Environmental Justice Australia

5 April 2017

Ms Rosalie McLachlan
Competitive Neutrality Complaints Office
Productivity Commission

By email only: cnoffice@pc.gov.au

Dear Ms McLachlan

Complaint to Competitive Neutrality Complaints Office, Productivity Commission

Breach of competitive neutrality policy – Northern Australia Infrastructure Facility

1. Environmental Justice Australia (**EJA**) is an Australian legal practice. We lodge this complaint on behalf of the Institute for Energy Economics and Financial Analysis (**IEEFA**) under s 21 of the *Productivity Commission Act 1998 (Cth)*. This complaint asks the complaints office to investigate breaches by the Northern Australia Infrastructure Facility (**NAIF**) of competitive neutrality (**CN**) requirements.

2. This complaint relies on the following CN framework:

   (a) the *Commonwealth Competitive Neutrality Policy Statement* 1996 (**CN Statement**);

   (b) the National Competition Policy Agreements 1997 (**NCP Agreement**); and

   (c) the 2004 Australian Government Competitive Neutrality Guidelines for Managers (**CN Guidelines**).

3. This complaint focuses on applications received by NAIF for financial support for rail infrastructure for the Galilee Basin. We understand NAIF is considering two applications for a rail line that would transport thermal coal about 400km from the Galilee Basin, a remote greenfield basin, to the Great Barrier Reef coast for export on the seaborne market. The applications are from an Adani related entity (**Adani Proposal**) and Aurizon (**Aurizon Proposal**). The Adani proposal is reportedly seeking a $1 billion loan from NAIF. The Aurizon Proposal is reportedly seeking $1.25 billion from NAIF.[1]

4. We submit that for the Adani and Aurizon Proposals there is no ‘market failure’ and NAIF support would encroach upon the domain of the private sector in breach of competitive neutrality principles. We also submit that the NAIF is non-transparent, ineffective, inefficient and has an inadequate governing framework.

5. At the outset we note that the Export Finance and Insurance Corporation (**EFIC**), a government body, has important overlapping characteristics with NAIF. EFIC was the subject of a Productivity Commission inquiry culminating in the Productivity Commission 2012 report into Australia’s Export Credit Arrangements: Inquiry report 58, 31 May 2012 (**EFIC Report**). In this complaint we highlight the Productivity Commission (**Commission**) recommendations and contrast the situation to NAIF.

[1] http://www.couriermail.com.au/news/opinion/editorial-antiadani-greens-are-fighting-to-wreck-our-future/news-story/13316f53d088a2895442edee9f4f8252

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Competitive neutrality

6. This complaint is about NAIF breaches of CN principles. The NCP Agreement states:[2]

> The objective of competitive neutrality policy is the elimination of resource allocation distortions arising out of public ownership of entities engaged in significant business activities.

7. The complaint against NAIF concerns these following issues as outlined in the CN Statement:

   (a) organisational structure: corporatisation;

   (b) taxation neutrality;

   (c) debt neutrality;

   (d) rate of return requirements;

   (e) regulatory neutrality;

   (f) full costing principles

8. We note that anyone can make a complaint,[3] and that the role of the complaints mechanism is to:[4]

   (a) respond to concerns that Government businesses are not complying with the competitive neutrality principles;

   (b) advise on whether resource allocation distortions are being caused by significant government businesses; and

   (c) consider whether Government businesses have net competitive advantages resulting from public ownership.

NAIF background

9. NAIF is a 'significant business'. It oversees $5 billion in tax-payers' money to fulfil its mandate to 2021. Regulatory costings suggest a single NAIF loans could be between an average of $200 million and $1 billion.[5] NAIF has a mandate to provide grants of financial assistance to the States and Territories for the construction of northern Australia economic infrastructure.[6] It is governed by the *Northern Australia Infrastructure Act 2016 (Cth)* (**NAIF Act**).

