



Draft Determination

Application for authorisation lodged by Hunter Valley Coal Chain
Coordinator Limited

in respect of

Authorisation number: AA1000658

Date: 1 May 2024

Commissioners: Keogh
Lowe

Summary

The ACCC proposes to grant authorisation to enable Hunter Valley Coal Chain Coordinator Limited (HVCCC) and coal chain participants to continue to engage in planning and coordination activities for the cooperative operation and alignment of the Hunter Valley coal supply chain.

HVCCC has been performing these activities since 2009 under an Existing Authorisation¹ for a broad and complex set of Capacity Framework Arrangements that expires on 31 December 2024. The new application does not involve any changes to HVCCC's activities but sets out HVCCC's planning and coordination activities with greater clarity.

The ACCC proposes to grant authorisation for 10 years, until 31 December 2034.

The ACCC considers the Proposed Conduct is likely to result in ongoing significant public benefit by maximising efficient coal chain capacity and throughput, and facilitating efficient infrastructure investment and employment decisions across the Hunter Valley coal chain. The ACCC considers the Proposed Conduct is unlikely to result in any significant public detriment.

The ACCC invites submissions in relation to this draft determination by 15 May 2024, before making its final decision.

1. The application for authorisation

- 1.1. On 19 December 2023 Hunter Valley Coal Chain Coordinator Limited (HVCCC) lodged application for authorisation AA1000658 with the Australian Competition and Consumer Commission (the ACCC). HVCCC is seeking authorisation for itself and on behalf of its current and future HVCCC Members, comprising representatives from competing infrastructure owners, service providers and coal producers in the Hunter Valley coal chain (see current HVCCC Members listed at Attachment A to this draft determination). Further, HVCCC seeks that any authorisation granted by the ACCC is expressed to apply to 'the Related Entities and to the directors and officers of HVCCC and its Related Entities.'² Related Entities means the successors, assigns, related bodies corporate, associated entities, agents, joint venture partners and equity partners of each Member of HVCCC (current and future).³
- 1.2. In a supplementary submission received on 22 January 2024, HVCCC made a minor amendment to clarify an aspect of the proposed conduct for which authorisation is sought.⁴
- 1.3. This application relates to HVCCC's central planning and coordination activities in the Hunter Valley coal chain. It does *not* seek to cover the separate agreements entered into between below rail, above rail, port and/or port terminal operators and their respective customers.⁵

¹ [Authorisation A91147-A91149 and A91168-A91169](#) granted to Port Waratah Coal Services, Newcastle Coal Infrastructure Group and Newcastle Port Corporation in relation to conduct described in the Capacity Framework Arrangements, 9 December 2009.

² HVCCC application for authorisation AA1000658, 19 December 2023, p. 8.

³ HVCCC application for authorisation AA1000658, 19 December 2023, Attachment 2.

⁴ HVCCC supplementary submission, 22 January 2024, pp. 1-2.

⁵ HVCCC application for authorisation AA1000658, 19 December 2023, p. 1.

- 1.4. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would or is likely to result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.5. HVCCC seeks authorisation for a further 10-year period after the Existing Authorisation expires, until 31 December 2034.

The Applicant

- 1.6. HVCCC was incorporated on 27 August 2009, replacing the Hunter Valley Coal Chain Logistics Team, which previously undertook a coal chain coordination role in the Hunter Valley.
- 1.7. A complete list of the current Members of HVCCC is provided in Attachment A to this draft determination. They include:⁶
 - **Producers** – coal producers that export coal through the Port of Newcastle
 - **Below rail rack provider** – Australian Rail Track Corporation Limited (**ARTC**)
 - **Above rail haulage providers** – Pacific National Pty Ltd, Aurizon Operations Limited, One Rail (FLACH) Pty Ltd, and Southern Shorthaul Railroad Pty Ltd
 - **Port terminals** – Port Waratah Coal Services (**PWCS**) and Newcastle Coal Infrastructure Group (**NCIG**), and
 - **Newcastle Port** – Port Authority of New South Wales and Port of Newcastle Operations Pty Ltd as trustee for the Port of Newcastle Unit Trust, the operator of the Port of Newcastle(referred to as **HVCCC Members**).
- 1.8. HVCCC's governance arrangements are specified in its Constitution and Members Agreement. The Objects of HVCCC (in Schedule 1 to its Constitution) set out its core functions and role, namely:

To plan and coordinate the co-operative operation and alignment of the Coal Chain in order to maximise the volume of coal transported through the Coal Chain, at a minimum total logistics cost in accordance with the agreed collective needs and contractual obligations of Producers and Service Providers.⁷
- 1.9. HVCCC Members can nominate Member representatives and directors. HVCCC Members, the board of directors, board committees and working groups meet regularly to monitor and manage HVCCC's operations.⁸
- 1.10. The Members Agreement sets out Information Sharing Protocols designed to ensure that confidential and competitively sensitive information is not provided to competing HVCCC Members. Further detail about how information is shared within HVCCC is provided in Section 3 of this draft determination.

⁶ HVCCC application for authorisation AA1000658, 19 December 2023, p. 4.

⁷ HVCCC application for authorisation AA1000658, 19 December 2023, p. 4.

⁸ HVCCC application for authorisation AA1000658, 19 December 2023, p. 4.

2. Background

Rationale for the proposed conduct

2.1. The Hunter Valley coal chain involves the shared use of above and below rail, port and port terminal infrastructure – each of which is owned by different parties – by multiple service providers and coal producers. HVCCC submits that the safe and efficient operation of the export coal supply chain ‘inherently requires coordination between coal chain participants, particularly in relation to planning for the use of, and interfaces between, shared and connected infrastructure.’⁹

The Hunter Valley coal export supply chain¹⁰

2.2. HVCCC advises that the Hunter Valley coal chain ‘is the largest seaborne coal export operation in the world.’ It comprises:

- 29 coal mines owned by 14 coal producers
- a rail network with multiple branch lines and coal haulage distances of up to 406 kilometres
- more than 24 points for loading coal onto trains
- 4 rail haulage providers delivering coal to the Port of Newcastle, as well as to domestic coal customers
- 3 unload points for domestic customers
- 2 export coal terminal providers (operating 3 terminals¹¹), with different operational processes and nomination, allocation and contacting arrangements with coal producer customers and
- the movement and loading of more than 1600 coal vessels each year.

2.3. HVCCC submits that since 2009, when it was incorporated, the following changes in the Hunter Valley coal chain have occurred:

- total export capacity has increased from 95 million tonnes to over 200 million tonnes per annum
- 5 additional coal producers have become members of HVCCC
- rail haulage providers have increased from 1 to 4, operating 58 trains (up from 28)
- the 2 export terminal operators expanded from 5 berths and 5 ship loaders, to 9 berths and 7 ship loaders in total, and
- the average vessel turnaround time has reduced from 12 days to 4 days.

2.4. In 2023, around 145 million tonnes of coal were exported through the Port of Newcastle.¹² The majority of coal exported is thermal (or steaming) coal, with some

⁹ HVCCC application for authorisation AA1000658, 19 December 2023, p. 1.

¹⁰ Unless otherwise state, information appearing under this heading is from HVCCC’s application for authorisation AA1000658, 19 December 2023, Attachment 5.

¹¹ Port Waratah Coal Services operates the Kooragang and Carrington Coal Terminals and Newcastle Coal Infrastructure Group operates the newest coal terminal on Kooragang Island.

