

Mr Richard Home
Executive Director
National Competition Council
Level 17, Casselden
2 Lonsdale Street
Melbourne VIC 3000

Our ref: 21-40689910
Direct Dial: +61 2 8922 8033
E-mail: dave.poddar@cliffordchance.com

30 July 2018

Dear Mr Home

Submission by Port of Newcastle Operations to the NCC for a possible recommendation to revoke the declaration of shipping channel service at the Port of Newcastle

We refer to the letter to Glencore Coal Pty Ltd (**Glencore**) from the National Competition Council (**NCC**) dated 10 July 2018 and the attached submission from Port of Newcastle Operations Pty Ltd (**PNO**) dated 2 July 2018 (**PNO Submission**).

Our client has a number of concerns in relation to the timing of PNO's submission to the NCC seeking revocation of the declaration of the service at the Port of Newcastle and the time afforded by the NCC to our client to provide submissions in response.

Our client is concerned that the timing of PNO's application to the NCC is motivated by its desire to seek avoid the consequences of the arbitration in relation to terms and conditions of access to the channel which is being conducted by the Australian Competition and Consumer Commission (**ACCC**). As you are aware, that arbitration is presently ongoing and is subject to strict time frames for determination.

Further, the timing of the PNO's application to the NCC places our client at a significant disadvantage in respect of responding to the PNO Submission due to the confidentiality restrictions in respect of the arbitration and the time and resources presently required to be devoted by our client in the arbitration which coincides with the NCC request for submissions.

We also note that PNO has had a long period of time over which to prepare its submission to the NCC and the question of whether the NCC should recommend revocation of the service raises complex factual, economic and legal issues.

In the circumstances our client will require more than 4 weeks to prepare its submissions in relation to the proposed revocation. Accordingly, Glencore requests that the NCC extend the date by which Glencore has to make a submission from 8 August 2018 to 3 September 2018.

PNO cannot be prejudiced by the short extension sought, as evidenced by its own substantial delay in making its submissions to the NCC seeking revocation of the service.

Yours sincerely

Dave Poddar
Partner
Clifford Chance