

NOTICE TO PORT OF NEWCASTLE OPERATIONS UNDER SECTION 44FA(1) OF THE COMPETITION AND CONSUMER ACT 2010

The National Competition Council (the Council) requests that Port of Newcastle Operations (PNO) give to the Council, by **5pm EST on Friday, 2 October 2015**, information in response to the questions below.

The Council considers the information requested may be relevant to deciding what recommendation to make in relation to the application by Glencore Coal Pty Ltd (Glencore) for declaration of the shipping channel service at the Port of Newcastle.

Any information provided in the response that is confidential must be clearly identified as such and reasons given in support of the claim of confidentiality. Where applicable, a public version of any confidential response, in which confidential information has been redacted, should be provided along with the confidential version.

Questions

1. Glencore states in its submission in response to the Council's draft recommendation that China Merchants Group, one of the 50% owners of PNO, has a bulk carrier fleet which includes bulk coal carriers (at p. 17).
 - 1.1 *Describe the nature and extent of any vertical integration between PNO and shipping services provided by China Merchants Group or its subsidiaries (CMG), including details of any bulk carrier fleet or vessels in which CMG has an interest.*
 - 1.2 *State whether any bulk coal carriers owned or operated by CMG use or service the Port of Newcastle and, if so, provide the details of any visits by those vessels to the Port of Newcastle between 1 January 2014 and the date of this Notice.*
 - 1.3 *Provide details of any procedures, protocols or other measures PNO has in place to prevent any favourable treatment by PNO of CMG vessels using the Port of Newcastle.*
2. Glencore has made the following statements in its submission:
 - 'Assessing what has occurred to date, the Channel access fees were increased without consultation and apply in a discriminatory manner to larger coal vessels that are more efficient and service only certain types of ports.' (at p. 7)
 - PNO '...will seek to recover at least an additional (in addition to the recent \$20m increase) amount between \$60m per year and up to \$180m per year, representing even on PNO's calculations between 3-6% of the total exported coal price.' (at p. 12) This is a conclusion from the report from Synergies Economic Consulting that estimates, based on publicly available information, PNO's cost base, revenue requirements and possible future price increases.

Glencore has also provided a report from RBB Economics that offers an economic assessment of the Council's draft recommendation, together with a report by the Reserve Bank of Australia entitled *Developments in Thermal Coal Markets*.

- 2.1 *State the process PNO undertook to set the prices for the navigation and wharfage charges for the services that are the subject of the application. In doing so, include:*
- (a) *PNO's considerations, including reasons, as to whether its changes to navigation and wharfage charges would or would not be likely to affect coal mining production in the Hunter Valley generally, or on any particular mines or mining operators specifically; and*
 - (b) *a description of any consultation undertaken by PNO in relation to the introduction of the new navigation and wharfage charges for the coal-related services at the Port of Newcastle.*
- 2.2 *What are PNO's considerations, including reasons, as to whether future changes to navigation and/or wharfage charges would or would not be likely to affect coal mining production in the Hunter Valley generally, or on any particular mines or mining operators.*
- 2.3 *In relation to the RBB Economics report, please provide PNO's response to the views expressed that:*
- (a) *...PNO should be able to maintain returns to shareholders whilst lowering unit prices taking into account the volume effect (p. 5);*
 - (b) *...approximately a third of the affected mines are currently cash negative indicates that the closure of mines cannot be discounted [and] that some mines are already closing and it is likely that further increases in access charges would lead to more closures (p. 7);*
 - (c) *...PNO can only generate a commercial return to its investors by imposing significant price increases into the future (p. 9).*

Dated: 18 September 2015