Memorandum

QCA draft determination for NQXT

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1. We have previously prepared three reports in relation to the request for declaration of the coal handling service at the North Queensland Export Terminal (**NQXT**). In our previous reports, we set out an economic framework for defining the market in which NQXT's coal handling service is provided. We showed that, on this market definition, the NQXT coal handling service does not satisfy criterion b.

2. The purpose of this memorandum is to provide our observations on aspects of the QCA draft determination relating to its reasons for concluding that the services supplied by NQXT satisfy criterion b. This memorandum should be read in conjunction with our earlier reports.

3. For reasons we explain below, the QCA's approach to defining the market for NQXT's coal handling service for the purposes of criterion b is flawed. The approach set out in our earlier reports is the only economically sensible approach that aligns with the observed market reality.

1 Competition between terminals is episodic and occurs through long-term contracting and capacity decisions

4. Competition between terminals occurs through mine development decisions, long-term take-or-pay contracts, capacity expansions and associated rail and port infrastructure investment. These decisions determine which terminal ultimately serves which volumes. The relevant competition therefore occurs at the point where mines decide whether to develop, whether to expand and which export pathway to commit to over the term of a long-term contract.

5. Once those decisions have been made, the resulting flows become relatively fixed for the duration of the relevant contractual and infrastructure arrangements. The fact that a mine is not switching today therefore says very little about whether that mine formed part of the competitive field over which terminals competed when the relevant commercial decisions were made.

6. The QCA acknowledges that competition in this market is episodic.[1]

> *The market for coal handling services (and the associated market for rail services) is episodic. The pattern in central Queensland has been for miners to sign long-term contracts. For major expansions, the facility owners have sought underwriting from the customers to support their investments*

7. That is correct as a description of how individual contracting decisions are made. Miners enter into long-term contracts at discrete points in time, typically when capacity expansions are being

[1] QCA draft determination, page 33.

underwritten. But that feature of contracting does not imply that the geographic scope of the market changes over time. Market definition concerns the set of alternatives that constrain pricing. That does not vary from one contracting episode to the next.

8. A mine may contract volumes with one terminal because another terminal is capacity constrained (either at the terminal or on the rail network from the mine to that terminal) during the period that the mine is wishing to expand output. If so, a mine enters a long-term contract with one terminal because the alternative terminal (and/or rail path to that terminal) is capacity constrained. That mine does so even though it may prefer, due to lower marginal transport costs abstracting from capacity constraints, the alternative terminal if there were no capacity constraints. That mine can be expected to switch its volumes back to the alternative terminal in the future if it can gain capacity rights at sufficiently low cost.

9. The timing and scale of capacity expansions are the mechanisms of competition between terminals for contestable demand. The fact that switching may occur only at discrete points in time rather than continuously through a spot market does not mean competition is absent.

10. The Goonyella evidence demonstrates this point clearly. NQXT competed successfully for Goonyella volumes facilitated via the GAPE expansion and associated NQXT expansion decisions. NQXT competed with DBT to expand and won that competition because it could deliver capacity in a more timely and, therefore, lower cost manner than DBT. DBT later expanded capacity and secured some of those volumes back. That is evidence of rivalry between terminals for contestable demand.

11. The only reasonable way to assess this switching between NQXT and DBT is that the relevant volumes are in the market served by both NQXT and DBT. If expansions by NQXT and DBT change where volumes flow, that is evidence that DBT and NQXT compete for those volumes (i.e., those volumes exist in a market that is served by both DBT and NQXT).

12. Precisely this dynamic is illustrated in a stylised way in Figure 3-6 of our 26 August report – where staggered expansions of capacity cause volumes to flow back and forth between ports over time.

2 The QCA model of competition does not capture how the market actually operates

13. Notwithstanding recognising the episodic nature of competition, linked to long term contracts and capacity expansions, the QCA approach to market definition for the purpose of criterion b abstracts from this real world fact. The QCA, instead, posits a spot market that simply does not exist and would never exist in this market. Within this spot market, there is no role for competing capacity expansions underwritten by long-term contracts. The capacity in the market is simply taken as given (treated as an exogenous variable).

14. The QCA market definition identifies all mine volumes who have lower transport costs to DBT as being in DBT's market. Those volumes are only ever also included in the market for NQXT's service if:

    a. a small (e.g., 5%) change in terminal prices would cause that mine to want to switch its volumes to the alternative mine; or

    b. if capacity constraints are such that the mine cannot gain access to DBT for its full volumes and, therefore, uses NQXT for the residual volumes that cannot be exported via DBT.

15. In this spot market miners simply choose which terminal to export through based on whether marginal rail plus terminal transport costs per tonne are lower, for that mine, through DBT or NQXT. There are a number of problems in the way with how the QCA has implemented this hypothetical

"spot market substitution" which, if corrected, would alter its conclusions even within its own "spot market" paradigm (see section 3 below).

