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Expert report of Greg Houston – does NQXT's coal handling service satisfy criterion (a)?

A report for Arnold Bloch Leibler

13 June 2025

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1. Introduction

1. I have been asked to prepare this report by Arnold Bloch Leibler (ABL) on behalf of QCoal Pty Ltd and Byerwen Coal Pty Ltd (together, the QCoal Users). Its subject is a review of whether the coal handling service supplied at North Queensland Export Terminal (NQXT) satisfies criterion (a) of section 76(2) of the *Queensland Competition Authority Act 1997* (QCA Act).
2. I examine whether the coal handling service provided at NQXT satisfies criteria (b), (c) and (d) of section 76(2) of the QCA Act in a separate report (criterion (b) report).¹

1.1 Instructions

3. ABL has asked me to provide my opinion on:²

...whether the coal handling service provided at the Terminal [NQXT] satisfies the criteria in section 76(2) of the [*Queensland Competition Authority Act 1997*] Act. In doing so, please have regard to the methodology that was adopted by the [Queensland Competition Authority] QCA and the Queensland Treasurer in assessing the declaration status of the coal handling service provided at the Dalrymple Bay Coal Terminal (DBCT).
4. ABL has asked me to undertake this review by reference to a proposed declaration date of 1 July 2027, with the proposed declaration period being ten years, ie, the ten-year period commencing 1 July 2027 (declaration period).³
5. I attach a copy of my instructions as annexure A.

1.2 QCA's methodology

6. Section 76(2)(a) of the QCA Act states that:

...access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service...
7. In its review of the declaration status of Dalrymple Bay Terminal (DBT), the QCA applied a methodology in respect of criterion (a) that involved:⁴
 - a. the identification of the market for the service – as set out in my criterion (b) report;
 - b. an assessment of the service provider's (in this case, NQXT) ability and incentive to exercise market power and whether it would be constrained in doing so in the absence of declaration;
 - c. the identification of markets other than the market for the service (dependent markets); and
 - d. an assessment of whether access (or increased access) as a result of a declaration of the service would promote a material increase in competition in at least one of the dependent markets.

¹ *Expert report of Greg Houston – Does NQXT's coal handling service satisfy criteria (b) to (d)?*, June 2025.

² ABL, *Letter to Greg Houston entitled 'Instructions – Access Declaration for North Queensland Export Terminal facility at Abbot Point*, 6 June 2025, para 9.

³ ABL, *Letter to Greg Houston entitled 'Instructions – Access Declaration for North Queensland Export Terminal facility at Abbot Point*, 6 June 2025, para 10.

⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 74.

8. I agree with the QCA that, at a high level, these steps appropriately apply criterion (a) in relation to the coal handling service at NQXT and, accordingly, have applied these same steps in my assessment.
9. In its assessment of DBT, the QCA assessed the effect of declaration on competition in the following dependent markets:⁵
 - a. coal tenements markets, including three functionally distinct tenements markets, ie:
 - i. exploration stage tenements;
 - ii. development stage tenements; and
 - iii. operating mines;
 - b. coal export market(s);
 - c. coal haulage services market;
 - d. DBCT secondary capacity trading market;
 - e. rail access market; and
 - f. other markets, such as port services, coal shipping services and various mining inputs and services markets.
10. In my opinion, these same markets, appropriately defined in the context of NQXT, are likely to be relevant dependent markets for an assessment of criterion (a).

1.3 Summary of conclusions

11. An assessment of whether the service provided at NQXT satisfies criterion (a) should be distinguished from the similar process previously undertaken for DBT principally because:
 - a. NQXT is vertically integrated across the supply chain, whereas the service provided by DBT is not vertically integrated with substantive other services; and
 - b. existing users at DBT have 'evergreen' access rights and DBT executed a deed poll and access framework to apply in the absence of declaration, whereas no such arrangements apply at NQXT.
12. NQXT's degree of vertical integration and the absence of long-term certainty over access for third-party users both have important implications for whether NQXT satisfies criterion (a).
13. A further distinction between my assessment in respect of NQXT and that in respect of DBT is that DBT was already declared at the time it was being assessed. Conversely, the service provided by NQXT is not presently declared. This means that:
 - a. the current state of the world at the time of the DBT assessment was likely to be *closer* to the 'with declaration' world; whereas
 - b. the current state of the world in the NQXT assessment is likely to be *closer* to the 'without declaration' world.
14. Further, the terms of the existing NQXT user agreements are unlikely to reflect those that would be struck today, because those agreements were struck between the third-party users and the state. The

⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 74.

circumstances of third-party users and the existing, vertically-integrated NQXT (a Bravus Australia business, ultimately owned by Adani Group) are very different from those that applied when those agreements were struck. In other words, the 'without declaration' world is likely to reflect less certain and less favourable circumstances for third-party users than the current state of the world – which already presents significant challenges for those third-party users in their ongoing interactions with NQXT.

15. In the absence of declaration, NQXT has the ability and incentive to exercise market power, with this ability not being constrained by any of:
 - a. competition from other coal export terminals, because coal handling services at those other terminals are not close substitutes for the NQXT service;
 - b. the countervailing power of users, because users do not have a credible threat of switching to an alternative terminal;
 - c. the threat of declaration or litigation under the *Competition and Consumer Act 2010* (CCA); or
 - d. access arrangements without declaration.
16. In respect of coal tenements markets, my analysis shows that:
 - a. there are three functionally distinct markets for coal tenements in relation to the service provided by NQXT, ie, exploration stage tenements, development stage tenements, and operating mines;⁶
 - b. the geographic boundaries of the markets for later-stage thermal coal tenements and later-stage metallurgical coal tenements that are dependent on the service provided by NQXT include the Newlands system – including tenements with direct connection to the Goonyella to Abbot Point extension (GAPE) – and the Galilee basin;
 - c. the significant risks for third-party access seekers and the substantial differential between third parties and Bravus Mining and Resources (a Bravus Australia business, ultimately owned by Adani Group) that would persist in a future without declaration imply that access (or increased access) to the service on reasonable terms as a result of declaration would be likely to promote:
 - i. an increase in competition between Bravus Mining and third parties in markets for later-stage coal tenements in the Newlands and Galilee systems, because those third parties would be offered similar or equal terms of access to NQXT, as compared to the significant risk of no or poor-quality access without declaration; or
 - ii. an increase in competition between third parties in markets for later-stage coal tenements, because without declaration those third parties may not be willing to undertake any transactions, and the certainty over access with declaration may incentivise those parties to undertake transactions.
17. In other words, in my opinion criterion (a) is satisfied in respect of at least one (all) dependent market(s) for coal tenements.
18. In respect of coal export markets, my analysis shows that:
 - a. there are likely to be separate markets for the export of metallurgical and thermal coal;

⁶ Although I identify functionally distinct markets for development stage and operating mine tenements, I analyse them together as 'later-stage' tenements, because my analysis suggests the key risks are similar across both markets.

- b. NQXT has the ability and incentive to restrict throughput of metallurgical coal through NQXT and instead to favour thermal coal mined by Bravus Mining;⁷
 - c. by consequence, declaration could promote a material increase in throughput of metallurgical coal at NQXT, in the context where NQXT accounts for a sizable proportion of global metallurgical coal trade; so that
 - d. declaration of the service provided by NQXT, and the access on reasonable terms for exporters of metallurgical coal that it would imply, could therefore promote an increase in competition in global markets for metallurgical coal exports, by increasing supply and decreasing prices.
19. In other words, in my opinion, criterion (a) is satisfied in respect of a dependent market for metallurgical coal exports.
20. In respect of rail markets:
- a. on the assumption that declaration of NQXT would allow for entry by new users into the Galilee basin, then declaration of NQXT would facilitate entry or the threat of entry for the provision of below-rail services connecting the Galilee basin to the Newlands system and thereby promote a material increase in competition in that relevant dependent market; and
 - b. declaration of the service provided by NQXT, and the equality of access on reasonable terms for coal hauled by third-party haulage providers that it would imply, would promote an increase in competition in the market(s) for coal haulage services covering the Galilee and Newlands systems (and possibly wider).

1.4 Relevant expertise

21. I am a founding partner of the firm of expert economists, HoustonKemp. Over a period of more than thirty years I have accumulated substantial experience in the economics of infrastructure services and their related markets and the provision of expert advice and testimony in litigation, business strategy and policy contexts. I have developed that expertise in the course of advising corporations, regulators and governments in Australia and the Asia-Pacific region on a wide range of regulatory, competition and financial economics matters.
22. I have prepared expert reports on a wide range of matters arising in connection with the central Queensland coal network over a period of approximately 13 years. These matters include the declaration reviews by the Queensland Competition Authority (QCA) of the coal handling service provided at the Dalrymple Bay Terminal and of the below rail services provided by Queensland Rail. I have also prepared expert reports that were submitted to the National Competition Council on matters that arose in the application of the criteria for declaration under Part IIIA of the *Competition and Consumer Act 2010* to the navigation service provided at the Port of Newcastle.
23. My industry sector experience spans aviation, banking, beverages, building products, car parking, cement, credit reporting, digital platforms, e-commerce, electricity and gas, employee remuneration, explosives, forest products, gambling, grains, groceries, healthcare, industrial gases, insurance, litigation funding, logistics, maritime services, medical waste, mining, office products, payments networks, petroleum, pharmaceuticals, ports, rail transport, retailing, scrap metal, securities markets, shipping, steel, stevedoring, telecommunications, thoroughbred racing, travel agency, waste processing and water.

⁷ NQXT also has the ability and incentive to restrict throughput of thermal coal supplied by third parties through NQXT, in favour of thermal coal mined by Bravus Mining.

24. I have given sworn evidence on these matters on numerous occasions before arbitrators, appeal panels, regulators, the Federal Court of Australia, the Australian Competition Tribunal, state Supreme Courts and other judicial or adjudicatory bodies.
25. I hold a BSc (Hons) in Economics, a University of Canterbury post-graduate degree, which I was awarded with first class honours in 1983.
26. I have been assisted in the preparation of this report by my colleagues Nick Twort, Dale Yeats and Liam Hickey. Notwithstanding this assistance, the opinions in this report are my own and I take full responsibility for them.
27. I attach a copy of my curriculum vitae at annexure B.

1.5 Structure of my report

28. This report sets out my application of criterion (a) to the coal handling service at NQXT, having regard to the approach taken by the QCA in its assessment of DBT. My report is structured as follows:
 - a. in section 2, I set out the factors relevant to criterion (a) that distinguish NQXT from DBT;
 - b. in section 3, I set out the relevant economic concepts for criterion (a);
 - c. in section 4, I examine whether NQXT is constrained from exercising market power;
 - d. in section 5, I assess the relevant dependent markets for coal tenements;
 - e. in section 6, I assess the relevant dependent markets for coal exports from NQXT;
 - f. in section 7, I assess the relevant dependent markets for rail access and coal haulage services; and
 - g. in section 8, I assess other relevant dependent markets.

2. Factors that distinguish NQXT from DBT

29. ABL has asked that I undertake this review having regard to the methodology that was adopted by the QCA in its assessment of the declaration status of the coal handling service provided at DBT. In this section, I set out the key factors that distinguish an assessment of NQXT from DBT. These are that:
- a. NQXT, as an entity owned by the Adani Group, is vertically integrated across the north Queensland coal supply chain, whereas DBT is not vertically integrated; and
 - b. existing users at DBT have 'evergreen' access rights and DBT executed a deed poll and access framework to apply in the absence of declaration, whereas no such arrangements apply at NQXT.
30. These distinguishing factors are critical for my assessment of dependent markets set out in the remaining sections.

2.1 NQXT is vertically integrated across the supply chain

31. The various functional levels of the supply chain for coal exports in Queensland include:
- a. the acquisition and development of coal resources, ie, exploration and development tenements;
 - b. operating mines;
 - c. below-rail services, ie, the use of the below-rail infrastructure for coal haulage;
 - d. above-rail services, ie, the coal haulage services between mines and coal terminals;
 - e. coal handling services, ie, the handling of coal at coal terminals; and
 - f. other port and shipping services, ie, as remunerated by means of harbour dues and wharfage charges.
32. In contrast to DBT, which is not vertically integrated,⁸ relevant entities falling within the Adani Group include:⁹
- a. Bravus Mining and Resources (Bravus Mining), which owns and operates the Carmichael mine in the Galilee Basin – for which it acquired the relevant exploration permit for coal from Linc Energy in 2010;¹⁰
 - b. Bowen Rail Company (BRC), which owns the Carmichael Rail Network, a rail line between the Galilee Basin and Collinsville that connects to the rail line to NQXT and operates a coal-haulage rail fleet on the network;
 - c. a 99-year lease of NQXT, ie, the deep-water coal export terminal;

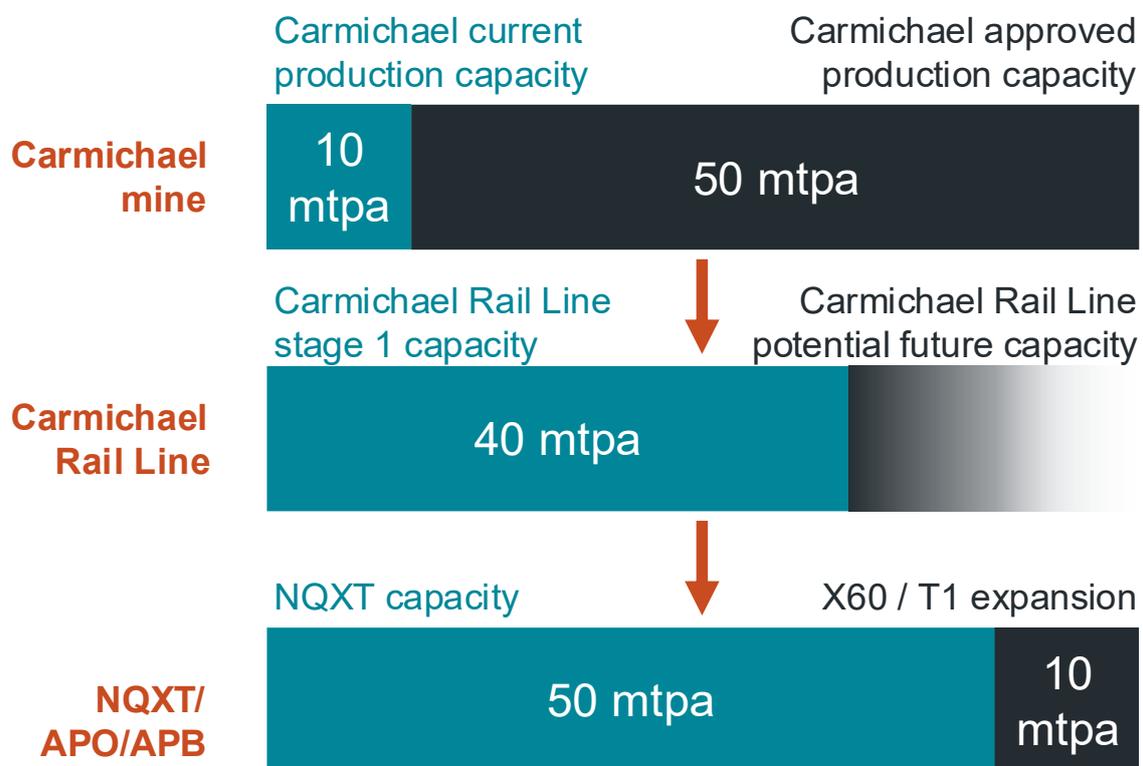
⁸ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, section 3.3.4.

⁹ Adani Group, *Adani Group corporate brochure*, September 2024, pp 32-33, available at <https://www.adani.com/en/-/media/Project/Adani/downloads/Adani%20Group%20Brochure>, accessed 27 May 2025.

¹⁰ Queensland Government, *EPC 1690 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=EPC&permitNumber=1690>, accessed 27 May 2025.

- d. Abbot Point Operations (APO), which is the terminal operator and manages capital projects at NQXT; and
 - e. Abbot Point Bulkcoal Pty Ltd (APB), which is the operations and maintenance contractor at NQXT.¹¹
33. By these arrangements, the Adani Group is vertically integrated into essentially every major functional level of the supply chain for coal exports within the catchment of NQXT.
34. Figure 2.1 illustrates the capacities and relationships between Adani’s Carmichael mine, Carmichael rail line¹² and NQXT.

Figure 2.1: Connection between Adani Group entities across the supply chain



2.1.1 Implications of vertical integration

35. NQXT is a bottleneck facility with market power in the coal handling service, while the Adani Group has the incentive and ability to use that market power to advantage itself over its rivals.
36. The presence of vertical integration at NQXT is relatively recent, ie, it differs from the circumstances at the time the current users’ agreements were struck, because the users initially entered into their user

¹¹ APO acquired the shares in Abbot Point Bulkcoal Pty Ltd (APB), the then-operator of the terminal, from Glencore in 2016. See: Glencore and Adani Australia, *Adani and Glencore reach agreement on Abbott Point Coal Terminal operations*, Media release, 20 September 2016. APB is named as the ‘Operations and Maintenance (O&M) Contractor’ in NQXT, *2023 annual compliance report – stormwater return dam (EPBC 2010/5561)*, 28 March 2024, p 3. APB operates as ‘Abbot Point Operations’. See: Abbot Point Operations Pty Ltd and Abbot Point Bulkcoal Pty Ltd, *Modern slavery statement 1 April 2022 – 31 March 2023*, p 4.

¹² I note that Adani has described the Carmichael Rail Network as being ‘...designed to carry 40 million tonnes per annum and **has the capacity for further expansion** [emphasis added]’ Adani Group, *Adani Group corporate brochure*, September 2024, pp 32-33, available at <https://www.adani.com/en/-/media/Project/Adani/downloads/Adani%20Group%20Brochure>, accessed 27 May 2025.

agreement with the Ports Corporation of Queensland Limited, a government-owned corporation.¹³ By contrast, NQXT is now owned and operated by a vertically-integrated user of the terminal.¹⁴

37. The implication of this change of ownership and the more recent exporting of coal from the Carmichael mine, transported to NQXT via the Carmichael rail line, is that the terms of user agreements that exist today are unlikely to reflect those that would be struck today, or at the termination of the current agreements. In other words, the 'future without declaration' contemplated in an assessment under criterion (a) is likely to be similar to, but not the same as, the present status. Similarly, the operator of the terminal has also changed to an Adani-owned entity. For example, the Adani Group, through the terminal operator, could amend terminal regulations to favour its own related entity, Bravus Mining.
38. In general, vertical integration means that the Adani Group may have the incentive and ability to disadvantage its rivals in the provision of services upstream and downstream of NQXT and may have limited incentive to reduce some costs that are shared among other users.
39. For example, NQXT could seek to disadvantage third-party access seekers by:
 - a. raising prices charged at the terminal (or otherwise not demonstrating that costs were efficient), which would disadvantage third-party access seekers relative to Bravus Mining, because higher prices at the terminal charged to Bravus Mining essentially represent a transfer within the Adani Group¹⁵ – for which such price increases could be imposed on third-party users by means of:
 - i. raising prices charged at NQXT, such as in relation to the terminal infrastructure charge (TIC);
 - ii. raising prices charged by APO as the terminal operator, such as in relation to the fixed handling charge (HCF) and variable handling charge (HCV); and
 - iii. raising prices charged by APB, such as project management costs that are passed on to users by APO;
 - b. removing or reducing operational flexibility for third-party users, such as:
 - i. the withdrawal of availability to those users of capacity that the users had over-contracted in order to ensure operational flexibility;
 - ii. the allocation of stockpiles and opportunities for coal blending; and
 - iii. shipping and out-loading scheduling;

¹³ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [4].

¹⁴ 'It is difficult to see that the Adani Group would have been interested in acquiring the terminal had AMPL [Adani Mining Pty Limited, now a user as Bravus Mining] not had plans for the [Carmichael] mine...the users were not only locked into long term contracts with a monopolistic supplier who controlled an asset vital to their businesses, but that supplier was no longer a Government entity which did nothing but operate the port; it was a private company with its own profit motives. Further, it was related to two companies, each of which was associated with the terminal, but at different levels to the market to the terminal owner. AMPL aims to become [and now is] a coal miner, and to become a user of the terminal. That is, it intends to operate at the same level of the market as the respondents. The Adani operator operates at a third level: providing services to the terminal owner...the cost of these services is passed through to the users...'. *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260, [181] and [183]. I note that the appeal judge found that '[t]he fact that the respondents [users] had contracted not with the appellant, but with the Ports Corporation, was of no importance in the assessment of whether the appellant [Adani] acted unconscionably... The appellant was entitled to prefer the interests of AMPL, as well as its own interests, over the interests of the respondents. *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [155-156].

¹⁵ I note that there is no present obligation for different users to be charged on the same basis, so that discrimination towards third-party access seekers could also occur without charging higher prices to Bravus Mining.

- c. adjusting train scheduling and preferencing at the terminal in general, so that coal from Bravus Mining transported or loaded by BRC had preference over other users and their freight handlers, reducing the efficient use of the port at the expense of the third-party users; and
 - d. refusing or frustrating the likelihood of necessary capital investment, expansion and development of the terminal and so precluding access to the terminal to third parties.
40. It follows that, by way of the examples set out above, there is a real and material risk that a future without declaration may be considerably different from the present.
41. These incentives differ greatly from those of DBT, which is not vertically integrated at any other point of the supply chain. The of vertical integration services at NQXT with other elements of the coal supply chain gives rise to two distinct 'classes' of users,¹⁶ ie:
- a. a class of users with ongoing, certain access and prices, being Bravus Mining in the case of NQXT and the existing users with 'evergreen' contracts, in the case of DBT; and
 - b. a class of users with less certain access and likely higher prices, being all third-party users in the case of NQXT (after the expiration of existing contracts by 2029) and new users or existing users seeking additional capacity, in the case of DBT.

2.2 Access without declaration at DBT

42. In its assessment of DBT, the QCA identified that Dalrymple Bay Coal Terminal Management's (DBCTM's) response to the threat of regulation included the presence of evergreen contracts for existing users and a deed poll that bound it to comply with an access framework, which restricted its conduct without declaration.
43. In other words:
- a. existing users of DBT had the option to extend their agreements and access DBT based on the terms of access and volumes set out in those agreements, including pricing provisions;¹⁷ and
 - b. new users of DBT, without declaration, would be subject to an access framework that hard-coded in a price cap at \$3 per tonne more than would apply under a QCA-administered pricing regime.¹⁸
44. This contrasts with NQXT, for which there is no indication as to the presence of any evergreen rights for existing users – I understand that all or most of the user agreements are due to expire before 2029.¹⁹
45. There is no indication of any framework governing the terms of access that will apply to new users or existing users at the end of their current contracts.
46. The presence of evergreen contracts and a deed poll binding DBT to comply with an access framework formed a foundation for the QCA's 'with and without' declaration assessment, because the

¹⁶ I note that the presence of two distinct 'classes' of users was a factor in the QCA's assessment of DBT.

¹⁷ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 77.

¹⁸ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 83.

¹⁹ For example, Queensland Coal Pty Ltd's user agreement had an expiry date of 30 June 2028 and another user agreement also had an expiry of June 2028. *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [10]; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260, [368]. A 2017 report from the Institute for Energy Economics and Financial Analysis also suggested that all user agreements at that time were scheduled to expire by June 2029. Institute for Energy Economics and Financial Analysis, *A house of cards in Australia: Adani's Abbot Point Coal Terminal faces escalating financial risk*, October 2017, p 10.

'without' declaration assessment was bounded by the deed poll/access framework and the access rights afforded to existing users.

3. Economic concepts for criterion (a)

47. In this section, I set out the relevant economic concepts for assessing whether criterion (a) is satisfied with respect to the coal handling service at NQXT.

3.1 Competition is a process of rivalry

48. Competition is a dynamic process of rivalry,²⁰ whereby firms seek to maximise their profits by offering price-product-service packages to customers that are more attractive than their rivals, whilst minimising their costs. Descriptions of competition often quote Stigler's definition, ie:²¹

[Competition is] rivalry between individuals (or groups or nations), and it arises whenever two or more parties strive for something that all cannot obtain.

49. Competition was similarly described in the Competition Policy Review (Harper Review) issues paper as a:²²

... process by which rival businesses strive to maximise their profits by developing and offering desirable goods and services to consumers on the most favourable terms.

