QCOAL USERS' FURTHER SUBMISSION IN SUPPORT OF ITS APPLICATION FOR A DECLARATION OF A SERVICE

Declaration of a service sought for the coal handling services at the North Queensland Export Terminal facility at Abbot Point

21 October 2025

Contents

1 Overview

1 On 13 June 2025, the QCoal Users of the North Queensland Export Terminal facility at Abbot Point (**the Terminal**) requested that the Queensland Competition Authority (**QCA**) recommend to the Treasurer that the coal handling services at the Terminal be declared a service under Part 5 of the *Queensland Competition Authority Act 1997* (Qld) (**the Act**), with a declaration date of 1 July 2027 and a declaration period of 10 years.

2 In support of the QCoal Users' request for a declaration, they enclosed two independent expert reports from Greg Houston of HoustonKemp (Criterion A Report and the Criterion B-D Report).

3 On 26 August 2025, North Queensland Export Terminal Pty Ltd (**NQXT**) responded to the QCoal Users' request. NQXT's Submissions were supported by:

(a) the expert report of Mr Jason Ockerby and Dr Tom Hird of Competition Economic Group (**CEG**) (**CEG Report**);

(b) the expert report of Mr Jeff Balchin of Incenta Economic Consulting (**Incenta Report**); and

(c) lay evidence statements from Mr Mark Smith (General Manager, NQXT), Mr Damien Dederer (General Manager, Abbot Point Operations) and Mr Brendan Lane (General Manager, Bowen Rail Company and Carmichael Rail Network) [redacted].

4 Unless stated otherwise, this submission adopts the terms and definitions as used in the QCoal Users' 13 June 2025 request.

5 The QCoal Users set out their further submissions below. In support of their further submissions the QCoal Users rely on:

(a) a further report of Greg Houston of HoustonKemp dated 21 October 2025; and

(b) a statement of David Moore, Infrastructure Manager QCoal.

6 Confidential Material in these submissions is marked as follows:

(a) Category A

(b) Category B

(c) Category C

2 Executive Summary

7 Despite the length of NQXT's Submissions, its arguments against the sought declaration of the service are relatively straightforward. At its core NQXT submits that:

(a) The Terminal operates in a competitive environment and faces direct competition from DBCT because the Central Queensland Coal Network (**CQCN**) is: (1) interconnected; and (2) mine operators have genuine alternatives to the coal handling services at NQXT [redacted]

(b) There is no evidence of market failure to justify regulatory intervention as the [redacted] has shown that [redacted]. And there is no evidence of self-preferencing, foreclosure or discrimination by NQXT or Adani despite the vertical integration of the Group.

(c) Declaration would not promote a material increase in competition in any relevant market.

(d) Declaration would not be in the public interest as it would undermine investment confidence and the "dynamism" underpinning the Terminal's success.

(e) The "broader context" cannot be ignored, and regulatory intervention would send a negative signal to investors.

8 NQXT goes on to say that for *"all these reasons, the QCoal Users' application for declaration fails on every substantive ground"* and that "*the QCA should recommend that the Minister **not** declare the service"*.

9 The QCoal Users disagree. Contrary to NQXT's submissions, all of the s 76(2) access criteria in the Act are satisfied. The critical differences between the QCoal Users and NQXT can be expressed in five core and straightforward points:

(a) The CQCN is not interconnected in the manner described by NQXT. This undermines the premise of most of its analysis as to the nature of the market.

(b) NQXT have misapplied the orthodox and required approach to defining a market.

(c) The CEG market definition is unworkable and unreliable.

(d) NQXT has incorrectly sought to analyse criterion (a) by considering the likely effects of declaration on irrelevant matters while ignoring the requirements of the Act in relation to *promoting* competition in dependent markets.

(e) Adani's current and historical conduct in relation to the terminal, access and pricing is not proof of effective competition in the market.

10 As an initial matter, NQXT's submissions provide an incomplete account of factual matters as a result of either omission or high-level generalisation. The result of this is to distort the reality of what is occurring on the ground. The clearest example of this distortion is the description of the CQCN as being "interconnected". This is wrong.

11 The mines along the Newlands system and the Carmichael rail line (collectively, **Northern Mines**) are captive to NQXT. Neither the QCoal Users, nor any other coal miner that has its mine located north of the Goonyella to Abbot Point extension (**GAPE**), can functionally haul coal from their mines to DBCT, or any other port apart from NQXT. It is for this reason that NQXT is wrong to assert that the CQCN is "interconnected" and to imply that that interconnectedness provides users with a genuine choice of alternative coal export terminals. As set out in the Statement of David Moore, Infrastructure Manager of QCoal it is inaccurate to assert that the Northern Mines have any genuine alternatives to NQXT to export their coal.

12 NQXT then misapplies key legal principles to support its position. Specifically:

(a) NQXT repeatedly asserts that the QCoal Users have failed to "demonstrate" certain matters and that they have a legal "onus" to do so. No such onus exists. The QCA is conducting an investigation. It will determine for itself whether it is *satisfied* that a service should be declared in accordance with the clear wording of s 76 of the Act.

(b) NQXT's analysis does not apply the longstanding and orthodox approach to market definition in Australia. The orthodox approach is one that includes: (1) the clear recognition the importance of substitutability and close substitution in a market definition exercise (which is reflected in the legislation itself); (2) a recognition that there may be both wider and narrower areas of rivalry, but that the market definition exercise is directed at defining a market characterised by close substitution between alternatives; and (3) a recognition that if the narrower area constitutes a market, then it is that market that is to be examined, even if participants from outside that defined market may also acquire services from the relevant provider/supplier.

13 This recognition of narrower and wider markets is one of the many reasons why Mr Houston's approach to and analysis of the relevant market for the purpose of a s 76 assessment is sound. Mr Houston's analysis captures the reality of the various markets that NQXT serves and is consistent with the QCA's approach to market definition in the DBCT decision.

14 By contrast, Dr Hird and Mr Ockerby's approach to market definition and the requirements of criterion (b) is deficient. Dr Hird and Mr Ockerby do not consider substitutability in their assessment of the market, or define a market characterised by substitutes that impose a close constraint on each other. For that reason alone, the analysis should be put to one side.

15 Similarly, the QCoal Users agree with Mr Houston's view that Mr Balchin mischaracterises both the effect and the economic test set out in criterion (a) and otherwise draws incorrect conclusions because:

(a) Section 76(2)(a) of the Act is not a cost-benefit analysis. Rather, it is concerned with whether a material increase in competition would be *promoted* and requires an assessment of the prospects of competition that will or may arise from reasonable terms of access. The test does not require the weighing and offsetting exercise contemplated by Mr Balchin.

(b) It is wrong to assume, as Mr Balchin does, that the most likely outcome of declaration is that users would be neither willing nor able to negotiate with NQXT directly in the context of a declaration. The effect of declaration is to provide guiderails to facilitate efficient access negotiations and to narrow the scope of disputes by providing a counterweight to the market power of one of the negotiating parties. This effect is precisely what occurred in relation to DBCT: the owner struck ten-year agreements with all its customers under what it called a "light-handed regulatory framework". In other words, declaration does not preclude a more favourable commercial outcome for access seekers, but does ensure minimum terms of access.

(c) Profit maximisation does not necessarily align with throughput maximization (as was recognised by the QCA in the DBCT decision). A supplier's incentive is to maximise profit not throughput. For a monopoly coal terminal this might be achieved by charging more even if this reduces volume. In other words, profits might be maximised by constraining throughput to volumes less than total capacity.

(d) Mr Balchin is otherwise wrong to suggest that there would not be a promotion of competition in the relevant markets that Mr Houston identifies in his Criterion A report.

16 Finally, the current and historical conduct relied upon by NQXT simply ignores key features of Adani's previous conduct highlighted in the QCoal User's original application. Notably, *nowhere* in NQXT's submission does it address Adani's clear self-preferencing that occurred in relation to the "acquisition" of the Rio User's access rights and novation to Bravus Mining in October 2016.[1]

17 Moreover, the material that NQXT covers does not support a conclusion that it operates in an effectively competitive market for the supply of coal handling services. Instead, the evidence of NQXT's conduct, which has taken place even while subject to constraints imposed by contracts previously agreed by a government-owned entity, demonstrates that NQXT has market power and is able to exercise that in a manner that will tend to reduce the production of coal by the Northern Mines by driving up production costs for users. It is not in the public interest to permit NQXT to do so.

18 The QCoal Users continue to request that the QCA recommend that a service be declared in relation to the coal handling services at the North Queensland Export Terminal at Abbot Point for the reasons set out in their original application and these further submissions.

3 The Central Queensland Rail Network is not Interconnected

19 Given that the operation of the CQCN is a fundamental factual premise of NQXT's submissions, it is helpful to address first the way in which the CQCN operates and some of the complexities associated with hauling coal on the network.

20 In its submissions, NQXT makes generalised references to the "interconnected" nature of the Central Queensland Coal Network and frequently refers to the ability of mines to access either DBCT or NQXT. The asserted "interconnected" nature of the rail network also appears to form a foundational assumption of Dr Hird and Mr Ockerby's expert analysis without further interrogation or examination of the details of the CQCN.