16. However, the more fundamental problem is that the QCA has invented a spot market paradigm, with fixed infrastructure capacity, that simply does not reflect how this market operates. The effect of this is that, unless:

    a. DBT is capacity constrained; and/or

    b. there is a mine sitting, more or less, within 5% of the midway point between NQXT and DBT,

    there will be no mines that are deemed competitive to both NQXT and DBT.

17. This leads to the perverse conclusion that DBT's current 8x expansion (which has been designed, at least in part, to win back volumes currently being exported through NQXT (i.e., volumes lost to NQXT due to NQXT's ability to expand capacity earlier than DBT)) is not evidence that those volumes sit within a market served by both NQXT and DBT. Rather, on the QCA's logic, the effect of the expansion is simply to shrink the market in which NQXT operates, so that it becomes no larger than the volumes NQXT continues to serve after DBT capacity becomes available.

18. On this logic, NQXT can never operate in a market materially larger than the volumes it serves at any particular point in time. Even where NQXT's volumes fluctuate substantially over time, and even where those fluctuations reflect switching between NQXT and DBT as capacity constraints bind and relax, that evidence of switching is treated as irrelevant to the identification of the mines for which NQXT and DBT compete.

19. The approach to criterion b should be forward-looking. The assessment concerns total foreseeable demand over the declaration period. That period is ten years. Over that period, DBCT spare capacity will change as expansion decisions are implemented. A market definition based on current capacity conditions and current contracting will not capture those dynamics. The assessment must reflect the conditions expected to prevail over the declaration period.

20. The observed pattern of contracting reflects regulatory and capacity conditions rather than the boundary of the market. Goonyella mines that have contracted with NQXT have done so when DBCT capacity was not available at regulated prices. That does not indicate that the terminals operate in separate markets. It reflects the interaction of regulation and capacity choices at particular points in time.

21. The relative cost positions of the terminals are also not fixed. They depend on utilisation and system conditions. If volumes were to shift toward NQXT, utilisation of shared infrastructure would change and pricing would adjust accordingly. These interactions are part of the competitive process and are not captured by an approach that treats current capacity and prices as fixed determinants of market boundaries.

22. Market definition is concerned with underlying substitution possibilities, not observed demand for each market participant at a given point in time. The QCA instead takes the realised flows arising from those competitive processes and uses them to define the market. That approach is circular. Competition between terminals determines observed flows. The QCA then uses those observed flows to define the market and concludes that NQXT can meet foreseeable demand in that market.

23. Capacity constraints are not an exogenous feature of the market. They reflect investment decisions made by the terminals in light of expected competitive conditions. Both NQXT and DBCT choose capacity with regard to the volumes they expect to win from the other. The observed level of capacity at any point in time is therefore an outcome of competition, not a boundary on it.

24. This is consistent with standard examples of competition in differentiated markets. Restaurants compete for all customers in an area, even though each has limited seating and does not build capacity to serve the entire market. Capacity choices reflect expectations about demand and competition, not the scope of the market.

25. The QCA treats the evidence of mines switching volumes between NQXT and DBT (switching that is a direct result of competing capacity expansions) as evidence that the relevant market for NQXT was larger when it was serving those volumes and, when the volumes switched to DBT, the relevant market NQXT operates in became smaller. This is not economically sensible.

2.1 The QCA is right to reject Houston Kemp's market definition but fails to draw the correct lesson for its own method

26. Recall that the QCA market definition identifies all mine volumes who have lower transport costs to DBT as being in DBT's market. Those volumes are only ever also included in the market for NQXT's service if:

    a. a small (e.g., 5%) change in terminal prices would cause that mine to want to switch its volumes to the alternative mine; or

    b. if capacity constraints are such that the mine cannot gain access to DBT for its full volumes and, therefore, uses NQXT for the residual volumes that cannot be exported via DBT.

27. By contrast, Houston Kemp's market definition only applies step a. Under Houston Kemp's methodology, even Goonyella volumes that are currently using NQXT and will do so even after the DBT 8x expansion is complete, are excluded from "foreseeable demand" in the market that NQXT operates in.