50. There are many ways in which firms engage in the process of competition, including by choosing product characteristics, investment levels, prices, levels of output, quality, brand development and types of inputs.

51. Competition is widely understood by economists to be a process that brings about benefits for consumers and society in the form of economic efficiencies, ie, the attainment of more and better products and services for the benefit of consumers. For example, the Harper Review cited a number of benefits associated with competition, ie:²³

More competitive markets can lead to: lower resource costs and overall prices; better services and more choice for consumers and businesses; stronger discipline on businesses to keep costs down; faster innovation and deployment of new technology; and better information, allowing more informed choices by consumers.

52. The Hilmer report similarly stated that:²⁴

Economic efficiency plays a vital role in enhancing community welfare because it increases the productive base of the economy, providing higher returns to producers in aggregate, and higher real wages. Economic efficiency also helps ensure that consumers are offered, over time, new and better products and existing products at lower cost. Because it spurs innovation and invention, competition helps create new jobs and new industries.

²⁰ In *Re Queensland Co-operative Milling Association Ltd., Defiance Holdings Ltd. (Proposed Mergers with Barnes Milling Ltd.)* (1976) ATPR 40-012 (hereafter *Re QCMA*), p 21, the Trade Practices Tribunal said 'Competition is a dynamic process; but that process is generated by market pressure from alternative sources of supply and the desire to keep ahead.' See also: Baldwin R, and Cave, M, *Understanding Regulation: Theory, Strategy and Practice*, Oxford University Press, New York, 1999, p 210. Maureen Brunt said: 'Competition is a process rather than a situation. Dynamic processes of substitution are at work. Technological change in products and processes, whether small or large, is ongoing and there are changing tastes and shifting demographic and locational factors to which business firms respond'. Maureen Brunt, *Market Definition Issues in Australian and New Zealand Trade Practices Litigation* (1990) 18 *Australian Business Law Review*, p 96.

²¹ Stigler G.J. (2008) *Competition*. In: Palgrave Macmillan (eds) *The New Palgrave Dictionary of Economics*, Palgrave Macmillan, London. Vickers, J, *Concepts of Competition*, Oxford Economic Papers, vol. 97, 1995, p 3 refers to this definition.

²² Competition Policy Review Panel, *Competition Policy Review Issues Paper*, 14 April 2014, p 8, para 1.1.

²³ Competition Policy Review Panel, *Competition Policy Review Issues Paper*, 14 April 2014, p 8, para 1.2.

²⁴ National Competition Policy Review Committee, *National Competition Policy Review (the Hilmer report)*, 25 August 1993, pp 4-5.

...

The promotion of effective competition and the protection of the competitive process are generally consistent with maximising economic efficiency.

3.1.1 Market power is the antithesis of competition

53. Market power is the antithesis of competition. Market power is the ability of a firm or firms profitably to set prices above the competitive level.²⁵ Such ability is derived from the absence of effective competitive constraints.²⁶
54. All firms have some degree of market power,²⁷ a market condition that is recognised as being essential for the economy to operate effectively. A degree of market power establishes the incentive for people and firms to innovate, improve products and cut costs, because they can earn greater profits by doing so.²⁸
55. However, firms with market power can also increase their profits by increasing prices, and lowering output, quality and innovation below the socially optimal levels, reducing welfare.²⁹
56. The degree of market power held by a firm depends upon the nature and the strength of competitive constraints imposed by:
 - a. existing suppliers;
 - b. potential new suppliers; and
 - c. countervailing power from customers.
57. Weaker competitive constraints are associated with greater market power and reduced welfare for consumers.
58. In assessing competitive constraints on a firm, relevant factors to consider include:³⁰
 - a. the number and size of their competitors, often summarised as the degree of market concentration;
 - b. the extent of barriers to entry, being factors that must be overcome by new entrants in order to operate or expand to scale, but which do not similarly impede the ability of incumbents to maintain scale;
 - c. the availability of substitutes to the supply of products or services by the firm;
 - d. the degree of countervailing power held by buyers in the market;
 - e. the dynamic characteristics of the market, including growth, innovation and product differentiation; and

²⁵ ACCC, *Guidelines on misuse of market power*, August 2018, para 2.14; Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, pp 40-41; and Morgan, M, Katz, M and Rosen, H, *Microeconomics*, McGraw-Hill Education, United Kingdom, 2006, p 454. Alternatively, a firm may be able to offer a quality level that is below the competitive level.

²⁶ ACCC, *Guidelines on misuse of market power*, August 2018, para 2.14.

²⁷ Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, pp 41 and 116.

²⁸ Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, p 89.

²⁹ Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, pp 40-64.

³⁰ See for example, *Competition and Consumer Act 2010*, section 50(3); QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, section 3.3.

f. the nature and extent of vertical integration.

59. Since counterfactual assessments are prospective, they will always involve a degree of uncertainty as to future market conditions and the nature of competition. The degree of uncertainty may be higher if the future state of the market is characterised by significant changes in conditions, such as arising from the likely entry or exit of one or more market participants.

3.2 Market for the service

60. In my criterion (b) report, I show that:³¹

- a. the relevant market for criterion (b) is the market for NQXT's coal handling service for mines that connect directly to (ie, are adjacent to) the GAPE, Carmichael Rail line or the Newlands system, ie, 'northern mines'; and
- b. there are no close substitutes to NQXT's coal handling service for mines in this market, and NQXT is the dominant coal handling facility serving this market.

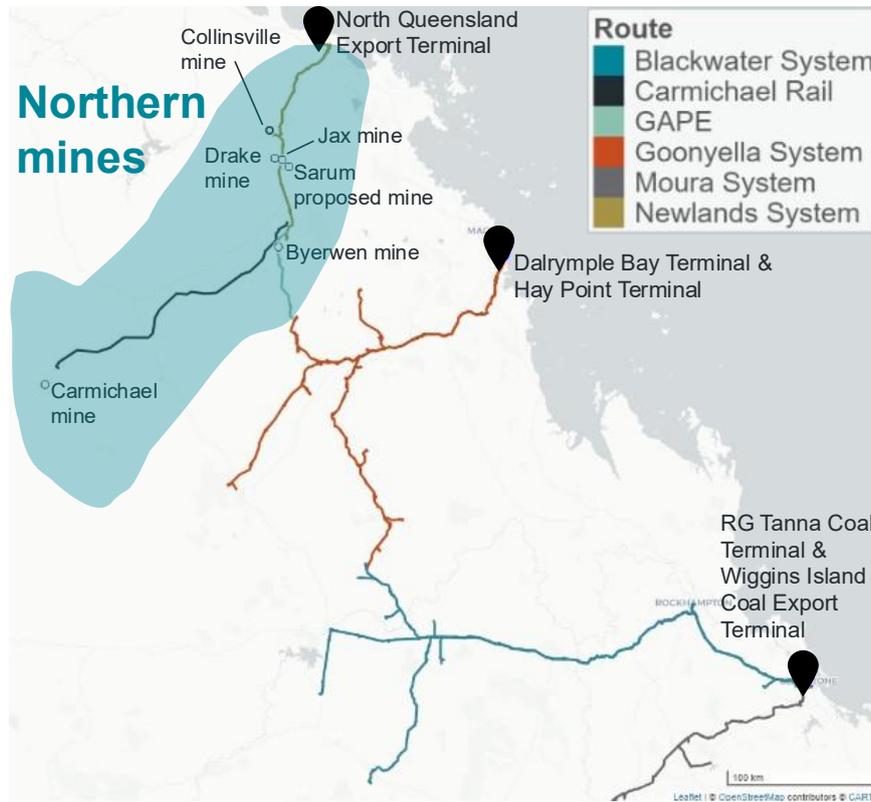
61. For the avoidance of doubt, my definition of northern mines:

- a. includes the Byerwen coal mine (and any future mines with a similar, direct connection to the GAPE), since it is the only mine with direct connection to the GAPE; and
- b. excludes all mines located in the Goonyella system.

62. I show the northern mine area in figure 3.1 below.

³¹ Criterion (b) report, section 4.2.5.

Figure 3.1: Northern mines and coal-carrying rail networks



63. There are no close substitutes to NQXT's coal handling service for the northern mines. It follows that NQXT has substantial market power in the market for the service.

3.3 Market definition

64. In this section, I set out the concepts for market definition that are relevant in the assessment of criterion (a), as applied in sections 6 to 8 for the identified dependent markets.
65. A market is the area of close competition between firms,³² ie, the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution.³³
66. Defining a market involves the identification of the competitive constraints that are likely to have a material effect on a product or service (they are 'in' the market), and those that have a less material effect (they are 'out' of the market). In practice, markets are rarely delineated by bright lines and firms selling products or services that are outside of a market may act as a competitive constraint on those in that market, albeit to a lesser degree.³⁴
67. The governing economic principle for the definition of markets is the degree of substitutability of the relevant products or services. It is critical that the initial, reasonably substitutable set of products or services are those that are the most relevant in addressing the question of substitutability, ie, they are

³²Re *Queensland Co-operative Milling Association Ltd., Defiance Holdings Ltd. (Proposed Mergers with Barnes Milling Ltd.)* (1976) ATPR 40-012, p 22.

³³ Substitution is the act of buyers or sellers switching from one product or service to another in response to changes in prices or quality.

³⁴ '...[A]ll competition or substitution does not cease at the outer boundaries of the market; the economy as a whole is a network of substitution possibilities in consumption and production; competition is a matter of degree.' See: *Re Tooth & Co Ltd* (1979) 39 FLR 1, p 39.

consistent with the conduct, purpose and commercial context at hand, and they allow for an analysis of the competitive constraints.

68. Substitution is the act of buyers or sellers switching from one product or service to another in response to changes in prices or quality.³⁵ The purpose of substitution analysis is to identify the products or services that act as close constraints on the firm in question, ie, those other transactions that do or could occur, and do or would affect, the transactions in question.
69. Defining a market is not an end in itself.³⁶ Rather, market definition is a 'focusing process' to be undertaken with a view to assessing whether the substantive criteria for the issue at hand are satisfied, in the commercial context of the subject of analysis.³⁷ The aim of this process is to identify and assess the strength of the competitive constraints acting upon the party or parties engaged in the relevant conduct.
70. It follows that when defining a market, it is important to be guided by both:
 - a. the purpose at hand – a consideration usually centred around the actual or potential conduct at issue; and
 - b. the commercial context in which the conduct has taken or could take place – a consideration that calls for alignment with the interactions between, and actions of, the relevant participants in the market.³⁸
71. The boundaries of a market are conventionally determined by reference to four dimensions, ie:³⁹
 - a. the product dimension, being the goods or services supplied;
 - b. the functional dimension, being that element of the supply chain that is the relevant arena of competition;
 - c. the geographic dimension, being the geographic area over which the relevant products are supplied (or could be supplied); and
 - d. the temporal dimension, being the time period over which substitution can take place.
72. In instances where competitive constraints that may have a material effect on a product or service can vary between different types of consumers, and especially in cases where a supplier can discriminate

³⁵ Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, p 103; and Carlton, D and Perloff J, *Modern Industrial Organization*, 4th Edition, Pearson Education Limited, Essex, 2015, p 670. These references refer to substitution in response to a change in price, but substitution may also be assessed by reference to changes in quality. See, for example: ACCC, *Merger guidelines*, November 2017, p 14.

³⁶ '[M]arket definition is not of interest by itself, but only as a preliminary step towards the objective of assessing market power.' See: Motta, M, *Competition policy: theory and practice*, Cambridge University Press, New York, 2009, p 101. 'Market identification is not a task undertaken at large, or in a vacuum. The task, and the extent of the task, are tailored to the conduct at issue and the statutory terms governing the contravention. The need to identify the market arises only in the context of determining whether the conduct constitutes a particular contravention of the TPA [now Competition and Consumer Act].' See: *Air New Zealand Ltd v Australian Competition and Consumer Commission*; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission*, [2017] HCA 21, para 57.

³⁷ *Air New Zealand Ltd v Australian Competition and Consumer Commission*; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission*, [2017] HCA 21, para 58.

³⁸ The High Court explains that the '...identification of the market must therefore "accurately [and] realistically describe and reflect the interactions between, and perceptions and actions of, the relevant actors or participants in the alleged market, that is, the commercial community involved". [footnote omitted]' See: *Air New Zealand Ltd v Australian Competition and Consumer Commission*; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission*, [2017] HCA 21, para 61.

³⁹ ACCC, *Merger guidelines*, November 2017, para 4.8.

between customers, the boundaries of a market may also be determined by reference to a customer dimension.⁴⁰

3.3.1 Functional dimension

73. The functional dimension of a market refers to the element of the vertical supply chain being considered, such as whether a product is being sold at the wholesale or retail level. Evidence of actual market transactions by vertically separate firms is strong evidence of the existence of separate functional markets.⁴¹ For example, if there are firms that offer wholesale services to retailers, then the retail and wholesale functions are likely to be separate, even if some firms offer both services.
74. Absent evidence of actual transactions, it may be necessary to consider whether, within what may appear to be a single function, there is the *potential* for trade to occur within that function. Separate functional levels may exist when there are potential transactions between the up and downstream levels that would allow the functions to be 'economically separable'.
75. In this context, economic separability is the extent to which independent entities can undertake the related activities under arm's length contractual arrangements, ie, through market procurement. In contrast, if two related activities cannot be performed separately, perhaps because the efficiencies of vertical integration are overwhelming⁴² and so they are only ever performed within the same firm, they are said to be economically inseparable.
76. It follows that multiple functional levels should be combined only in circumstances where vertical integration is effectively universal or overwhelmingly efficient.⁴³

3.3.2 Product and geographic dimensions

77. The generally accepted framework⁴⁴ for defining the product and geographic dimensions of markets is the 'hypothetical monopolist test'. This involves the systematic application of a process that:
 - a. commences with a candidate market being the narrowest reasonable market definition, taking into account the purpose at hand;
 - b. assesses whether a hypothetical monopolist in the candidate market would be closely constrained by products or services from outside the market, by contemplating the effect of imposing a small but significant non-transitory increase in price (SSNIP) from the competitive level – if the hypothetical monopolist would profitably be able to impose such a price rise, then the next step is applied or, otherwise, the candidate market is appropriate; and
 - c. expands the market to include the closest constraints on the hypothetical monopolist and goes back to the previous step.
78. In most contexts, the hypothetical monopolist framework is applied when the conduct at hand concerns a supplier in the relevant market.
79. In some contexts, the hypothetical *monopsonist* framework can also or alternatively be applied to inform the boundaries of the market. This form of test is most likely to be appropriate where the

⁴⁰ See, for example, the description of discrimination and captive customers in ACCC, *Merger guidelines*, November 2017, para 4.35-4.38; and Commerce Commission, *Mergers and acquisitions guidelines*, May 2022, paras 3.40-3.41.

⁴¹ See: *In the matter of Fortescue Metals Group Limited* [2010] ACompT 2, para 1,037.

⁴² ACCC, *Merger guidelines*, November 2017, para 4.42.

⁴³ See: Buckland, J, *Whither a unified approach to the functional dimension of market definition: why Metcash was the one that got away*, Australian Business Law Review, 42(3), 2014, p 227.

⁴⁴ ACCC, *Merger guidelines*, November 2017, paras 4.10-4.26.

relevant conduct involves or affects that of a prospective buyer. Similarly to the hypothetical monopolist form of test, it involves the systematic application of a process that:

- a. commences with a candidate market, being the narrowest reasonable market definition, taking into account the purpose at hand;
 - b. assesses whether a hypothetical *monopsonist* in the candidate market would be closely constrained by buyers from outside the market, by contemplating the effect of imposing a small but significant non-transitory *decrease* in price (SSNDP) from the competitive level – if the hypothetical *monopsonist* would not profitably be able to impose such a price reduction (because the seller would substitute to supplying buyers from outside the market), then the next step is applied or, otherwise, the candidate market is appropriate; and
 - c. expands the market to include the closest constraints on the hypothetical *monopsonist* (ie, those buyers from outside the hypothesised market) and goes back to the previous step.
80. There is no simple and generally accepted method for determining the narrowest reasonable market, and so a degree of judgement is required. The overarching principle is to ensure that the narrowest reasonable market definition is consistent with the purpose at hand.⁴⁵
81. Professor Maureen Brunt similarly suggested that a practical methodology for market definition is that:⁴⁶
- ...one begins with a specification of the conduct claimed to be unlawful...
82. In the context of an application of the access criteria, it is relevant to consider markets by reference not to the 'conduct', *per se*, but to the potential conduct if the service is not declared, and hence the effect of that potential conduct.
83. The substitutability of the relevant products or services is an important part of market definition and applying the relevant hypothetical test(s).⁴⁷ Substitution is the act of buyers or sellers substituting one product or service for another in response to changes in prices or quality.⁴⁸
84. Adopting this context, a market encompasses the range of business activities and geographic areas within which, if given a sufficient economic incentive:
- a. buyers will switch to a significant extent from one source of supply to another ('demand-side' substitution); and/or
 - b. sellers will switch to a significant extent from one production plan to another ('supply-side' substitution).

⁴⁵ *Air New Zealand Ltd v Australian Competition and Consumer Commission*; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission*, [2017] HCA 21, para 58. The High Court has also said that 'And it recognises that market identification depends upon the issues for determination - the impugned conduct and the statutory provision proscribing anti-competitive behaviour that the conduct is said to contravene. *Air New Zealand Ltd v Australian Competition and Consumer Commission*; *PT Garuda Indonesia Ltd v Australian Competition and Consumer Commission*, [2017] HCA 21, para 59.

⁴⁶ Brunt, M, *Market definition issues in Australian and New Zealand trade practices legislation*, *Australian Business Law Review*, April 1990, p 105.

⁴⁷ *Australian Competition and Consumer Commission v Pfizer Australia Pty Ltd*, [2018] FCAFC 78, (2018) 356 ALR 582, 2018 WL 2397940, para 265.

⁴⁸ *Australian Competition and Consumer Commission v Pfizer Australia Pty Ltd*, [2018] FCAFC 78, (2018) 356 ALR 582, 2018 WL 2397940, para 265.

4. Constraints on NQXT exercising market power

85. In this section, I assess the extent of constraints on NQXT's ability and incentive to exercise market power in the absence of declaration.
86. I show that, in the absence of declaration, NQXT has the ability and incentive to exercise market power, while such ability is not constrained by:
- competition from other coal export terminals, because coal handling services at those other terminals are not close substitutes for the NQXT service and there are considerable barriers to entry to building a suitable terminal proximate to the NQXT service;
 - the countervailing power of users, because users do not have a credible threat of switching to an alternative terminal;
 - the threat of declaration or litigation under the *Competition and Consumer Act 2010* (CCA); or
 - access arrangements without declaration.

4.1 NQXT not constrained by competition from other coal export terminals

87. In my criterion (b) report, I show that coal handling services at other coal export terminals, such as DBT, are not close substitutes for the NQXT service due to cost factors (for instance, relative supply chain costs and mine-specific costs), and rail and port constraints. Taking into account such constraints, there is not sufficient capacity available for other coal handling terminals to be close substitutes for the NQXT services. Other coal export terminals cannot, therefore, provide a strong competitive constraint on NQXT exercising market power towards mines seeking terminal access.
88. This is consistent with the finding of Justice McMurdo in the Supreme Court of Queensland that:⁴⁹

The users of the Terminal [NQXT] have no alternative facility for loading their coal into ships.

4.2 Users have little countervailing power

89. In this context, the countervailing power of users is the ability of users at NQXT to constrain it from exerting market power. For users to have countervailing power over NQXT, those users would need to have a credible threat of switching (at least some of their quantity) to an alternative terminal or otherwise reducing their use of NQXT.
90. In my criterion (b) report, I explain why coal handling services at other coal export terminals, such as DBT, are not close substitutes for the NQXT service.⁵⁰ Threats by existing users (or new, similar, users) to switch to other terminals would therefore not be credible.
91. The absence of any meaningful countervailing power applies to both existing users – either seeking to acquire additional capacity or at the end of their existing agreements, which are due to expire within the proposed declaration period – and new users, ie, users would have no effective countervailing power against NQXT in a future without declaration in the absence of an access framework.

⁴⁹ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [2].

⁵⁰ See also section 4.1.

4.3 NQXT is vertically integrated

4.3.1 Economic framework

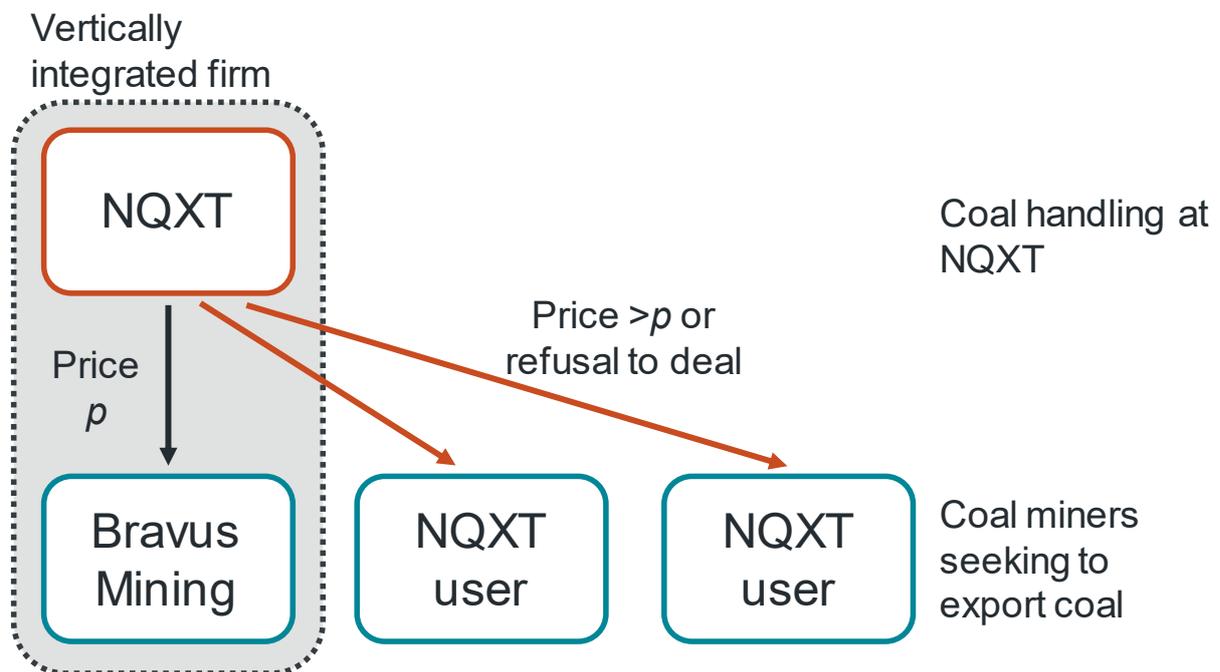
92. A service provider is vertically integrated if it operates (or closely related entities operate) in markets upstream or downstream from that in which it provides the service of interest. In other words, the service provider competes with third parties in upstream or downstream markets.
93. A vertically integrated firm with market power may have an ability and incentive to disadvantage its rivals in the upstream or downstream market. For example, a vertically integrated firm with market power may engage in vertical foreclosure, which takes place when such a firm:⁵¹
 - a. increases the price for supplying the relevant service to its downstream rivals (or reduces the quantity supplied to those rivals); or
 - b. reduces the price for purchasing inputs to the relevant service from its upstream rivals (or reduces the quantity purchased from those rivals).
94. The economic motivation for attempting to foreclose downstream rivals is that, by raising the input cost of rivals (such as the cost of coal handling services), the integrated firm can put those rivals at a cost disadvantage and thereby increase its own prices and/or market share in the downstream market, eg, coal exports. Similarly, the economic motivation for foreclosing the purchase of inputs to the relevant service from upstream rivals is to put those rivals at a disadvantage in those markets and thereby increase its own market share or reduce input prices in upstream markets.

4.3.2 NQXT is vertically integrated across the supply chain

95. I explain in section 2.1 that the Adani Group is vertically integrated into all of the key functional levels of the supply chain for coal exports sourced from within the catchment of NQXT.
96. NQXT is a bottleneck facility with market power and Adani has the incentive and ability to foreclose its rivals. For example, upon expiration of the existing user contracts, Adani (as NQXT) could significantly increase prices charged to or refuse to deal with its mining rivals and instead serve only its own operating mines (such as the Carmichael mine) – see figure 4.1.

