Queensland Competition Authority

Draft recommendation

Part B: Queensland Rail declaration review

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Contents

1 INTRODUCTION

1.1 The existing declaration

The use of Queensland Rail's below-rail network is declared under Part 5 of the QCA Act from 8 September 2010 to 8 September 2020, and is subject to Queensland's third party access regime. In particular, s. 250(1)(b) of the QCA Act describes the current declaration of the Queensland Rail service:

Box 1: Section 250—Saving of declarations of particular services

(1) Each of the following services is taken to be a service declared by the Ministers under part 5, division 2 -

…

(b) the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager;

(5) In this section -

…

railway manager see the *Transport Infrastructure Act 1994*, schedule 6.

Schedule 2: Dictionary

rail transport infrastructure see *Transport Infrastructure Act 1994*, schedule 6.

The regulatory framework for Queensland Rail under declaration is governed by the Access Undertaking 1[1] (AU1), which will operate between 1 July 2016 and 30 June 2020. AU1 sets out the terms and conditions under which Queensland Rail provides access to its service; it also addresses the process required for an access seeker to negotiate access to the service, and the way in which any disputes in relation to access are to be resolved.

1.2 Queensland Rail network

Queensland Rail manages a rail network which extends more than 6,600 kilometres across Queensland, and consists of seven regional systems and the Metropolitan system in Brisbane. A map of the Queensland Rail network is shown in Figure 1.

This rail network is used by both freight and passenger trains; Queensland Rail provides below-rail services as well as above-rail passenger services on its network, with Pacific National,

[1] *Queensland Rail's Access Undertaking 1*, 2016, https://www.queenslandrail.com.au/business/acccess/Access%20Undertaking%20and%20related%20documents/Queensland%20Rail%20Access%20Undertaking%201%202016.pdf.

Aurizon Operations and Linfox[2] providing above-rail freight services on various parts of the network.

Figure 1 Queensland Rail network

Figure 1 shows the eight rail systems which form the Queensland Rail network. Starting from the north, these lines are:

- The North Coast Line—the North Coast Line (shown in purple) extends from Cairns south to Nambour (near Brisbane) along Queensland's Eastern coastline, and passes through the regional cities of Townsville, Mackay, Rockhampton, Gladstone and Bundaberg. The North Coast Line carries primarily intermodal freight (83% of gross tonne kilometres[3] carried on the line).[4] The North Coast Line acts as a crucial connection point for trains from the Mount Isa

[2] At the time of drafting, the QCA understands that Aurizon Operations has sold its Queensland intermodal business to Linfox, and that this transaction will not be opposed by the ACCC. The QCA understands that under this deal, Aurizon Operations will continue to provide bulk rail haulage services under a 10-year take or pay contract with Linfox. See ACCC, *ACCC will not oppose proposed sale of Aurizon's Queensland intermodal business*, 12 October 2018, viewed 22 October 2018, https://www.accc.gov.au/media-release/accc-will-not-oppose-proposed-sale-of-aurizon’s-queensland-intermodal-business.

[3] Gross tonne kilometres (gtk) is a measure of the level of operating activity on a particular rail system. It is the product of the total gross weight of the train (i.e. including the locomotives and wagons used, as well as the goods and passengers carried) and the distance (in kilometres) travelled by the train.

[4] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 18,

Line as well as various parts of the Central Queensland Coal Network (shown in grey in Figure 1), all of which need to traverse a small portion of the North Coast Line in order to reach their destination port.

- The Tablelands system—the Tablelands system (shown in dark blue) consists of two unconnected sections of rail, the first extending west from Cairns to Forsayth, and the second extending from Croydon west to Normanton. Historically, the Tablelands system carried sugar from the Atherton Tablelands to various ports, however the QCA understands that today, it is only used by tourism passenger services. This includes the 'Savannahlander' service from Cairns to Forsayth, the 'Kuranda Scenic Railway' service from Cairns to Kuranda and the 'Gulflander' service from Normanton to Croydon.
- The Mount Isa Line—the Mount Isa Line (shown in green) extends from Stuart (near Townsville) west to Mount Isa, and also includes the Flynn to Phosphate Hill branch line. The Mount Isa Line is unique amongst Queensland Rail's railway systems in that it is a purely commercial line, and unlike Queensland Rail's other railway systems, receives no funding from the Queensland Government Transport Services Contract subsidies for below-rail services.[5] The Mount Isa Line carries primarily non-coal bulk freight such as acid and fertiliser (47% of total gtk carried on the line) and minerals (25% of total gtk carried).[6]
- The Central Western system—the Central Western system (shown in orange) extends from Emerald west to Winton, and includes the Emerald to Clermont branch line. This system is heavily underutilised[7] and carries low volumes of agricultural products. The passenger service 'the Spirit of the Outback' operates on this system (from Brisbane to Longreach).
- The Western system—the Western system (shown in light blue) extends from Miles west to Quilpie, and includes the Dalby to Meandarra, Miles to Wandoan and Westgate to Cunnamulla branch lines. Like the Central Western system, this system is underutilised and carries small volumes of agricultural products, as well as the passenger service 'the Westlander' (Brisbane to Charleville).
- The West Moreton system—the West Moreton system (shown in pink) extends from Rosewood west to Miles. This system carries primarily coal traffic (92% of total gtk carried on the system)[8], all of which originates from various mines connected to the West Moreton system and travels east via the Metropolitan system to the Port of Brisbane (with some small volumes being distributed to local power stations and industrial users).
- The South Western system—the South Western system (shown in yellow) extends from Toowoomba south to Thallon, including the Wyreema to Millmerran and Warwick to Wallangarra branch lines. Like the Central Western and Western systems, this system is underutilised and carries small seasonal volumes of agricultural products.

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https://www.queenslandrail.com.au/business/acccess/Compliance%20and%20reporting/Queensland%20Rail%20-%20Annual%20Performance%20Report%202016-17.pdf.

[5] See, for example, Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 4, https://www.queenslandrail.com.au/business/acccess/Compliance%20and%20reporting/Below%20Rail%20Financial%20Statements%20for%20the%20year%20ended%2030%20June%202017.pdf.

[6] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 18.

[7] See, for example, Queensland Rail, sub. 8, p. 6.

[8] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 18.

- The Metropolitan system—the Metropolitan system (shown in green) is centred around the Brisbane metropolitan region, consisting of many branch lines. It is bounded by Rosewood to the west and Nambour to the north, and extends south to Varsity Lakes station in the Gold Coast, as well as south-west to the Acacia Ridge Terminal (where it connects with the interstate rail system to New South Wales).[9] Although it primarily carries commuter passenger services, it is a vital connection point for coal traffic from the West Moreton system and intermodal traffic on the North Coast Line, which must use the Metropolitan system in order to access the Port of Brisbane. Currently, all interstate rail traffic (i.e. originating from New South Wales to a destination in Queensland) must also travel on the Metropolitan system in order to connect onto other Queensland rail systems, such as the North Coast Line.

The above descriptions of the various systems are intended to provide background information only. The precise description of the boundaries of each of the railway systems is discussed as part of the analysis of criterion (b). Detailed data regarding the length of each railway system, its track characteristics, types of freight carried and throughput volumes is discussed in criterion (c).

1.3 The declaration of the whole or parts of the service

Under the QCA Act, the QCA is required to make a recommendation that the service (as a whole) be declared, or that part of a service, that is itself a service, be declared, or that the service not be declared (Box 2).

Box 2: Section 87A—Declaration recommendation to be made before expiry of declaration

(1) At least 6 months, but not more than 12 months, before the expiry date of a declaration of a service, the authority must recommend to the Minister that, with effect from the expiry date -

(a) the service be declared; or

(b) part of the service, that is itself a service, be declared; or

(c) the service not be declared.

Queensland Rail has provided submissions in this review that any assessment against the access criteria of whether or not to declare the service, or part of the service, should be performed on a rail system by rail system basis.[10]

Given the language of the QCA Act, the QCA considers it appropriate to first assess the service as a whole (i.e. the entire Queensland Rail network). Subsequently, where evidence arises that demonstrates that any part of the service, that is itself a service, has characteristics which require different or further consideration from that given to the service as a whole, the QCA considers that it is then appropriate to assess that part of the service individually against the access criteria.

[9] ARTC, sub. 22, p. 2. The section of rail track extending from the Acacia Ridge Terminal south to the Queensland–New South Wales border is currently leased by the Australian Rail Track Corporation (ARTC).
[10] Queensland Rail, sub. 8, p. 3, para 19.

Based on the evidence provided in this review, the QCA has identified that parts of the service require consideration. Detailed reasoning of the approach taken in relation to each criterion is discussed in sections 2.2 and 2.3 (criterion b), section 3.2 (criterion a), section 4.3 (criterion c) and section 5.2 (criterion d).

In addition, the QCA considers that the only flexibility given to the QCA by section 87A of the QCA Act is to consider whether all or a part of the relevant service should be declared. The QCA Act makes no other provision for the QCA to modify the scope of the declared service through this review process.

1.4 The structure of Part B

The assessment of the service provided by Queensland Rail is set out in the following order:

- Criterion (b): meet total foreseeable demand in the market at least cost
- Criterion (a): promote a material increase in competition
- Criterion (c): state significance
- Criterion (d): promote the public interest.

Criterion (b) is considered first, before criterion (a), as this structure simplifies the analysis, by first identifying the relevant service, the facility for the service, and the market in which the service is provided (in criterion (b)). The analysis then considers dependent markets, and the effect of access as a result of declaration on competition in these markets (criterion (a)), followed by the significance of the facility to the state (criterion (c)), and public interest considerations (criterion (d)).

1.5 Overview of key positions

The QCA's draft recommendation on each aspect of the access criteria is summarised below.

Table 1 Summary of draft recommendation—Queensland Rail

The service[11]	*Criterion (a)*	*Criterion (b)*	*Criterion (c)*	*Criterion (d)*	*Declaration recommendation*	*Declaration period*
The Queensland Rail service as a whole	Not satisfied. Criterion (a) is satisfied only for parts of the service	Criterion (b) is satisfied for the Queensland Rail service as a whole	Criterion (c) is satisfied for the Queensland Rail service as a whole	Not satisfied, Criterion (d) is satisfied only for parts of the service	Only parts of the Queensland Rail service meet all of the access criteria and should be declared	n/a
North Coast Line service	Satisfied	Satisfied	Satisfied	Satisfied	Declare	15 years
Mount Isa Line service	Satisfied	Satisfied	Satisfied	Satisfied	Declare	15 years
West Moreton and Metropolitan systems services	Satisfied	Satisfied	Satisfied	Satisfied	Declare	15 years
Other systems services (South Western, Western, Central Western and Tablelands systems)	Not satisfied	Satisfied	Satisfied	Not satisfied	No declaration The use of each of these systems should not be declared	n/a

[11] The services are defined in section 2.2.

1.6 Draft recommendation

The QCA recommends that the following parts of the service, each of which is itself a service, be declared:[12]

- the North Coast Line service
- the Mount Isa Line service
- the West Moreton system service
- the Metropolitan system service.[13]

The QCA recommends that each of these services be declared for a period of 15 years.

[12] Pursuant to ss. 87A and 87C of the QCA Act.
[13] Each of these services are defined in section 2.2.2.

2 CRITERION B—MEET TOTAL FORESEEABLE DEMAND AT LEAST COST

2.1 Introduction

Section 76(2)(b) of the QCA Act is expressed as follows:

> that the facility for the service could meet the total foreseeable demand in the market-
>
> (i) over the period for which the service would be declared; and
>
> (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service)

Sections 76(3) and (4) of the QCA Act state:

> (3) For subsection (2)(b), if the facility for the service is currently at capacity, and it is reasonably possible to expand that capacity, the authority and the Minister may have regard to the facility as if it had that expanded capacity.
>
> (4) Without limiting subsection (2)(b), the cost referred to in subsection (2)(b)(ii) includes all costs associated with having multiple users of the facility for the service, including costs that would be incurred if the service were declared.

The key matters in respect of section 76(2)(b) for the below-rail service provided by Queensland Rail are summarised in Table 2.

Table 2 Summary of key positions—s. 76(2)(b)

Criterion (b)			
Issue	***Queensland Rail***	***Other stakeholders***	***QCA draft recommendation***
The service	Queensland Rail provides eight services—the use of each of its eight railway systems	The service should be defined by reference to the words in s. 250(1)(b) of the QCA Act	As per s. 250(1)(b) See section 2.2 below
The facility	There are eight facilities—each of its eight railway systems	The facility for the service is the below-rail infrastructure of the Queensland Rail network	The facility as a whole has been considered See section 2.4 below
The market	A key issue is whether the product dimension of the market for the relevant services includes road haulage services	Pacific National said the relevant market is the one in which Queensland Rail provides access to the below-rail services. South West Producers and Glencore focused on definitions of the market for the West Moreton system and Mount Isa Line respectively	The market is the market for the below-rail service (the market in which the service is provided is referred to as the 'primary market'). See section 2.5 below
The period for assessing total foreseeable demand	No submission made as the services should not be declared	South West Producers and Glencore said the period of declaration should be 15 years	The QCA recommends a declaration period of 15 years See section 2.7 below

Criterion (b)			
Total foreseeable demand	No material provided	South West Producers and Glencore said the total foreseeable demand on the West Moreton system and the Mount Isa Line respectively could be met by the existing facility	The facility for the service can meet the total foreseeable demand in the market over the period of declaration. See section 2.8 below
At least cost compared to any two or more facilities	No material provided	South West Producers and Glencore said that given there was not another existing facility capable of providing the service, the existing facility would meet the demand at least cost compared to the cost of constructing a new facility.	The facility for the service can meet the total foreseeable demand in the market at the least cost compared to any two or more facilities. See section 2.9 below Criterion (b) is satisfied

2.2 The service

The third party access regime under Part 5 of the QCA Act provides a regulatory framework to enable access seekers to gain access to significant infrastructure services where there may be a lack of effective competition. Importantly, declarations apply to services provided by means of a facility, and not to the facility itself. Therefore, the starting point for this review is the definition of the service.

2.2.1 Identifying the service

Section 87A of the QCA Act requires that at least six months 'before the expiry date of a declaration of a service', the QCA must recommend that the service (or a part of the service) be declared, or that the service not be declared.

Therefore, the starting point for the definition of the service is the description of the declared service in s. 250(1)(b) of the QCA Act:

> the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager;

Based on this, the QCA considers that the appropriate definition of the service is *the use of rail transport infrastructure for providing transportation by rail*.[14]

Thus, the declared service is a service consisting of the use of rail infrastructure; it is not a service for the transportation of goods or people. The supplier of this service is Queensland Rail; the customers acquiring this service are the above-rail entities operating rollingstock on the rail infrastructure, and not the end users who require goods or people to be transported.

2.2.2 Identifying parts of the service

Queensland Rail submitted that it provides eight services, being the use of the rail transport infrastructure for providing transportation by rail on each of its eight rail systems, and that

[14] This definition of the service is consistent with the approach taken by all stakeholders in defining the service.

given the distinct nature of the rail systems, it is appropriate that any assessment against the access criteria be performed on a rail system by rail system basis.[15]

The Queensland Rail network consists of eight rail systems, which are:

- the Mount Isa Line
- the North Coast Line
- the West Moreton system
- the Western system
- the South Western system
- the Central Western system
- the Tablelands system
- the Metropolitan system.[16]

Box 3 provides a detailed description of each of these systems.

[15] Queensland Rail, sub. 8, p. 3, para 19.
[16] Queensland Rail, sub. 8, p. 3, para 18.

Box 3: Queensland Rail's rail systems

Where reference is made in this part (Part B) to a particular Queensland Rail railway system, that railway system (including its geographic boundaries) is defined as below:

- The North Coast Line—rail transport infrastructure which extends from Nambour (near Brisbane) north along Queensland's eastern coastline to Cairns, being those parts of the network bound to the south by (and including) Nambour station, to the north by (and including) Cairns and to the west by (but excluding) Stuart (near Townsville), and including all branch lines, including those in the Maryborough area and Taragoola to Graham (around Gladstone).
- The Mount Isa Line—rail transport infrastructure which extends from Townsville westwards to Mount Isa, being that part of the network bounded to the east by (and including) Stuart and to the west by (and including) Mount Isa and including all branch lines, including the Flynn to Phosphate Hill branch line.
- The West Moreton system—rail transport infrastructure which extends westwards from (and including) Rosewood (near Brisbane), passing through Toowoomba, Dalby, Chinchilla, to (and including) Miles, but excluding the branch lines which form part of the Western system.
- The Metropolitan system—rail transport infrastructure centred around Brisbane (Roma Street station), bounded to the north by (and including) Nambour station, to the west by (and including) Rosewood, to the south by (and including) Varsity Lakes station, and to the south-west by the Acacia Ridge Terminal (where it connects with the interstate rail system to New South Wales), and including all branch lines within these boundaries.
- The South Western system—rail transport infrastructure which extends south from Toowoomba to Thallon, being that part of the network bounded to the west by (and including) Thallon, to the north by (and including) Toowoomba and to the South by (and including) Wallangarra and including all branch lines, including the Wyreema to Millmerran and Warwick to Wallangarra branch lines.
- The Western system—rail transport infrastructure which extends westwards from Miles to Quilpie, including all branch lines, including the Miles to Wandoan, Dalby to Meandarra (Glenmorgan) and Westgate to Cunnamulla branch lines, but excluding those parts of the network that are part of the West Moreton system.
- The Central Western system—rail transport infrastructure which extends westwards from Emerald to Winton and north from Emerald to Clermont, being that part of the network bounded to the east by (and including) Nogoa, to the north by (and including) Clermont and to the west by (and including) Winton and including all branch lines in that part of the network.
- The Tablelands system—rail transport infrastructure which consists of two unconnected sections of track, the first extending from Cairns westwards to Forsayth, and the second from Croydon westwards to Normanton, and including all branch lines in that part of the network.

'Rail transport infrastructure' has the meaning in Schedule 2 of the QCA Act.

The QCA must decide whether to recommend declaration of the service defined in s. 250(1)(b) of the QCA Act. If the QCA is satisfied that each of the access criteria are satisfied for this service, it must recommend that this service be declared.[17] The QCA Act does not require the QCA to start its analysis by deconstructing this service into a series of smaller services, and then to apply the access criteria to each one. Therefore, the QCA considers that the necessary starting point for its analysis is to consider whether the service defined in s. 250(1)(b) satisfies the access criteria.

Following this, the QCA has then considered whether there is any part of the relevant service that exhibits characteristics that require a different or further consideration from that given to the service as a whole. Only where such characteristics are identified is it necessary to consider whether these parts of the relevant service satisfy each of the access criteria.

In this context, the QCA has considered whether the following parts of the relevant service would satisfy the access criteria (these parts of the service are identified by use of the particular rail system):

- the 'North Coast Line service', being the use of the North Coast Line for providing transportation by rail
- the 'Mount Isa Line service', being the use of the Mount Isa Line for providing transportation by rail
- the 'West Moreton system service', being the use of the West Moreton system for providing transportation by rail
- the 'Metropolitan system service', being the use of the Metropolitan system for providing transportation by rail
- the 'South Western system service', being the use of the South Western system for providing transportation by rail
- the 'Western system service', being the use of the Western system for providing transportation by rail
- the 'Central Western system service', being the use of the Central Western system for providing transportation by rail
- the 'Tablelands system service', being the use of the Tablelands system for providing transportation by rail[18]

if, in each case, the rail transport infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager.[19]

The QCA is satisfied that each of these parts would constitute a 'service' for the purposes of s. 72 of the QCA Act.

[17] Pursuant to s. 87C(1) of the QCA Act.

[18] Together, the South Western system service, the Western system service, the Central Western system service and the Tablelands system service are referred to as the 'other systems services' throughout this Part B.

[19] Each of these rail systems is defined in Box 3. 'Railway manager' is defined in s. 250(5) of the QCA Act.

The following sections discuss the application of criterion (b) to the entire service, and to the extent relevant, to the parts of the service identified above. The remaining access criteria are considered separately using this same approach.

2.3 Criterion (b) considered with respect to the whole of the service

Queensland Rail emphasised the need for a system-by-system assessment for each of the access criteria, including criterion (b):

> Given the distinct nature of the rail systems managed by Queensland Rail, it is appropriate that any assessment against the access criteria of whether or not to declare the service, or part of the service, be performed on a rail system by rail system basis.[20]

In considering criterion (b), the QCA has first considered the service as described in s. 250(1)(b) of the QCA Act—that is, as a whole. Having done this, the QCA has then considered whether any of the eight services identified by Queensland Rail have characteristics that require different or further consideration from that given to the service as a whole.

The QCA does not consider that it is necessary to consider criterion (b) on a rail system-by-rail system basis. The reasoning is as follows.

As discussed in section 2.2, the service provided by Queensland Rail is 'the use of rail transport infrastructure for providing transportation by rail'. The service as described in the QCA Act contemplates the use of the entire Queensland Rail system; the fact that the Queensland Rail network covers a large geographic area and is categorised into different rail systems does not mean that the service provided by Queensland Rail changes across the systems. The QCA considers that the service—the use of rail transport infrastructure for providing transportation by rail—is consistent across all of the systems. Across all parts of its network, Queensland Rail provides the use of its below-rail infrastructure for transportation by rail.

Criterion (b) requires an analysis of the market in which the service is provided. Although different rail systems may have differing dependent markets, the nature of the market in which use of all of the rail systems (and the network as a whole) is provided is the same. The market is the market for access to below-rail services (see section 2.5). Although different market participants may participate more vigorously in different geographic parts of the market from time to time, the product dimension remains the same across the entire Queensland Rail network. It is the market for the access to below-rail services.

To the extent that it is necessary to consider whether any part of the service would satisfy criterion (b), the QCA is satisfied that this question can be answered in the affirmative in each case. This is because, based on the evidence, the QCA considers that it is clear that each of Queensland Rail's rail systems:

- has existing spare capacity and could meet total foreseeable demand in the market over the recommended declaration period
- has no other potential alternative facility which is capable of providing the service, and thus each of the rail systems would clearly meet total foreseeable demand at least cost.

[20] Queensland Rail, sub. 9, p. 3, para 19.

2.4 The facility

2.4.1 Stakeholder submissions

Queensland Rail submitted that it provides eight services using eight facilities, being each of the eight rail systems in its network.[21] Glencore identified the facility for the service on the Mount Isa Line service to be the below-rail infrastructure on the Mount Isa Line; similarly, the South West Producers said the facility for the service on the West Moreton and Metropolitan system is the below-rail infrastructure on those systems.[22]

2.4.2 QCA analysis

The QCA considers that the facility for the service is *rail transport infrastructure* for which Queensland Rail Limited[23] is the railway manager.[24]

'Rail transport infrastructure' is defined in schedule 6 of the *Transport Infrastructure Act 1994* (Qld)[25] to mean 'facilities necessary for operating a railway', and includes not only the railway track, but also 'things that are associated with the railway's operation', such as bridges, marshalling yards, overhead electrical power supply systems and service roads. Thus, the facility for the service includes all facilities included in the statutory definition of 'rail transport infrastructure'.

The rail transport infrastructure for which Queensland Rail Limited is the railway manager can be described as a network consisting of eight railway systems. Together, these systems form the facility for the service (see Box 3).

2.5 The market

2.5.1 Stakeholder submissions

Queensland Rail said:

> The key issue in market definition for each of the rail services will be the potential for substitution by access seekers – or the users of services provided by access seekers – between the relevant service and other services. In particular, the QCA will need to determine whether the product dimension of the market for the relevant services includes road haulage services. As discussed above, road is a practical and commercial alternative to rail transport for all but the transportation of some bulk commodities over long distances.[26]

Pacific National said:

> In the context of criterion (b), the relevant 'market' is the market in which QR provides access to below-rail services. As has been recognised on numerous occasions, this is separate to the market in which PN and other freight businesses provide haulage services.[27]
>
> There are no substitute facilities for the supply of the relevant service, being the 'use of rail transport infrastructure for providing transportation by rail'.[28]

[21] Queensland Rail, sub. 8, p. 3, para 18.
[22] Glencore, sub. 5, p. 14; South West Producers, sub. 4, p. 34.
[23] Or a successor, assign or subsidiary of Queensland Rail Limited—in accordance with s. 250(1)(b) of the QCA Act.
[24] This approach is consistent with the approach taken by all stakeholders in defining the facility for the service.
[25] Schedule 2 of the QCA Act (dictionary) defines 'rail transport infrastructure' by reference to the *Rail Transport Infrastructure Act 1994* (Qld), schedule 6.
[26] Queensland Rail, sub. 8, p. 5, para 35.
[27] Pacific National, sub. 9, p. 13.

Both Glencore and the South West Producers said that the relevant market for the purposes of criterion (b) will be the market in which the facility provides the declared service (or the relevant parts of the declared service).[29]

2.5.2 QCA analysis

In order to apply criterion (b), the QCA is required to identify the market in which the relevant service is provided (the 'primary market').

The primary market is to be identified by reference to the relevant service and other services (if any) that are able to be substituted for, or otherwise competitive with, the relevant service.[30] If no substitutes exist, the relevant service and the market in which it is provided are the same.

Whether one product is substitutable for another may be determined by reference to whether customers would switch demand from one product to the other in response to a sufficient price incentive (usually a small but significant non-transitory increase in price, or SSNIP).

In the present case, the QCA's analysis begins with the service defined in s. 250 of the QCA Act, namely, *the use of rail transport infrastructure for providing transportation by rail*.[31]

The supplier of this service is Queensland Rail; the customers acquiring this service are generally the above-rail entities operating rollingstock on the rail infrastructure, and not the end users who require goods or people to be transported. In Queensland, the existing above-rail freight operators are Pacific National, Aurizon Operations and Linfox. Queensland Rail also operates above-rail passenger trains.[32] Figure 2 illustrates the primary market for the service.

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[28] Pacific National, sub. 9, pp. 12–13.

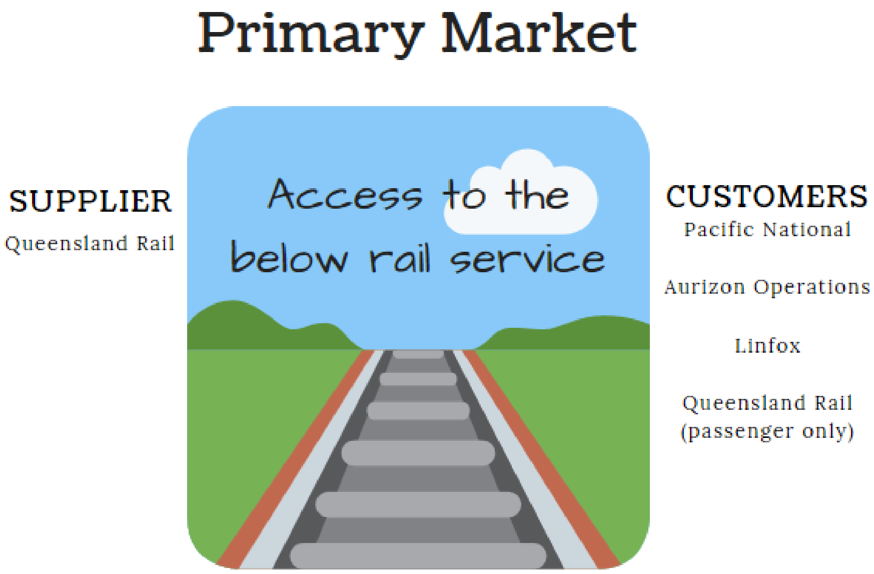
[29] Glencore, sub. 5, p. 6; South West Producers, sub. 4, p. 13.

[30] See s. 71 of the QCA Act.

[31] If the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager: see s. 250(1)(b) of the QCA Act.

[32] The QCA understands that the operation of Queensland Rail's passenger services are provided in accordance with Queensland Rail's statutory obligations, including Queensland Rail's Constitution, provisions in the Transport Services Contracts and provisions in the *Transport Infrastructure Act 1994* (Qld). See Queensland Rail, *Draft Queensland Rail Access Undertaking 1*, explanatory submission, March 2012, pp. 17–18, 22–25, http://www.qca.org.au/getattachment/e5518877-0458-492a-aa80-a3c49b937a31/QRail-Explanatory-Document-re-2012-DAU.aspx.

Figure 2 The primary market in which the service is provided



In a purely physical sense, the only type of infrastructure that could be used to provide Queensland Rail's below-rail service is rail infrastructure. Road infrastructure, for example, cannot be used for providing transportation by *rail*. However, the question of substitution is not to be determined solely by reference to the different physical characteristics of different services, but rather whether customers[33] of one would be expected to switch to the other in response to a sufficient price incentive.

In this context, the question is whether, if the cost of rail infrastructure increased relative to road (for example, if Queensland Rail imposed a SSNIP for the use of its rail infrastructure), would above-rail operators switch from using rail infrastructure to using road infrastructure instead?

The QCA considers that this would be highly unlikely. While it may be physically possible for an above-rail operator to sell its rollingstock and buy trucks instead (in order to switch from using rail infrastructure to using road infrastructure), the costs of doing so are likely to be so high as to make switching between different infrastructure services unviable in response to a SSNIP. For this reason, the QCA considers that no other form of infrastructure service is substitutable for the rail infrastructure service provided by Queensland Rail.

Therefore, the QCA is satisfied that the primary market is confined only to rail infrastructure access (i.e. below-rail services). The QCA discusses below, in relation to criterion (a), the separate above-rail markets that are dependent upon access to Queensland Rail's rail infrastructure.

2.6 The derived demand

The primary market is the market for the below-rail service. In this market, Queensland Rail is the supplier and the above-rail operators are the customers.

[33] For example, above-rail operators.

More broadly, however, the demand in the primary market—that is, the demand for the use of rail transport infrastructure by above-rail operators—is a derived demand.[34] Above-rail operators do not seek access to below-rail services to run trains for the sake of running trains; their demand for access to below-rail services derives from the demand of their customers (freight owners) to transport goods by rail from one point to another.[35]

There are three categories of freight task from which demand in the primary market derives:

- the transportation of bulk goods
- the transportation of non-bulk goods
- the transportation of passengers.

A proper input market analysis involves examining the extent to which end customers in each of these categories would respond to a SSNIP in the below-rail price. That is, if Queensland Rail increased the price of its below-rail service by 5 to 10 per cent, and it is assumed that the above-rail operator passed on the entirety of this increase, to what extent would freight owners (or freight forwarders) switch away from the use of rail for the transportation of their goods?

Box 4 considers the derived demand issue with respect to each of the three identified categories of freight task. A detailed analysis of the three categories of freight task is provided in section 3.7.3. Box 4 provides a summary of that analysis for the purposes of discussing derived demand.

[34] Queensland Rail also referred to the derived demand in its submission: Queensland Rail, sub. 8, p. 5, para 37.

[35] It is important to note that the existence of the derived demand does not mean that the market for below-rail services and the market for above-rail haulage (i.e. the transportation of goods by rail) are in the same market. Clearly, below-rail services are not a substitute for above-rail haulage services; these services are different components of the supply chain and are in distinct markets. The relationship between the above-rail haulage market and the below-rail market is discussed in detail in section 3.7.4.

Box 4: Derived demand—the three categories of freight task

Bulk goods

Bulk goods describes freight involving large volumes of homogenous product (e.g. coal, minerals, grains), which are transported in mass quantities and tend to be relatively non-perishable and non-fragile. Rail transport enjoys an inherent cost advantage in the transport of bulk freight due to its ability to exploit economies of scale.

Queensland Rail data shows that the transport of bulk goods accounted for approximately 40 per cent of all traffic (by gross tonne kilometre) carried across the Queensland Rail network in 2016–17.[36]

In most cases, owners of bulk freight are constrained by the nature of their goods (being high-volume, low-unit-value goods) to transportation by rail due to its cost effectiveness. The QCA considers that owners of bulk freight are unlikely to switch away from the use of rail transport for their goods in response to a SSNIP in the below-rail price.

Non-bulk goods

Non-bulk goods describes heterogeneous, unitised items of freight such as food, consumer products or manufactured goods, which may include perishable, fragile and high-unit-value goods.

Queensland Rail data shows that the transport of non-bulk (intermodal) goods accounted for approximately 38 per cent of all traffic (by gross tonne kilometre) carried across the Queensland Rail network in 2016–17.[37] There is no publicly available data indicating what proportion of this total non-bulk traffic can be categorised as short-, medium- or long-distance freight. However, given that the cost advantage of rail transport is only realised over long-distances, the QCA considers that it is likely that a majority of the non-bulk freight task on the Queensland Rail network is likely to be attributable to long-distance rail haulages.

This is because for the transport of non-bulk goods over long distances (greater than 1,000 km), empirical evidence suggests that rail is a much cheaper option than the alternative of transporting by road.[38] The QCA considers that owners of non-bulk freight travelling over long distances are unlikely to switch away from the use of rail transport in response to a SSNIP in the below-rail price.

For the transport of non-bulk goods over medium distances (between 600 and 1,000 km), freight owners may switch between the use of road or rail for the transport of their goods as neither enjoys an absolute cost advantage. Studies conducted on Australian inter-capital

[36] Bulk goods include coal, minerals, agricultural products (e.g. cotton, grain, sugar), acid and fertiliser. Queensland Rail data reports on the volumes (gross tonne kilometres) carried across the North Coast Line, Mount Isa Line, and West Moreton and Metropolitan systems. Together, the traffic carried on these four systems makes up 97 per cent of all traffic (by gtk) carried on Queensland Rail's network in 2016–17. Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, pp. 11, 18; Queensland Rail, sub. 8, p. 2, para 8.

[37] Queensland Rail reports refer to the volume of 'intermodal' freight carried. For the purposes of this analysis, the QCA has equated intermodal freight with non-bulk freight. Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, pp. 11, 18.

[38] For freight carried beyond 1,000 km, transport by road has been quoted to be between 15 to 300 per cent more expensive than transport by rail. See ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon,* Statement of Issues, March 2018, pp. 13–14, paras 80–81.

freight movements show that for medium-distance inter-capital non-bulk freight, the long-run cross-price elasticity between rail and road is 0.33 (i.e. relatively inelastic); this implies that a 1 per cent increase in rail prices would lead to a 0.33 per cent increase in road freight volumes.[39] The QCA is not aware of publicly available data on estimates of elasticities in the Queensland non-bulk freight market, and it is difficult to quantify the effect of a SSNIP in this sub-category of freight task in the Queensland freight market.

For the transport of non-bulk goods over short distances, or for the transport of time-sensitive or high-value goods, transport by road is cheaper than transport by rail, as rail is unable to realise its economies of scale over these distances. The QCA considers that transport by rail is likely to have only a very small share of this segment of the freight task, and that any changes in this segment of the market is likely to only have a very limited effect on the overall rail freight task.

Passengers

Queensland Rail is vertically integrated with respect to passenger services, and is currently the only supplier of above-rail passenger services in Queensland.[40] Queensland Rail data shows that the transport of passengers accounted for approximately 21 per cent of all traffic (by gross tonne kilometre) carried across the Queensland Rail network in 2016–17.[41] Above-rail passenger services rely on government subsidies for their viability. Based on data from Queensland Rail's 2016–17 financial report, Transport Service Contract subsidies accounted for approximately 94 per cent of all revenue received by Queensland Rail's above-rail passenger operations.[42]

Due to the vertically integrated nature of Queensland Rail's passenger service, and the subsidisation of its operations, it would not be meaningful to apply the SSNIP test to this analysis. This is because Queensland Rail is obligated to offer a certain number of passenger services on certain routes per week.[43] Therefore, if Queensland Rail raised its below-rail price for passenger services, it is likely that the same numbers of passenger services will nevertheless be maintained.

Following the analysis above, the QCA considers that freight owners of bulk freight, and of non-bulk freight travelling long distances, would be constrained to use transport by rail due to its

[39] BITRE, *Road and rail freight: competitors or complements?, information sheet 34*, Australian Government, July 2009, p. 10.

[40] With the exception of small private local tourism rail operators.

[41] The majority of passenger traffic was carried on the Metropolitan system (86 per cent of all passenger volumes by gtk), followed by the North Coast Line (12 per cent of all passenger volumes by gtk). Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, pp. 11, 18.

[42] For clarification, Queensland Rail receives two types of subsidies through its TSC: above-rail subsidies and below-rail subsidies. The subsidy referred to in this section are *above-rail* subsidies for Queensland Rail's passenger services; Queensland Rail does not operate above-rail freight services. This can be contrasted with the *below-rail* subsidies Queensland Rail receives for its management of the network, for example, subsidies to 'top-up' short-falls in revenue between costs of offering access to the below-rail service and the actual access revenues received. Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 15.

[43] Queensland Rail, *Draft Queensland Rail Access Undertaking 1*, explanatory submission, March 2012, pp. 17, 24–25.

cost effectiveness for that freight task. Given the costs advantages of rail transport over long-distances, the QCA also considers that it is likely that a majority of the non-bulk freight task on Queensland Rail's network is attributable to long-distance rail haulages.

Therefore, although the demand of above-rail operators for below-rail services is a derived demand, the QCA considers that an analysis of demand from the end customers shows that it is likely that a majority of these customers would not switch away from the use of above-rail transport in response to a SSNIP. As a result, the QCA considers that above-rail operators in the primary market (who face the derived demand) are unlikely to switch away from the use of rail transport infrastructure in response to a SSNIP in the below-rail price. This supports the analysis above in section 2.5.2.

2.7 The period for assessing total foreseeable demand

2.7.1 Stakeholder submissions

Glencore and the South West Producers both said that the Queensland Rail service should be declared for a period of 15 years.

