

CHAPTER 6

Competition Law

Introduction

The performance of long term contracts does not concern only the parties. The parties' relationship will form a part of the matrix existing with respect to the commodity or product. In that context, it was easily appreciated that contracts between two parties could affect commerce in a market. It followed, inevitably, that regulatory control over aspects of long term contracts was implemented in the public interest. The practical effect of the relevant legislation is a matter of some intricacy.

Analysis of ACCC Authorisations

As Colin Lockhart's paper explains, one of the ways in which competition law issues impact upon long term contracts is through the process of authorisation. The following section summarises three decisions of the ACCC to grant authorisation in respect of long term agreements for the supply of iron ore, gas and coal, with the aim of providing an indication of the particular features of the arrangements (and the language used by the ACCC in its determination) which justified the grant of authorisation.

Iron ore supply agreement:

BHP Billiton Iron Ore Pty Ltd (Authorisations A90981–A90983)

BHP Billiton Iron Ore Pty Ltd ('BHPBIO') applied for authorisation of a joint venture between subsidiaries of BHP Billiton, Itochu Corporation, Mitsui & Co and JFE Holdings Inc for the mining, processing and sale of iron ore to purchasers in Japan.

The ACCC granted authorisation for a period of 15 years from the commencement of the joint venture.¹ The following is a summary of the key considerations underpinning the ACCC's decision to grant authorisation.

The relevant market was the global market for iron ore. In the ACCC's view, 'generally, there is sufficient substitutability between export and domestic iron ore ... that the relevant market for the purpose of these

¹ Determination at [8.14].

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