⁵¹ A vertically-integrated firm may also control the access to an important input or customer base.

Figure 4.1: Example of NQXT vertical foreclosure



97. Adani Australia has stated that:⁵²

A critical requirement of NQXT's lease conditions with the Queensland Government is to provide access to all Queensland coal producers where capacity is available.

98. However, the vertically integrated nature of the Adani Group's operations, as well as the potential future expansion of Bravus Mining's Carmichael Mine, will continue to give rise to considerable uncertainty for third-party users. In that context, protections for third-party users – of the kind referred to in the quote above – appear to be relatively modest and insufficient to alleviate that uncertainty.

4.4 NQXT is not constrained by threat of declaration, regulation or litigation

99. In its assessment of DBT, the QCA identified the response of the operator, Dalrymple Bay Infrastructure Management Pty Ltd (DBCTM) to the present threat of declaration as a relevant consideration that should be taken into account in deciding whether criterion (a) is satisfied.⁵³ DBCTM's response included evergreen contracts for existing users and a deed poll that bound it to comply with an access framework that restricts its conduct without declaration.

100. Presently, different users of NQXT face some degree of variation in the terms of their access arrangements,⁵⁴ although I understand that, at least historically, they are '...in largely identical terms.'⁵⁵ It is not clear whether more recent agreements have significant differences. The agreements

⁵² Adani Australia, *Submission to the Joint Standing Committee on Trade and Investment Growth Inquiry into the Prudential Regulation of Investment in Australia's Export Industries*, April 2021, p 1.

⁵³ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 83.

⁵⁴ For example, I note that Sonoma has a most-favoured-nation clause, ie, its charges are not greater than other access seekers' for a '...substantially similar commercial arrangement.' *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260, [345].

⁵⁵ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [5].

have different commencement dates and durations.⁵⁶ However, I understand that most of the user agreements are due to expire before 2029.⁵⁷

101. The user agreements have also been described by an arbitrator as such that:⁵⁸

... the individual User Agreements with Adani, though in similar form, entitle Adani to deal with individual Users in very different ways. [footnote omitted]

102. In contrast to the evidence in relation to DBT, in the case of NQXT, there is no indication as to the existence of:

- a. any evergreen rights for existing users; or
- b. a framework that will apply to new users or existing users at the end of their current contracts.

103. For example, handling charges set by APO and the terminal infrastructure charge (TIC) set by NQXT have been subject to disputes in the Supreme Court of Queensland, and at arbitration.

104. It follows that there is no evidence of NQXT responding to any threat of declaration.

105. Section 46 of the CCA prohibits a firm with a substantial degree of market power in a market from engaging in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in that market or another market in which that firm supplies or acquires goods or services.⁵⁹

106. Although this is similar to criterion (a), the QCA observed in respect of DBT that:⁶⁰

- a. it was not satisfied that the threat of liability under section 46 would of itself result in service providers choosing to offer access to services on reasonable terms and conditions; and
- b. declaration could restrict conduct in a way that promoted competition in a dependent market in a material way, but in the absence of declaration, such conduct may not necessarily give rise to a lessening of competition that is substantial.

107. I agree that there may be a distinction between liability under section 46 and the considerations called for under criterion (a), and that it does not appear likely that NQXT would be constrained effectively by the threat of liability under section 46.

108. In summary, neither the threat of declaration nor of liability under section 46 of the CCA are likely to constrain NQXT's exercise of market power, and there is no evidence that these threats have constrained NQXT's past conduct.

109. I understand that the QCoal parties' application to the QCA will include relevant information on the prior conduct of the terminal owner, NQXT Pty Ltd.

⁵⁶ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [9].

⁵⁷ For example, Queensland Coal Pty Ltd's user agreement had an expiry day of 30 June 2028 and another user agreement also has an expiry of June 2028. *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [10]; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260, [368]. A 2017 report from the Institute for Energy Economics and Financial Analysis also suggests that all user agreements at that time were scheduled to expire by June 2029. Institute for Energy Economics and Financial Analysis, *A house of cards in Australia: Adani's Abbot Point Coal Terminal faces escalating financial risk*, October 2017, p 10.

⁵⁸ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [67], quoting arbitration award delivered in May 2019, para 300.

⁵⁹ Competition and Consumer Act 2010, s 46(1).

⁶⁰ QCA, *Declaration reviews: Aurizon Network, Queensland Rail and DBCT*, Final recommendation, March 2020, p 23.

4.5 No constraint from access arrangements without declaration

110. The QCA observed in respect of DBT that:⁶¹

In a future with declaration, the obligations on the access provider are established by Part 5 of the QCA Act. The QCA Act includes overarching obligations with which DBCT Management would have to comply, such as an obligation to negotiate with access seekers for making an access agreement; and requirements to provide certain information about the service to access seekers (which may include a QCA-approved reference tariff as a basis for access negotiations) and an obligation not to prevent or hinder access. There is also an ability for either an access provider or access seeker to refer an access dispute to the QCA for determination. These access obligations can only be altered by amending the QCA Act...

111. In DBT, two relevant factors identified by the QCA in making the 'with' and 'without' assessment were:⁶²

- a. existing user agreements, which contained an evergreen provision, providing an 'effective constraint on DBCTM's exercise of market power up to the volumes specified in those agreements'; and
- b. DBCTM's deed poll, which gave effect to an access framework that would apply in absence of declaration.

112. I explain in paragraph 100 that, in the case of NQXT, there is no indication as to the existence of any such rights for existing users, or of a framework that would apply to new users or existing users at the end of their current contracts.

113. Accordingly, there is no evidence that an alternative access arrangement without declaration would constrain NQXT from exercising market power.

⁶¹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 84.

⁶² QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 85.

5. Coal tenements markets

114. In this section, I assess whether access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in a market for coal tenements.
115. In summary, having regard to the QCA methodology, I show that:
- a. there are three functionally distinct markets for coal tenements in relation to the NQXT service, ie, exploration stage tenements, development stage tenements, and operating mines;
 - b. the geographic boundaries of the markets for later-stage thermal coal tenements and later-stage metallurgical coal tenements dependent on NQXT include the Newlands system, tenements with direct access to the GAPE and the Galilee basin;
 - c. the significant risks for third-party access seekers and the substantial differential between third parties and Bravus Mining that would persist in a future without declaration imply that access (or increased access) to the service on reasonable terms as a result of declaration would be likely to promote:
 - i. an increase in competition between Bravus Mining and third parties in markets for later-stage coal tenements in the Newlands (including tenements with direct access to the GAPE) and Galilee systems, because those third parties would be offered similar or equal terms of access to NQXT with declaration, as compared to the significant risk of no or poor-quality access without declaration; or
 - ii. an increase in competition between third parties in markets for later-stage coal tenements, because without declaration those third parties may not be willing to undertake any transactions, whereas the certainty over access as a result of declaration would improve the incentives on those parties to undertake transactions.

5.1 Coal tenements

116. A coal tenement is a right to:⁶³

...carry out prospecting, exploration, resource development or mining activity in respect of a specific piece of land.

117. The Queensland government grants coal tenements under the *Mineral Resources Act 1989*.

118. There are three types of coal tenements in Queensland, each distinguished by the type of authorisation and thereby the activities permitted to be undertaken, ie:⁶⁴
- a. an exploration permit for coal (EPC), which allows the holder to prospect, conduct geophysical surveys, conduct drilling, sampling and testing of materials and use other methods to determine the quantity and quality of coal present;

⁶³ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 111.

⁶⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 111.

- b. a mineral development licence (MDL), which allows the holder to conduct geoscientific programs, mining feasibility studies, metallurgical testing and marketing, and environments, engineering and design studies to evaluate the development potential of the defined resource; and
 - c. a mining lease (ML), which allows the holder to conduct large scale mining operations and other activities associated with mining.
119. EPCs are only made available by successful tender as part of a competitive process managed by the Queensland government.⁶⁵ In order to apply for an MDL or ML in relation to a particular piece of land, the applicant must have an EPC for the piece of land or have the permission of the relevant EPC holder.
120. The holder of any of these forms of coal tenement may sell the tenement to another party. Coal tenements markets may therefore include the initial acquisition of an EPC from the Queensland government and the purchase and sale of coal tenements (ie, rights) in a secondary market.⁶⁶
121. In its assessment of DBT, the QCA considered whether coal tenements constituted a relevant dependent market. The QCA concluded that it was satisfied there is a functionally distinct market for coal tenements in relation to the DBT service because:⁶⁷
- a. transactions in coal tenements have occurred between unrelated parties; and
 - b. there was a potential for transactions in coal tenements in the future.
122. Although there have been fewer coal tenement transactions in the northern mine area as compared to the Hay Point catchment area – because the area at issue has fewer potential coal deposits – transactions for coal tenements between unrelated parties have occurred and may occur in the future in the northern mine area, as evidenced by:
- a. Activex Canning's acquisitions of EPC2451 (proximate to the Newlands system) and EPC2459 (in the Northern Galilee basin) from CMR in 2020;⁶⁸
 - b. the acquisition of EPC1764 by Peabody and CITIC Resources Holdings from Samgris Resources in 2019;⁶⁹
 - c. Glencore's acquisition of an additional 12.5 per cent share in two mineral development licenses for coal in the Galilee Basin (MDL356 and MDL3035) from ICRA in 2022;⁷⁰ and

⁶⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 112.

⁶⁶ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 113.

⁶⁷ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 115.

⁶⁸ Queensland Government, *EPC 2451 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=EPC&permitNumber=2451>, accessed 27 May 2025; Queensland Government, *EPC 2459 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=EPC&permitNumber=2459>, accessed 27 May 2025.

⁶⁹ Queensland Government, *EPC 1764 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=EPC&permitNumber=1764>, accessed 27 May 2025. Peabody and CITIC now jointly hold the mineral development licence associated with that EPC. See: Queensland Government, *MDL 3044 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=3044>, accessed 27 May 2025.

⁷⁰ Queensland Government, *MDL 356 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=356>, accessed 27 May 2025; Queensland Government, *MDL 3035 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=3035>, accessed 27 May 2025.

- d. QCoal's acquisition of Cliffs Australia Coal's share of the Sonoma Mine (ML10325, ML10326 and ML10327) in the Newlands system in 2013.⁷¹
123. In the first two examples concerning EPCs, the sellers were companies that did not engage in mining and exporting coal. This suggests that the exploration aspects of coal mining are economically separable from the development and mining of coal resources,⁷² as consistent with the QCA's observations in relation to DBT that firms that specialise in exploration activity are active in markets for exploration permits.⁷³
124. It follows from this economic separability that there is a market for coal tenements that is distinct from the market for coal handling services at the Port of Abbot Point and distinct from other markets such as the coal export market.
125. This is consistent with the finding in relation to DBT that coal tenements were a relevant dependent market. Although the northern mine area and DBT catchment may be distinct geographic markets, the nature of coal handling services and coal tenements in these markets are broadly similar.
126. I therefore conclude that, having regard to the approach taken by the QCA in its review of DBT, there is a functionally distinct market for coal tenements in relation to the NQXT service.

5.2 Market definition

5.2.1 Functional dimension

Three functionally distinct coal tenements markets

127. In its assessment of DBT, the QCA concluded that there were three functionally distinct coal tenements markets, ie:⁷⁴
- a. a market for the supply and acquisition of new or early-stage exploration permits for coal (exploration stage tenements), which represent the rights to identify and prove coal deposits that are speculative in nature;
 - b. a market for the supply and acquisition of late-stage exploration and development tenements for coal (development stage tenements), which represent the rights to develop tenements into a mining operation; and
 - c. a market for the supply and acquisition of mines.
128. The markets defined by the QCA are related to, but distinct from, the three types of coal tenements in Queensland. The QCA observed that a late-stage EPC may be associated with an MDL or an ML, because once the holder is able to have a reasonable degree of confidence in the quantity and quality of coal present, they may apply for the relevant MDL or ML.⁷⁵ On the other hand, an early-stage EPC

⁷¹ JS Sonoma also acquired a portion of Cliffs Australia Coal's share in the Sonoma Mine. Queensland Government, *ML 10325 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=ML&permitNumber=10325>, accessed 27 May 2025; Queensland Government, *ML 10326 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=ML&permitNumber=10326>, accessed 27 May 2025; Queensland Government, *ML 10327 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=ML&permitNumber=10327>, accessed 27 May 2025.

⁷² See paragraphs 73-76.

⁷³ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 124.

⁷⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 117-118, 126-127.

⁷⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 112-113.

would not be associated with an MDL or an ML because the coal resource prospects are likely to be speculative at this stage.

129. I explain at section 3.3.1 that it may be relevant to distinguish different functional elements of the supply chain, depending on the presence of actual or potential market transactions between those elements. I also explain that multiple functional levels should be combined only in circumstances where vertical integration is effectively universal or overwhelmingly efficient.
130. I note that in the context of the northern mine area:
- a. early-stage exploration tenements are supplied as EPCs by the Queensland government whereas later-stage tenements may be bought and sold in the secondary market, ie, there are different sellers of different types of tenements;
 - b. firms operating at different levels of the vertical supply chain face different risks, eg, the terms and conditions of infrastructure access at NQXT are likely to be an increasingly relevant consideration for later-stage tenements relative to early-stage tenements – and likely to a greater extent than was the case for tenements proximate to Hay Point in the QCA's assessment of DBT, due to NQXT's vertical integration along the supply chain; and
 - c. the inherently risky exploration market attracts participation of some firms with a higher risk appetite – examples include Waratah Coal, Activex Canning, and Blackwood Resources.⁷⁶
131. This is consistent with the QCA's observations in respect of DBT that:
- a. as a matter of principle, the fact that some users of DBT specifically or coal miners generally hold rights for exploration stage tenements (ie, early EPCs) does not imply that there is *substitution* between different stage tenements, but rather that they may be *complements*, particularly for larger companies who may wish to hold a portfolio of coal projects at different stages of the mine life cycle;⁷⁷
 - b. an initial EPC is a 'right to a speculative activity through a competitive tender', supplied by the government, whereas coal tenements that include late-stage EPCs, MDLs and MLs encapsulate the right to carry out a resource development and operation project and may be bought and sold by users;⁷⁸
 - c. the existence of established infrastructure for export is likely to be a relevant consideration for participating in a market for exploration-stage tenements, but terms and conditions of infrastructure access would not be likely to be relevant.⁷⁹ By contrast, such terms and conditions of access may be relevant to a firm investing in a proven coal deposit that is being considered for development of an operational mine; and
 - d. the inherently riskier exploration market is likely to see participation by firms with a higher risk appetite that are specialising in exploration activity, generally with a lower capital base, as

⁷⁶ Blackwood holds eight EPCs in the Galilee Basin, Waratah Coal holds ten EPCs, one MDL and one ML in the Galilee Basin, while Activex Canning holds one EPC proximate to the Newlands System and one EPC in the Galilee Basin. None of these firms currently export any coal from Queensland. HoustonKemp analysis of Queensland Government, *Coal sales statistics – 2022 calendar year*, available at <https://www.data.qld.gov.au/dataset/annual-coal-statistics> (hereafter referred to as 'Queensland coal sales statistics'). I note that more recent versions of this dataset (eg, for the 2023 or 2024 calendar years) do not include export data by both port and export destination. I have therefore used the 2022 version of these data.

⁷⁷ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 124.

⁷⁸ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 124-125.

⁷⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 124.

compared to later-stage development and mine operation where firms may have a lower risk preference and a capital base sufficient for a coal mining operation.⁸⁰

132. Put simply, functionally different tenements:

- a. represent rights with different characteristics, ie, the right to explore as compared to the right to develop or operate a mine;
- b. may require different skills to make use of those rights, ie, exploration as compared to mine development or operation; and
- c. represent different risk profiles, eg, exploration tenements carry risk of no provable deposits, whereas development or operational tenements carry risk of (say) no access to export facilities on reasonable terms.

133. I therefore conclude that, having regard to the approach taken by the QCA in its review of DBT, there are three functionally distinct markets for coal tenements in relation to the NQXT service, ie, exploration stage tenements, development stage tenements, and operating mines.

Approach to analysis

134. I concluded at paragraph 133 that there are three functionally distinct markets for coal tenements in relation to the service provided by NQXT. Notwithstanding, in the remainder of this section I analyse operating mines and development stage tenements together because, in the NQXT context:

- a. much of the environment for competition in relation to 'later-stage tenements' (ie, development stage tenements and operating mines) – especially the risks faced by market participants – is similar;
- b. the number of transactions for tenements that occur in the Newlands and Galilee systems is less than the number of transactions in the Goonyella system, ie, the system that was assessed with respect to DBT, most likely due to the smaller number of potential coal deposits; and
- c. the environment for competition in relation to exploration stage tenements is different from later-stage tenements.

135. Accordingly, the competitive constraints and major risks faced by buyers and sellers in the markets for development stage tenements and operating mines are similar. Major risks include:

- a. risks associated with the global coal market and uncertainty over future demand; and
- b. risks associated with access to NQXT.

136. Further, considerations regarding the appropriate product and geographic dimensions of the relevant markets are similar for both operating mines and development stage tenements.⁸¹

137. The effect of declaration of coal handling services at Abbot Point on competition is also likely to be similar in the operating mines and development stage tenements markets.

⁸⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 124.

⁸¹ See sections 5.2.2 and 5.2.3.

138. Nevertheless, whether competition for 'operating mines' and 'development stage tenements' is assessed together or separately does not affect my conclusions.⁸² In the remainder of this report, I refer to 'later-stage' coal tenements to include tenements in the markets for development stage tenements and operating mines.
139. I set out above that there are several factors that distinguish exploration stage tenements from later-stage tenements, including:
- a. risk profile – the risks associated with investing in an exploration stage tenement, where the quality and extent of coal deposits is unknown, are fundamentally different from the risks associated with a later-stage tenement where the tenement holder can be reasonably certain as to the extent and quality of coal deposits;⁸³
 - b. government involvement – EPCs are only available through a successful tender managed by the Queensland government;⁸⁴
 - c. the availability and relevance of export terminal access terms and conditions to the value of a tenement; and
 - d. other elements, such as the environmental authority requirements to hold the tenement.⁸⁵
140. I note that there is limited evidence as to transactions occurring within each of these functionally distinct coal tenements markets in the northern mine area. Nevertheless, the potential for distinct transactions – with different, albeit overlapping, sets of buyers and sellers – remains, in accordance with the principles set out above.
141. It follows that there is a relevant dependent market for exploration stage tenements. However, I have not analysed in detail the precise definition or the effects of declaration for such a market, because there is not sufficient information as regards the likely effect of declaration on that market.

5.2.2 Product dimension

142. The markets for later-stage coal tenements proximate to Abbot Point includes tenements that cover thermal coal and metallurgical coal.
143. Mines that are currently reliant on the coal handling services at NQXT are located in the Newlands system (or have direct connection to the GAPE), which produces both thermal and metallurgical coal, or in the Galilee Basin, which produces only thermal coal. I discuss the appropriate geographic dimensions of later-stage coal tenements markets in further detail in section 5.2.3, below.
144. In its assessment of DBT, the QCA concluded that metallurgical coal and thermal coal were in different product markets because they have different end uses, different returns and risk profiles over the life of a project.⁸⁶

⁸² I note that this contrasts with the conclusions of the QCA and Treasurer in respect of a market for operating mines proximate to DBT. However, a distinguishing factor in DBT (as set out above) was the existence of evergreen contracts for existing users at DBT, because operating mines could be sold along with those evergreen rights. In contrast, acquiring a development stage tenement would not, of itself, bestow the owner with such evergreen export rights at the terminal. The lack of evergreen rights at NQXT means that the environments for competition in markets for operating mines and for development stage tenements proximate to Abbot Point are likely to be very similar.

⁸³ I note that there is a distinction between an 'exploration stage tenement' and an EPC, ie, that mature EPCs may be associated with reasonable certainty as to the extent and quality of coal deposits and as such may be regarded as development stage tenements.

⁸⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 112. I understand that there may be some presently-held EPCs that did not require a tender process.

⁸⁵ See QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 112.

⁸⁶ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 130.

145. Consistent with that approach and for the same reasons as those in relation to their different return and risk profiles and different end uses, it is appropriate to assess separately whether there are close substitutes available for both thermal and metallurgical coal tenements that are proximate to Abbot Point. In the remainder of this section, I treat separately:
- a. markets for later-stage thermal coal tenements; and
 - b. markets for later-stage metallurgical coal tenements.
146. However, many individual tenements in the Newlands system contain both thermal coal and metallurgical coal and operate mines that produce both types of coal. The current operating mines in the Newlands system each produced between 15 and 57 per cent metallurgical coal in 2022, with the remainder being thermal coal.⁸⁷ In aggregate, these mines produced 33.6 per cent metallurgical coal in 2022.⁸⁸
147. As a result, it may be appropriate to define a market for tenements that contain both thermal and metallurgical coal. This market may be relevant for an assessment of criterion (a) in addition to, or instead of, the two product markets I identify at paragraph 145 above. I assess the appropriate geographic boundaries of a market for tenements that contain both thermal and metallurgical coal at the end of section 5.2.3.
148. Irrespective of whether there are separate product markets for thermal and metallurgical coal tenements or a single product market for tenements containing both thermal and metallurgical coal, my conclusions in relation to the effects on competition with and without declaration in section 5.3 remain unchanged.

5.2.3 Geographic dimension

149. Having regard to the approach taken by the QCA in respect of the DBT service, the relevant steps for defining the geographic dimensions of the markets include:
- a. first, assessing the context for coal tenements in the Hay Point catchment;⁸⁹
 - b. second, identifying other areas within Australia and internationally that share similar contextual elements;⁹⁰
 - c. third, assessing whether coal tenements in those other areas represented strong substitutes – including actual and potential substitutes – for those in the area identified as the starting point.⁹¹

Narrowest reasonable starting point is the Newlands system and Galilee Basin

150. Since all mines in these locations export coal through NQXT exclusively, the narrowest reasonable starting point (or candidate market) to determine the geographic dimension of the market(s) for later-stage thermal and/or metallurgical coal tenements dependent on NQXT is the Newlands system,

⁸⁷ HoustonKemp analysis of Queensland coal sales statistics. By volume, QCoal's Drake Mine exported 15 per cent metallurgical coal in 2022 while QCoal's Byerwen Coal Mine exported 57 per cent metallurgical coal in 2022.

⁸⁸ HoustonKemp analysis of Queensland coal sales statistics.

⁸⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 129.

⁹⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 131-134.

⁹¹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 134-141. In the case that there are no strong substitutes, the geographical market is defined. If there are strong substitutes, the market should be expanded to include those substitutes, and the three-step process should be undertaken again on the expanded market.

tenements with direct connection to the GAPE, and the Galilee Basin,⁹² ie, they do not have an alternative terminal through which to export coal.⁹³ For the purposes of this analysis, I refer to this region as the 'north of Goonyella region' or the 'northern mine area'.

151. For the avoidance of doubt, the northern mine area excludes all mines located in the Goonyella system.

Hypothetical monopsonist framework is most appropriate

152. In assessing the extent to which there is substitutability between different geographic areas, I apply the hypothetical monopsonist test that I explain in section 3.3.2
153. The application of a hypothetical monopsonist framework in assessing the geographic dimension of the market would be appropriate in this context because:
- a. from 2029 onwards, under the status quo in which NQXT is undeclared, there is likely to be only one party with sufficient certainty over access on reasonable terms to export terminal infrastructure to warrant the potential purchase of a later-stage tenement in this area, thereby placing that party in a considerably different market position from any other prospective buyers; and
 - b. whilst the hypothetical monopolist test poses a question as to the likelihood of prospective buyers substituting away from the geographic region of interest in respect to a price rise, the hypothetical *monopsonist* test inquires as to the likelihood that sellers will substitute to supplying buyers from outside the market, ie, sellers of tenements north of the Goonyella system supplying buyers that would otherwise purchase tenements from other geographic areas, in the face of uncertainty over access to export terminal infrastructure.
154. The principal considerations in applying the hypothetical monopsonist framework to this matter are such that it would:
- a. commence with a candidate market for later-stage thermal and/or metallurgical tenements in the northern mine area;
 - b. suppose the existence of a hypothetical monopsonist in this candidate market;
 - c. presume that this hypothetical monopsonist has sufficient certainty over access to export infrastructure for there to be a market for such tenements;
 - d. suppose that this hypothetical monopsonist attempts to impose a price reduction on potential sellers of tenements in the northern mine area; and
 - e. examine whether sellers of tenements from the northern mine area would substitute to supplying buyers from outside that area, so as to defeat the price reduction.