Glencore said:

> In consideration of the duration of mining operations from exploration to rehabilitation being in the vicinity of 10–30 years depending upon the operation, Glencore considers the reasonable period over which foreseeable demand should be assessed – and for which the service should be declared, is a period of 15 years.[44]

The South West Producers said:

> In considering … the long term tenure of coal mine investments (usually around 10 to 30 years) and the long useful life of both above and below rail investments, the South West Producers consider that the relevant period [for declaration] ought to be the longest period for which the test of foreseeable demand at least cost (and all other access criteria) is met.
>
> This is on the basis that an extended declaration period will better produce efficiencies, including capitalisation on assets (including coal mine infrastructure and both the below rail infrastructure and rolling stock), and investment certainty in dependent markets.
>
> … The South West Producers consider that a reasonable period over which to declare the service is a period of 15 years …[45]

Queensland Rail did not comment on the period for declaration or the period for assessing total foreseeable demand, given its view that the Queensland Rail service should not be declared.

2.7.2 QCA analysis

The QCA's view is that the period for assessing total foreseeable demand should be 15 years.

In recommending this period, the QCA considers that the need for access seekers and holders to have certainty over the period of declaration must be balanced with the legitimate business interests of the infrastructure owner (Queensland Rail) to have its service declared for only as long as the service is considered to meet the access criteria.

[44] Glencore, sub. 5, p. 15.
[45] South West Producers, sub. 4, p. 35.

Long-term certainty and asset lives

The QCA notes that previous declarations of services provided by railways have typically been for periods of 10 years or longer. For instance, the service provided by the Tasmanian Railway was declared for 10 years, while the service provided by the Goldsworthy Railway (Western Australia) was declared for 20 years.[46]

In part, this reflects the long-lived nature of the sunk investments that will be made in expectation of access; for example, investments in rollingstock and mining operations typically have a useable life of 20 to 30 years.[47] Assuming that at a particular point in time (e.g. at the time of declaration), asset lives across the industry are on average around half life-expired at the time of declaration, a declaration period of 10 to 15 years would be appropriate. This assumption is supported by empirical evidence—for example, data from BITRE showed that as at 2017, approximately 54 per cent of Australian narrow gauge locomotives in current operation were aged between 0 and 15 years old.[48]

Timing of future market changes

The QCA considers that it is not evident that there would be substantial changes in the market in which the service is provided over the next 10 to 15 years, which would affect whether the service provided by Queensland Rail would continue to satisfy the declaration criteria. For example, there are no foreseeable major developments on any of Queensland Rail's rail systems. The sole exception is the Inland Rail project, which is expected to be operational in 2024–25.[49] This project will connect Melbourne with Brisbane via an inland route. Depending upon the final route chosen, it has the potential to provide a competing service to the service currently provided on Queensland Rail's South Western and/or West Moreton systems, or to add to demand in the primary market for these systems.

The South West Producers have submitted that they do not consider that the Inland Rail project will provide a substitute for the West Moreton system service, in part because it is intended as an interstate freight link for general freight haulage between Melbourne and Brisbane, and not as a dedicated track for the haulage of Queensland bulk freight (e.g. coal, agricultural products) from origins and destination points within Queensland.[50]

Given that there are some uncertainties as to the final alignment (route) of Inland Rail, its operational characteristics (e.g. operating in conjunction with, or in competition with, Queensland Rail systems), and the expected completion date of the project, the QCA does not consider that the project is materially relevant to a decision on the declaration period. In any event, the Inland Rail would likely only affect the service on the South Western and West Moreton systems. To the extent that the Inland Rail project was completed and could be demonstrated to materially affect circumstances on these systems during the declaration period, it would be open for Queensland Rail to submit a revocation application for the relevant system at the relevant time.

[46] QRC, sub. 7, p. 10.

[47] For example, BITRE data shows that in 2017 locomotives which were aged between 0 and 30 years old accounted for approximately 80 per cent of all Australian narrow gauge locomotives in operation. See Bureau of Infrastructure, Transport and Regional Economics (BITRE), *Trainline 5*, statistical report, Australian Government, 2017, p. 68; South West Producers, sub. 4, p. 52; Glencore, sub. 5, pp. 13, 15.

[48] Bureau of Infrastructure, Transport and Regional Economics (BITRE), *Trainline 5,* Australian Government, 2017, p. 68.

[49] ARTC, Inland Rail, viewed 25 October 2018, https://inlandrail.artc.com.au/.

[50] South West Producers, sub. 4, p. 19.

Periodic review of declarations

The QCA considers that it is appropriate for any declaration to be periodically reviewed. The application of the declaration criteria requires a consideration of likely future scenarios (e.g. the future state of markets with and without declaration, future foreseeable demand). Forecasts of the future are by its nature an inexact science, particularly for periods extending over 10 to 15 years.

The QCA considers that a 15-year declaration period provides an opportunity for review and adequately balances the legitimate business interests of Queensland Rail (to have future developments taken into account against the access criteria), while providing certainty for access seekers and holders in the context of industries which require large sunk investments.

Given these, factors, the QCA's initial view is that 15 years for assessing total foreseeable demand is appropriate for the Queensland Rail service.

2.8 Total foreseeable demand over the period of declaration

2.8.1 Stakeholder submissions

Queensland Rail submitted that 'the QCA will have to identify total foreseeable demand in the market that encompasses the services provided by each of the distinct rail facilities over the declaration period'.[51]

Pacific National considered that:

> it is clear that the QR infrastructure (either in its current form or as expanded) would be able to meet foreseeable demand in this market at lowest cost, compared to two or more facilities. The NCC has previously observed that railways typically exhibit natural monopoly properties due to high fixed costs and significant economies of scale. The QR rail infrastructure is no exception in this regard.[52]

2.8.2 QCA analysis

No stakeholders have provided data on the current utilisation of existing capacity on any of Queensland Rail's rail systems. There is also limited publicly available information relating to estimates of current utilisation rates and projections of total foreseeable demand on Queensland Rail's rail systems.

Based on the available public information, the QCA understands that each of Queensland Rail's rail systems is currently operating at below capacity, have historically operated at below capacity, and that there is no credible data to suggest that total foreseeable demand over the 15-year recommended declaration period would at any time exceed the existing capacity on the relevant rail system.

In particular, the QCA notes Queensland Rail's statement that many of its systems have been traditionally underutilised:

> The West Moreton System, the Western System, the South Western System, the Central Western System and the Tablelands System are facilities [which have] a lack of economic significance due to:
>
> (a) the low volume/value of freight hauled on each system with regard to contribution to, as appropriate, Queensland's exports, imports, or the domestic freight industry

[51] Queensland Rail, sub. 8, p. 5, para 36.
[52] Pacific National, sub. 9, p. 13.

(b) high under-utilisation rates, often related to the impact of modal competition with road

(c) the high degree of dependence on TSC revenue on these facilities indicating lack of commercial viability.[53]

The QCA is satisfied that for Queensland Rail the facility for the service could meet the total foreseeable demand in the market over the period for which the service would be declared.

2.9 At the least cost compared to any two or more facilities

2.9.1 Stakeholder submissions

Queensland Rail did not provide any submissions regarding the costs across its rail systems in providing the service, and did not provide any submissions regarding the consideration of 'any 2 or more facilities' in considering 'least cost'. There is limited publicly available data on such costs.

2.9.2 QCA analysis

The QCA considers that the language of s. 76(2)(b)(ii)[54] indicates that a comparison of *relative* costs is required—that is, the cost of the facility for the service (Queensland Rail-managed rail transport infrastructure) in meeting total foreseeable demand should be compared to the cost of two or more facilities in meeting this demand.

There is currently no other existing facility (i.e. rail transport infrastructure) which is capable of providing the service, or meeting total foreseeable demand in the market. Put another way, there is not another railway network in Queensland which duplicates Queensland Rail's rail systems, or extends across similar routes. Therefore, the QCA has considered a potential alternative facility that could meet part or all of the foreseeable demand in the market for the service—for example, a duplication of the existing Queensland Rail facility.

It is clear that the development of such a potential alternative facility would require extensive costs—including land acquisition, planning, design, development and construction—which, for an approximately 6,000 km railway, would cost billions of dollars.

When the cost of providing the service on the existing Queensland Rail network (which has spare capacity) is compared with the cost of providing the service on two or more facilities (including a potential alternative facility), it is clear that the existing Queensland Rail facility will meet total foreseeable demand in the market at the least cost. Total foreseeable demand is clearly not satisfied at least cost by building another potential alternative facility to be used in addition to the existing Queensland Rail facility, compared to simply using the existing Queensland Rail facility to satisfy total foreseeable demand.

Therefore, the QCA considers that the facility for the service could meet the total foreseeable demand in the market at the least cost compared to any two or more facilities.

2.10 Conclusion

Given the analysis above, the QCA considers that the Queensland Rail service satisfies criterion (b).

[53] Queensland Rail, sub. 8, p. 6, para 45.

[54] Section 76(2)(b) of the QCA Act states: 'that the facility for the service could meet the total foreseeable demand in the market - (i) over the period for which the service would be declared; and (ii) at the least cost compared to any 2 or more facilities (which could include the facility for the service)'.

To the extent that it is necessary to consider whether any part of the service would satisfy criterion (b), the QCA is satisfied that this question can be answered in the affirmative in each case. This is because, based on the evidence, the QCA considers that it is clear that each of Queensland Rail's rail systems:

- has existing spare capacity and could meet total foreseeable demand in the market over the recommended declaration period
- has no other potential alternative facility which is capable of providing the service, and thus each of the rail systems would clearly meet total foreseeable demand at least cost.

3 CRITERION A—PROMOTE A MATERIAL INCREASE IN COMPETITION

3.1 Introduction

Section 76(2)(a) of the QCA Act is expressed as follows:

> 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

The key matters in respect of s. 76(2)(a) for the below-rail service provided by Queensland Rail are summarised in Table 3.

Table 3 Summary of key positions—s. 76(2)(a)

<table>
<tr><th colspan="4">Criterion (a)</th></tr>
<tr><th>Issue</th><th>Queensland Rail</th><th>Other stakeholders</th><th>QCA draft recommendation</th></tr>
<tr><td>Queensland Rail Network as a whole (i.e. all lines)</td><td>Criterion (a) is not satisfied in relation to the whole or any parts of Queensland Rail's service.</td><td>Stakeholders discussed a variety of dependent markets across the various Queensland Rail systems.</td><td>Not satisfied; system by system analysis necessary for criterion (a)

See section 3.2</td></tr>
<tr><td>Queensland Rail's proposed access framework</td><td>The proposed access framework will ensure access is provided by Queensland Rail on reasonable terms and conditions, even if the services are not declared in the future. Access as a result of declaration would not promote a material increase in competition in any dependent markets</td><td>The proposed access framework will cause uncertainty of pricing and non-pricing terms of access, which will damage competition in a number of dependent markets</td><td>See section 3.4</td></tr>
<tr><td>North Coast Line and Metropolitan system</td><td rowspan="2">None of the services on its rail systems satisfied criterion (a), as Queensland Rail does not have the ability or incentive to exercise market power to adversely affect competition in any dependent market</td><td>Pacific National submitted that declaration provides for transparency and certainty of the terms of access, which promotes the competitiveness of rail freight services compared to road freight services</td><td>Criterion (a) is satisfied

See section 3.7</td></tr>
<tr><td>Mount Isa Line</td><td>Glencore submitted that declaration promotes long-term certainty of access on reasonable terms, a right to have the QCA arbitrate access disputes, and the potential to have a reference tariff on the Mount Isa Line service, which promotes competition in dependent markets including the North West Queensland mineral tenements market, the above-rail</td><td>Criterion (a) is satisfied

See section 3.8</td></tr>
</table>

Criterion (a)			
		haulage market and the North West Queensland mining inputs market	
West Moreton and Metropolitan systems		The South West Producers submitted that declaration promotes long-term certainty of access, reasonable access terms and efficient access pricing through the undertaking and West Moreton system coal reference tariffs, and thereby promotes a material increase in competition in dependent markets including the Port of Brisbane catchment coal tenements market, the Surat Basin coal tenements market, the south-west Queensland rail haulage market, the Port of Brisbane coal handling services market and the south-east Queensland and northern New South Wales domestic energy supply market	Criterion (a) is satisfied. See section 3.9
Other systems (South Western, Western, Central Western and Tablelands systems)		No stakeholders made submissions relating to the other systems	Criterion (a) is not satisfied See section 3.10

3.2 Criterion (a) considered with respect to the whole and parts of the service

In applying each of the access criteria, the QCA has first considered the service as a whole. Having done this, the QCA has then considered whether any of the eight services identified by Queensland Rail have characteristics that require different or further consideration from that given to the service as a whole, and if so, whether only part of the relevant service should be declared.

The service provided by Queensland Rail is 'the use of rail transport infrastructure for providing transportation by rail'. However, based on the submissions from stakeholders, the QCA considers that there are compelling reasons why criterion (a) should be applied to parts of the service. These parts of the service are defined by use of the particular railway systems, as set out in section 2.2.2.

Firstly, criterion (a) requires detailed analysis of dependent markets. Based on the submissions from Queensland Rail, the South West Producers and Glencore, the QCA considers that the dependent markets for each of the above services differ significantly.

The QCA considers that different dependent markets arise depending on the rail system, due to the different types of freight typically carried on each system. For example:

- the North Coast Line carries predominantly (83% of total gtk) intermodal freight.

- the Mount Isa Line carries predominantly (72% of total gtk) non-coal minerals and other bulk freight (acid, fertiliser).
- the West Moreton system carries predominantly (92% of total gtk) coal.[55]

This leads to mining-related dependent markets in the context of the Mount Isa Line and West Moreton system, which do not arise in the case of the North Coast Line as it carries very little mining freight. Therefore, the analysis of the dependent markets for the North Coast Line and the Mount Isa Line, for example, cannot be appropriately considered as a whole.

Further, the QCA understands that there is minimal cross-system traffic across the network[56], which suggests that an analysis of dependent markets can be appropriately limited to a system-by-system analysis of the services as defined above.

On this basis, because the nature of competition in dependent markets is disparate and does not lend itself to analysis of the relevant service as a whole, the QCA is unable to conclude that criterion (a) is satisfied by the relevant service as a whole. The QCA considers that, based on the material before it, it is appropriate to consider criterion (a) with respect to particular 'parts of the service', as identified in section 2.2.2.

3.3 The promotion of competition

3.3.1 The environment for competition

On the issue of the interpretation of criterion (a), Queensland Rail submitted that:

> Queensland Rail therefore respectfully does not agree with the preliminary view expressed in the QCA Issues Paper that the relevant inquiry under criterion (a) is whether declaration would 'promote a materially more competitive environment'.[57]

Other stakeholders disagreed with Queensland Rail's submission, with the South West Producers and Glencore each submitting that:

> QR's interpretation is completely inconsistent with the legal and regulatory precedent which exists in relation to the interpretation of this wording.[58]

The QCA's position on the interpretation of criterion (a), including in relation to the environment for competition, is discussed in Chapter 2, section 2.4.6. In summary, the QCA adopts the following approach to criterion (a) as described in the case law and by the National Competition Council (NCC):

> The promotion of a material increase in competition involves an improvement in the opportunities and environment for competition such that competitive outcomes are materially more likely to occur.[59]

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[55] For detailed data on each of the rail systems, see sections 4.4–4.7.
[56] Queensland Rail, sub. 8, p. 2. Queensland Rail submitted that 'with limited exceptions, the access agreements [with Queensland Rail] relate to a single system. The primary exceptions include access agreements for the purposes of providing maintenance (which relate to all systems) and access agreements relating to the North Coast Line, West Moreton system, Western and South Western systems where trains need to traverse the Metropolitan system (for example, to reach the Port of Brisbane)'.
[57] Queensland Rail, sub. 8, p. 4, para 22. See also QCA, *Declaration reviews: applying the access criteria*, staff issues paper, April 2018, pp. 18–19.
[58] South West Producers, sub. 16, p. 5; Glencore, sub. 17, p. 6.
[59] NCC, *Declaration of Services, A guide to declaration under Part IIIA of the* Competition and Consumer Act 2010 *(Cth),* April 2018, p. 32, para 3.23.

The QCA notes that this approach is consistent with the submissions of the South West Producers, Glencore and Pacific National on the issue of the interpretation of criterion (a).[60]

3.3.2 A 'material' increase in competition

The QCA notes the requirement in criterion (a) that the increase in competition promoted be 'material'. The QCA's approach in relation to this requirement is discussed in detail in Chapter 2. The QCA's view is that what matters in terms of a material impact on competition is not necessarily the number of competitors in the market, or the number of potential entrants that may be discouraged from entry. Rather, it is the possibility that more efficient firms would be discouraged from entering a dependent market in a future without declaration. That is, if efficient entry is likely to be promoted in a future with declaration, the QCA considers that this would indicate that access as a result of declaration would promote an increase in competition that is material.

3.4 The proposed access framework

3.4.1 Stakeholder submissions

Queensland Rail provided a proposed new access framework, consisting of three documents:

- draft access framework
- draft standard access agreement
- draft irrevocable deed poll.[61]

Together, these three documents are referred to as the Queensland Rail 'proposed access framework'.

Queensland Rail advised that this proposed access framework is intended to operate in the event that Queensland Rail's services are not declared (i.e. in a future without declaration):

> [O]n the basis that Queensland Rail's services are not declared, Queensland Rail will provide open access to its systems on substantially the same terms as it currently does, in accordance with a binding and enforceable Access Framework.[62]
>
> …
>
> The Access Framework and Standard Access Agreement will be based on the 2016 Access Undertaking and provide as much regulatory certainty for access seekers and access holders as currently exists.[63]
>
> …
>
> The Access Framework will ensure that access will be available on reasonable terms and conditions in the future without declaration, such that the declaration will not promote a material increase in competition in any dependent markets as has been stated in our [Queensland Rail's] original submission.[64]

The South West Producers and Glencore responded negatively to the proposed access framework, stating that:

[60] See, for example, South West Producers, sub. 4, p. 27; Glencore, sub. 5, p. 11; Pacific National, sub. 9, p. 9; South West Producers, sub. 16, p. 5; Glencore, sub. 17, p. 6.
[61] Queensland Rail, sub. 11, p. 1.
[62] Queensland Rail, sub. 11, p. 1.
[63] Queensland Rail, sub. 9, p. 5, para 27.
[64] Queensland Rail, sub. 11, p. 2.

> QR's arguments in respect of criterion (a) are fundamentally flawed as they rely on … an Access Framework:
>
> (1) that is not an appropriate counterfactual for the purposes of criterion (a), given that it is blatantly contrived solely to try to defeat the declaration continuing;
>
> (2) which is so easy for QR to amend that the QCA cannot be satisfied that the initially proposed terms present a likely future state of the market without declaration; and
>
> (3) which completely removes the principal protections provided [to South West Producers and Glencore respectively] by declaration …[65]

3.4.2 QCA analysis

Proposed access framework not executed

The QCA considers that the Queensland Rail proposed access framework is not an appropriate alternative scenario[66] on which to base the assessment of the likely state of the market in a future without declaration.

The QCA notes that in the future without declaration, notwithstanding the assurances given by Queensland Rail in its submission, the existence of any access framework regime to govern access to the Queensland Rail service would be speculative and not guaranteed. This is because the QCA has not been provided with evidence that shows that the proposed access framework:

- has been duly executed by Queensland Rail, with substantially the same terms and conditions as under the proposed access framework
- will actually come into force upon the expiry of the declaration (for example, through a 'condition precedent' mechanism where, upon the expiry of the Queensland Rail declaration, the access framework will automatically come into force).

The QCA has also not received evidence that Queensland Rail has provided an enforceable promise or undertaking that it will execute an access framework, with substantially the same terms as the proposed access framework, in the event that the existing declaration of the Queensland Rail services expires.

Further, the QCA notes that the documents comprising the proposed access framework are clearly labelled as 'draft' versions, and the language used by Queensland Rail in its submission indicates that the proposed access framework is only a draft, and is not yet finalised or ready to be executed. For example, Queensland Rail submitted:

> on the basis that Queensland Rail's services are not declared … Queensland Rail would execute an irrevocable Deed Poll …
>
> Attached to this letter are copies of the draft Access Framework and Standard Access Agreement … and the draft Irrevocable Deed Poll …
>
> We are committed to consulting with industry on the draft framework …[67]

The terms of the proposed access framework have clearly not yet been finalised; as such, the QCA is unable to appropriately analyse any of the terms of the proposed access framework, and their effect in forming the future state of the market without declaration. The draft terms are

[65] South West Producers, sub. 16, p. 4; Glencore, sub. 17, p. 4.
[66] That is, as representing the likely state of the market in a future without declaration.
[67] Queensland Rail, sub. 11, pp. 1–2.

presumably subject to change at the sole discretion of Queensland Rail at any time prior to execution.[68]

Further, there is no indication from Queensland Rail's submission of when the proposed access framework will be executed, and as such, presumably a scenario is possible where the declaration expires (assuming that the service is not re-declared) but the proposed access framework is not yet executed. That would leave an unexpected gap in coverage—a period of time where no access regime (whether statutory or voluntary) applied to the Queensland Rail service. Such a scenario would create material uncertainty for access seekers and users. It would also create an incentive for Queensland Rail to delay the execution of the proposed access framework, because if the service is not declared, the QCA will be unable to act as a regulator of access conditions or arbitrator of access disputes, providing Queensland Rail with much broader discretion to exercise its market power.

At this stage, the QCA considers that there is no certainty of terms in regard to the proposed access framework, including its date of commencement. As such, it is not appropriate to consider the proposed access framework as a feasible alternative scenario, or to analyse a likely state of the future without declaration where the proposed access framework terms operated, given that the final terms themselves are not yet known.

The QCA would be willing to reconsider this position if evidence is provided that the proposed access framework has been duly executed by Queensland Rail, including with a certain commencement date. This will ensure that all stakeholders are provided with a set of finalised, legally enforceable terms and conditions (including terms regarding amendments to the existing terms), which will apply immediately upon the expiry of the declaration. This will provide an appropriate initial starting point for an analysis of the access framework as an alternative arrangement in a future without declaration.

Uncertainties in application

In any case, the QCA considers that there would be uncertainties in how the proposed access framework would apply.

For instance, under the current terms, Queensland Rail can amend the access framework at any time, even after it has been executed, on the grounds that the amendments are 'not inconsistent with' the framework's objective[69], as long as the amendments are made 'having regard to' a number of factors under the deed poll.[70] Access seekers and users can only challenge such amendments through court proceedings, and only then within 90 days of the amendments being published.[71] Further, under the deed poll, damages (monetary compensation) are not available as a remedy, even if the amendments are determined to be in

[68] As the proposed access framework has not yet been executed by any parties, its terms relating to amendments do not yet apply. This situation is analogous to the drafting of a contract that has not yet been signed: the terms of the contract may be amended at the sole discretion of the drafter of the contract.

[69] The objective of the Framework is to promote the economically efficient operation of, use of and investment in the Queensland Rail network, with the effect of promoting effective competition in upstream and downstream markets: Queensland Rail, sub. 11, Access Framework, p. 3, cl. 1.2.2.

[70] Queensland Rail, sub. 11, Deed Poll p. 5, cl. 7; see also South West Producers, sub. 16, p. 9; Glencore, sub. 17, p. 10.

[71] Queensland Rail, sub. 11, Deed Poll p. 6 (cls. 7, 10).

breach of the deed poll and access framework.[72] Therefore, access seekers and users cannot recover compensation for any damage suffered as a result of any amendments.

Aurizon Coal expressed its concerns regarding the uncertainties relating to Queensland Rail's scope to amend the terms of the framework, saying:

> Aurizon Coal considers that two critical factors absent from the proposed Framework, namely, the inclusion of a fairness and reasonableness principle; and sufficient certainty that the proposed Access Framework will remain in place and not be amended by QR to the detriment of access seekers, access holders and operators.
>
> …
>
> Additionally, QR has a wide scope to amend the terms of the Framework within the term and Aurizon Coal has significant concerns that this latitude does not provide requisite regulatory certainty and undermines investment incentives of operators. The only option available to access holders and operators to challenge amendments made by QR is to start legal proceedings. This is ineffective considering the time and investment required to mount such proceedings.[73]

Similarly, both the South West Producers and Glencore were concerned that Queensland Rail could permit amendments to the Framework too readily, saying:

> While QR is required to 'have regard' to a number of factors under the deed poll, having regard to a matter solely requires giving consideration to it. It does not require that such factors are given particular significance or weight, that the amendment is consistent with the factors to be considered or that is appropriate having had regard to such factors …
>
> …
>
> However, a negative 'not inconsistent' test measured solely by reference to such a high level objective provides an extremely low threshold for an amendment to be permitted. For example, an amendment could be 'not inconsistent' where it did not promote the objective.[74]

The QCA considers that it is not clear that the recourse to court proceedings will provide an effective means of reviewing Queensland Rail's amendments. Any access seeker or user who sought to challenge any amendments would have to undertake expensive and potentially protracted court proceedings, with an uncertain outcome and no access to monetary compensation as a remedy.[75] Therefore, the QCA considers that even if the proposed access framework were executed, there would be considerable uncertainties as to its terms over the period of its operation.

Given that the proposed access framework is unexecuted and there are considerable uncertainties in how it would apply (even if executed), the QCA does not consider that the proposed access framework can be considered as the appropriate set of arrangements in the assessment of the state of the market in a future without declaration. As such, the QCA has not considered Queensland Rail’s proposed access framework any further at this stage.

3.5 The future with declaration

Glencore and the South West Producers submitted that the likely state of a future with declaration is best estimated using evidence from the status quo (where declaration exists).[76]

[72] Queensland Rail, sub. 11, Deed Poll p. 6 (cl. 8).
[73] Aurizon Coal, sub. 21, p. 3.
[74] South West Producers, sub. 16, pp. 9–10; Glencore, sub. 17, p. 11.
[75] See South West Producers, sub. 16, p. 10; Glencore, sub. 17, p. 11; Aurizon Coal, sub. 21, p. 3.
[76] Glencore, sub. 5, p. 11; South West Producers, sub. 4, p. 28.

The QCA considers that criterion (a) requires a comparison of the state of competition in relevant markets in a future with declaration against a future without declaration. Although both scenarios involve consideration of the *future*, the likely state of such a future can be informed by the evidence and behaviours of the past.

3.5.1 Stakeholder submissions

Glencore submitted that 'declaration has resulted in all of the following important protections for competition', and that 'it would be anticipated that each of these protections would continue … in future regulatory periods were the declaration continued':

(a) obligations in the QCA Act to:

  (i) negotiate access requests in good faith

  (ii) try to meet the reasonable requirements of users

(b) the prohibition in the QCA Act against preventing or hindering access or the use of the services

(c) a standard access agreement which provides minimum terms on which access can be obtained

(d) a right to seek QCA arbitration of access disputes (under the QCA Act and/or the undertaking)

(e) a potential right to seek for the QCA to impose a future reference tariff in respect of the Mount Isa Rail Access Service

(f) a transparent queuing process which provides an even playing field for all access seekers

(g) a more transparent operating regime - including through the operating requirements manual

(h) improved transparency as to the costs of services

(i) the disclosure and reporting regime—which provides transparency and accountability and should assist in improving performance and informing access negotiations.[77]

The South West Producers submitted that 'each of the following are protections which assist with promoting and providing the opportunity for competition which currently exist as a result of declaration':

(a) the QCA is responsible for setting Western system coal reference tariffs and has a clearly established methodology for setting those tariffs at an efficient level…

(b) the QCA is responsible for setting reasonable standard terms of access - as per the standard access agreement terms

(c) a transparent queuing process which provides an even playing field for all access seekers

(d) a more transparent operating regime - including through the operating requirements manual

(e) the disclosure and reporting regime - which provides transparency and accountability and should assist in improving performance and informing access negotiations

(f) the QCA Act and undertaking provides rights to bring access disputes where an access seeker cannot reach agreement with QR on obtaining access to the QR Network

(g) other protections that the QCA Act provides for declared services generally, such as obligations to:

[77] Glencore, sub. 5, pp. 11–12.

(i) negotiate access requests in good faith

(ii) try to meet the reasonable requirements of users

(iii) the prohibition against preventing or hindering access or use of the services.[78]

Similarly, Pacific National submitted that its ability to grow its business in Queensland has been critically dependent on the stable operation of Queensland's regulatory framework under Part 5 of the QCA Act, thus demonstrating that declaration and regulation has been effective in creating an environment in which the scope for rail freight competition can develop and grow.[79] In particular, it said that the benefits of declaration:

> extend well beyond simply constraining the exercise of market power and ensuring that a balanced risk profile underpins the setting of terms and conditions for access. Declaration has facilitated the introduction of important structural and behavioural constraints … and has underpinned the growth of competition in related upstream and downstream markets.[80]
>
> …
>
> Declaration provides for critical regulatory oversight of the terms and conditions of access, as well as access to dispute resolution mechanisms in the event of an access dispute with the service provider.[81]

The QCA is satisfied that declaration offers benefits and protections, including the examples raised by the stakeholders. The QCA considers that the factors raised in the submissions reflect an accurate summary of the current terms of the access regime under declaration (Part 5 of the QCA Act).

3.5.2 QCA analysis

The QCA considers that the current terms of access provide guidance as to the access regime that access seekers and users are likely to face in a future with declaration.

In particular, the QCA considers that a third party access regime under Part 5 of the QCA Act would, in a future with declaration, provide a credible constraint on Queensland Rail's use of market power as a monopolist. The QCA notes the following particular aspects of the current access regime for declared services, which are contained in the QCA Act, and which the QCA therefore considers are likely to exist in the future with declaration.

Firstly, declaration under the QCA Act establishes a right for an access seeker, and an obligation on Queensland Rail (as access provider of the service), to negotiate an access agreement. This right extends to any access seeker. In doing so, the access provider must negotiate in good faith and must make all reasonable efforts to satisfy the reasonable requirements of an access seeker. The QCA Act envisages that access negotiations will end in the successful conclusion of an access agreement, and if commercial negotiations fail, in arbitration by the QCA.

Secondly, in order to facilitate negotiations and minimise arbitrations, the QCA Act provides for the preparation and approval of access undertakings for declared services. These access undertakings can assist in establishing standard price and non-price terms to guide access negotiations and provide a credible 'default' position from which access seekers can begin

[78] South West Producers, sub. 4, p. 28.
[79] Pacific National, sub. 9, p. 6.
[80] Pacific National, sub. 9, p. 4.
[81] Pacific National, sub. 9, p. 12.

negotiations.[82] The QCA Act provides for periodic reviews of access undertakings (e.g. through the requirement that access undertakings must have an expiry date) and ongoing monitoring of compliance with the approved terms of the undertaking.

In this way, the QCA Act access regime currently prevents Queensland Rail from unilaterally setting, for any access seekers:

- the terms on which Queensland Rail would negotiate access arrangements, as those terms are set out in a QCA approved undertaking
- the terms and conditions under which Queensland Rail will provide access, as negotiations for an access agreement take place against the 'default' terms approved by the QCA in the undertaking.

As a result, the QCA considers that Queensland's third party access regime provides for:

- predictability in approach and regulatory certainty—the process to set access terms (e.g. access charges) is transparent, consultative and follows established methodologies
- transparency—the terms of the access undertaking and related documents are publicly available and the process of setting and reviewing these terms is transparent
- equal rights—the rights and remedies available under the QCA Act are available equally to all access seekers
- enforceability—the standard terms set by the QCA in an approved access undertaking, as well as the QCA's access determinations, are court-enforceable; any access seeker or holder can bring a dispute to the QCA or the courts and be assured that a transparent dispute resolution process will be followed.

3.6 The future without declaration

The QCA's approach in assessing criterion (a) is to consider the likely effect of access on reasonable terms and conditions as a result of declaration on competition in dependent markets both in a future with declaration and a future without declaration. Given that there are considerable uncertainties in how the proposed access framework would apply (see section 3.4.2), the QCA does not consider that the proposed access framework is an appropriate alternative scenario in the assessment of the state of the market in a future without declaration, and will not further consider its operation in the future without declaration. Rather, the QCA focuses on assessing how Queensland Rail, as a monopolist, might behave in such a market where there are no regulatory or contractual constraints on its behaviour. This includes a consideration of whether Queensland Rail will have the ability or incentive to exercise its market power to adversely affect competition in a dependent market.

3.7 The North Coast Line and Metropolitan system services

3.7.1 The two services considered together

The services provided by the North Coast Line and the Metropolitan system[83] are considered together, as the commercial reality of the use of these systems together demonstrates that it is necessary to do so.

[82] If parties cannot agree on the terms of access, the parties may seek an arbitration by the QCA, although the QCA's determination must not be inconsistent with the QCA-approved access undertaking.

The North Coast Line extends from Cairns south along Queensland's eastern coastline to Nambour (approximately 100 km north of Brisbane Central station). From Nambour the North Coast Line joins the Metropolitan system, which consists of a network of various lines and branch lines across the Brisbane metropolitan area. In particular, access to the Metropolitan system enables freight operators to access the crucial supply-chain infrastructure based in Brisbane, such as the intermodal terminals at Acacia Ridge and Tennyson and the import/export terminals at the Port of Brisbane; it also allows connection to the interstate rail system south into New South Wales.

As such, access to the Metropolitan system is crucial for users of the North Coast Line, as the majority of products hauled on the North Coast Line either originate from or are destined for Brisbane. This commercial reality is demonstrated by the submission of Queensland Rail:

> With limited exceptions, the [currently existing] access agreements relate to a single system… The primary exceptions include access agreements for the purposes of providing maintenance (which relate to all systems) and access agreements relating to the North Coast Line, West Moreton System, West and South Western Systems where trains need to traverse the Metropolitan System (for example, to reach the Port of Brisbane).[84]

Access to only the North Coast Line, and not the Metropolitan system, would be of very limited utility for the majority of users seeking access to the North Coast Line service.

3.7.2 Dependent markets

The market for the North Coast Line service is the market for the use of rail transport infrastructure for providing transportation by rail on the North Coast Line. A relevant dependent market is the above-rail haulage market on the North Coast (and Metropolitan) Line: this describes the market for the transportation of freight by rail on the North Coast (and Metropolitan) Line. In this market, beneficial freight owners (or freight forwarders) contract with operators of rollingstock to haul freight via rail from an origin to a destination point along the North Coast (and Metropolitan) Line.

Given the lack of stakeholder submissions in relation to the North Coast (and Metropolitan) Line services, the QCA's analysis is currently based largely on publicly available data.

The QCA notes that other dependent markets include the downstream end product markets for the goods hauled on the North Coast (and Metropolitan) Line, however these markets are varied given the variety of different freight carried on the Line. The QCA has not discussed these possible dependent markets any further at this stage due to the lack of stakeholder submissions on the issue, and the lack of publicly available data to support any such analysis.

3.7.3 The nature of the freight task on the North Coast corridor

Prior to a detailed analysis of the above-rail haulage market, the QCA considers it beneficial to provide a discussion of the nature of the freight task on the North Coast corridor, in particular, the use of road and the use of rail for the transportation of freight.

The 'North Coast corridor' describes the route along Queensland's eastern coastline, bounded by Brisbane in the south and Cairns in the north, passing through the regional cities of Bundaberg, Gladstone, Rockhampton, Mackay and Townsville. This transportation corridor includes both the Metropolitan and North Coast Line rail systems, as well as the Bruce Highway

[83] For the sake of brevity, the two systems together will be referred to as the North Coast (and Metropolitan) Line in this section.

[84] Queensland Rail, sub. 8, p. 2, para 12.

road infrastructure (which for many parts of the route runs almost parallel to the North Coast Line).

Competition between road and rail

Stakeholder submissions

Queensland Rail and Pacific National each said that they were materially constrained in the provision of below-rail and above-rail services respectively on the North Coast Line—in particular in relation to pricing—by strong competition from road operators.

Queensland Rail said:

> In the future without declaration, Queensland Rail would be materially constrained in the provision of below rail services for the purposes of transporting freight by … strong competition from road operators, which provide a closely substitutable service in respect of the transportation of freight, other than some bulk commodities being transported over long distances. Parties requiring freight transportation services can readily shift to moving freight by road in the event of an increase in access price and/or decline in quality of service provided.[85]
>
> Road transportation offers an effective substitute service to rail, which has a significant and direct downward impact on the prices that Queensland Rail negotiates with access seekers.[86]

Similarly, Pacific National explained:

> Regulated access has also enabled PN to compete effectively with road freight operators in Queensland, particularly on the North Coast corridor and Mt Isa corridor.[87]
>
> …
>
> Access to the monopoly below rail infrastructure supports a highly competitive environment for haulage along these freight corridors. In the haulage market, PN competes with other above-rail operators such as Aurizon, as well as other modes of freight transport (e.g. road transport).[88]
>
> …
>
> Removal of declaration would compromise the competitiveness of rail freight services as it would remove the regulatory certainty and transparency of access regulation which ensures rail operators remains competitive with road operators in providing non-bulk haulage services in Queensland.[89]

QCA analysis

The QCA considers that the extent to which the transportation of freight by road can be competitive with the transportation of freight by rail depends on the extent to which road transport is substitutable for rail transport for the particular type, volume and distance of freight to be transported. The QCA understands that a range of factors determine the appropriate mode for any transport task. These include:

- the type, size and volume of product to be transported
- the suitability/capability of the mode to transport and handle the product
- total door-to-door cost
- reliability of the transport mode

[85] Queensland Rail, sub. 8, p. 4, para 25.
[86] Queensland Rail, sub. 8, p. 1, para 3.
[87] Pacific National, sub. 9, p. 6.
[88] Pacific National, sub. 9, p. 8.
[89] Pacific National, sub. 9, p. 12.