21 The QCoal Users' experience of the CQCN is—as set out in the statement of Mr Moore—that "*while it is theoretically possible to haul coal to the Dalrymple Bay Coal Terminal (**DBCT**) from*

[1] QCoal Users' Application at page 7, and [33]-[37].

mines that connect directly to the Goonyella to Abbot Point extension …, the Newlands system or the Carmichael rail line…, it is not practically possible for them to do so".[2]

22 Put simply, if a mine is situated on the Goonyella rail line, its operator has the choice of railing its coal either to NQXT or DBCT (assuming it can obtain access at DBCT). But if a mine is located on the GAPE, Newlands or Carmichael rail lines, it has no choice but to rail its coal to NQXT. This is the reality of the rail haulage market as both the operator and all users understand it to work.

23 Mr Moore explains why this is the case:[3]

(a) *railing to DBCT from the Byerwen and the Northern Mines could not be undertaken as a regular service and could only be performed as an ad hoc service;*

(b) *having regard to the costs I describe below, the cost of the ad hoc service would be prohibitively expensive;*

(c) *having regard to the matters I describe below such as the cycle time, "Haul / Journey", and the complexity around cross system coordination the operational requirements to run anything other than an ad hoc service are unworkable;*

(d) *there is limited available capacity in the Goonyella rail system, as highlighted in the recent ACAR25 Annual Capacity Assessment …;*

(e) *a queue currently exists for capacity in the Goonyella rail system;*

(f) *the volumes that the QCoal Users would require to rail to DBCT could only be obtained via a transfer from an existing access holder (and it is unlikely that existing access holders would be willing to transfer their Goonyella access rights including their associated renewal right);*

(g) *DBCT is fully contracted and has limited capacity to take any coal that the QCoal Users could theoretically haul to DBCT; and*

(h) *the Carmichael, Newlands and GAPE systems are not designed to run coal haulage services from Byerwen (or the Northern Bowen Basin) to DBCT.*

24 Aurizon's 28 August 2025 submission to the QCA (**Aurizon Submission**) also accepts that there is no alternative service for the Northern Mines.[4]

25 The simple fact is that the Northern Mines have *never* hauled coal to DBCT or any other port apart from NQXT. That fact of itself demonstrates the unreality of the market definition propounded by NQXT, being a market that extends to suppliers between whom there has never been any substitution. That lack of substitution is understandable given the facts explained by Mr Moore. Markets must be defined having regard to commercial realities and having regard to the practical and real world barriers to substitution.

26 As explained in the table below, none of the examples NQXT has raised of mines [redacted] involve mines located on the GAPE, Newlands or Carmichael rail systems. Unlike mines in the Goonyella rail system, mines in these systems are captive to NQXT and have no realistic and practical alternative.

27 As set out in the QCoal Users' original submissions this reality was also reflected in the judgment of Dalton J in the Queensland Supreme Court which said that "*[t]he respondents [QCoal Users] have coal mines in central Queensland. To export coal, they need access to the terminal; there is no other terminal they can use".*[5]

Port and rail access comparison		
Mine[6]	**Connected Rail System**	**Ports Accessed**

2 Moore Statement at [5].
3 Moore Statement at [5].
4 Aurizon Submission, p 9.
5 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260 at [1].
6 NQXT Submissions at [355](a).

[redacted]		
[redacted]	[redacted]	
[redacted]		
[redacted]		
[redacted]		
Byerwen	GAPE	NQXT
Drake	Newlands	NQXT
Sonoma	Newlands	NQXT
Jax	Newlands	NQXT
Collinsville (Glencore)	Newlands	*NQXT[7]
Carmichael	Carmichael	NQXT

28 The assumption of interconnectedness — and the consequential conclusions drawn from it — are set out in the following passage from Dr Hird and Mr Ockerby's report:[8]

> *where there are multiple ports in an **interconnected railway system** there are considerable economic cost savings from running that system as a system – not has [sic] isolated subsystems.*
>
> *If this was not the case, then it would not be efficient to have interconnected railways allowing mines to switch from one port to another. **That is, if mines switching from one port to another was inefficient (e.g. there was a natural monopoly) then we would expect to see no rail connections between the ports.***

29 Dr Hird and Mr Ockerby appear unaware of the complexities of the rail system and the practical inability for mines connected to GAPE, Newlands or the Carmichael rail line to haul coal to DBCT. However, the QCoal Users embrace Dr Hird and Mr Ockerby's conclusion that a lack of rail connections between the ports is evidence of a natural monopoly. For all intents and purposes, there is no rail connection from the Northern Mines to DBCT—there being no bidirectional rail loops on the Newlands or GAPE system that could facilitate the existing connection being used for that purpose.

30 The QCoal Users also note that the Aurizon Submission does not characterise the relevant market as the entire CQCN network, and accepts that declaration of NQXT could promote competition in the dependent rail haulage market.[9]

31 The QCoal Users are happy to discuss their experience of the CQCN further with the QCA and would welcome the QCA engaging with Aurizon and others further on this matter.

4 NQXT has misapplied the law

4.1 QCoal Users have no onus or requirement to prove

32 At several points in its submission, NQXT's Submissions mischaracterises the operation of the Act, the process for requesting a declaration under s 77, and the requirement to satisfy the authority and the Minister under section 76(1).

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7 Collinsville [redacted] has historically exported through NQXT.
8 CEG Report at [65]-[66].
9 Aurizon Submission, p 2, 4-5

33 Specifically, NQXT refers to a “legal onus” being placed on the QCoal Users to prove certain matters.[10] For example, at [66] of its submissions, NQXT states that (emphasis added):

> *Criterion (d) places a legal onus on the QCoal Users to demonstrate that:*
>
> *(a) declaration of NQXT would result improved terms [sic] and conditions of access, compared to a future without declaration; and*
>
> *(b) that this improvement in the terms of access would promote the public interest.*

34 On the proper construction of the Act, no such onus exists.

35 Section 77 states that:

> *(1) A person may ask the authority to recommend that a particular service be declared by the Minister.*
>
> *(2) The Minister may ask the authority to consider whether a particular service should be declared by the Minister.*

36 Section 76(1) establishes that the access criteria are the matters about which (emphasis added):

(a) the authority is required to be ***satisfied*** for recommending that a service be declared by the Minister; and

(b) the Minister is required to be ***satisfied*** for declaring a service.

37 Neither s 77 nor s 76 prescribe any onus or standard that must be satisfied by the QCoal Users in asking the QCA to recommend that a particular service be declared by the Minister.

38 The Act makes it clear that the QCA is not a court, and to the contrary, “must act with as little formality as possible” and “is not bound by technicalities, legal forms or rules of evidence”.[11]

39 That no onus rests on the QCoal Users is underscored by the express power of the QCA in s 173(1) to “inform itself of any matter relevant to the investigation in any way it considers appropriate.”[12]

40 As Woodward J of the Federal Court noted in relation to Administrative Appeals Tribunal (**AAT**) decisions (emphasis added):

> *…the onus (or burden) of proof is a common law concept, developed with some difficulty over many years, to provide answers to certain practical problems of litigation between parties in a court of law. One of the chief difficulties of the concept has been the necessity to distinguish between its so called 'legal' and 'evidential' aspects. The concept is concerned with matters such as the order of presentation of evidence and the decision a court should give when it is left in a state of uncertainty by the evidence on a particular issue.*
>
> ***The use outside courts of law of the legal rules governing this part of the law of evidence should be approached with great caution.*** *This is particularly true of an administrative tribunal which, by its statute "is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate" (AAT Act s 33(1)(c)).*
>
> *Such a tribunal will still have to determine practical problems such as the sequence of receiving evidence and what to do if it is unable to reach a clear conclusion on an issue, but it is more likely to find the answer to such questions in the statutes under which it is operating, or in considerations of natural justice or common sense, than in the technical rules relating to onus of proof developed by the courts…*[13]

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10 NQXT Submissions at [66], [510].
11 Section 173(1) of the Act
12 Ibid.
13 *McDonald v Director-General of Social Security* (1984) 1 FCR 354, 356.

41 Just as the AAT is not bound by the rules of evidence, neither is the QCA. Instead, it must inform itself of matters as it considers appropriate and may consult with persons it considers appropriate for that purpose.[14]

4.2 Criterion (a) does not require proof of different terms

42 In respect of criterion (a), NQXT submits that the QCoal Users "*fail to identify the basis upon which any terms of access through declaration would differ from those which are the product of recent and successful commercial negotiations in relation to contract renewals.*"[15]

43 NQXT further submits that the QCoal Users have "failed to point to, or establish, any entrenched market power or market failure".[16]

44 Such submissions demonstrate NQXT's failure to grapple with the statutory test. Section 76(2) does not impose a "with and without" test whereby the QCA is to consider whether access seekers would obtain better terms in a future with declaration than without. The relevant question is whether the Minister is *satisfied* that regulation would *promote* competition and public interest respectively. Competition may be promoted, and the public interest served, even if the terms of access are substantively similar or the same.

