

NSW MINERALS COUNCIL

SUBMISSION TO THE

REVIEW OF COMPETITION POLICY ARRANGEMENTS

Summary

Members of the NSW Minerals Council (“**Council**”) have benefited from the introduction of National Competition Policy (“**NCP**”). It has led to earlier and more sweeping reform of rail freight of export coal to port, which has in turn made the Hunter Valley coal industry more competitive on world markets and helped it to better weather cyclical downturns in the export coal industry.

There were many impediments to the application of NCP to rail in the Hunter and there is room for improvement in the way it is applied. The Productivity Commission Report no. 17, *Review of the National Access Regime*, contained many findings and recommendations on how NCP might be improved. The Council endorses many of these findings and recommendations and considers that their early implementation would assist in achieving the goals of NCP.

Background

The Council represents the interests of minerals producers in New South Wales. Many of the Council’s members are part of the Hunter Valley coal industry. This industry is NSW’s largest export industry and makes a significant contribution to economic activity not only in NSW, but on a national scale. The use of the Hunter Valley rail network is an integral part of the industry – without the railway the industry would not have been able to achieve anywhere near the scale that it has.

When NCP was introduced the NSW rail network, including the Hunter, was owned and controlled by the NSW State Rail Authority (**SRA**). The SRA was completely vertically integrated, owning the tracks and rolling stock and carrying out all significant rail operations and maintenance on the network, other than interstate rail freight. Operating, communications, signalling and safety standards differed between states and within states. The result was inefficient and costly rail operations. Nevertheless most coal exporters using the Hunter rail network paid a significant monopoly rent, averaging around \$2.00 per tonne of coal railed, to the SRA for railing coal to port.

Now, monopoly rent has been virtually eliminated and above-rail operations are more efficient than before. This has resulted in greatly reduced coal freight costs, particularly for export coal. In addition, the NCP reforms have paved the way for the interstate standard gauge and Hunter railway networks to come under the control of a single access provider, the Australian Rail Track Corporation (**ARTC**). This is expected to further improve efficiency in rail operations in the Hunter and elsewhere. ARTC has claimed it will reduce access costs on the Hunter rail network by a further 20%.

It is difficult to quantify the impact that NCP has had on these reforms. But there is no doubt that, in relation to rail access, reform would have been less extensive and progress would have been much slower in the absence of NCP. There is also no doubt that NCP has resulted in significant efficiency improvements in above-rail operations of Hunter export coal rail freight through the threat of competition. This in turn has led to an improvement in the ability of the industry to compete on world markets.

Again, it is difficult to quantify the impact of lower rail freight rates on improvement in the international competitiveness of the Hunter coal industry, and the resulting contribution to GDP and exports. It is clear however that the reduction in rail freight rates for export coal in the period since 1997 has enabled the industry to better survive the low price phase of the coal price cycle and to be in a position to benefit from the upsurge in demand and prices of the past year or two.

The Hunter coal industry operates in “regional” Australia. Strengthening of the Hunter coal industry has had the effect of strengthening the economy of the Hunter region. The Council has commented on this in some detail in its submission to the Productivity Commission Inquiry into the *Impact of Competition Policy Reforms on Rural and Regional Australia*.

Application of NCP to Hunter rail

While the NCP has benefited the Hunter coal industry through its application to Hunter rail, it has not been plain sailing. The Council has set out in detail its experiences in seeking to have the benefits of NCP apply to the Hunter rail network in submissions to the Productivity Commission Inquiry into *Progress in Rail Reform* and the Commission’s *Review of the National Access Regime* and to inquiries conducted by other bodies. It is the Council’s view that much of the difficulty arose because of the NSW Government’s conflict of interest as the owner of the monopoly being regulated, and its part in the regulation of the monopoly. An example of this conflict is the role of the Premier as relevant Minister in accepting or rejecting the NCC’s recommendations on declaration of the provision of rail services in NSW.

Opportunities for further reform

The Issues Paper for this Review appears to be based on the premise that the reforms that have been accomplished are working satisfactorily. It seeks comments on broad areas for further reform and discusses unfinished business also in broad terms. The Council considers that, while there may be scope for more progress in those areas, further improvements could and should be made to existing features of NCP. The Productivity Commission itself highlighted many such areas in its *Review of the National Access Regime*, Report No 17. Many of concerns and improvements identified in that report have not yet been addressed or corrected, yet they are essential to consolidate the reforms made so far.

These matters generally relate to improving access. They include

- recognition that the so-called “negotiate – arbitrate” model for setting access prices and conditions gives too much power to the monopoly service provider (p. xxiv and Recommendation 8.2 of the Report)

- the need for full transparency of costs to access seekers in determining access charges (Recommendation 8.1)
- inclusion of Access Pricing Principles (Recommendations 6.3 and 12.3)
- encouraging adequate investment in new facilities to ensure that capacity keeps ahead of demand (pp. xxv – xxviii and Recommendations 11.1 – 11.3)
- productivity measurements and benchmarking techniques necessary for regulators to make greater use of productivity-based approaches to setting access prices should be further developed (Recommendation 12.2)

The *Review of the National Access Regime* report also recommended inclusion of an objects clause (Recommendation 6.1).

Combinatorial pricing

A further issue that needs to be addressed in the context of the recommendations listed above is that of combinatorial pricing. This is a feature of rail access regimes and undertakings in Australia. The combinatorial model for setting access charges has been accepted by regulatory agencies as providing an adequate outcome for access seekers. The Council considers however that this has not been adequately tested, and there are complications in its use that need to be further addressed.

One such complication arises in NSW where a statutory priority is provided to passenger trains in the use of the rail network. The lease entered into by ARTC requires ARTC to apply this priority to all track under its control. But the combinatorial model for access pricing does not take this priority into account. The result of this is that some access seekers can be overcharged. For example, coal trains can be charged the full cost of the double track between Maitland and Drayton under combinatorial principles included in the NSW Rail Access Regime. But because of the priority given to passenger trains when the network is operating at full capacity, coal traffic is not able to utilise anywhere near the capacity that it is paying for.

This has not been reflected in the approvals that have been given to the Regime and pricing under it.

Extending existing NCP reform

More effective competition between road and rail could be promoted by having a more even-handed approach between road and rail. The alignment and condition of the main rail freight lines in the Hunter Valley and between the East Coast capitals is generally inferior to the standard of roads serving the same points. The increased funding for rail in the recent AusLink statement is a start to redressing the balance, but there could not be said to be fair competition between road and rail until rail alignments, track duty and signalling systems are brought up to the same state of modernity as roads serving the same markets.