10. The Explanatory Memorandum to the NAIF Act states:

> The Northern Australia Infrastructure Facility Bill 2016 (the Bill) will establish the Northern Australia Infrastructure Facility (the Facility) to address gaps in

[2] NCP Agreement, s 3(1)
[3] *Productivity Commission Act 1998 (Cth)* s 21
[4] CN Statement
[5] NAIF Act, Explanatory Memorandum
[6] NAIF Act, s 3

the infrastructure financing market for northern Australia. The Bill will also establish a Board of the Facility (the Board) to make the investment decisions for the Facility.[7]

11. NAIF is NAIF is guided by the Minister by the NAIF Investment Mandate Direction 2016 (**Investment Mandate**). The Investment Mandate at s 7(1) states:

> The Facility must not provide a Financing Mechanism unless the Board is satisfied the Project would not otherwise have received sufficient financing from other financiers.

12. In addition, certain mandatory criteria must be met for NAIF to provide financial assistance.[8] Investment Mandate mandatory criterion 3 states:

> To be eligible for financial assistance, project proponents need to meet all the following mandatory criteria: …
>
> **The proposed Project is unlikely to proceed, or will only proceed at a much later date, or with a limited scope, without financial assistance.**

13. NAIF's default financing mechanism is a loan, but it can provide other types of financial assistance with agreement from the Minister.[9]

14. Examples of concessions NAIF can offer projects appear at s 10(2) Investment Mandate.

> (2) The Facility may propose, but is not limited to, the following loan concessions:
>
> (a) longer loan tenor than offered by Commercial Financiers, not exceeding the longest term of Commonwealth borrowings;
>
> (b) lower interest rates than offered by Commercial Financiers, which must not be lower than the rate at which the Commonwealth borrows at;
>
> (c) extended periods of capitalisation of interest beyond construction completion;
>
> (d) deferral of loan repayments or other types of tailored loan repayment schedules;
>
> (e) lower or different fee structures than those offered by Commercial Financiers;
>
> (f) ranking lower than Commercial Financiers for cash flow purposes.

15. At the date of this submission NAIF does not have a publicly available corporate plan or approved business plan.

[7] NAIF Act Explanatory Memorandum, p2
[8] NAIF Investment Mandate s 7(2)(a)(1)
[9] NAIF Investment Mandate ss 10(1), 11

16. EFIC advises NAIF. According to the Australian Department of Industry, Innovation and Science:[10]

> The Export Finance and Insurance Corporation (Efic) provides administrative support to the NAIF and ensures that a robust financial and governance framework are met. This includes financial analysis, risk structuring and due diligence to the same level of commercial lenders.

EFIC background

17. EFIC's statutory mandate included the providing financial services to firms located in Australia which contribute to the production of exports but do not themselves export. This means EFIC can finance resource related projects in Australia, including infrastructure projects.[11] EFIC's suite of financial services includes the provision of loans.[12] There is an overlap with NAIF's ability to provide financial assistance for northern Australian infrastructure.

18. Like NAIF, EFIC has a 'market gap' mandate.[13] It is defined in EFIC Statement of Expectations (**SoE**) as when 'private sector providers are unable or unwilling to support financially viable business activities'.[14] We note that EFIC has a commercial account and a 'National Interest' account for which transactions in the national interest can be approved or directed by cabinet.[15]

19. The EFIC Report noted that EFIC's exemption from CN arose as a result of its 'market gap' mandate.[16] The Commission was critical that CN requirements were not being met. Under the CN requirements EFIC's role would only apply if there was 'market failure' or, in other words, where there is a situation in which the allocation of goods and services is not efficient.

20. The EFIC Report was published in 2012. The Commission looked at EFIC's compliance with CN principles and made a number of recommendations. Which we will explore below.

21. Subsequently in February 2015 EFIC can no longer finance Australian infrastructure. The Minister's Statement of Expectations (**SoE**) stated:

> EFIC shall cease to support onshore resource projects (and related infrastructure) given that the private sector is active in this part of the market.

22. An email dated 2 June 2015 obtained under Freedom of Information laws from the Department of Foreign Affairs and Trade revealed EFIC was concerned a potential partnership with NAIF might conflict with competitive neutrality principles.[17]

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[10] https://industry.gov.au/industry/Northern-Australia-Infrastructure-Facility/Pages/Frequently-asked-questions.aspx
[11] EFIC Report, p 4
[12] EFIC Act s 23(1)
[13] EFIC Act Second Reading Speech, EFIC Statement of Expectations (SoE), EFIC Report, p 5.
[14] EFIC SoE, February 2015
[15] EFIC Report, pp 4, 5
[16] EFIC Report, p 5
[17] Email to Brendan Berne dated 2 June 2015.

