

National Competition Council

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3 August 2018

Mr Dave Poddar
Clifford Chance
Level 16, No. 1 O'Connell Street
SYDNEY NSW 2000

By email: dave.poddar@cliffordchance.com

Dear Mr Poddar

Submission by Port of Newcastle Operations to the National Competition Council for a possible recommendation to revoke declaration of the shipping channel service at the Port of Newcastle

I refer to your letter dated 30 July 2018, in which you requested an extension until 3 September 2018 for Glencore Coal Pty Ltd (**Glencore**) to provide a submission on a possible recommendation to revoke declaration of the shipping channel service at the Port of Newcastle.

Section 44J of the Competition & Consumer Act 2010 (**CCA**), which provides that the Council may recommend revocation of declaration to the designated Minister, imposes no particular procedural requirements upon the Council in relation to making such a recommendation.

In response to the submission from Port of Newcastle Operations (**PNO**) on this matter, the Council has of its own volition decided to follow a similar process to considering an application for declaration. Consistent with its 2018 *Guide to declaration under Part IIIA of the CCA* the Council has provided interested parties with four weeks to make submissions. The Council has also indicated its intention to publish a statement of its preliminary views and seek further comment before reaching any concluded position. In all respects this is materially consistent with the approach the Council took when Glencore initially applied for declaration.

In this context, the Council has considered the concerns raised in your letter and is of the view that neither the alleged motivation of PNO nor the fact of an arbitration currently being conducted by the ACCC warrant an extension of time for submissions to be made by Glencore. Further, the Council is not persuaded that any confidentiality restrictions in that arbitration materially impede the ability of Glencore to meet the Council's submission deadline. I note that the original declaration application was considered by all parties, including through Tribunal and judicial review, absent information from any arbitration process.

Accordingly, the Council has decided not to grant an extension and Glencore should provide any submission by **Wednesday 8 August 2018**. I note that a further opportunity to comment will follow the release of the Council's preliminary views.

I also note that the Council intends to maintain the fullest possible transparency in its assessment of PNO's request for a revocation recommendation. As your letter of 30 July 2018 was not accompanied by a confidentiality request, the Council proposes to publish that letter on its website on or after 8 August 2018, along with a copy of this reply. Please let me know if you object to such publication.

If you would like to further discuss this matter, please contact me at richard.home@acc.gov.au
or on 03 .

Yours sincerely

Richard Home
Executive Director
National Competition Council