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January 11, 2008

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Competition Policy Review Panel  
280 Albert Street, 10th Floor  
Ottawa, ON  
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Mr. Lynton Ronald Wilson, Chair  
Mr. N. Murray Edwards  
Ms. Isabelle Hudon  
Mr. Brian Levitt  
Mr. Thomas Jenkins

## **SUBMISSION OF ELK VALLEY COAL PARTNERSHIP TO THE COMPETITION POLICY REVIEW PANEL**

We are pleased to present our submission to the Competition Policy Review Panel. We look forward to the results of the Panel's work and determinations and express our best wishes to the members of the panel in this important crossroads in the continued development of Canada's economy. We would be pleased to attend to the Panel's requests for such information as may assist in the members' deliberations.

### **1. Elk Valley Coal Partnership**

1.1 Elk Valley Coal Partnership (the "Partnership" or "Elk Valley Coal") owns and operates<sup>1</sup> six coal mines: the Cardinal River mine, the Coal Mountain mine, the Fording River mine, the Line Creek mine, the Elkview mine<sup>2</sup> and the Greenhills mine.<sup>3</sup> The Cardinal River mine is located in west-central Alberta. The other five mines are located in close proximity to

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<sup>1</sup> Elk Valley Coal Corporation, a wholly-owned subsidiary of the Partnership, operates the mines.

<sup>2</sup> The Elkview mine is owned as to 95% by the Partnership; the rest is owned by Nippon Steel (2.5%) and Posco (2.5%)

<sup>3</sup> Posco owns 20%

each other within the Elk Valley in Southeast British Columbia (“SEBC” or the “Elk Valley”). All of the Partnership’s mines are a significant part of the global steel supply chain, with shipments made throughout the world.

1.2 In 2007, the five mines in SEBC produced approximately 21 million tonnes of coal of which more than 95% is metallurgical coal used for making steel. Of that amount, the vast majority is hard coking coal, such that Elk Valley Coal supplies approximately 15% of the world’s seaborne hard coking coal.<sup>4</sup> This makes Elk Valley Coal, and by extension Canada, the largest supplier of metallurgical coal in the Western hemisphere and the second largest supplier in the world.

1.3 The Partnership is held as to 60% by Fording Canadian Coal Trust and as to 40% by Teck Cominco Limited. Teck Cominco Limited also owns 20% of the Fording Canadian Coal Trust such that its direct and indirect ownership of the Partnership is 52%. It is also the managing partner of the Partnership.

## **2. Coal and the Global Value Chain**

2.1 Metallurgical or steel-making coal is extremely important to Canada; it accounts for approximately 2/3 of direct employment for the entire Canadian coal industry. Moreover as a significant industry in Canada, coal mining accounts for almost 10% of all Canadian mining employment<sup>5</sup> and directly contributes approximately 0.5% of total Canadian annual GDP.

2.2 Nearly 63 million tonnes of coal was produced in 2006 in Canada, of which approximately 25 million tonnes were steel-making coal. More coal is transported by rail than any other commodity in Canada. Elk Valley Coal’s production is shipped through several terminal facilities on the Pacific and the Great Lakes, from where it is shipped to steel mills in Canada and the United States, as well as to export destinations in approximately 20 other countries. Over 30% of the total tonnage handled by the Port of Vancouver comes from Elk

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<sup>4</sup> Metallurgical coal and steel-making coal are synonymous terms while coking coal is a category of steel-making coal that produces metallurgical coke when heated in the absence of oxygen. Metallurgical coal is produced in various grades, and while not all of it is coking coal, it is all used in the process of steel making. The qualities of metallurgical coal vary as do the requirements of the various steel mills. Thermal coal is used for its heating value, primarily for electric power generation.

<sup>5</sup> 2006 Stage 1 (mineral extraction and concentrating industries), Natural Resources Canada; Statistics Canada (Information Bulletin, November 2007)

Valley Coal. In 2006, the Port handled more than 220 ships loaded with the Partnership's metallurgical coal.