Organisational structure: corporatisation

23. The CN Statement requires NAIF to have clear and consistent objectives and adequate accountability and performance management.[18]

24. Like EFIC, NAIF has a 'market gap' mandate, not a 'market failure' mandate. The NAIF Act Explanatory Memorandum expands on the mandate.

> The Facility will operate in partnership with other financiers, filling key gaps in the infrastructure financing market for northern Australia by supplementing private lending for projects that produce significant benefits for the region. The Board will make investment decisions in accordance with the matters provided in the Investment Mandate to be issued by the Responsible Minister.

25. According to NAIF's Investment Mandate Explanatory Memorandum:

> <u>The Facility operates commercially and is governed by an independent Board.</u>

26. The line between expectation of repayment and providing financial support for projects that would not otherwise proceed is problematic. NAIF's internal processes should adequately guide its officials. We are concerned that NAIF does not have the appropriate internal governance processes and that the board has clear conflicts of interest issues. For example, on 6 December 2016 NAIF wrote to EJA and confirmed it had not finalised a Risk Appetite Statement. However it was undertaking due diligence on the Adani Proposal. That work could be wasted if the Risk Appetite Statement did not permit financing of a venture with that risk profile.

27. NAIF's risk management policies are not public. NAIF's Environmental and Social Review of Transaction Policy (**Environment Policy**), which is public, does no more than require regulatory approvals. Referring to commercial financier sector standards the Environment Policy states 'NAIF cannot bias NAIF funding to one industry or another outside of the guidelines contained in the NAIF Investment Mandate and the Act'. A series of Senate Economic Committee questions seeking to understand the weighting of fossil fuel project applications for NAIF support was left entirely unanswered by NAIF, with Senator Canavan ultimately stepping in and saying the question would be taken on notice.[19]

28. As a comparison, EFIC's internal auditors found high exposure to a few industries, and the Commission found some aspects of EFIC's credit risk management had not always been sufficiently robust. As a result, the Commission recommended 'EFIC should revise its risk management policies to include a limit on exposures to particular industries'.[20] We think NAIF restricting investment in certain industry is best practice for commercial financiers as required by the Investment Mandate.[21]

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[18] CN Statement, p 15
[19] Senate Economics Committee, Budget Estimates, 2 March 2017: http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/7be3e295-c546-44fb-901a-7df92f74ce62/toc_pdf/Economics%20Legislation%20Committee_2017_03_02_4806.pdf;fileType=application%2Fpdf . We also note Senator Canavan's admission of talks with NAIF about Adani and interjection to a question to NAIF about disclosing the Adani loan applicant's identity, after Ms Walker (NAIF CEO) said she was happy to answer that question. A discussion on concerns about NAIF's independence appears on pp 132-133]4, with Senator Canavan routinely answering questions asked of Ms Walker.
[20] EFIC Report, p 37
[21] Investment Mandate, s 17

29. NAIF is a new statutory body. Unlike EFIC, it does not have a long history of financing that can be drawn upon. It has not been subject to the same level of scrutiny as EFIC in the Commission's 2011 inquiry. We expect NAIF, which has operated since mid 2016 would have significantly weaker processes than EFIC as at 2012, by which time EFIC had operated for 21 years under the EFIC Act and 55 years in total. In 2012 the Productivity Commission found:[22]

> EFIC's governance practices, including its internal audit program, are not sufficient to ensure that its activities are consistent with the operational restrictions set out in the Statement of Expectations and Part 4 of the EFIC Act.

30. On 27 March 2017 Senator Sam Dastyari expressed concern about NAIF's processes and transparency on the Galilee Basin proposal to parliament:[23]