¹² Submission from [NSW Minerals Council](#), 5 February 2024, p. 2.

metallurgical coal exports as well. The majority of Hunter Valley coal is exported to Japan (55%), Taiwan (16%) and South Korea (around 10%). In 2023, 14 million tonnes of Hunter Valley coal was supplied to nearby domestic power stations.¹³..

Previous ACCC authorisations and supply chain coordination in the Hunter Valley

- 2.5. In the mid-2000's the ACCC authorised a series of transitional (or short-term) arrangements at the Port of Newcastle, which were designed to address the imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain, thereby reducing a lengthy queue of coal vessels that had formed offshore.
- 2.6. In 2004, global coal demand was high and prices were rising. Producers' demand for export capacity at the Port of Newcastle grew quickly. Producers had incentive to place vessels in the queue waiting offshore to then drive coal movement through the coal chain to load their coal. A large queue of coal vessels formed – imposing significant costs on the industry, including demurrage.
- 2.7. Port Waratah Coal Services sought authorisation for a 'vessel queue management system', which the ACCC granted in 2004. Then followed a series of applications for similar schemes over the next 5 years.
- 2.8. The ACCC expressed concerns that the underlying contractual, structural and regulatory reasons for the capacity imbalance in the Hunter Valley were not being addressed. In its 2008 determination the ACCC questioned whether authorisation of short-term queue management systems remained in the public interest, unless the underlying issues were addressed – namely:
 - common user provisions of PWCS's [Port Waratah Coal Services] Kooragang Lease which, in effect, has required PWCS to accommodate every shipper of coal, restricting its ability to enter into long term, binding contracts to underpin investment; and
 - service providers contracting based on assessments of individual capacity without reference to the coal chain as a whole.¹⁴
- 2.9. Essentially, the capacity of the Hunter Valley coal chain is dependent on a number of different components of infrastructure. The combined certified capacity of each individual component was higher than the system could deliver as a whole, due to efficiency losses from the interactions of the various parts of coal chain – namely, rail track, above rail haulage, and coal loading facilities at mines and the port.
- 2.10. This meant that most of the infrastructure owners were contracting for more volume than the whole system could deliver. Which meant more ships were being sent to the Port of Newcastle than could be loaded – which was the primary driver of the long vessel queue.
- 2.11. Following the 2008 Greiner Review of the Hunter Valley coal chain and in response to pressure from the NSW Government, a series of complex agreements were then developed with the industry (namely, the [Capacity Framework Arrangements](#)) to resolve the over contracting and to transition to long-term take or pay contracts for terminal capacity. A new coal chain coordinator (the HVCCC) was to be incorporated

¹³ HVCCC supplementary submission, 22 January 2024, p. 19.

¹⁴ [ACCC Determination](#), 23 April 2008, in relation to the applications for authorisation lodged by Newcastle Port Corporation and Donaldson Coal Pty Limited, p. iii.

as an independent entity (to replace the Hunter Valley Coal Chain Logistics Team), with greater access to information to assist it perform its planning and coordination functions.

- 2.12. ACCC authorisation of Capacity Framework Agreements was sought in 2009. Part of the Capacity Framework Arrangements included information sharing and coordination between the various industry participants and the HVCCC for the purposes of determining system capacity and coordinating the operation of the different parts of the coal chain.¹⁵ The ACCC authorised the Capacity Framework Arrangements for 15 years, expiring on 31 December 2024.

3. The Proposed Conduct

- 3.1. HVCCC seeks authorisation for itself and current and future HVCCC Members and directors to engage in the following conduct, including any concerted practice, and to make and give effect to any contract, arrangement or understanding, which contains a provision in relation to the following conduct:

1. Sharing information and/or coordination between HVCCC, Members and Related Entities for the purpose of:
 - a. *Capacity planning* – this includes undertaking work to facilitate efficient and aligned system capacity planning across the coal chain, including:
 - i. preparation and communication of Master Plans and Annual Coal Chain capacity plans (Annual Declaration and System Assumptions), and
 - ii. assisting coal chain participants to understand potential impacts of changes to, or transfers or, contracted capacity and changes to planning assumptions.
 - b. *Operational planning* – coordinating with Members and Related Entities to:
 - i. identify risks to, and opportunities for, efficient operations, and
 - ii. prepare rolling plans to enable efficient and aligned operations, across the coal chain.

This includes obtaining information from, and coordinating with, Members and Related Entities to prepare and share short to medium term plans – for example: maintenance windows, forward weekly plans, cargo assembly plans, coal delivery schedules, rail plans and stockpile and vessel plans.
 - c. *Facilitating the Live Run function* – this includes monitoring the execution of daily plans and making recommendations to:
 - i. minimise losses from delays and disruptions, and
 - ii. ensure that impacts from events in Live Run are appropriately addressed and managed in future plans.

¹⁵ The authorised HVCCC conduct is summarised at paragraph 2.89 of the [ACCC Determination](#), 9 December 2009, in relation to the application for authorisation lodged by PWCS, NCIG and Newcastle Port Corporation in respect of the Capacity Framework Arrangements at the Port of Newcastle.

- d. *Recommending improvements in delivery of HVCCC Objects* – this includes:
 - i. recommending, measuring and reviewing coal chain performance standards, such as load point standards, train standards (sizes and cycle times), unloading standards, cargo assembly standards (for example: build times, parcels per vessel, parcel size), and vessel standards
 - ii. creating and sharing performance reports, including analysis and insights for causes and potential improvements, and
 - iii. recommending improvements to processes for planning and coordinating the cooperative alignment of the coal chain.¹⁶
2. Any concerted practice, or any contract, arrangement or understanding between Members or Related Entities that they will act in a particular way on the basis of a recommendation by, or advice from, the HVCCC; or any conduct that involves a Member or Related Entity making an independent decision based on, or giving effect to, a recommendation by, or advice from, HVCCC in the delivery of HVCCC Objects, in each case so far as necessary or desirable to achieve the purposes set out in item (1).¹⁷

(together the **Proposed Conduct**).

- 3.2. Further detail and examples of how the Proposed Conduct works in practice is provided below.

*Capacity planning*¹⁸

- 3.3. HVCCC prepares a rolling 10-year Hunter Valley Coal Chain Master Plan, which focusses on the market outlook, forecast volume scenarios, capacity constraints and whole of coal chain considerations including port, track and rail. The Master Plan helps HVCCC and Members with their own strategic planning and identifies pathways to meet forecasted whole of coal chain demand. To assemble the Master Plan, HVCCC coordinates separately with each Producer Member for forecast volumes and with each Service Provider Member for planned maintenance, asset availability and operating assumptions.
- 3.4. HVCCC uses a purpose-built model that simulates the physical operations of the Hunter Valley coal chain. This can be used to evaluate and advise relevant HVCCC Members on whole of coal chain implications of new access requests and changes to existing contracted capacity. The guiding principles of HVCCC's capacity planning are to replicate each of the service providers core operating modes, in order to maximise the 'flow and synchronisation of the coal chain's interdependent assets'.
- 3.5. HVCCC also prepares and publishes a coordinated annual coal chain capacity plan (called *Annual Declaration and System Assumptions*). The *Annual Declaration* states the expected coal chain capacity based on the whole of coal chain interdependencies of shared infrastructure, differing service provider operating modes and contractual obligations, maintenance windows, and key performance levels. If the Annual Declaration determines there is a risk that coal chain capacity cannot be achieved, HVCCC coordinates the potential intervention pathways to deliver that capacity.