28. The QCA correctly states that this is wrong. On page 29 the QCA states:

> *HoustonKemp's approach to defining the market involved adopting an approach that focuses on customer location and attempts to replicate the approach we adopted as part of the 2020 review regarding the declaration of the DBT service.*
>
> *…*
>
> *The DBT customer profile contrasts with the Terminal's customer base, where mines that rail to it are located in both the Newlands and Goonyella systems. This means a purely customer-centric geographic approach that left out Goonyella NQXT users would mean excluding half of the Terminal's current customers — and a substantial portion of its volumes — from the definition of the market.*
>
> *So, although we used a customer-centric geographic approach to market definition as part of our 2020 review regarding the declaration of the DBT service, it may not be appropriate to do so here. In particular, we consider* ***HoustonKemp's conclusion that no mines in the Goonyella system are in the market for the service is not right, as it is at odds with the known facts about customers using the Terminal****. It is appropriate to define the market in a way that recognises there are Goonyella NQXT users. [emphasis added]*

29. However, instead of drawing the conclusion that this market is characterised by periodic competition for long-term contracts via capacity constraints and, therefore, DBT and NQXT operate in a market that substantially overlaps, the QCA reaches, in our view, an equally problematic conclusion.

30. QCA page 31 the QCA states:

> *The supplier location approach enables us to assess demand in the market by reference to demand for the Terminal's services (over the course of the proposed declaration period).* ***This approach appropriately addresses the commercial realities stemming from constrained capacity at DBT as well as how changing availability of capacity at DBT affects the demand for access to the Terminal from mines in the Goonyella system****. Furthermore, the approach is consistent with the legislative test of criterion (b), as it accommodates changes in demand over time (consistent with the requirement to forecast total foreseeable demand over the proposed declaration period).*

31. On page 33 the QCA states:

> *As it is unlikely that there would be any substitution between the Terminal and DBT in response to a SSNIP, it follows that a hypothetical monopolist could profitably impose a SSNIP. This applies to both segments of the market because:*
>
> *• the northern mines have no option to switch to a close economic substitute for the Terminal in any foreseeable circumstances during the proposed declaration period*
>
> *• the Goonyella NQXT users* ***only have an option to choose an alternative to the Terminal if capacity becomes available at DBT*** *— the SSNIP-related factors will not affect their choice of terminal.*

32. In doing so, the QCA effectively concludes that any Goonyella volumes flowing to NQXT represent foreseeable demand that:

    a. is in the market within which NQXT operates because they could not switch back to DBT; and

    b. is not in the market within which DBT operates because, even though they would prefer to use DBT (based on QCA regulated access prices) they cannot fit into DBT (at least not without displacing some other miner or until other miners reduce throughput at DBT).

33. However, if and when any of those volumes switch back to DBT, they are immediately treated as leaving the market for NQXT's service and becoming part of DBT's market.

34. Rather than recognising that switching between NQXT and DBT is evidence that they both compete, episodically, on capacity within the same market, the QCA has, instead, concluded that episodic bouts of competition change the market definition.

35. The difference between Houston Kemp and the QCA market definition is essentially:

    a. Houston Kemp assumes that all volumes that have materially (e.g., 5%+) lower transport costs to DBT are in DBT's market and not in NQXT's market and this is true even if those volumes won't fit in DBT and, consequently, are actually served by NQXT;

    b. The QCA adopts Houston Kemp's approach but assumes that volumes that do not fit in DBT and are served by NQXT are in NQXT's market (and, presumably, not in DBT's market)

36. Neither of these approaches is economically sensible. If customers in the Goonyella system have been, and will be, using NQXT to export volumes of their coal then this is evidence that all coal volumes from similarly situated customers are in a market that is served by NQXT. It is equally unreasonable to:

    a. Assume zero Goonyella volumes are in the NQXT market – as Houston Kemp does; or

    b. Assume only exactly the Goonyella volumes that use NQXT are in the NQXT market and no other volumes are – as the QCA does.

37. The QCA's market definition defines the market by reference to the current allocation of volumes between terminals *following the completion of historic commercial negotiations and infrastructure*

investment decisions. However, those allocations are themselves the *outcome of competition between terminals*.

38. This is particularly stark in relation to Goonyella mines. NQXT successfully competed for certain Goonyella volumes through the GAPE expansion and associated terminal expansion decisions. DBT has subsequently expanded capacity and some Goonyella mines are switching from NQXT to DBT at the end of their contracts with NQXT. Those movements in volumes are evidence of rivalry between terminals for contestable demand. However, the QCA treats the current allocation of those volumes as defining the scope of the market itself.

39. The relevant economic question is not whether a mine currently uses NQXT or DBT for some or all of its already existing capacity. The relevant question is whether that mine would, in past actual or foreseeable future circumstances, consider the terminals as potential substitutes for each other. That competition does not occur in a "spot market", it occurs episodically for long term contracts at the time new mine and terminal capacity is brought on or when previous long term contracts expire.

40. By focusing on realised flows rather than contestable demand, the QCA effectively treats the market share that are the outcome of competition as defining the scope of the market.

41. The QCA reasoning is internally circular. Competition between terminals occurs through contracting and capacity decisions. Those decisions determine which terminal ultimately serves a particular volume from a particular mine. The QCA then takes those observed flows and uses them to define the market.