> ...The fact is this is a secretive process, this is a process where there has been a complete lack of disclosure, lack of information; how these decisions are being made are not being made in a transparent way. If we are seriously talking about $1 billion of taxpayer funds being put up as a loan for a project to make it commercially viable, the first question you have to ask yourself is: why isn't it commercially viable to begin with? Why is it the private sector is not underwriting and providing these funds? If that is the case, then it needs that intervention. Ask yourself: should we be intervening in areas and policy areas that we do not necessarily want or need to be encouraging?
>
> There is a lack of transparency in how these decisions are being made. The Clean Energy Finance Corporation has repeatedly come before Senate estimates and, in a very open and transparent way, has answered legitimate questions that should be asked when taxpayer funds are being put up in these types of projects. When it comes to the Northern Australia Infrastructure Facility, nothing of the kind has taken place. We really run the risk that this just becomes a pork-barrelling exercise for the government to find another way of funding projects, but doing it off budget, off the balance sheet, and doing it in a way that is not realistically feasible to see how this money will ever be repaid. Are we talking about a $1 billion loan or are we talking about a $1 billion investment to a private corporation simply for the purpose of their own project?
>
> With the huge concerns over the Adani proposal when it comes to environmental considerations—again, we are not going to have time in this debate or in this chamber now to be able to adequately cover the different debate that is going on around the environmental concerns—surely we can agree that transparency over $1 billion of taxpayer funds is a good place to start. I think the Senate should have and needs to have a much bigger role in getting to the bottom of what potential loan is taking place, especially when you look at the concerning tax arrangements that Adani has used around the world.

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[22] EFIC Report, p 31

[23] http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/5d298a7a-7960-4bba-ad1b-f2fa9adb4c15/toc_pdf/Senate_2017_03_27_4879.pdf;fileType=application%2Fpdf

31. We invite the Commission's complaints office to make findings that NAIF is governed by an inadequate accountability and performance management framework.

Taxation neutrality

32. The CN Statement says taxation neutrality will be achieved by removing taxation exemptions from identified organisations where this can be achieved in a cost effective and administratively simple manner.[24] We have found no evidence that NAIF will pay tax or is taxation neutral. We ask the Complaints Office to investigate.

Debt neutrality / rate of return requirements

33. The CN Statement provides:[25]

> Markets confer borrowing cost advantages on government owned entities as a result of explicit government guarantees and perceptions of implicit government support. Debt neutrality will be achieved by subjecting identified organisations to similar borrowing costs to those faced by private sector business.

34. NAIF engages in a significant business activity and should be subjected to a debt neutrality charge. We note that after the EFIC Report was published, the *Export Finance and Insurance Corporation Act 1991 (Cth)* (**EFIC Act**) was amended to include new s 61A about payment of a debt neutrality charge. No such requirement exists in the NAIF Act.

35. The Explanatory Memorandum to the NAIF Investment Mandate is explicit about NAIF's intent to provide a subsidy through transferring financial risk to taxpayers through the provisions of loans lower than commercial rates:[26]

> For example, if the Facility is lending for a 10-year period, then the rate offered by the Facility should not be below the rate that the Commonwealth borrows at for a similar 10-year period.

36. The Adani and Aurizon Proposals are private sector projects in an internationally competitive export sector that has been in commercial operation for many decades and where there is no market failure.[27] In the EFIC Report the Commission noted:[28]

> The Minister communicates expectations of the EFIC Board through the publicly released Statement of Expectations (SoE). A key requirement in the SoE is that EFIC is not to compete directly with commercial providers of finance, as this is the basis for EFIC's exemption from competitive neutrality arrangements, and the basis for EFIC's 'market gap' mandate.
>
> The need for EFIC to fill a gap in the market was stated in the second reading speech when the EFIC Act was debated in Parliament. The market gap has

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[24] CN Statement, p 16

[25] CN Statement, p 17

[26] NAIF Investment Mandate Explanatory Memorandum, cl 10.

[27] In addition to general resource infrastructure market characteristics there is ample scope for NAIF to be in direct competition with commercial financiers in provision of its services. Consider a debt restructure or an insolvency situation where NAIF's security is subordinated to other lenders under Investment Mandate s 10(2)(f). NAIF should not be eligible an exemption from CN principles for its operations.

[28] EFIC Report, p 5

> been formally defined in the SoE 'as circumstances where the credit and insurance sectors are not able or are unwilling to provide credit and insurance services to financially viable Australian export transactions or overseas projects'.

37. The Commission continued:[29]

> An imbalance between demand for, and supply of, capital is not a market failure – this happens in all markets. Balance is typically restored over time through changes in the market price. The Commission has found no convincing evidence to indicate there are regulatory or other barriers that impede access to debt or equity finance by large firms, or resource and infrastructure projects located in Australia, that would justify EFIC's involvement.

