

GLENCORE COAL PTY LTD

Response to the submission by Port of
Newcastle Operations in relation to
Application to the National Competition
Council under Part IIIA of the Competition &
Consumer Act 2010 (Cth) in relation to the
Port of Newcastle

29 June 2015

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1. *Introduction and Purpose of Submission*

Glencore notes the submissions from the NSW Minerals Council on behalf of its 100 member companies, the comparatively smaller miners Whitehaven Coal and The Bloomfield Group and Peabody Energy as the world's largest private sector coal producer, as well as the industry group Shipping Australia on behalf of its 36 member lines and 50 corporate associate members and the two coal terminals located in the Port of Newcastle ("**Port**"), being Port Waratah Coal Terminal Services ("**PWCS**") and Newcastle Coal Infrastructure Group ("**NCIG**"). All of these Submissions are in favour of and support Glencore's application to the Council for a recommendation for the declaration of the shipping channel services at the Port. Glencore appreciates the industry's support.

Glencore has not had an opportunity since the submission was first published on 24 June 2015 to fully consider and respond to the 95 page submission dated 18 June 2015 from the new private infrastructure operator at the Port of Newcastle – Port of Newcastle Operations ("**PoN**"). However, Glencore believes it is important to respond to some of the matters raised in the PoN Submission at this time.

2. *Access to the Channel as a bottleneck for exports in the Hunter Valley*

Access to the channel at the Port ("**Channel**") is necessary to export coal from the Hunter Valley and Glencore is concerned as to access terms and conditions for the Channel, which terms and conditions include price.

The PoN Submission appears to dismiss the difficulties experienced in the Hunter Valley for all companies associated with the coal industry and the seriousness with which Glencore and the coal industry view what has happened at the Port of Newcastle – particularly the manner in which effective regulation has been removed.

Given that Glencore and the industry previously sought to constructively engage with PoN and the New South Wales State Government on this issue, Glencore finds the statements by PoN as to the nature of regulation at the Port and the oversight regime as well as the State's ability to terminate the lease to PoN, somewhat hollow.

Glencore would have hoped that the weight of submissions by the coal industry in support of declaration would have demonstrated that something should be considered by the State to address the issue and PoN not seek to dismiss the industry's concern in such a cursory manner.

3. Channel services in the Port of Newcastle

As both PWCS and NCIG note, those terminals and the Newcastle coal exporters in general have contributed substantially to dredging costs for the channel. NCIG paid \$300m from 2008 to 2013 and PWCS is required to pay \$0.6b for the dredging associated with terminal T4. NCIG notes in its submission that "it could be argued that the Hunter Valley Coal industry is effectively paying twice for the same asset in this case." Accordingly, a statement by PoN that there had been substantial under recovery by the State owned port operator in the past is a question of perspective. In these circumstances, Glencore anticipates the coal industry does not share the same view as PoN on "under recovery", nor would it share the view that services at the Port have improved under PoN.

4. The Part IIIA Test – Promotion of a material increase in competition in at least one market

4.1 The cost increase - The PoN submission fails to address significant price increases of up to 60% for certain vessels

- The PoN Submission does not address the fact that the navigation service prices have increased by up to 60% for Handymax, Panamax and Post Panamax vessels and 26% for Capesize vessels without any additional service or improvement to the port facilities being offered by PoN since privatisation.
- Terminal operators PWCS and NCIG have expended significant amounts over the past years for the dredging and maintenance of the Channel. The various cost assessments and flow charts in the PoN Submission fail to account for these significant industry contributions, rendering the various calculations and cost assessments incomplete.

4.2 The PoN Submission underestimates the impact of price increases in the NSW coal industry

- Glencore rejects PoN's assertion that the Port charges are a negligible component of total delivered cost of coal and are incapable of creating any material uncertainty or impact on competition. There is also no evidence to support PoN's statement that recent changes in price are a "once off restructure" and the submissions referred to above suggest otherwise. Further, PoN is empowered by legislation to continue to increase prices and therefore its approach creates considerable uncertainty associated with such a regime.
- In PoN's Submission, much is made of a purported percentage of costs of coal exports based on the current increase and PoN seeks to provide some third party analysis of Whitehaven's recent financing to show it has not been impacted by the price increase. However, the PoN Submission is contradicted by Whitehaven itself in its Submission dated 22 June 2015 which states at page 3 as follows:

"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 price and/or method of determining the price for the services at the Port of Newcastle, which in turn will:

...

