



## AUSTRALIAN COMPETITION TRIBUNAL

**THE HON JUSTICE JOHN E MIDDLETON**  
**PRESIDENT**  
**JUDGES' CHAMBERS**  
**FEDERAL COURT OF AUSTRALIA**  
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13 June 2019

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Dear Treasurer,

**Notice to extend consideration period for Australian Competition Tribunal to make a decision pursuant to s 44ZZOA(7) under the *Competition and Consumer Act 2010* (Cth) in relation to an access dispute concerning the Port of Newcastle**

On 8 October 2018, Port of Newcastle Operations Pty Ltd (PNO) lodged an application with the Australian Competition Tribunal (the **Tribunal**) pursuant to s 44ZP of the *Competition and Consumer Act 2010* (Cth) (the **Act**) calling on the Tribunal to 're-arbitrate' the determination made by the Australian Competition and Consumer Commission (the **ACCC**) dated 18 September 2018 regarding the access dispute between Glencore Coal Assets Australia Pty Ltd (**Glencore**) and PNO. The proceeding number allocated to this application was 'ACT 2 of 2018'. On 9 October 2018, Glencore lodged an application of its own in respect of the same access dispute. The proceeding number allocated to that application was 'ACT 3 of 2018'. The applications are interrelated and were accordingly heard together.

Under s 44ZZOA of the Act, the Tribunal must make a decision on applications of the kind referred to above within 'the consideration period'. Ordinarily, the consideration period is a period of 180 days from the date the relevant application is lodged, however this period may be extended, or in effect extended, pursuant to subsections (3) through (10). Absent any extension of time, the Tribunal would be required to make a decision on the applications as early as 6 April 2019.

On 2 April 2019, the Tribunal, each applicant (PNO and Glencore) and the ACCC agreed pursuant to s 44ZZOA(5) to 'stop the clock' for the period between 2 April 2019 and 15 July 2019. This agreement was reached to accommodate the proceeding timetable sought by each applicant and consented to by the ACCC. The effect of this agreement was that the time in which the Tribunal is required to make a decision was extended to as early as 20 July 2019.

The dispute between the parties gives rise to complex issues for determination, and further time is required for consultation between the members of the Tribunal, consideration of the matters in dispute, preparation and delivery of reasons, and for the parties to assist in the making of a final determination upon receipt of reasons. Accordingly, and for the purposes of s 44ZZOA(8)(b), the Tribunal is not in a position to make its decision by 20 July 2019.

By this notice, and the purposes of s 44ZZOA(b)(a), the Tribunal advises that it must now make its decision on the applications referred to above by 29 November 2019.

Pursuant to s 44ZZOA(9), the Tribunal intends to provide a copy of this notice to each applicant and the ACCC. The Tribunal also intends to publish a notice in *The Australian* newspaper stating that it has extended the consideration period and specifying the date by which it must now make its decision in respect of the above applications, in satisfaction of s 44ZZOA(10).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J Middleton', with a large, stylized initial 'J' on the left.

**The Hon Justice John E Middleton**  
**President of the Australian Competition Tribunal**