¹⁶ HVCCC application for authorisation AA1000658, 19 December 2023, Attachment A.

¹⁷ HVCCC supplementary submission, 22 January 2024, p. 2.

¹⁸ HVCCC application for authorisation AA1000658, 19 December 2023, pp 6-7.

- 3.6. The *System Assumptions* (including actual and expected demand, maintenance and asset performance) are documented to provide HVCCC and its Members with a reference point for the infrastructure requirements, modes of operation, maintenance windows, loss rates and key performance levels or targets. Even when HVCCC's *Annual Declaration* does not determine there is a risk to capacity being achieved, the *System Assumptions* outline performance obligations and highlights potential risks.

Operational planning

- 3.7. HVCCC coordinates rolling weekly planning meetings, which integrate coal producer demand and forecasts out to 12 weeks, match service providers' assets to demand and contractual obligations, align maintenance, and identify risks and opportunities.¹⁹ These meetings are led by the Forward Weekly Planning Coordinator within HVCCC's service delivery team. These meetings are conducted either face to face or in person, and in each case, separately with each HVCCC Member's representative. The information discussed in these meetings includes each HVCCC Member's coal demand and asset capability (including maintenance requirements). HVCCC considers the information provided from a whole of coal chain perspective and informs each individual HVCCC Member of the risks and opportunities to achieve its own forecast plan.²⁰
- 3.8. Any affected HVCCC Members (identified in constrained zones within the coal chain) are invited to attend a weekly forum at which HVCCC summarises the practical outcomes of Forward Weekly Plan from a whole of chain perspective.²¹
- 3.9. HVCCC also publishes daily rolling Cargo Assembly Plans to align service provider capacity and asset availability to meet producer demand and contractual obligations. This schedule is continually updated by HVCCC to change inputs from producer Members (that is, demand and supply variations) and service provider Members (that is, asset availability).²²

Live run (day of operations) function

- 3.10. This function is about monitoring the delivery of throughput against the daily plan. HVCCC runs the Live Run Integration Team, which is comprised of staff from HVCCC and each of the terminal, track, and rail haulage Members of HVCCC.²³ This team collectively oversees the execution of daily plans and schedules to minimise potential throughput losses from system interfaces and disruptions.
- 3.11. HVCCC facilitates information exchanges between service providers in its Live Run Role by:²⁴
- sending out a daily plan every 24 hours via integrated systems, which takes into account all known variables in the coal chain, including coal availability at mines, vessel stem, stockpile clearance, rail fleet, track and planned maintenance
 - hosting Live Run Integration Team 'hook-ups' via online meetings every 3 hours

¹⁹ HVCCC application for authorisation AA1000658, 19 December 2023, p 7.

²⁰ HVCCC supplementary submission, 22 January 2024, p 8.

²¹ HVCCC supplementary submission, 22 January 2024, p 8.

²² HVCCC application for authorisation AA1000658, 19 December 2023, p 7.

²³ Specifically: Australian Rail Track Corporation, Pacific National, Aurizon Operations, One Rail Australia, Southern Shorthaul Railroad, Port Waratah Coal Services, and Newcastle Coal Infrastructure Group.

²⁴ HVCCC supplementary submission, 22 January 2024, p 9.

- providing operational updates in real time through the HVCCC Integrated Planning System with links to Members' systems (as each individual Member's system is updated in the live environment) and
- as necessary, discussing 'live' with the Live Run Integration Team members any developments or changes to updates which require immediate attention.

3.12. HVCCC advises that the Live Run Integration Team has access to real-time, up to date operational information regarding the daily plan, coal chain status and disruptions. However, members of the Live Run Integration Team do not have access to commercially sensitive information of other operators and Member representatives are not involved in the forward planning functions and schedule development.²⁵

3.13. If the actual performance of the coal chain matches the daily plan, any information exchange is limited to status updates. However, when actual coal chain performance does not match the daily plan, HVCCC recommends actions necessary to recover the daily plan and minimise any throughput losses from a disruption. For example, during a disruption information sharing focuses on critical trains needed to complete cargoes, and on trains that might need to be cancelled to achieve and 'recover' the daily plan.²⁶ In doing so, HVCCC will provide advice about critical and priority trains (that is, those linked to a vessel that may be berthing in the next 24 – 48 hours). HVCCC will also make recommendations, from a whole of coal chain perspective, about what trains should be diverted or cancelled. HVCCC advises that service providers will assess any recommendations received from HVCCC and make an independent decision based on their ability to implement the recommendation and their customer obligations.²⁷

3.14. More specifically, the 'cancellation process' works as follows:²⁸

- a late running train likely to affect performance of the daily plan will be identified by either a representative of the relevant above rail haulage provider or by HVCCC's representative (known as the Dynamic Scheduler)
- the rail haulage provider's representative will identify which train (or trains) recorded in the daily plan should be cancelled to recover the daily plan and discuss the proposed cancellation with HVCCC
- if necessary, HVCCC's Dynamic Scheduler will make a recommendation concerning how best to recover the daily plan
- the rail haulage provider will cancel the service after taking into account any advice given or recommendation made by the HVCCC and
- HVCCC 'replans' the cancelled service as necessary in a future daily plan.

Monitoring, analysing and reporting

3.15. HVCCC monitors and analyses the actual performance of the Hunter Valley coal chain against the System Assumptions. Reports provided by HVCCC contain aggregated industry information, and aim to provide HVCCC Members with information and insights into opportunities for further system optimisation.

²⁵ HVCCC application for authorisation AA1000658, 19 December 2023, pp 7-8.

²⁶ HVCCC supplementary submission, 22 January 2024, pp 9-10.

²⁷ HVCCC supplementary submission, 22 January 2024, p 11.

²⁸ HVCCC supplementary submission, 22 January 2024, p 10.

Information Sharing Protocols

3.16. HVCCC obtains confidential information from HVCCC Members to deliver its coal chain plans, schedules and reports. This information includes individual producer forecasts, producer nominated orders/vessels, asset capability statements, contractual obligations between producers and service providers, and maintenance plans. HVCCC does not obtain pricing or cost information from HVCCC Members.²⁹

3.17. To ensure that confidential and competitively sensitive information is not provided to competing HVCCC Members, HVCCC has implemented Information Sharing Protocols within its Members Agreement which all HVCCC Members and Directors must comply with. The Information Sharing Protocols provide that HVCCC:³⁰

- Will not disclose confidential information shared by a Producer Member to any other Producer Member without their prior written consent –HVCCC advises this would be limited to circumstances where Producer Members have a shared or common interest. For example, they are affected by the same section of constrained rail track.
- Will not disclose a Producer Member’s confidential information to any third party or to a service provider unless the Chief Executive Officer and Chair of HVCCC are satisfied that the disclosure is to a Service Provider Member who will use the confidential information for the purpose of assisting HVCCC to achieve its Objects and that the Service Provider will keep the information confidential.
- Will ensure that its management information and data, including Board papers and other documents supplied to Directors (except the Chair) will not include a Member’s confidential information, except to the extent that the Directors need that information for a matter being considered by the Board (in which case the Directors will ensure such information remains confidential and that they will not pass that information back to their nominating Member organisation).

3.18. In practice, the Information Sharing Protocols work as follows:³¹

- information required from a Disclosing Member is agreed in writing with HVCCC
- the Disclosing Member’s information is sourced through system-to-system integration and stored by HVCCC
- HVCCC applies controls to protect confidentiality (for example, row level database security, aggregation and content filtering) and uses the information to produce plans or reports
- approval is sought from the Disclosing Member to publish the respective plans or reports
- Members access information through HVCCC’s Member Portal or through system-to-system integration with the required controls to protect confidentiality.