2.3 Elk Valley Coal produces approximately 90% of all steel-making coal produced in Canada and is an important supplier to Canadian-based steel mills who utilize the coal to produce steel products used in Canada and around the world. As a single corporate entity, Elk Valley Coal largely represents the metallurgical coal sector in Canada. Its top competitors are all foreign-based and include some of the largest mining companies in the world, including: BHP Billiton (Australia) and Mitsubishi (Japan), Anglo American (England/South Africa) and Mitsui (Japan), Xstrata (Switzerland) and Rio Tinto (England/Australia), with most of their production of steel-making coal based in Australia. In addition, US exporters of Appalachian steel-making coal taken in aggregate also represent significant foreign-based competition to Elk Valley Coal.

2.4 Through mining and handling activities, the steel-making coal industry makes a major economic contribution to Canada. For example, Canadian steel-making coal mines:

- (a) provide export earnings in the order of \$3 billion (2006), the vast majority of which originates in BC and Alberta;
- (b) provide highly paid and stable employment in many rural and urban communities;
- (c) enjoy an enviable safety record that compares favourably with any industry in Canada;
- (d) support the communities of those who supply the industry directly with goods and services from across the country;
- (e) supply steel mills in Ontario that in turn support the manufacturing industries of the country.

2.5 Steel-making coal is also an important facilitator and contributor to Canada's international trade and helps to diversify Canada's export base around the world. It represents the single largest export product from Canada to such countries as Japan, Korea, Taiwan, and Brazil. Approximately 45% of Elk Valley Coal's production is shipped to customers in Asia, 35% to Europe, 10% to South America and another 10% is shipped within North America.

2.6 The global steel industry not only acts as one of the foundations of our economic system but is vital to the developing economies of the world. While global coal production

amounts to about 5.8 billion tonnes annually, the market for high quality, seaborne metallurgical coal is approximately 220 million tonnes. Of that amount, approximately 140 million tonnes consists of hard coking coal – the kind produced in Canada. This makes hard coking coal a comparatively rare commodity and places Canada in a strategically advantageous position in the steel production value chain where the cost and competitiveness of our production in turn affects the cost and competitiveness of the global steel industry.<sup>6</sup>

### **3. Mandate of Panel and Objectives of EVCP**

3.1 The Competition Policy Review Panel was appointed by the Minister of Industry in 2007 with terms of reference including the following:

The global economy — and Canada's place in it — is changing at a rapid pace and will continue to do so in the future. Trade agreements are opening national markets while global investments are reaching unprecedented levels. Business is also becoming global, and production is increasingly oriented around global value chains. While our competition and investment policies are serving us well, they have not been substantially changed since the mid-80s. In undertaking the competition policy review, the Government's objective is to ensure that Canada's policies keep pace with these changes in order to create a highly competitive national economy and help create more and better jobs for Canadians. (emphasis added)

3.2 Elk Valley Coal's objectives are synonymous with the foregoing terms of reference on both counts:

- (a) first, metallurgical coal is a significant part of the global value chain relating to the production of steel used around the world, including in Canada; and
- (b) second, our entire focus is built around creating a business that can compete globally, continue to contribute to the national economy, preserve existing jobs and create new jobs, as we seek to expand the business.

3.3 We note the Panel's "fundamental task":

...to provide recommendations to the government on how to enhance Canadian productivity and competitiveness, as these are keys to generating wealth and creating jobs and opportunity in a fast-changing global economic environment. The Panel will examine a range of issues with an eye to ensuring that Canada's policies are modern and

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<sup>6</sup> Approximately 70% of the world's steel is produced using blast furnace technology that requires metallurgical coal as one of the main raw materials. Different types of coal are used in that technology with the lowest grade material used purely to provide energy and hot reaction gasses. The highest quality coals, including most of the metallurgical coal exported from Canada, are used to produce lumps of metallurgical coke which is mixed with the iron ore in the blast furnace and is critical to furnace operation.

effective, and reflect a competitive environment that is global in scope and typified by fierce competition between national jurisdictions seeking to attract investment, people and economic opportunities.