45 A similar argument to that now advanced by NQXT was rejected in *DBCT Management Pty Ltd v Treasurer and Minister for Infrastructure and Planning* (Qld) [2021] QSC 335 (***DBCT v the Treasurer***), where Davis J held that criterion (a) does not require satisfaction that the declaration would result in "a material increase in competition". Rather, it requires that the declaration "would promote a material increase in competition" (emphasis added).[17]

46 That holding arose in the context of a submission made by Dalrymple Bay Coal Terminal Management (**DBCTM**) that the word "would" in s 76(2)(a) and s 76(2)(d) signifies "a strong causal nexus, ie a consequence that it is extremely likely or near certain to occur."[18]

47 However, the submission was rejected. In addressing it at [114], Davis J observed that the submission:

> *…must be considered in the context that the judgment to be made by the Minister is as to a future matter. He is judging how declaration will affect the relevant market. It cannot be that the provision empowers the Minister to only declare the service where a particular result is certain.*

48 Then at [129], Davis J rejected DBCTM's characterisation of criterion (a):

> *The submission of DBCTM quoted in paragraph [127] above is wrong in my view. The emphasis in s 76(1)(a) is not upon materially increasing competition, but "promoting" a material increase in competition. It concerns the creation of a commercial environment which "is expected to promote a material increase in competition …"*[19]

49 *DBCT v the Treasurer* therefore makes clear that criterion (a) is not concerned with proving whether commercial outcomes would necessarily be different absent declaration, but rather with the anterior question whether declaration would promote a material increase in competition (whether or not such increase in fact occurs or is likely to occur).

4.3 Misapplication of market definition principles

50 Further, NQXT's submissions misapply orthodox market definition principles. They do so by diverting attention from the central inquiry—that is, close substitutability—to instead rely on flawed analogies to cast doubt on the appropriate and well-established tool for defining the market in these circumstances.

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14 Sections 173(1)(c) and (2) of the Act
15 NQXT Submissions at [28].
16 Ibid at [17].
17 [2021] QSC 335 at [104].
18 Ibid at [127].
19 Citing *Motor Accident Insurance and Other Legislation Amendment Act 2010*: Explanatory Memorandum. see *Re Telstra Corporation Ltd (No 3)* (2007) 242 ALR 482 at [96] citing *Re Sydney Airports Corporation* (2000) 156 FLR 10.

Substitutability

51 The centrality of the concept of substitutability in defining a "market" is enshrined in Part 5 of the Act. Section 71(2) of the Act establishes that:

> *A **market** is a market in Australia or a foreign country.*
>
> *If **market** is used in relation to goods or services, it includes a market for—*
>
> *(a) the goods or services; and*
>
> *(b) other goods or services that are able to be substituted for, or are otherwise competitive with, the goods or services mentioned in paragraph (a).*

52 Similarly, the importance of substitutability in identifying a market is also reflected in the *Competition and Consumer Act 2010* (Cth) s 4E, which provides:

> *…market means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.*

53 The practical application of the concept of substitutability in defining a market was explained by the Trade Practices Tribunal in *Re Queensland Co-operative Milling Association Ltd* (*Re QCMA*), in a manner that has been consistently affirmed by Australian courts, in the following terms: [20]

> *… A market is the area of close competition between firms or, putting it a little differently, the field of rivalry between them. (If there is no close competition there is of course a monopolistic market.) Within the bounds of a market there is substitution—substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive. Let us suppose that the price of one supplier goes up… Whether such substitution is feasible or likely depends ultimately on customer attitudes, technology, distance, and cost and price incentives.*

54 And importance of the market definition not being divorced from commercial reality was recognised recently by Beach J in *Epic Games, Inc v Apple Inc* (***Epic***):

> *The functional approach to market definition does not permit analysis of competition in a manner divorced from the commercial context of the putative contravention which precipitates the analysis. So a well-defined market should reflect or be consistent with the commercial reality of the relevant commercial relationship and dealings.*[21]

55 Moreover, as Deane J explained in *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177 at 196:

> *…The economy is not divided into an identifiable number of discrete markets into one or other of which all trading activities can be neatly fitted. One overall market may overlap other markets and contain more narrowly defined markets which may, in their turn, overlap, the one with one or more others. The outer limits (including geographic confines) of a particular market are likely to be blurred: their definition will commonly involve assessment of the relative weight to be given to competing considerations in relation to questions such as the extent of product substitutability and the significance of competition between traders at different stages of distribution…*

The Error in NQXT's Approach

56 Rather than focussing on questions of substitutability, NQXT approaches the question of market definition in the manner addressed by the report prepared by CEG, which utilises Hotelling modelling.

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20 (1976) 25 FLR 169 at 190.

21 *Epic Games, Inc v Apple Inc* [2025] FCA 900 at [1304].

57 To justify this approach, NQXT relies on the decision of Jagot J in *Australian Competition and Consumer Commission v NSW Ports Operations Hold Co Pty Ltd* (***NSW Ports***)[22] in which her Honour "cautioned against the risk of focussing narrowly on SSNIP tools when undertaking a broadly analogous exercise of market definition involving neighbouring port terminals."[23]

58 But the submission that the exercise of determining the relevant market in *NSW Ports* is "broadly analogous", and that the decision justifies the use of Hotelling modelling in lieu of the SSNIP test, is wrong.

59 Nothing in *NSW Ports* supports the approach for which NQXT contend. In particular, Jagot J did not reject the use of the SSNIP test as an aide to market definition or suggest that some new and unorthodox approach to market definition should be adopted.

60 In *NSW Ports*, Jagot J was concerned with the appropriate market definition in a case where the conduct allegedly deterred entry by a second container terminal in NSW. The Respondents in that case argued that, notwithstanding the extant relevant market for container terminal services was NSW-wide, that was not the appropriate market to assess the effect of the content because the effect of entry would be to bifurcate the NSW market into two markets, with little substitution between the two container terminals, such the each market would satisfy a SSNIP test.[24] That argument was rejected by Jagot J because it did not accord with the extant reality, which was that the conduct occurred in circumstances where there was a singular NSW-wide market into which any entry would occur.[25]

61 In *NSW Ports*, the commercial reality was that entry would result in substitution away from the incumbent monopoly supplier in the NSW container services market. It was that fact which made that extant market the appropriate market for assessing the effect of the impugned conduct. Any other approach would be at odds with commercial reality.

62 In the present case, the commercial reality is different. It is that, with or without declaration, the Northern Mines cannot switch away from NQXT to any alternative supplier. To treat NQXT as being in the same market as DBCT in such circumstances would overlook the commercial reality that there is no close substitution between those terminals for business of the Northern Mines, such as would be necessary for them to fall within the same relevant market. Notably, the "Hotelling model" is not a form of economic modelling that finds support in the *NSW Ports case*. The sole expert that relied on the Hotelling model was the subject of criticism by Jagot J. As her Honour noted at [1626]-[1627]:

> *The concerns which Dr Pleatsikas raised about the modelling undertaken by Mr Smith are also compelling. As Dr Pleatsikas explained Mr Smith's modelling… involves two fixed production locations (Port Botany and the Port of Newcastle), with customers arrayed linearly between them. The template for the model was developed by Harold Hotelling and was designed and constructed to investigate the profit-maximising location of undifferentiated producers (and consumers that are undifferentiated in their demands). However, Mr Smith has used the template to model pricing and profit conduct of highly differentiated producers and highly differentiated consumers. Such an exercise is unlikely to produce any useful output.*
>
> *Mr Smith's model also does not differentiate between the two ports other than by their position at the ends of a "linear road" between the two ports, despite the ports being highly differentiated in numerous respects. Mr Smith's distribution of customers is unrealistic as he has "arrayed customers (who he has assumed are non-differentiated in terms of their demand for port services (and non-differentiated in terms of the commodities they ship) on a one-dimensional straight line between the two ports, with uniform transport costs (no matter the mode) along the line, uniform demand and a uniform density of customers along the line". In the real world, "customers are highly differentiated and non-uniform in their demands (both as to volume and commodity) and are arrayed in a highly complex and likely non-random manner over a two-dimensional space (i.e., the geographic area of New South Wales)". Further, "the*

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22 [2021] FCA 720.
23 NQXT Submissions at [339].
24 See [2021] FCA 720 at [474]-[475].
25 [2021] FCA 720 at [477]-[478].

derivation of transport costs is much more complex, with multiple providers and both road and rail options".

63 For similar reasons, the Hotelling model is unlikely to be a reliable tool to assist the QCA to determine the relevant market, as it assumes that terminal users will be undifferentiated in their demand for coal handling services, and that there will be uniform demand and density of customers along the line.[26]

64 The orthodox approach to market definition was recently restated by Beach J in *Epic* at [1314]-[1347]. His Honour there re-affirmed that:

(a) in applying the SSNIP test, "*The idea is to find the smallest area (product and geographic) over which the hypothetical monopoly supplier can impose a SSNIP which then provides the boundaries of the market*";[27]

(b) "The economic rationale that informs this conceptual framework is as follows. If a hypothetical monopolist can profitably sustain a SSNIP above competitive levels, there must be no other goods or services within the market that are sufficiently close substitutes to the candidate good or service for customers to switch to so as to render the SSNIP unprofitable";[28]

(c) while substitutability is not necessarily the defining feature, "one is concerned with close competition in the form of strong substitution, where the evidence indicates there will be a relatively high demand or supply response, given price incentives. Substitution is a question of degree";[29] and

(d) "*There may be both a wider and a narrower area of rivalry. But if the narrower area itself constitutes a market, then it is power and conduct in that area that is to be examined."*[30]

65 It is these ordinary principles which ought to be applied in defining the market for coal handling services by the QCA.