²⁹ HVCCC application for authorisation AA1000658, 19 December 2023, p 8.

³⁰ HVCCC application for authorisation AA1000658, 19 December 2023, p 8.

³¹ HVCCC supplementary submission, 22 January 2024, p 13.

3.19. For each of its key activities, HVCCC shares the following kinds of information with HVCCC Members:³²

- *Strategic Capacity Planning* – contract and forecast throughput volumes (not specific to individual Members, and aggregated to geographic regions), planned maintenance for shared infrastructure, asset availability and operating assumptions.
- *Annual Declaration and System Assumptions* – demand (aggregated to geographic regions), maintenance and asset performance.
- *Operational Planning* – rail schedules to fulfil nominated orders / vessels, vessel schedules (distribution limited to terminals and port entities), planned maintenance for shared infrastructure.
- *Live Run* – access for Service Providers to real-time, up-to-date operational information regarding the daily plan, coal chain status and disruptions.
- *Monitoring, Analysis and Reporting* – aggregated industry actual performance information.

4. Consultation

- 4.1. The ACCC invited submissions from a range of potentially interested parties including Hunter Valley coal chain service providers, infrastructure owners, coal producers, relevant industry associations or peak bodies, and state and federal government bodies.
- 4.2. The ACCC received 11 submissions from interested parties, all in support of the application – namely: Glencore Coal; NSW Minerals Council; The Bloomfield Group; MACH Energy; Port Waratah Coal Services; Yancoal; Newcastle Coal Infrastructure Group; Australian Rail Track Corporation; Malabar Resources; Aurizon Operations; and Idemitsu Australia.
- 4.3. All public submissions from HVCCC and interested parties are on the ACCC's [Authorisations Public Register](#).

5. ACCC assessment

- 5.1. HVCCC seeks authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, may substantially lessen competition within the meaning of section 45 of the Act, and be a concerted practice that has the purpose or likely to have the effect of substantially lessening competition within the meaning of section 45 of the Act. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.

³² HVCCC supplementary submission, 22 January 2024, p 13.

Relevant areas of Competition

- 5.2. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 5.3. The ACCC considers that the relevant areas of competition likely to be impacted by the Proposed Conduct include:
- the global market for coal (or at least the Asian coal market)
 - the provision of coal handling services for coal exported from the Hunter Valley, including the provision of services at the coal loading terminals at the Port of Newcastle, and above and below rail services and
 - the provision of coal handling services for coal supplied to local domestic power stations from the Hunter Valley, to the extent that such supply is facilitated by rail haulage service providers and below rail infrastructure within the Hunter Valley export coal chain.

Future with and without the Proposed Conduct

- 5.4. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 5.5. In this case, HVCCC has been engaging in the Proposed Conduct under an Existing Authorisation since 2009, and its ongoing conduct is unchanged under the new application. Therefore, the future with the Proposed Conduct is the continued provision of HVCCC's central planning and coordination services in the Hunter Valley coal supply chain.
- 5.6. The ACCC considers that without the Proposed Conduct, HVCCC would unlikely be able to continue to provide its central coal chain planning and coordination services. Coal production and exports from the Hunter Valley would continue, but without central coordination the coal chain would operate less efficiently and would likely experience more (or longer) disruptions as service providers make decisions in isolation, and without transparency on the impact on system wide capacity.

Public benefits

- 5.7. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*³³

³³ Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

5.8. HVCCC submits that the Proposed Conduct has delivered and will continue to deliver significant public benefits. It submits the Proposed Conduct is likely to result in the following public benefits:³⁴

- maximise efficient coal chain capacity and throughput
- promote greater accuracy and transparency of whole of coal chain capacity to facilitate alignment of contracted capacity and increased certainty about production and investment decisions for producers and service providers
- facilitate a greater ability to manage and respond to disruptive coal chain events and
- provide greater certainty in supply chain planning which facilitates the optimisation of vessel queues, the efficient docking and dispatch of vessels, and lower demurrage costs.

5.9. In turn, HVCCC submits that collectively these public benefits will assist in:³⁵

- maintaining high levels of export revenue for Australia and royalties for NSW and
- maintaining employment levels in the Hunter Valley and surrounding areas.

5.10. The ACCC considers that it is appropriate to assess the public benefit claims of HVCCC under the following two broad categories:

- maximising efficient coal chain capacity and throughput and
- facilitating efficient infrastructure investment and employment decisions.

Maximising efficient coal chain capacity and throughput

5.11. HVCCC submits that the Proposed Conduct is likely to result in a benefit to the public by maximising efficient coal chain capacity and throughput. It considers the Proposed Conduct achieves this through:³⁶

- the development of System Assumptions which enable efficient and aligned planning and scheduling within the coal chain, compared to a situation where separate coal chain participants make decisions about interconnected infrastructure in isolation without consideration of wider coal chain impacts
- coordination for the purpose of synchronising or 'smoothing' total flow across the separate components of the coal chain, reducing interface losses
- central planning and coordination, enabling the efficient resolution of bottlenecks and system constraint points, which also reduces the potential for inefficient investment in unnecessary additional or 'buffer capacity' in different parts of the coal chain
- alignment and coordination of maintenance windows across the coal chain to enable recovery from unplanned events and disruptions to minimise coal chain impacts and potential delays to vessel loading and

³⁴ HVCCC application for authorisation AA1000658, 19 December 2023, pp 2-3.

³⁵ HVCCC application for authorisation AA1000658, 19 December 2023, p 3.

³⁶ HVCCC application for authorisation AA1000658, 19 December 2023, pp 9-10.

- the continued measurement of actual performance of the coal chain against System Assumptions, to facilitate improved planning and scheduling across the coal chain.

5.12. In response to the ACCC's request for further information about the public benefits realised from HVCCC's central planning and coordination services under the Existing Authorisation, HVCCC provided a report prepared by HoustonKemp, *The economic benefits of centralised coordination of the Hunter Valley coal chain (the **Houston Kemp Report**)*.³⁷ This report concludes that 'the coordinated activities of HVCCC and its members have delivered substantial benefits to the Hunter Valley export coal supply chain and the broader community'.³⁸

5.13. In particular, the Houston Kemp Report lists the following key benefits from centrally coordinated operations planning and scheduling facilitated through the HVCCC:³⁹

- Improving members' ability to respond to global market conditions – for example, the report estimates that centralised supply chain coordination has the potential to reduce the latest time for Cargo Assembly Plans to be updated from up to 10 days before operation to 1 day before operation.
- Avoiding operating costs from increased efficiency in train, track and terminal use – for example, the Houston Kemp Report considers HVCCC's coordinated operations planning and scheduling can minimise the number of train trips by avoiding unnecessary trips and delays by maintaining visibility of and managing conflicting train movements, and ensuring the optimal sequence of trains arriving at the port terminals. The report estimates this conduct avoids up to 260 train movements per year.
- Optimising network capacity by coordinating members' maintenance scheduling in a manner that concurrently maximises maintenance opportunities and the movement of coal – the Houston Report estimates that this aspect of the Proposed Conduct reduces lost throughput due to maintenance by up to 3.2 million tonnes per annum.
- Avoiding demurrage costs from reduced vessel queuing – the Houston Kemp Report notes that the HVCCC was originally established, at least in part, in response to excessive vessel queueing, which causes significant economic costs, safety and environment risks. It submits that without the Proposed Conduct, higher demurrage costs would likely occur. In addition, demurrage days would likely be more significant during times of peak demand or unanticipated supply chain disruptions. The report estimates that the Proposed Conduct could decrease the average demurrage days by up to 7.8 days per vessel (calculated by comparing the average demurrage days in 2020 as against the lowest number of demurrage days prior to the establishment of the HVCCC, and noting that there are many factors contributing to demurrage improvements over this time).

