

National Competition Council

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4 September 2018

Mr Andrew Christopher
Partner
Webb Henderson
Level 18
420 George Street
SYDNEY NSW 2000

By email: andrew.christopher@webbhenderson.com

Dear Mr Christopher

Re: Possible recommendation to revoke declaration of service at the Port of Newcastle – request for additional information

The National Competition Council (**the Council**) requests that Port of Newcastle Operations Pty Ltd (**PNO**) provide additional submissions, documents and information to enable the Council to consider whether the Council should recommend under section 44J of the Competition and Consumer Act 2010 (**the Act**) that the designated Minister revoke the declaration of the shipping channel service at the Port of Newcastle (**the Port**).

In particular, the Council requests further submission, documents and information from PNO in relation to:

1. Investment incentives in new coal mining projects in the port's catchment area with and without declaration.
2. The effect of declaration on competition in the acquisition and disposal of exploration and/or mining authorities.
3. Whether declaration of the Service would promote the public interest.
4. The effect of a proposed new container terminal at the Port on PNO's incentives to provide access to the declared service with and without declaration, including the terms and conditions on which access is provided. In particular, please provide relevant documents and information (such as Board papers or internal analyses or modelling) regarding:
 - (a) An estimate of the date on which a container terminal might commence operation at the Port.
 - (b) The nature and timing of projected investment in the container terminal
 - (c) Projected throughput (in terms of twenty-foot equivalent units [**TEU**] and vessels) at the terminal when it commences operation.
 - (d) Projected throughput (in terms of TEU and vessels) at the terminal by July 2031.
 - (e) Estimates of the projected throughput and revenue at the terminal as a percentage of total port throughput and revenue.

- (f) Information on the likely significance of charges for the declared service, including an estimate of the proportion of container prices and container service costs that port charges would comprise.
 - (g) The effect of the proposed new container terminal on the Port's capacity utilisation up to July 2013 and the effect that any consequent change in capacity utilisation will have on the terms and conditions of access to the declared service with and without declaration.
 - (h) The effect of the proposed new container terminal on prices and terms and conditions of access for non-containerised throughput.
 - (i) Whether PNO (or any of its owners) is/are relevantly vertically integrated into any container market or expects to become relevantly vertically integrated by July 2031.
5. Containers imported and exported at the Port in 2017 and 2018 including:
- (a) The total number of containers imported and exported at the Port (itemised by container capacity).
 - (b) The total number of container ships that imported or exported containers at the Port, including the class of those ships and the average number of containers (in TEU) that they were laden with.
 - (c) A breakdown of charges (itemised by charge type) imposed by PNO on container ships and the owners of container cargo.
 - (d) An estimate of the percentage that PNO's charges comprise of the total cost of importing or exporting one TEU container at the Port.
 - (e) An estimate of the percentage that PNO's charges comprise of the total price paid by end consumers who have paid to import or export one TEU container at the Port.

Next steps

PNO's response should be provided to the Council by **5pm EST on Monday 17 September 2018**.

In the interest of transparency, the Council intends to publish this letter and PNO's response on its website. Any information provided in PNO's response that it considers to be 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.

All interested parties (including PNO) will have an opportunity to provide further submissions after the Council has released a statement of its preliminary views.

Please contact me on 02 9230 9145 if you require further information.

Yours sincerely

Linley Johnson
Executive Director
National Competition Council