42. Having defined the market in this way, the QCA concludes that NQXT can meet foreseeable demand in that market. However, that result follows directly from the manner in which the market has been defined.

3 Regulated prices not competitive cost based prices

43. Even within the QCA's approach of modelling competition "as if" there were a spot market within exogenously determined capacity constraints, the QCA approach unreasonably embeds both regulatory decisions and regulatory pricing outcomes into its market definition. Relative transport economics between NQXT and DBT are materially affected by:

    a. the decision to regulate DBT;

    b. the prices set under that regulatory framework including the regulatory treatment and pricing of DBT expansions; and

    c. Aurizon rail pricing arrangements.

44. Those regulatory settings materially affect the relative cost of using each terminal, and therefore observed flows and substitution patterns between terminals. On the QCA approach, those regulatory decisions then become inputs into the definition of the market itself.

45. For example, the QCA decision relating to the socialisation of DBT 8X expansion costs materially affects the relative economics of DBT and NQXT for Goonyella mines. The DBT 8X expansion costs are materially higher per tonne than the costs of pre-existing capacity at DBT. However the QCA has decided to set the cost of access to the new capacity at DBT at below its incremental cost – funding the difference by higher prices charged for the pre-existing capacity.

46. The decision to socialise these costs means that the Goonyella miners wishing to bring on new mine output have their use to the DBT 8X expansion effectively subsidised by other Goonyella miners using the existing DBT capacity.

47. The QCA then uses the preference to use the subsidised DBT 8x expansion as sufficient to prove that those volumes choosing that subsidised capacity are not in the market that NQXT competes for. On the QCA approach, that would mean the decision by the QCA to subsidise access to new capacity at DBT causes the market within which NQXT operates to become smaller.

48. Conversely, if DBT pricing were higher, if DBT expansions were priced differently, or if Aurizon rail pricing made DBT relatively less attractive, then more demand may flow to NQXT. On the QCA approach, that would mean the market for NQXT becomes larger.

49. The implication is that both:

    a. the decision to regulate DBT; and

    b. the pricing outcomes produced by that regulation,

    directly influence the size of the market in which NQXT is said to operate following the QCA approach. This should not be the case.

50. Similarly, the way that the regulated GAPE pricing is set for train paths from Goonyella to NQXT is such that transport costs to NQXT are well above marginal costs when there is excess capacity on the GAPE (as their currently is). Imagine a scenario in which the QCA makes a regulatory decision that the unit cost per tonne crossing the GAPE is infinite. Based these regulate prices no miner would every consider NQXT and DBT to be in the same market. Should such regulatory decision making by the QCA define how foreseeable demand in the market is defined under criterion b?

51. Alternatively, imagine that the QCA allocated some mines in the Goonyella system as "NQXT mines" and others as "DBT mines" and imposed a regulatory rule that train paths to the assigned terminal and terminal access (at DBT) would be much lower using the assigned terminal rather than using the alternative. Should such regulatory decision making by the QCA define how foreseeable demand in the market is defined under criterion b?

52. We do not believe that this would be economically sensible. We believe that the relevant demand should be based on foreseeable demand if infrastructure is priced at marginal cost (including very low and very high marginal cost where there is excess/no capacity). That way, the foreseeable flow of volumes would reflect the efficient flow of volumes in a competitive market.

53. In Table 3-1 of our 7 October 2025 report, we identified the mines that we estimated it would be lower cost for NQXT to serve than DBT if below rail and terminal costs were based on marginal costs (rather than regulated prices for DBT and the GAPE and contract prices for NQXT). This identified a large number of mines deep in the Goonyella system as "preferring" NQXT if they faced marginal cost based prices.

54. However, the QCA reaches a different conclusion by adopting QCA regulatory pricing decisions for:

    a. the 8x expansion (which subsidise access to the DBT expansion) as the "cost" of Goonyella miners using that expansion; and

    b. the use of the GAPE (which taxes additional volumes being exported via NQXT from the Goonyella system) as the "cost" of Goonyella miners using the GAPE to export via NQXT.

55. See our 21 October 2025 report for further discussion and quantification of these subsidies and taxes implicit in QCA regulatory prices relative to marginal/incremental costs.

56. This creates the likelihood of cascading regulation. QCA regulation of DBT and Aurizon to favour "islanding" of Goonyella mines to DBT changes the relative "competitiveness" of DBT and NQXT. Those altered "competitive" conditions are then used by the QCA as a basis for concluding that NQXT itself operates in a narrower market and therefore satisfies criterion b.

57. The QCA approach therefore makes the scope of the market dependent on both the existence and form of regulation applying elsewhere in the CQCN, rather than the underlying costs structures between NQXT and DBT.