- the origin/destination pairing of the task
- the required transit time
- service frequencies offered
- flexibility of service offerings
- level of customer service provided.[90]

Based on the evidence discussed below, the QCA considers that there is a subset of the above-rail market, being the transportation of non-bulk freight for a medium distance (between 600 and 1,000 km), in which the transportation of freight by road can be said to be competing with the transportation of freight by rail.

The effect of the product type (bulk vs non-bulk products)

The Bureau of Infrastructure, Transport and Regional Economics (BITRE) found that the suitability of the transport mode depended upon the transport task, saying:[91]

> Each mode [road or rail] has attributes that render them more suitable, and generally less costly, for particular transport tasks. For example, the flexibility of road transport for urban goods distribution is unassailable; equally, the scale economies of rail over longer distances and for bulk commodities advantage it, over road, for these tasks.

Road transport is generally preferable for non-bulk goods, which includes perishable, fragile and high-value commodities (e.g. food, manufactured goods, retail products), which tend to be more time- and reliability-sensitive. As the ACCC stated:

> [R]oad freight is generally faster, as there are no strict cut off times, and in some cases more reliable as it is less prone to delay due to weather or maintenance events. For these reasons, road freight is considered better for goods with a short shelf life or otherwise with highly time sensitive delivery. Transport by road is also considered to be gentler on freight than transport by rail, making it more suitable for moving easily damaged goods. The flexibility of transport by a truck can make road freight more appropriate for products which need to be collected from a farm gate or a destination sufficiently far from the nearest rail terminal, such that the pick-up and delivery component would extend the total price and journey time.[92]

In contrast, rail transport is generally preferable for bulk freight, which generally involves large volumes of homogenous product, typically liquid or crushed material (e.g. coal, minerals, sugar, grain), transported in mass quantities, without packaging, which tend to be relatively non-perishable and non-fragile. As the ACCC noted:

> Market feedback has indicated that freight owners moving large volumes of non-perishable or long-shelf life perishable goods view rail as the more appropriate mode over longer distances due to its tonnage and volume capacity, lack of time sensitivity and lower price.[93]

BITRE also made it clear that road transport has only a very minor role in bulk freight transport:

> Australia's bulk freight task is dominated by rail (48 per cent) and shipping (36 per cent) … Road carries only a small proportion of bulk freight, with most of this aggregate building supplies, such

[90] Department of Transport and Main Roads (TMR), *North Coast Line Capacity Improvement Study,* final report, 2015, p. 73.

[91] BITRE, *Road and rail freight: competitors or complements?,* information sheet 34, Australian Government, July 2009, p. 1.

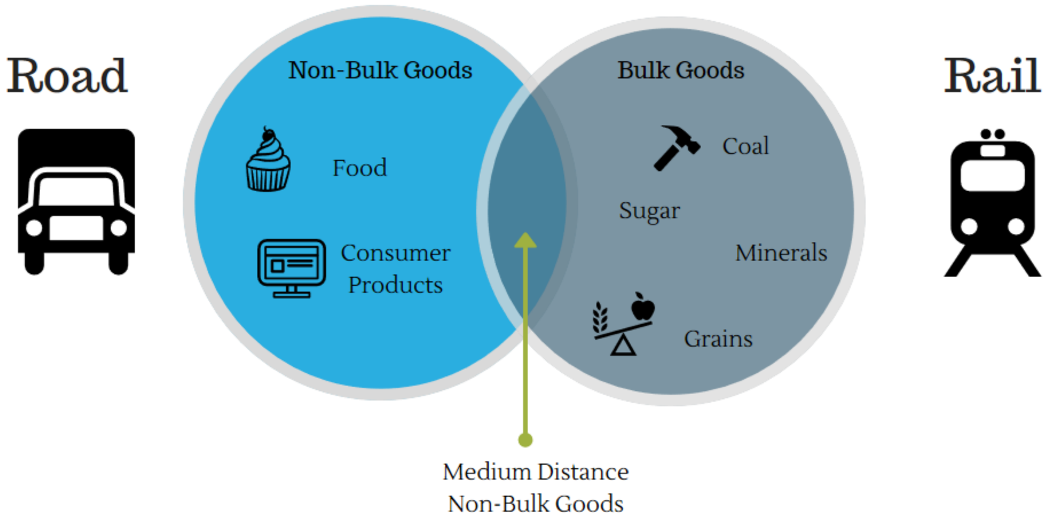
[92] ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 13, para 78.

[93] ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 13, para 79.

> as sand and gravel, generally carted short distances (less than 20 kilometres) … Transporting many of these commodities [bulk freight] by road would be vastly more expensive, and so there is effectively no competition from road transport.[94]

In summary, road transport is generally more advantageous for transporting non-bulk goods such as food and consumer products, which may be fragile, time-sensitive or require flexibility in their delivery. Rail transport is generally more advantageous for transporting bulk goods such as minerals or grain, which tend to be long-shelf-life goods in large volumes, generally requiring repeated deliveries to and from predefined points (e.g. a mine or grain silos to an export port). Figure 3 provides a graphical representation of the road and rail usage for the transportation of goods by product type.

Figure 3 Road and rail usage for the transportation of goods



The effect of distance

Outside these specific instances where road or rail have inherent advantages, market evidence suggests that price is the key determinant of modal choice for freight that can technically be carried by either road or rail.[95]

BITRE has noted that in terms of Australian average freight costs, the average road freight cost per kilometre is more or less constant with respect to distance, whereas average rail costs decline with increasing freight volumes and distances, such that rail is cheaper for door-to-door freight hauls (i.e. rail freight tasks including door-to-door pick-up and delivery) above 1,000 km.[96]

Similarly, the ACCC noted that there is a 'tipping point' in terms of distance travelled, at which transport by rail is significantly cheaper than road:

> Market participants have referred to a 'tipping point (varying between 600-1000km, or roughly the distance between Brisbane to Rockhampton or Mackay) at which rail is significantly cheaper than road … Examples provided to the ACCC indicate that for freight carried beyond this tipping point, from Brisbane to Townsville/Cairns, road has been quoted as significantly more expensive

[94] BITRE, *Road and rail freight: competitors or complements?,* information sheet 34, Australian Government, July 2009, p. 3.

[95] ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 13 (para 80); TMR, *North Coast Line Capacity Improvement Study,* final report, 2015, p. 73.

[96] BITRE, *Road and rail freight: competitors or complements?*, information sheet 34, Australian Government, July 2009, p. 8.

> than rail, with examples ranging from 15% more expensive to 300% more expensive. The ACCC has received tender information from a variety of market participants which shows that requests for tender for freight tasks from Brisbane to Cairns or Townsville are often only provided to or received by rail-based solutions. Market participants have provided the ACCC with a consistent message that unless their freight particularly requires road transport (for example, because it has a shorter shelf life and this is easily damaged), they generally do not consider road as an option past this tipping point.[97]

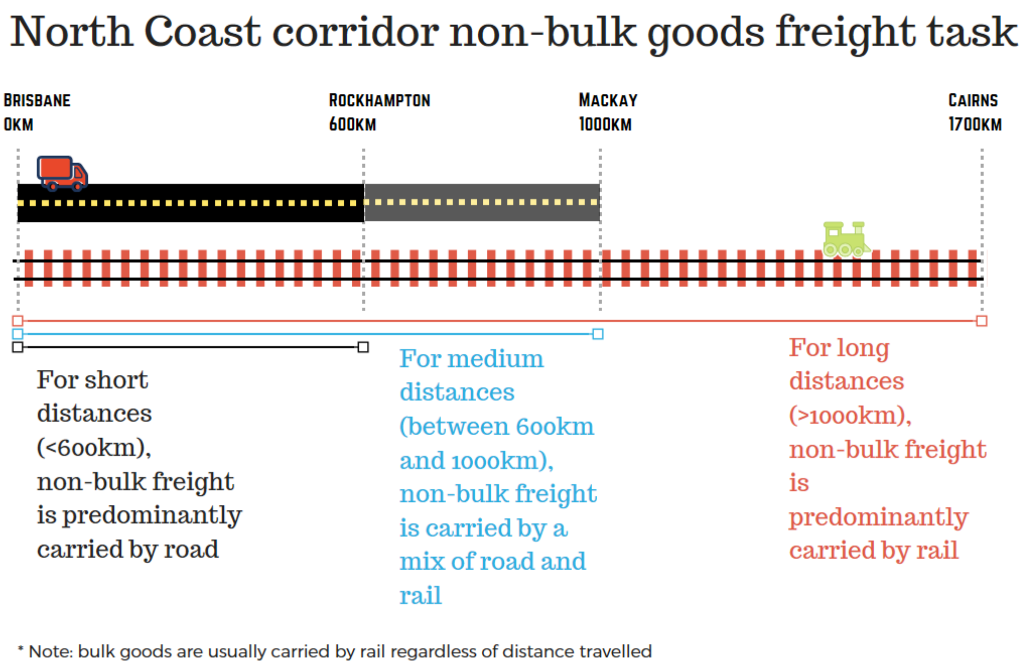
The segmented nature of the freight task on the North Coast corridor

The QCA considers that the freight task on the North Coast corridor is segmented into four categories:

- For bulk products, rail is the preferred transport mode, almost irrespective of distance travelled (unless for very small distances—less than 20 km).
- For non-bulk products travelling short distances (less than 600 km), road is the preferred transport mode.
- For non-bulk products travelling long distances (greater than 1,000 km), rail is the preferred transport mode.
- For non-bulk products travelling medium distances (between 600 and 1,000 km), competition exists between road and rail transport modes.[98]

Figure 4 depicts the segmented nature of the freight task on the North Coast corridor.

Figure 4 Choice of transport modes for the North Coast corridor



The QCA's preliminary view is that competition between road and rail operators on the North Coast transport corridor exists only within a subset of the general transportation market, specifically the transportation of non-bulk freight for a medium distance (between 600 and

[97] ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, pp. 13–14, paras 80–81.
[98] The QCA notes that this aligns with the analysis undertaken by the ACCC: ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 14, para 84.

1,000 km), in which the transportation of freight by road can be said to be competitive with the transportation of freight by rail. The QCA invites further submissions on the relative sizes of this subset (and other subsets) of the market.

The categories of the freight task on the North Coast corridor

The transport of bulk freight and the transport of non-bulk freight over long distances

Rail enjoys an inherent cost advantage in the transport of bulk freight, due to its ability to exploit economies of scale (e.g. by attaching more wagons to a locomotive, more volumes of goods can be carried for the one locomotive and one train path), thus allowing it to transport large volumes of bulk freight at lower average cost than road transport, which does not have economies of scale for large volumes (i.e. one truck can only carry a defined volume). Similarly, rail enjoys a significant cost advantage for the transport of non-bulk freight over long distances (greater than 1,000 km).

Thus, the QCA considers that rail operators may be relatively unconstrained in the prices which they may charge for the transportation of bulk freight, and the transportation of non-bulk freight over long distances along the North Coast corridor, as transport by road is not viewed as a viable alternative for such goods.

The transport of non-bulk freight over short distances

Road enjoys an inherent advantage in the transport of non-bulk freight over short distances, as over shorter distances rail is unable to fully realise the benefits of economies of scale. Road transport also offers additional flexibility (of both delivery times and delivery locations) for transport over shorter distances (less than 600 km). Thus, the QCA's preliminary view is that it may be the case that rail operators are less likely to compete in this segment of the market.

The transport of non-bulk freight over medium distances

Based on the publicly available evidence, the QCA's preliminary view is that a contestable market exists in the transportation of non-bulk freight over medium distances (600 to 1,000 km), where road and rail operators compete for customers.

The final price paid by beneficial freight owners (or forwarders) to transport freight by rail on the North Coast (and Metropolitan) Line consists of predominantly two components—an above-rail component, representative of the charges of the above-rail operator, and a below-rail component, representative of the charges of the below-rail manager (Queensland Rail).

In this contestable market (i.e. medium distance non-bulk freight), the total price charged by the rail operator[99] is constrained by the price charged by the road operator. This is because if the total cost of rail transport exceeds the total cost of road transport for such goods (which can be feasibly transported by road or rail), then rail operators will lose market share to road operators for the transport of this freight.

Thus, the QCA considers that the submissions made by Queensland Rail and Pacific National in relation to competition between road and rail on the North Coast corridor are correct, though only to the extent of applying to the transportation of non-bulk freight over medium distances.

Conclusion

It is against this background that the above-rail haulage market on the North Coast (and Metropolitan) Line is considered.

[99] Incorporating both the above- and below-rail components of the fee.

3.7.4 Above-rail haulage market on the North Coast (and Metropolitan) Line

The market

The market for above-rail haulage describes the market in which beneficial freight owners (or freight forwarders) contract with operators of rollingstock (locomotives and wagons) to haul freight via rail from an origin to a destination point along the North Coast (and Metropolitan) Line.

Figure 5 illustrates the above-rail haulage market on the North Coast (and Metropolitan) Line.

Figure 5 Above-rail haulage market on the North Coast (and Metropolitan) Line

The suppliers in the above-rail haulage market are the operators of rollingstock. The QCA understands that Pacific National and Linfox (formerly Aurizon Operations) currently provide above-rail haulage services on the North Coast (and Metropolitan) Line.

The customers in the above-rail haulage market include beneficial freight owners and freight forwarders. Freight forwarders offer a 'door-to-door' origin to destination service for freight owners, and typically contract above-rail haulage services on a wholesale level (and then package it with a pick-up and delivery service). Alternatively, beneficial freight owners may contract directly with above-rail haulage operators for rail haulage services.[100] As discussed in section 3.7.3, the demand in this market typically arises from three categories of freight task:

- the transportation of bulk goods
- the transportation of non-bulk goods over long distances (greater than 1,000 km)
- the transportation of non-bulk goods over medium distances (between 600 and 1,000 km).

The geographic dimensions of the above-rail market on the North Coast (and Metropolitan) Line are bounded by the geographic dimensions of the rail systems—Brisbane in the south and Cairns in the north, along Queensland's eastern coastline, including the regional cities along the route (e.g. Bundaberg, Gladstone, Rockhampton, Mackay and Townsville).

The relationship between the primary market and the dependent market

The market for the part of the service which is the use of the North Coast (and Metropolitan) Line is the market for the below-rail service on these rail systems.[101] In this primary market,

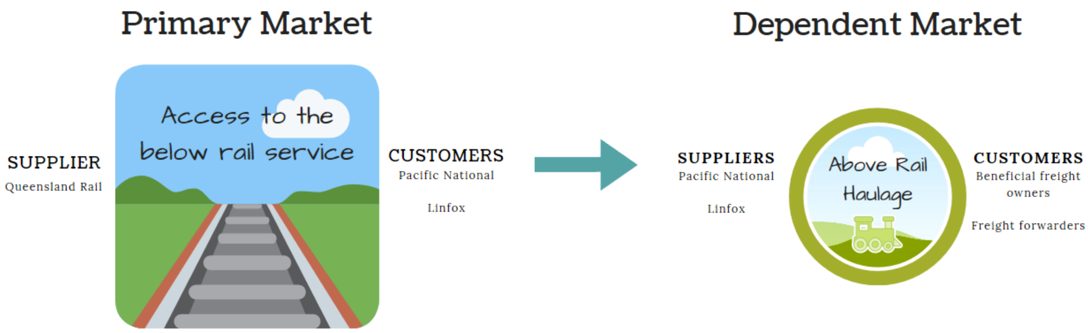
[100] See ACCC, *Pacific National/Linfox–Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 6, para 35, http://registers.accc.gov.au/content/trimFile.phtml?trimFileTitle=MER18+2552.pdf&trimFileFromVersionId=1205544&trimFileName=MER18+2552.pdf/.

[101] Specifically, this is the market for the use of rail transport infrastructure for providing transportation by rail.

Queensland Rail is the supplier of below-rail services and Pacific National and Linfox are the customers.

A dependent market for the service on the North Coast (and Metropolitan) Line is the above-rail haulage market on this line. In the above-rail haulage market, Pacific National and Linfox are the suppliers, and beneficial freight owners and freight forwarders are the customers. Figure 6 illustrates the relationship between the primary market for the service and the dependent above-rail haulage market.

Figure 6 Relationship between primary market for the service and the dependent above-rail haulage market



The nature of traffic on the North Coast (and Metropolitan) Line

The main types of traffic carried by above-rail operators on the North Coast Line are:

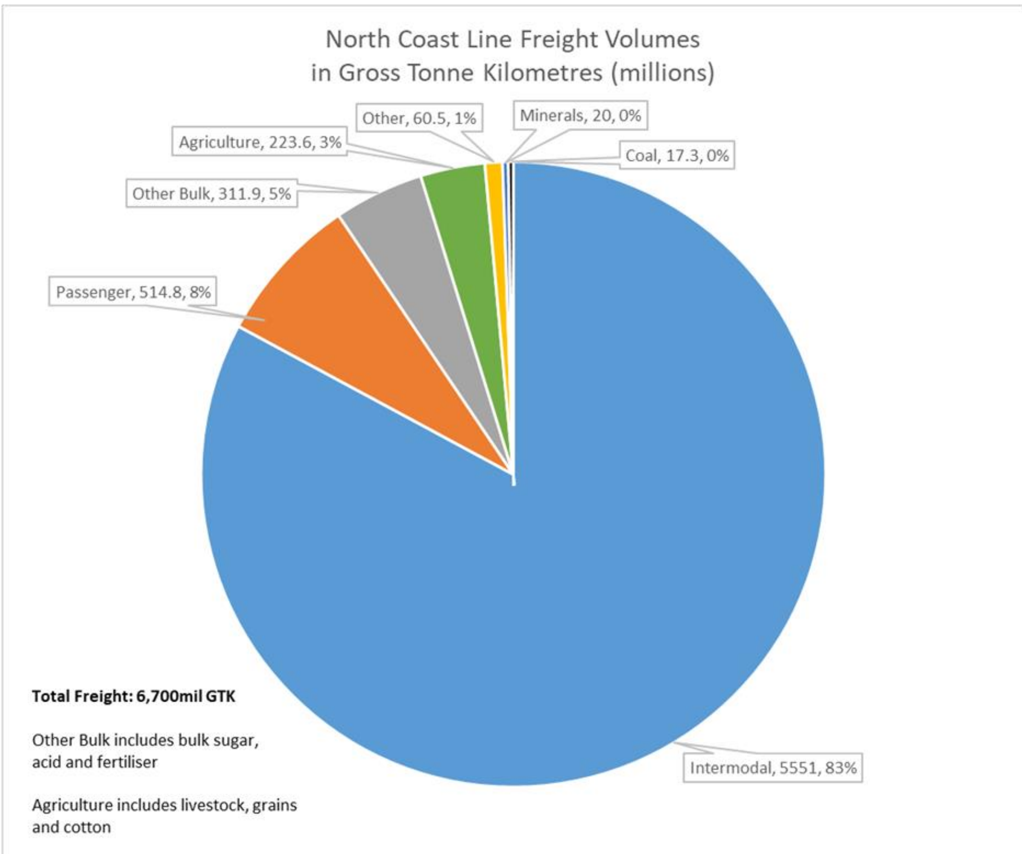
- intermodal freight (83% of total gtk carried on the line[102])
- passenger services (8% of total gtk carried)
- other bulk products (bulk sugar, acid and fertiliser) (5% of total gtk carried)
- agricultural products (livestock, cotton, grains) (3% of total gtk carried).

The North Coast Line primarily carries intermodal freight. The term 'intermodal' is used to describe typically non-bulk or general freight in containerised, palletised and/or parcel configurations (e.g. retail products, cars, manufactured goods, industrial supplies (pipes, wires etc.). Intermodal or 'non-bulk' freight is distinguished from 'bulk' freight, which consists of loose homogenous commodities typically transported in large volumes, such as sugar, grain, acid, fertiliser, and coal and minerals.

The breakdown of the types of freight carried by rail operators on the North Coast Line is shown in Figure 7.

[102] Gross tonne kilometres (gtk) is a measure of the level of operating activity on a particular rail system. It is the product of the total gross weight of the train (i.e. including the locomotives and wagons used, as well as the goods and passengers carried) and the distance (in kilometres) travelled by the train.

Figure 7 North Coast Line freight volumes by commodity, 2016–17



Source: Adapted from Queensland Rail, 2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1, December 2017, p. 18.

Entry into the market

In the current state of the market for above-rail haulage services on the North Coast (and Metropolitan) Line, Pacific National and Linfox (formerly Aurizon Operations) are the above-rail operators.

The potential entry of a new competitor into the above-rail haulage market on the North Coast (and Metropolitan) Line is likely to involve the incurring of substantial sunk costs as part of entering the market. In this context, the potential entrant's decision may depend on several factors, including:

- anticipated revenue—for example, from sufficient contracts (or sufficient volumes) with major customers who are willing to commit to haulage contracts to underwrite and sustain that entry[103]
- anticipated below rail costs—the price charged by Queensland Rail for the use of its below-rail network

[103] South West Producers, sub. 16, p. 14; Glencore, sub. 17, p. 15. The South West Producers and Glencore both mentioned the example of Pacific National who was able to enter the Queensland coal haulage industry through a contract underwritten by volumes from Glencore and Rio Tinto. See also ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 15, para 91.

- anticipated non-price access terms—for example, the scheduling of train paths by Queensland Rail in a way that allows for delivery times and frequency of service to meet customer needs, particularly given the need to coordinate paths with the existing operators' demand; and scheduling and access to intermodal terminal capacity, freight terminals, marshalling yards and other related-below rail infrastructure in Brisbane and along the North Coast (and Metropolitan) Line.[104]

The features of the existing market

The starting point for an analysis of the future with and without declaration is to note some salient features of the existing market for above-rail haulage on the North Coast (and Metropolitan) Line.

Two above-rail operators

Prior to 2018, the two above-rail operators on the North Coast (and Metropolitan) Line were Pacific National and Aurizon Operations. In August 2017, Aurizon Operations announced its intention to sell its Queensland intermodal business (including operations on the North Coast Line) to Pacific National; in July 2018, this proposed sale was opposed by the ACCC.[105]

At the time of drafting, the QCA understands that Aurizon Operations has sold its Queensland intermodal business (including operations on the North Coast (and Metropolitan) Line) to Linfox, and that this will not be opposed by the ACCC.[106] Therefore, there will likely to continue to be two above-rail operators on the North Coast (and Metropolitan) Line: Pacific National and Linfox.

No evergreen renewal rights in access agreements

The QCA understands that access agreements with Queensland Rail are typically for a period of 10 years. Importantly, the existing access agreements for the Queensland Rail network (including for users of the North Coast Line service) do not provide any automatic right for future renewals, such that terms under these agreements (e.g. in relation to pricing, capacity allocation or usage of facilities) progressively expire and must be re-negotiated for each new contract (e.g. every 10 years).[107]

In contrast, the QCA understands that existing access agreements with DBCT Management in relation to access to DBCT contain 'evergreen' renewal clauses, which allow incumbent users the option to extend their agreements and continue to access DBCT based on the same terms of access set out in the existing agreements (see Part C: the DBCT service).

Spare capacity exists on the North Coast (and Metropolitan) Line

Queensland Rail is the monopoly provider of the below-rail service in the primary market, and clearly has an ability to exercise its market power over its customers. However, Queensland Rail has denied that it has the ability or incentive to use market power to adversely affect competition in any dependent markets, stating that:

[104] ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon,* Statement of Issues, March 2018, p. 15, para 91.
[105] ACCC, *Pacific National Pty Ltd/Linfox—Proposed acquisitions of Intermodal assets from Aurizon*, 2018.
[106] ACCC, *ACCC will not oppose proposed sale of Aurizon's Queensland intermodal business*, media release, 12 October 2018, viewed 22 October 2018, https://www.accc.gov.au/media-release/accc-will-not-oppose-proposed-sale-of-aurizon’s-queensland-intermodal-business.
[107] South West Producers, sub. 4, p. 28.

> ii) In the future without declaration, Queensland Rail would be materially constrained … by [its] incentives to maximise demand for its below rail services due to significant spare capacity on its systems.[108]

Queensland Rail's submission does not specifically address capacity utilisation on the North Coast Line service, and the QCA notes that no stakeholders have provided evidence or data on the utilisation of capacity on the North Coast Line. However, based on publicly available evidence, the QCA considers that the North Coast Line is not currently operating at capacity.[109] Queensland Rail's ability and incentive to exercise market power in these circumstances is discussed in section 3.7.5.

Queensland Rail is not vertically integrated with respect to freight services

Queensland Rail's above-rail business is comprised solely of passenger services; it is currently the only provider of passenger train services across Queensland.[110] Queensland Rail does not offer any above-rail freight services and as such is not vertically integrated into the above-rail freight market.[111] The QCA understands that Queensland Rail's constitution limits its operations to the provision of rail passenger transport and activities relating to the planning, development and ongoing maintenance of its rail transport infrastructure, and that this constitution can only be amended with the consent of Queensland Rail's shareholding Ministers.[112] Thus, the QCA considers it unlikely that Queensland Rail would enter the above-rail freight market in the foreseeable future.

3.7.5 Competition in the above-rail haulage market in a future with and without declaration

The QCA considers that a future with declaration will continue to provide for access to the rail network on reasonable terms and conditions due to on-going regulatory oversight. The protections provided by the regulatory framework (see section 3.7.7) will provide certainty to a potential new market entrant (or renewing access holder) about the likely future terms and conditions of access, reducing the risks of undertaking market entry and operations. The certainty provided by access under declaration, including at time of contract renewal, is likely to be a critical factor in supporting efficient entry to and efficient participation in the above-rail haulage market, thereby materially promoting competition.[113]

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[108] Queensland Rail, sub. 8, p. 4, para 25.

[109] For example, Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 4 shows that in 2016–17 financial year, the North Coast Line received approximately $48 million in access charges, compared to $125 million in Transport Service Contract subsidies for the below-rail service provided by Queensland Rail. It suggests that the operation of the below-rail service on the North Coast Line is not able to be funded commercially from the volume of commercial access charges, and is still largely dependent on government subsidies for its operation. Above-rail freight services on the North Coast Line are operated by Pacific National and Linfox/Aurizon Operations, and are not subsidised.

[110] With the exception of a small number of small, localised, private tourist train operators.

[111] Queensland Rail, sub. 8, p. 1, para 2.

[112] Queensland Rail, *Draft Queensland Rail Access Undertaking 1*, explanatory submission, March 2012, pp. 15–17.

[113] Efficient participation in the market includes actions undertaken by incumbent market participants, such as investing in operational efficiencies and innovations, as well as re-investment into the market at the time of contract renewal.

Queensland Rail's ability and incentive to exercise market power: the hold-up problem

As a business, Queensland Rail has an incentive to maximise profits. In a future with declaration, its ability to exercise its monopoly power in order to maximise profits will be subject to the regulatory regime. In a future without declaration, the QCA considers that Queensland Rail will likely be unconstrained in its ability to exercise market power in order to maximise profits.

In relation to the North Coast Line, the QCA acknowledges that the availability of spare capacity on the line is likely to continue in the future.[114] Queensland Rail has submitted that it would be materially constrained in its ability and incentive to exercise market power in a future without declaration due to its incentives to maximise demand for its below-rail services, due to the 'significant spare capacity on its systems'.[115] While it is true that Queensland Rail may have an incentive to contract its spare capacity in order to increase its revenues, the QCA considers that its underlying incentive is still to maximise profit (which is not necessarily the same as maximising demand).[116]

It is in this environment that market participants will face decisions to enter or operate in the above-rail market on the North Coast (and Metropolitan) Line in a future without declaration. In particular, a new entrant to the above-rail haulage market will have to incur significant sunk costs through the need to invest in long-life rollingstock assets (which typically have a 20–25-year life[117]), as well as the associated maintenance and provisioning facilities. Given the specific operational characteristics of the North Coast (and Metropolitan) Line, such as a narrow-gauge track with specific tonnage allowances, such assets are unable to be readily switched to alternative uses elsewhere. The presence of sunk investments gives rise to the two-period 'hold-up problem' commonly described in the economics literature on natural monopoly regulation:

> The basic story is as follows: the users of a monopoly firm routinely have the opportunity to take some irreversible action which will significantly increase the value of or demand for the monopolist's products or services. The users or consumers, however, fear that once they have taken that action and incurred the associated sunk cost, the monopolist will engage in "ex post opportunism" – raising the price for the monopolist service, expropriating the additional benefit or value achieved. Fearing this expropriation, the users or consumers are reluctant to put themselves in a position where they can be exploited by the monopolist. As a result, they fail to take socially efficient actions, or they take other actions which are less socially beneficial, but with lower risk of expropriation. The failure to take efficient actions results in a material economic welfare loss.[118]

In the above-rail haulage market on the North Coast (and Metropolitan) Line service in a future without declaration, given that there is spare capacity and that Queensland Rail is not vertically

[114] There has historically been spare capacity on the North Coast Line, and the QCA does not consider that there are any foreseeable developments which would lead to capacity constraints arising on the North Coast Line. Therefore, the QCA considers that in a future without declaration, it is reasonable to assume that there would continue to be spare capacity on the North Coast Line.

[115] Queensland Rail, sub. 8, p. 4, para 25(a)(ii)(d).

[116] Therefore, even where Queensland Rail has an incentive to provide access, in a future without declaration such access may nevertheless be offered on monopolistic terms and conditions, for example at higher prices, than what may occur under a future with declaration. As such, even where Queensland Rail may be incentivised to provide access, such access may nevertheless be less than what it would be in a future with declaration.

[117] See for example, Glencore, sub. 5, p. 13; South West Producers, sub. 16 p. 14; QRC, sub. 7, p. 19.

[118] D Biggar, 'Is protecting sunk investments by consumers a key rationale for natural monopoly regulation?', *Review of Network Economics*, vol. 8, no. 2, p. 13.

integrated into the freight haulage market, it may reasonably be expected that Queensland Rail would have an incentive to provide access to a potential entrant, in order to promote utilisation of its assets and increase its revenues. Similarly, for those freight tasks where rail freight competes with road transport, Queensland Rail will arguably have an incentive to ensure rail freight is competitively priced in order to prevent loss of market share to road transport. Therefore, the QCA considers that initially, Queensland Rail would be incentivised to provide access to a potential new market entrant, in order to encourage it to enter the market.

If the firm decides to enter the market, it will incur significant sunk costs through the need to invest in long-life rollingstock assets, as well as the associated maintenance and provisioning facilities. The 20–25-year useful life of rollingstock can be contrasted against the typical length of a below-rail access agreement, which the QCA understands to be around 10 years.[119] Therefore, at some point in the middle of the useful life of the rollingstock, it can be expected that the below-rail access agreement will be due for renewal. As noted in section 3.7.4, below-rail access agreements with Queensland Rail have historically not contained evergreen renewal clauses[120]—this means that any terms contained in the original access agreement (entered into in the first period) may not necessarily be replicated in the new access agreement.

In the second period, when the below-rail access agreement is due for renewal, the above-rail operator would be in a less favourable bargaining position than Queensland Rail, as it has made significant sunk investments in rollingstock assets that are not readily used elsewhere. An argument may be made that Queensland Rail would also have made sunk investments, for example in improvements or expansions to the below-rail infrastructure to accommodate the above-rail operator's needs. However, the QCA considers that Queensland Rail may be able to offer use of its below-rail infrastructure to another above-rail operator (e.g. a competitor operator), whereas the above-rail operator may face greater difficulties in attempting to find an alternative use for its narrow-gauge rollingstock.

In a future without declaration, the QCA considers that Queensland Rail will be relatively unconstrained in its ability to exercise monopoly power, compared to the certainties of obtaining access on efficient and reasonable conditions offered under declaration. In particular, in a future without declaration, the QCA is concerned that all market participants will face material uncertainties relating to price and non-price terms[121], particularly at the time of contract renewal.

Therefore, in a future without declaration, Queensland Rail will have an ability and incentive to exercise market power in negotiating future (renewal) access agreements with the above-rail operator, for example through setting higher prices or offering unfavourable terms of access. In a future without declaration, an above-rail operator will be exposed to the risk of significant uncertainty in relation to price and non-price terms of access at the contract renewal stage.

In the second period, arguably this outcome may be regarded as a transfer of rents between the parties, with little impact on competition in the above-rail market. However, the QCA considers that the critical issue is that in the first period, the above-rail operator can foresee this risk that any sunk investments it makes in the first period will be exposed to the risk of expropriation by the monopolist in the second period. The QCA considers that this risk is sufficiently material

[119] QRC, sub. 7, p. 19.

[120] In the absence of information to the contrary, the QCA has proceeded on the basis that this practice will continue in the future i.e. that below-rail access agreements in the future are likely to also not contain evergreen renewal clauses.

[121] Such price and non-price terms are considered in detail in section 3.7.7.

that a potential more efficient entrant will likely be deterred from entering the market in the first place.[122]

In effect, the ability of Queensland Rail to exercise market power in future contracting periods creates a significant degree of uncertainty for potential market participants at the time they are considering investment, raising the hurdle rate required to justify the investment and potentially preventing efficient entry and efficient participation in the market. Furthermore, all market participants are exposed to this risk in a future without declaration: incumbent operators also face increased risk and uncertainty at the time of their contract renewals, due to the absence of evergreen renewal rights. This may undermine incentives for future efficient actions by those operators compared to the situation with declaration.[123] It may be the case that future uncertainty about terms and conditions of access for existing above-rail operators would be sufficient to undermine economically efficient participation over time and thus affect competition in the market.

Therefore, the QCA considers that the uncertainties facing market participants in a future without declaration would discourage efficient entry and efficient participation in the market. Conversely, the protections and certainties of access offered in a future with declaration would materially improve the environment for competition by encouraging efficient entry and actions (through a stable and predictable environment), which would in turn promote a material increase in competition in the above-rail haulage market on the North Coast (and Metropolitan) Line.

Examples of specific pricing and non-pricing terms that a potential new entrant would face in a future with and without declaration are discussed in section 3.7.7.

3.7.6 A 'material' increase in competition

The QCA's approach to the requirement that the increase in competition be 'material' is discussed in section 3.3.2. In summary, if efficient entry or efficient actions are promoted in a future with declaration, the QCA considers that this would indicate that access as a result of declaration would promote an increase in competition that is material.

In the case of the North Coast (and Metropolitan) Line service, the QCA considers that the uncertainties facing market participants in a future without declaration would affect all participants across the market, including more efficient firms. Conversely, the QCA considers that the certainties and protections offered by the access regime under declaration would promote efficient entry and efficient participation in the market. In this way, the QCA is satisfied that access as a result of declaration would promote a material increase in competition in the above-rail haulage market on the North Coast (and Metropolitan) Line.

[122] The Queensland Resources Council also raised this point (QRC, sub. 20, p. 14): '[O]ne needs to understand that, in order to produce or extract a commodity like coal, this requires a major sunk investment in mining equipment and infrastructure. These sunk investments give rise to what are known as "quasi-rent" which are subject to the threat of hold-up. The threat of expropriation of rents by a monopoly service provider in such a situation would only in extreme circumstances result in a pure transfer. More likely, even the threat of such expropriation can limit future investment and innovation by the upstream firms'.

[123] Pacific National, sub. 9, pp. 6–7.

3.7.7 Pricing and non-pricing terms in the future with and without declaration

Several stakeholders made submissions to the effect that participants in the above-rail haulage market would face considerable uncertainties as to the terms of access in a future without declaration.[124]

For instance, Pacific National warns that in a future without declaration:

> Queensland Rail would be incentivised to remove any pricing transparency around the cost of access to the network, increase access charges and reduce network service performance standards in a way that would be damaging to competition in downstream markets.
>
> In addition … access dispute mechanisms in Part 5 of the QCA Act [will no longer apply] and could result in QR using its monopoly position to negotiate pricing, terms and conditions.[125]

The QCA considers that in a future without declaration, access seekers and users on the North Coast (and Metropolitan) Line are likely to face uncertainties in relation to material price and non-price terms of access, as Queensland Rail will not face any effective constraints on its ability to exercise market power in relation to access terms.

In contrast, the QCA considers that in a future with declaration, market participants are likely to have greater certainty of access terms than in a future without declaration. Such terms could include non-discrimination provisions, the benefit of an independently determined floor and ceiling price (e.g. one determined by the QCA in accordance with the QCA Act), mandatory reporting and information provision requirements to inform access negotiations, and the option of seeking arbitration (including in relation to pricing terms) if negotiations fail. However, in any case, independent of the precise content of any such terms, the QCA considers that the increased certainty of terms that will be available in the future with declaration will lead to a material improvement in the environment for competition in the above-rail haulage market, compared to a future without declaration. For example, Pacific National highlighted the benefits of declaration in its experience:

> In this context, it will be important for the QCA to consider the benefits that declaration and the resultant competition has delivered. These extend well beyond simply constraining the exercise of market power and ensuring that a balanced risk profile underpins the setting of terms and conditions for access. Declaration has facilitated the introduction of important structural and behavioural constraints … and has underpinned the growth of competition in related upstream and downstream markets.[126]
>
> …
>
> The experience of PN in Queensland over the last decade [in entering the Queensland above rail market] clearly demonstrates how declaration and regulation by the QCA has been effective in creating an environment in which the scope for rail freight competition can develop and grow. Put simply, PN's ability to grow its business in Queensland has been critically dependent on the stable operation of Queensland's regulatory framework under Part 5 of the QCA Act.[127]

Pacific National's submission demonstrates that in the past, the benefits offered by declaration have enabled it to successfully enter the Queensland above-rail haulage market, including the above-rail haulage market on the North Coast (and Metropolitan) Line, and to successfully compete with Aurizon Operations. Having regard to Pacific National's experience in the past,

[124] For example, South West Producers, sub. 4, p. 31; Glencore, sub. 5, p. 13; Pacific National, sub. 9, p. 12; Aurizon Coal, sub. 21, p. 2.
[125] Pacific National, sub. 9, p. 12.
[126] Pacific National, sub. 9, p. 4.
[127] Pacific National, sub. 9, p. 6.

the QCA considers that the existence of similar terms in a future with declaration will materially promote an environment for competition, and will promote efficient entry and efficient action by all market participants, compared to a future without declaration.