- *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..."*
- The NSW Minerals Council also states as follows at page 6 of their submission dated June 2015:

"NSWMC confirms Glencore's submission that price increases for access to the shipping channels at the Port can materially affect the competitiveness and viability of coal mining operations in the Hunter Valley. Coal is an internationally traded commodity with prices set by the international market. To be competitive, Australian coal producers must have a cost base that allows them to meet that international price profitably, despite the shipping costs of exporting the coal from Australia and the impact of currency fluctuations. In this environment, monopoly pricing behaviour in the supply chain could materially affect the competitiveness and viability of Australian coal producers by increasing their cost base to unprofitable levels."

- Shipping Australia also stated as follows at page 2 of their submission dated 18 June 2015:

"2.5 In addition, PoN of Newcastle has increased its non-coal tariffs by 3.9per cent, for two consecutive years which is significantly above the prevailing and forecast CPI. These increases coupled with a recent 22per cent drop in coal exports is having an detrimental effect on the shipping lines who are currently suffering from overcapacity and marginal operating balances. The impact of reduced commodity values, in particular the coal price, is putting more pressure on the shipping companies to reduce bulk shipping rates and absorb cost.

2.6 SAL strongly believes that the declaration will provide a clear mechanism to facilitate and enforce fair and reasonable priced access to shipping channels. Additionally, it will establish price certainty and permit more effective competition in the global coal market. "

4.3 *The PoN Submission lacks industry insight and is inconsistent with the industry consensus*

As a general observation, the PoN Submission provides views in relation to the coal mining industry and Hunter Valley in particular which are not well grounded in industry experience as to how industry participants actually operate, nor are the conclusions made consistent with the views of the NSW Minerals Council nor terminal operators PWCS and NCIG.

4.4 *The current regulatory regime*

- There is no evidence to support the PoN Submission that the supposed threat of "heavy handed regulation" has caused PoN to constrain its charges below what it believes would otherwise occur. It is instructive to revisit an outline of the current regulatory regime provided in PoN's Submission. While PoN is subject to the Price Monitoring Scheme under Part 6 of the *Ports and Maritime Administration Act 1995* (NSW), the amendments to the legislation in 2013 removed the requirement to obtain Ministerial consent for setting relevant port charges. The current regime only imposes notice and reporting obligations on the Port Lessee and while the NSW Minister may refer any inappropriate pricing behavior to the Independent Pricing and Regulatory Tribunal ("**IPART**"), any action taken by IPART can at best result in recommendations rather than enforceable determinations by the ACCC as would be the case under a declaration outcome.
- Finally, Glencore notes that declaration will not create such a significant concern or uncertainty for the coal industry arising from regulatory oversight by the ACCC. Glencore considers the ACCC has administered the ARTC access arrangements generally very well.

4.5 *PoN's incentive to maximise return on its investment*

Central to PoN's concerns with the Application is the impact of declaration on its equity investment. These statements underscore the ACCC's publicly stated concerns with the misaligned incentives of privatised asset operators and the provision of access on fair and reasonable terms and demonstrate the incentive for PoN to resist declaration in order to recover the high price paid on privatisation. In contrast, given current coal industry issues, other coal infrastructure providers such as PWCS are reducing charges to be more economical, not increasing them.

5. *Conclusion*

5.1 *Designated Minister*

Glencore notes the earlier correspondence and submissions in relation to the Designated Minister for this matter. The PoN Submission makes it clear that PoN make the relevant decisions in respect of the service/facility and the price on which the entity allowed access will

have to pay for that access. The PoN Submission also makes it clear that the relevant charges are not subject to NSW Ministerial approval – see page 77 (see also pages 78 and 79):

"Port of Newcastle Operations currently has the power to fix and collect the state operational charges, wharfage charges, and navigation services charges, without Ministerial Approval."

We believe that PoN's Submission dated 18 June 2015 assists in conclusively determining this issue as the Designated Minister being the Commonwealth Minister.

5.1 Importance of Application

Glencore believes that this application is important for the purposes of access under Part IIIA to a bottleneck service/facility being the Channel to Australia's largest coal export port. Declaration of the services/channel is important for coal mining, coal exports, employment and economic growth in the Hunter Valley.

29 June 2015