5 Criterion (b): Errors in defining the market

66 Criterion (b) states that the Minister is required to be satisfied:

> (*b) 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); …*

67 Sections 76(3) and 76(4) provide:

> *(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.*[31]

68 Prior to 2017, criterion (b) required "that it would be uneconomical for anyone to develop another facility to provide the service".[32]

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26 C.f. NQXT's Submissions at [342].
27 [2025] FCA 900 at [1319].
28 [2025] FCA 900 at [1321]-[1322].
29 [2025] FCA 900 at [1328]-[1329].
30 Ibid [2025] FCA 900 at [1334].
31 Section 76 of the Act.
32 See the *Competition Policy Reform Act 1995* (Cth).

69 On 6 November 2017, criterion (b) in the *national* access regime was amended to take its current form. This followed the Productivity Commission's recommendation in 2013 that criterion (b) be revised to make clear that a natural monopoly test applies.[33] In 2018, s 76 of the Act was amended to "correspond with the revised criteria being introduced at the National level".[34]

70 The Productivity Commission's recommendations sought to ensure that the declaration criteria "*work together effectively in targeting the economic problem — an enduring lack of effective competition, due to natural monopoly, in markets for infrastructure services where access is required for third parties to compete effectively in upstream or downstream markets* (emphasis added)*".*[35]

71 In the Productivity Commission's view, the revised criterion (b) "should — in combination with the other declaration criteria — help to promote effective facilities-based competition".[36]

72 In *Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal*,[37] the High Court (although rejecting its application to criterion (b) as it stood in 2012) described the natural monopoly test as follows:*…The first of these "economic" constructions of criterion (b) directs attention to whether the facility in question can provide society's reasonably foreseeable demand for the relevant service at a lower total cost than if it were to be met by providing two or more facilities. This construction directs attention to the costs of producing the service. The Tribunal adopted this test in these cases and described it as a "natural monopoly approach".*[38]

73 In *DBCT v the Treasurer*, the Court referred to the explanatory memorandum for the Act and set out a section explaining the rationale of allowing third party access which refers to natural monopolies:[39]

> ***(c) Third party access***
>
> *The underlying rationale of creating third party access rights to significant infrastructure is to ensure that competitive forces are not unduly stifled in industries which rely upon a natural monopoly at some stage in the production process, especially where ownership or control of significant infrastructure is vertically integrated with upstream or downstream operations.*
>
> *A key aspect of the market system is that an infrastructure owner is entitled to choose with whom it will deal. The threat of competitors providing substitutes constrains a seller's ability to charge excessive prices or otherwise restrict supply. However, in cases where these substitutes do not exist, a seller possesses significant market power. A seller may exercise its market power to increase its profit by restricting output because doing so enables the seller to increase its price.*
>
> *In cases of natural monopoly, one facility meets all of a market's demand more efficiently than a number of smaller and more specialised facilities. Accordingly, it is not socially desirable that the infrastructure comprising a natural monopoly be duplicated. At the same time, the absence of competition enables a natural monopoly infrastructure owner to extract excessive profits through exercising market power.*
>
> *This is especially the case where the business which operates the natural monopoly also has a commercial interest in upstream or downstream markets (for example a rail operator who also owns the track). Such a business may discriminate against its upstream or downstream competitors by offering access on more favourable terms and conditions than is offered to competitors. In this way, an owner of a natural monopoly is able to stifle competition in upstream or downstream markets.*
>
> *The purpose of third party access is therefore to provide a legislated right to use another person's infrastructure. This should prevent owners of natural monopolies charging excessive prices. It should also encourage the entry of new firms into the*

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33 Productivity Commission, *National Access Regime*, Inquiry Report No 66 (October 2013) at p 160.
34 *Queensland Competition Authority Amendment Act 2018* (Qld).
35 Productivity Commission, National Access Regime, Inquiry Report No 66 (October 2013) at p 150.
36 Ibid at p 161.
37 (2012) 246 CLR 379.
38 Ibid at 412 [79].
39 *DBCT v the Treasurer* at [8]

> *potentially competitive upstream and downstream markets which rely on a natural monopoly infrastructure in the production process, and thereby enable greater competition in those markets. This in turn would promote more efficient production and lower prices to consumers .*
>
> *The Bill provides for a streamlined approach to access, and incorporates mechanisms to increase certainty for infrastructure owners and prospective users alike.*
> *(emphasis added)*

5.1 CEG Have Defined the Market Incorrectly

74 As set out above, the QCoal Users have commissioned a further report from Mr Houston of HoustonKemp to respond to matters raised in NQXT's submissions and the expert reports provided by both Dr Hird and Mr Ockerby of CEG and Mr Balchin of Incenta.

75 Dr Hird and Mr Ockerby purport to apply a Hotelling model. Before moving on to address the deficiencies in Dr Hird and Mr Ockerby's modelling, it is worth noting that a necessary factual precondition for the application of a Hotelling model is that customers can access both ends of the line.

76 Both Dr Hird and Mr Ockerby, and NQXT, assume that all customers can access both DBCT and NQXT.[40] They also appear to assume that transport costs are uniform across distance. But the Northern Mines cannot access both ends of the CQCN. That is, the Northern Mines are captive to NQXT and have no practical ability to rail to DBCT for the reasons detailed above. Nor are transport costs uniform in the CQCN, as prices differ across the Carmichael, Newlands, GAPE and Goonyella rail lines.

77 The QCoal Users agree with Mr Houston's observation that Dr Hird and Mr Ockerby adopt a very different and unconventional approach to market definition. It is also fair however to say that Dr Hird and Mr Ockerby's approach to market definition is contrary to the principles which must be applied, and irreconcilable with their work in other contexts.

78 In short, Dr Hird and Mr Ockerby's approach:

(a) ignores the clear legislative definition of "market" set out in s 71 of the Act that explicitly includes a substitutability requirement, that is driven by an overreliance on a colloquial description of the criterion (b) test as a "natural monopoly" test;

(b) assumes, contrary to the commercial reality on the ground, that the transport costs across the CQCN are uniform and undifferentiated; and

(c) results in market definition that would see a coal mine immediately adjacent to DBCT included in their assessment of total foreseeable demand despite the clear reality that:[41]

(i) it would be highly inefficient and impractical for such a coal mine to access NQXT due to the cost of transport;

(ii) such a mine is highly unlikely to ever access (or seek access to) NQXT; and

(iii) declaration of NQXT would have no practical bearing on that mine.

79 This leads to an approach to market definition that is irreconcilable with the role of criterion (b) (as explained above) to promote economic efficiency and address circumstances where there is a real and persistent lack of effective competition.

80 Further, Dr Hird and Mr Ockerby define the market by seeking to cast the widest net possible of potential customers who might trade with NQXT, *on the assumption* that there are no substitutes.[42] Doing so:

(a) results in an estimate of total foreseeable demand that is not actually "foreseeable" as it:

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40 NQXT Submissions at [365]-[374].
41 Further Houston Report at [81].
42 CEG Report at [83].

(i) ignores customers' maximum willingness to pay by not considering the cost of the next best alternative and the effect this has on the total level of demand for the service;[43] and

(ii) reflects demand for coal handling service over a geographic area that is likely to be as large as the CQCN;[44]

(b) results in a market with geographic boundaries that are absurdly large such as to result in perverse definitions of the market for a service; and

(c) erroneously seems to suggest that a market definition governed by substitution results in a market that includes only one supplier.

81 The QCoal Users say that Mr Houston's approach to market definition is to be preferred for the reasons set out in his Criterion (b)-(d) report and his further report. His market definition accurately reflects the reality for users on the ground. It is consistent with the QCA's approach to market definition in the DBCT decision. And it is grounded in an orthodox approach to market definition that is consistent with the legislative definition.

82 Finally, Mr Ockerby makes comments in relation to his previous work that are difficult to reconcile with his report in this matter. In particular, in *NSW Ports*, Mr Ockerby gave evidence that was recorded by Jagot J in the following terms (emphasis added):

> [758] *"…geographic market definition is not about lines on a map.* ***Port Botany and the Port of Newcastle will overlap in their geographic distribution of customers. The geographic market identifies whether they will compete or not by constraining each other's prices****;*
> *…*
>
> *the idea that it is simply sufficient for the Port of Newcastle to take container volumes away from Port Botany as an indicator of competition is not right –* ***overlap of customers does not indicate competition…***
>
> [844] *'a natural monopoly exists where there are large fixed and sunk costs and low marginal costs such that it is lower cost for one firm to serve the market than for more than one firm to serve the market";*
>
> *'****port operators are in possession of substantial market power****, due to high barriers to entry, including increasing returns to scale relative to the size of the market. In other words,* ***they are natural monopolies****';*
>
> *'****ports are natural monopolies*** *that generate positive externalities to the rest of the economy when developed';…"*
>
> [862] "…*the business case for PON - and this applies to ports generally - is* ***on the basis of having a monopoly over their catchment area****. That's - the ports don't typically - there are some exceptions, in Rotterdam, I think, there is one where ports are located in close proximity to another. But typically they're choosing hinterlands which are separate from one another, such that they incur these fixed costs,* ***they are the monopoly, they become the natural monopoly for that Hinterland.*** *And they can charge a price which captures the surplus that shippers get from using that port. They're not going to compete with another port, that's the, sort of, logic of port development. Or the economics of it*."