⁹² HoustonKemp analysis of Queensland coal sales statistics. I note that there are mines in the Goonyella system that export coal predominantly or exclusively through NQXT – for example Stanmore's Poitrel mine, which predominantly produces metallurgical coal, and exports all of its thermal coal and the majority of its metallurgical coal through NQXT. Further, I note that in respect of metallurgical coal tenements, this is likely limited to the Newlands system, because the Galilee Basin consists almost entirely of thermal coal.

⁹³ In other words, in the case of coal tenements, the customer dimension of the market is an important aspect of the market definition process (and the geographic dimension specifically), because customers south of the GAPE have different substitution possibilities (ie, including DBT and other terminals) than those north of the GAPE. See paragraph 72.

155. In the remainder of this section I apply the steps set out above to the markets for later-stage thermal coal tenements and later-stage metallurgical coal tenements that are dependent on the service at NQXT. In my opinion, the evidence suggests that there are relevant dependent markets for:⁹⁴
- a. later-stage thermal coal tenements in the Newlands System and Galilee Basin; and
 - b. later-stage metallurgical coal tenements in the Newlands System.

Later-stage thermal coal tenements

156. In respect of thermal coal in the Abbot Point catchment:
- a. the Newlands system and the Galilee basin produce a high quality of thermal coal;⁹⁵ and
 - b. 92 per cent of thermal coal throughput volume at Abbot Point is exported to the Asia-Pacific seaborne market.⁹⁶
157. The second step in this exercise is to identify other areas within Australia and overseas that may export quality thermal coal to the Asia-Pacific region.
158. I have identified other potential areas as being:
- a. thermal coal tenements in Queensland outside of the Newlands System and Galilee Basin;
 - b. thermal coal tenements in NSW – as NSW and Queensland export far more coal than any other Australian state;⁹⁷ and
 - c. thermal coal tenements in Indonesia and Russia, as these countries also export thermal coal to the Asia-Pacific region.⁹⁸
159. Finally, I undertake the third step, which is to determine whether tenements in each of these three other geographic locations in turn provide close substitutes for thermal coal tenements in the Newlands System and the Galilee Basin.
160. In the remainder of this section, I explain why thermal coal tenements in those areas are not close substitutes for those in the Newlands System and the Galilee Basin, such that the relevant geographic market should be confined to that area. The principal considerations underpinning this finding are that:
- a. buyers of later-stage tenements from outside the northern mine area can be presumed to have sufficient certainty over access to other export facilities (including, for example, an expanded DBT), but much less certainty in relation to access to NQXT;

⁹⁴ I note at paragraph 134 that although I expect that there are functionally distinct markets for development stage tenements and operating mine tenements, I have analysed these markets together.

⁹⁵ 'Queensland coal mines should be the last coal mines closed in the world because it's the best quality coal there is, and that goes for our thermal and metallurgical coal'. Queensland Resources Council, *Qld's high quality coal industry here for the long haul: QRC*, 19 November 2021. Australian thermal coal is generally regarded as being of a high quality. See, for example: Queensland Treasury, *Queensland's coal industry and long-term global coal demand*, November 2022, p 4; Minerals Council of Australia, *Best in class: Australia's bulk commodity giants - Australian export thermal coal: the comparative quality advantages*, 2021.

⁹⁶ This includes the four largest export destinations for thermal coal from NQXT by volume – India (36.6 per cent of thermal coal throughput), Vietnam (26.7 per cent), Japan (12.4 per cent) and Singapore (5.4 per cent): HoustonKemp analysis of Queensland coal sales statistics.

⁹⁷ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 132-133.

⁹⁸ See APERC Coal report 2022, p 47. I note that this source does not include India as part of the Asia-Pacific. However, Indonesia is the only other country with a scale of thermal coal exports greater than or comparable to Australia. See: International Energy Agency, *Coal market update*, July 2023.

- b. such outside buyers would therefore be highly unlikely to substitute towards tenements in the northern mine area; and, accordingly
- c. a geographic dimension of the market bounded by the northern mine area is sufficiently broad and should not be expanded.

Other thermal coal tenements in Queensland

161. The QCA has identified that mines tend to operate in a specific rail-port catchment and have incentives to maximise the use of existing rail-port combinations and efficiencies.⁹⁹ This is consistent with the observed operations of some existing users, such as QCoal and Bravus/Adani, with the majority or entirety of each firm's coal exports drawing from the Newlands System or Galilee Basin and being handled at NQXT.
162. Such decisions are consistent with firms experiencing economies of scale associated with obtaining resources and export terminal access for mines in the same region.
163. This suggests that coal tenements outside of the Newlands System and Galilee Basin – where the most cost-efficient export terminal (absent capacity constraints) will not be NQXT – cannot be considered close substitutes for tenements inside the Newlands System and Galilee Basin, at least for firms that already own such tenements.
164. I note that some tenement holders, such as Glencore, TerraCom and Peabody, own tenements in multiple catchment areas across Queensland. However, this does not necessarily imply that those or other users consider thermal coal tenements in other regions to be close substitutes. Indeed, investing in different areas may help companies to diversify risks associated with export infrastructure access, such that tenements in different catchment areas may be considered complements.¹⁰⁰
165. The QCA observed in its assessment of DBT that:¹⁰¹
- ...the use of an alternative terminal of itself does not necessarily constitute evidence of switching from DBCT to an alternative terminal.
166. This is consistent with the fact that although some firms hold tenements in areas other than the Newlands system and Galilee basin – and consequently use other export terminals – these firms consider such alternative tenements to be complements for tenements in the Newlands system and Galilee basin.
167. Prospective buyers of later-stage thermal coal tenements in Queensland can be presumed to have sufficient certainty over access to other export facilities, such as DBT. Such prospective buyers – along with existing users of NQXT – are unlikely to have any degree of certainty in relation to access to NQXT, were they to consider substituting to purchasing later-stage thermal coal tenements in the northern mine area. It follows that they would be highly unlikely to substitute towards tenements in that northern mine area, if a hypothetical monopsonist buyer sought to reduce prices for tenements in that area.
168. Consistent with these observations, I conclude that other later-stage thermal coal tenements in Queensland are unlikely to be close substitutes for those in the northern mine area.

⁹⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 134-135.

¹⁰⁰ See paragraph 131.a.

¹⁰¹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 15.

Thermal coal tenements in NSW

169. There are several barriers for firms looking to substitute between thermal coal tenements in Queensland and NSW, ie:
- a. the regulatory environment in different states;
 - b. differences in the quality of coal deposits; and
 - c. efficiencies associated with operating in a specific rail-port catchment.
170. First, the regulatory environment for obtaining coal tenements varies by state. In 2015, the NSW government introduced a new system for the allocation, granting and renewal of coal tenements.¹⁰² The rights and approvals associated with later-stage tenements are likely to differ between states. Dealing with different state legislation and processes around royalties may make the practicalities of substituting between tenements in different states challenging for some firms.
171. Second, Institute for Energy Economics and Financial Analysis (IEEFA) analysis from 2019 found that, based on energy content and ash content metrics, the quality of Carmichael raw thermal coal from the Galilee basin would sell internationally at approximately a 50 per cent discount to the 6,000kcal Newcastle benchmark price.¹⁰³ This suggests that thermal coal from the Galilee basin is of a lower quality and price compared to the Newcastle benchmark. Differences in the risk-return profile associated with tenements in Newcastle compared to the Galilee Basin mean that substitution between tenements in those locations is unlikely to be straightforward.
172. Third, I explain at paragraphs 161 to 162 that some firms operate within a specific rail-port catchment and in so doing take advantage of economies of scale. Those principles also indicate that, applying the QCA's approach to the relevant geographic market in DBT, thermal coal tenements in NSW may not be substitutable for thermal coal tenements in the Newlands system and the Galilee Basin.
173. Further, I set out at paragraph 164 that larger firms hold tenements across different locations in Queensland and NSW. However, this may reflect those tenements being complementary within a diversified portfolio of coal investments and within that firm's investment strategy. Evidence of firms holding tenements in multiple locations therefore does not imply that those tenements are in the same market.
174. Prospective buyers of later-stage thermal coal tenements in NSW can be presumed to have sufficient certainty over access to other export facilities, such as those located at the Port of Newcastle. Such prospective buyers – along with existing users of NQXT – are unlikely to have any degree of certainty in relation to access to NQXT, should they consider substituting to purchasing later-stage thermal coal tenements in the northern mine area. It follows that they would be highly unlikely to substitute towards tenements in that northern mine area, if a hypothetical monopsonist buyer sought to reduce prices for tenements in NSW.
175. Consistent with these observations, I conclude that later-stage thermal coal tenements in NSW are unlikely to be close substitutes for those in the Newlands System and Galilee Basin.

Thermal coal tenements in Indonesia and Russia

176. Indonesia is geographically the closest thermal coal export competitor to Australia. Indonesia and Australia also share a substantial proportion of thermal coal export destination markets. However,

¹⁰² National Competition Council (NCC), *Revocation of the declaration of the shipping channel service at the Port of Newcastle – recommendation*, 22 July 2019, pp 100-102.

¹⁰³ Worringham, C and Institute for Energy Economics and Financial Analysis (IEEFA), *Thermal coal flat-lines in faltering economy, power from non-coal sources continues to grow*, November 2019, p 22.

Australian thermal coal quality is generally higher than Indonesian thermal coal.¹⁰⁴ Indonesian coal is likely to result in higher carbon dioxide emissions and contain higher levels of undesirable trace elements relative to Australian thermal coal.¹⁰⁵ Australian and Indonesian coal tenements are therefore likely not to be closely substitutable.

177. Russia's thermal coal exports are of a comparable quality to Australian thermal coal exports.¹⁰⁶ However, geopolitical factors mean that Russian thermal coal tenements are unlikely to be considered substitutable for Australian tenements for current and prospective later-stage Australian tenement holders. These factors suggest that later-stage thermal coal tenements in Russia are not in the same market as those in the Newlands System.
178. Prospective buyers of later-stage thermal coal tenements in Indonesia and Russia can be presumed to have sufficient certainty over access to other export facilities (or to be located in proximity to demand). Such prospective buyers – along with existing users of NQXT – are unlikely to have any degree of certainty in relation to access to NQXT, should they consider substituting to purchasing later-stage thermal coal tenements in the northern mine area. It follows that they would be highly unlikely to substitute towards tenements in that northern mine area, if a hypothetical monopsonist buyer sought to reduce prices for tenements in Indonesia or Russia.
179. Moreover, the substitutability of tenements in Indonesia and Russia with those in Queensland is likely to be limited by differences in the legal, regulatory and geopolitical environments in those countries.
180. Taken together, I conclude that thermal coal tenements in the areas identified above are not close substitutes for those in the Newlands System and the Galilee Basin, such that the relevant geographic market should be confined to that area.

Later-stage metallurgical coal tenements

181. First, I note that with respect to later-stage coal tenements in the Abbot Point catchment:
 - a. the Newlands system produces a high quality of metallurgical coal;¹⁰⁷ and
 - b. 74 per cent of metallurgical coal throughput volume at Abbot Point is exported to the Asia-Pacific seaborne market, with 20 per cent being exported to Europe.¹⁰⁸
182. The second step in this exercise is to identify other areas within Australia and overseas that may export quality metallurgical coal primarily to the Asia-Pacific region.
183. Other areas may include:

¹⁰⁴ Australian thermal coal is rated higher than Indonesian coal in seven out of 11 thermal coal quality metrics analysed. Australian thermal coal is rated satisfactory in ten of the 11 thermal coal quality metrics analysed, and marginal in one metric. In contrast, Indonesian coal is rated satisfactory in four of the 11 thermal coal quality metrics analysed, marginal in one metric and inferior in six metrics. Minerals Council of Australia, *Best in class: Australia's bulk commodity giants - Australian export thermal coal: the comparative quality advantages*, 2021, p 6.

¹⁰⁵ Lower rank coals, such as 'the sub-bituminous coals from Indonesia...generate higher levels of CO₂ than do bituminous coals (such as exported from Australia).' Australian thermal coal has 'significantly lower levels of [undesirable trace elements] arsenic, boron, mercury and selenium than international coals. The levels of cadmium, chlorine, fluorine and lead are similar in Australian and international coals.' Minerals Council of Australia, *Best in class: Australia's bulk commodity giants - Australian export thermal coal: the comparative quality advantages*, 2021, p 9.

¹⁰⁶ See Minerals Council of Australia, *Best in class: Australia's bulk commodity giants - Australian export thermal coal: the comparative quality advantages*, 2021, p 6.

¹⁰⁷ The Newlands System is part of the Bowen Basin, which is generally considered to produce the best hard coking coal (high quality metallurgical coal) in the world. QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 139.

¹⁰⁸ The four largest export destinations for metallurgical coal from Abbot Point by volume are India (34.8 per cent of metallurgical coal throughput), Japan (22.0 per cent), South Korea (8.2 per cent) and Germany (7.7 per cent): HoustonKemp analysis of Queensland coal sales statistics.

- a. metallurgical coal tenements in Queensland outside of the northern mine area;
- b. coal tenements in NSW – because NSW and Queensland export far more coal than any other Australian state;¹⁰⁹ and
- c. metallurgical coal tenements in the US and Canada, since these countries also export coal to the Asia-Pacific region.¹¹⁰

184. In the remainder of this section, I explain why metallurgical coal tenements in those areas are not close substitutes for those in the Newlands System and the Galilee Basin, such that the relevant geographic market should be confined to the latter area. The principal considerations underpinning this finding are that:

- a. prospective buyers of later-stage tenements from outside the northern mine area can be presumed to have sufficient certainty over access to other export facilities (including, for example, an expanded DBT), but much less certainty in relation to access to NQXT;
- b. such outside buyers would therefore be highly unlikely to substitute towards tenements in the northern mine area; and, accordingly
- c. a geographic dimension of the market bounded by the northern mine area is sufficiently broad and should not be expanded.

Other metallurgical coal tenements in Queensland

185. I explain at paragraph 161 that mines tend to operate in a specific rail-port catchment. Since operating mines located significantly outside of the Newlands System are more likely to access other ports – for example, mines in the Goonyella system would be likely to access ports at Mackay while mines further south would be likely to access the Port of Gladstone – this suggests that metallurgical coal tenements outside of the Newlands System may not be substitutable for those inside the Newlands System.
186. Metallurgical coal tenements in different parts of Queensland also vary in quality. The Bowen Basin produces a high quality of metallurgical coal.¹¹¹
187. Metallurgical coal quality grades include hard coking coal, semi-soft coking coal, and PCI coal.¹¹² Hard and semi-soft coking coals are converted into coke before being used in metallurgical processes, while PCI coal is a direct input and acts as a partial substitution for coke in the process.¹¹³ Hard coking coal has better coking properties than semi-soft coking coal, and so generally attracts higher prices.¹¹⁴ PCI coal is a lower quality and less expensive form of metallurgical coal.¹¹⁵
188. In 2022, 100 per cent of the metallurgical coal exported from mines in the Newlands System was hard coking coal. 95 per cent of metallurgical coal exported through the privately owned Hay Point Coal

¹⁰⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 132-133.

¹¹⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 133.

¹¹¹ The Newlands System is part of the Bowen Basin, which is generally considered to produce the best hard coking coal (high quality metallurgical coal) in the world. QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 139.

¹¹² Queensland Treasury, *Queensland's coal industry and long-term global coal demand*, November 2022, p 5.

¹¹³ Minerals Council of Australia, *Best in class: Australia's bulk commodity giants - Australian metallurgical coal: quality sought around the world*, 2021, pp 4-6.

¹¹⁴ See, for example: KPMG, *Coal price and FX market forecasts*, September/October 2023, pp 2-3.

¹¹⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 131; and Minerals Council of Australia, *Best in class: Australia's bulk commodity giants - Australian metallurgical coal: quality sought around the world*, 2021, p 4.

Terminal was hard coking coal. In contrast, 49 per cent of metallurgical coal exported through the port of Gladstone and 61 per cent of metallurgical coal exported through DBCT was hard coking coal.¹¹⁶

189. Many of the mines in the Goonyella and Blackwater systems, which produce the majority of Queensland's metallurgical coal exports, export coal through DBT and the Port of Gladstone.
190. The risk/return profile of a later-stage coal tenement is likely to be affected by these differences in coal type due to:
 - a. different future demand prospects;¹¹⁷ and
 - b. differing market prices arising from the variation in quality across metallurgical coal types – in particular, price forecasts for different grades of metallurgical coal show that semi-soft coking coal is generally lowest-priced, with PCI coal and hard coking coal forecast prices being on average of 7 per cent and 49 per cent higher, respectively.¹¹⁸
191. The different risk/return profiles associated with different types of metallurgical coal imply that tenements in other systems with different proportions of hard coking coal may not be substitutable for tenements in the Newlands system. There are also additional differences between tenements in different systems across Queensland, including export prices, supply chain costs, rail infrastructure, co-shipping and blending opportunities.¹¹⁹
192. Prospective buyers of later-stage metallurgical tenements in Queensland can be presumed to have sufficient certainty over access to other export facilities, such as DBT. Such prospective buyers – along with existing users of NQXT – are unlikely to have any degree of certainty in relation to access to NQXT, were they to consider substituting to purchasing later-stage thermal coal tenements in the northern mine area. It follows that they would be highly unlikely to substitute towards tenements in that northern mine area, if a hypothetical monopsonist buyer sought to reduce prices for tenements elsewhere in Queensland.
193. Taken together, evidence concerning rail-port catchments, risk-return profiles and other factors suggests that metallurgical coal tenements elsewhere in Queensland are not likely to be close substitutes for metallurgical coal tenements in the Newlands System or tenements directly connected to the GAPE.

Coal tenements in NSW

194. The QCA noted in its final recommendation in respect of DBT that thermal coal is the prevalent type of coal in NSW and that thermal and metallurgical coal tenements are likely to be in different markets.¹²⁰ On this basis – and for the reasons regarding access to export facilities in respect of thermal coal tenements that I explain above – coal tenements in NSW are not likely to be closely substitutable for metallurgical coal tenements in the Newlands system.

¹¹⁶ HoustonKemp analysis of Queensland coal statistics.

¹¹⁷ For instance, future demand for PCI coal in steelmaking may fall as new technology is introduced. See, for example: Institute for Energy Economics and Financial Analysis (IEEFA) website, available at <https://ieefa.org/articles/pci-coal-steelmaking-soon-be-impacted-decarbonisation>, accessed 28 May 2025.

¹¹⁸ Analysis based on average price forecasts for each of hard coking coal, low and ultra-low volatile PCI coal, and semi-soft coking coal for the years 2025-2028. Average price forecast over that period was USD\$215.53, USD\$154.68, USD\$144.88 for hard coking coal, low and ultra-low volatile PCI coal and semi-soft coking coal, respectively. KPMG, *Coal price and FX market forecasts*, December 2024/January 2025.

¹¹⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 137. See also: Criterion (b) report.

¹²⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 137.

Metallurgical coal tenements in the US and Canada

195. The QCA noted in its final recommendation in respect of DBT that due to differences in coal quality, transport costs and end markets, development stage coal tenements in the Hay Point catchment were not in the same market as those in the US and Canada.¹²¹ It drew on evidence about the Bowen Basin generally, ie, which includes the metallurgical coal tenements in the Abbot Point catchment.
196. The QCA's analysis is also applicable to the Newlands system, and so it is unlikely that metallurgical coal tenements in the US and Canada are closely substitutable for metallurgical coal tenements in the Newlands system.
197. Prospective buyers of later-stage metallurgical tenements in the US and Canada can be presumed to have sufficient certainty over access to other export facilities. Such prospective buyers – along with existing users of NQXT – are unlikely to have any degree of certainty in relation to access to NQXT, should they consider substituting to purchasing later-stage thermal coal tenements in the northern mine area. It follows that they would be highly unlikely to substitute towards tenements in that northern mine area, if a hypothetical monopsonist buyer sought to reduce prices for tenements in the US and Canada.
198. Taken together, metallurgical coal tenements in the areas identified above are not close substitutes for those in the Newlands System, such that the relevant geographic market should be confined to that area.

Later-stage tenements containing thermal and metallurgical coal

199. I conclude that the geographic boundaries of the markets for later-stage thermal coal tenements and later-stage metallurgical coal tenements dependent on NQXT include the northern mine area. It follows that, if there are relevant dependent markets for later-stage tenements that contain both thermal and metallurgical coal, it is likely that the geographic boundaries of such markets are also confined to the northern mine geographic area.

5.3 Competition with and without declaration

200. In this section, I assess the future state of competition with and without declaration in the coal tenements markets identified in section 5.2, ie:
 - a. first, I set out the framework for assessing whether declaration would promote a material increase in competition in a dependent market, having regard to the QCA's and the Queensland Treasurer's approaches in respect of DBT (section 5.3.1);
 - b. second, I review the available evidence regarding the existing state of competition for coal tenements and the implications for my analysis (section 5.3.2);
 - c. third, I analyse future competition with and without declaration for each dependent market identified in section 5.2; and
 - d. last, I explain my opinion that criterion (a) is satisfied in respect of NQXT, having regard to the Treasurer's and the QCA's approaches in respect of DBT for each dependent market identified in section 5.2.
201. An important distinction between this assessment in respect of NQXT and that in respect of DBT is that DBT was already declared at the time it was being assessed. Conversely, NQXT is not presently declared. This means that:

¹²¹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 139.

- a. the current state of the world at the time of the DBT assessment was likely to be *closer* to the 'with declaration' world; whereas
- b. the current state of the world in the NQXT assessment is likely to be *closer* to the 'without declaration' world.

202. However, I explain in section 2.1.1 that the terms of the user agreements that exist today are unlikely to reflect those that would be struck today, because those agreements were struck between the third-party users and the state, rather than between third-party users and NQXT, which is vertically-integrated with Bravus Mining, which would be the case if those agreements had been struck today.

203. In other words, the 'without declaration' world is likely to reflect a less certain and less favourable world for third-party users than the current state of the world – which already presents significant challenges for those third-party users in their ongoing interactions with NQXT.

5.3.1 Framework for assessment

204. The QCA and the Queensland Treasurer took slightly different approaches to the question of whether access (or increased access) to DBT, as a result of a declaration, would promote a material increase in competition in a dependent market for coal tenements. In this section, I explain the essential distinction between the two approaches.

QCA approach

205. The QCA referred to federal government explanations that the term 'material' was included in relation to the consideration of criterion (a) in the corresponding section of the CCA in order to:¹²²

...ensure access declarations are only sought where the increases in competition are not trivial.

206. Similarly, the explanatory notes to the QCA Act include that the materiality condition:¹²³

...will prevent the declaration of services where only a trivial increase in competition is expected to result...

207. The QCA formed a view that:¹²⁴

... an assessment of a material increase in competition in this market requires considering whether a future without declaration would materially impact on the ability of market participants to compete against each other in developing tenements on their merits, compared to a future with declaration, all other considerations remaining unchanged.

208. The QCA's approach then assessed whether there would be a material difference in the investment decisions of different types of potential port users under a future with declaration compared to a future without declaration.¹²⁵

209. Put another way, the QCA assessed whether a future with declaration would change the actual investment decisions of particular port users.

¹²² Treasury, *Government response to Productivity Commission report on the review of the National Access Regime*, 20 February 2004, p 7.

¹²³ *Motor Accident Insurance and Other Legislation Amendment Act 2010* (Qld), Explanatory notes, pp 15-16.

¹²⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 145.

¹²⁵ The QCA said that '[t]he 'materiality' threshold requires the QCA to consider whether, for instance, the higher TIC faced by new users would have the effect of making some tenements developed by new users unprofitable—that is, would it have a detrimental impact on the ability of new users to develop some tenements, relative to those developed by existing users, and compared to if they were developed in a future with declaration, all other things being equal': QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 145.

