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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: Declaration of shipping channel service at the Port of Newcastle.

1. Introduction

Peabody Energy Australia Pty Ltd (**Peabody**) welcomes the opportunity to respond to the Draft recommendation by the National Competition Council (**NCC**) in relation to the Declaration of the shipping channel service at the Port of Newcastle dated 30 July 2015 (**Recommendation**)

As the world's largest private sector coal producer, Peabody maintains a significant presence in Australia with the ownership 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 provides this submission in relation to the Recommendation;

2. Submission:

Peabody does not support the Recommendation put forward by the NCC as we do not support the determination in relation to section 44G(2)(a) under Part IIIA the Competition and Consumer Act 2010 (**CCA**).

Section 4.41 of the Recommendation considers that as the charges for the service represent only a very small component of the overall cost of the production and sale of coal for export from the Hunter Valley; that it is unlikely that changes in those charges would materially impact competition in any relevant market. Section 4.43 notes that Criteria (a) is not satisfied.

Peabody submits that although the cost of the service is only a small component, it is the materiality of the increase that is the consideration. In the case of the services provided by the PON, there has been a material increase in costs relative to the service that has been provided. While this may be a small increase in relation to the entire value chain it is likely a material cost increase to vessels entering the Port of Newcastle which may impact access for services.

In this instance there are 2 direct implications of the material cost increase. In the first instance, the vessel being charged has to absorb the cost which can result in a decrease in competition for shipping from the Hunter Valley and Port of Newcastle. Second, is that the costs are able to be passed through the value chain and subsequent demand may be reduced or margins may be eroded.

If the material increase in cost that has occurred with PON services was translated to multiple and/or substantial unit costs in the value chain, then the potential impact on competition can be a significant issue. Cost increases that are unable to be absorbed or passed on through price, may result in a decline in market participants. In the case of the Hunter Valley, which competes in a global marketplace, the result may be that there is the inability to pass through cost, and therefore result in a decrease in competition and subsequent access for services.

In accordance with section 44G(2)(a), pricing in relation to the service provided by PON may impact on access for services as there has been a material increase, not simply because the increase is only a small component of the overall value chain. Due to the material nature of the increase, it is possible that the long term market for access to channel services by the PON may be diminished. This has the ability to impact the entire value chain which includes producers and service providers in the Hunter Valley.

Peabody submits that the NCC review the determination in respect of criteria (a) based on a test of materiality in relation to the cost increase for service provided as opposed to the overall impact of the cost.

Please contact 07 3333 5628 should you wish to discuss this submission.