38. Adani is a major multinational corporation and Aurizon is Australia's largest rail infrastructure firm. In accordance with the Commission's 2012 findings there is no justification for NAIF support of the Adani or Aurizon Proposals under competitive neutrality principles. We invite the Commission to make this finding, and to determine that NAIF will unfairly distort the market should it provide financial support to Adani or Aurizon.

Regulatory neutrality

39. The CN Statement states:[30]

> Regulatory neutrality will be achieved by subjecting, where appropriate, all identified organisations to the same regulatory environment as private sector businesses.

40. NAIF is to comply with best practice corporate governance of commercial financiers[31] which we take to mean it must assess risk against risks management criteria required by the Australian Prudential Regulatory Authority (**APRA**). Further evidence is found in the NAIF Act Explanatory Memorandum that states:[32]

> Regulatory implications on large business is anticipated to be low as Facility loan requirements will be consistent with administrative information already required by private financiers.

41. Following on from the global ratification of the Paris COP21 Climate Agreement, there is currently a re-pricing upwards of risk and globally, commercial financiers are reducing support for new thermal coal related projects. Recent APRA guidance references a framework that requires assessments of long-term credit require a 2degree climate change scenario analysis due to regulatory risk for NAIF's peers. The International Energy Agency has modelled a 2 degree scenario and sees no room for the Adani or Aurizon Proposal.[33]

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[29] EFIC Report, p 214
[30] CN Statement, p 18
[31] Investment Mandate, s 17
[32] NAIF Act Explanatory Memorandum, p 3
[33] International Energy Agency World Economic Outlook 2016, p 208

42. Improved clarity is required around NAIF accountability and risk. EFIC, on the other hand, has a clear direction from the February 2015 SoE to refer to APRA standards in managing financial risk.[34]

43. According to the CN Statement, the complaints mechanism process will provide a further means to address net competitive regulatory advantages on a case-by-case basis.[35]

44. The NAIF enjoys significant regulatory advantages that are not justified on an evidentiary basis. There is, in our view, insufficient evidence of 'market failure' for private sector resource related infrastructure, and no evidence for the Adani or Aurizon Proposals. The 2015 Northern Australia Infrastructure Audit does point to 'market failure' but emphasises Government led initiatives such as roads.[36] We understand the construction of proposed Terminal Zero (T0) at Abbott Point is unlikely to be completed in the coming decade and financial analysts have concluded that without T0 the Galilee Basin rail project would be a single user facility serving only the Carmichael mine. Therefore under the current Adani and Aurizon Proposals, there is no market failure with respect to the 'first mover disadvantage'.[37]

45. The Government's White Paper on Developing Northern Australia (our North, Our Future) which precedes NAIF states:[38]

> If the history of northern development teaches us one thing, is that business and governments should stick to what they do best.
>
> Governments' role is to create successful business environments, not successful businesses. This is best achieved through prudent economic policies, the right infrastructure to get things moving, regulation that minimises costs on business, a workforce with the right skills, and basic research necessary for business to identify opportunities in the north.
>
> **It is not the Commonwealth Government's role to direct, or be the principal financier, of development.** Developing the north is a partnership between investors (local and international investors who provide capital and know-how) and governments (that create the right investment conditions).
>
> **World class risk management is shown by the northern resources industry,** which has built vast infrastructure in difficult operating environments with innovative technology to supply distant customers. Chevron Australia is building the nation's largest natural resource project, the Gorgon Project (US$54 billion) in northern Western Australia, involving a logistics exercise of almost unprecedented scale.

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[34] EFIC SoE, February 2015
[35] CN Statement, p 19.
[36] Australian Government, Northern Australia Infrastructure Audit, January 2015, p15: http://infrastructureaustralia.gov.au/policy-publications/publications/files/IA_Northern_Australia_Audit.pdf
[37] Australian Government, Northern Australia Infrastructure Audit, January 2015, p15: http://infrastructureaustralia.gov.au/policy-publications/publications/files/IA_Northern_Australia_Audit.pdf
[38] Australian Government, Our North, Our Future: White Paper on Developing Northern Australia, pp 2-3: http://northernaustralia.gov.au/files/files/NAWP-FullReport.pdf

Governments have facilitated, rather than led this growth. **Business is far better placed to understand the risks and rewards from northern economic development.** Governments further support growth by providing essential information, especially where there are basic knowledge gaps.