Pricing terms

In relation to pricing terms, under the current access regime (Queensland Rail's Access Undertaking 1, 2016), services on the North Coast Line are not subject to a QCA approved reference tariff. Prices are individually negotiated with each user of the North Coast Line, within the guidance of the pricing rules set by the QCA. Furthermore, the current QCA Act[128] requires the provision of information to access seekers on price, cost and spare capacity, potentially in the form of an approved reference tariff, and allows all access seekers to refer access disputes (including disputes regarding pricing) to the QCA for arbitration. Given that these terms are contained in the QCA Act, the QCA considers that they will apply in a future with declaration.

As discussed above, the QCA considers that in a future without declaration, Queensland Rail will have the ability and incentive to exercise monopoly power in relation to pricing terms. In a future without declaration, an above-rail operator who is making decisions to enter or participate in the above-rail haulage market faces future price uncertainty at the time of contract renewal. As anticipated below-rail costs are likely to be a material factor in the decision-making process of an above-rail operator, the QCA considers that the uncertainties relating to pricing terms in a future without declaration are likely to deter efficient entry or efficient actions by market participants due to the risk of hold-up.

Conversely, the QCA considers that in a future with declaration, there is likely to be regulatory oversight (including transparent dispute resolution mechanisms and the possibility of a reference tariff) which would ensure that access, including pricing terms, 'on reasonable terms and conditions', would exist. These protections, which would be offered in a future with declaration, are likely to provide additional certainties in the decision-making process for both potential entrants and current market participants, thus incentivising efficient entry and efficient actions in the above-rail haulage market, and therefore promoting a material increase in competition.

Non-pricing terms

Non-pricing terms of access include terms in relation to the allocation of train paths, scheduling, and the use of maintenance and provisioning facilities. For a participant in the above-rail haulage market on the North Coast (and Metropolitan) Line (including a potential entrant), these anticipated non-price terms are also likely to be a material factor in the decision-making process to enter or to further invest, as they directly affect the nature of the service that the above-rail operator could offer to its own customers, and hence its anticipated revenue in the market.

Currently, the QCA Act imposes 'non-discrimination' obligations on Queensland Rail[129], including obligations to:

[128] See QCA Act, Part 5, Division 5(Access disputes about declared services) and s. 101.

[129] These are obligations imposed on all declared services. Furthermore, the QCA Act requires that some of these obligations 'must' be included in any access undertakings submitted by the declared service (s. 137(1A) of the QCA Act). See also *Queensland Rail's Access Undertaking 1*, 2016, p. 4 (section 1.3), https://www.queenslandrail.com.au/business/acccess/Access%20Undertaking%20and%20related%20documents/Queensland%20Rail%20Access%20Undertaking%201%202016.pdf.

- not unfairly differentiate between access seekers in relation to the level of service provided and opportunities given to obtain access rights
- not unfairly differentiate between access holders in a way that has a material adverse effect on the ability of a user to compete with other users
- not prevent or hinder a user's access to the service.[130]

Given that these terms are contained in the QCA Act, the QCA considers that they will apply in a future with declaration.

Further, the QCA notes that the access undertaking for a declared service could also provide additional protections for an access seeker or holder, in relation to the matters specified in the QCA Act.[131] For example, Queensland Rail's Access Undertaking 1 imposes obligations on Queensland Rail to consistently apply the terms of the undertaking (including pricing rules and rights of access) equally to all access seekers and access holders, to comply with the network management principles, and to disclose data and publish reports to assist with transparency of access.[132]

This can be contrasted with a future without declaration, where a potential entrant to the above-rail haulage market faces uncertainties as to these non-term pricing terms of access. The QCA acknowledges that commercial firms face a range of uncertainties in decision-making on a daily basis. However, the QCA considers that in this case, these uncertainties relate to essential terms, which have a significant effect on the expected profitability of entry into (or operations within) the market. The effect of uncertainties in relation to material non-price terms is similar to the effect of uncertainties in relation to pricing terms: an above-rail operator who is making decisions to enter or operate in the above-rail market is likely to be deterred if it can foresee that at the time of contract renewal, it may be held-up, for example by not being able to gain access to appropriate train paths at appropriate times.

Thus, the QCA considers that the uncertainties relating to non-pricing terms in a future without declaration are also likely to deter efficient entry or efficient actions by market participants due to the risk of hold-up. In contrast, the protections offered in a future with declaration, particularly in relation to non-discrimination between access holders and seekers, are likely to provide additional certainties in the decision-making process for all market participants, thus incentivising efficient entry and efficient actions in the above-rail haulage market and thereby promoting a material increase in competition, in the sense of improving the environment for competition.

3.7.8 Other possible constraints on Queensland Rail's use of monopoly power

In its submission, Queensland Rail raised a number of other factors which it said would materially constrain its ability or incentive to exercise market power.[133] Queensland Rail did not provide any detailed information to substantiate its claims. In the absence of supporting evidence, the QCA has given limited weight to these arguments and discusses each briefly below.

[130] See, for example, ss. 99, 100, 101, 104, 125, 168C of the QCA Act.
[131] See s. 137(2) of the QCA Act. Under declaration, any such terms under the access undertaking would have been approved by the QCA under s. 138(2) of the QCA Act.
[132] Queensland Rail's Access Undertaking 1, 2016, section 1.3 (consistency and differentiation), section 4.1 (network management principles), part 5 (reporting).
[133] Queensland Rail, sub. 8, p. 4, para 25(ii).

Queensland Rail's statutory obligations and position as a statutory authority

Queensland Rail submitted that its statutory obligations, its position as a statutory authority, and its obligations under the Transport Services Contract (TSC) would constrain it in the provision of below-rail services. Queensland Rail did not elaborate on its contention.

In the absence of further information on this matter, the QCA is not satisfied that Queensland Rail's obligations as a statutory body and under the TSC would ensure Queensland Rail provided access on reasonable terms and conditions compared to a situation where access is provided as a result of declaration.

Key relevant dependent markets are already effectively competitive

Queensland Rail submitted that key relevant dependent markets are already competitive, and that it is well established that if a dependent market is effectively competitive, improved access is unlikely to promote competition.[134] However, Queensland Rail did not provide further evidence in relation to any specific dependent markets.

As discussed in Chapter 2, the present review requires the QCA to decide whether to recommend the declaration of services which are already declared.[135] It may be that competitive conditions in a dependent market are attributable to the fact that the relevant service is (and has been) declared for approximately 20 years leading up to this review.[136] The QCA has taken this factor into account in its analysis of the relevant dependent markets.

For example, the QCA's view is that declaration has been pivotal in promoting existing competition in the above-rail haulage market on the North Coast (and Metropolitan) Line. To the extent that competition exists in this market at this point in time, it is due to the access regime reducing barriers to entry and fostering a competitive environment. This conclusion is supported by Pacific National, which noted that regulated access under Part 5 of the QCA Act has been critical in promoting an environment for rail freight competition in Queensland:

> Regulated access has supported strong investment by PN … PN's investment would not have been justified, absent a stable regulatory environment.[137]

In comparing the state of the market with declaration against that without declaration, the QCA has sought to examine the ability and incentive that the monopolist would have to exert market power in the absence of declaration. A detailed discussion of the QCA's approach to this review is contained in Chapter 2.

The threat of regulation or re-declaration

Queensland Rail submitted that in a future without declaration, it would be materially constrained in the provision of below-rail services by 'the threat of regulation or declaration under Parts 3 or 5 of the QCA Act'.[138]

Queensland Rail did not provide reasons justifying its submission that in a future without declaration it would be materially constrained by the threat of declaration. However, this would

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[134] Queensland Rail, sub. 8, p. 5, para 28.
[135] This can be contrasted with the scenario in an application for declaration, in which a party applies for the declaration of service which is currently not declared.
[136] The Queensland Rail service was first declared by regulation in 1998. See the *Queensland Competition Authority Amendment Regulation (No. 1) 1998*, s. 5.
[137] Pacific National, sub. 9, pp. 6–7.
[138] Queensland Rail, sub. 8, p. 4, para 25(a)(ii)(f).

amount, in effect, to an argument that the service can be declared in the future (if the access criteria are satisfied) and accordingly should not be declared now. The QCA is not satisfied that the threat of declaration would be a sufficient constraint on Queensland Rail's ability and incentive to exercise monopoly power in a future without declaration. Additionally, the QCA does not consider that the possibility of declaration in the future negates the argument for declaration in the present where the access criteria are satisfied.

Queensland Rail did not provide any evidence relating to its submissions on Part 3 of the QCA Act. In the absence of further information on this matter, the QCA is not satisfied that the obligations under Part 3 would act as an effective constraint on Queensland Rail's behaviour in a future without declaration.

For the sake of completeness, the QCA has also addressed the operation of s. 46 of the *Competition and Consumer Act 2010* (misuse of market power), in the context of submissions from stakeholders in relation to the Aurizon Network and DBCT services. For the reasons set out in those Parts and in Chapter 2 of this recommendation, the QCA is not satisfied that the operation of s. 46 would operate as a sufficient constraint on Queensland Rail in the absence of declaration.

The access regime in Part 5 of the QCA Act is a comprehensive framework specifically designed to facilitate access to monopoly infrastructure services (where the service meets the access criteria). The QCA is not satisfied that Queensland Rail's broader obligations as a statutory body and under the TSC are an effective substitute for this regime in terms of ensuring access is provided on such terms as to promote competition in related markets.

The QCA therefore considers that access (or increased access) to the below-rail service on the North Coast (and Metropolitan) Line, on reasonable terms and conditions, as a result of declaration, would promote a material increase in competition in the above-rail haulage market. This is because the opportunities and environment for competition in the above-rail market will be materially enhanced in a future with declaration given the constraint it imposes on any future exercise of monopoly power by Queensland Rail, compared to a future without declaration.

3.7.9 Conclusion

The QCA is satisfied that criterion (a) is satisfied in respect of the North Coast (and Metropolitan) Line service, in relation to the dependent above-rail haulage market.

3.8 The Mount Isa Line service

3.8.1 Dependent markets

The market for the Mount Isa Line service is the market for the use of rail transport infrastructure for providing transportation by rail on the Mount Isa Line. The QCA considers that relevant dependent markets include:

- the North West Queensland minerals tenement market
- the above-rail haulage market on the Mount Isa Line
- the market for mining inputs in the North West Queensland minerals region.[139]

[139] See also Glencore, sub. 5, p. 9.

The QCA is satisfied that each of these relevant dependent markets are each separate from the primary market for the service.

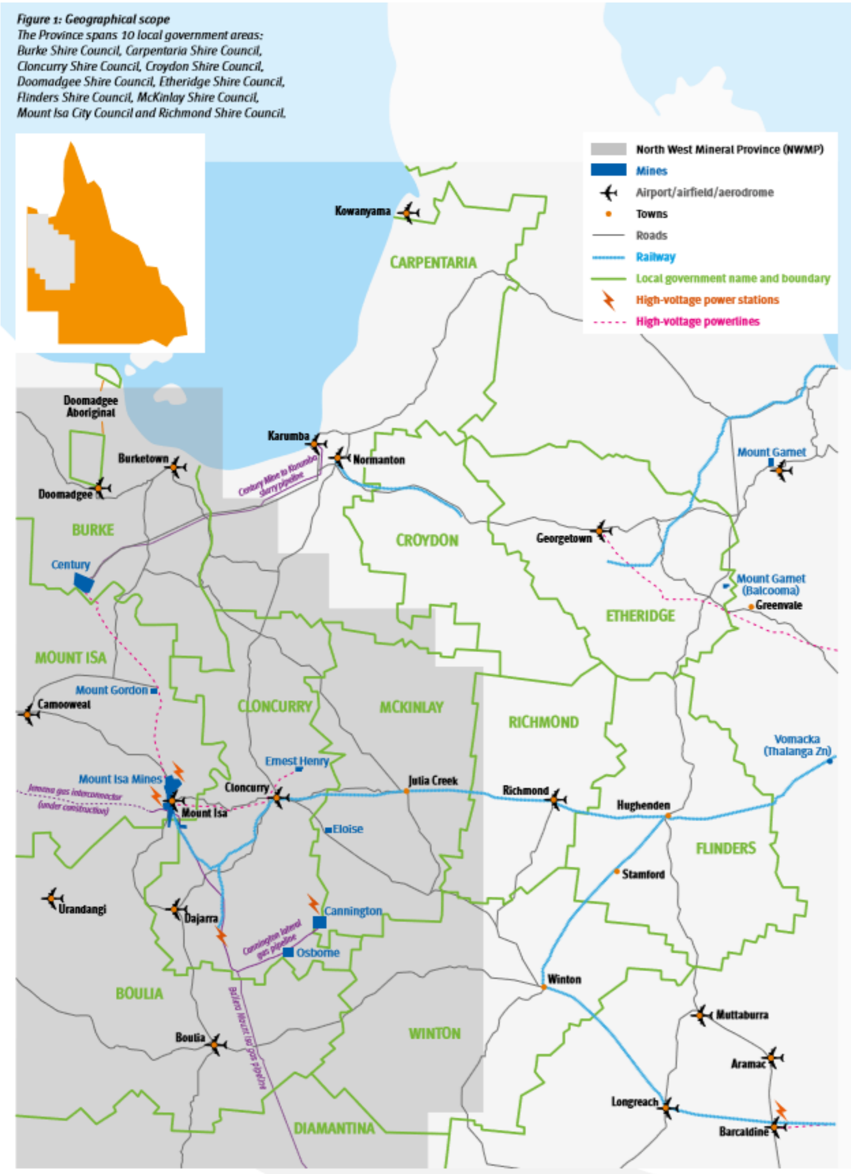
Criterion (a) requires an analysis of the effect on competition in at least one market. The QCA has focussed its analysis on one particular market, the North West Queensland minerals tenement market, due to the detailed submissions from stakeholders in relation to this particular market.

3.8.2 North West Queensland minerals tenement market

The market

The North West Minerals Province (NWMP) encompasses an area centred around Mount Isa in Queensland's north-west region, covering a land area of approximately 375,000 square kilometres (Figure 8).

Figure 8 The North West Minerals Province



Source: Department of State Development, Manufacturing, Infrastructure and Planning, A Strategic Blueprint for Queensland's North West Minerals Province, *Queensland Government, 2018, p. 6, https://www.statedevelopment.qld.gov.au/resources/plan/nwmp/nwmp-strategic-blueprint.pdf.*

The NWMP contains approximately 75 per cent of Queensland's base metal and mineral endowment, including copper, lead, zinc, silver, gold and phosphate deposits, and is recognised as a prospective area with the potential for further discoveries across a range of commodities.[140]

A tenement is the right to carry out prospecting, exploration or mining activity in respect of a specific piece of land—a right created through licence issued by the state. Tenements are limited in time and area, with constraints on the ability of the tenement holder to tie up a tenement that it has no intention to develop. The tenement holder may also choose to sell part or all of its rights in the tenement to another party, including the rights to mine any deposits.

Within Queensland, three types of mining licences can be granted over any particular minerals tenement:

- an exploration permit for minerals, which permits the holder to use advanced exploration methods to determine the quantity and quality of minerals present; these are granted for periods of up to five years
- a mineral development licence, which permits the holder to conduct geoscientific programs (e.g. drilling), mining feasibility studies and metallurgical testing to evaluate the development potential of the defined resource; these are granted for periods of up to five years
- a mining lease, which permits the holder to conduct larger scale mining operations; these are issued for durations depending on the identified reserves and projected mine life.[141]

For the purposes of this analysis, the QCA considers that the functional dimension of the North West Queensland minerals tenement market includes the market for all three types of mining authorities. This is because the market participants are likely to be similar across the three types of licences, and there are substantially similar incentives which affect market behaviour for each type of licence granted over a tenement. The QCA notes that stakeholders have also adopted this approach of defining the market for mineral tenements.[142]

The sellers in this market are the Queensland Government (through tender processes), and existing tenement holders who wish to sell their tenements. The buyers in this market are explorers, developers, and producers of minerals who seek to acquire such tenements (these may be large established mining firms, or smaller 'junior' miners and investors).[143]

[140] Department of State Development, Manufacturing, Infrastructure and Planning, *A Strategic Blueprint for Queensland's North West Minerals Provinc*e, Queensland Government, 2018, p. 5; Department of Natural Resources and Mines, *Annual exploration program 2017–18*, Queensland Government, 2017, p. 10, https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0008/1280474/annual-exploration-program-report-2017-18.pdf.

[141] Business Queensland, Mineral and coal authorities, 2018, https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/authorities.

[142] See Glencore, sub. 5, p. 9 (in relation to tenements for minerals) and South West Producers, sub. 4, pp. 20–21 (in relation to tenements for coal). Based on these submissions, the QCA is satisfied that there are clearly different markets for minerals tenements and coal tenements in Queensland. For the Mount Isa Line service, the relevant dependent market is clearly the market for minerals tenements, as defined above.

[143] Glencore, sub. 5, p. 9. For an example of a recent tenement release in the NWMP, see Department of Natural Resources and Mines, *Annual exploration program 2017–18*, 2017, pp. 10–11.

Entry into the market

The decision of a buyer to enter the North West Queensland minerals tenement market (e.g. to buy a tenement) is heavily dependent on their valuation modelling for the tenement, with regard to three primary factors:

- anticipated revenue
- mine operating costs
- infrastructure and logistics costs.[144]

In particular, the QCA understands that due to the relative remoteness of the NWMP region to the nearest export port (a distance of approximately 1,000 km from Mount Isa to the Port of Townsville), freight costs are likely to be high.[145] In particular, for a prospective buyer of a minerals tenement, the relative proportion of freight costs (both for mining inputs as well as mineral outputs) in comparison to likely revenue from the tenement is likely to be an important component of the overall decision-making process for acquiring the tenement.[146]

The features of the current Mount Isa Line service

One above-rail operator

Pacific National is currently the only train operator that provides above-rail haulage services on the Mount Isa Line, accessing the below-rail service provided by Queensland Rail to haul end customers' products. Currently, Glencore's copper, zinc and lead businesses are the largest end users by volume on the Mount Isa Line.[147]

Structure of below-rail access agreements

In relation to the below-rail contracts, the QCA understands that in the Queensland bulk haulage industry, miners can (and typically do) enter directly into access agreements with the below-rail service provider (Queensland Rail).[148] The rights under those contracts are then allocated to that mine's nominated above-rail access provider.[149] Alternatively, the above-rail haulage provider can directly enter into contracts with the below-rail service provider for the use of the below-rail service; in this case, the QCA understands that the below-rail price is typically passed on by the above-rail operator directly onto the end user.

In the absence of submissions, the QCA is uncertain of specific current contractual arrangements between miners and Queensland Rail on the Mount Isa Line. However, Glencore has previously indicated that it negotiates directly with Queensland Rail regarding the below-rail

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[144] Glencore, sub. 5, p. 10.

[145] There is no reference tariff for services on the Mount Isa Line. Below-rail access charges are negotiated between the access seeker and Queensland Rail. There is no publicly available data on the current below-rail access charges on the Mount Isa Line. Therefore, in the absence of stakeholder submissions, total freight costs for any particular user of the Mount Isa Line are unable to be precisely quantified.

[146] Glencore, sub. 5, p. 10.

[147] Glencore, sub. 5, p. 4; also Glencore, submission to the QCA, *Queensland Rail's 2015 Draft Access Undertaking, draft decision*, December 2015, p. 1, http://www.qca.org.au/getattachment/fa7086bc-74c7-4ae8-b65c-1552da1ad054/Glencore-Submission-on-Queensland-Rail-2015-DAU.aspx.

[148] A majority of third party access agreements on the CQCN are held by miners; the access agreements on the West Moreton system are also directly held by the two mines, Yancoal and New Hope. See QRC, sub. 7, p. 31; Aurizon Coal, sub. 21, p. 1.

[149] Contractually, the miners have the right to run trains on the below-rail network, but in a practical sense an above-rail provider is engaged to run those trains on the miner's behalf. See QRC, sub. 7, p. 31.

price for its tonnages on the Mount Isa Line.[150] Thus, in the analysis below, reference is made to the miners in the North West Queensland minerals tenement market negotiating directly with Queensland Rail on below-rail access terms.

No evergreen renewal rights in access agreements

Typically, below-rail access agreements are for a 10-year period and mine life is approximately 25–30 years.[151] The QCA understands that below-rail access agreements with Queensland Rail on the Mount Isa Line do not include ‘evergreen’ renewal clauses; a train operator or end customer would have to negotiate a new access agreement on expiry of existing agreements. Therefore, existing terms under these agreements (e.g. in relation to pricing, capacity allocation or usage of facilities) will progressively expire, and existing terms will not necessarily be replicated in future agreements.

Under the current access regime (Queensland Rail's Access Undertaking 1, 2016), services on the Mount Isa Line are not subject to a QCA-approved reference tariff. Prices are individually negotiated with each user of the Mount Isa Line, within the guidance of the pricing rules set by the QCA. Furthermore, the current QCA Act[152] allows all access seekers to refer access disputes (including disputes regarding pricing) to the QCA for arbitration. The access regime also provides for the approval of a reference tariff. Where approved, a reference tariff can facilitate access negotiations by providing a basis for the negotiation of access charges.

Spare capacity exists on the Mount Isa Line

The QCA understands that there is currently existing spare capacity on the Mount Isa Line, and that 'all of the projections [of future foreseeable demand] could be met by the existing capacity of the Mount Isa Line, specifically noting that the Mount Isa Line has sufficient capacity to meet the high demand forecast'.[153]

3.8.3 Competition in the North West Queensland minerals tenement market in a future with and without declaration

The QCA considers that a future with declaration will see a continuation of the existing situation, whereby participants in the North West Queensland minerals tenement market are able to gain access to below-rail services (through their nominated above-rail haulage provider) for both the transportation of mining inputs and the export of mine outputs, on reasonable terms and conditions, due to on-going regulatory oversight and the protections provided by the access regime in Part 5 of the QCA Act. The protections provided by the regulatory framework (see section 3.7.7) are likely to provide certainty to a potential new market entrant (or an existing tenement holder approaching renewal of its existing rail agreements or mining authorities) about the likely future terms and conditions of access to the below-rail service, reducing the risk associated with entry and operations in the North West Queensland minerals tenements market.

Given the relative remoteness of the NWMP region to the nearest export port (a distance of approximately 1,000 km from Mount Isa to the Port of Townsville), freight costs are likely to be a material component of the overall decision-making process for a firm seeking to enter the

[150] Glencore, submission to the QCA, *Queensland Rail's 2015 Draft Access Undertaking*, 5 June 2015, p. 3, http://www.qca.org.au/getattachment/d381820a-b7fd-4ff0-94a4-af80e306aa80/Glencore-Submission-on-QR-2015-DAU-June-15.aspx.

[151] Glencore, sub. 5, p. 15; QRC, sub. 7, p. 19.

[152] See QCA Act, Part 5, Division 5 (Access disputes about declared services) and s. 101.

[153] Glencore, sub. 5, p. 15.

market, or for an existing firm facing renewal of its rail agreement or mining authority. Given the materiality of transport costs for minerals tenement holders using (or planning to use) the Mt Isa Line service, the QCA is satisfied that the certainty provided by access under declaration (including at time of contract renewal) at an efficient price and on reasonable terms and conditions, will be a key factor underpinning future efficient entry into and efficient operation in this market.

Queensland Rail's ability and incentive to exercise market power

Queensland Rail submitted that in a future without declaration, it does not have the ability or incentive to use any market power to adversely affect competition:

> ii) In the future without declaration, Queensland Rail would be materially constrained ... by:
>
> a. Strong competition from road operators, which provide a closely substitutable service in respect of the transportation of freight, other than some bulk commodities being transported over long distances.[154]

The QCA considers that these alleged constraints do not apply in the case of the Mount Isa Line service, as the service falls into the exception referred to by Queensland Rail—that is, the transportation of bulk commodities over long distances.

The North West Queensland minerals tenement market is located a substantial distance away from the nearest export port—over 1,000 km from Mount Isa to the Port of Townsville. The nature of the goods produced by the tenements, being high-volume bulk minerals, combined with the substantial distance to port, means that rail transport offers a substantial cost advantage to other modes of transport, such as road transport. This is because the average per kilometre cost of road freight is approximately constant with respect to distance, whereas rail transport enjoys significant economies of scale, with costs decreasing with increasing freight volumes and distances.[155] For freight travelling greater than 600–1,000 km, rail transport is significantly cheaper than road.[156] This is supported by submissions from Glencore, which stated:

> For all of the bulk minerals services contracted by Glencore, rail transport is the only economic mode of transport ... road haulage does not provide any competitive constraint on rail costs for bulk minerals ...[157]

The natural cost advantage of rail for transporting freight (both bulk and non-bulk) over the long distances on the Mount Isa Line means that users of the Mount Isa Line service will depend upon rail transport as the primary mode of transporting their freight, both for moving mining inputs into a tenement and for transporting minerals output out to port.

Given these underlying cost fundamentals, the QCA considers that Queensland Rail does have the ability to exercise market power on the Mount Isa Line service.

3.8.4 The two-period hold-up problem

The QCA considers that there currently is spare capacity on the Mount Isa Line, and the availability of spare capacity on this line is likely to continue in the future. Given this, the QCA

[154] Queensland Rail, sub. 8, p. 4, para 25.

[155] Bureau of Infrastructure, Transport and Regional Economics (BITRE), *Road and rail freight: competitors or complements?*, information sheet 34, Australian Government, 2009, p. 8.

[156] ACCC, *Pacific National/Linfox—Proposed acquisitions of intermodal assets from Aurizon*, Statement of Issues, March 2018, p. 13.

[157] Glencore, sub. 17, p. 8.

considers in a future without declaration, Queensland Rail is likely to have an incentive to offer access to a potential entrant miner (or a train operator hauling product under an agreement with that miner) in order to promote utilisation of its below-rail infrastructure and increase its revenues.[158]

Entrants intending to develop the tenement

If a potential entrant commits to entering the market and developing a tenement, it will incur considerable sunk costs, including exploration, development and equipment costs.[159] According to Glencore, the typical duration of mining operations in the NWMP is in the vicinity of 10 to 30 years depending on the operation.[160] In contrast, the typical length of a rail haulage contract is approximately 10 years.[161] Therefore, sometime in the middle of the useful life of the mining tenement, it can be expected that the below-rail access agreement will be due for renewal. As noted in section 3.8.2 above, below-rail access agreements with Queensland Rail have historically not contained evergreen renewal clauses. This means that any terms contained in the original access agreement may not be necessarily replicated in any new access agreement.

In the second period, when the below-rail access agreement is due for renewal, the miner would be in a less favourable bargaining position with Queensland Rail. The miner has already made significant sunk investments in developing the mining tenement, and will continue to rely on access to the Mount Isa Line service in order to import mining inputs and to export mine outputs. Without continued access to the Mount Isa Line service, a miner faces the risk that its asset (the tenement) will be stranded.

In this second period, the QCA considers that Queensland Rail will be relatively unconstrained in its ability to exercise market power in a future without declaration. It may raise access charges, or less favourable non-price access terms (e.g. train path allocations). This is a point argued by Glencore, which said:

> [I]n the absence of declaration there will be:
>
> (a) a significant increase in prices to existing users;
>
> (b) a much higher likelihood of differential pricing with a high prospect of favouring some users over others - not justified on the basis of efficiency, but rather based on commercial negotiations and/or the uncertainty of different arbitral outcomes
>
> (c) a dramatic chilling effect on investment in mines or industrial facilities reliant on the use of the rail. In particular, it is difficult to see why an investor would incur considerable amounts in exploration and development (and obtaining related regulatory approvals), if the investor is ultimately faced with an access negotiation where QR is economically incentivised to charge the producer an access price which would leave the producer only

[158] However, as was the case with the North Coast Line analysis, even where Queensland Rail has an incentive to provide access (for example in the first period), in a future without declaration such access may nevertheless be offered at monopolistic terms and conditions, such that access may be less than what it would be compared to a future with declaration (and access on reasonable terms and conditions).

[159] Even if a potential entrant is only seeking to acquire a tenement for future re-sale, it can foresee that any future buyer would need to incur considerable sunk costs in order to develop the tenement, and that the need to incur sunk costs would be a material part of that buyer's decision-making process. Thus, by entering the market, a reseller assumes the risk that the hold-up problem may affect the future value of its tenement.

[160] Glencore, sub. 5, p. 15.

[161] QRC, sub. 7, p. 19.

> covering marginal costs (and not being able to recover the sunk costs expended to that point).[162]

In the second period, an exercise of market power by Queensland Rail against a miner may arguably be regarded as a transfer of rents between the parties, with little effect on competition. However, the QCA considers that the critical issue is that in the first period, a miner can foresee this risk that any sunk investments it makes will be exposed to the risk of expropriation by the monopolist in the second period.

The ability of Queensland Rail to exercise market power in future contracting periods creates a significant degree of uncertainty around material terms (such as pricing and terms of access) for potential market participants at the time they are considering investment. This is likely to adversely affect the value of the tenements in this market, and raise the hurdle rate required to justify an investment in a tenement. The QCA considers that this risk is sufficiently material that the miner may be deterred from entering the market in the first place. As Glencore said:

> [I]t is impossible to see how investors would incur costs in exploration and development when there is such limited certainty of costs [on the Mount Isa Line service] and the knowledge that they can be held hostage to monopoly pricing at the time of seeking access.
>
> It is highly likely that the prospect of new entry will be eliminated.
>
> Even if Glencore was incentivised to continue to participate in the market due to its existing portfolio of Mount Isa mines and existing take or pay rail haulage or port commitments, that will forever entrench a position of there being few possible acquirers in the market (being the existing incumbents). This is particularly so as most (if not all) other producers in the region are producers of a single project such that once the life of those projects had expired (or prices had been increased to such a point that producers could not feasibly operate a single project in the region) they would not be incentivised to reinvest further in further tenements.[163]

The QCA considers that in a future without declaration, the hold-up problem will also apply to existing tenement holders at the time of their contract renewal (of the below-rail contract). Therefore, in a future without declaration, the QCA is concerned that existing tenement holders may begin to delay undertaking efficient actions in their existing tenements in anticipation of the possibility of such investments being held-up. Thus, in a future without declaration the QCA is concerned that all market participants in the North West Queensland minerals tenement market will face uncertainties relating to material price and non-price terms for access to below-rail services on the Mount Isa Line, particularly at the time of contract renewal, and that these uncertainties will deter efficient entry and efficient participation across the North West Queensland minerals tenement market.

Entrants intending to resell the tenement

An argument may be made that an entrant to the North West Queensland minerals tenement market who is intending to simply hold the tenement and resell it at a later date will not incur the same sunk costs as an entrant intending to develop the tenement, and thus will not face the hold-up problem.

The QCA considers that this argument fails to appreciate the risks borne by the potential reseller. Even if a potential entrant is only seeking to acquire a tenement for future re-sale, it can foresee that any future buyer would need to incur considerable sunk costs in order to develop the tenement, and that the need to incur sunk costs would be a material part of that

[162] Glencore, sub. 17, p. 14
[163] Glencore, sub. 17, p. 14.

buyer's decision-making process. Thus, by entering the market, a reseller assumes the risk that Queensland Rail may act in an unconstrained manner in a future without declaration. If future potential entrants are deterred from entering the market due to concerns about the hold-up issue, this is likely to adversely affect the value of the reseller's investment.

The QCA considers that a potential reseller would be able to foresee this risk at the time of entry, and would likely to be deterred from entering the market in the first place. In this sense, the uncertainties in relation to access terms in a future without declaration are likely to also deter efficient entry and efficient participation by resellers in the North West Queensland minerals tenement market.

3.8.5 The future with declaration

In contrast, the QCA considers that in a future with declaration, market participants are likely to have greater certainty of access terms than in a future without declaration. Some specific protections offered by declaration are discussed in detail in section 3.7.7.

The QCA considers that the continued certainty of terms, particularly in relation to material pricing and non-price terms, is likely to continue to promote efficient entry and efficient participation in the North West Queensland minerals tenement market.

A detailed discussion in relation to the requirement that the increase in competition be 'material' is provided in section 3.3.2. In the case of the Mount Isa Line service, the QCA considers that the uncertainties facing market participants in a future without declaration would affect all participants across the market, including more efficient firms. Conversely, the QCA considers that the certainties and protections offered by the access regime under declaration would promote efficient entry and efficient actions by these more efficient firms. In this way, the QCA is satisfied that access as a result of declaration would promote a material increase in competition in the North West Queensland minerals tenement market.

Thus, the QCA considers that access to the Mount Isa Line service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition (in the sense of the environment for competition), in the North West Queensland minerals tenement market.

3.8.6 Conclusion

The QCA is satisfied that criterion (a) is satisfied in respect of the Mount Isa Line service.

3.9 The West Moreton and Metropolitan systems services

3.9.1 The two services considered together

The services provided by the West Moreton and Metropolitan systems are considered together, as the commercial reality of the use of these systems together demonstrates that it is necessary to do so.[164] Access to the Metropolitan system is crucial for users of the West Moreton system, in order to rail coal and agricultural products to the Port of Brisbane for export. As the South West Producers submitted, 'travelling only along the West Moreton system is of very limited utility on its own'.[165] This is supported by the submission from Queensland Rail:

[164] This reasons are similar as for considering of the North Coast Line and Metropolitan system services together.
[165] South West Producers, sub. 4, p. 9.

> With limited exceptions, the [currently existing] access agreements relate to a single system… The primary exceptions include access agreements for the purposes of providing maintenance (which relate to all systems) and access agreements relating to the North Coast Line, West Moreton System, Western and South Western Systems where trains need to traverse the Metropolitan System (for example, to reach the Port of Brisbane).[166]

3.9.2 Dependent markets

The market for the West Moreton and Metropolitan system services is the market for the use of rail transport infrastructure for providing transportation by rail on the West Moreton and Metropolitan systems. The QCA considers that relevant dependent markets include:

- the West Moreton region coal tenements market
- the above-rail haulage market on the West Moreton system
- the Port of Brisbane coal handling services market.[167]

These relevant dependent markets are each separate from the primary market for the service.

Criterion (a) requires an analysis of the effect in competition in at least one market. The QCA has at this stage focused its analysis on one particular market, the West Moreton region coal tenements market. This is due to the detailed submissions from stakeholders in relation to this particular market.

3.9.3 West Moreton region coal tenements market

The market

The South West Producers submitted:

> As noted in the FMG Tribunal Decision, a tenements market (distinct from coal markets) exists as there is evidence of supply and acquisition of tenements (of non-operational projects), including evidence of companies which acquire tenements with a view to future divestment for a profit rather than development.[168]

The QCA considers that there is a market for coal tenements in the West Moreton region. Within Queensland, a distinction is made between tenements for coal (such as in the West Moreton region) and tenements for minerals (such as in the Mount Isa region). However, as for the Mount Isa region, three types of mining licences are relevant to the West Moreton region: an exploration permit for coal, a mineral development licence for coal, and a mining lease.

For the purposes of this analysis, the QCA considers that the functional dimension of the West Moreton region coal tenements market includes the market for all three types of mining authorities.[169]

The QCA considers that the geographic dimension of the West Moreton region coal tenements market is the area for which the most efficient and lowest cost point of export is via the West Moreton and Metropolitan systems to a coal terminal at the Port of Brisbane. A map of the

[166] Queensland Rail, sub. 8, p. 2, para 12. Note that the Western and South Western systems connect to the West Moreton system; the West Moreton system then connects to the Metropolitan system (at Rosewood).
[167] See also, South West Producers, sub. 4, p. 20.
[168] South West Producers, sub. 4, p. 20. Although not directly referenced by the South West Producers in its submission, the QCA understand that the FMG Tribunal Decision referred to in the quote is a reference to *In the matter of Fortescue Metals Group Limited* [2010] ACompT 2.
[169] See South West Producers, sub. 4, p. 20.

approximate geographic region of the market is shown in Figure 9. The geographic dimension of the market is the area that is centred around the West Moreton and Metropolitan rail systems.

Figure 9 Map of the West Moreton coal tenements region

Source: South West Producers, sub. 4, p. 8.

The QCA notes that the South West Producers considered that the geographic dimension of the market should be defined as the 'Port of Brisbane catchment coal tenements market, being that area for which the most efficient and lowest cost point of export is via a coal terminal at the Port of Brisbane'.[170] The QCA considers that such a definition is wider than the appropriate definition of the West Moreton coal tenements region, as the definition may (theoretically) capture future mines which do not use the West Moreton system, but still export coal via the Port of Brisbane (e.g. via the proposed Inland Rail system). As the analysis of criterion (a) relates to access to the West Moreton (and Metropolitan) system service, the geographic dimension of the market should be limited to tenements which use, or can be expected to use, the West Moreton (and Metropolitan) system.

The sellers in the West Moreton region coal tenements market are the Queensland Government and existing tenement holders. The buyers in this market are explorers, developers, and producers of coal who seek to acquire such tenements (these may be large established mining firms, or smaller junior miners and investors).

