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Submissions: Declaration of Port of Newcastle
National Competition Council
GPO Box 250
Melbourne VIC 3001

Peabody Energy Australia Pty Ltd Submission: Application for the declaration of shipping channel services at the Port of Newcastle.

1. Introduction

Peabody Energy Australia Pty Ltd ("**Peabody**") welcomes the opportunity to respond to the submission put forward by Glencore Coal Pty Ltd ("**Glencore**") to the National Competition Council ("**NCC**"); the Application for a declaration recommendation in relation to the Port of Newcastle dated May 2015 ("**Application**")

As the world's largest private sector coal producer, Peabody maintains a significant presence in Australia with the ownership of 8 coal mines between Queensland and New South Wales. Peabody operates in the Hunter Valley with the Wambo and Wilpinjong mines and exports through the Port Waratah Coal Services ("**PWCS**") and Newcastle Coal Infrastructure Group ("**NCIG**") coal export terminals. These coal export terminals provide access to export markets through the use of channel services provided by the Port of Newcastle Operations Pty Ltd ("**PNO**") under a long term lease with the NSW Government.

Due to the critical nature of the services provided by PNO and the natural monopoly position of the harbour which PNO operates, Peabody broadly supports the Application put forward by Glencore and provides the following submission;

2. Submission:

Peabody provides the following submission with reference to the Application and sections 44G(2) under Part IIIA the Competition and Consumer Act 2010 ("**CCA**");

2.1. Access to Services

The access to channel services provided by the PON within the boundaries of the port of Newcastle are an integral part of the global seaborne coal supply chain. They facilitate trade between seller and buyer through the existing export terminals of NCIG and PWCS and enable individual competition within the Hunter Valley and industry competition as the Hunter Valley competes globally with other large scale export coal producing areas.

The recently proposed increase in costs to access the channel services has the potential to reduce competition from the Hunter Valley operations through a combination of deterioration in export price due to cost equalisation (seller's reducing cost to the value of the port charges) or a direct decrease in trade through an increase in buyer related costs resulting in a change of supply. As outlined in the section 7 of the Application, the cost of accessing the services at the port of Newcastle is generally to the account of the vessel owner, which is directly attributable to buyers in a traditional Free on Board (FOB) market.

Peabody submits that the nature of the price increase may have an impact on the competitive nature of the Hunter Valley in relation to the global coal seaborne market. Given the nature of the natural harbour and relative monopoly position of the PON in providing channel services there is the ability to impact competition and therefore access.

In accordance with section 44G(2)(a), Peabody believes that competitive pricing will increase competition from Hunter Valley coal producers in competing globally and increase the long term market for access to channel services by the PON. In effect, a low unit price seeks to promote long term access and greater mutual prosperity for producers and service providers.

In relation to the terms of access that should reasonably be provided by the PON, we believe that the terms previously provided or close there to prior to the lease arrangement with the NSW Government provided a framework for the delivery of services to facilitate competitive trade. The certainty of terms in providing the service is the stability of long term pricing in relation to the service. The ability for the PON to set pricing by notice and without oversight decreases certainty and increases risk.

2.2. Alternative Services

The natural harbour of Newcastle (including the natural shipping channel) has enabled the development and ongoing prosperity to a range of port and export related services that support a wide range of industries, including the coal export industry. Peabody supports section 9 of the Application in consideration of section 44G(2)(b) of the CCA that the harbour area of Newcastle is uneconomical to duplicate as its natural harbour environment creates a clear advantage to any alternative development options.

2.3. National Significance

In relation to section 10 of the Application and section 44G(2)(c), Peabody supports the notion that the port of Newcastle is of national significance. The port of Newcastle (including the natural harbour) has supported and aided in the development of a diverse range of industries over a significant period of time. The port has had positive impacts for national economic trade through the facilitation of key import and export industries and has aided the development of significant employment and industry within the Hunter Valley. These industries may not have developed without the existence of a natural harbour and protected marine environment.

2.4. Current Regime

It is believed that there is no effective access regime in operation which would be to the contrary section 44G(2)(e).

2.5. Public Interest

Peabody submits that access (or increased access) to the service would not be contrary to the public interest under section 44G(f). To the contrary, we believe that increased access may facilitate a greater level of trade through increased shipping and/or supply into export markets. It is acknowledged however that the overall level of export supply from the Hunter Valley is predicated on a variety factors including cost.

3. Summary

Peabody welcomes the opportunity to respond to the Application to the NCC. As outlined, Peabody is supportive of the Application in relation to the services provided by the PON as they are in accordance with the criteria of section 44G(2) of the CCA.

A summary of the rationale for support of the Application is outlined as follows;

- Access to services may decrease without effective regulation due to a direct increase in costs or decrease in market share due to increased global competition.
- The natural harbour is a natural monopoly which is uneconomical to duplicate.
- The port of Newcastle is of national significance due to its role in the development and maintenance of significant economic contribution to the country and the region.
- It is believed there is no effective access regime currently in place.
- The public interest from increased access may be served from greater competition and development of upstream coal mining interests stemming from increased access at the port of Newcastle.