3.4 Elk Valley Coal is keenly aware of global competition. Competition for labour, customers and the products we sell is intense in the markets we serve. Those markets are global. Producers in Australia and elsewhere compete for the same international markets as we do, and U.S. and other producers compete for the same North American, European, and South American markets we serve. We are particularly encouraged by the Panel's statement that recognizes the need to move quickly and aggressively:

In the twenty-first century, economic success will not be achieved by being backward or inward looking. The goal is to foster the development of Canadian businesses and to maximize the opportunity for Canadians to capitalize on global trade, investment and competition. The Panel's mandate is therefore to make recommendations to the government on ways to establish the domestic conditions that both encourage Canadian firms to be active and aggressive investors at home and abroad, and maximize Canada's attractiveness as a destination for new investment and talent.

3.5 Elk Valley Coal seeks to compete vigorously in world markets, capitalize on existing opportunities to expand production and increase sales and decrease the risks associated with the investment required to expand, but is constrained by the lack of competition in Canada built into national transportation policy. That policy governs competition in respect of the Partnership's single largest cost – rail transportation – which compromises the competitiveness of Canada's steel-making coal industry. Elk Valley Coal has global ambitions and wishes to overtake its competitors to become the world's premier steel-making coal supplier. In the Panel's review of "key elements of Canada's competition and investment policies to ensure that they are working effectively", we encourage the Panel to consider the very negative impact of the uncompetitive rail environment on the competitiveness of all Canadian export mines, including Elk Valley Coal, the jobs we provide and our ability to expand to achieve that ambition.

#### **4. Transportation of Coal from the Elk Valley**

4.1 There are many users of the rail freight system in Canada, which is occupied primarily by Canadian National Railway and Canadian Pacific Railway. Some shippers have access to both carriers, some shippers have can use several modes of transportation (truck,

marine, rail), some must use more than one and still others have very little choice. Many shippers are concerned about the degree to which their operations are captive to rail.

4.2 Elk Valley Coal's mines are entirely dependent on rail to transport coal to its customers, 90% of which is shipped west to Vancouver ports<sup>7</sup>. Approximately 90% of that amount is shipped via Canadian Pacific Railway (CP) and 10% via Canadian National Railway (CN). CP hauls 100% of Elk Valley Coal's shipments from Southeast British Columbia and CN hauls all of Elk Valley Coal's shipments from central Alberta. There is no competition for rail services at any of Elk Valley Coal's mines. Each mine is captive to the carrier that serves it. All the other export steel-making coal mines in Canada are also captive to one railway, 100% of their products being shipped via CN.

4.3 The captivity of the Southeast British Columbia mines has been acknowledged by CP on several occasions:

*"Our Canadian coal traffic originates mainly from southeastern British Columbia coal mines... CPR has exclusive access to these mines..."*<sup>8</sup>

*"In early 2003, the EVCC Partnership was formed... CPR is their exclusive provider of all service to export and U.S. markets..."*<sup>9</sup>

4.4 In fact, when asked: "Does EV have any other option of who transports their coal", the President and CEO of CPR simply answered "No."<sup>10</sup>

4.5 The captivity of these mines is further demonstrated by the excessive rates charged by CP; which CP has also previously acknowledged:

4.6 *"This means that in some instances, such as aggressive competition from the subsidized highway mode, railways charge low rates recovering only a little more than variable costs."*

4.7 *And in other instances – where we have more advantage – the railways charge more thereby recovering much more than variable costs."*<sup>11</sup>

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<sup>7</sup> Another 10% is shipped east to North American steel mills via CP.

<sup>8</sup> CPR, 2004 Investor Fact Book (2004) at 34

<sup>9</sup> CPR, 2004 Investor Fact Book (2004) at 35

<sup>10</sup> Excerpts from question and answer from presentation of Rob Ritchie, President and CEO, CPR, delivered to Merrill Lynch Global Transportation Conference, June 17, 2004) [unpublished] at p. 5.

