

COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)



IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 2 of 2020

Re: Application for authorisation AA1000473 lodged by New South Wales Minerals Council on behalf of itself, certain coal producers that export coal through the Port of Newcastle, and mining companies requiring future access through the Port, and the determination made by the ACCC on 27 August 2020

Applicant: Port of Newcastle Operations Pty Limited

DIRECTIONS

TRIBUNAL: Justice Middleton (President)

DATE OF ORDER: 25 November 2020

WHERE MADE: Melbourne

THE TRIBUNAL DIRECTS BY CONSENT THAT:

Information to be provided by the ACCC

1. The Australian Competition and Consumer Commission (ACCC) is to provide the Tribunal with all submissions made to the ACCC in connection with the making of its authorisation made pursuant to s 88 of the CCA the subject of this application (**Authorisation**) on or before Wednesday, 2 December 2020.
2. The ACCC is to provide the Applicant, Port of Newcastle Operations Pty Limited (**PNO**), and the New South Wales Minerals Council (**NSWMC**) with non-confidential versions of all submissions made to the ACCC in connection with the making of its Authorisation on or before Wednesday, 2 December 2020.

Third parties and applications to intervene

3. Any application for leave to intervene in these proceedings, and any material relied on in support of any application, be filed and served on or before Wednesday, 9 December 2020.
4. Within 5 days of the date of these Directions, the ACCC is to give written notice of this application to all persons who made submissions to the ACCC in connection with its Authorisation advising them of the terms of direction 3.
5. Any submissions responding to an application to intervene be filed and served (including on the applicant for intervention) on or before Wednesday, 16 December 2020.
6. The Tribunal will determine on the papers any application made under direction 3, unless any person notifies the Tribunal by 4:00pm on Friday, 18 December 2020 that they require a hearing to resolve the application.

Statements of Facts, Issues and Contentions

7. PNO is to file and serve a Statement of Facts, Issues and Contentions on or before Monday, 14 December 2020.
8. NSWMC is to file and serve a Statement of Facts, Issues and Contentions on or before Monday, 25 January 2021.
9. Each intervener is to file and serve a Statement of Facts, Issues and Contentions on or before Monday, 1 February 2021.
10. The ACCC is to file and serve a Statement of Facts, Issues and Contentions on or before Monday, 8 February 2021.

Issues list

11. To assist interested third parties who may make a submission under direction 12, the ACCC is to file and serve an Issues List on or before Monday, 8 February 2021, which the Tribunal will publish on its register, identifying key issues, as identified by the ACCC, raised by the Application.



Interested Third Party materials

12. Interested third parties are to file and serve any submissions and supporting material to which the Tribunal may have regard on or before Monday, 22 February 2021.

Evidence

13. PNO is to file and serve any proposed evidence on or before Monday, 15 March 2021.
14. NSWMC is to file and serve any proposed evidence on or before Monday, 29 March 2021.
15. Each intervener is to file and serve any proposed evidence on or before Monday, 29 March 2021.
16. The ACCC is to file and serve any proposed evidence on or before Friday, 16 April 2021.
17. PNO is to file and serve any proposed evidence in reply on or before Friday, 23 April 2021.
18. NSWMC is to file and serve any proposed evidence in reply on or before Friday, 30 April 2021.

Case Management Hearing

19. On Friday, 7 May 2021 at 10.15am, the application be listed for a case management hearing.

Confidentiality

20. Subject to direction 24, the information identified as being confidential to PNO contained at paragraph 3(a)(ii) of the confidential version of the Form I application under s 101 of the *Competition and Consumer Act 2010* (Cth) filed by PNO on 17 September 2020, and paragraphs 29, 29(b) (including footnote 5 contained therein), 29(c), 29(d), 29(e), 29(f) and 60 of the Attachment to Form I (together, **PNO Highly Confidential Information**), is to be disclosed to the external legal advisors and experts retained by NSWMC by 27 November 2020.



21. Subject to direction 24, the information identified as PNO Highly Confidential Information must not be disclosed, without leave of the Tribunal, to any person other than the external legal advisors or experts retained by NSWMC.
22. If the Tribunal intends to have (or already has had) regard to any of the PNO Highly Confidential Information in making its decision in these proceedings (**Relevant PNO Confidential Information**), direction 23 below applies.
23. Subject to direction 24, in the event that the Tribunal gives an indication in accordance with direction 22 as to Relevant PNO Confidential Information:
 - (a) PNO has 7 days to apply for directions preventing or restricting disclosure of any of the Relevant PNO Confidential Information, with a copy of such application to be provided to the NSWMC and the ACCC at the same time as the application to the Tribunal; and
 - (b) if such an application is made, the application must not be disclosed to any person except the external legal advisors and experts retained by NSWMC, without leave of the Tribunal, until any such application has been determined;
 - (c) if such an application is not made, any restrictions applying to the dissemination of the Relevant PNO Confidential Information cease to apply.

Confidentiality and the ACCC

24. Paragraphs 20, 21 and 23 of these Directions do not apply to restrict disclosure to, or use of by, the Australian Competition and Consumer Commission (including, for the avoidance of doubt, its external legal representatives and consultants) of any information in this proceeding.

Date entered: 25 November 2020



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

REGISTRAR
Australian Competition Tribunal