(our emphasis)

46. According to the Department of Industry, Innovation and Science, NAIF is a major long term initiative of the White Paper.[39]

47. The Commission found EFIC justified its 'market gap' mandate on the basis of information related market failures and the funding restrictions due to the GFC. EFIC's February 2015 SoE, published after the EFIC Report was released, states EFIC will not provide support for infrastructure related to resource projects in Australia because private sector is active.

48. In 2012 the Commission noted:[40]

Filling the 'market gap': not a role for government

The concept of the market gap can cover circumstances where there is no market failure that would warrant government intervention through EFIC. EFIC has provided assistance on the basis of the market gap in circumstances that are not a result of market failure including:

• a reluctance by firms to dilute the equity of existing shareholders by taking on additional equity partners as a firm expands

• firms exhausting other forms of debt or equity finance

• meeting the credit preferences of the firm's owners

• participants making EFIC's involvement a precondition of the transaction or project proceeding

• reluctance by an exporter or buyer to incur the transaction costs of finding more supportive bankers

• firms reaching the prudentially determined credit limits of their banks

• private sector providers declining to supply services because of recent financial distress of the client

• timeframes determined by approval processes, including government approval processes, not being met without EFIC's assistance

• private sector providers seeking to make a transaction or project more attractive through EFIC's participation.

The Minister should remove the 'market gap' mandate from the Statement of Expectations as it lacks rigour and does not ensure that EFIC's activities generate a net benefit to the economy.

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[39] https://industry.gov.au/industry/Northern-Australia-Infrastructure-Facility/Pages/default.aspx
[40] EFIC Report, p 36

49. In our view Adani and Aurizon would satisfy a number of these criteria in applying for NAIF support. More information can be provided.

50. NAIF, like EFIC, is at clear risk of distorting the allocation of resources within the economy. The EFIC Report found:[41]

> A focus on the so-called 'market gap' has meant that EFIC has not targeted its operations to address market failures, but rather to areas that should be the domain of the private sector. EFIC's pricing and project selection criteria distort the allocation of resources within the trade finance sector and within the economy…

51. NAIF's risk and governance criteria is opaque and, we believe, inadequate. On 27 March 2017 Australia's former Treasurer, Wayne Swan, described NAIF's governance as 'worse than Lehman Brothers' and referred the issue to the Attorney General.[42]

52. Under the current Galilee Basin rail proposals linking the Great Barrier Reef coast to thermal coal mines, NAIF is said to be considering financial support of up to $1 billion. This would be 20% of its entire portfolio. NAIF must have a preference for a diversified portfolio.[43] Further, information from the Adani group of companies involved in the Carmichael mine project and rail project suggests that the vast majority of financing will be obtained from NAIF as well as Chinese and Korean export credit agencies.[44]

53. Commercial financiers are not interested in the rail line. They are, according to the Australian government, best placed to understand development risks.[45] There is no information gap.[46] NAIF is looking at providing financial support to a project for large private firms that would be subsidised by government lenders around the world. It would be, in effect, the principal or lead financier, as other lenders are induced to get on board if NAIF support is secured.

54. We are concerned that NAIF continues to expend resources on considering the Galilee Basin proposals despite its mandate to provide support only to the extent that financing is required for projects to proceed. This is the reality since 5 December 2016 when Adani stated about NAIF funding:[47]

> It's not critical. We have obviously applied for it because it's available …This is something that governments of all political persuasions have done in the past

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[41] EFIC Report, p31
[42] http://www.afr.com/news/policy/budget/northern-australia-funds-governance-as-dodgy-as-lehman-brothers-20170327
[43] Investment Mandate, s 7(4)
[44] http://www.thehindu.com/business/Industry/gautam-adani-hopes-to-start-australian-coal-mine-project-by-august/article17531691.ece
[45] Australian Government, Our North, Our Future: White Paper on Developing Northern Australia, pp 2-3: http://northernaustralia.gov.au/files/files/NAWP-FullReport.pdf
[46] Senate Economics Committee, Budget Estimates, 2 March 2017, p 128. Senator Canavan: "Clearly, in the case of Adani, there is a heightened public interest and heightened public scrutiny of it. That is appropriate".: http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/7be3e295-c546-44fb-901a-7df92f74ce62/toc_pdf/Economics%20Legislation%20Committee_2017_03_02_4806.pdf;fileType=application%2Fpdf .
[47] http://www.smh.com.au/federal-politics/political-news/its-not-critical-adani-says-it-doesnt-even-need-controversial-1-billion-government-loan-20161205-gt425r.html

and I assume will do in the future. It doesn't necessarily mean it's make or break for the project.