5.14. Further, the Houston Kemp Report submits that an important benefit from HVCCC's Live Run (day of operations) services is rescheduling trains with consideration of their urgency and impact on the downstream supply chain, which requires visibility of the whole supply chain. In addition, coordination and timely communication between

³⁷ HoustonKemp Economists, [The economic benefits of centralised coordination of the Hunter Valley coal supply chain](#), A report for the Hunter Valley Coal Chain Coordinator, 30 January 2024.

³⁸ The Houston Kemp Report, 30 January 2024, p 3.

³⁹ The Houston Kemp Report, 30 January 2024, pp 8 – 9.

service provider members in response to disruptive incidents results in faster rescheduling of cancellations and replanning. The report estimates that HVCCC's Live Run activities results in 687 fewer train cancellation per year.⁴⁰

5.15. Idemitsu Australia submits that 'HVCCC's unique helicopter view enables it to develop and coordinate efficient coal delivery plans taking into consideration the coal chain's interdependencies and dynamic environment.'⁴¹ It submits it has observed significant public benefits under the Existing Authorisation, including:⁴²

- the efficient utilisation of shared infrastructure to minimise the cost of transporting coal from the mines to the export terminals at the Port of Newcastle and
- optimising vessel queues off the coast of NSW, reducing demurrage costs (improving the coal chain's international competitiveness) and promoting marine safety.

5.16. Yancoal supports HVCCC's submission that the Proposed Conduct has reduced supply chain losses from 10.1% to 6.7% and average vessel turnaround times from 12 days to 4 days under the Existing Authorisation.⁴³ It considers that similar benefits will continue to be delivered by the Proposed Conduct should ongoing authorisation be granted. This contrasts to Yancoal's coal exporting experience in Queensland, where it submits that there is no independent coal chain coordinator, and there are greater system losses and less certainty about the capacity that the coal chain can deliver.⁴⁴

5.17. The Bloomfield Group also considers that HVCCC's activities under the Existing Authorisation, which it does not seek to materially change in the current application, 'has shown itself to be fundamental in achieving the outcomes desired by both the industry and NSW government as proposed by the Greiner Review in 2008'.⁴⁵

5.18. Further, the Bloomfield Group submits that without ongoing authorisation of HVCCC's services, it would not be possible for it to provide certainty, equity and system optimisation for Hunter Valley producers and service providers. It also considers that resulting inefficiencies would have a larger negative impact on smaller producers and service providers in the industry.⁴⁶

5.19. Glencore Coal submits that the coordinated planning and 'live run' activities of HVCCC ensures the maximisation of shared infrastructure in the Hunter Valley coal chain at minimum cost. It considers HVCCC has a unique ability to identify, plan to and manage 'the constraint of the day', with such constraints often changing frequently depending upon maintenance, weather or other operating considerations. Like other interested parties, Glencore submits this contrasts to its coal exporting experience in Queensland where it has seen:

...far less knowledge of the prevailing constraint and asset owners subsequently making decisions in isolation without knowledge of potential detrimental impacts on other aspects of the coal chain. A litmus test on the performance of the coal chain can be evidenced by the level of demurrage paid by coal producers (a form of liquidated damages occurring due to ships waiting around to be loaded). Over time, the demurrage cost per tonne of coal sold from our business in Queensland has been far higher than that we experience in New South Wales. Whilst other factors can be at play, we believe a

⁴⁰ The Houston Kemp Report, 30 January 2024, pp 9 – 10.

⁴¹ Idemitsu Australia submission, 19 February 2024, p 2.

⁴² Idemitsu Australia submission, 19 February 2024, p 3.

⁴³ Yancoal submission, 15 February 2024, paragraph 2.1.

⁴⁴ Yancoal submission, 15 February 2024, paragraph 2.2.

⁴⁵ The Bloomfield Group submission, 9 February 2024, p 2.

⁴⁶ The Bloomfield Group submission, 9 February 2024, pp 1-2.

large contributor this is the HVCCC coordination activities ensuring the coal chain participants are appraised of the constraint(s) being faced, along with possible decisions to employ. This leads to less lost capacity and enhanced competitiveness of the Hunter Valley coal as a reliable supplier of coal to a global market.⁴⁷

5.20. The NSW Minerals Council, the peak industry body representing the mining industry in NSW, submits that the HVCCC is critical to the efficient operation of the Hunter Valley coal chain and the ability to optimise the benefits from NSW coal.⁴⁸ Without the Proposed Conduct, there would be 'inefficient use of rail and port infrastructure, extensive shipping queues and the constrained ability for mines to maximise coal export volumes.'⁴⁹

5.21. The coal terminals at the Port of Newcastle, NCIG and PWCS, also submit that the Proposed Conduct is likely to continue to deliver operational efficiencies to service providers, and the entire industry. Specifically, PWCS submits that:

The coordination role undertaken by HVCCC is essential to the efficient operation of the Hunter Valley coal chain in circumstances where the coal chain infrastructure and assets are both owned and operated – and used – by multiple, separate parties.⁵⁰

5.22. Similarly, ARTC, which provides below rail (track) access to the Hunter Valley coal network, considers that without the Proposed Conduct there would be losses across the coal chain. It submits:

The Hunter Valley Coal Chain is a shared, interconnected supply chain with multiple asset owners and users. Central planning and coordination between participants enable the various components to be viewed and optimised as a 'system' to achieve industry outcomes which would not be realised if the individual components were planned in isolation.⁵¹

5.23. Aurizon Operations considers there is an ongoing need for the Proposed Conduct. It submits that:

HVCCC's activities and measures, such as operational planning, Day of Operations Live Run functions...enhanced coordination among stakeholders, Coal Chain performance reporting...are essential for the smooth flow of exports from Newcastle. By addressing the current challenges and adopting these measures, we can expect improved productivity, reduced operational costs across the supply chain, and increased competitiveness in the international market.⁵²

ACCC view

5.24. The ACCC notes there is broad recognition within the industry of the efficiency enhancing benefits that HVCCC's central coordination and planning activities have delivered under the Existing Authorisation. Submissions from interested parties about cost savings compared to other coal chains that do not have a formal central coal chain coordinator and system planner, together with the estimates of the extent of reduced system losses provided in the Houston Kemp Report, suggest these public benefits have been significant.

5.25. Compared to a situation where coal exports from the Hunter Valley coal would continue, albeit without central coordination and system planning, the ACCC considers

⁴⁷ Glencore Coal submission, 1 February 2024, p 2.

⁴⁸ NSW Minerals Council submission, 5 February 2024, p 1.

⁴⁹ NSW Minerals Council submission, 5 February 2024, p 2 - 3.

⁵⁰ PWCS submission, 14 February 2024, p 1.

⁵¹ ARTC submission, 16 February 2024, p 1.

