

EXECUTIVE SUMMARY

The *Queensland Competition Authority Act 1997* (the QCA Act) requires the Queensland Competition Authority (the Authority) to develop criteria to assist the Premier and the Treasurer (the Ministers) in deciding whether to declare a government business activity to be a government monopoly business activity.

The Criteria, originally issued in 1997, have been updated to reflect presentational changes introduced following the release of *Criteria for the Identification of Non-Government Monopoly Business Activities* in November 2008. The definition of a government business activity, to which the Criteria apply, encompasses both State and local government entities. References to local government entities have also been made explicit to reflect changes introduced to the QCA Act since the Criteria were initially developed. Nevertheless, the substance of the Criteria remains unchanged.

The test for identifying government monopoly business activities is based upon an assessment of whether these business activities have sufficient market power such that they are capable of persistently behaving in a manner different to that which would occur in a competitive market. In competitive markets, sellers increase their prices or reduce the quality of their products or services at their peril, as consumers are able to find alternatives relatively easily.

Where an incumbent possesses substantial market power, the rigours normally provided by competition to protect customers and to innovate are substantially weakened. This is likely to occur where:

- (a) a business activity enjoys a substantial influence in a market;
- (b) a business activity can act to an appreciable degree independently of its competitors¹;
or
- (c) a business activity's competitors are unable or unwilling to effectively compete with it.

Figure 1 gives a simplified description of the framework within which the Authority recommends government monopoly business activities be identified. Basically, a three-step process is envisaged:

step 1 – determines whether the activity is a government business activity;

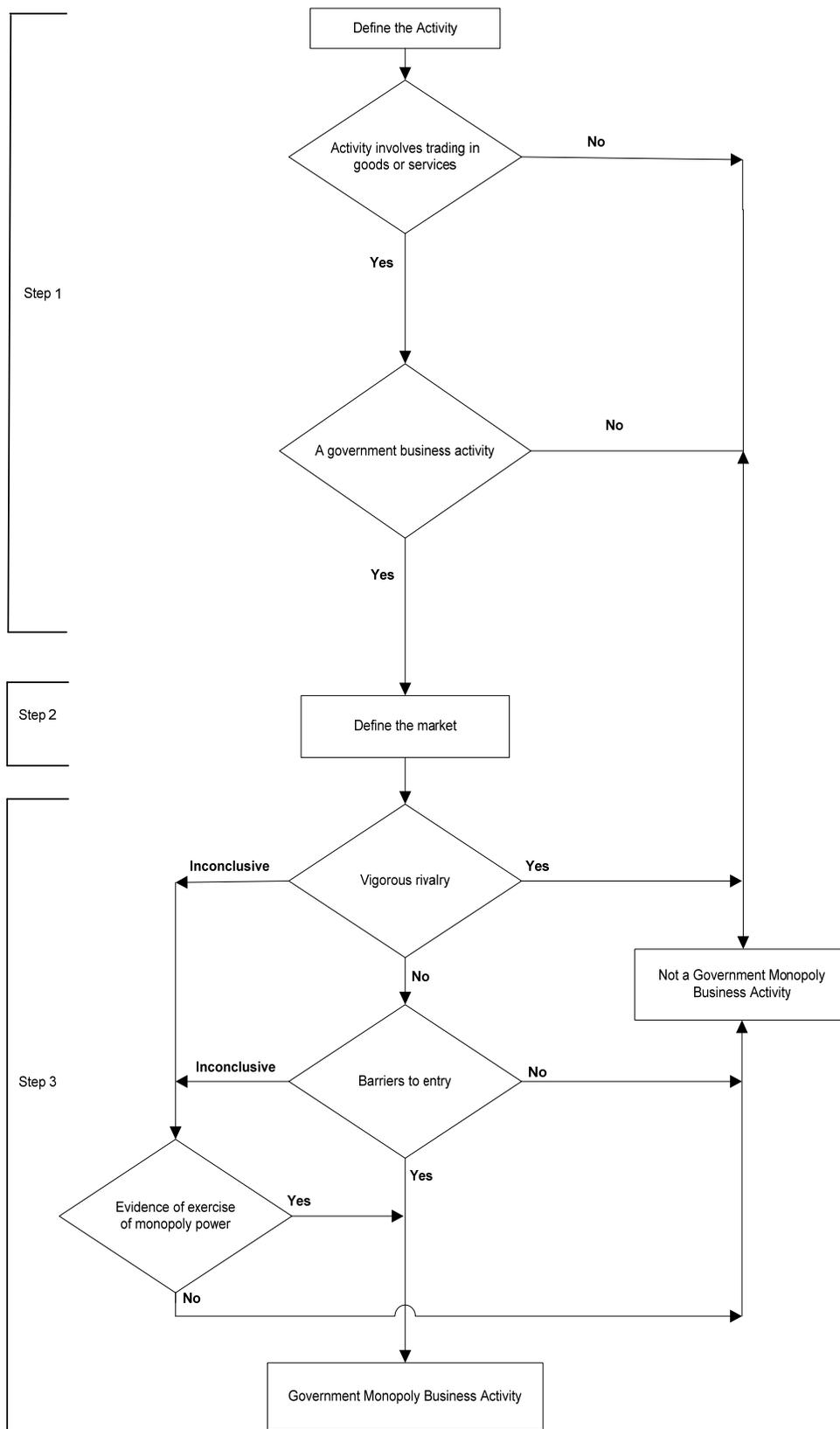
step 2 – defines the markets in which the government business activity operates; and

