



04 September 2015

{by e-mail}

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

Dear John,

Submission on National Competition Council (NCC) Draft Recommendation in relation to declaration of the Port of Newcastle

Whitehaven Coal Limited (**Whitehaven**) makes this subsequent submission in response to the NCC's draft recommendation, in relation to the application by Glencore Coal Pty Limited (**Glencore**) for the declaration of the Port of Newcastle.

Whitehaven reiterates its support for the application by Glencore for the reasons outlined in our submission to the NCC dated 22 June 2015.

Whitehaven agrees with the NCC with regards to the designated Minister being the Federal Minister for Small Business.

It is Whitehaven's understanding from the draft recommendation that the NCC believes the application meets all relevant requirements other than Material Promotion of Competition (criterion a)).

Promotion of a material increase in competition

The NCC draft recommendation concludes that given the charges are a relatively small component of the overall cost of production and transport of coal, the charges would have little impact on competition in a relevant market and therefore increased access would not materially promote competition. Due to this NCC's draft recommendation to the relevant Minister is to not declare the service.

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.

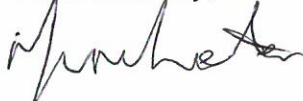
Whitehaven maintains that the Port of Newcastle does meet the criteria a) of section 44G(2)) of Part 111A of the Competition and Consumer Act and that the service should be declared under the Act :

- in establishing whether the criteria for material increase in competition is met, the component of the charge or its increase against overall cost is not relevant and therefore should not be taken into consideration in the NCC recommendation;
- in any event an increase of the quantum proposed by Port of Newcastle (circa \$20m) to the cost of the Newcastle coal export industry should not be viewed as immaterial;
- with the purchase price of the port lease being \$1.75billion coupled with the forecast of minimal expansion (and potentially contraction) of the Hunter Valley coal production the only avenue available to the port owners to increase returns is through pricing increases;
- given the current coal market conditions of historically low margins an increase in costs of any magnitude has the potential to force companies to close low margin mines thereby decreasing competition in the coal market;
- in the absence of regulatory oversight of pricing provided by declaration it is likely this will be the first of many price increases over the coming periods, leading to additional mine closures and thereby further reducing competition.

Whitehaven believes the Glencore application meets all criteria for declaration of the Port of Newcastle including Material Promotion of Competition due to the reasons provided above. Given the additional information above Whitehaven requests NCC review its draft recommendation accordingly.

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

Yours sincerely,



Keiron Rochester

GENERAL MANAGER – INFRASTRUCTURE