mrs Zegarac,

MS ZEGARAC: - - - why I am not invited to my case.

HIS HONOUR: I will tell you why, because it is a different case.

MS ZEGARAC: It is not.

HIS HONOUR: Yes, it is.

MS ZEGARAC: I have the proof, it is not.

HIS HONOUR: Show me what proof you have got.

MS ZEGARAC: That is what everybody wants to know, how did I know. That part I will let you figure out yourself. Because you know all these things, and you know how you are doing things. It is so impossible to get it.

SECURITY OFFICER: Ms Zegarac - - -

MS ZEGARAC: I am saying this is my case and I want to speak and I want to find out what all these people are doing here and I want their documents.

HIS HONOUR: I won't let you interrupt their case. It is not your case.

MS ZEGARAC: Well, no that is my case.

HIS HONOUR: I know that. But I still want to hear them - - -

MS ZEGARAC: I got proof it's my case and if you tell me to get out and not to be here, and it's my case, then that is another story that is going to happen.

HIS HONOUR: Okay.

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MS ZEGARAC: It is corruption, it is in corruption. Right here what's happening is – right here, corruption, if I am not allowed to be at my case.

SECURITY OFFICER: Ms Zegarac, you have to leave the court room.

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MS ZEGARAC: Why I'm excluded, it is my case and I, as a party, am excluded. That is corruption.

HIS HONOUR: At the moment I am going to ask you to leave, because - - -

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MS ZEGARAC: You have - - -

HIS HONOUR: You are interrupting other people and I – it is hard for me to concentrate when there is interruptions. I can't do it.

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MS ZEGARAC: Excuse me, are you saying this is not my case?

HIS HONOUR: I am saying it is not your case.

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MS ZEGARAC: So that is not true. Right now, right now, corruption is happening right now. With all of these three judges, it is all you here, this is corruption.

HIS HONOUR: It might be - - -

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MS ZEGARAC: This is corruption and I am going to go public, I am going to go public about this, who are these people, what are they doing? They getting money from the government, from the taxpayer's money for what, for the bogus things that don't exist.

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SECURITY OFFICER: Ms Zegarac, you have to leave. You have to leave the court room.

MS ZEGARAC: No, no, I am talking to the judge.

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HIS HONOUR: That man is asking you to go outside - - -

MS ZEGARAC: Yes, it doesn't matter what he asks. Has he got authority to remove me from my case, that's the question.

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HIS HONOUR: He does.

MS ZEGARAC: He has no authority to remove me from my case. I have every right to be heard. I have every right to be heard at my case.

HIS HONOUR: That is true. All right.

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MS ZEGARAC: That's true.

HIS HONOUR: What I might do, is that man will talk to you. I am just going to go away for five minutes and just check a few things. But the man over there will explain to you – sorry, he won't explain to you anything. He will escort you out.

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MS ZEGARAC: No.

HIS HONOUR: Because - - -

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MS ZEGARAC: Why?

HIS HONOUR: Because - - -

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MS ZEGARAC: Why, I tried to speak to this gentleman quietly and he saw me and he ignored me. I tried to get his attention quietly and he did not – he saw me, looked at me, he saw I want to speak to him and then he didn't want to look at me any more. So I am not going to sit here and wait till the case is over, till you make a judgment in my presence and not to say anything.

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SECURITY OFFICER: You are making a mistake, Ms Zegarac.

MS ZEGARAC: I am not speaking to you, I'm speaking to the judge. Excuse me.

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SECURITY OFFICER: Ms Zegarac

MS ZEGARAC: He has authority to say what he needs to say. You don't have authority.

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SECURITY OFFICER: Please leave the premises.

HIS HONOUR: I am just going to stand down for a few minutes.

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ADJOURNED

[10.38 am]

RESUMED

[11.57 am]

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MR ARCHIBALD: Before the - - -

HIS HONOUR: We have to work out what we are going to do to make up some lost time. One of us has a meeting at quarter past 1. Is it possible to run through til quarter past 1, have only a 45 minute break, so we get back half an hour - - -

5 MR ARCHIBALD: Yes.

HIS HONOUR: - - - and, if necessary, either with or without a break, sit a bit longer into the afternoon, beyond 4.15, if that suits?

10 MR ARCHIBALD: Yes. Well, we'll see how we're going - - -

HIS HONOUR: Sure, absolutely.

15 MR ARCHIBALD: - - - and then we can perhaps catch up a bit more time tomorrow.

HIS HONOUR: We could do that.

20 MR ARCHIBALD: Start a bit early, go a bit later.

HIS HONOUR: We could do that.

25 MR ARCHIBALD: Now, I was referring the tribunal to the BC Iron quarterly activities report for the period to end June 2009, and all I need to draw the attention of the tribunal to is the first item on the first page, referring to the establishment of the joint venture between BC Iron and Fortescue. One sees that BC Iron is to be manager. The particular point for present purposes is the third dot point that TTI, the FMG vehicle, is to provide rail haulage, port handling, and ship loading facilities for the joint venture; and although I don't have a copy I can readily provide to the
30 tribunal now, there is a binding Heads of Agreement locking in those transportation arrangements, and locking in the port end of the requirements of the joint venture.

35 Yesterday, if I understood Mr Beach correctly, when he was drumming up possible demand for the Newman line, he mentioned Nullagine as a possible source of demand. Whatever the possibility might have been previously, that demand is now taken off the table and locked into the Chichester line from Nullagine right through to port. Nullagine being, as I mentioned before, the break being to the north of the Cloudbreak and Christmas Creek prospects anyway, and, therefore, obviously higher efficiencies in utilising the Chichester line, it being closer in access, shorter trucker,
40 than going further on to the Newman line, in any event. Then further in relation to Fortescue infrastructure, the evidence shows proposals by Fortescue in some respects beyond the proposals for new rail lines or extension of rail lines.

45 Despite the seemingly comprehensive nature of the map folder, for some reason the map – the maps there don't capture these Fortescue expansions. Could I provide to the tribunal two sheets showing these expansions. The first of the sheets that the tribunal will receive is page 15, from Fortescue's February 2009 market update. The