<sup>11</sup> "Challenge to Policymakers: Help Railway Fulfill their Potential", Notes for remarks, by Robert J. Ritchie, President and CEO of Canadian Pacific Railway, to Canadian Railway Club, Montréal, Québec, 12/05/2000

4.8 The fact that rail transportation is the only feasible mode of transportation in Canada available to move significant tonnage of coal to export terminals is well recognized. For instance, Transport Canada, on its internet home page, has stated that;

*“Coal is perhaps the only truly captive commodity in a general sense. Coal mines served by rail are generally not readily accessible to a second railway because of relatively remote locations and moving this traffic by truck, even where there are highways, is complicated by the massive volumes involved.”<sup>12</sup>*

4.9 In its report, the National Transportation Act Review Commission (“NTARC”), a body appointed under the authority of the *National Transportation Act, 1987* to review the effectiveness of that legislation, specifically addressed the dominance of the rail mode in relation to coal transportation as follows:

*“Rail transport is often the only way to move bulk commodities of low value, such as coal, over long distances over land. In such cases, a railway has no effective competition and commands considerable market power.” (emphasis added)<sup>13</sup>*

4.10 In sum, Elk Valley Coal’s mines are captive to the railways. Elk Valley Coal competes in very competitive markets at a significant geographical disadvantage to our competitors on the global stage, while being hamstrung at home by a lack of competition for rail service. The negative impact of this situation on the company’s competitive position is magnified when coupled with the significant advantages enjoyed by its global competitors in Australia and elsewhere where greater competition in the rail sector exists.

## **5. Australian Competition for the Supply of Coal**

5.1 Coal mines in Australia produce close to two-thirds of both the world’s seaborne steel-making coal and hard coking coal. These mines supply substantially all of Canada’s customers outside of North America; in other words, we compete head to head against Australian suppliers of coal in all of our major markets outside Canada and the United States. There is no customer to whom Canada can sell its coal where we enjoy a transportation advantage.

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<sup>12</sup>Transport Canada Internet Home Page dated 4/28/97, p. 4 of 5 (Tab 60)

<sup>13</sup>Canada, *Report of the National Transportation Act Review Commission*, vol. 1 (Ottawa: 1992) at page 130

5.2 In order to remain competitive, Canadian producers must control costs and overcome inherent disadvantages. That begins at home. Elk Valley Coal has done everything possible to reduce its mine costs, including utilizing some of the largest and most productive mining equipment, developing highly effective preventive maintenance programs, employing sophisticated information technology and mine modeling software to enhance productivity, applying best practices from individual operations to all our mines, achieving constructive and proactive labour relations processes, and establishing industry-leading safety practices. As a result, our costs of mining are on par with our Australian counterparts. In other words, we can compete on the things we can control. However, transportation costs are controlled by monopoly suppliers of rail and port services.

5.3 Our Australian competitors enjoy two significant advantages over Elk Valley Coal. First, their coal mines are located on average less than 200 kilometres from tidewater, while Elk Valley Coal's mines are located over 1,100 kilometres from tidewater, where coal is loaded onto ships for transport to steel mill customers around the world. Second, many of these Australian coal mines enjoy competitive transportation service. While we do not expect competition policy or transportation policy to overcome this geographical disadvantage, it can have a positive impact fostering the kind of competition among transportation (specifically rail) suppliers that companies like Elk Valley Coal require to remain leaders in the global marketplace. Canada's policies should be designed to help companies to benefit from competition at home and abroad. We certainly do not expect to be harmed by the lack of it.

5.4 The chart at Appendix A demonstrates that Elk Valley Coal lies in the fourth quartile of the global cost curve of coking coal mines making them among the most vulnerable to pricing downturns. We must also contend with significant price volatility, as the chart at Appendix B illustrates; this volatility demonstrates the exposure Elk Valley faces in a pricing downturn.

5.5 Australian coal producers enjoy competitive rail transportation today because of bold steps taken as a result of a review of competition policy similar to the mandate of this panel. Without going into detail, the principles were relatively simple: create circumstances in which rail carriers would have to compete for their customers and allow competition to provide the

benefits of lower costs, higher volumes and innovative service. This is what Canada needs to remain a vital part of the global steel manufacturing chain, especially as it pertains to rail transportation of steel-making coal.

## **6. Cost Control**

6.1 In order to participate in the global supply chain of steel, Canada must provide products and services in that chain at a competitive level, in terms of quality, quantity, service and price. Over the course of many years, BC and Alberta suppliers have developed markets for coal that now look to Canada as a good secondary supplier to Australian suppliers. Elk Valley Coal is by far the largest such alternative supplier. Its reputation has been garnered by meeting customer demand for quality hard coking coal, supplied in adequate quantities on time.