83 There is obvious tension between the propositions:

(a) that all ports are natural monopolies *per se*, and that overlapping customers is not an example of competition; but

(b) nonetheless, that DBCT provides a competitive constraint on NQXT.

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43 Further Houston Report at [80], [89(a)].

44 Further Houston Report at [89(b)].

5.2 The premise of NQXT's criticisms as to market definition is wrong

84 In addition to relying on CEG, NQXT advances the rhetorical submission that Mr Houston's assessment of market definition is "absurd" because it leads to the "conclusion that half of NQXT's current customers are not in the market for NQXT's coal handling service".[45]

85 The difficulty with that submission is that it is contrary to the established principles identified above.

86 The Northern Mines which sit in the area identified by NQXT in its submissions at Figure 17 are a quintessential example of the proper application of the SSNIP test that:

(a) commences with the identification of the Northern Mines as comprising the narrowest scope of the market as the candidate market—which reflects an orthodox assessment of the preferences of mines having regard to their locations and the function of the CQCN;[46]

(b) identifies DBCT as a potential close substitute by reference to relative costs of access for those mines; but

(c) rejects that expansion of the market on the basis that DBCT is not a close substitution having regard to the inability of the Norther Mines to access it because of capacity constraints and because the relative costs to do so would be disproportionate;[47] and

(d) consequently, conclude having applied the SSNIP test that NQXT could, in the market for coal handling services defined by mines on or north of the GAPE, substantially increase the price of coal handling services without causing Northern Mines to switch to an alternative terminal.

87 Given the preference of mines located in the Goonyella region (as previously accepted by the QCA) to use DBCT, and the obvious geographical barrier created by the direction of haulage along the GAPE being limited south to north, there is nothing uncommercial or artificial about the market being defined in this way. Although four mines outside the identified market use the Terminal, if (as Mr Houston concludes and the QCA previously accepted) those mines would (in the absence of existing contracts) seek to use of NQXT's coal handling service in response to price or quality incentives, the market is correctly defined to exclude these.[48]

88 Indeed, [redacted] recontracting is equally explicable by those mines *preferring* DBCT and obtaining either long-term access that was not available in the past, or accessing the separate secondary market for access to coal handling services because NQXT is not a close substitute for DBCT. That is consistent with the Aurizon Submission, which notes that "the continued demand for Goonyella to NQXT services is highly dependent on not being able to obtain Access Rights at DBCT and those Access Seekers obtaining access to NQXT on reasonable and non-discriminatory terms"[50] (in other words, Goonyella coal miners would not use NQXT if DBCT had sufficient capacity).

89 For those reasons, the QCA should not adopt a Hotelling model to define the market for coal handling services as contended for by NQXT.

6 Criterion (a): Errors in the Incenta Report

90 Five short points may be made about the Incenta Report that is concerned with whether Criterion (a) is satisfied.

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45 NQXT's Submissions at [348].
46 First Houston Criterion (B)-(D) Report at [107], [139].
47 First Houston Criterion (B)-(D) Report at [144]-[160].
48 First Houston Criterion (B)-(D) Report at [172].
49 NQXT's Submissions at [355(b)].
50 Aurizon Submissions, p 7.

6.1 Regulatory Difficulties are Overstated

91 Throughout his report, Mr Balchin seeks to draw a distinction between the benefits that may follow from declaration with what is likely to occur in respect of the regulation of prices.[51]

92 In doing so, there is a general air of catastrophising in both NQXT's submissions and Mr Balchin's report about the effect that a declaration of a service would have on the market for coal handling services—and the regulatory processes that might follow.[52] Mr Balchin particularly places emphasis on his view that if declaration occurs:

> *… the **most likely outcome**…is that the QCA **will**…implement what is essentially an ex ante review of prices and other terms of access…there would be a **strong likelihood** that the QCA would be asked to arbitrate the terms of access. [emphasis added]*[53]

93 In Mr Balchin's view, this may result in the QCA having to confront what are said to be "complex regulatory issues" that may result in a price that is higher than what the parties may negotiate.[54]

94 In his further report, Mr Houston points out the difficulty with these concerns in the following terms:[55]

> *In my opinion, it is incorrect for Mr Balchin to contend that the 'most likely outcome' of declaration is that parties would neither be willing nor able to negotiate directly in the context afforded by declaration. In contrast to Mr Balchin's contended 'most likely outcome', I note that the owner of DBT struck ten year agreements with all its customers under what it described as a 'light-handed regulatory framework'. This suggests that there is ample scope for commercially agreed access to infrastructure for which a service has been declared.*

95 The QCoal Users agree with this proposition, as well as Mr Houston that it is difficult to reconcile Mr Balchin's views that:

(a) on the one hand, without declaration, the parties can be expected to negotiate effectively; and

(b) on the other, that declaration would remove the likelihood of negotiations being effective.

96 The QCoal Users also agree with Mr Houston's conclusion that the effect of declaration would be to facilitate efficient access negotiations and to narrow the scope of disputes. As is evidently apparent from Adani's historical conduct set out in section 8 below — the existing world without declaration has not resulted in effective negotiation.

97 Further, the proposition that the QCA may have difficult tasks imposed upon it in being asked to impose a regulatory environment—and that this may increase prices—should not be accepted.[56]

98 *First*, the QCA is a sophisticated regulator which has regulatory mechanisms available to it the effect of which are ultimately to facilitate effective negotiation. While doing so may require it to address issues such as valuing the initial regulatory asset base,[57] or fluctuating demand,[58] it could not credibly be suggested that the QCA could not undertake those tasks.

99 *Second*, it is most unlikely that a regulated regime would result in increased prices. At present, NQXT is a monopolist that is relatively unconstrained in its exercise of market power, with an incentive to achieve the highest price available to it, regardless of whether that is efficient. There is no suggestion that its price setting in the New Standard Agreement negotiations has been tethered by some assessment of efficient pricing. But in a negotiated

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51 Incenta Report at [12].
52 Incenta Report at [11].
53 Incenta Report at [76] as quoted in Further Houston Report at [20].
54 Incenta Report at [10]; NQXT Submissions at [127].
55 Further Houston report at [22].
56 Incenta Report at [10].
57 Incenta Report at [9(a)].
58 Incenta Report at [9(b)].

world that is subject to QCA regulation, that regulation applies an appropriate counterbalance in circumstances where one market participant has clear market power.

100 However, even if the result of regulation would be higher prices for coal handling services, that would not be relevant to the question of whether criterion (a) is satisfied—as it is not the price for access, but certainty of access, that is material to whether competition is promoted in a dependent market.

6.2 No Cost Benefit Analysis is Required

101 Relatedly, Mr Balchin makes the express assertion that "for price regulation to be justified in the context of the Terminal, the benefits expected from this would need to be commensurately large relative to downside risks of regulation."[59]

102 Section 76(2)(a) of the Act is not a cost-benefit analysis at large. Rather, it is concerned with whether a material increase in competition would be *promoted* and requires an assessment of the prospects of competition that will or may arise from reasonable terms of access.

103 The test does not require the lengthy weighing and offsetting exercise contemplated by Mr Balchin—and does not admit of any analysis that is directed to whether the cost of regulation (borne by participants in the market which is to be regulated) outweighs the promotion of competition in a dependent market. The connection between those two concepts can only arise if there was reason to think that costs incurred by the regulator in regulating the market—or the parties themselves—would influence the competitive dynamics of the dependent market.

104 But there is no suggestion of that being likely in respect of dependent coal tenement markets (or any other dependent market). And as any such costs are likely to be borne equally by all participants in the relevant dependent market, the critical feature of any factor that distorts competition—being a factor that affects one, but not other, participants—is not present.

105 Mr Balchin goes on to say that Adani's own use of the terminal is protected by referring to s 119 of the Act.[60] To support this conclusion, he refers to s 119 of the Act that appears in "Division 5 Access disputes about declared services" and specifically "Subdivision 3 Arbitration of access disputes and making of access determinations". These sections have nothing to do with whether or not the QCA should recommend that a service be declared.

106 But in any event, the QCoal Users do not contend that Adani cannot legitimately use the Terminal. The concern raised by the QCoal Users is in respect of a vertically integrated series of entities is that other users do not have access to the terminal on reasonable terms and conditions and Adani will continue to self-preference, thereby distorting competition in dependent markets.

6.3 DBCT Provides no Constraint

107 Mr Balchin also contends that NQXT's current offers to users are constrained by competition from DBCT and that NQXT's pricing is reasonable because:[61]

> *It is evident that NQXT's pricing is constrained by direct competition from the DBCT,* [redacted]

108 The QCoal Users agree with Mr Houston's conclusion in respect of this assertion that *"In my opinion, this is not strong evidence of effective negotiation giving rise to 'reasonable' prices. Rather, any monopolist will 'factor in' prices for out-of-market constraints in determining its profit maximising price, but this is not evidence of the existence of any close constraint that inhibits the exercise of substantial market power"*. [62]

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59 Incenta Report at [12].
60 Incenta Report at [116]-[117].
61 Incenta Report at [69].
62 Further Houston Report at [25].

