

18 March 2020

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By email: adjudication@acc.gov.au

Interim Authorisation – Application for Authorisation by NSW Minerals Council

Yancoal Australia Limited (*Yancoal*) welcomes the opportunity to make submissions to the ACCC in respect of the application made by the New South Wales Minerals Council (*NSWMC*) seeking authorisation for a collective negotiation with Port of Newcastle Operations Pty Ltd (*PNO*) (the *Application*). The ACCC has requested submissions on the urgent interim authorisation component of the Application by 18 March 2020 and on the substantive application for authorisation by 3 April 2020. This submission relates to the interim authorisation request.

Yancoal supports interim authorisation being granted on the basis that:

- 1 PNO has indicated to Yancoal that it requires any negotiated arrangements to be concluded urgently (noting that price was originally intended to commence from 1 January 2020). Accordingly, unless interim authorisation is granted it is unlikely any collectively negotiated agreement with PNO will be possible.
- 2 There will not be any lasting impact on competition from granting the interim authorisation, given the proposed conduct will only involve the coal producers sharing views on terms PNO has already made public, and not involve any disclosure of competitively sensitive information about the producer's mining operations.
- 3 There are strong merits for granting the substantive authorisation application given:
 - (a) bilateral negotiations since December 2019 have not yet reached a resolution;
 - (b) PNO's monopoly position and unconstrained charging powers under the *Ports and Maritime Administration Act 1995* (NSW) create an inequality of bargaining position, which a collective negotiation may mitigate;
 - (c) there are public benefits arising from the proposed conduct including creating long term certainty for all stakeholders (with the resulting economic benefits of greater investments and result flow-on impacts on royalties, employment and economic growth), and a collective negotiation reducing time and cost of negotiation relative to the existing bilateral negotiations;
 - (d) the proposed conduct will not lessen competition – as:
 - (i) the conduct is voluntary (both for coal producers and PNO);
 - (ii) the proposed conduct will not involve the coal producers sharing any competitively sensitive information about their own operations; and

- (ii) the parties do not compete for channel access in the normal sense given that there is surplus channel capacity and the coal producer's current position (in the absence of an agreement of the type proposed) is that coal producers are simply price takers given the price setting powers that PNO has.

Please do not hesitate to contact me on [REDACTED] or via email at [REDACTED] if you wish to discuss any aspect of this submission.

Yours sincerely



Mike Dodd

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