⁵² Aurizon Operations, 16 February 2024, p 1.

the Proposed Conduct is likely to deliver significant public benefits by lowering the cost for producers to move a given amount of coal (for example, improving vessel turnaround times by 1 day would result in total annual demurrage savings of around \$54 million – based on demurrage costs of \$30 000 per day and 1813 vessels at the Port of Newcastle in 2019)⁵³ and facilitating increased output by reducing system losses from supply chain disruptions and ensuring the system components of the coal chain interact better with each other. The ACCC considers that transparency over system capacity, with contracting between coal producers and service providers being based on the capacity of the coal chain as a whole, is also likely to continue to optimise coal throughput in the Hunter Valley.

- 5.26. The ACCC notes that the volume of coal exported from the Hunter Valley ultimately depends on a range of factors, including the quality and type of coal produced in the region and the global price of coal. To the extent that the Proposed Conduct enhances the international competitiveness of Hunter Valley coal and results in increased exports, this would be a public benefit.

Efficient infrastructure investment and employment decisions

- 5.27. HVCCC submits the Proposed Conduct, particularly through its capacity planning activities, promotes greater accuracy and transparency about whole of coal chain capacity. In turn, this is likely to lead to increased certainty about production and investment decisions for producers and service providers, which HVCCC considers is a public benefit.

- 5.28. The Houston Kemp Report suggests that HVCCC's centralised capacity planning:⁵⁴

...helps to optimise infrastructure investment, so that members make appropriate decisions about asset management and investment to ensure that supply chain capacity meets demand while maximising supply chain efficiency.

...Centralised planning also reduces the need for duplicate planning staff and systems costs across the supply chain.

- 5.29. Many interested parties agree that the Proposed Conduct is likely to result in more efficient infrastructure investment decisions.

- 5.30. Idemitsu Australia submits that HVCCC has delivered such benefits to the industry under the Existing Authorisation and this is likely to continue under the Proposed Conduct. It considers HVCCC's activities have provided greater understanding and confidence regarding:

- a) large scale investment decisions for both coal producers and service providers;
- b) entering long term commercial arrangements between internal and external stakeholders;
- c) identifying and modelling strategic coal chain opportunities and risks;
- d) coal chain capacity expansions; and
- e) new and expanding coal projects.⁵⁵

⁵³ HVCCC supplementary submission, 22 January 2024, p 16.

⁵⁴ The Houston Kemp Report, 30 January 2024, pp 5-6.

⁵⁵ Idemitsu Australia submission, 19 February 2024, p2.

5.31. Yancoal submits that without the Proposed Conduct there would likely be system losses and inefficient capital investment in the Hunter Valley, In particular:

Without very careful planning and coordination of matters like outages, scheduling of services and coordination in a live running environment, the coal chain would experience very significant system losses. Such system losses directly result in either an inability for coal chain service providers to meet contractual commitments to producers (and resulting reduction in export volumes and sales) or infrastructure owners being required to over-invest in expanded capacity to meet such volumes (and thereby passing through inefficient higher costs to producers).⁵⁶

5.32. The Bloomfield Group considers that under the Existing Authorisation the HVCCC has been 'the essential catalyst to enable ongoing growth, operational stability, investment and open access for existing, new, small and large participants in the Hunter Valley Coal Chain.'⁵⁷

5.33. Further, Glencore Coal submits that HVCCC's capacity modelling delivers benefits by providing:

...confidence in the capacity of delivery of shared infrastructure to underpin major investment decisions, either new coal infrastructure or coal mines. This modelling ensures producer contracts...are deliverable in the context of the interaction and operation of the broader coal chain. This ensures only efficient investments in infrastructure are undertaken, as well as providing confidence for coal miners investing in capital at the up-stream end of the coal chain.⁵⁸

ACCC view

5.34. The ACCC notes that in the early years under the Existing Authorisation, HVCCC's coal chain capacity planning activities were central in establishing aligned commercial incentives in the Hunter Valley to facilitate infrastructure investment to expand coal chain capacity. The ACCC understands there is currently excess capacity in the Hunter Valley coal chain, and as noted in the Huston Kemp Report, given the trajectory of global coal demand and progress to decarbonisation, future benefits from HVCCC's capacity planning may stem more from efficiently using existing infrastructure, rather than expanding the capacity of the coal chain.

5.35. The Proposed Conduct will continue to allow HVCCC to identify new and emerging points of constraint in the coal chain. The ACCC considers that under the Proposed Conduct, HVCCC's ongoing capacity planning, reporting and coordination activities will continue to provide greater transparency about the system capacity of the Hunter Valley coal chain, and greater contracted capacity certainty to the industry compared to what would occur without the Proposed Conduct. This is likely to have flow on benefits in the Hunter Valley, including facilitating efficient investment decisions by coal producers, infrastructure owners and service providers. Similarly, the Proposed Conduct is also likely to facilitate more efficient employment decisions across the Hunter Valley coal industry, compared to what would occur absent HVCCC's coordination and planning activities.

⁵⁶ Yancoal submission, 15 February 2024, paragraph 2.1.

⁵⁷ The Bloomfield Group submission, 9 February 2024, p 1.

⁵⁸ Glencore Coal submission, 1 February 2024, p 1.

ACCC conclusion on public benefits

5.36. The ACCC's assessment of the likely public benefits has been informed by the experience of the Hunter Valley coal industry under the Existing Authorisation over the last 15 years of HVCCC's operation. The ACCC acknowledges the widely accepted efficiency enhancing benefits realised by the industry over that time. The ACCC considers that the Proposed Conduct is likely to continue to result in significant public benefits from:

- maximising efficient coal chain capacity and throughput and
- facilitating efficient infrastructure investment and employment decisions of all coal chain participants.

Public detriments

5.37. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.⁵⁹

5.38. The ACCC has considered the potential public detriment from a lessening of competition from the coordination and sharing of information between HVCCC Members, who are competing producers and service providers in the Hunter Valley.

Coordination and information sharing among competing HVCCC Members

5.39. HVCCC submits the Proposed Conduct will not result in any discernible public detriment. It submits the Proposed Conduct will not:⁶⁰

- reduce the availability of capacity for coal exports
- lessen competition between producers who will continue to make independent decisions about the production and marketing of coal, and continue to compete to supply coal to Australian and overseas customers or
- lessen competition between rail and port terminal service providers who will continue to compete to win contacts with customers.

5.40. In addition, HVCCC considers making recommendations about how to smooth flows across the connecting components of the coal chain will not have any impact on how producers or service providers market and compete to supply products and services to their respective customers. These recommendations are not binding on service providers.

5.41. Finally, it considers that any potential detriment from sharing information between competing HVCCC Members, is mitigated by the implementation of its Information Sharing Protocols.

5.42. Idemitsu Australia notes that while HVCCC performs operational scheduling, planning, and modelling and makes recommendations to its Members, competing HVCCC Members cannot be compelled to implement these recommendations. These

⁵⁹ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

⁶⁰ HVCCC application for authorisation AA1000658, 19 December 2023, p 3.

decisions remain at the sole discretion of the individual coal chain participants, thus reducing any potential impact on competition.