210. In its assessment of DBT, the QCA noted that:¹²⁶

...new users and expanding existing users would expect a higher access charge in a future without declaration than in a future with declaration, and **would expect to pay more than existing users** (up to the volumes in their existing user agreements). [footnote omitted, emphasis added]

211. In the circumstances of DBT, the QCA's initial approach meant that a price differential that led to a redistribution of economic surplus *within* the supply chain would not be enough to satisfy criterion (a), but a price differential that would stop new users from investing would be sufficiently material for such satisfaction. I assume that the same would also apply in respect of uncertain access, rather than just a price differential.

Treasurer's approach

212. The Treasurer noted that both new and existing users of DBT would be competing for capacity and observed that, due to the particular circumstances in respect of the arrangements with existing users of the terminal, there would be likely to be some asymmetry in the access terms faced by new users compared to existing users under a future without declaration.¹²⁷

213. The Treasurer's view was that the relevant question can be framed as:¹²⁸

...whether there is an improvement in the opportunities and environment for competition, such that competitive outcomes are materially more likely to occur in a future with declaration compared to a future without declaration.

214. The Treasurer identified that in a future without declaration new users at DBT could be charged a higher access price than existing users and that in a future with declaration this price difference would likely be substantially less.¹²⁹ Therefore, to determine whether declaration would promote a material increase in competition, the relevant question in relation to the DBT was:¹³⁰

...whether the pricing differential is likely to cause new users to assess a tenement as having a value materially below that assessed by existing users.

215. In such circumstances, existing users may be able to outbid new users for tenements, and so the pricing differential would constitute a material barrier to entry for new users.¹³¹ This contrasts with the QCA's approach, which focused on the *investment decisions*, rather than pricing differentials between groups of users.

216. Applying the Treasurer's approach to NQXT, if one group of NQXT users would assess a tenement as having a value materially below that assessed by another group of NQXT users in a future without declaration, then declaration could promote a material increase in competition in that market. I note that such a difference in valuation could arise by consequence of either different levels of certainty over access to export facilities or by different prices faced by different users.

¹²⁶ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 111.

¹²⁷ Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, 267, para 4.7.16.

¹²⁸ Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, 267, para 4.7.16.

¹²⁹ Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, 267, para 4.7.55.

¹³⁰ Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, 267, para 4.7.31.

¹³¹ Treasurer (Qld), *Queensland Competition Authority Act 1997 - Notice of a decision to declare a service under sections 84-87*, Queensland Government Gazette, No 31, 1 June 2020, 267, paras 4.7.31-4.7.32.

My approach

217. The price that a prospective buyer is willing to pay for a coal tenement increases with its expected revenue (eg, higher coal price, and, importantly, higher prospects of access to export facilities) and falls with expected costs, eg, expected logistics costs. It follows that buyers with significantly different prospects of access to export facilities may be expected to have significantly different willingness-to-pay for tenements that would rely on such facilities.
218. Access to a facility on reasonable terms brought about by declaration therefore could significantly affect the valuation that parties place on tenements in the relevant area, and so declaration may:
- a. affect the structure of the market or conduct of firms therein in such a way that can be expected to bring about a material enhancement to the competitive process; and
 - b. affect the volume and/or quality of output in that market.
219. In my opinion, if these conditions are met, it follows that competition in a dependent market for coal tenements would increase as a result of declaration.

5.3.2 Existing state of competition

220. I explain at paragraphs 100-101 that:
- a. users of NQXT face similar user agreements to each other, although NQXT is able to treat different users differently, including by charging different access prices to different users; and
 - b. the user agreements have different commencement dates and durations, although I understand that all or most of the user agreements are due to expire before 2029.
221. I also explain in section 4.3 that Adani is vertically integrated across the supply chain, so that it has the ability and incentive to treat its own mining operations differently from non-Adani users or prospective users. This implies that parties acquiring later-stage tenements in the Newlands or Galilee systems are likely to face considerable risk in their ongoing ability to access NQXT on reasonable terms.
222. The transactions that have occurred for later-stage coal tenements in the Newlands and Galilee systems (ie, in any of the dependent markets identified in section 5.2) include:
- a. Glencore's acquisition of an additional 12.5 per cent share in two mineral development licenses for coal in the Galilee Basin (MDL356 and MDL3035) from ICRA in 2022;¹³² and
 - b. QCoal's acquisition of Cliffs Australia Coal's share of the Sonoma Mine (ML10325, ML10326 and ML10327) in the Newlands System in 2013.¹³³
223. There is limited evidence of new entry or regular transactions for coal tenements. This is consistent with perceived high risks by potential parties engaging in such transactions of:

¹³² Queensland Government, *MDL 356 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=356>, accessed 28 May 2025; Queensland Government, *MDL 3035 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=MDL&permitNumber=3035>, accessed 28 May 2025.

¹³³ Queensland Government, *ML 10325 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=ML&permitNumber=10325>, accessed 28 May 2025; Queensland Government, *ML 10326 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=ML&permitNumber=10326>, accessed 28 May 2025; Queensland Government, *ML 10327 resource authority public report*, available at: <https://myminesonlineservices.business.qld.gov.au/Web/PublicEnquiryReport.htm?permitType=ML&permitNumber=10327>, accessed 28 May 2025.

- a. entering or expansion in the global coal market amidst a global energy transition; and
- b. obtaining long-term access to proximate coal terminal infrastructure to be able to export.

224. In its assessment of the existing state of competition in the market for development stage coal tenements in respect of DBT, the QCA concluded that:¹³⁴

...the entry of new players and an increase in the proportion of coal tenements held by new players (potential coal miners) indicate that the market for development stage coal tenements is workably competitive. Since the service is already declared (and has been for some time), existing competitive conditions may not necessarily represent the 'future without' declaration. Therefore, the QCA examined the environment for competition in this market in a future with and without declaration.

225. By contrast, the relatively thinly traded markets and lack of substantive new entry for later-stage tenements proximate to Abbot Point are unlikely to be said to be workably competitive. This is consistent with the observation drawn above that, in contrast to DBT, NQXT is *not* presently declared.

5.3.3 Competition in a future with and without declaration

226. I delineate my assessment of competition in the markets for later-stage tenements by reference to:¹³⁵

- a. access terms in a future with and without declaration;
- b. coal handling capacity at NQXT; and
- c. NQXT's incentives without declaration – which I explain at section 4.3 above.

Access terms in a future with and without declaration

227. The QCA explained when it assessed the DBT service that:¹³⁶

The QCA's view is that expected returns over the economic life of a mining project and the risks arising in relation to those returns are central to making long-term investment decisions in developing mining projects into coal mines.

Typically, coal miners seek to develop a tenement into a mining operation if they expect, among other things, to obtain rail and port access. As the expected access terms and conditions would affect the expected return and associated risks over the life of a mining project, this would likely influence a tenement holder's decision to develop a coal tenement into a mining operation, all other things remaining unchanged. Therefore, it is relevant to consider expectations about access terms (in particular, pricing) **over the economic life of a mine.** [emphasis added]

228. I agree with this observation as applied to NQXT, ie, the access terms for new and existing NQXT users with and without declaration could affect the state of competition in the markets for later-stage coal tenements.

¹³⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 143.

¹³⁵ This is consistent the QCA's assessment in respect of DBT, although I do not address those aspects assessed by the QCA that are not relevant in the context of NQXT, such as existing users' evergreen rights. QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020A, pp 146-147. I do not assess the profit margin estimates of new mining projects (or for existing users once their user agreements expire) as assessed by the QCA in respect of DBT, because it is not possible to estimate the differential in prices (or terms) faced by access seekers *vis a vis* Bravus Mining – although, for the reasons that I set out in section 4.3, I expect this to be material. In respect of NQXT, the principal consideration is whether third-party access seekers can be expected to have certainty over *any* ongoing access to the terminal. Such a refusal to provide access could be put into effect by, among other things, NQXT refusing to deal with third-party access seekers, frustration of access agreements, or by setting prices for third-party access seekers at a prohibitively high level. A lack of access without declaration for third-party access seekers would have a material effect on the ability of those third-parties to develop and mine tenements profitably. If third-party access seekers were able to secure long-term access, the potential for them to face higher access *prices* (which would affect profitability of developing and mining tenements for those firms) at NQXT without declaration is also likely to have a material effect on their participation in markets for coal tenements.

¹³⁶ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 147.

Access terms for new and existing users without declaration

229. Access terms for existing users without declaration are likely to remain as they currently stand until the end of each user's current user agreement with NQXT. However, upon expiry of those user agreements, it appears unlikely that access to NQXT will be provided on the same terms or at the same prices, including because Adani/NQXT has the ability and incentive to favour its own, vertically integrated associated parties – see section 2.
230. This is distinct from the incentives of the counterparty to the user agreements at the time they were struck, because the users initially entered into their user agreement with the Ports Corporation of Queensland Limited, a government-owned corporation.¹³⁷ By contrast, NQXT is now owned and operated by a vertically-integrated user of the terminal.¹³⁸
231. New users seeking access to the port are likely to face the same uncertainty with respect to access to the port as existing users upon expiry of their user agreements.
232. I explain at paragraph 100 that all or most of the user agreements that currently apply at NQXT are due to expire before around 2029. It is likely that the willingness of third-party buyers and sellers in markets for later-stage coal tenements in the Newlands and Galilee systems would incorporate the risks that they would not be able to access NQXT on reasonable terms.¹³⁹
233. On the other hand, Bravus Mining's access on reasonable terms to the terminal is likely to be certain, because it is a related entity of NQXT and the terminal operator.

Access terms for new and existing users with declaration

234. The QCA set out the access terms that would apply to new and existing users in respect of DBT if it was declared, ie:¹⁴⁰

In a future with declaration, access terms and conditions for expanding existing users and new users will be governed by Part 5 of the QCA Act. In particular, a coal mine investor seeking to make a long-term investment decision would, similar to an existing user, expect pricing on reasonable terms for the duration of the agreement.

While any future decisions of the QCA are not known, the terms of the 2017 access undertaking SAA are illustrative of what could be approved under declaration having regard to the assessment criteria in the QCA Act. In this review the QCA has considered a declaration period of 10 years for the DBCT service—that is, declaration until 2030. An access agreement executed in a future with declaration may include price review provisions akin to the SAAs approved by the QCA, such that the TIC may be expected to be subject to:

- the QCA approval or determination, for the part of the mine economic life that overlaps with a declaration period until 2030
- a dispute resolution mechanism akin to the mechanism in the QCA-approved SAA, if the declaration expires in 2030 and the economic life of the relevant mine lasts longer than the declaration period. [footnotes omitted]

235. I assume that a similar set of access terms would apply to users of NQXT, because access would also be governed by Part 5 of the QCA Act.

¹³⁷ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [4].

¹³⁸ See footnote 14.

¹³⁹ This is consistent with the QCA's observation that it is relevant to consider expectations about access terms over the economic life of a mine. See paragraph 227.

¹⁴⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 148.

236. By consequence of the significant risks for third-party access seekers and the substantial differential between third parties and Bravus Mining that would be likely to persist in a future without declaration, I find that access (or increased access) to the service on reasonable terms as a result of declaration would be likely to promote:
- a. an increase in competition between Bravus Mining and third parties in markets for later-stage coal tenements in the Newlands and Galilee systems – because those third parties would be offered similar or equal terms of access to NQXT with declaration, as compared to the significant risk of no or poor-quality access without declaration; or
 - b. an increase in competition between third parties in markets for later-stage coal tenements – because without declaration those third parties may not be willing to undertake *any* transactions, and the certainty over access as a result of declaration may incentivise those parties to undertake transactions.
237. It follows that access (or increased access) to the service on reasonable terms as a result of declaration would be likely:
- a. to affect the structure of the market in such a way that can be expected to bring about a material enhancement to the competitive process, by way of allowing the potential for more than one participant to have some certainty over access on reasonable terms; and, by consequence
 - b. to affect the volume of tenements transacted in the relevant market(s).
238. In drawing this conclusion I note that:
- a. under the QCA's approach in respect of DBT – in which a price differential that would stop new users from investing would be material enough to satisfy criterion (a), and for which I assume an *access certainty* differential could similarly apply – the significant access risk that would be mitigated by declaration would likely give rise to a material increase in competition as a result of declaration; and
 - b. under the Treasurer's approach in respect of DBT – in which a material price differential that would be equalised by declaration would be material enough to satisfy criterion (a) – the significant access risk that would be equalised across parties by declaration would likely also give rise to a material increase in competition as a result of declaration.

Access to coal handling capacity at NQXT with and without declaration

239. NQXT currently has spare capacity.¹⁴¹ My companion assessment of the application of criterion (b) to NQXT results in an estimate of total foreseeable demand that is less than nameplate capacity at NQXT in any year of the declaration period.
240. However, I explain in my assessment of criterion (d) that there is only limited incentive for NQXT to expand the terminal to provide long-term access to third parties on reasonable terms, or to do so in a timely manner.
241. In contrast, the QCA Act specifically permits that an access undertaking by the QCA can:¹⁴²

...require the access provider to extend, or permit the extension of, the facility.

¹⁴¹ Criterion (b) report.

¹⁴² QCA Act, section 118(1)(d).

5.3.4 Effect of access as a result of declaration on competition

242. For the reasons that I set out above, the significant risks for third-party access seekers and the substantial differential between third parties and Bravus Mining that would persist in a future without declaration imply that access (or increased access) to the service on reasonable terms as a result of declaration would be likely to promote:
- a. an increase in competition between Bravus Mining and third parties in markets for later-stage coal tenements in the Newlands and Galilee systems, because those third parties would be offered similar or equal terms of access to NQXT with declaration, as compared to the significant risk of no or poor-quality access without declaration; and/or
 - b. an increase in competition between third parties in markets for later-stage coal tenements, because without declaration those third parties may not be willing to undertake *any* transactions, and the certainty over access as a result of declaration may incentivise those parties to undertake transactions.
243. To summarise, in my opinion, access as a result of declaration would promote a material increase in competition in the markets for:
- a. later-stage thermal coal tenements in the Newlands System and Galilee Basin;
 - b. later-stage metallurgical coal tenements in the Newlands System; and/or
 - c. later-stage tenements containing both thermal and metallurgical coal in the Newlands System and the Galilee Basin.

6. Coal export markets

244. In this section, I assess whether access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in a coal export market.
245. In summary, I show that:
- a. there are likely to be separate markets for the export of metallurgical and thermal coal;
 - b. the Adani Group has the ability and incentive to restrict throughput of metallurgical coal through NQXT and instead favour its own, thermal coal mined by Bravus Mining;¹⁴³
 - c. by consequence, declaration could promote a material increase in throughput of metallurgical coal at NQXT, and that NQXT represents a sizable proportion of global metallurgical coal trade; and so
 - d. declaration of the service provided by NQXT, and the access on reasonable terms for exporters of metallurgical coal¹⁴⁴ that it would imply, could therefore promote an increase in competition in global markets for metallurgical coal exports, by increasing supply and thereby putting downward pressure on prices.

6.1 Market definition

246. In its assessment of DBT, the QCA formed the view that coal export markets were separate from the market for the relevant service and comprised relevant dependent markets for the purpose of its declaration review.¹⁴⁵ That coal export markets are relevant dependent markets is also consistent with the recommendation of the National Competition Council (NCC) in respect of the declaration of services provided by the shipping channels at the Port of Newcastle.¹⁴⁶
247. Coal exports from Australia primarily comprise metallurgical and thermal coal.¹⁴⁷ Metallurgical coal and thermal coal have different uses and so customers are unlikely to be willing to substitute between them. It follows that metallurgical coal and thermal coal are in separate product markets due to their different end uses – metallurgical coal for steel production and thermal coal for electricity generation.¹⁴⁸
248. In the context of exports that are handled by DBT, the QCA focused its assessment on metallurgical coal and it distinguished this from the assessment by the NCC in its revocation of the declaration of the shipping channel service at the Port of Newcastle, which focused on thermal coal.¹⁴⁹ This is because DBT primarily handles metallurgical coal.¹⁵⁰

¹⁴³ Adani Group also has the ability and incentive to restrict throughput of thermal coal supplied by third parties through NQXT.

¹⁴⁴ Declaration of NQXT could also promote an increase in competition in global markets for thermal coal exports if third-party thermal coal exporters are unable to export through NQXT. However, I focus my analysis on metallurgical coal.

¹⁴⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 199.

¹⁴⁶ See, for example: NCC, *Declaration of the shipping channel service at the Port of Newcastle*, Final recommendation, 2 November 2015, pp 28-33.

¹⁴⁷ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 198.

¹⁴⁸ This is consistent with the QCA's conclusions in the context of DBT. See: QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 199.

¹⁴⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 199.

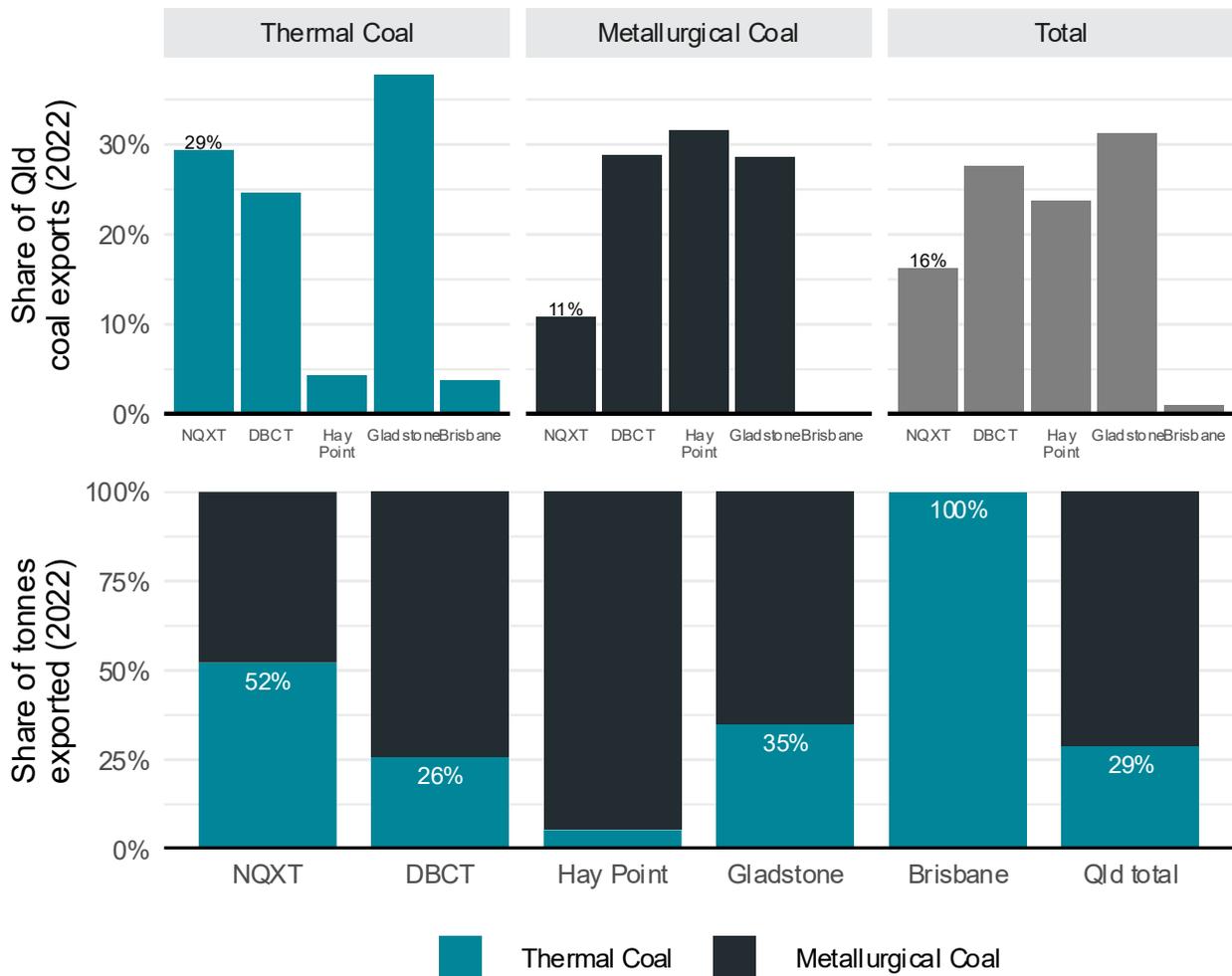
¹⁵⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 25.

249. Consistent with this and my opinion that there are different markets for metallurgical and thermal coal, I also assess the potential for access as a result of declaration to promote a material increase in competition in either or both of the metallurgical coal and thermal coal export markets.
250. Coal exports to the Asia-Pacific region represent internationally traded commodities, with prices set by reference to international spot prices.¹⁵¹
251. A relevant starting point for the analysis is the share of exports originating from the terminal at hand, ie, NQXT.¹⁵² Consistent with this, figure 6.1 below shows that in 2022, NQXT exported approximately:
- a. 29 per cent of Queensland's thermal coal exports;
 - b. 11 per cent of Queensland's metallurgical coal exports;
 - c. 16 per cent of Queensland's total coal exports; and
 - d. 52 per cent thermal coal and 48 per cent metallurgical coals.

¹⁵¹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 200.

¹⁵² This is consistent with the QCA's analysis in respect of DBT, in which it took as a starting point the share of exports originating from DBT. QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 200.

Figure 6.1: Coal exports in Queensland by type of coal in 2022, tonnes



Source: Queensland coal sales statistics.

Note: Metallurgical coal exports consist of hard and semi-soft coking coals and PCI coal.

252. Coal throughput handled at NQXT is material on a global scale and accounted for about:

- a. two per cent of world trade in thermal coal in 2022;¹⁵³ and
- b. five per cent of world trade in metallurgical coal in 2022.¹⁵⁴

253. In relation to DBT, the QCA noted that:¹⁵⁵

¹⁵³ Global thermal coal trade was 1,056 Mt in 2022. International Energy Agency, *Coal 2023: analysis and forecast to 2026*, December 2023, p 63. Thermal coal exports in 2022 at NQXT was 16.3 Mt. Queensland coal sales statistics.

¹⁵⁴ Global metallurgical coal trade was 320 Mt in 2022. International Energy Agency, *Coal 2023: analysis and forecast to 2026*, December 2023, p 70. Metallurgical coal exports in 2022 at NQXT was 14.9 Mt. Queensland coal sales statistics.

¹⁵⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 200.

- a. much of the coal throughput at DBT was associated with existing (evergreen) user agreements which would provide an effective constraint on DBCT Management's exercise of market power, up to the volumes in those agreements; and
- b. coal volumes outside of existing user agreements would be subject to the access framework and that, although that volume may be subject to higher access charges, the level of those charges would be unlikely to have a detrimental impact on the ability of new users to develop tenements into mines and hence the export of additional volume, compared to access with declaration.

254. By contrast, I explain above that these considerations do not apply to NQXT, which has neither evergreen user agreements nor an agreed access framework that would apply in absence of declaration.

6.2 Competition with and without declaration

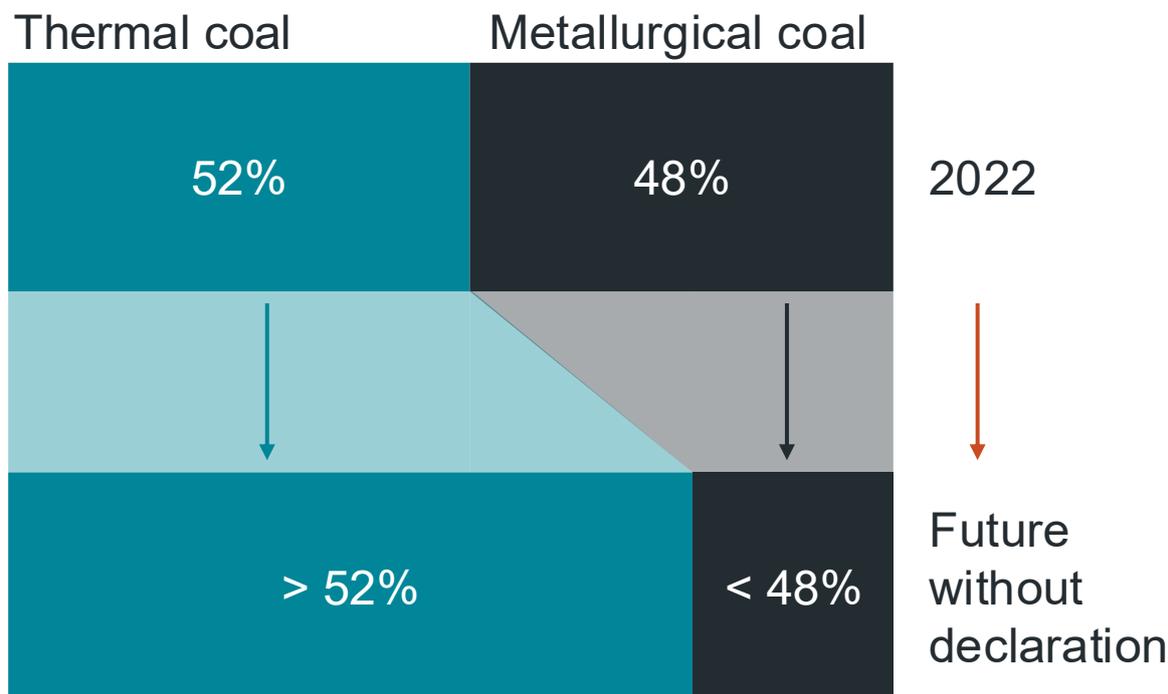
255. I explain in section 5.3.3 that access terms for existing users without declaration are likely to remain as they currently stand until the end of each user's current agreement with NQXT but that, upon expiry of those user agreements, NQXT has the incentive to favour its own, vertically integrated associated parties – see also section 2.