6.2 The one area where Elk Valley Coal is hindered is cost, particularly transportation costs. The delivered cost of coal is what puts Elk Valley Coal at a disadvantage for the reasons described above. To continue to supply world markets and participate in the global supply chain for the manufacture of steel, Canada needs to control its transportation costs.

6.3 The chart at Appendix A ranks all producers of seaborne coking coal and demonstrates their costs of delivering coal to tidewater. Elk Valley Coal sits in the fourth quartile of the global cost curve of producing and delivering coal to port. The chart demonstrates that distribution costs (rail and port) are the reason for Elk Valley Coal's ranking.

6.4 The impact of this ranking is significant in many ways:

- (a) Individual operations are vulnerable to shutdown during pricing and volume downturns while lower cost competitors are able to continue operating profitably;
- (b) Increased difficulty in attracting investment to the industry and to individual mines because returns are lower than those of our competitors;
- (c) Increased risk results in a higher cost of capital which further increases costs, exacerbating the effects of the rankings further; and
- (d) Lower levels of investment will result in lower employment levels and reduced overall economic activity.

## **7. Deregulation of Rail Transportation**

7.1 Railways and shippers have advocated economic deregulation of the rail transportation system for decades. The *Transport Act* (1938), the *National Transportation Act* (1967), the *National Transportation Act, 1987* (in force in 1988) and the *Canada Transportation Act* (1996) (and the associated privatization of CN) all contained important elements of economic deregulation for the railways. From 1938 to 1996, CN and CP were transformed from fully regulated utilities to private sector, shareholder driven business enterprises with decreasing economic regulation. Railways now make choices and decisions involving services and prices like other private enterprises. They are driven by shareholder requirements rather than government regulatory limitations and obligations. In many respects, this has been a positive development, not only for the railways, but for Canadian taxpayers as well.

7.2 Consolidation in the rail industry has also led to few participants, and the regulatory environment has made entry difficult. Unfortunately, where possible (as illustrated above under the heading “Transportation of Coal from the Elk Valley”), railways have taken advantage of their market power to the detriment of their customers’ needs. The exercise of railway market power has been the subject of many reports, including those presented to the *Canada Transportation Act* Review Panel (2000/2001) during which shippers from numerous industries presented the many ways in which this market power was and is being exercised.

7.3 The deregulation of Canadian railways has been driven by many factors – railway management, competition, U.S. deregulation – and, to a certain degree, has paralleled what has and is happening in other natural monopolies such as the telecommunications industry, pipelines, and electrical energy transmission. In all these service sectors, major regulatory changes have or are being made to introduce the benefits of a more competitive environment – lower costs, greater efficiencies and improved services. In all of these service sectors, the regulation of these monopoly powers has been the most significant issue.

7.4 Historically in these service sectors heavy capitalization requirements and the need to provide fair and equal treatment to all customers or consumers led to economic regulation. Customer dissatisfaction and monopoly pricing of services were factors in deregulation. Canadian businesses were becoming less competitive in an increasingly globalized

trading world where Canada was a major participant. Governments in Canada, both Federal and Provincial, began some time ago to break down these service monopolies in the longer run interest of consumers and the country generally.

7.5           The exposure of these monopolies to competition is instructive. The telecommunications industry is an obvious example. Prices to consumers have come down substantially and yet the telcos that were originally monopolies have generally flourished. They are now unquestionably more efficient. Predictions of dire consequences by these monopolies if they were forced to compete did not materialize. They predicted that capital reinvestment would dry up. In fact, they turned their attention to surviving and competing and have generally succeeded. We are now looking at expanding spectrum to allow more wireless market participants. In all sectors where natural monopolies have been exposed to competition for distribution, those who are dominant have enjoyed an advantage in competing with new entrants.

7.6           Freight railways operating in Canada enjoy significant volumes of business that are completely captive to rail, and often captive to one railway only. Elk Valley Coal is one such customer.

7.7           In the deregulation of rail transportation services, the Government of Canada has enacted shipper relief mechanisms in the hope of counterbalancing that railway market power. Experience has shown that these well intentioned provisions have had limited effect.<sup>14</sup>

## **8.           The Need For Rail Competition**

8.1           Regulatory change over the past few decades has not resulted in a reduction of railway market power over captive shippers. The *Canada Transportation Act* (1996) facilitated the privatization of CN by providing prospective shareholders with a railway that could price its services to captive shippers with few restrictions. These railway shareholders, mainly American, have been well rewarded and the privatization of CN has been a great success. CP has similarly benefited.