Entry into the market

The decision of a buyer to enter the West Moreton region coal tenements market (e.g. to buy a tenement) is heavily dependent on their valuation modelling for the tenement. The South West Producers described the method they use to value tenements:

> Firstly, the South West Producers, as acquirers in various tenement markets, can confirm that they value tenements using financial modelling, principally reflecting a discounted cash flow model. The critical parts of that cash flow model are:

[170] South West Producers, sub. 4, p. 20.

(a) expected revenue – principally determined by coal prices and US$/A$ exchange rates;

(b) mine operating costs; and

(c) infrastructure / logistics costs.

The last of these is critically important for Port of Brisbane coal tenements.

The QCA understands that such a valuation method is in line with market practice.

In particular, the QCA understands that due to the unique location of the West Moreton region coal tenements market (being near the Brisbane metropolitan region), and in requiring access to the Metropolitan system to access the export port, participants in the West Moreton region coal tenements face unique infrastructure constraints (including train path limits for coal services through the Metropolitan system). Infrastructure and logistics methods and costs are therefore likely to be a material consideration in the overall decision-making process for a potential market participant. For example, the South West Producers noted:

> [A]s the QCA is aware from consideration of the Western system coal tariffs in the last undertaking process, the infrastructure costs for this coal supply chain are higher than any other coal supply chain in Australia. This is exacerbated by the smaller vessel size which can be loaded at the Port of Brisbane.[171]

The features of the current West Moreton and Metropolitan system service

One above-rail operator, three exporting mines

Aurizon Operations (Aurizon Coal) is currently the only train operator that provides above-rail haulage services on the West Moreton and Metropolitan system, accessing the below-rail service provided by Queensland Rail to haul end customers' coal.

Two miners are currently producing and exporting thermal coal from the West Moreton region—New Hope (which owns New Acland and Jeebropilly) and Yancoal (which owns Cameby Downs). All coal transported on the West Moreton and Metropolitan system service to the Port of Brisbane originates from these three mines. The QCA understands that there are other mines in the West Moreton region, but that these mines are co-located with and exclusively supply a nearby power station.[172]

Structure of below-rail access agreements

The QCA understands that New Hope and Yancoal contract directly with Queensland Rail for access rights to the below-rail services on the West Moreton and Metropolitan system. The mines subsequently also contract with Aurizon Coal as their nominated rail operator.[173] Thus, in the analysis below, reference is made to the miners on the West Moreton and Metropolitan systems negotiating directly with Queensland Rail on below-rail access terms.

No evergreen renewal rights in access agreements

Typically, below-rail access agreements are for a 10-year period, compared to the typical life of a coal mine, which is around 10 to 30 years.[174] The QCA understands that below-rail access agreements with Queensland Rail on the West Moreton and Metropolitan system do not

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[171] South West Producers, sub. 4, p. 21.
[172] South West Producers, sub. 4, p. 35.
[173] Contractually, the miners have the right to run trains on the West Moreton and Metropolitan system, but in the practical sense Aurizon Coal is engaged to run the trains on the miners' behalf: South West Producers, sub. 4, p. 14; Aurizon Coal, sub. 21, p. 1; QRC, sub. 7, p. 31.
[174] South West Producers, sub. 4, p. 35; QRC, sub. 7, p. 19.

include 'evergreen' renewal clauses, so that a miner would have to negotiate a new access agreement on expiry of existing agreements.[175] Therefore, existing terms under these agreements (e.g. in relation to pricing, capacity allocation or usage of facilities) will progressively expire, and existing terms will not necessarily be replicated in future agreements.

Under the current access regime, the services on the West Moreton and Metropolitan system are unique in that they are subject to a QCA-approved reference tariff.[176]

Spare capacity exists on the West Moreton and Metropolitan system

The QCA understands that spare capacity currently exists on the West Moreton and Metropolitan system. For example, the South West Producers submitted that in 2016–17, approximately 7 million tonnes of coal was hauled on the West Moreton system, and that this reflected a decline from the 2012–13 volume of 8.5 million tonnes (due to the closure of the Wilkie Creek mine in mid-2013).[177] These figures are corroborated by data from BITRE, which states that the West Moreton system has capacity to deliver up to 10.8 mtpa of coal to the Port of Brisbane. In 2016–17, 6.9 mtpa of coal was hauled on the system, implying a capacity utilisation of 63.8 per cent.[178]

In addition, the South West Producers said that 'the approximate 7 mtpa level which has prevailed since 2014/15 is likely to reflect the foreseeable demand in the longer term, and that 'there is no reasonable prospect of the Wilkie Creek mine being restarted, such that it would not be appropriate to include it in any projection of foreseeable demand'.[179]

3.9.4 Competition in the West Moreton region coal tenements market in a future with and without declaration

The QCA considers that a future with declaration will continue to provide for access to the below-rail service on the West Moreton and Metropolitan system on reasonable terms and conditions, due to the ongoing regulatory oversight and the protections provided by the access regime in Part 5 of the QCA Act. The protections provided by the regulatory framework are likely to provide certainty to a potential new market entrant (or an existing tenement holder approaching renewal of its existing rail agreements or mining authorities) about the likely future terms and conditions of access to the below-rail service, reducing the risk associated with entry and operations in the West Moreton region coal tenements market.

In addition to requiring the transport of bulk goods, over which rail has a natural cost advantage, coal miners in the West Moreton region are entirely dependent on the use of rail haulage to transport coal to the Port of Brisbane due to unique non-price constraints prohibiting the use of road haulage to transport coal through the Brisbane metropolitan region.[180] Given its dependence on the use of rail transport infrastructure, the QCA is satisfied that the certainty provided by access under declaration, including access at an efficient price and on reasonable terms and conditions, will be a critical factor in promoting future efficient entry into and operations in the West Moreton region coal tenements market.

[175] South West Producers, sub. 4, p. 28.
[176] See Queensland Rail's Access Undertaking 1, 2016, section 3.5 and schedule D.
[177] South West Producers, sub. 4, pp. 35–36.
[178] BITRE, *Freightline 4—Australian coal freight transport*, 2016, p. 14.
[179] South West Producers, sub. 4, pp. 36–37.
[180] South West Producers, sub. 4, p. 15.

Queensland Rail's ability and incentive to exercise market power

Queensland Rail submitted that in a future without declaration, it does not have the ability or incentive to use any market power to adversely affect competition in a dependent market:

> (ii) In the future without declaration, Queensland Rail would be materially constrained ... by:
>
> a. Strong competition from road operators, which provide a closely substitutable service in respect of the transportation of freight, other than some bulk commodities being transported over long distances.[181]

The QCA considers that these constraints do not apply in the case of the West Moreton and Metropolitan system services, due not only to the bulk nature of coal products, but also to the unique non-price constraints on utilising road haulage to transport coal to the Port of Brisbane across the Brisbane metropolitan region. In particular, Queensland Rail said in March 2012, in submissions in the Draft Access Undertaking 1 process:

> Road is a key competitor to the vast majority of Queensland Rail's rail network … However, Queensland Rail acknowledges that, at present, coal carrying train services in the West Moreton System do not currently compete with alternative transport providers to have coal transported to port facilities.[182]

Generally, rail transport offers a substantial cost advantage to other modes of transport, such as road transport, for the haulage of bulk products such as coal, being high-volume, low-unit-value products. This is because rail transport enjoys economies of scale, with costs decreasing with increasing volumes (e.g. more wagons can be attached to a single locomotive to accommodate larger volumes). In comparison, road transport faces a near constant cost per kilometre travelled (one truck can only carry a fixed volume of coal per trip). For example, the South West Producers said that:

> trucking/road haulage is generally uneconomic for coal from the West Moreton system mines, with the economics of road haulage becoming worse the further west the mine is (e.g. for Cameby Downs) and the large scale the mine is (e.g. for the proposed New Acland development).[183]

In addition, coal users using the West Moreton and Metropolitan system services face additional non-price constraints which mean that road transport is not a substitute for rail transport. These include:

- government policy, which prohibits the operator of the coal terminal at the Port of Brisbane from receiving coal by road haulage delivery without the consent of the Port of Brisbane
- government policy, environmental, safety and social licence to operate issues which prevent the operation of a large volume of coal delivery trucks through the Brisbane metropolitan region (even if the transported coal could be accepted at the Port of Brisbane).[184]

The effect of these commercial realities means that Queensland Rail is not constrained by competition from road operators on the West Moreton and Metropolitan system services. The QCA considers that Queensland Rail does have the ability and incentive to exercise market power on the West Moreton and Metropolitan system services, and that this would have an

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[181] Queensland Rail, sub. 8, p. 4, para 25.

[182] Queensland Rail, *Draft Queensland Rail Access Undertaking 1*, explanatory submission, March 2012, p. 16, http://www.qca.org.au/getattachment/e5518877-0458-492a-aa80-a3c49b937a31/QRail-Explanatory-Document-re-2012-DAU.aspx.

[183] South West Producers, sub. 4, p. 15.

[184] South West Producers, sub. 4, p. 15.

effect on competition in the West Moreton region coal tenements market. This is discussed in more detail in section 3.9.5.

3.9.5 The two-period hold-up problem

The QCA considers that many features of the West Moreton region coal tenements market are sufficiently similar to many features of the North West Queensland minerals tenement market (in relation to the Mount Isa Line service), such that the detailed analysis of the two-period hold-up problem discussed in section 3.8.4 above will analogously apply to the West Moreton and Metropolitan system service.

In particular, in a future without declaration, due to the availability of spare capacity on the West Moreton and Metropolitan system, the QCA considers that it is likely that Queensland Rail will be incentivised to provide access to a potential market entrant in the first period (i.e. at the time of market entry), but will have the ability and incentive to exert market power in the second period (i.e. at the time of contract renewal) in order to maximise its profits.

Participating in the coal tenements market requires considerable investment in exploration, development and production over time given mines are long-life projects requiring significant upfront development costs. A typical coal mine has a 10 to 30 year useful life, compared with the 10-year typical term of a rail access agreement; as a result, at some point in the middle of the useful life of the coal tenement, it can be expected that the below-rail access agreement will be due for renewal.[185] Therefore, at the time it is considering investment, a potential new market entrant will be faced with the prospect that, having incurred these sunk costs, at the time of contract renewal, Queensland Rail will have the ability to exercise market power in setting access prices and other terms and conditions of access.

The costs of accessing below-rail infrastructure, along with expected mine revenue and operating costs, are critical to the valuation of coal tenements and to the decision to invest, or continue to invest, in this market (at all stages, including exploration, development and production). Transport costs are particularly important for coal mines from the West Moreton region given the unique infrastructure constraints noted above. For example, based on the current West Moreton reference tariff from Queensland Rail's Undertaking 1, the costs of below-rail access accounts for as much as 10 to 20 per cent of the final free-on-board price of export thermal coal.[186] Therefore, below-rail costs are a material component of the decision-making process for entry into or operations in the market.

In a future without declaration, for example, there would likely be no independently approved[187] reference tariff for coal services on the West Moreton system, and no threat of a reference tariff being applied.[188] Thus, a potential entrant to the West Moreton region coal tenements market would not have the benefit of a default reference tariff to use in its decision making, and would face uncertainties as to the access charge. Further, in a future without declaration, Queensland Rail is likely to have no obligation or incentive to publicly release its capacity and utilisation data. As such, for a potential entrant to the coal tenements market, it

[185] South West Producers, sub. 4, p. 35.

[186] This calculation is based on the reference tariffs applicable from 19 July 2018 to 30 June 2019, for a reference train service departing Cameby Downs mine, travelling fully loaded on the 'down' train path and empty on the return 'up' train path.

[187] That is, a reference tariff approved by the QCA in accordance with the QCA Act.

[188] Although the QCA notes that it would nevertheless be open for Queensland Rail to submit a voluntary undertaking (for a non-declared service) pursuant to s. 136(2) of the QCA Act.

would be very difficult to predict or to appropriately negotiate an access charge for its use of the West Moreton and Metropolitan services, particularly at the time of contract renewal.

At the time of contract renewal, an exercise of market power by Queensland Rail against a miner may arguably be regarded as a transfer of rents between parties, with little effect on competition. However, the critical issue is that in the first period, a miner can foresee the risk that any sunk investments it makes in the first period will be exposed to the risk of expropriation. The QCA considers that this additional risk and uncertainty is likely to be sufficiently material as to deter efficient entry by prospective mines in the first place.

This view is supported by the South West Producers who submitted that the uncertainty around terms of access in a future without declaration means that:

> it is impossible to see how producers would incur costs in exploration and development [of a tenement] in the face of such limited certainty of costs of the West Moreton coal rail access service and the knowledge that they can be held hostage to monopoly pricing at the time of seeking access. It is highly likely that the prospect of new entry would be eliminated.[189]

Existing tenement holders would also face higher risks in a future without declaration, with greater uncertainty around future terms of access on the expiry of existing contracts, given that there are no evergreen renewal clauses in existing contracts. This may create a disincentive to invest in further exploration and development of existing tenements, with the potential to affect competition in the market over time.

Therefore, in a future without declaration, the QCA is concerned that all market participants will face uncertainties relating to material price and non-price terms for access to below-rail services on the West Moreton and Metropolitan system, particularly at the time of contract renewal, and that these uncertainties will deter efficient entry and efficient participation across the West Moreton region coal tenement market.

3.9.6 The future with declaration

In a future with declaration, participants in the West Moreton region coal tenements market will have the benefit of the protections and obligations in the QCA Act and access undertaking. These protections, including pricing and non-pricing terms, are discussed in detail in section 3.7.7. These terms serve to address information asymmetry by requiring the provision of information to access seekers and providing certainty around both pricing and non-pricing terms and conditions of access.

The QCA considers that the continued certainty of terms, particularly in relation to essential pricing and non-pricing terms, is likely to continue to promote efficient entry and efficient participation in the West Moreton region coal tenements market.

A detailed discussion in relation to the requirement that the increase in competition be 'material' is provided in section 3.3.2. In the case of the West Moreton and Metropolitan system services, the QCA considers that the uncertainties facing market participants in a future without declaration would negatively affect all participants across the market, including more efficient firms. In contrast, the QCA considers that the certainties and protections offered by the access regime under declaration would promote efficient entry and efficient participation in the market.

In this way, the QCA is satisfied that access to the West Moreton and Metropolitan system services, on reasonable terms and conditions, as a result of a declaration of the service would

[189] South West Producers, sub. 16, p. 14.

promote a material increase in competition, in the West Moreton region coal tenements market.

3.9.7 Conclusion

The QCA is satisfied that criterion (a) is satisfied in respect of the West Moreton and Metropolitan system services.

3.10 The other systems services (South Western, Western, Central Western and Tablelands systems)

Presently, the QCA is inclined to consider that access to the South Western, Western, Central Western and Tablelands systems services ('the other systems services'), on reasonable terms and conditions, as a result of the declaration of the service, *would not* promote a material increase in competition in any relevant dependent markets.

The QCA notes the lack of stakeholder submissions in relation to any aspect of criterion (a) for any of these other systems services. In particular, the QCA notes a lack of specific submissions in relation to identifying:

- any relevant dependent markets for any of the other systems
- the ability and incentive of Queensland Rail, or any other market participant, to exercise market power to affect competition in any dependent market
- the effect, if any, that access as a result of declaration has on competition in a dependent market
- the likely state of competition in any dependent market, in a future with and without declaration.

The QCA notes a recent media report of possible future investment in the South Western system.[190] The QCA has received no submissions from stakeholders relating to the South Western system, and there are no detailed publicly available information in relation to this system. The QCA invites further submissions from interested stakeholders in relation to the South Western system service, or any of the other systems services.

3.10.1 Stakeholder submissions

Queensland Rail did not provide any specific submissions in relation to any of these other systems; however, it submitted that criterion (a) is not satisfied in relation to any part of Queensland Rail's service, because Queensland Rail does not have the ability or incentive to exercise market power to adversely affect competition in any dependent market.[191] In particular, Queensland Rail submitted that with respect to the Western system, the South Western system, the Central Western system and the Tablelands system, there are:

> (a) low volume/value of freight hauled on each system ...
>
> (b) high under-utilisation rates, often related to modal competition with road

[190] Southern Downs Regional Council, *Major rail service company Watco invests in Southern Downs*, news release, 20 September 2018, viewed 2 October 2018, https://www.sdrc.qld.gov.au/council/alerts-news-notices/2018-news/major-rail-service-company-watco-invests-in-southern-downs.

[191] Queensland Rail, sub. 9, p. 4, para 25.

(c) the high degree of dependence on TSC [Transport Services Contract] revenue on these facilities indicating lack of commercial viability.[192]

No other stakeholders provided any specific submissions in relation to these other systems.

3.10.2 QCA analysis

Given the publicly available data, the QCA understands that the use of these other systems is underutilised, and both above-rail and below-rail services on these other systems are dependent on TSC subsidies for their continued operation.[193] For clarification, Queensland Rail receives two types of subsidies through the TSC: above-rail subsidies and below-rail subsidies. The subsidies discussed in this section below refer to above-rail subsidies, which directly affect the above-rail haulage market (a dependent market), and may indirectly affect other dependent markets.

In relation to above-rail freight services, historically there has been only one above-rail freight operator on the other systems.[194] This operator is subsidised through the TSCs to provide above-rail freight services. The TSCs subsidise an above-rail freight operator to provide freight haulage services (such as for the haulage of cattle on the Western and Central Western systems) which would otherwise not be commercially viable. According to the Department of Transport and Main Roads, these above-rail subsidies are provided for public policy reasons to 'support regional economic development and trade', to 'assist in managing livestock transport demands on the road network', and to support non-commercial above-rail livestock and freight services and ensure that a minimum standard of service is delivered.[195] Given these public policy considerations, the QCA considers that these subsidies for above-rail freight services on the other systems are likely to continue even if the other systems services were not declared.

In relation to above-rail passenger services, Queensland Rail is the only above-rail passenger operator in Queensland.[196] Queensland Rail has stated that it 'receives substantial transport service payments for the operation of passenger train services', and that 'the characteristics of passenger train services are such that they are not commercial without significant Queensland Government support in the form of transport service payments'.[197]

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[192] Queensland Rail, sub. 9, p. 6, para 45.

[193] See for example, Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 4; and Department of Transport and Main Roads, Rail Transport Contracts and Agreements, Queensland Government, 2018, viewed 11 September 2018, https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Rail-services-and-infrastructure/Rail-Transport-Contracts-and-Agreements.

[194] In the past, this above-rail operator has been Aurizon Operations. For example, the Department of Transport and Main Roads has stated that 'The Queensland Government offers 325 rail cattle services each year through the Livestock Transport Services Contract with rail operator Aurizon.': Department of Transport and Main Roads, Rail Transport Contracts and Agreements, Queensland Government, 2018, viewed 11 September 2018

[195] Department of Transport and Main Roads, Rail Transport Contracts and Agreements, Queensland Government, 2018, viewed 11 September 2018.

[196] With the exception of small private local tourism operators. Queensland Rail operates regular passenger and tourist services on the Western system, Central Western system and Tablelands system, as well as the North Coast Line, Mount Isa Line, West Moreton system and commuter services on the Metropolitan system: Queensland Rail sub. 8, p. 2, para 9-10.

[197] Queensland Rail, *Draft Queensland Rail Access Undertaking 1*, explanatory submission, March 2012, pp. 16–17

The QCA Act requires the QCA to recommend that a service be declared if each of the access criteria are satisfied. Given the heavily subsidised nature of both above-rail freight and passenger services on these other systems and the presumption that these above-rail services would continue to be provided (due to the TSC subsidies) with or without declaration, it is not evident that access as a result of declaration would promote a material increase in competition in a dependent market such as the above-rail haulage market, or any other dependent market, on any of these other systems.

The QCA therefore considers, based on the material before it, that each of the services provided on the South Western, Western, Central Western and Tablelands systems do not satisfy criterion (a).

4 CRITERION C—STATE SIGNIFICANCE

4.1 Introduction

Section 76(2)(c) of the QCA Act is expressed as follows:

> that the facility for the service is significant, having regard to its size or its importance to the Queensland economy

The key matters in respect of s. 76(2)(c) for the below-rail service provided by Queensland Rail are summarised in Table 4.

Table 4 Summary of key positions—s. 76(2)(c)

Criterion (c)			
Issue	***Queensland Rail's position***	***Other stakeholders' position***	***QCA draft recommendation***
Queensland Rail Network as a whole (i.e. all lines)	No comment (Its submission shows that its positions differ across the individual lines)	Pacific National, Glencore, New Hope and Yancoal each said that the Queensland Rail Network as a whole satisfies criterion c	Criterion (c) is satisfied
North Coast Line	The North Coast Line satisfies criterion (c).	No comment	Criterion (c) is satisfied in respect of each of the rail systems
Mount Isa Line	The Mount Isa Line satisfies criterion (c)	Glencore submitted that the Mount Isa Line satisfies criterion (c)	
West Moreton and Metropolitan systems	The Metropolitan system satisfies criterion (c). The West Moreton system does not satisfy criterion (c)	New Hope and Yancoal submitted that the West Moreton system and Metropolitan system together (being the 'West Moreton coal corridor') satisfy criterion (c)	
Other systems (South Western, Western, Central Western and Tablelands systems)	The other systems do not satisfy criterion (c)	No comment	

4.2 Queensland Rail Network as a whole

The QCA considers that the use of the Queensland Rail Network as a whole—comprising the seven regional systems and the Metropolitan system—is significant, having regard to its size and its importance to the Queensland economy. In each case, the QCA considers that each individual rail system, being the facility for a part of the service that is itself a service[198], is significant, having regard to that system's size or that system's importance to the Queensland economy.

[198] Section 87A(1)(b) of the QCA Act.

4.2.1 Stakeholder submissions

Queensland Rail did not comment on whether the network as a whole satisfied criterion (c); rather, it submitted that 'given the distinct nature of the rail systems managed by Queensland Rail, it is appropriate that any assessment against the access criteria of whether or not to declare the service, or part of the service, be performed on a rail system by rail system basis'.[199]

Other stakeholders (Pacific National, Glencore and the South West Producers[200]), each submitted that the Queensland Rail network as a whole satisfied criterion (c).[201] For instance, the South West Producers considered that the rationale for the analysis of the Queensland Rail network as a whole is that:

> While some of those rail lines are shown as distinct pieces of the QR Network, it is important to note that freight to and from a number of parts of the QR Network travel across other parts of the network, particularly including the South East Queensland network. That is, the "services" provided are best understood on an origin-destination basis, which do not necessarily correspond to QR's designation of its own lines and systems.[202]

4.2.2 QCA analysis

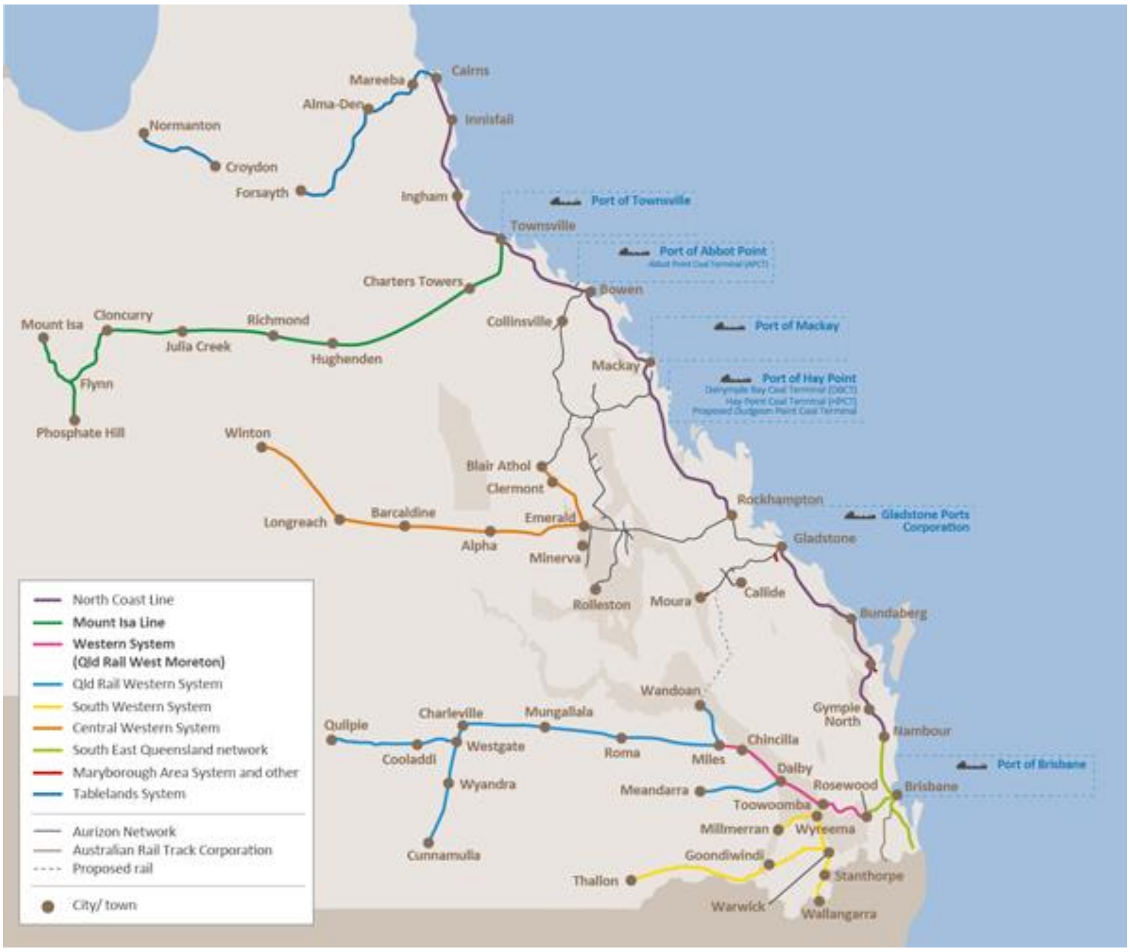
Size

Physical and geographical dimensions

A map of the Queensland Rail network is provided in Figure 10.

[199] Queensland Rail, sub. 8, p. 3, para 19.
[200] South West Producers, sub. 4, p. 4. The South West Producers are New Hope and Yancoal.
[201] Pacific National, sub. 9, p. 13; Glencore, sub. 5, p. 16; South West Producers, sub. 4, p. 5.
[202] South West Producers, sub. 4, p. 9.

Figure 10 Queensland Rail network



Different stakeholders provided slightly different estimates of the physical dimensions (total rail track distance) of the Queensland Rail network. For example, Queensland Rail stated that its rail network 'extends more than 6,600 km across Queensland'[203]; Glencore stated that 'the whole of the QR network is clearly significant when regard is had to the 7,000 km of rail track and associated infrastructure that it includes, as well as the significant area of the state of Queensland that the network covers'[204]; and New Hope and Yancoal said that 'the QR Network as a whole is clearly significant, consisting of approximately 8,000km of track which covers a significant proportion of the State'[205].

Estimates of the total length of rail track may differ, based on factors such as whether yards, sidings, passing loops and duplicate tracks are included in calculations of track length. Based on the latest publicly available track information provided in Queensland Rail's system information packs (available for each system)[206], the QCA is satisfied that Queensland Rail's rail network as a whole extends, at a minimum, approximately 6,600 km.

[203] Queensland Rail, sub. 8, p. 2, para 6.
[204] Glencore, sub. 5, p. 16.
[205] South West Producers, sub. 4, p. 44.
[206] Available from https://www.queenslandrail.com.au/forbusiness/the-regional-network.

Moreover, it can be clearly seen that the eight systems are interconnected[207] (with the exception of the standalone Normanton to Croydon track on the Tablelands system), forming a network that extends across a significant area of the state.

Given the substantial physical size of the network (approximately 6,600 km of rail track), and the substantial geographic area of the state that the network covers, the QCA considers that the Queensland Rail network as a whole, being the facility for the service described in s. 250(1)(b) of the QCA Act, is significant, having regard to its size.

Actual throughput volumes

In terms of freight volumes, Queensland Rail submitted that:

> The most significant volumes of freight are carried on the West Moreton system (thermal coal), the Mount Isa Line (metals, minerals concentrate and chemicals) and the North Coast Line (intermodal freight and sugar). These three systems carried approximately 97 per cent of the freight tonnage transported on Queensland Rail's network in 2016–17.[208]

The QCA notes that approximately 19.6 billion gross tonne kilometres (gtk)[209] of passengers and freight (including intermodal, coal, minerals, industrial products[210] and agricultural products[211]) were carried on the Mount Isa Line, North Coast Line, West Moreton and Metropolitan systems.[212]

In terms of passengers carried, Queensland Rail estimated that 51.69 million passenger trips were taken in 2016–17 on the Citytrain network on the Brisbane Metropolitan system, and more than 760,000 passengers travelled on the Queensland Rail regional systems as part of the Queensland Rail travel and tourism network.[213]

Given the substantial volumes of freight and passengers carried across the Queensland Rail network, the QCA considers that the Queensland Rail network as a whole, being the facility for the service described in s. 250(1)(b) of the QCA Act, is significant, having regard to its size.

Importance to the Queensland economy

The QCA considers that the Queensland Rail network as a whole is a vital component of the Queensland economy, as it facilitates the operation of various industries which depend upon access to the railway network. Such industries include:

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[207] With the exception of the standalone Normanton to Croydon track on the Tablelands system. The Central Western system is interconnected with the North Coast Line through the Aurizon Network's Central Queensland coal network (CQCN), and the QCA notes that freight and passenger traffic have historically been permitted access across the CQCN, for example the 'Spirit of the Outback' passenger service from Brisbane to Longreach. See Aurizon Network, sub. 6, pp. 45–47.

[208] Queensland Rail, sub. 8, p. 2, para 8.

[209] Gross tonne kilometres (gtk) is a measure of the level of operating activity on a particular rail system. It is the product of the total gross weight of the train (i.e. including the locomotives and wagons used, as well as the goods and passengers carried) and the distance (in kilometres) travelled by the train.

[210] Including acid and fertiliser.

[211] Including livestock, grains, cotton and sugar.

[212] Queensland Rail, *2016-17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, pp. 11, 18, https://www.queenslandrail.com.au/business/acccess/Compliance%20and%20reporting/Queensland%20Rail%20-%20Annual%20Performance%20Report%202016-17.pdf.

[213] Queensland Rail, *Annual and Financial Report 2016–17*, pp. 24, 29, https://www.queenslandrail.com.au/about%20us/Documents/QueenslandRail_AnnualFinancialReport_2016-17_LR.pdf.

- the above-rail haulage industry
- the mining industries which depend upon the Mount Isa Line and the West Moreton system for the transportation of minerals and coal products for export
- agricultural and livestock industries across regional Queensland
- the regional communities, which rely upon the agriculture and mining industries for local employment and economic growth
- the tourism industry across Queensland, particularly tourism in regional communities which are connected to the rail network
- the Brisbane Metropolitan system commuter service.

Stakeholders have provided estimates of the monetary contributions of various individual systems to the Queensland economy, which are discussed below in this chapter in relation to the relevant rail system. The QCA notes that in 2016–17 access revenue from third party access to the below-rail network reached approximately $163.6 million.[214]

Queensland Rail emphasised that 'it is critical that the economic significance is not conflated with cultural, historical or societal significance when applying criterion (c)'.[215] The QCA considers that importance to the Queensland economy does not merely refer to monetary contributions to the gross state product, but may also include contributions to employment, contributions to regional development and contributions to economic growth and productivity.

The QCA considers that access to the Queensland Rail network facilitates the development of various industries in Queensland, which contribute significantly to the Queensland economy through the gross state product as well as regional development and employment. Thus, the QCA is satisfied that the Queensland Rail network as a whole is significant having regard to its importance to the Queensland economy.

4.3 Criterion (c) considered with respect to the whole and parts of the service

Queensland Rail submitted that the QCA should consider each of the access criteria, including criterion (c), on a system-by-system basis:

> Given the distinct nature of the rail systems managed by Queensland Rail, it is appropriate that any assessment against the access criteria of whether or not to declare the service, or part of the service, be performed on a rail system by rail system basis.[216]

In considering criterion (c), the QCA has first considered the service as described in s. 250(1)(b) of the QCA Act—that is, as a whole. Having done this, the QCA has then considered whether any of the eight services identified by Queensland Rail have characteristics that require different or further consideration from that given to the service as a whole.

The QCA is satisfied that the Queensland Rail network as a whole is significant having regard to its size and its importance to the Queensland economy. While the QCA considers the characteristics of the parts of the service do not necessarily warrant different consideration from the relevant service as a whole in relation to criterion (c), the QCA has considered each rail system identified above as the facility in each 'part of the service', having regard to their specific

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[214] Queensland Rail, *Annual and Financial Report 2016–2017*, p. 27.
[215] Queensland Rail, sub. 8, p. 6, para 41.
[216] Queensland Rail, sub. 8, p. 3, para 19.

characteristics. Based on this, the QCA is satisfied that each of the rail systems is significant, having regard to its size or its importance to the Queensland economy.

4.4 North Coast Line

The QCA considers that the North Coast Line[217] is significant, having regard to its size and its importance to the Queensland economy.

4.4.1 Stakeholder submissions

Queensland Rail submitted that the 'North Coast Line [is a] rail system of sufficient size and/or of sufficient importance to the Queensland economy to satisfy criterion (c)'.[218]

The South West Producers agreed, and stated that 'many of the rail lines are highly significant, in a variety of different ways, and are used by quite different rail haulage tasks. For example, the North Coast Line supports major containerised freight transportation'.[219]

4.4.2 QCA analysis

Physical and geographical dimensions

The North Coast Line extends from Nambour (near Brisbane) north along Queensland's eastern coastline to Cairns, consisting of approximately 1,461 km of total track.[220] Approximately 420 km of the line from Nambour to Parana (near Gladstone) consists of an electrified single track, while the remaining 1,042 km from Rockhampton (Rocklands) to Cairns consists of a non-electrified single track. Further, Aurizon Network manages the approximately 113 km of the North Coast Line between Parana and Rocklands, which form part of its Blackwater system.[221] Many of Queensland Rail's railway systems connect to the North Coast Line, including the Metropolitan system (at Nambour), the Mount Isa Line (at Stuart, near Townsville), and the Tablelands system (at Cairns). All four systems comprising Aurizon Network's CQCN also intersect with the North Coast Line.

The QCA considers that the North Coast Line is of an extensive length, extending across a significant area of the state, and is therefore significant, having regard to its size.

Throughput volumes

The North Coast Line is the principal regional freight and passenger line within the Queensland Rail network.[222] The system carries predominantly intermodal freight (83% of total freight

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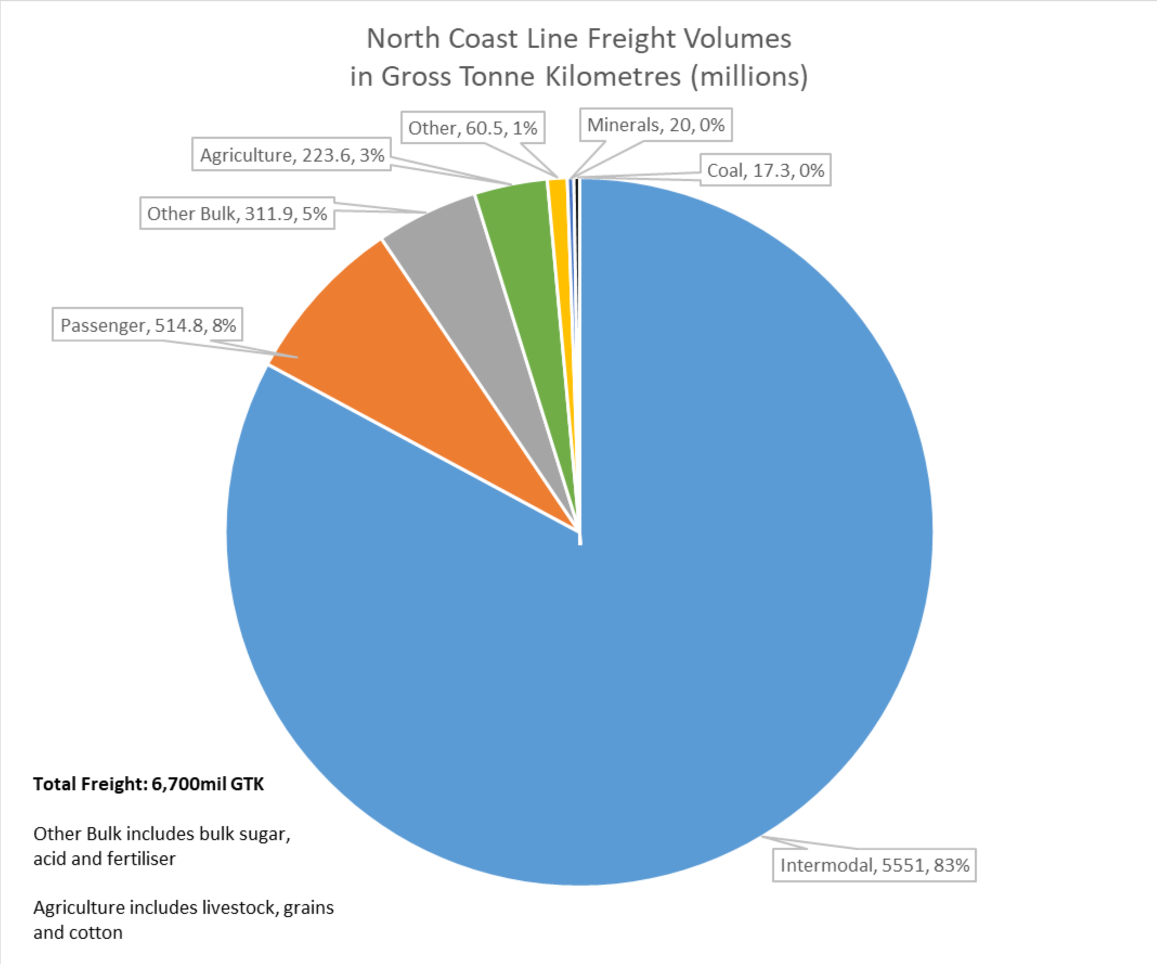
217 Being the facility for a 'part of the service described in s. 250(1)(b) of the QCA Act, that is itself a service', pursuant to s. 87A(1)(b) of the QCA Act.
218 Queensland Rail, sub. 8, p. 6, para 43.
219 South West Producers, sub. 4, p. 9.
220 Queensland Rail, *North Coast Line System North Information Pack*, October 2016, https://www.queenslandrail.com.au/business/acccess/Documents/North%20Coast%20Line%20North%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf; Queensland Rail, *North Coast Line System South system Information Pack*, October 2016, https://www.queenslandrail.com.au/business/acccess/Documents/North%20Coast%20Line%20South%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.
221 Aurizon Network, sub. 6, p. 46.
222 Queensland Rail, North Coast line system, https://www.queenslandrail.com.au/forbusiness/the-regional-network/north-coast-line-system.

carried)[223] between Brisbane and major regional centres in Queensland, including Rockhampton, Mackay, Townsville and Cairns. It also carries:

- sugar traffic from sugar mills to the Ports of Mackay and Townsville
- minerals exports, mining inputs and industrial products between the Mount Isa Line and the Port of Townsville
- long-distance passenger and tourism services, including on the Spirit of Queensland (Brisbane to Cairns), the Spirit of the Outback (Brisbane to Longreach), the Tilt Train (Brisbane to Rockhampton) and The Westlander (Brisbane to Charleville).[224]

In 2016–17, the North Coast Line transported approximately 6,700 million gtk of freight and passengers—approximately 33 per cent of total traffic across the entire Queensland Rail network.[225] A breakdown of volumes carried by category is provided in Figure 11.