256. It follows that third-party users' access on reasonable terms to the terminal is highly uncertain in the absence of declaration. On the other hand, Bravus Mining's access to the terminal on reasonable terms is very likely to be certain because it is a related entity of NQXT and the terminal operator. Although the Carmichael mine has been developed with a present capacity of 10mtpa, it has been approved to be developed with a maximum capacity of 60mtpa, ie, in excess of the current capacity at NQXT. Bravus' Carmichael mine produces only thermal coal.

257. The net result of this differential in certainty, combined with NQXT's incentive and ability to exclude its competitors – see section 4.3.2 – is a reasonable prospect that exports of *thermal coal* through NQXT will increase as exports of *metallurgical coal* decrease – see figure 6.2 below. Metallurgical coal exporters located proximate to Abbot Point do not have alternative means by which they are able to export coal.



Figure 6.2: Potential change in mix of coal types exported at NQXT without declaration



258. This contrasts significantly with the QCA’s analysis in respect of DBT, because it considered that volumes through DBT would be unchanged with and without declaration. The QCA considered that:¹⁵⁶

...all things being equal, **coal throughput under existing user agreements would unlikely be affected in the absence of declaration.** To that extent, the competitive conditions in metallurgical coal exports with declaration would be no better than they would be without declaration.

...

...[The level of the charge to new users absent declaration] would be unlikely to have a detrimental impact on the ability of new users to develop tenements into mines, and, hence, **the export of additional volume** under the terms of the deed poll/access framework, compared to access with declaration. [emphasis added]

259. In section 5.3.3 I explain my assumption that, with declaration, access would be governed by Part 5 of the QCA Act and so, with declaration, all users – first- and third-party – would expect access and pricing on reasonable terms for the duration of the agreement. This implies that the reduction of metallurgical coal exports that could reasonably be expected without declaration would be less likely to occur with declaration.

260. It follows that it is reasonable to expect that declaration could increase the global throughput of metallurgical coal, relative to no declaration. I explain in section 6.1 above that NQXT handles around five per cent of global metallurgical coal trade, so this change in quantity could be significant.

¹⁵⁶ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 200.

6.3 Effect of access as a result of declaration on competition

261. In section 6.2, I explain that declaration could promote a material increase in throughput of metallurgical coal at NQXT, relative to without declaration, and that NQXT represents a material proportion of global metallurgical coal trade.
262. The International Energy Agency (IEA) has noted that disruptions in metallurgical coal supply from Australia can and have '...pushed prices to extraordinary highs...',¹⁵⁷ and so I would expect that an increase in metallurgical coal throughput, as a result of declaration, would similarly act to place downward pressure on prices, relative to a case without declaration.
263. Declaration of NQXT, and the access on reasonable terms for exporters of metallurgical coal that it would imply, would therefore promote an increase in competition in global markets for metallurgical coal exports, by increasing supply and thereby placing downward pressure on prices.¹⁵⁸

¹⁵⁷ International Energy Agency, *Coal 2023: analysis and forecast to 2026*, December 2023, p 70.

¹⁵⁸ Declaration of NQXT could also promote an increase in competition in global markets for thermal coal exports if third-party thermal coal exporters are unable to export through NQXT. However, I focus my analysis on metallurgical coal.

7. Rail access and coal haulage services markets

264. Rail transport represents essential infrastructure for coal miners to move significant amounts of coal to port terminals.¹⁵⁹ In this section, I assess whether access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in relevant markets for rail access and coal haulage services.

7.1 Rail access

265. Rail access or 'below-rail' services represent the physical infrastructure, ie, the track networks on which 'above-rail' operators provide services to end users.

266. The rail systems in the Central Queensland Coal Network (CQCN) are owned, operated and maintained by Aurizon Network, with the exception of the recently commissioned Carmichael rail line, which is owned, operated and maintained by a subsidiary of the Adani group, Bowen Rail Company (BRC).

267. The rail systems owned by Aurizon are declared under the QCA Act and provide access to third-party above-rail operators in accordance with Aurizon Network's access undertaking. In its assessment of DBT, the QCA formed the view that Aurizon's monopoly position in providing below-rail services in the systems in which it operates was unlikely to change in the future, regardless of the declaration status of DBT.¹⁶⁰

268. In my opinion, this is also likely to be relevant for NQXT in respect of the Newlands system and GAPE.¹⁶¹ I therefore focus instead on rail access in the Galilee system, which is consistent with my observation above that the overarching principle for market definition is to ensure that the narrowest reasonable market definition is consistent with the purpose at hand.

7.1.1 Market definition

269. I explain above that I take the narrowest reasonable market definition to be rail access in the Galilee system, ie, connecting end users in the Galilee basin to the Newlands system. The market structure includes, at present:

- a. a monopoly provider of rail access services, being BRC; and
- b. a single end-user of those services, being Bravus Mining.

270. The relevant product is access to the rail system. When the QCA assessed the geographic dimension of the below-rail market in DBT, it identified that:¹⁶²

The coal miners' interest is in the rail lines that connect their mine (origin) to the port (destination). These rail lines could both originate and terminate within any given system or they could traverse different systems. Based on the physical location of a mine in the Goonyella coal system, **the point of origin will always remain in the Goonyella coal system**. While coal miners could switch their destination by transporting coal through a different system, **both cost and non-cost factors would prevent coal miners in the Goonyella coal system from switching their destination...** it is highly unlikely coal miners in the Goonyella coal system would switch to other

¹⁵⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 201.

¹⁶⁰ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 212.

¹⁶¹ However, I note that there is a potential for GAPE assets to become stranded if rail capacity in the Newlands system is exhausted by BRC using the non-GAPE rail infrastructure to export through NQXT.

¹⁶² QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 203-204.

coal systems/regions in response to a SSNIP to meet their coal transportation needs... from the demand side, the geographic dimension of the market would likely be the Goonyella system.

271. In my opinion, these same constraints on users in the Galilee basin would apply, ie, they would neither be able to substitute their demand for rail access services in the Galilee basin to rail access services covering a different geographic location nor to be able to substitute their demand to non-rail services.
272. Similarly, providers of below-rail services in different geographic locations are not able to substitute to the provision of below-rail services in the Galilee basin without significant investment in the infrastructure required to do so.
273. It follows that there is a relevant dependent market for access to below-rail services in the Galilee basin.

7.1.2 Competition with and without declaration

274. I explain in section 5.3.3 that:
 - a. the risks arising in relation to access to NQXT on reasonable terms and conditions are incorporated into the buying and selling decisions of parties in dependent markets;
 - b. the risks faced by third parties are much higher than the risks to NQXT's related entities, ie, Bravus Mining and, for rail access, BRC; and
 - c. declaration would equate the terms of access to NQXT between Bravus Mining and third parties, compared to significant risk of no or poor-quality access without declaration.
275. These same considerations would also apply:
 - a. to parties demanding rail access from the Galilee basin, ie, coal miners or potential coal miners; and
 - b. to parties supplying or potentially supplying rail access from the Galilee basin, ie, BRC or a new entrant below-rail operator.
276. In particular, Adani Group's vertical integration in the Galilee basin is particularly impactful, because it owns:
 - a. the only active mine in the basin, ie, Bravus Mining's Carmichael Mine, which has significant capacity for growth;
 - b. the only current below-rail infrastructure connecting the basin to exporting, ie, BRC's Carmichael Rail Network; and
 - c. the only current above-rail infrastructure operating on the Carmichael Rail Network, operated by BRC.
277. Demand for rail access from users in the Galilee basin could be frustrated by lack of certainty over access to NQXT, without declaration. Third-party potential suppliers of rail access, ie, a new entrant rail line, are therefore unlikely to be able to source sufficiently certain demand for those services in order to underwrite the investment that would be required to build a new rail line.
278. However, if access to NQXT for potential users in the Galilee basin (other than Bravus Mining) on reasonable terms was provided for by declaration, it is feasible that those users could collectively underwrite investment required for an additional third-party rail line connecting to the Newlands system. The actual or potential threat of new entry, with declaration of NQXT, would represent a constraint on BRC in providing rail access services to users in the Galilee basin.

279. On the assumption that declaration of NQXT would allow for entry by new users into the Galilee basin, declaration of NQXT would facilitate entry or the threat of entry for the provision of below-rail services connecting the Galilee basin to the Newlands system, ie, promote a material increase in competition in that relevant dependent market.

7.2 Coal haulage

280. Coal haulage or 'above-rail' services represent the physical transport of coal by train from coal mines to ports.

281. In my opinion, coal haulage services is a relevant dependent market in respect of the service at NQXT, because the demand for coal haulage services depends on access to the terminal infrastructure at NQXT. This is consistent with the QCA's conclusion in respect of DBT, where it explained that:¹⁶³

Coal haulage (above-rail) operators transport coal from mine to port and are a distinct upstream market in the coal supply chain that uses the coal handling service at DBCT. The QCA therefore considers coal haulage to be a relevant and separate dependent market.

282. There are four haulage providers that service mines, ie: Aurizon, Pacific National, BMA Rail and BRC.¹⁶⁴ BMA Rail exclusively provides haulage services to its own, related mines. BRC operates on the Carmichael Rail Network (which is also owned by Adani Gorup) and on the Newlands system.¹⁶⁵ BRC presently provides haulage services only to its own, related mine, and it is not clear whether it may also offer third-party access.

7.2.1 Market definition

283. I take the narrowest starting point for the process of defining the relevant markets to be coal haulage services in the Newlands and Galilee systems.¹⁶⁶

284. Coal haulage services were provided in a separate market to haulage services for other bulk commodities, because:¹⁶⁷

- a. coal miners demand haulage services for transporting coal, and would not substitute to haulage services for transporting other bulk goods; and
- b. rail haulage providers for other bulk commodities would not likely to be able to substitute to providing coal haulage services in the Newlands and Galilee systems.

285. In respect of the relevant geographic market, the QCA considered in respect of DBT that:¹⁶⁸

The coal miners' interest is in the rail lines that connect their mine (origin) to the port (destination). These rail lines could both originate and terminate within any given system or they could traverse different systems. Based on the physical location of a mine in the Goonyella coal system, **the point of origin will always remain in the Goonyella coal system**. While coal miners could switch their destination by transporting coal through a different system, **both cost and non-cost factors would prevent coal miners in the Goonyella coal system from switching their destination...** it is highly unlikely coal miners in the Goonyella coal system would switch to other

¹⁶³ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 202-203.

¹⁶⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 203.

¹⁶⁵ Bowen Rail Company, *Fact sheet*, available at https://s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bowenrail22/documents/ad001_bowen_rail_fact_sheet_v3.pdf, accessed 28 May 2025.

¹⁶⁶ This is consistent with the QCA's analysis in respect of DBT, where it took as its narrowest starting point coal haulage services in the Goonyella coal system. See: QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 203.

¹⁶⁷ This is consistent with the QCA's analysis in respect of DBT. See: QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 203.

¹⁶⁸ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, pp 203-204.

coal systems/regions in response to a SSNIP to meet their coal transportation needs... from the demand side, the geographic dimension of the market would likely be the Goonyella system.

However, on the supply side, above-rail haulage operators can (and do) operate on all of the CQCN systems, which are also largely interconnected. To the extent that haulage operators operate on a CQCN basis and **are able to redeploy rollingstock** from one coal system to another, it would indicate that the geographic dimension is CQCN-wide.

Accordingly, the QCA considers that the geographic dimension of the above-rail haulage market **could be as narrow as the Goonyella system or could be CQCN-wide.** [emphasis added]

286. In my opinion, these same factors are relevant to NQXT. The relevant geographic dimension of the above-rail haulage market could include:
- a. each of the Galilee and Newlands systems (separately);
 - b. the Galilee and Newlands systems together; or
 - c. CQCN-wide, including the Galilee system.

7.2.2 Competition with and without declaration

287. I explain above that the relevant market is for the provision of coal haulage services over a geographic area at least as wide as each of the Galilee and Newlands systems, with a geographic scope possibly expanded to be CQCN-wide (including the Galilee system).
288. In its assessment of DBT, the QCA did not agree that the absence of declaration of the DBT service would adversely affect entry for coal haulage providers, because:¹⁶⁹
- a. entry conditions are more fundamentally related to the ability for haulage providers to access the below-rail service and the Aurizon below-rail service is declared;
 - b. existing user agreements in relation to DBT contain an evergreen provision, implying that existing users could substitute between coal haulage providers and so could facilitate entry of a new provider; and
 - c. coal volumes over and above existing user agreements would be subject to the access framework, which would be unlikely to have a detrimental impact on the ability of new users to develop mines and hence the entry condition for a haulage provider would be unlikely to be different with and without declaration.
289. However, the circumstances around NQXT are fundamentally different from those in relation to DBT because:
- a. unlike the situation in respect of DBT, below rail in the Galilee system is not declared and so there is no obligation on its owner (BRC) – which is vertically integrated with above-rail services, NQXT itself and the Carmichael Mine – to provide access to haulage providers on reasonable terms;
 - b. user agreements at NQXT do not contain evergreen provisions, and so existing users may not be able to guarantee a new entrant, alternative coal haulage provider certainty over long-term viability; and
 - c. unlike the situation in respect of DBT, there is no access framework that would apply without declaration.

¹⁶⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 204.

290. In particular, the vertically integrated relationship between NQXT and BRC means that it would have an incentive to implement terminal regulations in a way that would – unlike DBT – ‘...unfairly favour a particular party’.¹⁷⁰ In other words, NQXT could adjust the operation of the terminal, and particularly its interface with rail operations, in such a manner as to affect other parts of the rail supply chain, with alternative coal haulage providers consequently less able to compete to provide those services.
291. This ability would be greatly reduced with declaration, because the provisions relating to the terminal regulations would be included in the relevant access framework, and the QCA would have the role of determining objections about NQXT's approval or rejection of amendments proposed by the operator – which is also an Adani Group entity.
292. Declaration of NQXT, and the equality of access on reasonable terms for coal hauled by third-party haulage providers that it would imply, would therefore promote an increase in competition in the market(s) for coal haulage services covering the Galilee and Newlands systems (and possibly wider).

¹⁷⁰ The QCA stated that: ‘[h]owever, the QCA considers that as DBCT Management does not have a related supply chain business, it would not have an incentive to implement changes to these provisions or to the terminal regulations in a way that would unfairly favour a particular party.’ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 205.

8. Other markets

293. In this section, I briefly assess whether access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in other relevant markets.

8.1 Secondary capacity trading market

294. The QCA explained in respect of DBT that:¹⁷¹

The QCA Act provides for the user of a declared service to transfer all or part of the user's interest in an access agreement subject to certain conditions (s. 106). Pursuant to that provision, the SAAs that have been approved by the QCA give a user (or the DBCT access holder) the right to transfer its contracted access rights to a third party on a permanent or temporary basis; and permit another user or third party to ship coal through DBCT using those access rights.

The ability of users to transfer capacity (or the right to ship) at DBCT creates scope for a secondary market to develop, which involves the trading of existing surplus capacity between users. Indeed, a market has been established by existing users of the DBCT service who elect to use the existing provisions in their user agreements to facilitate swaps, transfers and assignment of access and shipping rights with other users. The QCA therefore considers the DBCT secondary capacity trading market to be a relevant and separate market. [footnotes omitted]

295. Capacity may also be traded by users at NQXT, ie:¹⁷²

A user may assign all or part of its rights or entitlements under its agreement, including all or part of its AMT, either “permanently or in respect of a period of time”, with the prior consent of the owner, which consent is not to be unreasonably withheld. An effective assignment discharges the user from obligations under the user agreement in respect of the rights and entitlements assigned. With the consent of the owner, again not to be unreasonably withheld, a user may permit a third party to present coal to the terminal. [footnotes omitted]

296. Although I do not have detailed information regarding the demand for and supply of secondary capacity at NQXT, I understand that NQXT at one stage offered capacity arising from the withdrawal of Queensland Coal Pty Ltd (QCPL) and that at least one user ‘...had shown interest...’, seeking a ‘...substantial increase from 2020 until 2029, which was rejected by the appellant [NQXT] except for the period of two years preceding the arrival of AMPL [Bravus Mining].¹⁷³

297. In respect of DBT, the QCA categorised capacity transfers of up to one year as ‘short-term’ and capacity transfers of six to 10 years as ‘long-term’.¹⁷⁴ The QCA considered that there were distinct markets for secondary, short-term capacity transfers and the primary market – the market for the service itself.¹⁷⁵

298. In respect of NQXT, I similarly assess whether access to the service as a result of declaration would promote a material increase in competition in a secondary capacity market.

299. In its assessment in relation to DBT, in analysing the effect of declaration on the environment for competition in the secondary capacity trading market the QCA considered the fundamental question was whether coal miners could continue to trade capacity directly with each other in the absence of

¹⁷¹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 208.

¹⁷² *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [22].

¹⁷³ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [102].

¹⁷⁴ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 208. The QCA did not specify whether it considered transfers between one year and six years as short-term or long-term.

¹⁷⁵ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 208.

declaration, or whether DBCT Management would be able to frustrate direct trading of capacity between users.

300. In my opinion, this consideration also applies to NQXT. In particular, it is likely that the most relevant factor would be NQXT's ability to withhold consent for capacity transfers with and without declaration. The existing user agreements state that '...consent is not to be unreasonably withheld...'.¹⁷⁶ However, for the reasons explained in section 2.1.1, such provisions may not be reflective of those that could be struck by an Adani Group-owned NQXT.
301. In the absence of information regarding actual and potential transactions for short-term capacity between users, it is difficult to assess the extent of this ability and thus whether declaration would promote a material increase in competition in this market.

8.2 Other markets

302. Other services provided in relation to the NQXT supply chain includes port services, coal shipping services and various mining inputs and services markets.
303. In its assessment with respect to DBCT, the QCA took the view that the markets for such other services are derivative of:¹⁷⁷
- a. coal export markets, because activity in markets at the port level of the supply chain (eg, port services and coal shipping services) would occur in connection with, or derive from, the activity of coal exports); or
 - b. coal tenements markets, because activity in markets at the mine level of the supply chain (eg, mining inputs and services markets) would occur in connection with, or derive from, the activity of exploration of coal tenements and development of coal tenements into mining operations.
304. On the above considerations, the QCA – also citing decisions by the NCC and Australian Competition Tribunal – assessed that the analysis of whether declaration would promote a material increase in competition in such derivative markets would rely on the conclusion in respect of the coal exports markets and the coal tenements markets.¹⁷⁸
305. In respect of DBT, the QCA's conclusion in respect of the coal exports market and the coal tenements market was that access (or increased access) as a result of declaration would not promote a material increase in competition in those markets and thus it concluded that declaration in that matter would not be likely to have any second-order effects in the derivative markets.¹⁷⁹
306. However, I note that even if competition in a market was not materially promoted by declaration, such that the *total* volume in a market, say, across all relevant coal export markets remained unchanged, changes *across* those markets could have flow-on effects for competition in derivative markets.
307. For example, I note in section 6.2 that NQXT would have the ability and incentive to increase throughput of its own (related party's) thermal coal and reduce the throughput of (third-party) metallurgical coal. Although I expect that thermal coal users and metallurgical coal users are likely to make use of similar or identical port services, such as towage, and so the total demand for those services would be likely to remain similar, the market structure could shift to a more concentrated set of buyers, with Bravus Mining expanding and other users contracting.

¹⁷⁶ *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2021] QCA 187, [22].

¹⁷⁷ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 213.

¹⁷⁸ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 213.

¹⁷⁹ QCA, *Part C: DBCT declaration review*, Final recommendation, March 2020, p 213.

308. It follows that there may be competition implications, without declaration, in these 'derivative' markets, even if declaration did not promote a material increase in competition in the markets from which they derive. In other words, declaration and the access to NQXT that it would imply could promote a material increase in competition, even in derivative markets.

Annexure A – Instructions





6 June 2025

By-Email
Confidential & privileged communication

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Dear Mr Houston

Instructions — Access Declaration for North Queensland Export Terminal facility at Abbot Point

- 1 We act for QCoal Pty Limited and Byerwen Coal Pty Limited (together, the **QCoal Users**).
- 2 The QCoal Users are parties to user agreements under which they are entitled to access coal handling services at the North Queensland Export Terminal facility at Abbot Point (formerly Abbott Point Coal Export Terminal) (the **Terminal**) including the unloading, storing, reclaiming and loading of coal (the **Service**).
- 3 NQXT Holdings Pty Ltd (ACN 150 520 835) (formerly Mundra Port Holdings Pty Ltd) (**NQXT Holdings**) is the lessee under a 99-year lease of the land and fixtures used for the operation of the Terminal. The Terminal land is owned by North Queensland Bulk Ports Corporation Limited (ACN 136 880 218), a Queensland-government owned entity.
- 4 North Queensland Export Terminal Pty Ltd (ACN 149 298 206) (formerly Adani Abbot Point Terminal Pty Limited) (**NQXT**) is the owner of the assets and chattels associated with the operation of the Terminal, and is the party that contracts with Terminal users for the provision of the Service. NQXT sub-leases the Terminal land from NQXT Holdings.
- 5 Abbot Point Operations Pty Limited (**APO**) operates the Terminal, and sub-contracts the operation of the Terminal to Abbot Point Bulkcoal Pty Limited (**APB**).
- 6 The QCoal Users wish to have the Service declared under Part 5 of the *Queensland Competition Authority Act 1997* (Qld) (the **Act**).

Instructions

- 7 We instruct you to prepare a report for the purpose of assisting the Queensland Competition Authority (**QCA**) in deciding whether to recommend that the Service be declared under Part 5 of the Act.
- 8 Your duty is to assist the QCA and not the QCoal Users in preparing your report.
- 9 Your instructions are to express your independent opinion, within the confines of your expertise as an economist, on whether the coal handling service provided at the

Terminal satisfies the criteria in section 76(2) of the Act. In doing so, please have regard to the methodology that was adopted by the QCA and the Queensland Treasurer in assessing the declaration status of the coal handling service provided at the Dalrymple Bay Coal Terminal (**DBCT**).

- 10 You should assume for the purpose of your report that any proposed declaration of a service under the Act will take effect from 1 July 2027. You should also assume for the purpose of your analysis a declaration period of 10 years.

Documents Provided

- 11 You have previously been provided with a copy of the mine production forecasts as provided by both AME and Wood Mackenzie for a number of mines operating north of the Goonyella system.

Expert independence

- 12 Although your report is not being prepared for use in court proceedings, we request that in undertaking this engagement you comply with the duties and requirements of an expert for court proceedings as set out in rules 429F and 429H of the *Uniform Civil Procedure Rules 1999* (Qld) (**UCPR**), as if those duties and requirements applied to these instructions. A copy of rules 429F and 429H and Schedule 1C of the UCPR (**Experts' Code of Conduct**) is **enclosed** with these instructions.

- 13 As applied to these instructions, those duties provide that your obligation to act independently in assisting the QCA overrides any other obligations that you may have to any party or to any person who is liable for your fees and expenses.

