

Third party access to infrastructure

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National Competition Council

- Intergovernmental Agency
- Established under Part II of the Trade Practices Act
- Advises on application of access regulation
- Advises on effectiveness of State or Territory access regimes

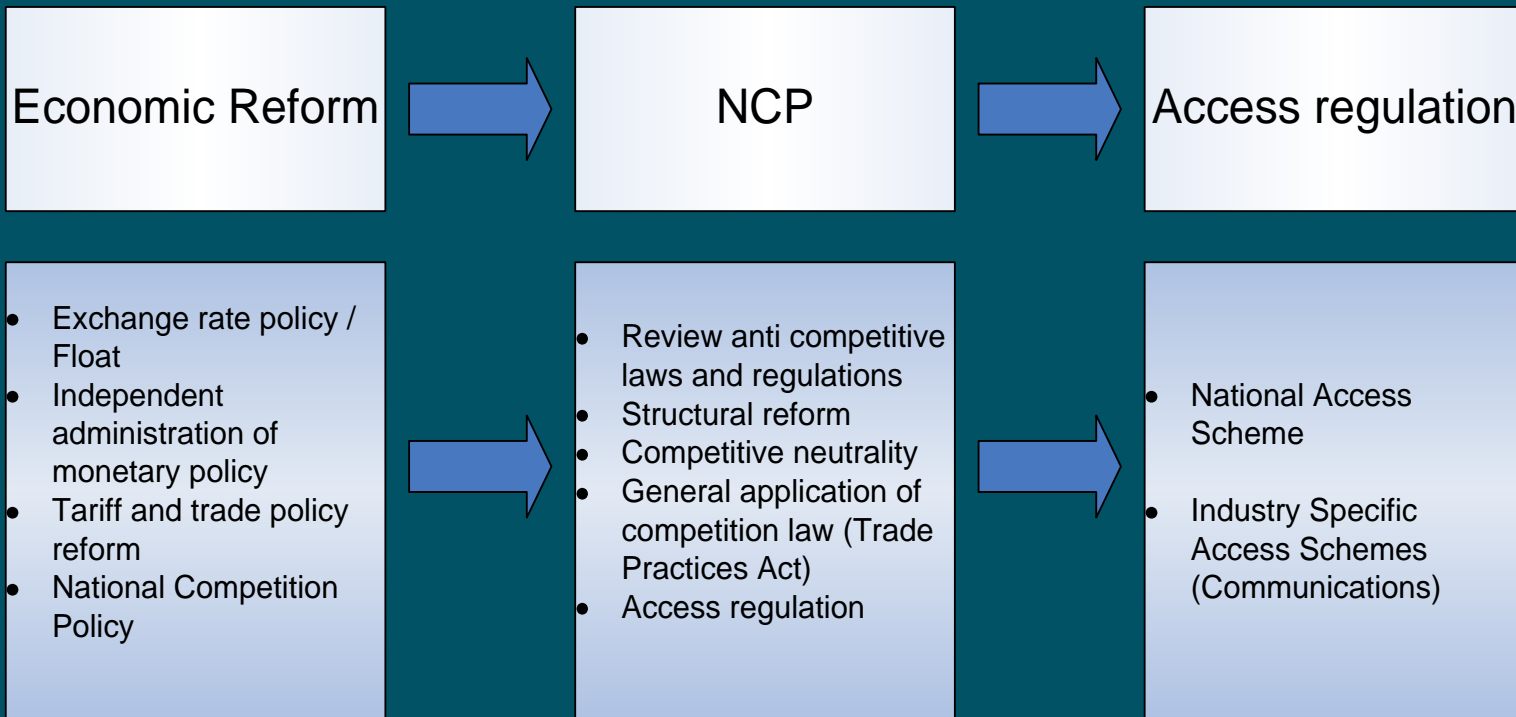


National Competition Council

- Council of up to 5 persons
 - Fixed term, part time appointments requiring Commonwealth and State approval
- Secretariat of 8-12:
 - Economists and lawyers
 - Public service appointments
- Cross sectoral responsibilities
- Ability to retain economic, legal and other experts



Microeconomic reform





“In some markets the introduction of effective competition requires competitors to have access to facilities which exhibit natural monopoly characteristics, and hence cannot be duplicated economically”

HILMER REPORT

August 1993

National Competition Council
growth, innovation, productivity



Balancing interests ...