109 Further, this pricing constraint also needs to be read in the context of only operating as an effective mechanism on users who *have a choice* of railing to either DBCT or NQXT. As set out above, because of the nature of the CQCN, a number of users have no choice but to use NQXT. For those users, DBCT offers no real constraint.

6.4 Profit maximisation does not necessarily align with throughput maximisation

110 Mr Balchin goes on to argue that Adani has an incentive to maximise throughput.[63] At various points, NQXT repeats that contention as an answer to the concern that it will increase prices.[64]

111 But the asserted incentive does not exist. Up until a point, NQXT has a profit maximising incentive to have users other than Bravus utilise the Terminal. But it does not follow that the profit maximising path for NQXT is to increase the supply of handling services to other users at the Terminal as much as possible if, instead, it can supply fewer handling services at a higher price. As was recognised by the QCA in the DBCT decision, a monopoly supplier's incentive is *to maximise profit*, and this can be achieved by charging more even if this reduces volume.

112 Nothing that Mr Balchin says explains why the position is any different for NQXT.

6.5 Coal haulage services

113 Finally, Mr Balchin argues that declaration "*cannot influence the conditions for competition in the market for rail haulage*".[65] This argument is based on "*the fundamental structure of the industry*". It ignores, however, that NQXT has both the ability and incentive to hinder or prevent users of NQXT (other than Adani) from using the Newlands System.[66]

114 There is a significant capacity constraint on the Newlands System. [redacted] NQXT, as part of the Adani group, has an incentive to make more capacity on the Newlands System available for Bravus by reducing the use of the Newlands System by other users.

115 One way to do so is by hindering or preventing other users from using the Terminal. That is because the reason for users to use the Newlands System is to haul coal to the Terminal to use the coal handling services at the Terminal. If a user is prevented or disincentivised from using the Terminal, they will, in turn, be prevented or disincentivised from using the Newlands System.

116 NQXT (or APO) has the ability to hinder or prevent users of NQXT (other than Bravus) from using the Terminal through its control of the Terminal's operations, whether informally or by changing the terminal regulations at the Terminal.

117 Further, the Adani Group is also in a position to leverage its vertically-integrated operations to take advantage of ad hoc services on the rail network because it has access to its own above rail fleet, which is not a resource available to other Terminal users. Again, this provides both the incentive and the ability to operate the Terminal in a way that favours the Adani Group and disadvantages other users and participants in the coal chain.

7 Current and historical conduct not proof of competitive outcomes

118 NQXT also advances the overarching proposition that [redacted]

63 Incenta Report at [17].
64 NQXT Submissions at [270], [306], [328].
65 Incenta Report at [34].
66 Further Houston Report at section 2.4.
67 Smith Statement at [211].
68 NQXT Submissions at [70].

119 That proposition should not be accepted:

(a) The existence of commercial negotiations between the parties does not prove the existence of competitive outcomes for users. It merely proves that the price which NQXT has offered those users for access (even after negotiations) is less than the price for access which would make it no longer profitable for producers of coal to use the Terminal.

(b) The New Standard Agreement, although arising out of commercial negotiations, has not resulted in competitive outcomes for users.

(c) Further, the proposition ignores the fact that the recent conduct of NQXT can be explained only by its exploitation of its position as a monopolist provider of coal handling services, which position arises: (i) in respect of some users, because they have no choice but to deal with NQXT; and (ii) in respect of the remaining users, because once they have signed take-or-pay contracts, there is no feasible alternative but for those users to utilise the Terminal.

7.1 Commercial Negotiations are not Explained by Competitive Pressure

120 In addition to asserting that the market for coal handling service is competitive by reason of the mis-definition of the market (identified above), NQXT asserts that concessions made by it in certain negotiations with users are evidence of competitive constraints placed upon it (by the existence of DBCT as an alternative provider of services).[69]

121 There are two difficulties with that proposition.

122 *First*, the proposition is premised upon the notion that [redacted] That premise is not correct.

123 [redacted]

124 Given that the Collinsville Mine also sits north of the GAPE, for the reasons explained above, Glencore has no ability to access any other terminal to rail its coal from *that* mine. [redacted]

125 [redacted]

126 [redacted]

127 [redacted]

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69 NQXT Submissions at [107]-[117].
70 NQXT Submissions at [113].
71 Statement of Mr Smith at [121(d)].
72 CEG Report at [290].
73 Set out in the Smith Statement at [108]-[110].
74 Smith Statement at [108].
75 NQXT Submissions at [420].
76 CEG Report at [290], Table 9-2.

128 [redacted]

129 Rather, it is an elementary aspect of economic theory that each of Stanmore and Middlemount would, in the absence of capacity at DBCT that either can access, rationally agree to pay NQXT a handling charge up to whatever amount it would cease to be profitable for each of them to continue to mine and ship coal through the Terminal. Indeed, at least in the short run, each of Stanmore and Middlemount would rationally agree to pay the handling charges demanded by NQXT (after attempted negotiation), even if doing so was loss making but the price per tonne which it obtains in the market for its coal exceeds its average variable cost of mining and shipping those tonnes (the shutdown condition).

130 [redacted] evidences no more than that:

(a) it is in NQXT's interests to seek to extract as much economic surplus as it can; but

(b) as the market for the supply of coal handling services is not perfectly competitive and as there is imperfect information, NQXT will be unaware of each of the other user's shut down points (which will in all likelihood be different amongst different users).

131 In those circumstances, it is to be expected that negotiations can occur and that the parties' various bargaining strategies will produce different outcomes in terms of both price and the terms of the various user agreements. But there is no plausible basis to conclude that those negotiations have been primarily driven by competitive pressures.

7.2 New Standard Agreements are not the result of bargaining constrained by competition

132 As an additional justification for its position, NQXT asserts that its proposed "New Standard Agreement" is objectively reasonable and should be seen to be such in comparison to the legacy user agreements.[78] That proposition, and the reasons advanced for it, ought also to be rejected.

Fixed-Pricing Provisions

133 NQXT first contends that the New Standard Agreements have certainty of pricing, and that this provides users with an advantage over the legacy user agreements, [redacted]

134 At a very high level, it is axiomatically correct that a non-variable price removes the risk for users of the price increasing every five years if other users do not renew.

135 However, that risk is illusory given the proposed terms of the New Standard Agreement.

136 [redacted]

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77 Smith Statement at [160(a)].
78 NQXT Submissions at [118], [120].
79 NQXT Submissions at [265(a)].
80 New Standard Agreement at cl 4.1, Schedule 5.
81 New Standard Agreement at cll 4.4 to 4.8.

137 In every material respect, the Port Charge is therefore equivalent to the TIC that was imposed on a take-or-pay basis under the legacy user agreements. [redacted]

	2022/23	2023/24		2024/25	2025/26	2026/27
TIC $/tonne	[redacted]	[redacted]		[redacted]	[redacted]	[redacted]

138 In seeking to justify that increase in price, Adani asserts that the TIC "does no more than provide for it to maintain existing total revenue over the next decade, in the face of falling volumes". But that proposition cannot be accepted.

139 [redacted]

(a) if Adani's "High" tonnage forecast figures are adopted;

	2022/23	2023/24	2024/25	2025/26	2026/27
TIC $/tonne	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Forecast inflation	2.26%	2.26%	2.26%	2.26%	2.26%
NPV of the Annual Revenue Requirement ($'000)	[redacted]				
NPV of the Annual Maximum Tonnage for all Access Holders ('000)	[redacted]				
WACC, post-tax nominal	[redacted]				
WACC, real	[redacted]				

(b) if Adani's "Low" tonnage forecast figures are adopted, which would result in a *NPVofTonnes* of 114,595, the TIC over the five-year period would be calculated as follows:

	2022/23	2023/24	2024/25	2025/26	2026/27
TIC $/tonne	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

82 NQXT Submissions at [405].
83 An *NPVofTonnes* of 155,626 derived from a WACC of 3.09% and contracted tonnes of 35Mt in FY23 and FY24, 34.71Mt in FY25, 34.5Mt in FY26, and 30.9Mt in FY27.
84 Smith Statement at [201]-[202].

140 Indeed, if the TIC were calculated using those same revenue figures but on the assumption that the only user would be Bravus, shipping its publicly stated target of 16Mt of coal [redacted] Schedule 7 of the legacy user agreements would have produced a TIC, given an *NPVofTonnes* of 73,077, as follows:

	2022/23	2023/24	2024/25	2025/26	2026/27
TIC $/tonne	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

141 It follows that while a fixed Port Charge may well result in some illusory risk being shifted from the users to NQXT, NQXT's proposed New Standard Agreement seeks to set a Port Charge that is so high that it is beyond what any third-party user of the terminal could reasonably expect to pay under a legacy user agreement unless no user other than Bravus were willing to agree to use the Terminal. It is not a charge which allocates risk to both the users and NQXT.