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<sup>14</sup> See Tougas, "Shippers and Railroads: A Canadian Perspective" (originally entitled "Qualitative Aspects of Price and Output Regulation of Federal Freight Railways in Canada"), Journal of Transportation Law, Logistics and Policy, June 2006; and, "Responding to the Market Power of Federal Freight Railways," in Competition as a driver of change: Proceedings of the 41st Annual Conference of the Canadian Transportation Research Forum, May 2006

8.2 During the course of the 1990s and the beginning of this decade, captive resource sector shippers in Canada saw their international competitiveness decline in the face of tough international market competition and unresponsive railway pricing. The result has been particularly noteworthy in the coal sector.

8.3 Despite record commodity prices more recently, the lack of a competitive rail system in Canada has not allowed Canada to move from the 4<sup>th</sup> quartile of the global cost curve and, indeed, the concern has been that some of Elk Valley Coal's mines could fall off that curve altogether during a pricing downturn.

8.4 The Government of Canada has been active in addressing the concerns of many shippers. In 2007, Parliament passed Bill C-11 that, among other things, amended the statement of national transportation policy and reintroduced reviews of transportation mergers and acquisitions. Bill C-8, which has been debated before the Standing Committee on Transport, Infrastructure and Communities, addresses several railway market power issues that are designed to assist some captive shippers. That is all commendable. These changes, however, have not addressed the fundamental need for competition in the freight railway sector.

8.5 Combined with grain, the resource sector (coal, sulphur/fertilizer and forest products) accounts for more than 50% of CP's railway revenue and most of its profits. Yet, CP's capital investment programs are increasingly directed toward their least profitable and most competitive sector of railway business – intermodal traffic. Both CN and CP have demonstrated that where they must compete against each other and against other carriers, they do so. Not surprisingly, competition is beneficial to those served by several rail carriers. The challenge lies in creating competition where only one carrier serves a shipper, such as in the case of Elk Valley Coal.

8.6 The best efforts to create competition through tweaks of the existing legislation will not result in the benefits of competition that Canadian industry requires and should expect. It is not reasonable to expect that, with Canada's dispersed shippers, remote locations and great distances, competition between railways will naturally arise. No one is going to build more railways to compete against CP in the Elk Valley anymore than they would to compete with CN into a lumber mill anywhere else in northern BC, for example.

8.7 Given the Panel's mandates to review competition policy, we ask ourselves why it is that Elk Valley Coal is not permitted to benefit from a competitive environment for the provision of rail services to its mines. If Canada is to be a part of the value chain associated with global steel production, competitive rail rates must be a part of the equation. Accordingly, we believe it is in Canada's best interests for Elk Valley Coal and the remainder of the Canadian export coal industry to realize the benefits of competition in the provision of rail services.

8.8 In a modern economy, competitive market forces bring about the best and most efficient allocation of resources in the form of high quality goods and services at prices closely coupled to cost, innovation and dynamism. All Canadians expect market forces to provide them with these benefits. Unfortunately, these benefits (and the attributes of competition) are noticeably absent from the provision of rail services to Elk Valley Coal. That is why competition policy must allow for a correction to those situations where there is no competition or the current level of competition is ineffective.

8.9 Canada has several choices to achieve this objective:

- (a) do nothing and maintain the status quo;
- (b) continue to tweak regulatory mechanisms in an attempt to countervail railway market power;
- (c) construct mechanisms to provide rail services on a basis that replicates the benefits of competition described above.

8.10 The first option will not protect Canada's ability to participate in the global steel supply chain in the face of increasingly volatile markets. It would also seriously imperil Canada's international trade position as an exporter to diverse markets. The second option has been helpful to some, but not to Elk Valley Coal. The third option represents a significant policy challenge but not one that is unfamiliar to Canadian policymakers, namely, how to provide the benefits of competition in a monopoly environment.