Asset owners

“Appropriate” returns on investment

Investment in infrastructure

Participation & Consultation

Judicial review & oversight

Users, consumers

Access on “appropriate” terms, conditions and prices

Investment in infrastructure

Investment in dependent markets

Speedy decisions

Certainty



... and objectives



On the one hand

- Enhances competition in dependent markets
- Avoids duplication
 - Wasted resources
 - Multiplied environmental and similar effects

On the other

- May deter infrastructure investment
- May interfere with owner's operations
- May allow inefficient operations to thrive
 - Free riders
- Costly to implement



Alternatives



- Do nothing
 - Wasteful duplication or lack of competition
- General competition (antitrust) law
 - Indeterminate application
 - Inadequate remedies
- Public ownership and operation



Multiple approaches



State regimes

Ports, rail, grain handling, water

Coordinated State regimes

Electricity lines. Gas pipelines

Part XXIC

Telecommunications

Part IIIA

National access regime

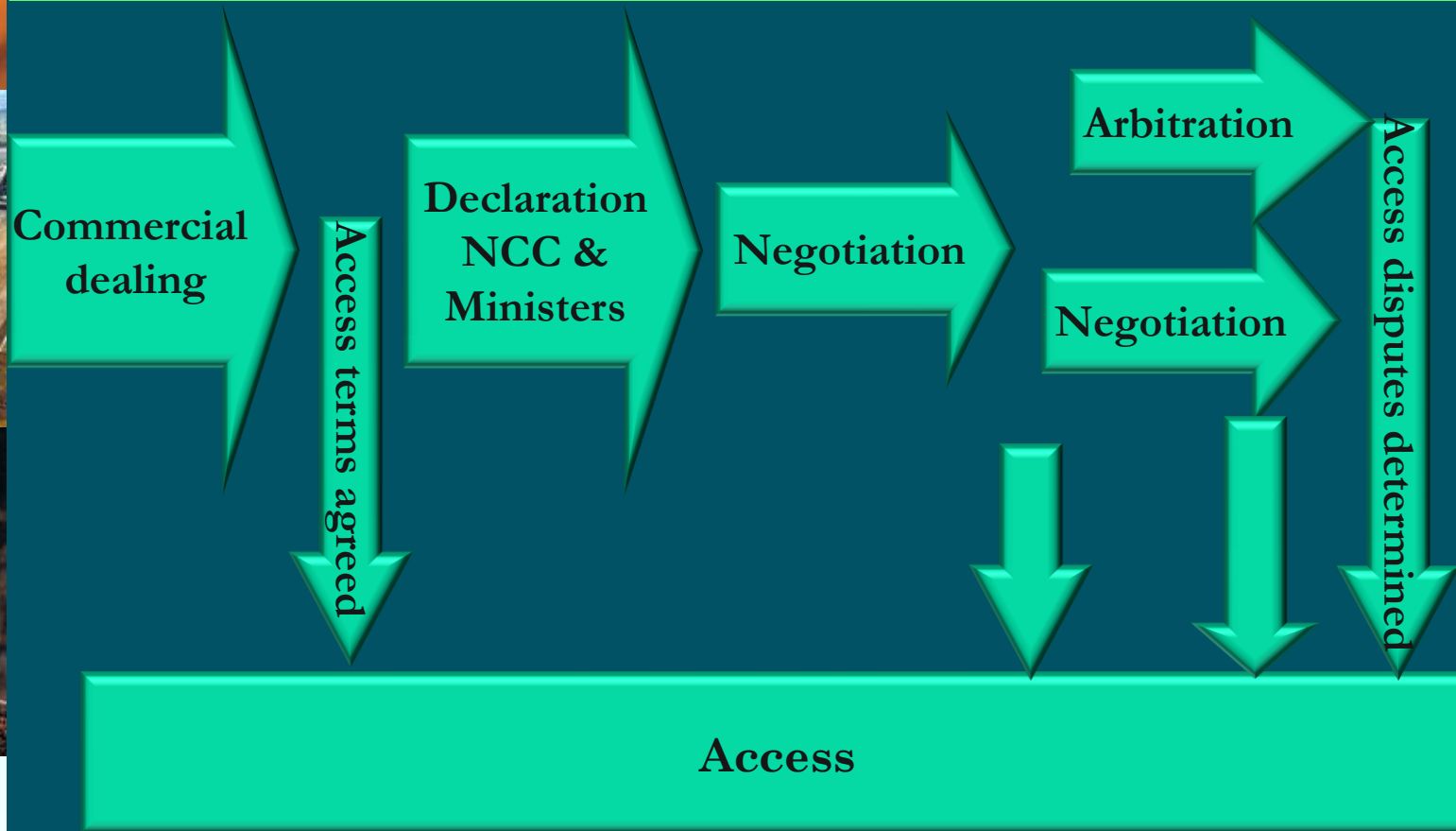


Part IIIA framework

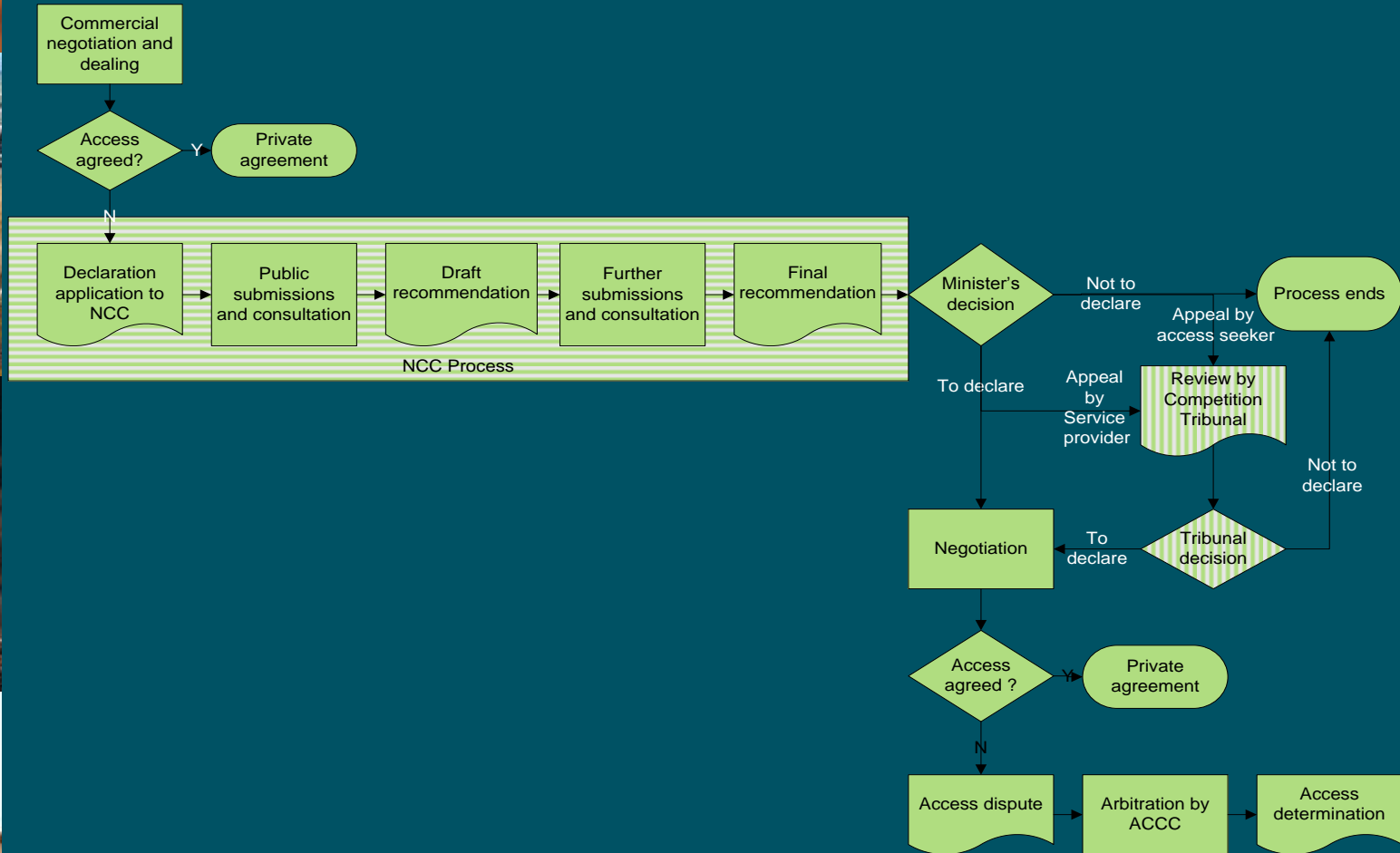
| Access option | Regulator |
|--|---|
| Private commercial negotiation and agreement | Not regulated |
| Effective State or Territory access regimes | NCC/Minister (Certification) then ACCC/State regulators |
| Access undertakings | ACCC |
| Declaration | NCC/Minister or Premier then ACCC |