142 *Second*, NQXT asserts that its proposed Port Charge and handling charges (that is, the total cost charged to users) are only marginally higher than at DBCT.[86] The difficulty with that proposition is that NQXT's submission depends upon a contention that the TIC at DBCT in the years FY26 to FY32 will be $4.43 to $6.68. These are figures said to be drawn from a presentation attached to documents prepared for Dalrymple Bay Infrastructure Limited's 2024 AGM.[87] However, that document in fact shows a projected TIC of (in most cases) $1 per tonne less at DBCT in each of FY26 to FY31.[88] An updated version of the same graph published in August 2025 shows even lower projected TIC figures.[89]

143 [redacted]

144 That fact significantly increases the magnitude of the risk to users that NQXT asserts it is alleviating by offering a fixed price under the New Standard Agreement. The point may be explained this way:

(a) Under the legacy user agreements, users were at risk that:

(i) [redacted] NQXT might release a user from its obligations under a legacy user agreement—rather than simply accepting the benefit of the take or pay obligations—with the consequence that the contracted tonnes would decrease for a period of time and the users' TIC charge would increase at the next price review and HCF charges would increase immediately; or

(ii) [redacted]

(b) It is true that under the New Standard Agreement, the first of these risks is eliminated—because there is no price review period during the term of the agreement. However, this risk is something which was only ever brought about by

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85 [redacted]

86 NQXT Submissions at [412].

87 See NQXT Submissions f.n. 194 slide 11: https://investors.dbinfrastructure.com.au/FormBuilder/_Resource/_module/QffK5lpyyU-JL7Cq6IFs5Q/file/report/2024_Annual_General_Meeting_Investor_Presentation.pdf

88 See slide 11.

89 Dalrymple Bay Infrastructure 2025 Half Year Financial Results – Investor Presentation at Slide 11: https://investors.dbinfrastructure.com.au/FormBuilder/DownloadFile.axd?file=/Report/ComNews/20250825/02982668.pdf

90 New Standard Agreement at cl 2.7.

91 See, e.g., the Sonoma User Agreement.

NQXT's self-interested decision to agree to release one user from their agreement in a manner that extracted part of the present value of the take-or-pay obligations for themselves while socialising the cost of the uncontracted capacity on the remaining users (addressed further below).

(c) On the other hand, the second risk is one which is ameliorated only in the sense that price reviews will happen every 10 years rather than five. But at that point, NQXT has every incentive to demand a price which it considers protects it against the risk of non-renewal over the following 10-year period. Because the Northern Mine users have no credible threat of utilising a different service provider, NQXT has market power to do so. Accordingly, fixing prices for 10 years rather than five simply changes when the risk of prices rising from falling contracted tonnages affects the users.

145 In this context, NQXT repeats its long-standing criticism of the schedule 7 formulas in the legacy user agreements that that schedule did not deliver an NPV=0 outcome for the owner of the Terminal, as it did not allow for NQXT to recover all economic costs that it incurred.[92]

146 [redacted] In doing so, it sought to approximate a regulatory environment that, consistently with the pricing principles in s 168A(a), allowed a price for access that would "generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved".

147 In proposing the New Standard Agreement, it cannot be expected that NQXT, exercising the market power available to it, would choose to accept anything less than such a return. Indeed, in exercising the market power available to it from the constraints on users switching, it would be expected that NQXT would seek to have the New Standard Agreements set a price that is higher than the NPV=0 outcome for all economic costs that NQXT contended the legacy user agreements ought to have provided to it.[94] It should therefore be assumed that the price set by NQXT will always exceed the efficient price that the pricing principles would produce.

Other Identified "Benefits"

148 Although NQXT asserts that the development of the New Standard Agreement "reflects benefits for users", aside from the fixed Port Charge discussed above, [redacted]

149 Of course, as the general position for users is that they have no capacity to ship coal through an alternative terminal, the only benefit to users of this change is if it has become unprofitable for the user to continue to ship coal and it wishes to seek production but cannot do so because of the take-or-pay arrangements. In those circumstances, if NQXT defaulted the user may be able to take advantage of the shorter period for termination. But in all other circumstances, the users have no economic incentive to terminate their user agreements for default by NQXT.

Detrimental Changes

150 On the other hand, NQXT has introduced a number of detrimental changes in the proposed New Standard Agreement, and these changes reflect NQXT's exercise of its market power.

151 [redacted]

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92 NQXT Submissions at [408].
93 See, Schedule 7 of the legacy user agreements at [2.2].
94 Partial Award of the Hon Michael McHugh SC dated 15 May 2019 at [40]-[46].
95 [redacted]
96 NQXT Submissions at [259(f)].

152 None of those inefficient incentives, nor how the "commercial framework" is undermined, is explained. The assertion calls for explanation when both the legacy user agreements, and the standard DBCT User Agreement approved by the QCA contained such a term.[97] The restriction on assignment and secondary trading would *prima facie* reinforce NQXT's market power, and its ability to control and restrict the supply of services at the Terminal.

153 [redacted] Doing so would only result in paying for capacity that that user could not use, in the hope of selling it to third parties. At present, those third parties can already seek spot access to the Terminal directly from NQXT. There is no risk of banking in the declaration period.

154 [redacted]

155 [redacted]

156 [redacted]

157 [redacted] It is said to be justified on the basis of "the changing commercial environment and increased risks facing the coal industry".

158 However, there is no evidence to suggest that additional credit support is in fact required because of changing factors in the coal market. To the contrary, aside from WICET, NQXT identifies no other take-or-pay arrangement in respect of which credit support is mandatory. It is not on the Aurizon network. Nor is it mandatory at DBCT.[101]

159 Further, were the risks affecting the coal industry sufficiently great that any of the users lacked good financial standing, NQXT has had capacity under the legacy user agreements to demand credit support. It has only done so in the past as part of a disingenuous scheme.[102] By its own conduct, NQXT demonstrates no actual need for credit support from users.

160 Moreover, the proposition that credit support may be required from users because of heightened risk in the industry sits uncomfortably with NQXT's assertion that the Terminal cannot meet total foreseeable demand.[103] While the QCoal Users contend that that assertion is wrong and the Terminal can meet total foreseeable demand at least cost, NQXT's assertion to the contrary undermines its assertion that it requires credit support from users.

Explanation for Terms of New Standard Agreement

161 Once regard is had to these features of the proposed terms of access which NQXT intends to offer, it could not be concluded that those terms are reasonable. Although they are based on access arrangements which are similar to the legacy user agreements and access terms at DBCT, the terms seek to extract additional economic rents from the users (through increased

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97 Legacy User Agreements at cll 14.1-14.4; DBCT Standard Access Agreement at cl 11.2.
98 NQXT Submissions at [120(d)].
99 NQXT Submissions at [259(g)(i)].
100 NQXT Submissions at [259(g)(ii)].
101 DBCT Standard Access Agreement at cl 29.3
102 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd & Ors* [2020] QSC 260 at [119]-[116].
103 NQXT Submissions at [495].

prices) and to impose additional burdens on coal producers which increase the cost of production. In doing so, NQXT promotes the production of coal under the efficient level of production by increasing the cost of production and decreasing the incentive for expansions in mines or the development of new projects.

162 Declaration, which it can be expected would result in NQXT being required to offer access on reasonable terms and conditions similar to those offered at DBCT because those terms have previously been approved by the QCA, is therefore more likely to promote production closer to the efficient level of production in the market serviced by NQXT. In doing so, the public interest is likely to be served by:

(a) increasing the royalties likely to be paid by miners to the State; and

(b) promoting additional investment in mining, with the consequent economic benefits that will flow from additional investment.

7.3 Evidence of Use of Market Power by NQXT

163 NQXT further asserts that there is no evidence of self-preferencing or market failure.

164 Given that NQXT came to be the owner of the Terminal pursuant to arrangements which required it to be assigned the benefit of the User Agreements in substitution for a government-owned corporation that had agreed to enter into long-term take-or-pay contracts that approximate a regulated environment, it would not be expected that NQXT has yet had the opportunity to misuse its market power.

165 Therefore, were it the case that there was no evidence of a misuse of market power by NQXT to date, that would not assist it in demonstrating that an undeclared environment is likely to produce reasonable terms and conditions for access that are in the public interest. It would simply demonstrate that the constraints imposed by the legacy user agreements were effective in constraining the exercise of market power while those constraints remained in place. It would provide no confidence about the prices or other access terms NQXT will seek to impose in the future.

166 However, the proposition that there is no evidence of self-preferencing or market failure is incorrect. NQXT's use of its market power for the benefit of it and its related parties, at the expense of the users, can be seen in both its approach to management of access to the Terminal, as well as its approach to pricing arbitrations.

Dealings with Queensland Coal Pty Limited

167 At [34] of the Application, the QCoal Users have described the transactions between NQXT, a subsidiary of Rio Tinto called Queensland Coal Pty Limited (**QCPL**), and Bravus that were the subject of a proceeding in the Supreme Court of Queensland.

168 Those transactions took place at a time where the Terminal was fully contracted, such that the cost of operating the Terminal was shared among all users across 50Mt of contracted capacity. At that time, Bravus had no clear pathway to obtain access to the Terminal for substantial tonnage prior to the commencement of FY23.

169 Accordingly, the effect of those transactions was, in substance, that:

(a) Bravus obtained access to the Terminal from 1 July 2022, which it required for the operation of its proposed mine and could not have otherwise obtained at the time.[104]

(b) NQXT received the sum of $255 million which it had negotiated as the agreed price to permit QCPL to be released from its take-or-pay commitments, which it received to pay down its debts, without a real obligation to use any of the money obtained ostensibly as a security deposit for that purpose.[105]

(c) The aggregate contracted tonnage at the Terminal decreased by approximately 20% for FY17 to FY22. Having voluntarily released QCPL from its obligation to take-or-pay for its contracted tonnage, NQXT then sought to charge the Users (and did so

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104 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* [2020] QSC 260 at [144].

