



COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2018

Re: Application by Port of Newcastle Operations Pty Ltd under section 44ZP of the *Competition and Consumer Act 2010 (Cth)* for review of the arbitration determination by the Australian Competition and Consumer Commission in relation to an access dispute between Glencore Coal Ltd and Port of Newcastle Operations Pty Ltd

Applicant: Port of Newcastle Operations Pty Ltd

AND

File No: ACT 3 of 2018

Re: Application by Glencore Coal Assets Australia Pty Ltd under section 44ZP of the *Competition and Consumer Act 2010 (Cth)* for review of the arbitration determination by the Australian Competition and Consumer Commission in relation to an access dispute between Glencore Coal Ltd and Port of Newcastle Operations Pty Ltd

Applicant: Glencore Coal Assets Australia Pty Ltd

DIRECTIONS

TRIBUNAL: Justice Middleton (President), Mr Shogren, Dr Abraham

DATE OF ORDER: 18 April 2019

WHERE MADE: Melbourne

THE TRIBUNAL DIRECTS THAT:

1. The information and documents provided by Port of Newcastle Operations Pty Ltd (**PNO**) described as “Glencore Restricted Access Information” as provided by the Australian Competition and Consumer Commission (**ACCC**) to the Tribunal and representatives of the parties on 18 December 2018 must not without prior leave of the Tribunal be disclosed to any person except:

- (a) PNO (including its external legal advisors, engaged experts and any person performing administrative functions to assist those persons);
 - (b) the ACCC (including its external legal advisors, engaged experts and any person performing administrative functions to assist those persons); and
 - (c) any external representative of (including external legal advisers), or experts engaged by, Glencore Coal Assets Australia Pty Ltd (**Glencore**) who has provided a confidentiality undertaking in favour of PNO.
2. The information and documents provided by PNO described as “PNO Only Information” provided by the ACCC to the Tribunal and representatives of PNO on 18 December 2018 must not without prior leave of the Tribunal be disclosed to any person except PNO and the ACCC (and their respective external legal advisers, engaged experts and any person performing administrative functions to assist those persons), unless the Tribunal indicates that it intends to have (or already has had) regard to any of the PNO Only Information in making its decision in these proceedings (**Relevant PNO Only Information**) in which case direction 3 below applies.
3. In the event that the Tribunal indicates the existence of Relevant PNO Only Information, PNO must be provided with 7 days' notice to apply for directions preventing or restricting disclosure of any of the Relevant PNO Only Information, with a copy of such application to be provided to both Glencore and the ACCC at the same time as the application to the Tribunal, and:
- (a) if such an application is made, no disclosure to any person except PNO and the ACCC (including their external legal advisors, engaged experts and any person performing administrative functions to assist those persons) of the Relevant PNO Only Information may occur without the Tribunal's permission until any such application has been determined; and
 - (b) if no such application is made, the Relevant PNO Only Information will be provided to any external representative of (including external legal advisers), or experts engaged by, Glencore who has provided, or does provide, a confidentiality undertaking in favour of PNO.

4. Subject to directions 1 and 2 above, except as required by law, any other document and information contained therein provided to the Tribunal, filed or served by any party or the ACCC in these proceedings, other than documents or information already in the public domain, must not be:
- (a) without prior leave of the Tribunal, disclosed to any person except PNO, Glencore and the ACCC and their respective external legal advisers, engaged experts and any person performing administrative functions to assist those persons; and
 - (b) without prior leave of the Tribunal, used for any purposes other than for the purposes of these proceedings.
5. Nothing in these directions imposes an obligation on the ACCC in respect of a document or information which has been obtained by it otherwise than in the course of these Tribunal proceedings, or on Glencore or PNO in respect of a document or information which has been obtained by it otherwise than in the course of these Tribunal proceedings or the preceding arbitration before the ACCC.

Date entered: 18 April 2019



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

REGISTRAR
Australian Competition Tribunal