- 14 Consistent with these requirements, we request that your report include written confirmation that:

- (a) you have read, and agree to be bound by, the Experts' Code of Conduct to the extent that it imposes duties and obligations on you relevant to your role as an expert in your assistance of the QCA;
- (b) the factual matters stated in the report are, as far as you know, true;
- (c) you have made all inquiries considered appropriate;
- (d) the opinions stated in the report are genuinely held by you;
- (e) the report contains references to all matters you consider significant; and
- (f) you understand your duty to the QCA and you have complied with that duty.

- 15 In addition, please enclose or include in your report the following:

- (a) your curriculum vitae and any other relevant training, education and experience;
- (b) a statement of the questions you have been asked to consider as set out in this letter;
- (c) the factual premise(s) upon which your report proceeds; and
- (d) the documents and other materials which you have been provided with and instructed to consider in the preparation of your report.

16 Please let us know if you have any questions or if you require any further information at this stage.

Yours sincerely
Arnold Bloch Leibler

A handwritten signature in black ink, appearing to read 'Stephen Lloyd', written in a cursive style.

Stephen Lloyd
Partner

A handwritten signature in blue ink, appearing to read 'Matthew Lees', written in a cursive style.

Matthew Lees
Partner

Uniform Civil Procedure Rules 1999

Reprint current from 13 September 2024 to date (accessed 3 June 2025 at 11:59)

[Chapter 11](#) > [Part 5](#) > [Division 4](#) > Section 429F

429F Duty of expert

- (1) The expert has a duty to assist the court.
- (2) The expert—
 - (a) is not an advocate for a party to the proceeding; and
 - (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert must comply with the requirements under the code of conduct.
- (4) However, subrule (3) does not limit any provision of this part.
- (5) The expert's duties under this rule override any obligation the expert may have to—
 - (a) any party to the proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

Uniform Civil Procedure Rules 1999

Reprint current from 13 September 2024 to date (accessed 3 June 2025 at 11:59)

[Chapter 11](#) > [Part 5](#) > [Division 4](#) > Section 429H

429H Requirements for report

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The report must include the following information—
 - (a) the expert's qualifications;
 - (b) all material facts, whether written or oral, on which the report is based;
 - (c) the expert's reasons for each opinion expressed in the report;
 - (d) references to any literature or other material relied on by the expert to prepare the report;
 - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
 - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
 - (h) a summary of the conclusions reached by the expert;
 - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
- insufficient data

- (4) The expert must confirm in the report that—

- (a) the expert has read, and agrees to be bound by, the code of conduct; and
- (b) the factual matters stated in the report are, as far as the expert knows, true; and
- (c) the expert has made all inquiries considered appropriate; and
- (d) the opinions stated in the report are genuinely held by the expert; and
- (e) the report contains reference to all matters the expert considers significant; and
- (f) the expert understands the expert's duty to the court and has complied with the duty.

Uniform Civil Procedure Rules 1999

Reprint current from 13 September 2024 to date (accessed 3 June 2025 at 11:59)

Schedule 1C

Schedule 1C Code of conduct for experts

rule 425, definition *code of conduct*

Part 1 Preliminary

1 Purpose of code

- (1) The purpose of this code of conduct is—
 - (a) to state an expert's obligations under the following provisions of chapter 11, part 5—
 - (i) rule 429A;
 - (ii) rule 429B(1), (2), (5) and (6);
 - (iii) rule 429F;
 - (iv) rule 429H;
 - (v) rule 429K(1) and (2); and
 - (b) otherwise to state an expert's obligations in relation to an order made, or a direction given, by the court.
- (2) In this code of conduct, the information included in square brackets after a rule heading is a reference to the comparable rule under chapter 11, part 5.
- (3) The brackets and information do not form part of these rules.

2 Application of code

- (1) This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a proceeding.

Note—

Rule 429F requires the expert to comply with the requirements under this code of conduct.

- (2) In a provision of this code of conduct that refers to a direction given under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, a reference to a joint report is a reference to a report about the conference that states—
 - (a) the matters, if any, on which the experts agree; and
 - (b) the matters, if any, on which the experts disagree and the reasons for any disagreement.

Part 2 Duty to comply with orders and directions

3 Duty to comply with court's orders and directions

- (1) An expert must comply with an order made, or a direction given, by the court.

- (2) Without limiting subrule (1), if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, the experts must hold the conference, and prepare the joint report, in compliance with the direction.

Part 3 Experts' conferences and joint reports

4 Application of part

This part applies if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report.

5 Experts' conference and joint report [r 429A]

- (1) In holding the conference and preparing the joint report, the experts—
 - (a) must exercise independent judgement; and
 - (b) must endeavour to reach an agreement on any matter on which they disagree; and
 - (c) must not act on any instruction or request to withhold or avoid reaching an agreement.
- (2) Unless the court directs otherwise, the experts must—
 - (a) hold the conference in the absence of the parties or their agents; and
 - (b) prepare the joint report without reference to, or instructions from, the parties or their agents.
- (3) The experts must give the joint report to the parties—
 - (a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or
 - (b) otherwise—as soon as practicable after the conference has concluded.
- (4) This rule is subject to rule 6.

6 Permitted communications between experts and parties [r 429B(1), (2), (5) and (6)]

- (1) Any of the experts may, in writing—
 - (a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or
 - (b) inform the parties of any matter adversely affecting the proper and timely conduct or conclusion of the conference or preparation of the joint report.
- (2) A communication mentioned in subrule (1) must—
 - (a) be made jointly to all of the parties; and
 - (b) state—
 - (i) whether or not all of the experts agree on the terms of the communication; and
 - (ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.
- (3) The experts must, within 2 business days after a request is made under rule 429B(4), give a progress report about the progress of the conference or the joint report.
- (4) The progress report must state—

- (a) whether or not all of the experts agree on the terms of the report; and
- (b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

Part 4 Giving of evidence by experts and related matters

7 Duty of expert [r 429F]

- (1) The expert has a duty to assist the court.
- (2) The expert—
 - (a) is not an advocate for a party to the proceeding; and
 - (b) must not accept instructions from any person to adopt or reject a particular opinion.
- (3) The expert's duties under this rule override any obligation the expert may have to—
 - (a) any party to the proceeding; or
 - (b) any person who is liable for the expert's fees or expenses.

8 Requirements for report [r 429H]

- (1) A report prepared by the expert must be addressed to the court and signed by the expert.
- (2) The report must include the following information—
 - (a) the expert's qualifications;
 - (b) all material facts, whether written or oral, on which the report is based;
 - (c) the expert's reasons for each opinion expressed in the report;
 - (d) references to any literature or other material relied on by the expert to prepare the report;
 - (e) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (f) if there is a range of opinion on matters dealt with in the report—a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
 - (g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;
 - (h) a summary of the conclusions reached by the expert;
 - (i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's

belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
- insufficient data

- (4) The expert must confirm in the report that—
- (a) the expert has read, and agrees to be bound by, the code of conduct; and
 - (b) the factual matters stated in the report are, as far as the expert knows, true; and
 - (c) the expert has made all inquiries considered appropriate; and
 - (d) the opinions stated in the report are genuinely held by the expert; and
 - (e) the report contains reference to all matters the expert considers significant; and
 - (f) the expert understands the expert's duty to the court and has complied with the duty.

9 Supplementary report following change of opinion [r 429K(1) and (2)]

- (1) Subrule (2) applies if the expert changes, in a material way, an opinion in a report prepared by the expert under chapter 11, part 5 (an *earlier report*).
- (2) Unless the expert knows the proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to—
 - (a) if the expert is a court-appointed expert—the registrar; or
 - (b) otherwise—the party who appointed the expert.

Annexure B – Curriculum vitae



Greg Houston

Partner

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Overview

Greg is a founding partner of HoustonKemp. He is an expert in the application of economics to assist high stakes decision-making in competition, finance, policy, regulatory and industrial relations matters.

In the antitrust sphere, Greg is regularly sought to advise on the competitive effects of proposed merger transactions, and to provide expert testimony in antitrust enforcement proceedings. His evidence has been cited favourably in numerous proceedings before the courts, the Competition Tribunal and in the decisions of Australian and international arbitrators. For many years, Greg has been listed as one of the world's leading competition economists while, most recently, Greg was named by Lexology as a 'Global Elite Thought Leader' for his contributions to competition economics.

On regulatory matters, Greg has played a substantial role over many years in shaping the development of economic regulatory regimes governing airport, communications, energy, maritime port and water services infrastructure in Australia and the Asia Pacific region. His clients in this area include governments, regulators, infrastructure service providers, users and trade associations.

Greg is also the foremost expert in the region on the application of economics to critical questions arising in securities markets, insider trading and market manipulation. He has filed expert reports in numerous proceedings concerning the adequacy and effect of disclosures in relation to listed and unlisted securities, in both Australia and New Zealand. Greg's evidence was substantially accepted in three of the few wrongful disclosure matters for which final judgment was informed by economic evidence.

In April 2014, Greg – together with Adrian Kemp – founded HoustonKemp, a firm dedicated to applying economic analysis to bring clarity and focus to complex problems arising in competition, finance, policy and regulation.

Greg holds a first class honours degree in economics from the University of Canterbury and is a member of the Competition and Consumer Committee of the Law Council of Australia.

Qualifications

1982 **University of Canterbury, New Zealand**
B.Sc. (First Class Honours) in Economics

Prizes and scholarships

1980 University Junior Scholarship, New Zealand

Career details

2014-	HoustonKemp Economists Partner, Sydney, Australia
1989-2014	NERA Economic Consulting Director (1998-2014) London, United Kingdom (1989-1997) Sydney, Australia (1998-2014)
1987-1989	Hambros Bank, Treasury and capital markets Financial Economist, London, United Kingdom
1983-1986	The Treasury, Finance sector policy Investigating Officer, Wellington, New Zealand

Project experience¹

Competition, access and mergers

2025	Foodstuffs Analysis of grocery sector competition Preparation of an expert report for submission to Ministry of Business, Industry and Enterprise in response to its 'request for information' on means of supporting a new competitor in the New Zealand supermarket sector.
2024-2025	Allens/Confidential ACCC grocery inquiry Advice and analysis to a major grocery retailer in relation to the inquiry by the Australian Competition and Consumer Commission (ACCC) into the retail grocery sector.
2024	DMAW Law/AdBri Competitive effects of agreement Expert report submitted to the Supreme Court of South Australia on the competitive effects of certain provisions in an agreement for the exclusive supply of cementitious products by AdBri to a South Australian concrete manufacturer.
2023-2024	Chapman Tripp/Foodstuffs Merger clearance Advice, analysis and expert reports prepared in relation to the application before the New Zealand Commerce Commission for clearance of the proposed merger of Foodstuffs' North Island and South Island retail grocery co-operatives.
2023-2024	Clayton Utz/Apple Inc Alleged misuse of market power Expert reports and evidence given before the Federal Court on market definition, market power and the competitive effects of the terms applying to use of the App Store by app developers and app users, in the context of proceedings brought by Epic Games (and others) against Apple (and Google).

¹ Past ten years only.

- 2022-2024** **Piper Alderman/Stillwater Pastoral**
Damages estimation
Expert report prepared for a mediation on the estimated effect on retail electricity prices of alleged short notice rebidding of capacity into the electricity market by the two major Queensland electricity generators, Stanwell and CS Energy.
- 2022-2023** **Allens/Brookfield Renewable Group**
Authorisation of proposed transaction
Expert reports submitted to the ACCC on the ability of AusNet, Intellihub and Origin Energy Markets to engage in any vertical foreclosure strategy or discriminatory conduct with respect to wholesale or retail suppliers of electricity or related services, in the context of Brookfield's proposed acquisition of Origin Energy.
- 2022-2023** **Norton Rose Fulbright/Coles Group**
Merger clearance
Expert reports submitted to the ACCC on the effects of competition in vertically related markets in the context of the acquisition by Coles of two fresh milk processing facilities from Saputo Dairy.
- 2022-2023** **Minter Ellison/Singtel Optus**
Authorisation of network and spectrum sharing
Expert reports submitted to the ACCC on the competitive effect of proposed arrangements between Telstra and TPG in the context of their application for authorisation of agreements involving the transfer of radio spectrum, the decommissioning of telecommunications assets and the sharing of radio access network services underpinning the provision of mobile telephony services.
- 2020-2022** **Chapman Tripp & DLA Piper/Foodstuffs**
Competition market study
Advice, analysis and expert reports prepared in relation to the New Zealand Commerce Commission's market study of the retail grocery sector, and subsequent government proposals to establish a wholesale grocery access regime, and to analyse the costs and benefits of forced divestiture of retail grocery outlets.
- 2022** **Ashurst/Cardtronics**
Authorisation of proposed transaction
Expert report submitted to the ACCC on the competitive effects and public benefits arising in the context of the proposed merger of cash in transit service providers, Armaguard and Prosegur.
- 2022** **Minter Ellison/NIB Health Fund**
Authorisation of collective buying group
Expert report before the Competition Tribunal in the context of its review of the decision by the ACCC to authorise the establishment of a collective buying group in the health insurance sector.
- 2022** **Mills Oakley/confidential client**
Competition effects of restrictions
Advice and analysis of the effects on competition of several state-based restrictions applying in relation to classes of gambling products.

- 2020-2021** **DLA Piper/Perth Airport**
Market value assessment
Expert reports prepared in the context of *quantum meruit* proceedings before the Supreme Court of Western Australia in relation to the market value of aeronautical services provided at Perth Airport to Qantas Group airlines between July and December 2018.
- 2017-2021** **Gilbert + Tobin/BlueScope**
Alleged cartel conduct
Advice and analysis in relation to an ACCC investigation and then prosecution of alleged cartel conduct.
- 2021** **Clayton Utz/Port of Newcastle Operations**
Collective bargaining authorisation review
Expert report and evidence given before the Competition Tribunal in the context of its review of the decision by the ACCC to authorise collective bargaining for port access services by Hunter Valley coal producers.
- 2021** **Ashurst, King & Wood Mallesons/Ovato-Are Media**
Merger clearance
Advice and expert reports submitted to the ACCC and the New Zealand Commerce Commission in relation to attaining clearance in Australia and New Zealand for magazine publisher Are Media to acquire the magazine distribution business of Ovato.
- 2019-2020** **King & Wood Mallesons/Confidential client**
Merger authorisation
Advice and preparation of expert report for use in a potential application for authorisation of a proposed transaction in the health sector.
- 2018-2020** **Squire Patton Boggs/Confidential client**
Market power provision
Advice and reports prepared on the application of an industry-specific regulation directed at limiting a firm's pricing conduct in circumstances where it has market power.
- 2018-2020** **Queensland Rail**
Access to facilities
Advice in relation to the review by the Queensland Competition Authority (QCA) of the declared status of services provided by QR's five rail networks, as well as the QCA's simultaneous review of the access undertaking applying to those networks.
- 2018-2020** **DLA Piper/DBCT Management**
Access to facilities
Expert reports submitted to the QCA review of the declared status of services provided by the Dalrymple Bay Coal Terminal.
- 2017-2020** **King & Wood Mallesons**
Competition analysis
Advice to a major digital platform service provider on competition matters arising in the ACCC's digital platforms inquiry, and the development of the news media and digital platforms bargaining code.

- 2015-2020** **Port of Newcastle Operations**
Access to facilities
Advice and expert reports submitted to the National Competition Council on matters arising in applying the criteria for declaration under Part IIIA, in the context of applications by Glencore and the NSW Minerals Council seeking recommendation that navigation service be declared, and PNO's application for recommendation that the declaration of services be revoked.
- 2020** **Ashurst/ASN**
Exclusive dealing
Expert report on the competitive effects of the exclusive dealing notification to the ACCC by the dedicated TV shopping channel retailer TVSN, proposing to be able to acquire products from suppliers on an exclusive basis.
- 2017-2019** **Wilson Harle/Wilson Parking**
Competitive effects of merger
Expert report submitted in High Court of New Zealand proceedings (settled shortly before trial) brought by the Commerce Commission concerning the competitive effects of an already completed merger transaction.
- 2017-2019** **Ashurst/Confidential client**
Anti-competitive bundling
Advice in relation to an ACCC's investigation of bundled discounts that were alleged to have had an anti-competitive effect.
- 2018** **Westpac Banking Corporation**
Competition analysis
Expert report prepared for the Productivity Commission in response to the draft finding in its banking competition inquiry that each of Australia's banks holds substantial market power.
- 2017** **Minter Ellison Rudd Watts/Complete Office Supplies**
Competitive effects of merger
Expert reports submitted in High Court of New Zealand proceedings concerning the proposed acquisition of OfficeMax by Platinum Equity injunction.
- 2017** **Minter Ellison/CrownBet**
Merger authorisation
Expert reports and testimony in Competition Tribunal proceedings concerning the proposed acquisition of Tatts by Tabcorp.
- 2014-2016** **Ashurst and Gilbert + Tobin/Confidential client**
Competitive effects of agreements
Analysis and advice prepared in context of an ACCC investigation of agreements between a supplier and its major customers that are alleged to harm competition.
- 2016** **Bird & Bird/Generic Health**
Competitive effects of patent infringement
Expert reports and testimony in Federal Court proceedings concerning the damages arising from infringement of a pharmaceutical patent in relation to a pharmaceutical patent.
- 2016** **Manildra Group**
Competition analysis
Advice and preparation of an expert report assessing competitive constraints in the supply of fuel grade ethanol.

2016 **Clayton Utz/Anglo American**
Competitive effects analysis
Expert reports assessing the economic impact on the equine critical industry cluster if certain thoroughbred breeding operations were to leave the Upper Hunter.

2014-2015 **Australian Government Solicitor/Commonwealth of Australia**
Competition and trade analysis
Expert report on competition and trade in tobacco products, prepared in the context of the World Trade Organisation dispute settlement proceedings concerning Australia's tobacco plain packaging legislation.

Regulatory analysis

2025 **Clayton Utz/Port of Newcastle**
Regulatory determination of wharfage charges
Expert report submitted to the Supreme Court of NSW in the context of proceedings brought by Glencore concerning the arbitral re-determination of wharfage charges levied on coal exporters at the Port of Newcastle.

2025 **Barrenjoey Capital Partners**
Regulatory due diligence
Advice and preparation of a vendor due diligence report in the context of the potential sale of a stake in the NSW transmission network service provider, Transgrid.

2022-2023 **Brookfield Renewable Group**
Regulatory due diligence
Advice and preparation of a regulatory due diligence report on regulatory and competition matters arising in the context of Brookfield's proposed acquisition of Origin Energy.

2022-2023 **Barrenjoey Capital Partners**
Regulatory due diligence
Advice and preparation of a vendor due diligence report in the context of the sale of a stake in the NSW electricity network service provider, Endeavour Energy. This work focused on the regulatory framework for regulation of electricity network services and its evolution in the transition towards a lower carbon energy sector.

2023 **Chapman Tripp/Transpower**
Efficiency effects of transmission pricing decision
Expert report submitted to the High Court of New Zealand in the context of an application for judicial review of Transpower's proposed reclassification of transmission assets serving the electricity distribution customers of Buller Electricity.

2020-2022 **DLA Piper/Perth Airport**
Quantum meruit determination
Expert reports and evidence given in proceedings before the Supreme Court of Western Australia on the appropriate methodology and its application in a quantum meruit application to determine the fair and reasonable price for aeronautical services provided by Perth Airport Pty Ltd to Qantas Group during 2018, the price for which was in dispute.

- 2019-2021** **DLA Piper/Dalrymple Bay Infrastructure**
Review of access undertaking
Advice and expert reports prepared in the context of the Queensland Competition Authority's review of the access undertaking for users of the Dalrymple Bay coal terminal.
- 2021** **Crown Solicitor/ESCOSA**
Review of regulatory determination
Conducted a formal review of the Essential Services Commission of South Australia's (ESCOSA) final determination of maximum allowed revenue for the licensed Compass Springs drinking water services provider, Robusto Investments, and subsequently, prepared expert reports and gave evidence before the South Australia Civil and Administrative Tribunal.
- 2021** **Brookfield Asset Management**
Regulatory due diligence
Advice and preparation of a regulatory due diligence report and advice on competition matters arising in the context of Brookfield's acquisition of the Victorian electricity and gas network service provider, AusNet Services.
- 2021** **Barrenjoey Capital Partners**
Regulatory due diligence
Advice and preparation of a vendor due diligence report in the context of the sale by Australian Super of a stake in the NSW electricity network service provider, Ausgrid. This work focused on the regulatory framework for regulation of electricity network services and its likely evolution in the face of the transition towards a lower carbon energy sector.
- 2021** **Barrenjoey Capital Partners**
Regulatory due diligence
Advice and preparation of a regulatory due diligence report in the context of the acquisition of the electricity network service provider, Spark Infrastructure Group by a consortium of KKR, OTPP and PSP.
- 2019** **Brookfield Asset Management/Bank of America**
Regulatory due diligence
Vendor due diligence report on all regulatory aspects of the arrangements – and potential developments therein – applying to the Dalrymple Bay coal terminal.
- 2017-2018** **King & Wood Mallesons/Tasmania Gas Pipeline**
Gas pipeline arbitration arrangements
Expert reports on economic aspects of the Part 23 regime arbitration with Hydro Tasmania on the terms of access to the Tasmanian Gas Pipeline.
- 2017-2018** **Victorian and South Australian electricity distribution networks**
Productivity adjustments
Expert report on the conceptual and empirical basis for pre-emptive productivity adjustments to DNSPs' projected operating expenditure.
- 2017-2018** **Jemena**
Gas pipeline arbitration arrangements
Advice and analysis in relation to the new rules for arbitration of prices for services provided by non-scheme gas pipelines.

- 2016-2018** **APA Group**
Gas market reform
Expert reports submitted to the Gas Market Reform Group in the context of its review of the gas pipeline coverage criteria, and the proposal to introduce the compulsory auction of contracted but un-nominated gas pipeline capacity.
- 2018** **Johnson Winter & Slattery/Queensland Competition Authority**
Apprehension of bias claim
Expert reports submitted to the Queensland Supreme Court showing the chain of causation necessary for a connection between the QCA's Aurizon draft decision and the economic interests of the Port of Newcastle.
- 2016-2017** **Minter Ellison Rudd Watts/Trustpower, New Zealand**
Transmission pricing methodology
Expert reports submitted to the Electricity Authority and to the High Court of New Zealand in relation to proposed reforms to the transmission pricing methodology and the distributed generation pricing principles.
- 2015-2017** **Government of New South Wales**
Economic regulation for privatisation
Advisor to government of New South Wales on all economic regulatory aspects of the proposed partial lease the electricity transmission and distribution entities, TransGrid, AusGrid and Endeavour Energy.
- 2014-2016** **Powerco**
Input methodologies review
Advice and several expert reports prepared in the context of the Commerce Commission's reviews of cost of capital and others aspects of the Input Methodologies governing the determination of maximum prices for New Zealand electricity and gas distribution networks.
- 2016** **Johnson Winter & Slattery/Australian Gas Networks**
Materially preferable decision
Expert report reviewing whether aspects of the Australian Energy Regulator's (AER's) draft access arrangement decision would be likely to result in a materially preferable decision in terms of achievement of the national gas objective.
- 2014-2016** **Atco Gas**
Access price review
Expert reports on the economic interpretation of provisions in the national gas law and rules in relation to depreciation and the application of the national gas objective to the entire draft decision, submitted to the Economic Regulation Authority of WA.
- 2014-2016** **Government of Victoria**
Economic regulation for privatisation
Advisor to government of Victoria on the design, development and application of the framework for economic regulation of the Port of Melbourne Corporation in the context of the privatisation of the port by way of long term lease.