Access via declaration



Declaration process



Declaration criteria

- (a) Material increase in competition in a dependent market
- (b) Uneconomical to develop another facility
- (c) Nationally significant
- (d) No undue risk to human health and safety
- (e) No effective access regime
- (f) Not contrary to the public interest



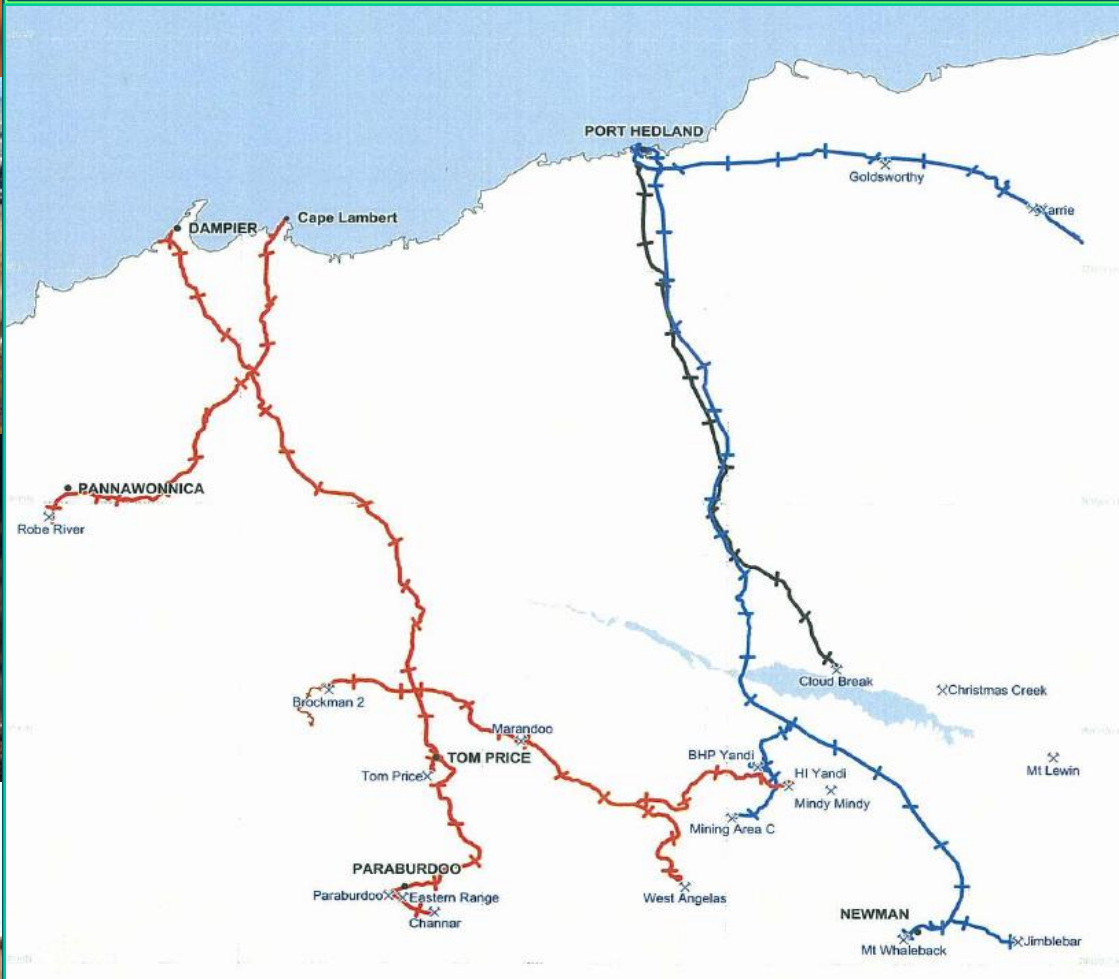
Pilbara rail access applications



- Mt Newman
 - Application in 2004
 - Point to point service
- Robe, Hamersley, Goldsworthy
 - Applications in 2007/2008
 - All points services
- Access to ‘below rail’ services (not haulage)



Pilbara railways



- Rio Tinto Iron Ore
 - Robe*
 - Hamersley*
- BHP Billiton Iron Ore
 - Goldsworthy*
 - Mt Newman (2006)
- Fortescue/TPI
 - TPI railway
 - Kennedy (Proposed)