8.11 As the Panel reviews competition policy generally, we recommend that the rail transportation sector be reviewed in light of the objective to allow Canadians to compete in the global value chain. The place to start is by providing a policy framework that allows rail rates to be set on the basis of cost, which is the essential hallmark of competition.

8.12 This will merely replicate what a competitive market would do, and no more. Canada would still not have an ideal rail competitive environment, but it would move us toward a system that is the best available in the circumstances. The existing regulatory mechanisms are vital to curtail railway market power, but they are insufficient.

### **8.13 Conclusion**

Elk Valley Coal is a significant contributor to Canada's overall economic welfare. Every effort has been made to allow each of its mines to compete in the global value chain and to participate in the global supply of steel. Export markets have been diversified away from dependence on one country alone. The pricing of coal has become highly volatile in recent years adding significantly to the risk being faced by Canadian suppliers. Efficiencies have been brought to bear on the production of the highest quality steel-making coal that can be found. Despite all these efforts and the value that the steel-making coal industry represents to Canada, rail costs in particular continue to edge Elk Valley Coal toward the most expensive end of the global cost curve. The Competition Policy Review Panel has a unique opportunity to contribute toward the effort to ensure that all Canadian businesses enjoy the benefits of competition, including those businesses, such as Elk Valley Coal, that are held back from competing due to the exercise of railway market power.

ELK VALLEY COAL PARTNERSHIP

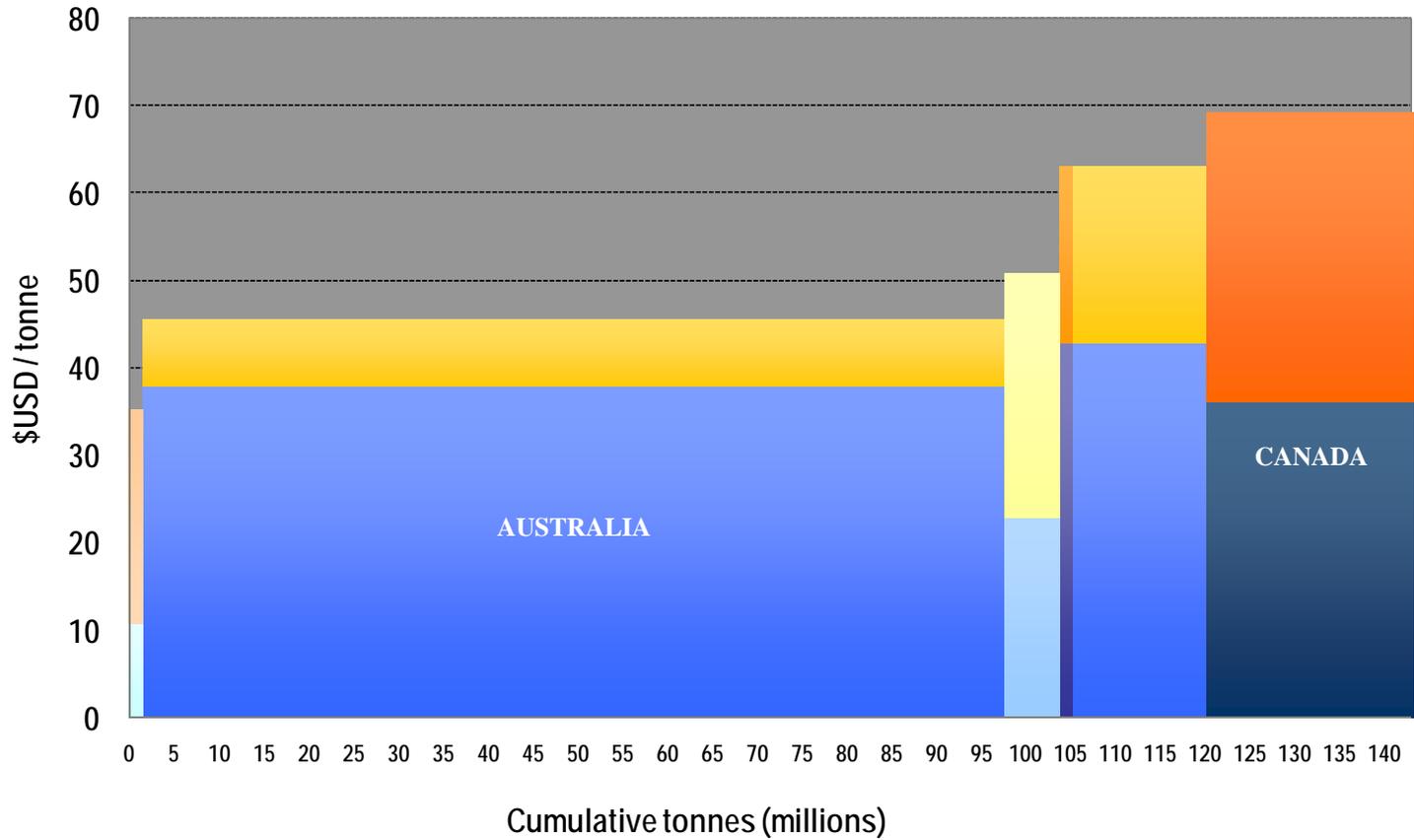
A handwritten signature in black ink, appearing to read "Boyd Payne". The signature is fluid and cursive, with the first name "Boyd" and last name "Payne" clearly distinguishable.

