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SAL 15060

18 June 2014

**Port of Newcastle
National Competition Council
GPO Box 250
Melbourne VIC 3001**

By email to pon@ncc.gov.au

Re: Declaration of Shipping Channel Services at the Port Of Newcastle (PoN) – Glencore Application

1. Background

- 1.1 Shipping Australia Limited (SAL) is a peak shipowner association with 36 member lines and shipping agents and 50 corporate associate members, which generally provide services to the maritime industry in Australia. Our member lines are involved with over 80 per cent of Australia's international trade and car trade as well as over 70 per cent of our break bulk and bulk trade. A number of our members are also actively engaged in the provision of coastal cargo services to Australian consignors and consignees. A list of members is available at www.shippingaustralia.com.
- 1.2 A major focus of SAL is to promote efficient and effective maritime trade for Australia whilst advancing the interests of ship owners and shipping agents. SAL also provides secretariat services to the many liner companies and agencies who are members of conferences, discussion agreements, consortia and joint services that have their agreements registered under Part X of the Australian Competition and Consumer Act 2012. These agreements specifically seek to facilitate and encourage growth of Australia's liner shipping trades.
- 1.3 SAL is concerned that the current arrangement for the provision of shipping channel access service (the service) in *all* NSW Ports and the related navigation services charge has no effective oversight for price monitoring. Based on this, the application for such a service at Port of Newcastle to be declared is strongly supported.

2. Access to the Service will promote competition

- 2.1 The PoN shipping channel constitutes the critical link to the transport of goods, including coal exports to and from the port. It provides a means by which access seekers, such as shipping companies or their agents, gain access to the port and the monopoly provision of

these services reduces their ability to negotiate lower charges. In fact, the free reign by private enterprises, such as at the PoN, to raise these service charges adds an uncontrolled fixed cost to all exports through the port and thus reduces their international competitiveness.

- 2.2 Australia is the world's largest coal exporter, with 78per cent of the coal we mine sent to over 30 countries. The top five destinations for coal from Australia are Japan, China, South Korea, India and Taiwan. Coal is Australia's second biggest export after iron ore with a value of around \$50 billion per annum and the Port of Newcastle is the world's biggest coal export hub, shipping more than 150 million tonnes in the last year.
- 2.3 It is acknowledged that until the mid-2000s the sale of iron and coal was largely based on longer-term contract, however in recent years trade of these commodities has shifted to shorter-term pricing mechanisms, with monthly contracts and spot sales now prevalent. Arguably, spot transactions are now the most informative signal about the current state of demand and supply for these commodities. Increases in port charges such as the navigation service charge has an indirect negative impact on coal producers in the Hunter region, as buyers of the coal will factor in the additional transportation costs at the point of utilisation, thereby making the region uncompetitive in the global market.
- 2.4 The recent coal tariff restructure by PoN resulted in a 61per cent increase in the navigation service charge. On examination of this tariff structure, and based on the number of coal vessel visits to the port in 2014, it is apparent that this increase in the navigation service charge will provide a conservative estimated yearly financial windfall of over AUD 22 million to the Port of Newcastle. This cannot be justified against any increased cost base and seems to be clear evidence of price gouging by the new private operator.
- 2.5 In addition, PoN of Newcastle has increased its non-coal tariffs by 3.9per cent, for two consecutive years which is significantly above the prevailing and forecast CPI. These increases coupled with a recent 22per cent drop in coal exports is having a detrimental effect on the shipping lines who are currently suffering from overcapacity and marginal operating balances. The impact of reduced commodity values, in particular the coal price, is putting more pressure on the shipping companies to reduce bulk shipping rates and absorb cost.
- 2.6 SAL strongly believes that the declaration will provide a clear mechanism to facilitate and enforce fair and reasonable priced access to shipping channels. Additionally, it will establish price certainty and permit more effective competition in the global coal market.

3. Uneconomical to duplicate the service

- 3.1 The natural layout of the Port of Newcastle and its associated shipping channel clearly demonstrates a “bottleneck”. The high fixed cost for creating a channel (if possible) together with the declining cost as the number of vessels increases makes the duplication of the channel an economically unfeasible option and places the PoN as the operator of the service with a clear market monopoly.
- 3.2 Additionally, it is not feasible for Hunter Valley coal producers to export their product through any other port.
- 3.3 SAL considers that the utilisation of the service, i.e. the shipping channel is below capacity and is controlled by berth availability and access coordinated accordingly.