- 5.43. Yancoal submits that the Proposed Conduct is inherently pro-competitive, and its experience under the Existing Authorisation is that coal producers (and competing service providers) have remained ‘fiercely competitive and independent rivals.’⁶¹ In addition to the HVCCC’s Information Sharing Protocols, it considers all HVCCC Members are aware of ‘the competition law constraints on sharing information beyond that strictly required for the HVCCC’s role.’⁶²
- 5.44. Glencore Coal submits the Existing Authorisation of HVCCC’s activities have not resulted in any observable public detriments.
- 5.45. PWCS considers the Proposed Conduct will not result in any anti-competitive detriment. Importantly, the Proposed Conduct does not allow HVCCC or its Members to obtain competitively sensitive information about any coal chain participant’s prices, export customers, customer negotiations and terms, or sales and marketing activities.
- 5.46. Further, PWCS considers that to the extent HVCCC Members need to disclose confidential information to HVCCC, the Information Sharing Protocols and other internal practices ensure that this information is only used by HVCCC to carry out its functions and is not provided to any competitor.

ACCC view

- 5.47. The ACCC considers the Proposed Conduct could potentially lessen competition from the coordination and sharing of information between HVCCC Members. However, this potential detriment appears to be substantially mitigated by HVCCC’s Information Sharing Protocols and restrictions on how competitively sensitive information is shared. In practice, the HVCCC gathers information such as producers’ individual demand forecasts, producer nominated orders/vessels, asset capability statements, contractual obligations between producers and service providers, and maintenance plans on a bilateral basis. HVCCC stores this information and access controls are applied to protect confidentiality. HVCCC does not obtain commercial information such as pricing or cost information and these types of information are not shared between coal producers as part of these arrangements.
- 5.48. The ACCC notes the Information Protocols are designed to ensure that competing producers, rail operators and port terminal operators do not obtain access to confidential or competitively sensitive information. However, the protocols permit HVCCC to share the information it receives from producers, above rail operators or port terminal operators in specific, limited circumstances, and with prior consent. Examples of these circumstances include:⁶³
- Sharing information between producers – where producers are dependent on the same constrained section of rail track. HVCCC may advise these producers with relevant information about shared infrastructure investment and opportunities to maximise the volume of coal transported at the lowest total logistics cost, as well information about recovery from delays and disruptions.
 - Sharing information between rail haulage providers – HVCCC might share Live Run operational information between rail service providers for the purpose of collective recovery from unplanned events, delays and disruptions.

⁶¹ Yancoal submission, 15 February 2024, p 3.

⁶² Yancoal submission, 15 February 2024, p 3.

⁶³ HVCCC supplementary submission, 22 January 2024, pp 11-12.

- Sharing information between port terminal operators – consistent with its reporting obligations, HVCCC may share reports on coal chain performance as it relates to terminal operation, including identifying common causes of losses.

5.49. The ACCC notes that the limited circumstances where information may be shared between competing HVCCC are directly linked to achieving HVCCC’s core Objects – namely, to plan and coordinate the cooperative operation and alignment of the coal chain to maximise coal throughput, at a minimum cost, and in accordance with the collective needs and contractual obligations of producers and service providers.⁶⁴ HVCCC Members will still make independent decisions based on their own commercial assessment and will continue to compete to win customers. The ACCC has not received any evidence of competition being adversely affected over the last 15 years of HVCCC’s operations.

5.50. For the reasons outlined above, the ACCC considers there is likely to be little, if any, public detriment from the Proposed Conduct.

Balance of public benefit and detriment

5.51. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of:

- maximising efficient coal chain capacity and throughput and
- facilitating efficient infrastructure investment and employment decisions of all coal chain participants.

5.52. The ACCC considers that coordination and information sharing among competing HVCCC Members under the Proposed Conduct is likely to result in limited, if any, public detriment.

5.53. Therefore, for the reasons outlined in this draft determination, the ACCC is satisfied that the Proposed Conduct is likely to result in a significant public benefit and that this public benefit would outweigh any likely detriment to the public from the Proposed Conduct.

Length of authorisation

5.54. The Act allows the ACCC to grant authorisation for a limited period of time.⁶⁵ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

5.55. In this instance, HVCCC seeks authorisation to continue to engage in the Proposed Conduct for a further 10 years, until 31 December 2034.⁶⁶ In support of its request, HVCCC highlights that its centralised coordination is a well-established and stable attribute of the Hunter Valley coal chain, and has been since the HVCCC’s establishment under the Existing Authorisation 15 years ago.

5.56. In addition, HVCCC advises that forecast demand for Hunter Valley coal is expected to remain relatively stable for the next 10 years, and ongoing worldwide demand for seaborne thermal coal is expected to remain firm for several decades. Additionally,

⁶⁴ HVCCC application for authorisation AA1000658, 19 December 2023, p 5.

⁶⁵ Subsection 91(1)

⁶⁶ HVCCC application for authorisation AA1000658, 19 December 2023, p 1.

HVCCC anticipates the complexity of the supply chain will steadily increase in the future as demand is increasingly met by mines further away from the Newcastle export terminals. As such, HVCCC submits there remains significant benefit from the Proposed Conduct, and a 10-year authorisation, if granted, will support long term certainty and confidence for the Hunter Valley coal industry.⁶⁷

- 5.57. Idemitsu Australia submits that the proposed 10-year duration of authorisation is appropriate given the long-term commercial frameworks between coal producers and their service providers, and the asset life of the large-scale infrastructure investments in the Hunter Valley. It also considers this is a reasonable period to 'strategically assess future coal demand and supply within the coal chain.'⁶⁸
- 5.58. Similarly, Malabar (a recent new coal producer in the Hunter Valley) submits it is committed to a long-term involvement with HVCCC to ensure the coal chain continues to operate efficiently. It advises that it 'commenced production in 2023 and has a consented 26-year mine life.'
- 5.59. MACH Energy owns the newest open cut mine in the Hunter Valley (the Mount Pleasant Operation) and has been operating since 2018, supplying thermal coal to both domestic and export customers. It has approval to expand production and operate the Mount Pleasant Operation until 2048. It submits it has 'one of the anticipated longest life coal mines meaning that HVCCC will be an integral part of [its] ...business well into the future.'⁶⁹
- 5.60. PWCS also supports HVCCC's request for a 10-year authorisation, 'given the need for certainty to facilitate long term investments in coal chain assets and infrastructure'.⁷⁰

ACCC view

- 5.61. While there may be a degree of uncertainty about the volume of thermal coal likely to be exported in future years, the ACCC notes ongoing production and recent mine approvals in the Hunter Valley. While coal is being exported from the Hunter Valley, the ACCC considers the Proposed Conduct is likely to maximise the efficient operation of coal exports from Newcastle, compared to a situation without central coordination and operation of the coal chain. Given the HVCCC's long history of operation, without evidence of significant detriment occurring, and the long asset life of coal chain investments, the ACCC considers a longer-term authorisation is appropriate. Should there be a significant change in the level of exports due to a change in government policy, or for any other reason, the HVCCC may no longer engage in the Proposed Conduct. Further, such a change may constitute a material change in circumstances such that the ACCC could review the authorisation and potentially revoke or substitute a new authorisation for it. Therefore, the ACCC proposes to grant authorisation for HVCCC to engage in the Proposed Conduct for a further 10 years, until 31 December 2034.

⁶⁷ HVCCC supplementary submission, 22 January 2024, pp 19-20.

⁶⁸ Idemitsu Australia, 19 February 2024, p 3.

⁶⁹ MACH Energy submission, 13 February 2024, p 1.

⁷⁰ PWCS submission, 14 February 2024, p 2.