Figure 11 North Coast Line freight volumes by commodity in 2016–17



Source: Adapted from Queensland Rail, 2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1, p. 18.

[223] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 18.
[224] Queensland Rail Travel, https://www.queenslandrailtravel.com.au/.
[225] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, p. 18.

The QCA considers that substantial annual volumes of freight are carried on the North Coast Line, and that the line is significant, having regard to its size.

Importance to Queensland economy

The North Coast Line is a crucial freight corridor along Queensland's eastern coastline. It facilitates rail freight movement between Brisbane and key regional centres and enables economic activity. For example, Pacific National submitted that:

> Access to QR's monopoly below rail infrastructure supports a highly competitive market for freight services along key rail corridors, particularly the North Coast Line and Mt Isa to Townsville rail corridors. Access to below-rail infrastructure is crucial to supporting competition in the downstream freight haulage markets. In these haulage markets, PN competes with other rail operators (Aurizon), as well as other modes of freight transport (e.g. road transport).[226]

Pacific National further noted that it transports approximately 160,000 TEUs[227] per annum within Queensland[228], the majority of which is transported on the North Coast Line.

The QCA considers that the North Coast Line connects key coastal Queensland regional centres, and plays a critical role in supporting economic activity across a large area of the state, and is therefore significant, having regard to its importance to the Queensland economy.

Conclusion

Given the substantial length of the railway track forming the North Coast Line, the substantial volume of freight carried on the line, and the critical role of the line in facilitating rail freight movement across Queensland, the QCA considers that the North Coast Line is significant, having regard to its size and its importance to the Queensland economy. The QCA notes that Queensland Rail and stakeholders agreed with this position in their submissions.

4.5 Mount Isa Line

The QCA considers that the Mount Isa Line[229] is significant, having regard to its size and its importance to the Queensland economy.

4.5.1 Stakeholder submissions

Queensland Rail submitted that the Mount Isa Line is 'of sufficient size and/or of sufficient importance to the Queensland economy to satisfy criterion (c)'.[230]

Glencore expressed a similar view, submitting that 'the Mount Isa Line is highly significant both having regard to its size (being approximately 1032 kilometres in length) and in its significance to the Queensland economy'.[231] It said that '[t]he area covered by the Mount Isa Line is also of particular national significance due to its positioning across some of the most dense deposits of copper, lead, zinc, silver and phosphate rock in the world'.[232]

[226] Pacific National, sub. 9, p. 11.
[227] Twenty-foot equivalent unit container, a measure of intermodal container movements.
[228] Pacific National, sub. 9, p. 3.
[229] Being the facility for a 'part of the service described in s. 250(1)(b) of the QCA Act, that is itself a service', pursuant to s. 87A(1)(b) of the QCA Act.
[230] Queensland Rail, sub. 8, p. 6, para 43.
[231] Glencore, sub. 5, p. 3.
[232] Glencore, sub. 5, p. 16.

The South West Producers submitted that 'many of the rail lines are highly significant, in a variety of different ways … the Mount Isa Line supports the transportation of mining inputs to and bulk mineral products from the north west minerals province'.[233]

4.5.2 QCA analysis

Physical and geographic dimensions

The Mount Isa Line extends from Stuart (near Townsville) west to Mount Isa, including the Flynn to Phosphate Hill branch line. Together, the system is 1,032 km long, consisting of a non-electrified single track. The Mount Isa Line services a number of regional communities, and acts as a critical link from the North West Minerals Province to the Port of Townsville.[234]

Given its extensive length and geographic spread (extending from Queensland's eastern coastline to almost its western border), the QCA considers that the Mount Isa Line is significant, having regard to its size.

Throughput volumes

In 2016–17, the Mount Isa Line transported approximately 5,100 million gtk of freight and passengers, consisting approximately 25 per cent of total freight and passenger traffic across the entire Queensland Rail network.[235] This equated to approximately 6 million tonnes per annum of freight railed on the Mount Isa Line.[236] Glencore submitted that the Mount Isa Line transports 75 per cent of Queensland's non-coal mineral output.[237]

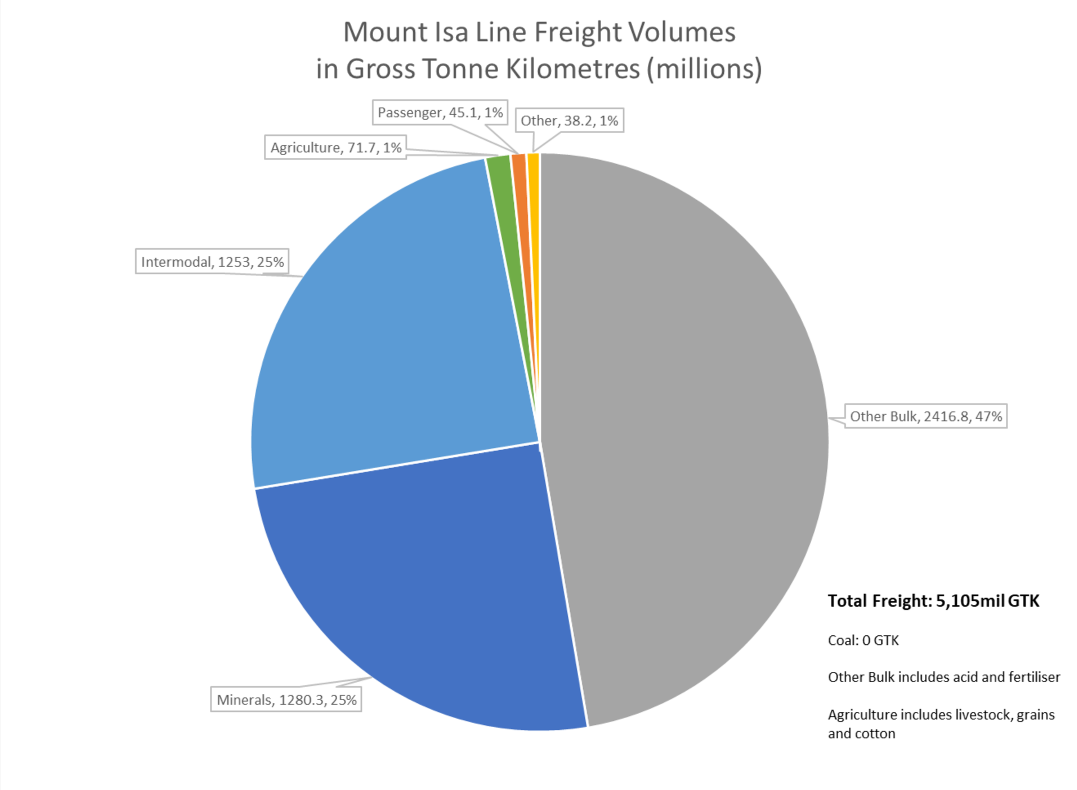
The Mount Isa Line carries predominantly:

- minerals—including copper, lead, zinc, magnetite and sulphur, totalling 1,280 million gtk in 2016–17, or 25 per cent of total freight carried on the line[238]
- other bulk freight—acid, cement, fertiliser, totalling 2,416 million gtk in 2016–17, or 47 per cent of total freight carried on the line
- general freight, intermodal and livestock—totalling 1,325 million gtk in 2016–17, or 26 per cent of total freight carried on the line
- passengers and other freight—including the long-distance 'The Inlander' (Townsville to Mount Isa) passenger and tourism service.[239]

[233] South West Producers, sub. 4, p. 9.
[234] Queensland Rail, *Mount Isa System Information Pack*, 2017, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Mt%20Isa%20System%20Information%20Pack%20-%20Issue%203.1%20-%20February%202017.pdf.
[235] Queensland Rail, *2016–17 Annual Performance Report*, *Queensland Rail Access Undertaking 1*, December 2017, p. 18.
[236] Glencore, sub. 5, p. 15; Queensland Rail, *Mount Isa System Information Pack*, 2017, p. 6.
[237] Glencore, sub. 17, p. 19.
[238] The QCA understands that the volume of minerals carried on the Mount Isa Line in 2016–17 was lower than average due to a transitional period in which Glencore switched its above-rail operator from Aurizon Operations to Pacific National. There was a delay in Pacific National commencing its rail haulage operations on the Mount Isa Line, during which time minerals were carried by road on the Flinders highway. See for example: ABC, 'Freight to increase on north Queensland roads as Glencore moves some transport operations to trucks', *ABC Rural*, 23 February 2017, viewed 2 October 2018, http://www.abc.net.au/news/rural/2017-02-23/more-freight-to-hit-north-queensland-roads-glencore/8296554.
[239] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 18.

A breakdown of volumes carried by commodity on the Mount Isa Line is provided in Figure 12.

Figure 12 Mount Isa Line freight volumes by commodity in 2016–17



Source: Adapted from Queensland Rail, 2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1, p. 18.

The QCA considers that substantial annual volumes of freight are carried on the Mount Isa Line, and that the line is significant, having regard to its size. The QCA notes that both Queensland Rail and stakeholders agreed with this position.

Importance to the Queensland economy

The Mount Isa Line is the only Queensland Rail system which operates on a purely commercial basis—it does not receive or rely upon Queensland Government subsidies to remain commercially viable to operate.[240] In 2016–17, Queensland Rail received approximately $83.5 million in access charges from users of the Mount Isa Line, the largest amount of access charges received on any of Queensland Rail's systems.[241]

According to Queensland Rail, the asset replacement value of the Mount Isa Line (as at 2012) is $12.8 billion, with the regional mineral production using the line worth approximately $6.67 billion.[242]

[240] Queensland Rail, sub. 8, p. 1, para 4.

[241] Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p .4, https://www.queenslandrail.com.au/business/acccess/Compliance%20and%20reporting/Below%20Rail%20Financial%20Statements%20for%20the%20year%20ended%2030%20June%202017.pdf.

[242] Queensland Rail, *Mount Isa Line Rail Infrastructure Master Plan*, 2012, p. 6, https://www.queenslandrail.com.au/business/acccess/Documents/Maps/QR4159.1%20Infrastructure%20Master%20Plan%202012_Updated_LR.pdf.

Queensland Rail has previously said:

> The line services a number of communities along the line through passenger transport and the conveyance of general freight. The line is the critical link from the North West Minerals Province to the Port of Townsville, where the majority of bulk products are exported.
>
> The Mount Isa Line is of particular national interest as it runs along some of the world's largest deposits of copper, lead, zinc, silver and phosphate rock. The region surrounding the Mount Isa Line produces 75% of Queensland's non-coal mineral output.[243]

Glencore submitted that 'the mineral deposits in the North West region are brought to market by miners such as Glencore using the Mount Isa Line as a critical supply chain—with the production brought to market making up 75% of Queensland's non-coal mineral output'.[244]

Glencore also submitted that the Mount Isa Line is significant, due to its importance to the Queensland economy, with access to the Mount Isa Line enabling the resources sector in North West Queensland to make substantial contributions to the Queensland economy, including:

- $1.3 billion in gross regional product (in the North West region)
- $397 million in wages paid to 2,709 full time employees
- $544 million in royalties
- $345 million spent to the benefit of local businesses and community organisations.[245]

The QCA considers that the Mount Isa Line is significant, having regard to its importance to the Queensland economy. It makes direct contributions to the Queensland economy through its operation as a fully commercial line, contributing significant amounts in direct access charges and not requiring government subsidies to support its operation. It also plays a substantial indirect role in supporting the development of the North West Minerals Province, a highly prospective mining region, which relies upon the line for both importing mining inputs and exporting mining products.

Conclusion

The QCA considers that the Mount Isa Line is significant, having regard to its size and its importance to the Queensland economy, due to the extensive length of the rail track, the substantial volumes of freight carried on the line on an annual basis, and its economic significance in its own right and in enabling key regional industries which contribute substantially to the Queensland economy.

4.6 West Moreton and Metropolitan systems

The QCA considers that the West Moreton system and the Metropolitan systems[246] are both significant, having regard to the size and the importance to the Queensland economy of each system.

The two systems are considered together in this analysis, as the West Moreton system is primarily used by access holders to rail coal and agricultural products to the Port of Brisbane for

[243] Queensland Rail, *Mount Isa System Information Pack*, 2017, p. 5.
[244] Glencore, sub. 5, pp. 16–17.
[245] Glencore, sub. 5, p. 17.
[246] Each being a facility for a 'part of the service described in s. 250(1)(b) of the QCA Act, that is itself a service', pursuant to s. 87A(1)(b) of the QCA Act.

export, via the Metropolitan system. As South West Producers said, '[t]ravelling only along the West Moreton system is of very limited utility on its own'.[247]

4.6.1 Stakeholder submissions

Queensland Rail submitted that the Metropolitan system is a 'rail system of sufficient size and/or of sufficient importance to the Queensland economy to satisfy criterion c'; however, it considered that the West Moreton system is a facility of 'insufficient size and insufficient importance to the Queensland economy'.[248]

South West Producers submitted that both the West Moreton and Metropolitan systems are significant, saying that:

> Many of the rail lines are highly significant … For example, the West Moreton System, which supports coal, agriculture and livestock transportation and adjoins the Western System in the west at Miles with the South East Queensland network in the east at Rosewood; and the South East Queensland network contains the Brisbane metropolitan train system, on which QR operates the passenger train services used for travel by thousands of people every day, and which is accessed by coal and other freight services to access the Port of Brisbane.[249]
>
> The West Moreton system alone runs over 314 kilometres adjoining south-east Queensland in the east of Rosewood with the far-west section of the Western system in the west at Miles. The total rail distance from the furthest West Moreton system mine to the Port of Brisbane (Cameby Downs) is approximately 380 kilometres.[250]

Even when considering only the rail transport infrastructure used to provide the West Moreton corridor coal rail access service (being the combined West Moreton System and the section of the metropolitan Brisbane system used to transport coal from the West Moreton regions to the Port of Brisbane), the South West Producers said that 'would also be regarded as a facility that is significant, having regard to its size or the economic benefits it facilitates for Queensland'.[251]

4.6.2 QCA analysis

Physical and geographic dimensions

The West Moreton system extends from Rosewood west to Miles, consisting of 314 km of non-electrified, predominantly single track.[252] At Rosewood in the east, the West Moreton system connects with the Brisbane Metropolitan system; at Miles in the west, the West Moreton system connects with the Western system; the Western system's Dalby to Meandarra branch line also connects to the West Moreton system at Dalby.

The Metropolitan system radiates from Roma Street station in Brisbane's CBD, and extends north to Nambour, where it joins the North Coast Line; extends east via various branch lines, including the dedicated dual gauge freight and coal lines from Lytton Junction to reach the Port of Brisbane at the Fisherman Islands; extends south through the Gold Coast area to the interstate border with New South Wales; and extends west via Ipswich to Rosewood, where it

[247] South West Producers, sub. 4, p. 9.
[248] Queensland Rail, sub. 8, p. 6, paras 43–44.
[249] South West Producers, sub. 4, p. 9.
[250] South West Producers, sub. 4, p. 44.
[251] South West Producers, sub. 4, p. 44.
[252] Queensland Rail, *West Moreton System Information Pack*, 2016, pp. 12–16, https://www.queenslandrail.com.au/business/acccess/Documents/West%20Moreton%20System%20Information%20Pack%20-%20Issue%203.1%20-%20October%202016.pdf.

connects with the West Moreton system. The entire system consists of approximately 612 km of track, with mostly duplicated, electrified lines in the metropolitan region.

The South West Producers' submission addressed the 'West Moreton corridor coal rail access service' in particular. This was defined as the use of the West Moreton system and relevant parts of the Metropolitan system (including the dedicated dual gauge track from Lytton Junction to Fisherman Islands) for the transportation of coal from the south-west Queensland coal mines to the Port of Brisbane[253] (Figure 13).

Figure 13 The West Moreton corridor rail transport infrastructure

Source: Adapted from South West Producers, sub. 4, p. 8.

The QCA considers that each of the West Moreton and Metropolitan systems are of significant lengths, with tracks extending across a significant area of the state, and are significant, having regard to their size.

Throughput volumes

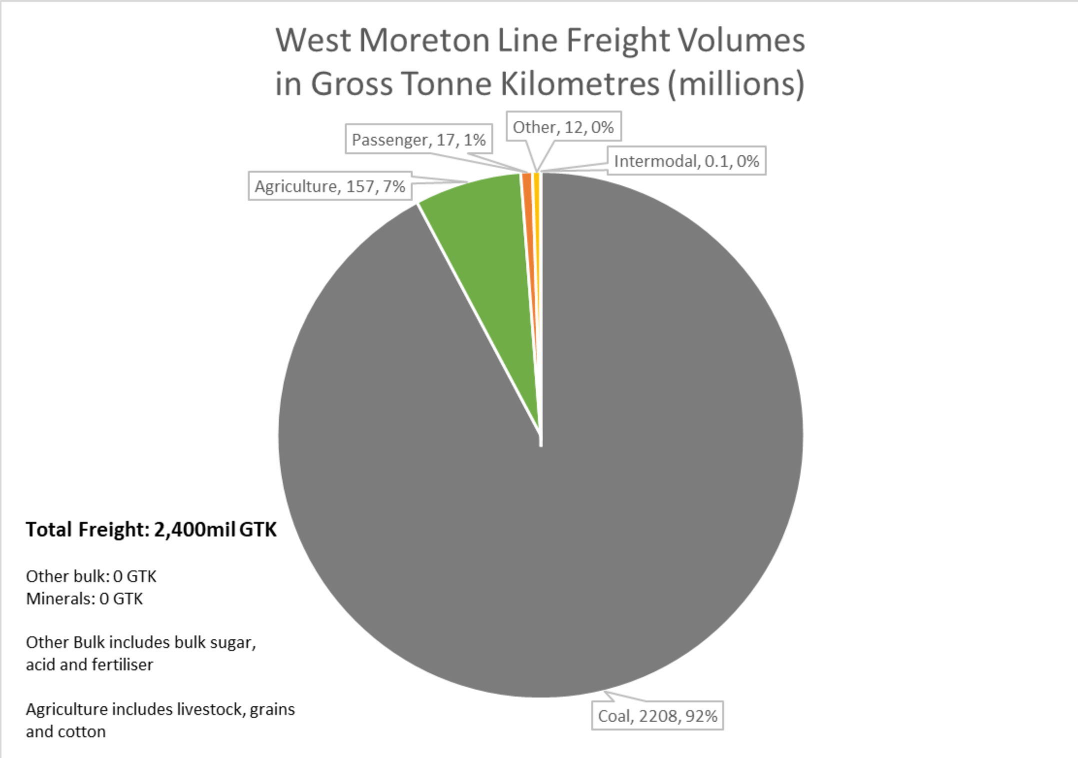
The West Moreton system serves three mines that export via the Port of Brisbane—Jeebropilly and New Acland (New Hope) and Cameby Downs (Yancoal).[254] There are other coal mines near the West Moreton system which supply nearby coal power stations[255], thus the system currently serves five operating mines.[256] The West Moreton system has the capacity to deliver up to 10.8 million tonnes of coal per annum to the Port of Brisbane.[257] The Port of Brisbane has

[253] South West Producers, sub. 4, p. 4.
[254] South West Producers, sub. 4, p. 7.
[255] BITRE, *Freightline 4—Australian coal freight transport*, Department of Infrastructure and Regional Development, Australian Government, 2016, p. 14, https://bitre.gov.au/publications/2016/files/Freightline_04.pdf.
[256] South West Producers, sub. 4, p. 45.
[257] BITRE, *Freightline 4*, 2016, p. 14.

one coal terminal—owned and operated by Queensland Bulk Handling Pty Ltd (wholly-owned by New Hope Group)—which has a coal-loading capacity of 10 million tonnes per annum.[258]

According to the South West Producers, the West Moreton system transports approximately 7 million tonnes per annum of coal, the vast majority of which is exported via the Port of Brisbane, and also provides grain, livestock and passenger services (while having further unused capacity).[259] In 2016–17, the West Moreton system transported approximately 2,400 million gtk of freight and passengers, consisting approximately 12 per cent of total freight and passenger traffic across the entire Queensland Rail network (by gtk).[260] A breakdown of volumes carried by commodity on the West Moreton system is provided in Figure 14.

Figure 14 West Moreton system freight volumes by commodity in 2016–17



Source: Adapted from Queensland Rail, 2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1, p. 11.

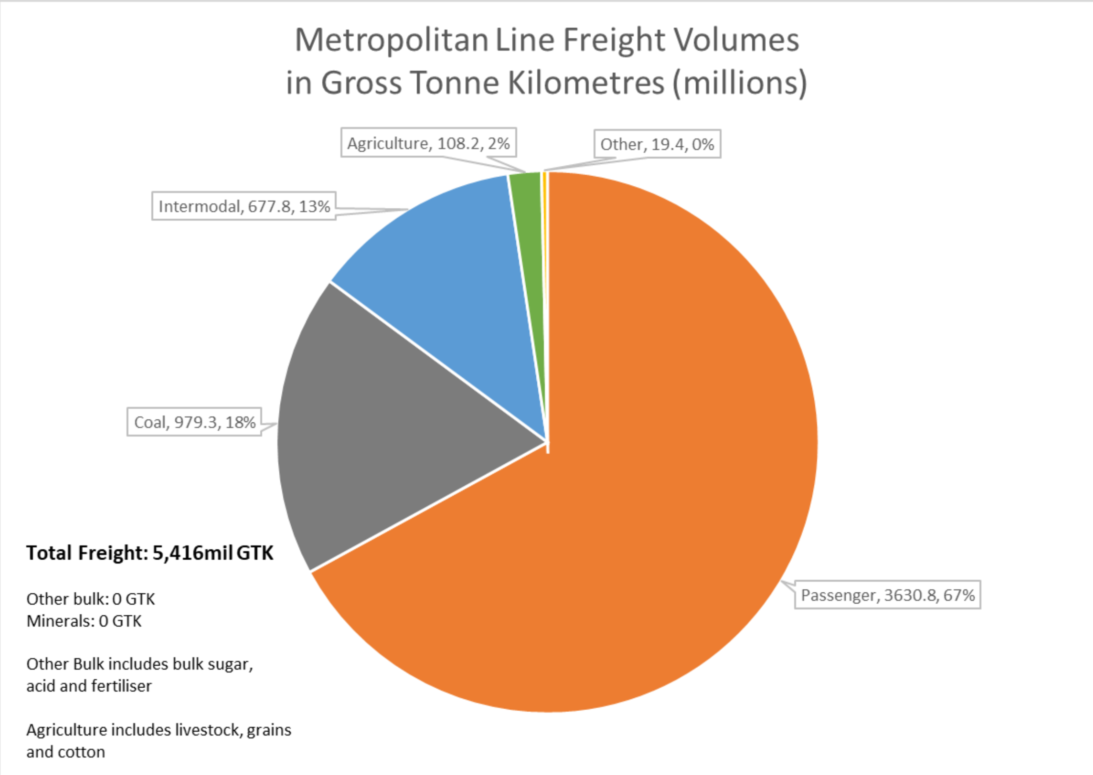
The QCA considers that the volume of freight carried annually by the West Moreton system is substantial. For example, the 314 km West Moreton system carries approximately 7 mtpa of freight, compared with the 1,032 km Mount Isa Line, which carries approximately 6 mpta of freight. Thus, the QCA considers that the West Moreton system is significant, having regard to its size.

The Metropolitan system predominantly carries passenger services for metropolitan Brisbane, as well as freight services for agriculture, coal and intermodal customers. In order to reach the Port of Brisbane, freight from the West Moreton system (and the Western and South Western systems, which connect onto the West Moreton system), as well as the North Coast Line must travel through the Metropolitan system.

[258] BITRE, *Freightline 4*, p. 14.
[259] South West Producers, sub. 4, p. 44 and sub. 16, p. 19.
[260] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 11.

In 2016–17, the Metropolitan system transported approximately 5,416 million gtk of coal, agricultural and intermodal traffic, consisting of approximately 26 per cent of total freight and passenger traffic across the entire Queensland Rail network (by gtk).[261] A breakdown of volumes carried by commodity on the Metropolitan system is provided in Figure 15.

Figure 15 Metropolitan system freight volumes by commodity in 2016-17



Source: Adapted from Queensland Rail, 2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1, p. 18.

In 2016–17, 51.69 million passenger trips were taken on the Brisbane Metropolitan system (the Citytrain network)[262], with regional passenger services[263] also departing from Brisbane and travelling along the Metropolitan system. The QCA considers that a substantial volume of freight and passengers are carried by the Metropolitan system annually and thus the Metropolitan system is significant, having regard to its size.

Importance to the Queensland economy

South West Producers submitted that the West Moreton and Metropolitan systems are significant, having regard to their importance to the Queensland economy, saying that:

> QR's rail network generally, and/or those parts of it that provide the West Moreton corridor coal rail access service are significant, having regard to its importance to the Queensland economy, in the case of the West Moreton corridor through servicing coal, grain, livestock and passenger traffic and the economic contribution made by the coal mines, rail haulage, coal handling

[261] Queensland Rail, *2016–17 Annual Performance Report, Queensland Rail Access Undertaking 1*, December 2017, p. 18.
[262] Queensland Rail, *Annual and Financial Report 2016–17*, 2017, p. 24.
[263] Including the Spirit of Queensland (Brisbane to Cairns), the Spirit of the Outback (Brisbane to Longreach), the tilt train (Brisbane to Rockhampton) and the Westlander (Brisbane to Charleville).

> services, and resulting royalties and indirect economic benefits of the coal supply chain which the West Moreton system rail transport infrastructure forms part of'.[264]

In addition, the South West Producers submitted that the West Moreton rail corridor is significant in its economic contribution to the state, as it has been 'specifically recognised by the National Transport and Infrastructure Council as a national key freight route', and due to its economic contributions to the state.[265]

In 2016–17, Queensland Rail received approximately $58.9 million in coal access charges from the West Moreton and Metropolitan systems.[266] In this period, the West Moreton system received approximately $2.2 million in government subsidies.[267] This suggests that, unlike most of Queensland Rail's network (with the exception of the Mount Isa Line), usage of the West Moreton system is predominantly funded by its users on a commercial basis, and the West Moreton service does not rely heavily on government subsidies to operate.

The South West Producers provided data on the indirect contributions to the economy facilitated by access to the West Moreton rail corridor, saying that together, the 'economic contributions made by the coal, freight and passenger services that travel the West Moreton coal rail access service are significant'.[268] It said:

> Coal from the West Moreton system constituted 22 per cent of the Port of Brisbane's throughput in 2015–16.
>
> Queensland Rail, Aurizon and QBH employ a material number of people in connection with below-rail and above-rail operations on the West Moreton corridor and the coal handling services at the Port of Brisbane, which form part of the West Moreton coal supply chain.
>
> In 2016–17, the resources industry in the West Moreton region contributed approximately $30 million in wages paid to 263 full time employees, $7 million spent on regional communities, and paid $3.8 billion in royalties to the state.[269]

The QCA is satisfied that both the West Moreton system and Metropolitan system are significant, having regard to their importance to the Queensland economy. This is based on the systems' substantial direct contributions to the economy in the form of access revenue, as well as the substantial indirect contributions to the economy that access to these systems provide. In particular, access to these systems facilitates the operation of many areas of economic activity (such as coal, rail haulage, agriculture and commuter passenger transport), which contribute substantially to the Queensland economy both in terms of direct revenue (gross state product), as well as employment and regional development.

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[264] South West Producers, sub. 4, p. 6.
[265] South West Producers, sub. 4, pp. 46–47.
[266] During 2016–17, Queensland Rail received $58.866 million in total access charges; however, during the same period Queensland Rail paid a rebate of $23.019 million to its access user, Aurizon Operations, for access charges applied in excess of the QCA determined coal reference tariffs during the AU1 approvals period (1 July 2013 to 10 October 2016). As a result, in 2016–17 Queensland Rail received $35.847 million in net coal access charges on the West Moreton and Metropolitan systems, consisting of $28.7 million from the West Moreton system and $7.2 million from the Metropolitan system. See Queensland Rail*, Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, pp. 4, 13.
[267] It is difficult to discern the amount of subsidies received by the Metropolitan system alone as this number is not separately reported for the Metropolitan system, and is instead grouped in the reported number for the 'rest of the network'. See Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 4.
[268] South West Producers, sub. 4, p. 47
[269] South West Producers, sub. 4, pp. 47–49.

Conclusion

The QCA considers that both the West Moreton system and Metropolitan system are significant, having regard to each of the systems' size and each of the systems' importance to the Queensland economy.

4.7 Other systems (South Western, Western, Central Western and Tablelands systems)

The QCA considers that the South Western, Western, Central Western and Tablelands systems[270] are each significant in terms of size, though each system is not significant in terms of importance to the Queensland economy.

However, as s. 76(2)(c) requires that only one consideration is satisfied, as indicated by the word or—'having regard to its size or its importance to the Queensland economy'—the QCA considers that criterion (c) is satisfied in respect of each of the South Western, Western, Central Western and Tablelands systems, having regard to its size.

4.7.1 Stakeholder submissions

Queensland Rail submitted that each of:

> the Western System, South Western System, Central Western System and Tablelands System do not satisfy criterion (c) … including a lack of economic significance due to:
>
> (a) The low volume/value of freight hauled on each system with regard to contribution to, as appropriate, Queensland's exports, imports, or the domestic freight industry;
>
> (b) High under-utilisation rates, often related to the impact of modal competition with road; and
>
> (c) The high degree of dependence on Transport Services Contract revenue on these facilities indicating lack of commercial viability.[271]

No other stakeholders made submissions in respect of the South Western, Western, Central Western and Tablelands systems.

4.7.2 QCA analysis

Importance to the Queensland economy

The QCA considers that each of the South Western, Western, Central Western and Tablelands systems is not significant, when regard is had to each system's importance to the Queensland economy. The QCA acknowledges that these systems may be of regional economic, historical or cultural significance for many regional communities. For example, the QCA understands that:

- The Tablelands system is of cultural and historic significance, and is an importance facilitator for regional tourism in North Queensland; for example, the Normanton to Croydon railway line commemorated 125 years of service in 2016, and the Kuranda Scenic Railway service from Cairns to Kuranda is a significant tourism attraction in its own right for visitors to the Cairns region.[272]

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[270] Each being a facility for a 'part of the service described in s. 250(1)(b) of the QCA Act, that is itself a service', pursuant to s. 87A(1)(b) of the QCA Act.
[271] Queensland Rail, sub. 8, p. 6, para 45.
[272] Queensland Rail, *Annual and Financial Report 2016–17*, p. 29.

- The Central Western system provides an option for livestock transport for Central Western Queensland, an option for freight and supplies to be transported into regional communities, and a source of tourism through Queensland Rail's Spirit of the Outback (Brisbane to Longreach) passenger service, with the Longreach station reaching its 100 year milestone in 2016.[273]
- Similarly, the Western system provides an option for livestock transport for south-western Queensland regions, an option for freight and supplies to be transported into regional communities, and a source of tourism through Queensland Rail's The Westlander (Brisbane to Charleville) passenger service.
- The South Western system provides an option for the transport of agricultural products such as grain and cotton from the productive agricultural regions of the Darling Downs.

Such regional development and community service issues are considered in more detail in terms of public interest considerations (criterion (d)). However, while acknowledging the regional, cultural and historical significance of these lines, the QCA also acknowledges Queensland Rail's submission that 'it is critical that economic significance is not conflated with cultural, historical or societal significance when applying criterion (c).'[274]

Based on Queensland Rail's financial statements, in 2016–17, the South Western, Western, Central Western, Tablelands and Metropolitan systems[275] received $129.7 million in non-coal access charges.[276] However, Queensland Rail financial statements also show that in 2016–17, $136.1 million in access charges were 'internal charges' from within Queensland Rail—'internal charges treated as revenue are access charges, telecommunications charges and ancillary infrastructure charges'.[277] This would suggest that most, if not all of the access charges reported for the 'rest of the network' systems were in fact internal charges, indicating that a very small amount of external access revenue was received for the South Western, Western, Central Western, Tablelands and Metropolitan systems.

In contrast, in 2016–17, approximately $441 million was received in government subsidies for the operation of the South Western, Western, Central Western, Tablelands and Metropolitan systems.[278] That is, approximately 74 per cent of the revenue received on the South Western, Western, Central Western, Tablelands and Metropolitan systems was due to government subsidies and, as discussed above, the other 26 per cent of revenue received on these systems was likely due to Queensland Rail internal charges. Queensland Rail's financial statements demonstrate that only a very small amount of external access charges were received on these systems, and it is likely that the continued operation of these systems is highly dependent on government subsidies.

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[273] Queensland Rail, *Annual and Financial Report 2016–17*, p. 29.
[274] Queensland Rail, sub. 8, p. 6, para 41.
[275] The Metropolitan system is included in this figure because Queensland Rail financial reports group the South Western, Western, Central Western, Tablelands and Metropolitan systems together as 'Rest of Network' for reporting purposes. Unfortunately, no individual line-by-line data is available for these systems; therefore, the effects of the Metropolitan system cannot be isolated from the aggregate data for the purposes of analysis in this section.
[276] Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 4.
[277] Queensland Rail, *Financial Statements for the Year Ended 30 June 2017*: *Below Rail Services Provided by Queensland Rail*, 2017, pp. 9, 15.
[278] Queensland Rail, *Financial Statements for the Year Ended 30 June 2017*: *Below Rail Services Provided by Queensland Rail*, 2017, p. 4.

No other stakeholders made submissions in relation to criterion (c) for the South Western, Western, Central Western and Tablelands systems, including in relation to the indirect contributions made by these systems to the state economy.

Therefore, the QCA considers that each of the South Western, Western, Central Western and Tablelands systems is not significant, when regard is had to each system's importance to the Queensland economy.

Size: physical and geographic dimensions and throughput volumes

The South Western system extends from Toowoomba to Wallangarra, including the Warwick to Thallon and Wyreema to Millmerran branch lines, consisting of approximately 610 km of single, non-electrified track.[279] The South Western system connects onto the West Moreton system at Toowoomba. Traditionally, grains, cotton lint and cotton seed have been the primary products hauled on this line, with the volumes of agricultural products varying according to the seasons. For example, in 2014–15, approximately 180,000 net tonnes of total grain and cotton were hauled, using approximately 110 loaded trains; however, volumes can be as high as 550,000 net tonnes of total grains and cotton hauled (in 2005–06, 2009–10 and 2011–12), using over 300 and up to 500 loaded trains during high volume years.[280] The theoretical capacity limitation for the South Western system is the available capacity across the Toowoomba Range, where the South Western, West Moreton and Western systems meet. Out of the approximately 112 return train paths across the Toowoomba Range per week, 14 paths are preserved for primary industry, with a further 19 uncontracted paths available for access by primary producers. However, Queensland Rail data indicates that actual utilisation across the Toowoomba Range has never reached this theoretical capacity (in terms of return train paths) in the last 10 years.[281] The QCA considers that the South Western system consists of a substantial length of railway track and, subject to seasonal agricultural production, it is capable of and has previously hauled substantial volumes of bulk agricultural products such as grain and cotton. Given this, the QCA considers that the South Western system is significant, having regard to its size.

The Western system extends from Miles west to Quilpie, and includes the Westgate to Cunnamulla, Miles to Wandoan and Dalby to Meandarra branch lines, consisting of approximately 1,082 km of single, non-electrified track.[282] The Western system connects to the West Moreton system at Miles and Dalby. The Western system mainly carries agricultural products, particularly grain and livestock (cattle), and also carries freight (e.g. pipes) and the Westlander passenger service between Brisbane and Charleville. Freight traffic from the Western System travels via the West Moreton and Metropolitan systems, with grain and cotton exported, and pipes (and other freight) imported via the Port of Brisbane, and livestock are transported to Dinmore and Holmview. Data on the volumes of freight carried on the Western

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[279] Queensland Rail, *South Western System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/South%20Western%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.