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Boyd Payne, President and Chief Executive Officer

**APPENDIX A**

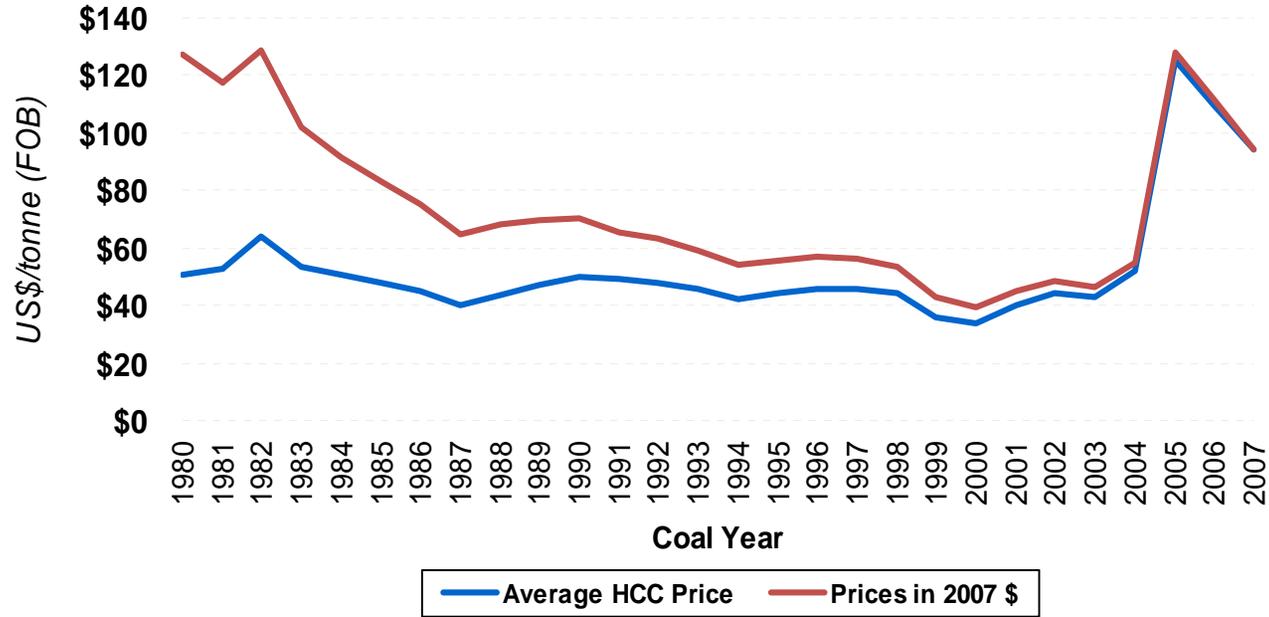
**2006 F.O.B. COST CURVE**



Source: AME Mineral Economics

**APPENDIX B**

**AVERAGE HARD COKING COAL PRICE  
1980 – 2007**



Source: Average HCC is Elk Valley Coal price; Real \$ calculated using Stats Canada Historical Consumer Price Index