step 3 – assesses the intensity of competition in those markets relevant to the enquiry.

Declaration as a monopoly business activity does not automatically subject the monopoly business activity to a prices oversight investigation by the Authority. This requires a separate decision by the Ministers. In this regard, the Ministers may refer the monopoly business activity to the Authority for an investigation into its pricing practices or for ongoing monitoring of its pricing practices.

¹ The term "competitor" refers to actual or potential competitors.

Figure 1: Simplified Framework for Identifying Government Monopoly Business Activities



Step 1 – Determining Whether the Activity is a Government Business Activity?

The first step in the process is to properly define the activity that is to be the subject of the analysis with a view to determining whether it is a government business activity. There are two requirements under the QCA Act to be addressed in this context. The first requirement is that the activity involves a trading in goods or services. The second is that the business activity must be provided by a government agency of the State or a local government. If provided by a local government entity, only significant business activities (as defined under the *Local Government Act 1993*) are covered by the definition.

In practical terms, a government business activity is:

An activity undertaken by a government agency that involves trading in goods and services.

It should be noted that:

- (a) ‘government agency’ means a government company or part of a government company; or a State instrumentality, agency, authority or entity, or a division, branch or other part of a State instrumentality, agency, authority or entity; or a department or a division, branch or other part of a department; or a government owned corporation; or a local government entity. A local government entity means a local government or part of a local government, or a local government owned corporation;
- (b) ‘trading’ requires goods or services to be provided to another legal entity; and
- (c) ‘trading in’ requires actual trading as opposed to the mere potential for trading. Therefore, a refusal to supply goods or services to any other legal entity will not constitute a business activity for the purposes of Part 3. [Depending on the circumstances, a refusal to supply services may be able to be addressed under Part 5 or Part 5A of the QCA Act].

A government agency may undertake several distinct business activities. Consequently, precisely defining the product or service that is the subject of the analysis is essential to correctly identify the business activity and to define the relevant market, which is the next step in the process.

Step 2 – Market Definition

A market is an area of close competition or rivalry. If there is no close competition this can, of course, indicate a monopolistic market. Defining a market involves drawing a line in the chain of substitutes for a product or service that potentially compete with it. In defining and analysing a market, it is important to consider the purpose of the investigation, which, in the case of identifying government monopoly business activities, is to assess the extent of competitive pressure.

The analysis will need to address the product market (alternative products or services that can be used instead of those provided by the government business activity), the geographic market (the geographical region from which alternative sources of supply may be found), the relevant functional level of the market under consideration and the period of time allowed for an effective competitor to enter the market.

Once the relevant market has been defined, the intensity of the competitive pressures can be assessed and other relevant factors, such as the extent of barriers to entry, can be considered.

Step 3 – Assessing the Level of Competition in the Market

The principal factors which assist in determining if a government business activity is not effectively constrained by competitive pressures in a market are:

- (a) the absence of vigorous competition in the market together with barriers to entry for new entrants into the industry (or to the expansion of existing rivals); and
- (b) evidence of the exercise of substantial market power by the government business activity (e.g. by way of excessive pricing, inefficient operations or cross-subsidisation).

An absence of vigorous rivalry and the existence of barriers to entry constitute the primary test. If there is an absence of vigorous rivalry and barriers to entry exist then the activity is a monopoly business activity. If there is evidence of vigorous rivalry or if no barriers to entry exist, then the activity is not a monopoly business activity.

Where the primary test is inconclusive or there is insufficient information for it to be applied, the second test relating to evidence of the exercise of substantial market power is applied.