[280] Doyle, G, *South Western Rail System,* Queensland Rail, presentation to Rail Forum: Explore best utilisation of existing rail infrastructure on the South West line*,* Goondiwindi, 4 December 2015, http://www.grc.qld.gov.au/documents/17518/41793789/12.35%20QLD%20Rail%20-%20Goondiwindi%20Rail%20Forum%20Presentation%2004122015%20Final%20pdf1.pdf.

[281] Doyle, G, *South Western Rail System*, Queensland Rail, presentation to Rail Forum: Explore best utilisation of existing rail infrastructure on the South West line, Goondiwindi, 4 December 2015.

[282] Queensland Rail, *Western System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Western%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.

system were not available. However, the QCA considers that the Western system consists of an extensive length of railway track, which covers a substantial geographic area of the state; thus, the QCA considers that the Western system is significant, having regard to its size.

The Central Western system extends from Emerald west to Winton, and includes the Emerald to Clermont and Blair Athol branch line, consisting of approximately 780 km of single, non-electrified track.[283] The Central Western system connects to Aurizon Network's Goonyella system (near Blair Athol) and Blackwater system (near Emerald). The Central Western system mainly carries rural commodities (including grain and livestock), containerised freight and the Spirit of the Outback passenger service between Brisbane and Longreach, which carried 14,000 passengers in 2016–17.[284] Data on the throughput volumes of freight carried on the Central Western system were not available. However, the QCA considers that the Central Western system consists of an extensive length of railway track, which covers a substantial geographic area of the state; thus, the QCA considers that the Central Western system is significant, having regard to its size.

The Tablelands system extends from Cairns south-west towards Forsayth, and includes a stand-alone section of track from Croydon west to Normanton in North-West Queensland, consisting of 382 km of single, non-electrified track.[285] Historically, the Tablelands system has carried sugar and molasses for the many sugarcane farms around the Atherton Tablelands region. Today, the Tablelands system primarily carries tourism services, with Queensland Rail operating the Gulflander service on the historic Normanton to Croydon track, the Savannahlander service from Cairns to Forsayth, as well as the historic Kuranda Scenic Railway service, which runs from Cairns to Kuranda. In 2016–17, more than 450,000 passengers travelled on the 34 km Kuranda Scenic Railway[286], which formed approximately 60 per cent of all passengers travelling on the Queensland Rail regional tourism network that year. Data on the volume of passengers and freight carried on the rest of the Tablelands system were not available. The QCA considers that the Tablelands system consists of an extensive length of railway track, which covers a substantial geographic area of Queensland's Northern region, and substantial passenger numbers are carried on the Tablelands system annually. Thus, the QCA considers that the Tablelands system is significant, having regard to its size.

Conclusion

The QCA considers that each of the South Western, Western, Central Western and Tablelands systems are significant, having regard to the size of each. Although the QCA considers that each of the South Western, Western, Central Western and Tablelands systems is not significant having regard to their importance to the Queensland economy, the language of s. 76(2)(c) requires that only one consideration is satisfied, as indicated by the word or—'having regard to its size <u>or</u> its importance to the Queensland economy'. Thus, the QCA considers that criterion (c) is satisfied in respect of each of the South Western, Western, Central Western and Tablelands systems, having regard to the size of each of the systems.

[283] Queensland Rail, *Central Western System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Central%20West%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.
[284] Queensland Rail, *Annual and Financial Report 2016–17*, 2017, p. 24.
[285] Queensland Rail, *Tablelands System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Tablelands%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.
[286] Queensland Rail, *Annual and Financial Report 2016–17*, p. 29.

5 CRITERION D—PROMOTE THE PUBLIC INTEREST

5.1 Introduction

Section 76(2)(d) of the QCA Act is expressed as follows:

> that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote the public interest

Section 76(5) of the QCA Act further states:

> In considering the access criterion mentioned in subsection (2)(d), the authority and the Minister must have regard to the following matters –
>
> (a) if the facility for the service extends outside Queensland –
>
> (i) whether access to the service provided outside Queensland by means of the facility is regulated by another jurisdiction; and
>
> (ii) the desirability of consistency in regulating access to the service; [287]
>
> (b) the effect that declaring the service would have on investment in –
>
> (i) facilities; and
>
> (ii) markets that depend on access to the service;
>
> (c) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared;
>
> (d) any other matter the authority or Minister considers relevant.

The key matters in respect of s. 76(2)(d) for the below-rail service provided by Queensland Rail are summarised in Table 5.

Table 5 Summary of key positions—s. 76(2)(d)

Criterion (d)			
Issue	***Queensland Rail***	***Other stakeholders***	***QCA draft recommendation***
Queensland Rail Network as a whole (i.e. all lines)	None of the rail systems satisfies criterion (d)	Pacific National, Glencore, New Hope and Yancoal each submitted that the Queensland Rail network as a whole satisfied criterion (d)	Not satisfied; system by system analysis necessary for criterion (d) See section 5.2
Queensland Rail's proposed access framework	The access framework provides access on reasonable terms and conditions such that declaration would not promote the public interest	South West Producers, Glencore and Aurizon Coal submitted that the access framework does not provide access on reasonable terms and conditions. There are uncertainties relating to pricing, the continuation of the framework beyond 10 years, the amendment of terms, and the enforceability via commercial arbitration	The proposed access framework is not an appropriate alternative scenario for informing the future without declaration See section 5.4

[287] As the Queensland Rail facility does not extend outside Queensland, the QCA has not considered s. 76(5)(a) any further.

Criterion (d)			
North Coast Line	No comment	Pacific National provided submissions in relation to its use of the North Coast Line in particular to support its position that criterion (d) is satisfied for all Queensland Rail systems	Inclined to consider that criterion (d) is satisfied. The QCA invites additional stakeholder submissions on its position See section 5.5
Mount Isa Line	No comment	Glencore submitted that the Mount Isa Line satisfies criterion (d)	Criterion (d) is satisfied See section 5.6
West Moreton and Metropolitan systems	No comment	New Hope and Yancoal submitted that the West Moreton system and Metropolitan system together (being the 'West Moreton coal corridor') satisfies criterion (d)	Criterion (d) is satisfied See section 5.7
Other systems (South Western, Western, Central Western and Tablelands systems)	No comment	No comment	Criterion (d) is not satisfied See section 5.8

5.2 Criterion (d) considered with respect to the whole and parts of the service

Queensland Rail emphasised the need for a system-by-system assessment for each of the access criteria, including criterion (d):

> Given the distinct nature of the rail systems managed by Queensland Rail, it is appropriate that any assessment against the access criteria of whether or not to declare the service, or part of the service, be performed on a rail system by rail system basis.[288]

The Queensland Rail service is 'the use of rail transport infrastructure for providing transportation by rail'. In considering criterion (d), the QCA has first considered the service as defined in s. 250(1)(b) of the QCA Act—that is, as a whole. Having done this, the QCA has then considered whether any of the eight services identified by Queensland Rail[289] have characteristics that require different or further consideration from that given to the service as a whole.

There are compelling reasons why criterion (d) should be considered in relation to the following parts of the service:

- the North Coast Line service
- the Mount Isa Line service
- the West Moreton and Metropolitan systems services

[288] Queensland Rail, sub. 9, p. 3, para 19.
[289] Queensland Rail defined the services on a rail system by rail system basis.

- the other systems services.[290]

The QCA has found that the dependent markets for each service, as well as the investment effects in such facilities and dependent markets, differ significantly. For instance:

- The nature of the freight carried on each of the services differs significantly.[291] For example, the North Coast Line carries predominantly (83% of total gtk[292]) intermodal freight, the Mount Isa Line carries predominantly (72% of total gtk) non-coal minerals and other bulk products (acid, fertiliser), and the West Moreton system carries predominantly (92% of total gtk) coal.
- The nature of the track and operational requirements on each of the systems differs significantly—for example, in relation to the track condition and maximum allowable axle loads.[293]
- The volume of freight and utilisation on each of the systems differs significantly.
- The individual systems are geographically dispersed across Queensland, and there is minimal cross-system traffic—'with limited exceptions, the access agreements [with Queensland Rail] relate to a single system'.[294]
- Administrative and compliance costs apply differently across different systems in practice.

Due to these different characteristics, and particularly as there are differing investment effects in different dependent markets, the QCA is unable to conclude that criterion (d) is satisfied by the relevant service as a whole.

Thus, the QCA considers that, based on the material before it, it is appropriate to consider criterion (d) with respect to the 'parts of the service, which is itself a service', as identified in section 2.2.2.

5.3 Queensland Rail's submissions on criterion (d)

Queensland Rail submitted that in its view, declaration of the service would not promote the public interest:

> [T]he QCA cannot be satisfied that access (or increased access), on reasonable terms and conditions as a result of declaration of the below-rail service provided on each facility will promote the public interest.[295]

Queensland Rail provided a list of reasons for its argument, including that:

> - Access on reasonable terms and conditions under [Queensland Rail's] proposed Access Framework will promote significant public benefits
> - There are significant direct costs of declaration

[290] See the discussion and definition of 'parts of the service' in section 2.2.2.
[291] See the criterion (c) analysis for Queensland Rail, for detailed data and analysis on each system.
[292] Gross tonne kilometres (gtk) is a measure of the level of operating activity on a particular rail system. It is the product of the total gross weight of the train (i.e. including the locomotives and wagons used, as well as the goods and passengers carried) and the distance (in kilometres) travelled by the train.
[293] See, for example, Queensland Rail, *Mount Isa System Information Pack*, 2017, p. 16, https://www.queenslandrail.com.au/business/acccess/Documents/Mt%20Isa%20System%20Information%20Pack%20-%20Issue%203.1%20-%20February%202017.pdf.
[294] Queensland Rail, sub. 8, p. 2, para 12.
[295] Queensland Rail, sub. 8, p. 7, para 46.

- There are significant indirect costs of declaration
- There are policy arguments as to why declaration does not promote the public interest.[296]

In their submissions in response to the Queensland Rail submission, the South West Producers and Glencore submitted that Queensland Rail's submissions in respect of criterion (d) 'are effectively a list of unsubstantiated assertions' and 'fail to acknowledge or engage with the benefits of declaration and adverse outcomes which would arise in the absence of declaration'.[297] Submissions from the South West Producers, Glencore and Pacific National each considered that criterion (d) was satisfied with respect to access to the entire Queensland Rail network.[298] Queensland Rail did not provide any submissions in response to initial submissions.

The QCA considers that Queensland Rail has submitted a list of reasons which are not supported by any evidence or further explanation. In the absence of any supporting evidence from Queensland Rail, the QCA can only give limited weight to Queensland Rail's submission.

The remainder of this chapter discusses the QCA's analysis of:

- Queensland Rail's proposed access framework in the context of criterion (d) (section 5.4)
- whether the various parts of the Queensland Rail service satisfy criterion (d) (sections 5.5 to 5.8).

5.4 The proposed access framework

5.4.1 Stakeholder submissions

Queensland Rail described the access framework under which it intends to provide access, even if the services are not declared, saying:

> Queensland Rail will put in place a binding and enforceable framework under which it will provide access, for the purposes of both freight and passenger rail services, which will provide certainty for customers, competitive pricing and aim to promote more freight by rail ... The Access Framework will ensure access to the services provided by Queensland Rail on reasonable terms and conditions even if the services are not declared in future.[299]

Queensland Rail subsequently submitted a draft of its proposed access framework.[300]

The South West Producers and Glencore did not consider that the access framework provides access on reasonable terms and conditions.[301] In particular:

- It [the Access Framework] provides no certainty of efficient pricing
- It is limited to 10 years with no certainty as to how the terms of access will continue beyond that point
- It provides no certainty of terms given the ease of QR amendments
- It will be very difficult to enforce.[302]

[296] Queensland Rail, sub. 8, p. 7, para 47.
[297] South West Producers, sub. 16, p. 26; Glencore, sub. 17, p. 20.
[298] South West Producers, sub. 4, p. 6; Glencore, sub. 5, p. 3; Pacific National, sub. 9, pp. 13–14.
[299] Queensland Rail, sub. 8, p. 5, paras 26–27.
[300] Queensland Rail, sub. 11.
[301] South West Producers, sub. 16, p. 27; Glencore, sub. 17, p. 21.
[302] South West Producers, sub. 16, p. 27–28; Glencore, sub. 17, pp. 21–22.

Aurizon Coal also expressed concerns with the Queensland Rail proposed access framework:

> - Under the proposed Framework, QR would have the ability to price up to what the market could bear, without appropriate protections for reasonable and fair terms of access. In addition, the proposed Framework provides no guarantee that the service provided by QR (including reliability and performance) would be commensurate with any pricing position adopted by QR …
> - Two critical factors are absent from the proposed Framework, namely, the inclusion of a fairness and reasonableness principle; and sufficient certainty that the proposed Access Framework will remain in place and not be amended by QR to the detriment of access seekers, access holders and operators.
> - QR has a wide scope to amend the terms of the Framework within the term and Aurizon Coal has significant concerns that this latitude does not provide requisite regulatory certainty and undermines investment incentives of operators.[303]

5.4.2 QCA analysis

A detailed consideration of the Queensland Rail proposed access framework was provided in the criterion (a) analysis (section 3.4).

For the same reasons as discussed in criterion (a), given that the proposed access framework is unexecuted and there are considerable uncertainties in how it would apply (even if executed), the QCA does not consider that it represents an appropriate alternative scenario for informing the future without declaration. As such, the QCA has not considered Queensland Rail's proposed access framework any further in its analysis of whether access (or increased access) on reasonable terms and conditions as a result of declaration would promote the public interest. Rather, the focus is on the broader matter of assessing how Queensland Rail would likely behave in a future without declaration, where there are no regulatory or contractual constraints on its behaviour, compared to a future with declaration; and thus whether access as a result of declaration would promote the public interest, taking into account the various matters described in s. 76(5) of the QCA Act.

5.5 The North Coast Line service

The QCA is inclined to consider that access to the North Coast Line service, on reasonable terms and conditions, as a result of declaration of the service would, on balance, promote the public interest.

However, the QCA notes the lack of stakeholder submissions, and the lack of publicly available information, in relation to:

- the effect that declaring the service would have on investment in facilities, including facilities such as the North Coast Line below-rail infrastructure itself, or investment in other related facilities, such as rail yards or intermodal depots used by above-rail haulage operators in accessing the below-rail service
- the effect that declaring the service would have on investment in relevant dependent markets
- the role, if any, that the North Coast Line plays as a connection point for other railway lines and port infrastructure.[304]

[303] Aurizon Coal, sub. 21, pp. 2–3.

The QCA invites submissions from interested stakeholders in relation to any aspect of criterion (d) (i.e. not limited to the matters raised above) in relation to the North Coast Line.

5.5.1 Stakeholder submissions

Queensland Rail said that access to the service as a result of declaration on each of its railway systems (including the North Coast Line) did not satisfy criterion (d).[305]

In contrast, Pacific National viewed regulation as critical and anticipated risks to businesses in a future without declaration:

> [D]eclaration provides for critical regulatory oversight of the terms and conditions of access, as well as access to dispute resolution mechanisms in the event of an access dispute with the service provider. Removal of declaration would compromise the competitiveness of rail freight services as it would remove the regulatory certainty and transparency of access regulation.[306]
>
> Put simply, PN's ability to grow its business in Queensland has been critically dependent on the stable operation of Queensland's regulatory framework under Part 5 of the QCA Act.[307]

5.5.2 QCA analysis

Investment in facilities

No stakeholders made submissions or provided data in relation to the effect of declaration on investment in the North Coast Line itself, or other facilities (e.g. rail yards, maintenance and provisioning facilities). In the absence of stakeholder submissions and publicly available evidence, the QCA is unable to form a view as to whether declaration of the service on the North Coast Line would have a beneficial or detrimental effect on investment in facilities. To the extent that the QCA considers that the stable market environment created by declaration promotes efficient investment in the above-rail haulage market on the North Coast Line (see below), the QCA considers that it is likely that such increased investment in the above-rail haulage may lead to increased investment in the below-rail facilities. However, the QCA invites further submissions on this aspect of criterion (d).

Investment in markets that depend on access to the service

Pacific National said that declaration has promoted investment in the above-rail haulage market:

> PN's market entry and success in Queensland, across a number of varied freight tasks [i.e. for both haulage of non-bulk freight and bulk freight] relied on the stable operation of the economic regulatory framework … PN considers that continued declaration … under Part 5 of the QCA Act is critical to promoting competition and freight transport supply chain investment moving forward.[308]
>
> …

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[304] For example, (1) services from the Mount Isa Line must access a portion of the North Coast Line from Stuart in order to access the Port of Townsville; (2) services on Aurizon Network's Goonyella system may interact with North Coast Line services (and may travel upon the North Coast Line) near Yukan, in order to access the Port of Hay Point; (3) services on Aurizon Network's Newlands system must access a portion of the North Coast Line between Durroburra and Kaili (near Bowen) in order to access the Port of Abbott Point; (4) services on the North Coast Line must travel upon a portion of Aurizon Network's Blackwater system between Gladstone and Rockhampton.

[305] Queensland Rail, sub. 8, p. 7, para 46.

[306] Pacific National, sub. 9, p. 12.

[307] Pacific National, sub. 9, p. 6.

[308] Pacific National, sub. 9, p. 3.

> [The benefits of declaration] extend well beyond simply constraining the exercise of market power and ensuring that a balanced risk profile underpins the setting of terms and conditions of access. Declaration has facilitated the introduction of important structural and behavioural constraints … and has underpinned the growth of competition in related upstream and downstream markets.[309]

Pacific National said that this growth of competition has in turn led to increased investment in the above-rail haulage market in terms of increased operational efficiency and increased innovation in above-rail rollingstock. Pacific National submits that it has undertaken significant amounts of capital investment in both intermodal and bulk rollingstock, freight terminals and maintenance facilities, and that this investment 'would not have been justified, absent a stable regulatory environment'.[310]

Queensland Rail did not provide any submissions in relation to the effect of declaration on investment in general, including investment in dependent markets on the North Coast Line.

The QCA considers that declaration is likely to provide long-term certainty of access, and access on reasonable terms and conditions, and that this environment is likely to promote efficient investment in the above-rail haulage market on the North Coast Line, as above-rail operators can be more certain that they will reap the benefits of their investments (e.g. into rollingstock efficiency) into the future. The benefits of declaration include transparent and consistent pricing principles, non-discrimination principles and access to independent and transparent dispute resolution processes.

The QCA notes that the benefits of regulatory certainty on investment are particularly pronounced for investment in long-life assets such as rollingstock, intermodal depots and maintenance facilities, which require long planning and construction timeframes and large sunk costs. The reason is that due to the narrow-gauge track and specific allowable tonnage requirements on the North Coast Line, assets made for operating on the North Coast Line may not be easily converted to be used on other lines.

No stakeholders made submissions providing evidence that declaring the North Coast Line service would have a detrimental effect on investment in markets that depend on access to the service. The QCA therefore considers that, on balance, declaring the North Coast Line service would have a net beneficial effect on investment in dependent markets, including markets such as the above-rail haulage market on the North Coast Line.

Administrative and compliance costs and other costs

Queensland Rail submitted generally that there are significant costs of declaration, including 'compliance and regulatory costs borne by Queensland Rail, the costs of the QCA performing its regulatory functions, and the direct administration costs borne by the QCA'.[311] However, Queensland Rail did not provide further evidence or data to support this submission either in aggregate or on a system-by-system basis. No other stakeholders made submissions in relation to the administrative and compliance costs (and other costs) that would be incurred by Queensland Rail if the North Coast Line service were declared.

The QCA considers that the costs that would be incurred by Queensland Rail if the service were declared are:

309 Pacific National, sub. 9, p. 4.
310 Pacific National, sub. 9, p. 6.
311 Queensland Rail, sub. 8, p. 7, para 47.

- the costs incurred by Queensland Rail in dealing with the QCA (e.g. costs of preparing undertakings, ongoing compliance, as well as the QCA levy charge)
- the costs incurred by Queensland Rail in dealing with multiple users of its facility (e.g. costs of negotiating access contracts, any additional costs of train coordination and maintenance as a result of access under declaration).

Costs incurred in dealing with the QCA

The QCA charges Queensland Rail a fee for providing regulatory services.[312] This QCA fee includes all costs incurred by the QCA in regulating Queensland Rail, including costs in relation to the access undertaking approval process and ongoing compliance processes. According to the QCA's decision notice of Queensland Rail's QCA levy for 2017–18:

> The QCA fee is a fee charged by the QCA for providing regulatory services. The QCA levy is a tariff charged by Queensland Rail to its customers to recover the QCA fee. The 2016 undertaking outlines that the QCA levy will be 'determined from year to year, based on the QCA Levy levied by the QCA to Queensland Rail and allocated amongst Train Service types in a manner approved by the QCA'. The QCA levy is reviewed (taking into account any over or under recovery in the previous year) after the QCA announces the next year's fees for providing regulatory services.[313]

The QCA levy, as in the decision notice, was determined to be $0.00394 (or 0.394 cents) per thousand gross tonne kilometres (gtk) rebate for the North Coast and West Moreton freight and minerals users.[314] The QCA levy for previous years was 4.033 cents per thousand gtk for freight and minerals in 2014–15, and 2.742 cents per thousand gtk for freight and minerals in 20113–14.[315]

Given these amounts, and in the absence of contrary evidence, the QCA considers that on average, over the period of declaration, the QCA levy is a relatively minor cost, compared to the access charges charged by Queensland Rail on the North Coast Line.

In any case, under current and previous access undertakings, Queensland Rail has been permitted, and has in practice, passed on the entirety of the QCA levy onto its users, in accordance with the 'beneficiary pays' principle. To the extent that the QCA levy continues to be paid in practice by the users of the North Coast Line service in a future with declaration, the QCA considers that the levy is likely to have a minor effect in terms of the costs burden on Queensland Rail as a result of declaration.[316] More generally, however, irrespective of the incidence of QCA levy in a future with declaration[317], the QCA considers that such costs should be balanced against the benefits generated by the access regime. Such benefits include

[312] Pursuant to s. 245(2) of the *Queensland Competition Authority Act 1997*, s. 3 of the *Queensland Competition Authority Regulation 2007* (repealed 24 August 2018) and since 24 August 2018, s. 3 *of the Queensland Competition Authority Regulation 2018.*

[313] QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, attached to the QCA's letter to Queensland Rail, 21 June 2018, http://www.qca.org.au/getattachment/14dba471-af75-4e5a-af12-caa6c12870c8/QCA-Final-decision-on-QR-s-QCA-levy-2017-18.aspx. This decision is pursuant to Queensland Rail's 2016 access undertaking.

[314] This rebate was given due to an adjustment from previous years. See QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, p. 2.

[315] QCA, *QCA Levy for 2014–15*, letter to Queensland Rail, 18 June 2014, https://www.queenslandrail.com.au/business/acccess/Documents/CurrentAccess/QCA%20Levy_2014_15.pdf; QCA, *QCA Levy for 2013–14*, letter to Queensland Rail, 2 July 2013 (unpublished).

[316] This point is made as s. 76(5)(c) of the QCA directs the QCA to have regard to 'the administrative and compliance costs that would be *incurred by the provider of the service* if the service were declared' (emphasis added).

[317] That is, whether Queensland Rail or another party (e.g. the users) actually pays the QCA levy.

certainty and transparency of access terms and conditions, which leads to the promotion of competition and investment in dependent markets (for a detailed discussion, see sections 3.7.6 and 5.5.2 above). The QCA considers that these benefits are likely to outweigh the costs of the QCA levy.

In relation to the costs incurred by Queensland Rail internally in dealing with the QCA (e.g. in preparing the undertakings required under declaration, performing any ongoing compliance, auditing or reporting obligations), neither Queensland Rail nor any other stakeholders provided any data on estimates of this cost. There is also no publicly available data on such costs.[318]

The QCA does not set a reference tariff on the North Coast Line under the current access undertaking (Queensland Rail's Access Undertaking 1, 2016), and access charges are negotiated between users and Queensland Rail under the access undertaking framework. As such, there is no publicly available information on:

- whether Queensland Rail passes on any internal administrative and compliance costs associated with the regulatory regime as a result of declaration to the users of the North Coast Line through their access charges
- what proportion of internal administrative and compliance costs Queensland Rail allocates to the North Coast Line users (i.e. the costs of preparing the undertaking are spread across the entire network, as the undertaking applies to the entire Queensland Rail network), or
- what proportion of the access charge (if any) of users is actually attributable to such costs.

Costs incurred in dealing with multiple users

The Queensland Rail network is likely to be a multi-user system with or without declaration (especially as Queensland Rail is a state-owned entity and is not vertically integrated with respect to freight services), and administration costs in managing a multi-user system will always exist. Queensland Rail has therefore not demonstrated that such costs related to the North Coast Line would likely be greater with declaration than without declaration.

In particular, the QCA notes that Pacific National and Linfox/Aurizon Operations currently provide above-rail haulage services on the North Coast Line. Thus, there will continue to be two above-rail operators on the North Coast Line.

The QCA has received no submissions from stakeholders in relation to any administration costs associated with declaration on the North Coast Line. Thus, the QCA considers that any additional costs relating to the coordination of multiple users that would be incurred by Queensland Rail if the North Coast Line service were declared (compared to a multi-user system under no declaration) are likely to be relatively minor.

In addition, the QCA considers that the standard terms which can be approved by the QCA under declaration (for example, through the standard access agreement) are likely to reduce the costs of negotiation for users by providing a 'default' starting position for negotiations. To the extent that a standard access agreement continues to be approved by the QCA in a future with declaration, this has the potential to reduce administrative costs for all parties. This is because standard terms can avoid the need for new bespoke access agreements to be negotiated for each individual access request, and can help minimise the scope for access disputes and the costs associated with dispute resolution.

[318] Queensland Rail did not provide estimates of its costs of complying with the regulatory framework for any of its lines.

Environmental and safety considerations

Pacific National emphasised the stability created by regulation:

> PN's market entry and success in Queensland, across a number of varied freight tasks [i.e. for both haulage of non-bulk freight and bulk freight] relied on the stable operation of the economic regulatory framework under Part 5 of the QCA Act.[319]

Pacific National linked declaration to environmental and social benefits:

> [D]eclaration of the QR infrastructure has supported the competitiveness of rail haulage (as against heavy vehicle road transport) on key freight corridors [including the North Coast Line]. This has in turn delivered a number of environmental and social benefits.[320]

Pacific National gave examples of public benefits of rail:

- Road freight produces 14 times greater accident costs than rail freight per tonne kilometre.
- Road freight produces 16 times as much carbon pollution as rail freight per tonne kilometre.[321]

Pacific National calculated that the public benefit associated with its use of the North Coast Line, in terms of reduced carbon pollution and accident costs, were approximately $17 million in reduced carbon pollution per annum and $15 million in accident costs.[322]

Queensland Rail also submitted that 'efficiencies promoting increased competitiveness of rail results in environmental and safety benefits from increased rail modal share', although it did not provide further evidence in support of this submission.[323]

As discussed above, the QCA considers that the certainty of access and access on reasonable terms provided by declaration is likely to promote investment in the above-rail haulage market. In the absence of contrary information, the QCA considers that this investment is in turn likely to promote the usage of rail by freight owners, particularly in contestable markets such as the carriage of intermodal freight for medium distances on the North Coast Line (e.g. Brisbane to Rockhampton or Mackay), where rail competes with road.[324]

Pacific National submitted that the usage of rail on the North Coast Line as a result of declaration is likely to promote benefits in environmental and safety considerations; Queensland Rail's submission agreed with the position of Pacific National on this issue. Given this, the QCA is satisfied that declaring the service on the North Coast Line would have a net beneficial effect on environmental and safety considerations on the North Coast Line.

5.5.3 Conclusion

The QCA considers that declaration of the North Coast Line service:

- would have a net beneficial effect on investment in markets that depend on access to the service

[319] Pacific National, sub. 9, p. 3.
[320] Pacific National, sub. 9, p. 14.
[321] Pacific National, sub. 9, p. 14.
[322] Pacific National, sub. 9, p. 14.
[323] Queensland Rail, sub. 8, p. 7, para 47.
[324] For example, Pacific National, sub. 9, p. 6; Queensland Rail, sub. 8, p. 4. See also section 3.7.3 for a detailed discussion on the issue of the competition between road and rail on the North Coast Line.

- would mean that Queensland Rail incurred administrative and compliance and other costs, however, these costs are not considered excessive relative to those that may be incurred in the absence of declaration
- would have a net beneficial effect on environmental and safety issues in the North Coast Line transport corridor.

Having weighed all of the costs and benefits, the QCA considers that there is a net public benefit.

Therefore, the QCA is inclined to consider that on balance, access (or increased access) to the North Coast Line service on reasonable terms and conditions, as a result of declaration of the service, would promote the public interest.

5.6 The Mount Isa Line service

The QCA considers that, on balance, access to the Mount Isa Line service on reasonable terms and conditions, as a result of declaration of the service, would promote the public interest.

5.6.1 Stakeholder submissions

Queensland Rail submitted that access to the service as a result of declaration on each of its railway systems (including the Mount Isa Line) did not satisfy criterion (d).[325]

Glencore submitted that access to the Mount Isa Line service as a result of declaration 'would promote the public interest by providing long term certainty as to rights of access, access being available on reasonable terms … and thereby facilitating investment in the North West region', and wider flow-on economic benefits through employment, royalties to the State and regional economic growth.[326]

No other stakeholders made specific submissions in relation to the Mount Isa Line service.

5.6.2 QCA analysis

Investment in facilities

Queensland Rail did not make any specific submissions in relation to the effect of declaration on investment on the Mount Isa Line. Rather, it mentioned examples of the costs of declaration, including that 'declaration reduces the efficiency of substantial Government investment in Queensland Rail's network', but it did not provide any basis for these statements.[327]

Glencore did not provide specific submissions in relation to the effect of declaration on investment in the Mount Isa Line itself (being the facility for the service), although it noted that the North West Minerals Province mining industry 'underwrites the continued operations of the Mount Isa Line (which would otherwise require significant government subsidisation to continue to operate passenger, livestock and grain services)'.[328]

The QCA understands that the Mount Isa Line is the only rail system in the Queensland Rail network that operates on a purely commercial basis; that is, it does not depend upon Queensland Government subsidies—under the Transport Services Contract—to fund its

[325] Queensland Rail, sub. 8, p. 7, para 46.
[326] Glencore, sub. 5, p. 3.
[327] Queensland Rail, sub. 8, p. 7, para 47.
[328] Glencore, sub. 5, p. 19.

operation, maintenance or expansions (if needed).[329] In 2016–17, Queensland Rail below-rail services accounts show that the Mount Isa Line below-rail service received no payments (subsidies) from the TSCs.[330]

The QCA notes that investment in the Mount Isa Line may be made by Queensland Rail itself or may come from other investors such as users of the railway line or third party investors. The QCA has not received data from Queensland Rail or other stakeholders in relation to investment in the Mount Isa Line. In the absence of such submissions, based on publicly available information, the QCA understands that the costs of operations, maintenance and expansions on the Mount Isa Line are fully funded by the users of the line through access charges. Queensland Rail's Mount Isa Line Rail Infrastructure Master Plan notes that any future investments to increase capacity on the Mount Isa Line will be fully funded through access charges, on a user-pays basis. However, Queensland Rail also notes that there is currently capacity available on the line for the contracted tonnes, and thus no expansion is currently needed.[331]

Glencore supported declaration, as it provides 'long term certainty as to rights of access, access being available on reasonable terms (through the standard access agreement and rights to arbitrate access disputes), and fair pricing'.[332]

Given the material before it, the QCA considers that declaration would promote the long-term certainty of access (including assurance of access on reasonable terms and conditions). Such certainty would more likely promote users of the Mount Isa Line to make investments in the Line, given that the users can have confidence that they will reap the benefits of their current investment in the future.

The long-term certainty of access (including assurance of access on reasonable terms and conditions) guaranteed under declaration is especially important for the promotion of investment in below-rail facilities, as such investments usually involve large sunk costs, long construction times (e.g. two or more years) and coordinated action between the railway manager and all users.[333]

On balance, the QCA considers that declaring the Mount Isa Line service would have a net beneficial effect on investment in the Mount Isa Line. The QCA notes that no stakeholders have provided any evidence that declaration of the Mount Isa Line service would have a negative effect on investment in the Mount Isa Line. The QCA also notes that no stakeholders have provided any submissions in relation to the effect of declaration on investment in other facilities related to the Mount Isa Line service.

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[329] Queensland Rail, sub. 8, p. 1, para 4. See also the Department of Transport and Main Roads, Rail Transport Contracts and Agreements, Queensland Government, 2018, https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Rail-services-and-infrastructure/Rail-Transport-Contracts-and-Agreements.

[330] Queensland Rail, *Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail*, 2017, p. 4, https://www.queenslandrail.com.au/business/acccess/Compliance%20and%20reporting/Below%20Rail%20Financial%20Statements%20for%20the%20year%20ended%2030%20June%202017.pdf.

[331] Queensland Rail, *Mount Isa Line Rail Infrastructure Master Plan*, 2012, pp. 10–13, https://www.queenslandrail.com.au/business/acccess/Documents/Maps/QR4159.1%20Infrastructure%20Master%20Plan%202012_Updated_LR.pdf.

[332] Glencore, sub. 5, pp. 3, 19.

[333] See, for example, indicative capacity enhancements, costings and timeframes for the Mount Isa Line: Queensland Rail, *Mount Isa Line Rail Infrastructure Master Plan*, 2012, p. 15.

Investment in markets that depend on access to the service

Queensland Rail did not make any specific submissions in relation to the effect of declaration on investment in markets that depend on access to the Mount Isa Line service.[334] Glencore submitted that criterion (d) is 'clearly satisfied in respect of the Mount Isa Rail Access Service', and that access as a result of declaration to the Mount Isa Line service has facilitated investment in the North West Queensland mining industry, including dependent markets such as:

- the market for mining tenements
- the market for above-rail haulage services
- other indirect markets, such as the market for labour (employment) in the North West Queensland mining industry and the market for household goods and services in the North West Queensland regional communities.[335]

Glencore gave specific examples of the beneficial effect that declaring the Mount Isa Line service would have on investment in dependent markets. For example, Glencore submitted that access as a result of declaration has minimised barriers to entry especially for new and junior investors, thus facilitating investment in the mining tenements market[336], and that declaration provides long-term assurance for access, and the certainty to support the 'significant sunk costs required in the exploration, establishment and development phases', thus supporting the continued investment in the North West Queensland mining industry.[337]

Glencore supported its submission with data from the Queensland Resources Council, which indicated that, for example, in 2016–17 the resources industry in North West Queensland directly contributed $354 million into local regional businesses and community organisations.[338] Glencore argues that such benefits arose directly as a result of the declaration of the Queensland Rail Network, including the Mount Isa Line service.[339]

Pacific National submitted that declaration of the service has had a beneficial effect on investment in the above-rail haulage market. It submitted that 'access to QR's monopoly below rail infrastructure supports a highly competitive market for freight services along key rail corridors, particularly the North Coast Line and Mt Isa to Townsville rail corridors'.[340]

> PN was the first new entrant in Queensland's bulk freight industry and has been providing bulk freight services on Queensland Rail's Mt Isa line since 2011 … PN's Queensland bulk non-coal business employs 55 staff operating across one main location currently using 11 locomotives and 400 wagons … PN's market entry and success in Queensland, across a number of varied freight tasks, relied on the stable operation of the economic regulatory framework under Part 5 of the QCA Act … PN also considers that continued declaration is critical to promoting competition and freight transport supply chain investment moving forward.[341]

The QCA acknowledges that, to some extent, investment in the above-mentioned dependent markets may have occurred as a result of the operation of the mining industry 'in any case', whether or not the service provided on the Mount Isa Line was declared. However, the QCA

[334] Queensland Rail, sub. 8, p. 7, para 47.
[335] Glencore, sub. 8, pp. 18–19.
[336] Glencore, sub. 8, p. 19.
[337] Glencore, sub. 8, p. 19.
[338] Glencore, sub. 8, p. 18.
[339] Glencore, sub. 8, p. 19.
[340] Pacific National, sub. 9, p. 11
[341] Pacific National, sub. 9, pp. 2–3.

notes that no stakeholders have made submissions which seek to qualify or rebut the submissions made by Glencore or Pacific National. On the basis of the material before it, the QCA is satisfied that the certainty of access terms in a future with declaration is likely to promote *additional* investment effects in dependent markets, compared to an environment where there is no declaration.

No stakeholders made submissions which demonstrated that declaring the Mount Isa Line service would have a detrimental effect on investment in markets that depend on access to the service. Given this, on balance, the QCA considers that declaring the Mount Isa Line service would have a net benefit effect on investment in dependent markets, including markets such as the mining tenements market and the market for above-rail haulage services.

Administrative and compliance costs and other costs

Queensland Rail submitted generally that there are significant costs of declaration[342], however it did not provide further evidence or data to support this submission. Glencore submitted that 'as the network will always need to be a multi-user system, the administration costs will be no greater with declaration than they would be without it'.[343]

The QCA considers that the costs that would be incurred by Queensland Rail if the Mount Isa Line service were declared could fall into two categories.

Costs incurred in dealing with the QCA

In relation to the QCA levy, the QCA determined a levy of $0.03447 per thousand gtk for the Mount Isa freight and minerals users for 2017–18.[344] The QCA considers that this rate is a relatively minor cost, compared to the access charges charged by Queensland Rail per thousand gtk on the Mount Isa Line.[345]

In relation to the costs incurred by Queensland Rail internally in complying with the regulatory regime (e.g. in preparing undertakings) on the Mount Isa Line service, neither Queensland Rail nor any other stakeholders provided any data on estimates of this cost, and there is no publicly available data on such costs.