4. National Significance

- 4.1 An extract from the PoN website states that *“The Port of Newcastle is the largest bulk shipping port on the east coast of Australia and the world’s leading coal export port”*. Supporting trade figures for the year 2014 reflect the port handled 164.3 million tonnes of which coal exports comprised 159 million tonnes (97per cent) and equates to almost 50per cent of Australia’ coal exports. Thermal coal exported through Newcastle is of a high quality and continues to be the preference for the premium power generation markets where importance is placed on quality, efficiency and reduced emissions.
- 4.2 The PoN has recently supported the proposed development of Port Waratah Coal Service’s T4 site which received the NSW Planning and Assessment Commission approval in December last year. This will increase berth capacity which is currently the limiting factor.
- 4.3 SAL believes that whilst the Newcastle coal exports contribute towards Port of Newcastle’s national importance and the economy, the shipping channel is the vital link that requires declaration in recognition of its national significance.

5. Price monitoring - Absence of effective regulatory oversight

- 5.1 In 2012, the NSW government passed enabling legislation (*Ports Assets (Authorised Transactions) Act 2012*) which provided for the restructuring of and transfer of ports assets, including the shipping channel, to the private sector. The Port of Newcastle (private port operator) is jointly owned by the Infrastructure Fund (managed by Hastings) and China Merchants.
- 5.2 As a result of the above legislation, consequential amendments were made to the *Ports and Maritime Administration Act 1995* (PMAA) prescribing a private port operator as a *“relevant port authority”* thereby enabling them to set and control port charges, including navigation services charge which is directly related to the service, in question. The extent of price monitoring under the PMAA is limited to providing a reason for a change in the charge and does not prescribe any limits, criteria or justification for the application of any increase in the charge. SAL believes that the recent 61per cent increase in the navigation service charge is clear evidence of the Port of Newcastle exercising monopoly power.
- 5.3 The objective of the NSW government’s price monitoring scheme under the PMAA is to promote the *“economically efficient operation of”* port facilities by monitoring the port operators’ charges, *“so as to promote a competitive commercial environment in port operations”*. It is unclear how such a significant increase of the navigation charge could be justified and escape Ministerial scrutiny for inconsistency, magnitude and a sharp trend.
- 5.4 SAL considers that the PMAA’s price monitoring is inadequate, does not allow for commercial negotiation of charges and lacks an effective dispute resolution mechanism. The only avenue appears to be seeking Ministerial recommendation for review by the Independent Pricing and Regulatory Tribunal.

6. Access to the Service will provide public benefit

- 6.1 As mentioned above, declaring the service will provide for greater price certainty to the shipping lines and their agents, thereby promoting business confidence to port users and

relevant stakeholders in the export supply chain. SAL notes the Council has previously recommended certification of shipping channels and considered them not to raise public safety and was not contrary to public interest.

7. Provider of the Service

- 7.1 The Port of Newcastle (as the relevant port authority) provides a service to visiting vessels seeking access to its port and for use of its berthing facilities. It is responsible for, amongst other things, the maintenance dredging of the channel and recovers the associated costs through the navigation service charge. As mentioned above, section 50 of the PMAA Act prescribe that this charge may be fixed by the PoN. Mindful that legal opinions have been obtained in this regard, SAL members believe that the provider of the service is the Port of Newcastle as it operates the facility and controls the access as well the related pricing mechanism through the navigation service charge. Conscious that the owner (lessor) of the service is the State Government and the provider of the service (lessee) is the PoN, any recommendation by the National Competition Council to the NSW Premier as the designated Minister could present a conflict of interest and hence we recommend that this be referred to the relevant Commonwealth Minister.

8. Conclusion

- 8.1 SAL's view is that ports and their shipping channels are natural monopolies which can impose excessive prices. This will impact on export industries unless effective access regimes are implemented. SAL supports the application for the declaration of the shipping channel service at the Port of Newcastle.

Authorised by:
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Chief Executive Officer