105 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* [2020] QSC 260 at [127]-[129]; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* (2021) 399 ALR 302 at [41].

successfully) on the basis that QCPL was no longer contracted, without accounting for any of the money that it had received. In effect, NQXT arranged the transaction to enable it to be paid twice for the same tonnage.[106]

170 Ultimately, despite initial findings of the Supreme Court of Queensland, NQXT was found not to have engaged in conduct that was unconscionable within the meaning of the *Australian Consumer Law*.

171 However, that conclusion does not gainsay the proposition that NQXT was only able to arrange a series of transactions like this because of its position as a monopolist with market power. That power arose (and continues to arise) from the fact that the Terminal is the only available port for some of the users,[107] and that the market for the supply of coal handling services is not competitive, particularly because users are required to sign up to long-term take-or-pay arrangements.

172 But for that power, NQXT would have been dis-incentivised from entering into such a transaction, because users could have credibly threatened to switch suppliers if NQXT insisted on seeking to pass through the artificially increased price which it had manufactured. But instead, NQXT could, and did, increase prices in an arbitrary (albeit lawful) manner without any credible risk of losing contracted users.

173 [redacted]

174 [redacted]

175 [redacted]

176 Therefore, the effect of NQXT's conduct was to sterilise substantial capacity at the Terminal for a period of five years (there being a necessary lag between when QCPL was released from its obligations and when any other user might have been able to take over that capacity), and at the same time limit the ability for other users to take over that capacity by permitting Bravus to take over QCPL's capacity (but only from the commencement of FY23). The only reason for NQXT to engage in this conduct was to obtain a windfall profit and at the same time benefit Bravus. It is a clear example of self-preferencing. There can be no confidence that NQXT would not seek to engage in similar conduct in an unregulated future environment.

Conduct of Arbitral Proceedings

177 Similar conclusions may be drawn about NQXT's likely future use of its market power in its conduct of pricing arbitrations under the legacy user agreements.

178 As referred to in the Application, NQXT and four users participated in arbitrations in respect of the pricing periods starting on both 1 July 2017 and 1 July 2022. Those arbitrations followed NQXT proposing a TIC in respect of each pricing period, which was disputed by those users as reflecting an accurate application of the Schedule 7 principles.

179 In each arbitration, the users established that the TIC that had been proposed was well in excess of that which ought to have been proposed, having regard to Schedule 7.

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106 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* [2020] QSC 260 at [140]-[141]; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* (2021) 399 ALR 302 at [163].

107 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* [2020] QSC 260 at [1]; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* (2021) 399 ALR 302 at [2].

108 Letter from Adani Abbot Point Terminal Pty Ltd to QCoal Group dated 1 September 2016.

109 Letter from Adani Abbot Point Terminal Pty Ltd to QCoal Group dated 17 November 2016.

110 Letter from Byerwen to Adani Abbot Point Terminal Pty Ltd dated 15 December 2016.

111 Affidavit of Deborah Silver affirmed 29 April 2019 at [69].

112 Letter from Adani Abbot Point Terminal Pty Ltd to Byerwen dated 16 January 2017.

180 For the period commencing 1 July 2017, NQXT contended that a proper application of Schedule 7 resulted in a TIC of [redacted] for FY17 (for the QCoal Group).[113] The Tribunal determined that a proper application of Schedule 7 produced a TIC [redacted].[114]

181 For the period commencing 1 July 2022, NQXT contended that a proper application of Schedule 7 resulted in a TIC of [redacted] for FY22 (again for the QCoal Group).[115] The Tribunal determined that a proper application of Schedule 7 produced a TIC of [redacted].[116]

182 While the users were not successful in respect of each argument that was made, the arbitral process demonstrated that on each occasion it was provided with the opportunity to do so, NQXT sought to obtain a price for access far in excess of its Schedule 7 entitlements. It was only the intervention of a quasi-curial process that prevented NQXT from simply imposing those prices.

183 Similarly, it was only through having to participate in curial processes that NQXT complied with its obligations to provide information under the legacy user agreements. Prior to being compelled to do so by putting on evidence, NQXT refused to provide detailed information about the reasonableness of the handling charges which were imposed on users.[117]

184 In the absence of a declaration, there is no reason to consider that the incentive for NQXT to seek to extract maximum economic rents from the Users would be any different. Instead, those incentives are likely to be magnified because the proposed New Standard Agreement contains:

(a) no scope, other than at the pre-contractual stage, to negotiate the Port Charge; and

(b) no scope for users to challenge the handling charges, which the agreement contemplates will simply be agreed between the Operator and NQXT.[118]

185 [redacted] And there is nothing in the New Standard Agreement which would require NQXT to charge Bravus the same amount as other users. Even if Bravus did pay the same amount, it would simply be a payment to a related company at no cost to the group overall.

186 Consequently, NQXT, as an entity within the Adani group, has positive incentives not to charge for only the efficient operation of the Terminal, as the corporate group will profit from inefficient operations (and not necessarily at the expense of Bravus).

187 It might be expected users subject to this type of conduct would seek to avoid contracting further with NQXT. [redacted] However, for those users who do not have access to DBCT, those users continue to have no credible threat of switching suppliers, so as to ameliorate the strength of the incentive for Adani to seek to profit maximise in this way.

Consequences of Non Declaration

188 In a world without declaration NQXT's incentive to continue to act in this way promotes the production of coal under the efficient level of production by increasing the cost of production and decreasing the incentive for expansions in mines or the development of new projects.

189 For similar reasons to those set out above, it would be expected in a world with declaration that the QCA would impose requirements for efficient and reasonable pricing for access to the Terminal, thereby promoting production closer to the efficient level of production in the market serviced by NQXT. Again, doing so promotes the public interest by promoting the economic benefits which would follow from production of coal at a more efficient level, rather than promoting the extraction of economic rent by a multi-national corporation.

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113 Letter from Adani Abbot Point Terminal Pty Ltd to QCoal Group dated 31 October 2016.
114 Final Award of the Hon Michael McHugh SC dated 23 August 2019 at Order 11.
115 Written Opening Submissions of NQXT dated 24 November 2023 at [465].
116 Partial Final Award of the Hon Wayne Martin KC dated 10 December 2024 at Order 1.
117 *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* [2020] QSC 260 at [280]; *Adani Abbot Point Terminal Pty Ltd v Lake Vermont Resources Pty Ltd* (2021) 399 ALR 302 at [262].
118 C.f. Legacy user agreements at cl 7.6(b) with New Standard Agreement, cl 6.
119 New Standard Agreement cl 6.2.

8 Criterion (d) promotion of public interest

190 NQXT contended in their submission that declaration would not promote the public interest as it would impose unnecessary costs, inflexibility and regulatory risk and would undermine investment confidence. These concerns lack a foundation.

191 *First*, NQXT relies on demand uncertainty for coal to say that declaration is inappropriate. However, the fundamental principles of an access regime apply in a market with uncertain demand or consistent, predictable demand. In fact, if users face uncertainty about the demand or market price for their product and are considering whether to continue or maintain their operations, it may be even more important that they have confidence of being able to access the Terminal on reasonable terms and conditions.

192 *Second*, NQXT oddly suggests that an access declaration would send a powerful and adverse signal regarding regulatory and sovereign risk for prospective investors in Queensland's infrastructure and that any declaration would be "for the first time ever in this context". Access regimes are not a new innovation. The Act itself — and the access regimes specifically — have been in force since 1997, well before Adani purchased the terminal.

193 Moreover, Queensland infrastructure already contains three declared services (including DBCT) all of which function well and promote the public interest. Far from signalling risk to prospective investors, an access regime and a declared service (as is the case with DBCT) signals to investors that they will not be forced to contend with misuse of market power with no recourse. Further, the access regime under the Act allows a service provider (such as an infrastructure owner) to continue to own, use and earn an appropriate return on their investment.

194 To the extent that NQXT seeks to argue against the existence of access regimes in general, that is plainly contrary to the provisions and policy of the Act, and cannot be accepted by the QCA.

195 In addition to issues relating to price, an access regime is also important to ensure that the facility will be properly maintained. This gives users confidence in being able to rely on the service remaining available and suitable for their needs and is a vital aspect of users being able to access the Terminal on reasonable terms and conditions.

196 *Finally*, the QCoal Users maintain the submission made in their original application as to why declaration of a service would promote the public interest. It is notable that NQXT did not respond to the QCoal Users' calculation of the significant loss of royalties that the Queensland Government may suffer as a result of the proposed price increase and mechanisms contained in the proposed New Standard Agreement. NQXT does not, however, forget to cite their own payment of royalties as an example of benefits for the coal sector and the state of Queensland.[120]

9 Conclusion

197 For these additional reasons, which are addressed in further detail in Mr Houston's Further Report and the statement of Mr Moore, the QCA ought to be satisfied that the four criteria are satisfied and that it would be appropriate to recommend to the Minister that the coal handling service at NQXT be declared a service under Part 5 of the Act.

120 NQXT Submissions at [517].