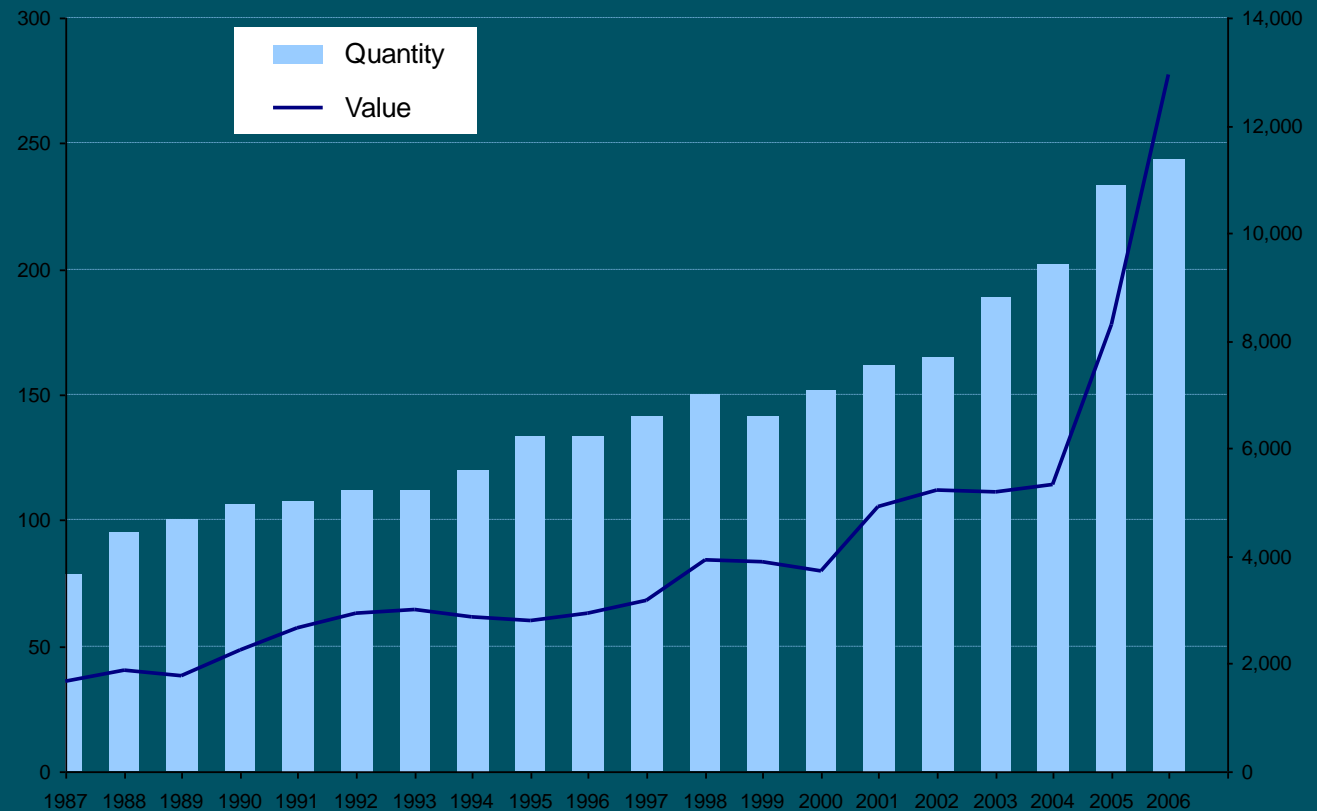


WA iron ore production



Million tonnes

\$ million



Source: WA Department of Industry and Resources



Approaches to Pilbara rail access



- State Agreement Acts
 - Deal with range of issues:
 - access (haulage)
 - Royalties, land leases etc
 - Ineffective to date, uncertain in application
- State access regime (proposed)
 - Provide for haulage
 - Economic Regulation Authority oversight
- Part IIIA



Criterion (a): Promotion of competition

- Dependent markets:
 - Haulage on each railway
 - Iron ore tenements in the Pilbara
- Compare state of competition with and without access



Dependent markets & competition



- Haulage of iron ore on each railway
 - Without access no service or a service provider monopoly
 - With access – TPI, other mining companies, other haulage providers, BHP Billiton, Rio Tinto
- Iron ore tenements in the Pilbara
 - Focused on iron ore given dominance in Pilbara
 - Access will increase prospects of development of stranded tenements
- Issues:
 - Claimed all part of one global iron ore market
 - Not distinct from market for service
 - Council cannot be satisfied without specifics as to customers etc



International iron ore market(s)

International iron ore market



Markets for:

