

22 June 2015

{by e-mail}

John Feil
Executive Director
National Competition Council
GPO Box 250
MELBOURNE VIC 3001

Dear John,

Application for a declaration recommendation in relation to the Port of Newcastle

Whitehaven Coal Limited (**Whitehaven**) makes this submission in support of the application, by Glencore Coal Pty Limited (**Glencore**) for a declaration recommendation in relation to the Port of Newcastle.

Whitehaven has substantial coal mining operations in the Hunter Valley and is one of the largest employers in the New England region of NSW. Whitehaven currently operates four open cut mines (Maules Creek, Werris Creek, Rocglen, Tarrawonga) and one underground mine (Narrabri) all in the Gunnedah Basin zone.

Whitehaven is a rapidly expanding producer in the Australian coal industry. Managed production has quadrupled over the past 4 years after having invested over \$1.0 billion during that period. Subject to acceptable returns on investment, Whitehaven has plans to continue growth through the medium term by increasing market share with the higher coal quality users in Japan, Korea and Taiwan.

Whitehaven utilises the Port Waratah Coal Services owned terminals and is a shareholder in the Newcastle Coal Infrastructure Group facility. For coal transport Whitehaven has rail contracts with Australian Rail Track Corporation, Pacific National and Aurizon as well owning locomotive and rail wagon assets.

Whitehaven generally agrees with and adopts the description of the Hunter Valley coal industry in section 3 of Glencore's application.

Whitehaven generally agrees with and adopts the descriptions of the relevant Service and Facilities and the role of Port of Newcastle Ops as set out in sections 5 and 6 of Glencore's application.

Coal exported by Whitehaven competes in a seaborne coal market. Some of it is sold by Whitehaven on a spot basis and some on a long-term basis, where the price is periodically

adjusted. Accordingly Whitehaven cannot pass through increased costs which it may incur to purchasers of the coal.

Whitehaven exports coal primarily on a FOB basis through the coal export terminals located at the Port of Newcastle. The vessels onto which that coal is loaded at those coal export terminals must use the Service and accordingly must pay the navigation service charges to Port of Newcastle Ops. Those charges (and all increases) are passed on to Whitehaven by the coal purchaser through lower FOB prices that are adjusted for the cost differential of shipping from Newcastle against other ports.

These charges are part of the cost of exporting the coal and increases in them reduce Whitehaven's returns from the sale of coal and Whitehaven's competitiveness in the international market.

Impact of the unfettered ability of Port of Newcastle Ops to increase charges

Port of Newcastle Ops recently announced substantial increases in the prices it charges for navigation services at the Port of Newcastle (effective 1 January 2015). The extent and timing of these increases was not known by Whitehaven materially in advance of the announcement. As a consequence, there is currently significant uncertainty in relation to the extent and timing of future increases by Port of Newcastle Ops in the prices it charges for navigation services at the Port of Newcastle.

Such uncertainty creates significant commercial risks for current and potential coal projects in the Hunter Valley, and dependent operations in relevant associated upstream and downstream markets associated with coal production, which in turn is likely to have a detrimental impact on competition in these markets.

In particular, the lack of commercial certainty associated with an unregulated Port of Newcastle Ops who in an unregulated environment is able to increase navigation service and other charges over and above reliable estimates. This lack of predictability creates uncertainty in cost estimates which then adversely impacts long term investment in existing and future mining developments. Moreover, the lack of certainty causes financiers of coal mining operations to apply tighter funding conditions and/or restrict the supply of funding.

As coal production in the Hunter Valley operates within an interconnected supply chain, uncertainty in relation to coal mining projects has significant flow on effects for relevant upstream and downstream markets. In addition to relevant upstream and downstream markets associated with coal production (for example, market(s) associated with the provision of various coal mining services, above and below rail services and other transport and infrastructure services), the financing of coal mining projects is also highly dependent upon the ability to project and have some level of certainty of the expected costs and returns, the absence of which is likely to result in:

- a lack of investor confidence and commitment to support new coal mining projects, or expansions to existing coal mines, in the Hunter Valley; and
- financing for new and existing coal mines being unavailable (or being available but at a higher cost or on less favourable terms to the borrower).

Declaration criteria

Whitehaven submits that each of the declaration criteria in part IIIA of the *Competition and Consumer Act* are satisfied.

Promotion of a material increase in competition

Whitehaven agrees with and adopts the facts and submissions in section 8 of Glencore's application that declaration will promote a material increase in competition in markets associated with the export of coal and upstream and downstream markets related to coal production, including those associated with the financing of coal mining projects. Whitehaven also makes the further submissions below.

Whitehaven submits that declaration of the Service will improve the opportunities and environment for competition in various markets by providing greater certainty for existing and future coal producers in relation to the price and/or method of determining the price for the Service at the Port of Newcastle, which in turn will:

- provide greater commercial certainty in relation to investment in coal mining projects by existing and future coal producers, which is likely to have a material positive impact on the viability of future investment in, and supply of coal from, new and expansion projects in the Hunter Valley thereby increasing market competition;
- materially improve conditions for competition in market(s) relating to the provision of capital funding for mining projects from both domestic and international sources, as such financing is highly dependent upon the ability to appropriately project expected costs, including costs in relation to the Service; and
- having regard to the interconnected nature of the coal production supply chain in the Hunter Valley, materially improve conditions for competition in upstream and downstream markets associated with coal production, such as market(s) associated with the provision of various coal mining services, above and below rail services, and other transport and infrastructure services. An example of this is the recent introduction of a second tug boat operator which was made possible by the increase in coal production and sales through the Port of Newcastle.

Uneconomical to develop another facility

Whitehaven agrees with and adopts the facts and submissions in section 9 of Glencore's application which make it clear that it is impossible economically to develop another facility to provide the Service.

National significance

Whitehaven submits that it is clear, based on the facts and submissions in section 10 of Glencore's application that, having regard to the Port of Newcastle's role in overseas trade and the national economy, the Facilities are of national significance.

No existing effective access regime

Whitehaven agrees with and adopts the facts and submissions in section 12 of Glencore's application, that the Service is not currently the subject of an effective access regime.

Public interest

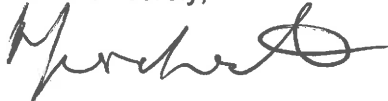
Whitehaven agrees with and adopts the facts and submissions in section 13 of Glencore's application, that access to the Service will not be contrary to the public interest.

Duration of Declaration

Whitehaven supports a declaration period that reflects the long term nature of investment in the coal industry and provides the certainty required to ensure increased competition in the operation and financing of the industry.

Please contact me if you would like further clarification on the above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Keiron Rochester', written in a cursive style.

Keiron Rochester

GENERAL MANAGER – INFRASTRUCTURE