Costs incurred in dealing with multiple users

In relation to the costs incurred by Queensland Rail in dealing with multiple users of the Mount Isa Line who have been provided access as a result of declaration, the QCA considers that such costs would likely be no greater with declaration than they would be without declaration. This is because the Queensland Rail network is likely to be a multi-user system with or without declaration (especially as Queensland Rail is a state-owned entity and is not vertically integrated with respect to freight services), and administration costs in managing a multi-user system will always exist.

[342] Queensland Rail, sub. 8, p. 7, para 47.
[343] Glencore, sub. 5, p. 19
[344] QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, 2018, p. 2, http://www.qca.org.au/getattachment/14dba471-af75-4e5a-af12-caa6c12870c8/QCA-Final-decision-on-QR-s-QCA-levy-2017-18.aspx.
[345] For a detailed discussion of the QCA levy, see section 5.5.2 (North Coast Line service—Administrative and compliance costs). In relation to the QCA levy, similar considerations arise across the North Coast Line service, the Mount Isa Line service and the West Moreton and Metropolitan system services, and the discussion in section 5.5.2 applies analogously to these services.

Currently, there are two users on the Mount Isa Line: Pacific National operates above-rail freight services and Queensland Rail operates above-rail passenger services.[346] Thus, the QCA considers that the administration costs associated with two users on the Mount Isa Line are likely to be relatively minor. No stakeholder commented in a submission on administration costs associated with multiple users on the Mount Isa Line.

In addition, the QCA considers that the QCA Act framework that would apply if the service was declared can provide for the approval of standard terms (for example, through the standard access agreement) that are likely to reduce the costs of negotiation for users by providing a 'default' starting position for negotiations. This is likely to save all parties (including Queensland Rail) administrative costs that would otherwise be incurred if a new bespoke access agreement needed to be negotiated for each individual access request, as well as minimising scope for disputes and the costs associated with dispute resolution.

Employment and regional development issues

Glencore submitted that declaration has promoted mining investments in the North West Queensland region, which has in turn brought broader public benefits to the North West Queensland regional economy in terms of employment and contribution to regional businesses and regional development.[347] Glencore submitted Queensland Resources Council data which showed that in 2016–17 the resources sector in the North West Queensland region paid approximately $397 million to 2709 full time employees, spent approximately $345 million to the benefit of local businesses and community organisations, and contributed approximately $1.3 billion in gross regional product, which was 19 per cent of North West Queensland's total gross regional product.[348] No other stakeholders provided submissions, including any evidence to the contrary, on the effect of declaration on employment and regional development issues.

The QCA considers that declaring the Mount Isa Line service would have a net benefit effect on investment in facilities and dependent markets in the mining sector in North West Queensland, and that such investment would lead to beneficial effects in promoting employment and development of the regional economy. The QCA acknowledges that, to some extent, employment and regional development would have occurred as a result of the operation of the mining industry in any case, whether or not the Mount Isa Line service was declared.[349] However, the QCA is satisfied that declaration is likely to provide long-term certainty of access, and access on reasonable terms and conditions, and that this environment is likely to promote *additional* employment and regional development spending effects compared to an environment where there is no declaration.

5.6.3 Conclusion

The QCA considers that declaration of the Mount Isa Line service:

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[346] Glencore, sub. 5, p. 7; Pacific National, sub. 9, p. 7. Queensland Rail's 'The Inlander' passenger service uses two return train paths on the Mount Isa Line per week—see Queensland Rail Travel, The Inlander: Townsville to Mount Isa, viewed 19 September 2018, https://www.queenslandrailtravel.com.au/Railexperiences/ourtrains/theinlander.

[347] Glencore, sub. 5, pp. 18–19.

[348] Glencore, sub. 5, p. 17.

[349] Once the sunk cost of developing a mine and associated infrastructure has been incurred, miners will have an incentive to operate the mine to recover such costs, even if the revenue gained may be a lesser amount than if the service were declared. This would be the case until the mine becomes 'uneconomical' to operate; that is, when the marginal costs of production exceed the marginal revenue to be made from such production.

- would have a net beneficial effect on investment in facilities and markets that depend on access to the service
- would mean that Queensland Rail incurred administrative and compliance and other costs, however, these costs are not considered excessive relative to those that may be incurred in the absence of declaration
- would have a net beneficial effect for employment and regional development in the North West Minerals Province region, as well as the various regional communities served by the Mount Isa Line service.

Having weighed all of the costs and benefits, the QCA considers that there is a net public benefit.

Therefore, the QCA considers that on balance, access (or increased access) to the Mount Isa Line service, on reasonable terms and conditions, as a result of declaration of the service, would promote the public interest.

5.7 The West Moreton and Metropolitan systems services

The QCA considers that, on balance, access to the West Moreton and Metropolitan systems services on reasonable terms and conditions, as a result of declaration, would promote the public interest.

The services provided by the West Moreton and Metropolitan systems are considered together in this analysis, as the QCA considers that the commercial reality demonstrates that it is necessary to do so. The West Moreton system is primarily used by access holders to rail coal and agricultural products to the Port of Brisbane for export, via the Metropolitan system. For example, the South West Producers submitted that 'travelling only along the West Moreton system is of very limited utility on its own'.[350]

5.7.1 Stakeholder submissions

Queensland Rail submitted that access to the service as a result of declaration on each of its railway systems (including the West Moreton and Metropolitan systems) did not satisfy criterion (d).[351]

The South West Producers submitted that declaration of the entire service[352], or at least 'the West Moreton corridor coal rail access service', would promote the public interest.[353]

5.7.2 QCA analysis

Investment in facilities

Queensland Rail did not make any specific submissions in relation to the effect of declaration on investment in the West Moreton or Metropolitan systems (being the facilities for the services). The South West Producers submitted that 'declaration of the West Moreton coal rail access service facilitates ongoing investment in coal mining in the West Moreton region', including by

[350] South West Producers, sub. 4, p. 9.
[351] Queensland Rail, sub. 8, p. 7, para 46.
[352] As defined in s. 250(1)(b) of the QCA Act.
[353] South West Producers, sub. 4, p. 6.

promoting and facilitating investments in the below-rail facilities as well as facilities including the coal mines in the West Moreton region.[354]

A reference tariff is published in the current Queensland Rail access undertaking for access to the coal service provided on the West Moreton and Metropolitan systems. This differs from the regulatory regime for the remainder of Queensland Rail's service, as no reference tariff applies to the other services.[355] The QCA considers that this publicly available reference tariff provides additional pricing certainty for coal access seekers and access holders on the West Moreton and Metropolitan systems.

In relation to investment in coal mine facilities which depend on access to the service, the South West Producers said that:

- 'the reasonable pricing and terms of access under the existing declaration are an attractive sales point for coal mining investment in the West Moreton region'[356]
- declaration provides 'long term certainty of being able to obtain access, access being available on reasonable terms, and pricing being set at efficient levels based on a well understood methodology'[357]
- 'because infrastructure costs are some of the first costs considered when testing the viability of a new investment, low [and certain] infrastructure costs are a front page selling point for resources investment'.[358]

The South West Producers also said:

> In the absence of declaration there would be a dramatic chilling effect on investment in mines. In particular, it is difficult to see why a producer would incur considerable costs in exploration and development (and obtaining regulatory approvals), if the producer has no real way of predicting the price it will face at the point when access is requested; and will ultimately be faced with an access negotiation where QR is economically incentivised to charge the producer an access price which would leave the producer only covering marginal costs (and not being able to recover the sunk costs expended to that point)'.[359]

The South West Producers pointed to the decisions by Yancoal to increase production at the Cameby Downs mine (expanding from 1.8 mtpa initially to around 2–2.5 mtpa currently), and to the proposal by New Hope to extend the operation timeframe of the New Acland mine, as evidence that declaration has promoted investment in mining facilities.[360] The South West Producers submitted that the investment in these mines were made, in part, in reliance on the certainty provided by the declaration and resulting access undertaking.[361]

The QCA is satisfied that declaration of the West Moreton and Metropolitan systems services has had a positive effect on investment in mine facilities in the past, and is likely to continue to have a positive effect in promoting investment in the future, by providing:

- long-term certainty of access

[354] South West Producers, sub. 4, p. 50.
[355] Whether the QCA approves reference tariffs for other systems in a future with declaration is a matter for the applicable undertaking process and is outside the scope of the review. See s. 101 of the QCA Act.
[356] South West Producers, sub. 4, p. 51.
[357] South West Producers, sub. 4, p. 50.
[358] South West Producers, sub. 4, p. 51.
[359] South West Producers, sub. 16, p. 13.
[360] South West Producers, sub. 4, p. 51.
[361] South West Producers, sub. 4, p. 51.

- access on reasonable terms and conditions (including a transparent dispute mechanism to the QCA)
- an access price that reflects efficient costs (including a reference tariff for the West Moreton coal services).

Such investments typically involve large sunk costs and long approval and construction timeframes. In the absence of declaration, it is likely that there may be uncertainties as to the terms of future access to the West Moreton and Metropolitan systems, including in relation to the access price.[362] Such uncertainties may cause investments in mine facilities to be delayed or deferred to other projects, as the risk exists that once such investments costs are sunk, Queensland Rail may have the ability or incentive to extract some portion of the sunk value of the investment (i.e. up to a point where the coal miner is only covering the marginal costs of production, and is thus unable to recover the sunk costs associated with the investment). For a detailed discussion on this hold-up issue, refer to section 3.9.5.

The QCA notes that no stakeholder has provided any evidence that disputes the submissions made by the South West Producers, or suggests that declaration of the West Moreton and Metropolitan systems services would have a negative effect on investment in facilities. Given the analysis above, on balance, the QCA considers that declaring the West Moreton and Metropolitan systems services would have a net beneficial effect on investment in facilities.

Investment in markets that depend on access to the service

Queensland Rail did not make any specific submissions in relation to the effect of declaration on investment in markets that depend on access to the West Moreton and Metropolitan systems services. The South West Producers submitted that 'declaration promotes the public benefit by providing long term certainty as to rights of access, access being available on reasonable terms and at efficient pricing and thereby facilitates investment in the Western system region'[363], including investment in dependent markets such as the above-rail haulage market.[364]

In relation to investment in the above-rail haulage market, the South West Producers submitted that declaration has promoted investment into rollingstock on the West Moreton coal rail corridor due to the 'certainty of access, access terms and efficient pricing methodology' provided by declaration. This is because rollingstock are long-life assets (approximately 20 to 25 years), and 'no rational [above-rail] operator will make such an investment if the certainty of access, access terms and efficient pricing methodology provided by declaration is removed'.[365]

In this respect, Aurizon Coal has submitted that it is the only above-rail haulage provider to provide coal haulage in the relevant West Moreton and Metropolitan systems, and that 'Aurizon Coal has significant investments and interests in the West Moreton Coal System'.[366] Aurizon Coal said that in an environment with no declaration, the potential for increased and potentially uncapped access charges could materially erode rail operator margins, which 'substantially undermines investment incentives in the rail haulage market'.[367] The QCA considers that the certainty of access on reasonable terms and conditions (including the pricing certainty provided by the reference tariff) provided by declaration is more likely to promote investment in the

[362] For example South West Producers, sub. 4, p. 51; Aurizon Coal, sub. 21, p. 2.
[363] South West Producers, sub. 4, p. 6.
[364] South West Producers, sub. 4, p. 52.
[365] South -West Producers, sub. 4, p. 52.
[366] Aurizon Coal, sub. 21, p. 1.
[367] Aurizon Coal, sub. 21, p. 2.

above-rail haulage market, given the long commitment timeframes and large sunk costs involved.

In this respect, the QCA notes that no stakeholders have provided evidence that declaring the West Moreton and Metropolitan systems services would have a detrimental effect on investment in markets that depend on access to the service. Nor have any stakeholders sought to rebut or qualify the submissions made by the South West Producers in relation to the investment effects of declaration. Given this, on the information before it, the QCA considers that declaring the West Moreton and Metropolitan system services would have a net beneficial effect on investment in dependent markets.

Administrative and compliance costs and other costs

The South West Producers submitted that:

> Whilst there are administrative and compliance costs involved in maintaining declaration, given that these costs are met by users by virtue of the QCA Levy, these costs are immaterial in the context of any public detriment. In addition, most of the administrative costs would have to be incurred in any case, given the existing multi-user nature of the QR Network and the West Moreton corridor'.[368]

The QCA considers that the costs that would be incurred by Queensland Rail if the West Moreton and Metropolitan systems services were declared could fall into two categories.

Costs incurred in dealing with the QCA

The QCA levy on the West Moreton system is currently 'funded entirely by customers [i.e. access holders]'.[369]

The QCA notes in its decision notice on the 2017–18 QCA levy that 'the QCA levy for 2017–18 will be $0.31825 per net tonne for the West Moreton system coal users, $0.00394 per thousand gross tonne kilometres rebate for the North Coast and West Moreton freight and minerals users',[370] and that 'the proposed levy of 31.825 cents a metric tonne for the West Moreton coal users is less than 4 per cent of the below-rail access charge'.[371] Thus, the QCA considers that on average over the period of declaration, the QCA levy is a relatively minor cost compared to the coal access charges on the West Moreton and Metropolitan systems.[372]

In relation to the costs incurred by Queensland Rail internally in dealing with the QCA (e.g. in preparing the undertakings required under declaration, performing any ongoing compliance, auditing or reporting obligations), Queensland Rail did not provide any submissions or data on the estimates of this cost.

The South West Producers said:

[368] South West Producers, sub. 4, p. 53.
[369] South West Producers, sub. 16, p. 29.
[370] This rebate was given due to an adjustment from previous years See QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, 2018, p. 2, http://www.qca.org.au/getattachment/14dba471-af75-4e5a-af12-caa6c12870c8/QCA-Final-decision-on-QR-s-QCA-levy-2017-18.aspx.
[371] QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, 2018, p. 2. The QCA notes that the 2017–18 QCA levy for the West Moreton system coal users is higher than it was in previous years due to an adjustment factored into the 2017–18 QCA levy decision. The QCA levy for 2014–15 was 3.684 cents per net tonne for West Moreton system coal, and for 2013–14 was 2.720 cents per net tonne for West Moreton system coal.
[372] For a detailed discussion of the QCA levy, see section 5.5.2 (North Coast Line service—Administrative and compliance costs). In relation to the QCA levy, similar considerations arise across the North Coast Line service, the Mount Isa Line service and the West Moreton and Metropolitan system services, and the discussion in section 5.5.2 applies analogously to these services.

> [C]ustomers [coal users of the West Moreton System] bear their own costs of the regulatory process, and the prudent expenditure by QR on the regulatory process which is taken into account in the prices set by the QCA. Accordingly, if the customers effectively bear all of the costs arising from regulation and are still supportive of declaration continuing, it must be that the reasonable terms and conditions of access arising from declaration promote the public interest.[373]

The QCA Act framework that would apply in a future with declaration provides for the approval of access undertakings which can have regard to Queensland Rail's administrative and compliance costs. For instance, under the current undertaking (Queensland Rail's Access Undertaking 1, 2016), access for coal trains on the West Moreton and Metropolitan systems services is subject to a QCA determined reference tariff. This reference tariff (derived from the maximum allowable revenue) includes a component reflecting Queensland Rail's operating expenses, which include Queensland Rail's internal 'corporate overheads' costs in compliance with the regulatory regime. Thus, for the coal trains on the West Moreton and Metropolitan systems services, the costs incurred by Queensland Rail internally in complying with the regulatory regime are recovered from the coal access users through the access charges, as the South West Producers have submitted.

To the extent that such administrative and compliance costs continue to be paid in practice by the users of the West Moreton and Metropolitan systems services in a future with declaration, the QCA considers that these costs are likely to have a minor effect in terms of the costs burden on Queensland Rail as a result of declaration.[374] More generally, notwithstanding the identity of the ultimate bearer of the costs, the QCA considers that the administrative and compliance costs associated with the regulatory access regime should be balanced against the benefits generated by the regime. Such benefits include certainty and transparency of access terms (including the possibility of a reference tariff), which leads to the promotion of competition and investment in dependent markets (for a detailed discussion, see sections 3.9.6 and 5.7.2 above). The QCA considers that these benefits are likely to outweigh the administrative and compliance costs associated with the regulatory regime.

For the sake of completeness, the QCA has also considered non-coal services (e.g. agriculture) which utilise the West Moreton and Metropolitan systems. The QCA understands that the volumes of non-coal services are seasonal and minor compared to the coal access services. In this respect, Queensland Rail has previously requested (and the QCA has approved) that freight, minerals and long distance passenger services on the West Moreton system attract a weighting that is significantly less than that of West Moreton coal traffic for the purposes of allocating the QCA levy.[375] While these services are covered by the existing declaration and access regime, Queensland Rail has previously indicated that it does not consider that it incurs significant QCA related costs for these services. Therefore, the QCA is satisfied that the costs incurred by Queensland Rail in relation to these services are likely to be very minor.

[373] South West Producers, sub. 16, p. 29.

[374] This point is made as s. 76(5)(c) of the QCA directs the QCA to have regard to 'the administrative and compliance costs that would be incurred by the *provider of the service* if the service were declared' (emphasis added).

[375] Queensland Rail, *2017–18 Queensland Competition Authority Levy, Queensland Rail Access Undertaking 1*, January 2018, http://www.qca.org.au/getattachment/bea6e4bb-3eba-47c3-8039-c076941c73e9/Queensland-Rail-2017-18-QCA-Levy-report.aspx; see also QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, attached to the QCA letter to Queensland Rail, 21 June 2018.

Costs incurred in dealing with multiple users

In relation to the costs incurred by Queensland Rail in dealing with multiple users of the West Moreton and Metropolitan systems services who have been provided access as a result of declaration, the QCA has not received evidence that such costs are greater with declaration than they would be without declaration. This is because the Queensland Rail network is likely to be a multi-user system with or without declaration (especially as Queensland Rail is a state-owned entity and is not vertically integrated i.e. does not provide above-rail freight services), and administration costs in managing a multi-user system will always exist.[376]

In relation to negotiation costs, the South West Producers submitted:

> [D]eclaration has also provided an important role in reducing the costs of negotiation ... A standard access agreement and independently determined efficient pricing [under the current declaration] reduces the barriers to obtaining access, saves all parties (including QR) costs that would be otherwise associated with a drawn out negotiation.[377]

The QCA considers that the standard terms and pricing of access under declaration are also likely to reduce the costs and timeframes for negotiation for users, and minimise the scope for disputes and the costs associated with dispute resolution.

Regional development, public funding and environmental issues

Regional development

The South West Producers said:

> Investment in the coal production, the rail haulage market, the coal handling services market and other related markets as a result of declaration of the West Moreton coal rail access service creates substantial flow-on economic benefits to communities, including through employment and economic growth in regional areas [including the Ipswich, Lockyer Valley, Scenic Rim and Somerset local government areas].[378]

The South West Producers quoted Queensland Resources Council data showing that in 2016–17 the resources sector in the West Moreton region paid approximately $30 million in wages to 263 full-time employees, spent approximately $7 million to the benefit of local businesses and community organisations, and contributed approximately $70 million in gross regional product, which forms 2 per cent of West Moreton region's total gross regional product.[379] No other stakeholders provided submissions, including any evidence to the contrary, of the effect of declaration on employment and regional development issues.

The QCA is satisfied that access to the West Moreton and Metropolitan systems services as a result of declaration promotes investment in regional markets, leading to beneficial effects on employment and regional development. It is valid to say that to some extent, employment and regional development would have occurred as a result of the operation of the mining industry in any case, whether or not the West Moreton and Metropolitan systems services were declared. However, in the absence of submissions and evidence to the contrary, the QCA considers that declaration is likely to promote *additional* employment and regional development spending compared to an environment where there is no declaration.

[376] See also similar submission made by South West Producers, sub. 4, p. 53.
[377] South West Producers, sub. 4, p. 53.
[378] South West Producers, sub. 4, p. 52.
[379] South West Producers, sub. 4, p. 49.

Environmental and safety issues

The use of the West Moreton and Metropolitan systems services is unique among Queensland Rail's network, as any freight trains necessarily need to travel through the suburban Metropolitan system (across densely populated suburban Brisbane). In doing so, these services are subject to environmental, political and legal limitations, such as in relation to the number of allowable freight train paths, the number of allowable wagons on a train, and the priority of passenger services on the Metropolitan system under the *Transport Infrastructure Act 1994* (Qld). The use of rail to transport freight through the Metropolitan system involves balancing environmental, social and political considerations.

On the one hand, the use of rail to transport freight arguably reduces the amount of freight that is transported to the Port of Brisbane from the West Moreton region via road (using trucks or road-trains). Indeed, it is current government policy, and a condition of the lease of the Queensland Bulk Handling coal terminal at the Port of Brisbane, that it is prohibited from receiving coal by road haulage delivery without the consent of the Port of Brisbane.[380] Thus, the declaration of the West Moreton and Metropolitan systems services is likely to benefit suburban Brisbane communities in terms of reducing the volume of large truck traffic through the densely populated Brisbane area, thereby having a beneficial effect in terms of safety, noise and environmental pollution.[381]

On the other hand, the use of rail to transport freight, particularly through the Metropolitan system, may have detrimental effects on suburban Brisbane communities in terms of noise, pollution and the sharing of rail paths with passenger services, although the QCA notes that no stakeholders have provided submissions or evidence in relation to any such detrimental effects.

Thus, on balance, the QCA considers that declaration of the West Moreton and Metropolitan systems services is likely to have a small beneficial effect in terms of promoting the public interest in the areas of social and environmental considerations.

Finance and public funding issues

The South West Producers have submitted that declaration has facilitated continued investment in the coal industry in the West Moreton region, which 'has relieved some of the financial pressure that would otherwise sit with the state government to fund maintenance of the West Moreton [system] solely for the purpose of passenger, livestock, grain and other freight services'.[382] The South West Producers also submit that in the absence of declaration, the uncertainty of pricing and other terms of access may 'push coal users out of the market for the service', or reduce their demand for the service, such that 'a far greater proportion of the costs of operating and maintenance of the West Moreton corridor infrastructure would fall onto other sectors or directly on the government'.[383]

Non-coal services using the West Moreton and Metropolitan systems services are subsidised by the government through the Transport Service Contracts (TSCs). Figure 16 shows a breakdown of the sources of below-rail net revenue[384] on the West Moreton system.[385]

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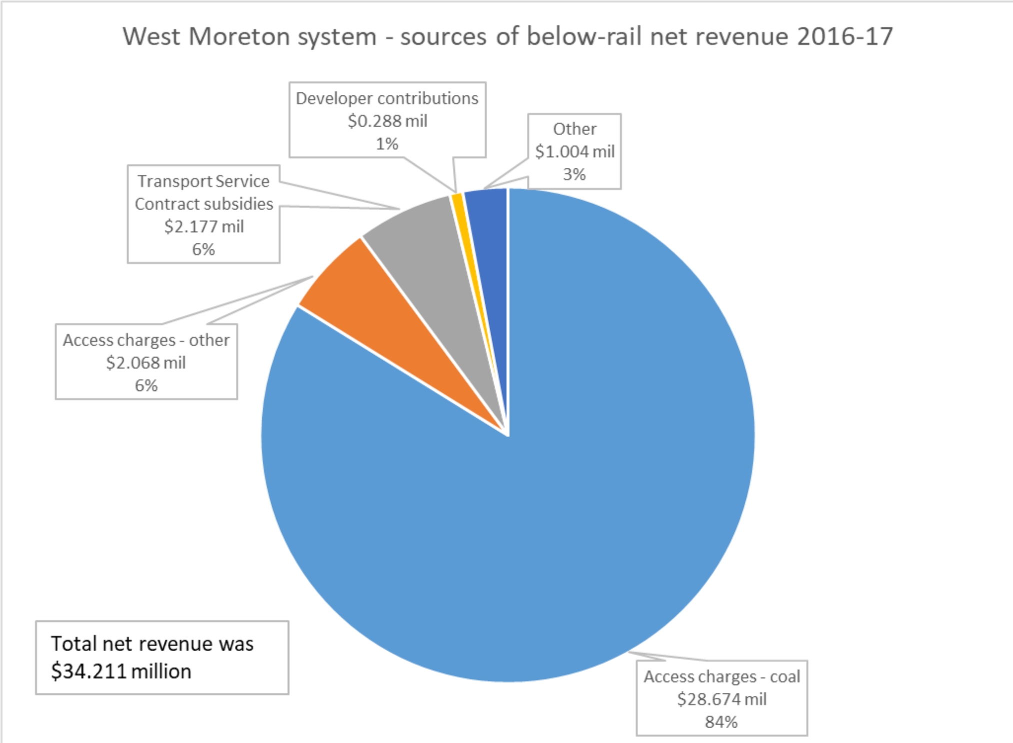
[380] South West Producers, sub. 4, p. 15.
[381] See a similar point made by Pacific National in relation to the North Coast Line, sub. 9, p. 14.
[382] South West Producers, sub. 4, p. 50.
[383] South West Producers, sub. 4, p. 53; South West Producers, sub. 16, pp. 24, 31–32.
[384] The words "net revenue" are used as in 2016–17 Queensland Rail paid a one-off rebate to the users of the West Moreton system due to over-recovery of access revenue in previous years. Thus, the total net revenue

Figure 16 Sources of below-rail net revenue on the West Moreton system, 2016–17



Source: Adapted from Queensland Rail, Financial Statements for the Year Ended 30 June 2017: Below Rail Services Provided by Queensland Rail, 2017, p. 4.

It can be seen that in 2016–17, approximately 90 per cent of net revenue from below-rail services on the West Moreton system was received from access charges (84% from coal, 6% non-coal), and only 6 per cent of total revenue was attributable to TSC subsidies from the Queensland Government.

The QCA understands that below-rail TSC subsidies are provided to meet the cost of the supply of the below-rail service; that is, where Queensland Rail cannot fully recover the cost of providing the below-rail service from the access charges[386], the TSC subsidy operates to 'fill the gap' between the amount of access charges received and the cost of providing the service. Therefore, if more access revenue is received on a system, the amount of the TSC subsidy would decrease proportionately.

From the data in Figure 16, it can be seen that access charges received (particularly from coal users) using the West Moreton and Metropolitan systems services contributed substantially to the revenue received on such systems, and towards the costs of operation and maintenance of the below-rail infrastructure on the systems, which would otherwise need to be funded by the government through the TSC subsidies.

figure of $34.211 million represents the revenue figure after the rebate has been paid. A detailed explanation of the 2016–17 West Moreton revenue data is provided in section 4.6.2.

[385] Please note that below-rail revenue data for the West Moreton system only is discussed, as revenue data attributable to the Metropolitan system alone cannot be determined from the accounts. This is because Metropolitan system figures are not reported separately in the accounts, but are instead grouped together in the figures for the 'rest of the network' (which includes the Metropolitan, Western, South Western, Central Western and Tablelands systems).

[386] The Mount Isa Line is the only Queensland Rail rail system that is able to operate on a 'commercial basis' and does not receive below-rail TSC payments for its operation.

The QCA therefore considers that access as a result of declaration on the West Moreton and Metropolitan systems services is likely to promote the public interest, in terms of promoting investment in the mining industry in the West Moreton region, thereby promoting the use of the West Moreton system, which in turn will reduce the amount of the government subsidy required to support the operation and maintenance on these systems.

5.7.3 Conclusion

The QCA considers that declaration of the West Moreton and Metropolitan systems services:

- would have a net beneficial effect on investment in facilities and markets that depend on access to the services
- would mean that Queensland Rail incurred administrative and compliance and other costs, however, these costs are not considered excessive relative to those that may be incurred in the absence of declaration
- would have a net beneficial effect for regional development, financial and environmental issues across communities in South West and South East Queensland.

Having weighed all of the costs and benefits, the QCA considers that there is a net public benefit.

Therefore, the QCA considers that on balance, access (or increased access) to the West Moreton and Metropolitan systems services, on reasonable terms and conditions, as a result of declaration of the service, would promote the public interest.

5.8 Other systems services (South Western, Western, Central Western and Tablelands systems)

Presently, the QCA is inclined to consider that access to the South Western, Western, Central Western and Tablelands systems services ('the other systems services'), on reasonable terms and conditions, as a result of the declaration of the service, *would not* promote the public interest. However, the QCA notes the lack of stakeholder submissions addressing public interest factors in relation to the other systems services, including in relation to:

- the effect that declaring the service would have on investment in facilities on any of the other systems, including investment in the below-rail infrastructure itself on any of the systems, or investment in related facilities
- the effect that declaring the service would have on investment in markets that depend on access to the service provided on any of these other systems
- the administrative and compliance costs and other costs that would be incurred by Queensland Rail if the service on any of the other systems were declared
- any other considerations (e.g. environmental, regional development and employment issues) that would affect the consideration of the public interest in declaring the service provided on any of the other systems.

The QCA notes a recent media report of possible future investment in the South Western system.[387] The QCA also notes a reference to a Yeppoon rail line upgrade project in Queensland Rail's 2017-18 Annual Report, which it says will allow 'livestock to be transported on rail directly from the north west and central west regions of Queensland to Rockhampton for processing'.[388] The QCA has received no submissions from stakeholders relating to the South Western system or the Central Western system, and there is no detailed publicly available information in relation to these systems. The QCA invites submissions from interested stakeholders in relation to the public interest criterion for the South Western system service, the Central Western system service, or any of the other systems services.

5.8.1 Stakeholder submissions

Queensland Rail did not provide any specific submissions relating to these other systems; however, it submitted that access to the service as a result of declaration on each of its railway systems did not satisfy criterion (d).[389] No other stakeholders provided any specific submissions in relation to these other systems, but the South West Producers, Glencore and Pacific National all submitted that the Queensland Rail network as a whole should be declared.[390]

5.8.2 QCA analysis

Investment in facilities and markets that depend on access to the service

No stakeholders made submissions or provided data in relation to the effect of declaration on investment in the below-rail infrastructure on any of the other systems, investment in any other facilities, or investment in dependent markets. There is very limited credible publicly available information in relation to such investment effects. In the absence of stakeholder submissions and publicly available evidence, the QCA considers that it is unable to form a view as to whether the declaration of the other systems services would have a beneficial or detrimental effect on investment in facilities or dependent markets. The QCA invites submissions from interested stakeholders in relation to the effect of declaring the other systems services on investment in facilities and dependent markets.

Administrative and compliance costs and other costs

No stakeholders made submissions or provided data in relation to the administrative and compliance costs (and other costs) that would be incurred by the provider of the service (Queensland Rail) if the other systems services were declared. There is very limited credible publicly available information in relation to such costs, and in particular, the interaction of such costs with the TSC subsidies that would be received by Queensland Rail for services provided on the other systems.

The QCA makes the following observations on costs:

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[387] Southern Downs Regional Council, *Major rail service company Watco invests in Southern Downs*, 20 September 2018, viewed 2 October 2018, https://www.sdrc.qld.gov.au/council/alerts-news-notices/2018-news/major-rail-service-company-watco-invests-in-southern-downs.

[388] Queensland Rail, *Annual and Financial Report 2017-18*, p. 41, https://www.queenslandrail.com.au/about%20us/Documents/Queensland%20Rail%20-%20Annual%20and%20Financial%20-%20Report%20-%202017-18.pdf.

[389] Queensland Rail, sub. 8, p. 7, para 46.

[390] South West Producers, sub. 4, p. 4; Glencore sub. 5, p. 2; Pacific National, sub. 9, p. 8.

- The QCA levy is allocated entirely amongst the West Moreton system, Mount Isa Line and North Coast Line services, and is currently recovered entirely by Queensland Rail from its users on these three systems.[391]
- No data on the costs incurred by Queensland Rail internally in dealing with the QCA is available publicly, nor data on the proportion of such costs that can be allocated to the regulation of the other systems services. In practice, the QCA does not set a reference tariff for the other systems services, and requires very little ongoing compliance and administration from Queensland Rail in relation to the other systems services.
- Aurizon Operations, which is the primary above-rail freight haulage operator on the other systems, has previously stated that most of these services are only operated due to government subsidies.[392] Queensland Rail operates passenger services on the Western, Central Western and Tablelands systems. In relation to the costs incurred by Queensland Rail in dealing with multiple users of the other systems, such costs are likely to be no greater under declaration than without declaration, as the Queensland Rail network is likely to be a multi-user system with or without declaration (as Queensland Rail is a state-owned entity and is not vertically integrated with respect to freight services).

Given this, the QCA is inclined to consider that the administrative and compliance costs and other costs incurred by Queensland Rail, if the other systems services were declared, are likely to be relatively minor. However, the QCA invites submissions from interested stakeholders to provide more data on this issue.

Any other considerations

These other systems carry a mix of products and passengers, in particular:

- The South Western, Western and Central Western systems carry primarily agricultural products (grains, cattle), with volumes varying according to the seasons, as well as some small amounts of containerised or general freight.[393]
- The Tablelands system carries primarily tourism services. These passenger services are operated by Queensland Rail.[394]

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[391] QCA, *Queensland Rail's 2017–18 QCA levy*, decision notice, attached to the QCA's letter to Queensland Rail, 21 June 2018, p. 1.

[392] Aurizon Holdings Ltd, *Regional Freight Transport Services*, factsheet, n.d., https://www.aurizon.com.au/~/media/aurizon/files/what%20we%20do/services/intermodal%20freight/guides/regional%20freight%20transport%20services%20contract%20fact%20sheet.pdf; Aurizon Holdings Ltd, *Livestock Transport Services*, fact sheet, n.d., https://www.aurizon.com.au/~/media/aurizon/files/what%20we%20do/services/bulk%20freight/fact%20sheets/aur2465_a4%20livestock%20transport%20fact%20sheet%20fa_rr.pdf.

[393] Queensland Rail, *South Western System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/South%20Western%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf;
Queensland Rail, *Western System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Western%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf;
Queensland Rail, *Central Western System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Central%20West%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.

[394] Queensland Rail, *Tablelands System Information Pack*, 2016, p. 5, https://www.queenslandrail.com.au/business/acccess/Documents/Tablelands%20System%20Information%20Pack%20-%20Issue%203%20-%20October%202016.pdf.

- All of the 'other systems' carry a small volume of passenger services (e.g. two return train paths per week).[395] These passenger services are operated by Queensland Rail.

Queensland Rail submitted that each of these 'other systems' have a 'high degree of dependence on TSC revenue … indicating lack of commercial viability'.[396]

The 2016–17 Queensland Rail below-rail financial statements show that very little, if any, access charges were received from non-Queensland Rail users on the other systems.[397] Additionally, in 2016–17, revenue from TSC subsidies on the below-rail services on the 'Rest of the Network' (which includes the other systems as well as the Metropolitan system) totalled $411.03 million, supporting Queensland Rail's submission that the provision of the below-rail services on the other systems is highly dependent (if not entirely dependent) on TSC subsidies. Additionally, the above-rail services (i.e. rail haulage) which are users of the below rail services provided on the other systems, are also heavily subsidised by above-rail TSC payments. For example, 'the Queensland Government offers 325 rail cattle services each year' and subsidises '208 rail freight services on the Central Western Line each year' through contracts with the rail operator Aurizon.[398]

From the information that is publicly available, it appears that the below-rail services provided on the other systems are heavily subsidised, and that there are very few external users of the other systems (i.e. users excluding the subsidised above-rail services currently operated by Aurizon). The TSC subsidies are provided for public policy reasons to 'support regional economic development and trade', to 'assist in managing livestock transport demands on the road network', and to support the use of rail transport which may otherwise not be a commercially viable transport option[399], and thus are likely to continue even if the other systems were not declared.

Given this, the QCA is inclined to consider that there are very few, if any, benefits that would arise from access as a result of declaration of the other systems services. However, given the limited amount of data on this issue (or any other public interest issues), the QCA invites submissions from interested stakeholders on any issues relating to how access (or increased access), on reasonable terms and conditions, as a result of a declaration of any of the other systems services may promote the public interest.

[395] With the exception of the Kuranda Scenic Railway service, which operates one return service a day on the 40 km section of track on the Tablelands system between Cairns and Kuranda.

[396] Queensland Rail, sub. 8, p. 6, para 45.

[397] Approximately $129.7 million was received as access charges on the 'rest of the network', which includes the other systems as well as the Metropolitan system. The effect of the Metropolitan system alone cannot be separately estimated, based on available data. In the same period, total internal charges reported as below rail services revenue totalled $144.0 million. Internal charges treated as revenue are access charges, telecommunications charges and ancillary infrastructure charges. This suggests that most, if not all, of the access charges reported for 'rest of the network' were actually internal charges attributed between Queensland Rail entities, and not access charges received from third party users of the access regime. See Queensland Rail, *Financial Statements for the Year Ended 30 June 2017*: *Below Rail Services Provided by Queensland Rail*, 2017, pp. 4, 9.

[398] Queensland Government Department of Transport and Main Roads, Rail Transport Contracts and Agreements*,* 2018, https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Rail-services-and-infrastructure/Rail-Transport-Contracts-and-Agreements.

[399] Department of Transport and Main Roads, Rail Transport Contracts and Agreements*,* Queensland Government, 2018.

5.8.3 Conclusion

As for all systems, the QCA has adopted the approach of assessing whether the South Western, Western, Central Western and Tablelands systems services satisfies criterion (d), based on the material before it.

Given the absence of stakeholder submissions and the heavily subsidised nature of these other systems, the QCA is inclined to consider that, on balance, access to the other systems services as a result of declaration of the service would not promote the public interest.