- Transporting Ore
- Exploring & developing mining tenements



Criterion (b): Uneconomical to duplicate

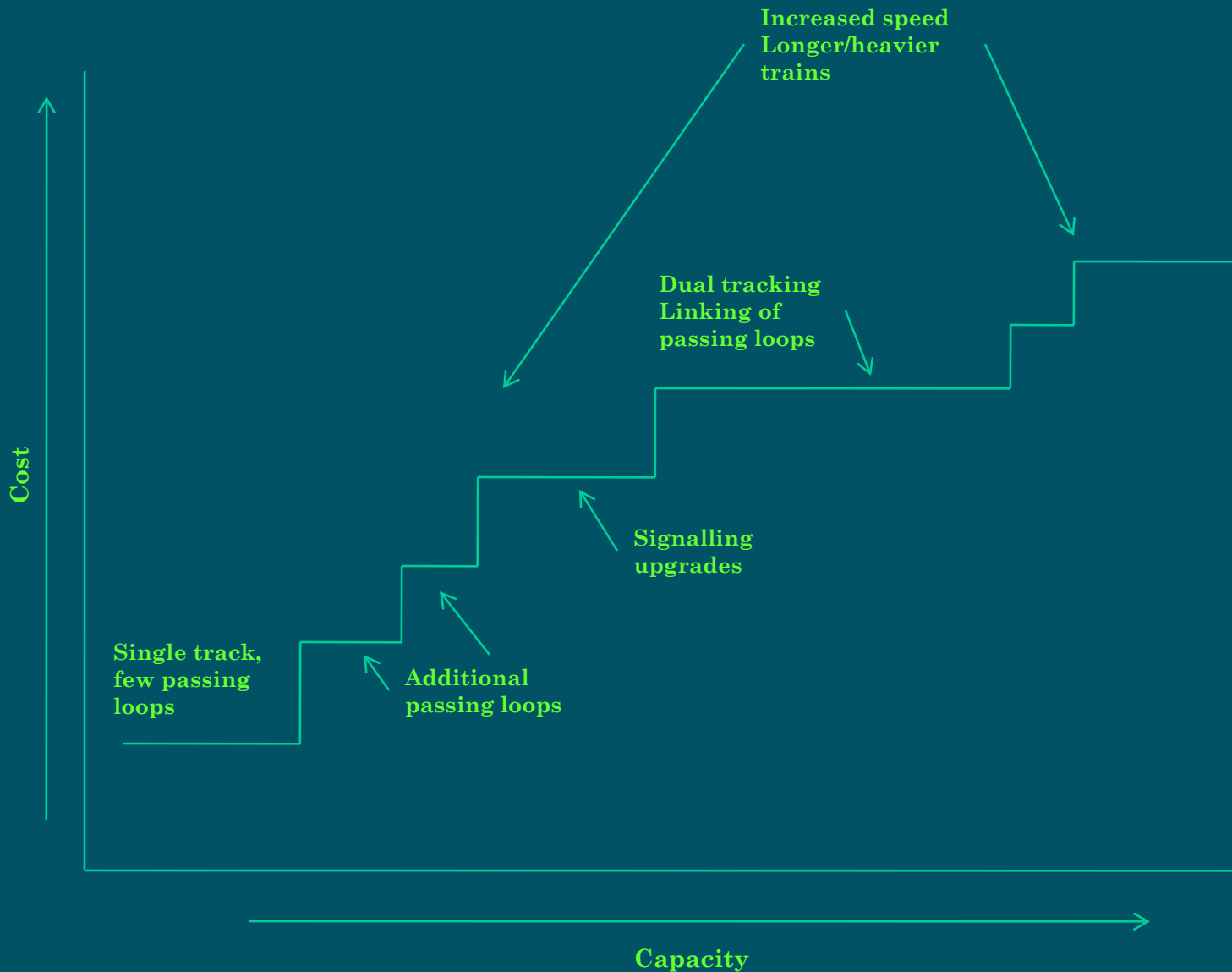
- National benefit (social) test rather than a purely commercial evaluation
- Natural monopolies where across all likely levels of demand one facility can serve the market at least cost:
 - Large and ‘lumpy’ investment
 - Relatively high capital (fixed) costs, relatively low operating (variable) costs
 - Very large economies of scale
 - Incremental expansion costs less than costs of duplication



Economic character of heavy haul railways

- Heavy haulage railways exhibit strong natural monopoly characteristics
- Economies of scale and scope not exhausted
- Even when likely demand may exceed capacity of railways in current/planned configurations expansion likely to be economical
- Archetypal natural monopolies





Criterion (f): Public interest

- Benefits

- A material promotion of competition in the market for haulage services for iron ore on each railway and in the market for iron ore tenements in the Pilbara
- Accelerated development of iron ore mines in the Pilbara by smaller mining companies and resulting additional iron ore exports
- Avoiding unnecessary and inefficient duplication of railway facilities
- Avoiding use of inefficient road haulage or other transport options
- Avoiding additional impacts on native title rights
- Reduced adverse impact on the environment



Public interest

- Costs

- Costs and feasibility of expanding the various railways
- Regulatory costs
- Loss of production
- Deterring or delaying optimisation of rail operations
- Deterring or delaying efficient investment
- Environmental costs
- Loss of ‘facilities-based competition’
- Diseconomies and inefficiencies of multi-user systems compared to single-user systems (Comparison with East Coast coal operations)
- Impacts of regulation



NCC assessment of public interest

- Benefits – significant
- Costs – limited
 - Comparisons with East coast coal operations of limited application
 - Ownership and operation unchanged
 - Vertical integration maintained
 - Dominant users with small number of customers for below rail services
 - Safeguard provisions limit scope for disruption
 - Complement to any state haulage regime



ACCC arbitration



Access prices must cover efficient costs of providing access & allow a commercial return on investment

Can require access seekers to take and pay

Must allow existing users sufficient capacity to meet their needs

Cannot cause third parties to become owners of a facility or an extension

Cannot require providers to pay for extensions to meet access seeker's needs

Must take into account the legitimate business interests of providers

Must provide for safe and reliable operation

Can dismiss vexatious, trivial or bad faith access disputes

Does not have to require access