Industrial relations analysis

- 2025** **Norton Rose Fulbright/Veolia**
Impact of proposed determination on enterprise viability
Expert report submitted to the Industrial Relations Commission on the likely impact of a Transport Workers Union application for the making of a contract determination in relation to Veolia's commercial waste collection services.
- 2025** **Crown Solicitor/NSW Government**
Context for and effect of potential wage increases
Expert reports and sworn evidence before the Industrial Relations Commission on the economic context for and analysis of historical changes and proposed increases in real wages for employees of Fire and Rescue NSW.
- 2024** **Crown Solicitor/NSW Government**
Effect of industrial action by Sydney Train employees
Expert report submitted to the Fair Work Commission on the economic effect of notified protected industrial action by Sydney Train employees over the New Year's Eve holiday period.
- 2024** **Minter Ellison/Transgrid**
Regulatory context and analysis of wage increases
Expert report and sworn evidence before the Fair Work Commission on the effects of wage increases beyond those incorporated into the regulatory framework for transmission service providers, and historical and proposed increases in real wages.
- 2024** **Crown Solicitor/NSW Government**
Context for and effect of potential wage increases
Expert report submitted to the Industrial Relations Commission on the economic context for and analysis of historical changes and proposed increases in real wages for New South Wales (NSW) public sector employees.
- 2024** **Minter Ellison/Transgrid**
Effect of electricity outages
Expert report submitted to the Fair Work Commission on the economic effect of industrial action on Transgrid's network that had the capacity to cause electricity power outages across NSW.
- 2023-2024** **Minter Ellison /DP World**
Effect of industrial action by stevedores
Expert report assessing the economic impact of ongoing notified protected industrial action by stevedores at the ports of Brisbane, Sydney, Melbourne and Freemantle.
- 2022-2023** **Crown Solicitor/NSW Government**
Context for and effect of potential wage increases
Expert report and evidence before the Fair Work Commission on the economic context for and analysis of historical changes and proposed increases in real wages for employees of Sydney Trains and NSW Trains.
- 2022** **Seyfarth Shaw/Svitzer**
Effect of industrial action by tugboat masters
Expert report and evidence before the Fair Work Commission assessing the economic effect of industrial action by tugboat masters affecting the provision of harbour towage services at container and bulk trade ports in Queensland, NSW, South Australia and Western Australia.

- 2021** **Seyfarth Shaw/Australian Fresh Produce Alliance**
Earnings of piece rate and hourly paid workers in horticultural sector
Expert reports submitted to the Fair Work Commission in the context of an application brought by the Australian Workers Union, assessing empirical evidence concerning both the level and relative earnings of piece rate and hourly paid workers in the horticultural sector.
- 2020** **Seyfarth Shaw/Patrick**
Effect of industrial action by stevedores
Expert report submitted to the Fair Work Commission assessing the economic impact on the Australian and NSW economies of notified protected industrial action by stevedores.
- 2020** **Seyfarth Shaw/DP World**
Effect of industrial action by stevedores
Expert reports submitted to the Fair Work Commission assessing the economic impact on the Australian and NSW economies of notified protected industrial action by stevedores.
- 2020** **Crown Solicitor for New South Wales**
Relative economic effects of government expenditure decisions
Expert reports and testimony before the NSW Industrial Relations Commission in relation to the relative effects on the NSW economy of salary increases for public sector employees, as compared with increased expenditure on infrastructure projects – in the context of the effects of the Covid-19 pandemic.
- 2019** **Seyfarth Shaw/Confidential client**
Effect of potential industrial action by stevedores
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that various forms of industrial action by stevedores would be likely to have on the Australian economy.
- 2016-2017** **Seyfarth Shaw/Confidential client**
Effect of potential industrial action by stevedores
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that various forms of industrial action by stevedores would be likely to have on the Australian economy.
- 2015-2016** **Airservices Australia**
Effect of potential industrial action by air traffic controllers
Analysis and draft expert report in the context of a potential application to the Fair Work Commission addressing the economic effect that certain forms of industrial action by Air Traffic Controllers would be likely to have on passengers, businesses, and the Australian economy.

Valuation and contract analysis

- 2024** **Clayton Utz/Synergy**
Expert reports and sworn evidence in arbitration proceedings concerning the new market price to be applied in a long term gas supply agreement between the Gorgon Joint Venture and Synergy.

- 2022-2023** **Gilbert +Tobin/Beach Energy**
Expert reports submitted in arbitration proceedings concerning the new market price to be applied in a long term gas supply agreement between Beach Energy and a major purchaser of wholesale gas.
- 2023** **DLA Piper & Arnold Bloch Leibler/Coal terminal users**
Price review arbitration
Expert reports and sworn evidence in arbitration proceedings concerning the application of the price review clauses in the standard user agreement for the North Queensland Export Terminal.
- 2023** **Quinn Emmanuel/Representative proceeding**
Economic loss estimate
Expert report submitted to the Supreme Court of Victoria estimating economic loss to group members seeking compensation as a result of the Stage 3 and/or Stage 4 restrictions imposed in Melbourne and regional Victoria in response to the second wave COVID-19 outbreak in July to October 2020.
- 2021-2023** **Northern Lands Council**
Native title compensation
Expert reports and sworn evidence before the Federal Court on the economic framework for determining the amount of compensation necessary to restore native title claimants to the economic position they would be in today, had they not been deprived of the opportunity to bargain in relation to the alleged infringement of native title rights three decades ago.
- 2018-2020** **DLA Piper/Basslink Pty Ltd**
Damages valuation
Expert reports and sworn evidence in arbitration proceedings concerning the extent of damages arising from the 2016 failure of the Basslink electricity interconnector cable between the Tasmanian and Victorian regions of the national electricity market.
- 2017-2019** **DLA Piper & Arnold Bloch Leibler/Coal terminal users**
Price review arbitration
Expert reports and sworn evidence in arbitration proceedings concerning the application of the price review clauses in the standard user agreement for Adani Abbot Point coal terminal.
- 2022** **Minter Ellison Rudd Watts/Confidential client**
Damages valuation
Expert report submitted in an arbitration proceeding concerning a claim for damages arising from alleged negligence by a major insurance broking firm in relation to its advice and placement of insurance cover for earthquake-related loss and damage.
- 2016** **SyCip Salazar Hernandez & Gatmaitan/Maynilad Water Services**
Concession contract dispute
Expert reports and sworn evidence in arbitration proceedings concerning the application of the price review clauses in the Manila Water Concession agreements.

- 2015-2016** **Clyde and Co/Apache Corporation**
Contract dispute
Expert reports submitted in the context of Supreme Court of Victoria proceedings concerning the appointment of receivers for Burrup Fertilisers Pty Ltd, in relation to the market price of gas available to supply an anhydrous ammonia plant on the Burrup Peninsula.
- 2015-2016** **Raja, Darryl & Loh/Serudong Power Sdn Bhd (SPSB)**
Power purchase agreement arbitration
Expert reports submitted in the context of an international arbitration held in Kuala Lumpur concerning the interpretation of price indexation provisions in a power purchase agreement between SPSB and Sabah Electricity Sdn Bhd.
- 2015-2016** **Australian Government Solicitor/Commonwealth of Australia**
Native title compensation
Expert reports and evidence before the Federal Court in relation to the native title compensation claim against the Northern Territory for certain acts extinguishing native title in the town of Timber Creek.

Securities and finance

- 2024** **Norton Rose Fulbright/Macleod**
Materiality of information
Expert report submitted to the Federal Court in proceedings brought by the Australian Securities and Investments Commission (ASIC) against the CEO of Noumi in relation to the materiality of information and its expected effect on the price of Noumi shares.
- 2024** **Cuncannon Partners/Intueri shareholders**
Materiality of information
Expert report prepared for mediation in relation to the adequacy of prospectus disclosures for the initial public offering of Intueri Education Group, as well as Intueri's subsequent disclosures to the New Zealand Securities Exchange (NZX).
- 2023** **Minter Ellison/ASIC**
Materiality of information
Expert reports and sworn evidence before the Federal Court in proceedings brought by ASIC alleging that Nuix Limited and its Directors failed to notify the ASX of information that was material to the price of its securities and thereby breached its continuous disclosure obligations.
- 2021-2023** **Slater and Gordon/Representative proceeding**
Materiality of information
Expert reports submitted to the Federal Court in the context of proceedings – settled, prior to trial – concerning the likely materiality of profit-related information as regards the price of ASX-listed securities in G8 Education Limited.
- 2021-2023** **HWL Ebsworth/iSignthis**
Materiality of information
Expert reports and sworn evidence before the Federal Court in proceedings brought by ASIC alleging that iSignthis and/or its Chief Executive Officer failed to notify the ASX of information that was material to the price of its securities and so breached its continuous disclosure obligations.

- 2022-2023** **Shine Lawyers/Representative proceeding**
Breach of disclosure obligations
Expert reports and sworn evidence before the Federal Court in proceedings concerning the effect of certain disclosures on the price of ASX listed securities in Insignia Financial Limited.
- 2022** **Watson Mangioni/Regency**
Appropriate litigation funding commission
Expert report before the Federal Court in six settlement approval proceedings on the funding commission to be paid upon settlement of group proceedings brought against manufacturers of motor vehicles containing Takata air bags.
- 2022** **Madison Marcus/Galactic**
Appropriate litigation funding commission
Expert report and evidence before the Federal Court in proceedings seeking approval of the funding commission to be paid upon settlement of group proceedings brought against the franchisor of 7-Eleven stores.
- 2019-2021** **Shine Lawyers/Representative proceeding**
Breach of disclosure obligations
Expert reports and sworn evidence before the Federal Court in proceedings concerning the effect of certain disclosures on the price of ASX listed securities in Iluka Limited.
- 2020-2021** **SBA Law/Pitcher Partners**
Valuation of damages
Expert reports and sworn evidence in the context of Federal Court proceedings brought against Pitcher Partners in its role as group auditor of consumer law firm Slater & Gordon and alleging it failed to recognise the need for an impairment of Slater & Gordon's UK subsidiary in light of poorer than expected financial performance and pending regulatory changes.
- 2020-2021** **Australian Securities and Investments Commission**
Breach of disclosure obligations
Expert reports submitted in the context of Federal Court proceedings brought by ASIC in relation to the materiality for the price of its securities of the January 2013 disclosure by Rio Tinto Limited of an impairment to the value of Rio Tinto Coal Mozambique assets.
- 2021** **Maurice Blackburn Lawyers/Representative proceeding**
Appropriate litigation funding commission
Expert reports prepared in the context of proceedings before the Supreme Court of Victoria seeking approval of a GCO for application in representative proceedings brought against ANZ and Westpac banks concerning the application of flex commissions in the sale of motor vehicles.
- 2019-2020** **Joint Action Funding/Representative proceeding**
Valuation of damages
Expert reports submitted to the New Zealand High Court in the matter of Eric Houghton versus parties associated with former listed entity, Feltex Carpets, on the extent of loss arising from the allotment of shares under an IPO for which the prospectus contained untrue statements.

- 2019-2020** **Slater & Gordon/Representative proceeding**
Breach of disclosure obligations
Expert reports submitted in the context of proceedings before the Federal Court concerning the effect of certain disclosures on the price of ASX listed securities in Spotless Limited.
- 2019-2020** **Arnold Bloch Leibler/Australian Funding Partners**
Appropriate litigation funding commission
Expert reports and sworn testimony in the proceedings before the Victorian Supreme Court concerning the appropriate level of funding commission to apply in the context of the 2018 settlement of representative proceedings brought against Banksia Securities Limited.
- 2017-2020** **Portfolio Law/Representative proceeding**
Misleading and deceptive conduct
Expert reports and sworn testimony in representative proceedings before the Federal Court concerning the effect of certain disclosures on the price of ASX listed securities in Myer.
- 2020** **Corrs/Balance Legal Capital**
Appropriate litigation funding commission
Expert report prepared in the context of proceedings to approve the settlement of a consumer class action brought against Swann Insurance, on the reasonable range of and return on investment implied by historically observed funding commission rates in previous class action proceedings in Australia.
- 2020** **Johnson Winter & Slattery/Representative proceeding**
Group cost order application
Expert report prepared in the context of an application to be brought before the Supreme Court of Victoria to make a GCO, under which the legal costs and funding commission for a representative proceeding would be set by reference to a percentage of the settlement amount.
- 2020** **McCabe Curwood/Lewer Corporation**
Economic interpretation of loan agreement
Expert report prepared for the Supreme Court of Victoria as to whether a US dollar loan could be interpreted, economically, as equivalent to the sum of an Australian dollar loan plus a foreign exchange forward contract.
- 2020** **JWS/Australian Securities and Investments Commission**
Breach of disclosure obligations
Expert report in reply submitted in the context of Federal Court proceedings brought by ASIC concerning the materiality for the price of its securities of information omitted from ASX disclosures made by GetSwift Limited.
- 2017-2018** **Australian Pipelines and Gas Association**
Allowed rate of return
Advice in relation to the rate of return guideline review being undertaken by the Australian Energy Regulator (AER), including participation in the AER's concurrent expert evidence session one.
- 2018** **William Roberts/Representative proceeding**
Misleading and deceptive conduct
Preliminary analysis on the extent of liability and potential damages arising from a shareholder class action alleging breach of disclosure obligations.

- 2016-2017** **Allens/QBE**
Shareholder class action
Advice and analysis on the extent of liability and potential damages arising from a shareholder class action alleging breach of QBE's ASX disclosure obligations.
- 2017** **Slater and Gordon/Gasmere Ltd**
Share portfolio valuation
Expert report prepared in relation to Supreme Court of Victoria proceedings brought against Shaw and Partners concerning the appropriate valuation of a share portfolio, the subject of a damages claim following the collapse of Opus Prime.
- 2015-2016** **Maurice Blackburn/Representative proceeding**
Misleading and deceptive conduct
Expert reports submitted to the Federal Court assessing the effect of alleged misstatements in relation to the annual accounts and associated going concern assumption in relation to Tamaya Resources (in liquidation).
- 2016** **Elliot Legal/Representative proceeding**
Misleading and deceptive conduct
Expert reports in representative proceedings in the Supreme Court of Victoria concerning the effect of certain disclosures on the price of ASX listed securities in Downer EDI.

Sworn, transcribed evidence²

- 2025** **Expert evidence before the Industrial Relations Commission on behalf of the NSW Government, in proceedings concerning an enterprise bargaining agreement between the Industrial Relations Secretary and the Fire Brigade Employees' Union**
Expert reports, sworn evidence, Sydney 21 February 2025
- 2024** **Expert evidence before the Fair Work Commission on behalf of Transgrid, in proceedings concerning an enterprise bargaining agreement between Transgrid and the Electrical Trades Union**
Expert reports, sworn evidence, Sydney 18 December 2024
- Expert evidence before Hon James Allsop AC, Hon Wayne Martin AC KC and Hon Kenneth Martin KC, in the matter of an arbitration between the Gordon Joint Venture and Synergy**
Expert reports, sworn evidence, Perth, 3-4 December 2024
- Expert evidence before the Federal Court on behalf of Apple Inc, in the matter of Epic Games Inc & Anor v Apple Inc & Anor and David Anthony v Apple Inc & Anor**
Expert reports, sworn evidence, Melbourne, 7 June and 17 June 2024
- 2023** **Expert evidence before Hon Wayne Martin AC KC on behalf of QCoal and Lake Vermont Resources, in the matter of an arbitration between North Queensland Export Terminal v QCoal and Lake Vermont Resources**
Expert reports, sworn evidence, Brisbane, 13-14 December 2023

² Past ten years only.

Expert evidence before the Federal Court on behalf of the Australian Securities and Investments Commission, in the matter of ASIC v Nuix Limited and Ors

Expert reports, sworn evidence, Sydney, 29 November 2023

Expert evidence before the Federal Court on behalf of the shareholder applicants in the matter of McFarlane v Insignia Financial

Expert reports, sworn evidence, Sydney, 13-15 June 2023

Expert evidence before the Federal Court on behalf of iSignThis, in the matter of Australian Securities and Investments Commission v iSignThis and Ors

Expert reports, sworn evidence, Melbourne, 7-9 March and 8 June 2023

Expert evidence before the Fair Work Commission on behalf of the government of New South Wales, in proceedings concerning an enterprise bargaining agreement between NSW rail entities and various rail unions

Expert reports, sworn evidence, Sydney, 9 February 2023

2022

Expert evidence before the South Australia Civil and Administrative Tribunal, in its review of ESCOSA's drinking water determination for Robusto Investments

Expert reports, sworn evidence, Adelaide, 15-17 August 2022

Expert evidence before the Federal Court on behalf of Galactic, in the settlement approval of group proceedings concerning 7-Eleven Stores Pty Ltd

Expert report, sworn evidence, Sydney, 29 March 2022

Expert evidence before the Fair Work Commission on behalf of Svitzer, in the matter of an application to suspend industrial action notified by the Australian Maritime Officers Union

Expert reports, sworn evidence, via videolink, Friday 18 February 2022

2021

Expert evidence before the Federal Court on behalf of Pitcher Partners, in the matter of the representative proceedings Matthew Hall v Pitcher Partners

Expert reports, sworn evidence, via videolink, 14-16 December 2021

Expert evidence before the Competition Tribunal on behalf of Port of Newcastle Operations, in the matter of an application for redetermination of a collective bargaining authorisation decision by the Australian Competition and Consumer Commission

Expert reports, sworn evidence, via videolink, 13 October 2021

Expert evidence before the Supreme Court of Western Australia on behalf of Perth Airport, in the matter of Perth Airport v Qantas Group

Expert reports, sworn evidence, via videolink, 5-8 October 2021

Expert evidence before the Fair Work Commission on behalf of the Australian Fresh Produce Alliance, in the matter of an application by the Australian Workers Union to vary the Horticultural Workers Award 2020

Expert reports, sworn evidence, via videolink, 20 July 2021

Expert evidence before the Federal Court on behalf of Aucham Superfund, in the matter of the Aucham Superfund v Iluka Resources Limited

Expert reports, sworn evidence, via videolink, 8-9 April 2021

- 2020**
- Expert evidence before the NSW Industrial Relations Commission on behalf of the Crown Solicitor for NSW, in the matter of the Crown Employees (Police Officers) and Paramedics and Control Centre Officers' awards**
Expert reports, sworn evidence, Parramatta, 7-8 October and 13 November 2020
- Expert evidence before Hon Robert French AC on behalf of Basslink Pty Ltd, in the matter of the State of Tasmania and Hydro Electric Corporation v Basslink Pty Ltd**
Expert reports, sworn evidence, via videolink, 13-14 October 2020
- Expert evidence before the Supreme Court of Victoria on behalf of Australian Funding Partners, in the matter of Laurence John Bolitho v Banksia Securities Limited**
Expert reports, sworn evidence, via videolink to Melbourne, 4 August 2020.
- Expert evidence before the Supreme Court of Queensland on behalf of the QCoal group and Lake Vermont Resources, in the matter of Adani Abbot Point v QCoal, Sonoma Mine Management and Byerwen Coal (the QCoal Group), and Lake Vermont Resources**
Expert reports, sworn evidence, Brisbane, 28 February 2020
- 2019**
- Expert evidence before the Federal Court on behalf of Ramsay Healthcare, in the matter of ACCC v Ramsay Healthcare**
Expert reports, sworn evidence, Sydney, 9-10 December 2019
- Expert evidence before Hon Michael McHugh AM, on behalf of the QCoal Group and Lake Vermont Resources, in the matter of Adani Abbot Point Terminal v QCoal, Sonoma Mine Management and Byerwen Coal (the QCoal Group), and Lake Vermont Resources**
Expert reports, sworn evidence, Brisbane, 21 February 2019
- 2018**
- Expert evidence before the Federal Court on behalf of TPT Patrol, in the matter of TPT Patrol v Myer**
Expert reports, sworn evidence, Melbourne 23 August 2018
- Expert evidence before the Board of the Australian Energy Regulator, on behalf of the South Australian public lighting customers, in arbitration proceedings concerning public lighting charges**
Expert reports, transcribed evidence, Melbourne, 7 May 2018
- Expert evidence before the Board of the Australian Energy Regulator, on behalf of the Australian Pipelines and Gas Association, in the Review of Rate of Return Guidelines, Concurrent expert evidence session one**
Joint expert report, transcribed evidence, Sydney, 15 March 2018
- Expert evidence before the Federal Court on behalf of Changshu Longte Grinding Ball Co Ltd, in the matter of Changshu Longte v Anti-Dumping Review Panel and others.**
Expert reports, sworn evidence, Sydney, 1 February 2018
- 2017**
- Expert evidence before the Competition Tribunal on behalf of CrownBet, in the application by Tabcorp for authorisation to acquire Tatts**
Expert reports, sworn evidence, Melbourne, 30 May–1 June 2017

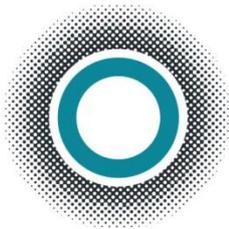
- 2016**
- Expert evidence before the Federal Court on behalf of Generic Health, in the matter of Bayer Pharma Aktiengesellschaft v Generic Health Pty Ltd**
Expert reports, sworn evidence, Sydney, 14-15 December 2016
- Testimony before an UNCITRAL arbitral tribunal on behalf of Maynilad Water Service Inc (MWSI), in the matter of MWSI v Republic of the Philippines**
Report, sworn evidence, Singapore, 6 December 2016
- Expert evidence on behalf of Powerco, at the Commerce Commission's Conference on the Cost of Capital matters**
Transcribed evidence, public hearings, Wellington, 7 September 2016
- Expert evidence before the Federal Court on behalf of plaintiffs, in the matter of HFPS v Tamaya**
Expert reports, sworn evidence, Sydney, 13 May 2016
- Expert evidence before an arbitral tribunal on behalf of Serudong Power Sdn Bhd (SPSB), in the matter of SPSB v Sabah Electricity Sdn Bhd (SESB)**
Expert reports, sworn evidence, Kuala Lumpur, 27-28 April 2016
- Expert evidence before the Federal Court on behalf of the Commonwealth of Australia, in the matter of Griffiths v Northern Territory**
Expert reports, sworn evidence, Darwin, 24-25 February 2016

Speeches and publications³

- 2023**
- GCR Live conference**
Digital Platforms: market reports and regulatory reforms
Panel discussant, Sydney, 30 November 2023
- Law Council, Competition and Consumer Workshop**
Evolution of economics and antitrust
Speech, Melbourne, 2 September 2023
- 2019**
- RBC Renewables and energy transition forum**
Economic and regulatory forces affecting the transition
Panel discussant, Sydney, 12 September 2019
- Competition Matters conference**
Competition issues for Digital platforms
Panel discussant, Auckland, 26 July 2019
- Competition Law Conference**
Proof of collusion, or optical illusion?
Speech, Sydney, 25 May 2019
- Clayton Utz – Equitable briefing series**
Expert joint conferencing and reports
Panel discussant, Sydney, 16 May 2019

³ Past ten years only

- 2018**
- RBC Capital Markets Global Infrastructure Forum**
Australian utilities: current policy issues and industry trends
Panel discussant, Sydney, 13 March 2018
- GCR 7th Annual Asia Pacific Law Leaders Forum**
The role of algorithms: cartel enforcement in the era of artificial intelligence
Panel discussant, Singapore, 10 March 2018
- 2017**
- IPART 25th Anniversary Conference**
Electricity and Water: Mutual Lessons
Speech, Sydney, 27 October 2017
- Competition Law Conference**
ACCC v Flight Centre: What was going on?
Speech, Sydney, 6 May 2017
- Association for Data-driven Marketing and Advertising**
Driving Customers to you: Insights from Location Data
Speech, Melbourne, 5 April 2017
- GCR 6th Annual Asia Pacific Law Leaders Forum**
Roadblocks and Solutions in Cross Border Mergers
Panel discussant, Singapore, 2 March 2017
- 2016**
- NSW Planning Assessment Commission**
Economic Effects of Drayton South Mine on Upper Hunter Industry
Presentation to public hearing, Muswellbrook, 16 November 2016
- 2015**
- Electricity Networks Association Regulation Seminar, Brisbane**
Participant in Expert Plenary Panel
Speech, Brisbane, 5 August 2015
- NZ Commerce Commission Input Methodologies Review, Wellington**
'Allocation of Risk' and 'New Technologies'
Panel Discussant, Wellington, 29 July 2015
- Competition Matters Conference, Wellington**
Disruptive Technologies
Chair, Discussion Panel, Wellington, 24 July 2015
- Competition Law Conference**
The Public Interest in Private Enforcement
Speech, Sydney, 30 May 2015
- Singapore Aviation Academy, Singapore**
Private Financing of Airport Infrastructure Expansions
Speech, Singapore, 5 March 2015
- GCR 4th Annual Asia-Pacific Law Leaders Forum**
Differences in using economics in EU and Asia Pacific
Speech, Singapore, 5 March 2015
- AEMC Public Forum**
East Coast Gas Market Review
Speech, Sydney, 25 February 2015



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