55. On 30 March 2017 the front page of the Sydney Morning Herald carried an article ‘Northern Australia fund hits roadblock’ that stated:

> But Brendan Lyon, the chief executive of Infrastructure Partnerships Australia, said the fund was attempting to solve a problem that didn’t exist while the government ignored the problem that did.
>
> “There isn’t a problem in terms of capital markets – there is a problem in terms of funded infrastructure projects which are able to be built”, he said.
>
> “And that is where things like privatisation at a state level in Queensland and WA and a return to a fairly sensible policy base at a national level needs to occur – there just aren’t these projects sitting around waiting to happen because no-one noticed.”

56. The CN Guidelines state the benefits of competitive neutrality include:[48]

(a) Ensuring public resources are used as efficiently as possible;

(b) Improving the overall performance of government businesses;

(c) Improving transparency and accountability of government businesses, presenting costs in a way that enables comparison to the private sector; and

(d) Providing a better basis for agency managers to assess the mode of delivery for government business activities.

57. Findings that NAIF did not comply with competitive neutrality principles and subsequent recommendations to the Minister would contribute to these outcomes.

58. The case for breach of competitive neutrality principles for the Galilee rail projects is strong. We note former Treasurer Wayne Swan’s views on this topic on 27 March 2017:[49]

> With a board that has been stacked in favour of mining investments. And with an investment mandate so broad and vague that the Minister Canavan can essentially treat the NAIF as his own personal slush fund. The government has stacked the board with pro-mining people, who are unwilling to assert NAIF’s independence. And that is most alarming, the most alarming aspect of NAIF.
>
> For months, ministers Canavan and Joyce have repeatedly promoted a $1 billion loan to Adani to partly fund the Carmichael rail road while simultaneously claiming that investment decisions of the NAIF are independent. If the Adani mine is to go ahead it must be able to stand on its own merit. It should not get one fifth of Mr Canavan’s slush fund to help make it a profitable investment.

59. The Commission found with respect to EFIC in 2012:[50]

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[48] CN Guidelines, p 4
[49] https://www.facebook.com/GetUpAustralia/videos/10154216508376455/

EFIC's participation in export transactions lowers the risk borne by other parties to the transaction. A preference for EFIC or Australian Government participation is an explicit call to shift risk from the participants in the transaction to taxpayers – and does not constitute a market failure.

60. An apt illustration of EFIC's market gap involvement in uncommercial projects is the Wiggins Island Coal Export Terminal (**WICET**), a greenfields construction of a coal export terminal to service coal mines in the Bowen, Surat and Maryborough coal basins in Queensland. EFIC provided a guarantee to an Australian bank for US$100 million with a tenor of 7 years. At the height of the coal boom miners agreed to pay a fixed rate to export coal from the terminal regardless of the size of their shipping loads. Those payments would be used to pay WICET's loans. As of March 2017 WICET's debt was $3.9 billion and miners were urging banks to change the contracts so lenders would carry the liabilities. Press reports that the alternative to the miners' proposal was for WICET to be placed into voluntary administration.[51] We note EFIC used WICET as an example of a greenfield deal it had been involved in when it pitched to work with NAIF in 2015.[52]

61. We invite the Complaints Office to make a finding that NAIF should not finance the Adani and Aurizon Proposals.

Full costing principles

62. The CN Statement says:

> The Competition Principles Agreement requires that where Agencies undertake significant business activities as part of a broader range of functions, then agencies, where appropriate, should pay all applicable taxes or tax equivalents and debt guarantee charges.

63. We refer you to our submissions above and invite the Complaints Office to make findings that NAIF's governing framework does not ensure the satisfaction of full costing principles.

Please let us know if you require further information.

Yours sincerely,

David Barnden
Lawyer
Environmental Justice Australia

[50] EFIC Report, p 206
[51] https://www.noosanews.com.au/news/coal-deal-strikes-sticky-wicet/3153949/
[52] Presentation "Northern Australia Infrastructure Facility: How Efic can assist, December 2015" obtained under FOI laws