6. Draft determination

The application

- 6.1. On 19 December 2023 Hunter Valley Coal Chain Coordinator Limited (**HVCCC**) lodged application for authorisation AA1000658 with the Australian Competition and Consumer Commission (the **ACCC**), seeking authorisation under subsection 88(1) of the Act.
- 6.2. The application relates to HVCCC's ongoing central planning and coordination activities in the Hunter Valley coal chain. HVCCC seeks authorisation for itself and current and future HVCCC members (the current members of HVCCC are set out at Attachment A of this draft determination) and directors to engage in the following conduct, including any concerted practice, and to make and give effect to any contract, arrangement or understanding, which contains a provision in relation to the following conduct:
1. Sharing information and/or coordination between HVCCC, Members and Related Entities for the purpose of:
 - a. *Capacity planning* – this includes undertaking work to facilitate efficient and aligned system capacity planning across the coal chain, including:
 - i. preparation and communication of Master Plans and Annual Coal Chain capacity plans (Annual Declaration and System Assumptions), and
 - ii. assisting coal chain participants to understand potential impacts of changes to, or transfers or, contracted capacity and changes to planning assumptions.
 - b. *Operational planning* – coordinating with Members and Related Entities to:
 - i. identify risks to, and opportunities for, efficient operations, and
 - ii. prepare rolling plans to enable efficient and aligned operations, across the coal chain.

This includes obtaining information from, and coordinating with, Members and Related Entities to prepare and share short to medium term plans – for example: maintenance windows, forward weekly plans, cargo assembly plans, coal delivery schedules, rail plans and stockpile and vessel plans.
 - c. *Facilitating the Live Run function* – includes monitoring the execution of daily plans and making recommendations to:
 - i. minimise losses from delays and disruptions, and
 - ii. ensure that impacts from events in Live Run are appropriately addressed and managed in future plans.
 - d. *Recommending improvements in delivery of HVCCC Objects* – this includes:
 - i. recommending, measuring and reviewing coal chain performance standards, such as load point standards, train standards (sizes and cycle times), unloading standards, cargo assembly standards (for example: build times, parcels per vessel, parcel size), and vessel standards
 - ii. creating and sharing performance reports, including analysis and insights for causes and potential improvements, and

- iii. recommending improvements to processes for planning and coordinating the cooperative alignment of the coal chain.⁷¹
 2. Any concerted practice, or any contract, arrangement or understanding between Members or Related Entities that they will act in a particular way on the basis of a recommendation by, or advice from, the HVCCC; or any conduct that involves a Member or Related Entity making an independent decision based on, or giving effect to, a recommendation by, or advice from, HVCCC in the delivery of HVCCC Objects, in each case so far as necessary or desirable to achieve the purposes set out in item (1).⁷²
(together the **Proposed Conduct**).
- 6.3. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 6.4. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 6.5. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 6.6. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

- 6.7. The ACCC proposes to grant authorisation AA1000658 to HVCCC and current and future HVCCC members (the current members of HVCCC are set out at Attachment A of this draft determination) to engage in the following conduct, and to make any contract or arrangement or arrive at any understanding, and to give effect to any contract, arrangement or understanding, which contains a provision in relation to the following conduct:
 1. Sharing information and/or coordination between HVCCC and its current and future members for the purpose of:
 - a. *Capacity planning* – this includes undertaking work to facilitate efficient and aligned system capacity planning across the coal chain, including:
 - i. preparation and communication of Master Plans and Annual Coal Chain capacity plans (Annual Declaration and System Assumptions), and
 - ii. assisting coal chain participants to understand potential impacts of changes to, or transfers of, contracted capacity and changes to planning assumptions.

⁷¹ HVCCC application for authorisation AA1000658, 19 December 2023, Attachment A.

⁷² HVCCC supplementary submission, 22 January 2024, p. 2.

b. *Operational planning* – coordinating with current and future HVCCC members to:

- i. identify risks to, and opportunities for, efficient operations, and
- ii. prepare rolling plans to enable efficient and aligned operations, across the coal chain.

This includes obtaining information from, and coordinating with, current and future HVCCC members to prepare and share short to medium term plans (including maintenance windows, forward weekly plans, cargo assembly plans, coal delivery schedules, rail plans and stockpile and vessel plans).

c. *Facilitating the Live Run function* –this includes monitoring the execution of daily plans and making recommendations to:

- i. minimise losses from delays and disruptions, and
- ii. ensure that impacts from events in Live Run are appropriately addressed and managed in future plans.

d. *Recommending improvements in delivery of HVCCC Objects* – this includes:

- i. recommending, measuring and reviewing coal chain performance standards, such as load point standards, train standards (sizes and cycle times), unloading standards, cargo assembly standards (for example: build times, parcels per vessel, parcel size), and vessel standards
- ii. creating and sharing performance reports, including analysis and insights for causes and potential improvements, and
- iii. recommending improvements to processes for planning and coordinating the cooperative alignment of the coal chain.

2. Any concerted practice, or any contract, arrangement or understanding between current and future HVCCC members that they will act in a particular way on the basis of a recommendation by, or advice from, the HVCCC; or any conduct that involves a current or future HVCCC member making an independent decision based on, or giving effect to, a recommendation by, or advice from, HVCCC in the delivery of HVCCC Objects, in each case so far as necessary or desirable to achieve the purposes set out in item (1).

6.8. Pursuant to section 88(2) of the Act, the ACCC proposes to grant authorisation to HVCCC and current and future members of HVCCC. The ACCC does not propose to extend authorisation to any other “Related Entities” of HVCCC or its members.

“Related Entities” is defined in the application as “the successors, assigns, related bodies corporate, associated entities, agents, joint venture partners and equity partners of each Member of HVCCC (current or future)”.⁷³ Based on the information currently before the ACCC, the identity of the persons who fall within the definition of Related Entities, and the extent to which those persons are likely to be engaged in or would become engaged in the Proposed Conduct, as well as whether one or more provisions of Part IV of the Act would or might apply to them, is unclear.

6.9. The ACCC proposes to grant authorisation in relation to Division 1 of Part IV of the Act, and section 45 of the Act, including for conduct that might be a concerted practice.

⁷³ HVCCC application for authorisation AA1000658, 19 December 2023, Attachment 2.

6.10. This draft determination is made on 1 May 2024. The ACCC proposes to grant authorisation AA1000658 for 10 years, until 31 December 2034.

7. Next steps

7.1. The ACCC now invites submissions in response to this draft determination by 15 May 2024. In addition, consistent with section 90A of the Act, the applicant or an interested party may request that the ACCC hold a conference to discuss the draft determination. The deadline to request a conference is 15 May 2024.

List of HVCCC Members⁷⁴

Coal producers

Bengalla Coal Sales Company Pty Limited

Bloomfield Collieries Pty Ltd

Centennial Coal Sales and Marketing Pty Limited

Glencore Coal (NSW) Pty Limited

Hunter Valley Energy Coal Pty Ltd

Idemitsu Australia Pty Ltd

MACH Energy Australia Pty Ltd

Maxwell Coal (Sales) Pty Ltd

Peabody Australia Mining Pty Ltd

Whitehaven Coal Limited

Yancoal Australia Limited

Below rail

Australian Rail Track Corporation Limited

Above rail

Aurizon Operations Limited

One Rail Australia (FLACH) Pty Ltd

Pacific National Pty Ltd

Southern Shorthaul Railroad Pty Ltd

Port terminal operators

Port Waratah Coal Services Limited

Newcastle Coal Infrastructure Group Pty Ltd

Port of Newcastle Members

Port Authority of New South Wales

Port of Newcastle Operations Pty Limited

⁷⁴ HVCCC application for authorisation AA1000658, 19 December 2023, Attachment 4.