

# Luke Wainscoat

## PRINCIPAL

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Sydney

+61.2.7227.8900

Luke.Wainscoat@brattle.com

Dr. Wainscoat is an economist specialising in competition, regulatory, and damages matters in Australia and New Zealand.

He has two decades of experience advising private and government clients on competition issues including mergers, cartels, anticompetitive agreements, and the misuse of market power. Dr. Wainscoat has served as an economic expert in the Federal Court of Australia, the Supreme Court of Victoria and the Fair Work Commission. He has worked for clients in a wide range of industries, from advertising and digital platforms to banking, insurance, transportation, and utilities.

Recognised as one of Australia's leading competition economists by *Lexology Index* (previously, *Who's Who Legal*), Dr. Wainscoat's expertise extends to concerted practices, applications for authorisation, access to bottleneck facilities, cartel investigations, the effects of agreements on competition, and exclusive dealing.

Dr. Wainscoat also advises clients and has provided expert testimony on commercial damages matters. He has experience managing a range of regulatory projects, particularly in the energy, telecommunications, and rail sectors.

Prior to joining Brattle, Dr. Wainscoat spent 14 years as an Economist at consultancies in Sydney. He previously worked as an Economist at the United Kingdom's Office of Fair Trading (the predecessor to the Competition and Markets Authority). The section editor of the *Australian Journal of Competition and Consumer Law*, Dr. Wainscoat also lectures on competition and regulatory economics at the University of Sydney.

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### AREAS OF EXPERTISE

- Antitrust & Competition
- Regulatory Investigations & Enforcement
- Intellectual Property
- Commercial Damages

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## EDUCATION

- **University of Melbourne**  
PhD and MCom in Economics
- **University of Warwick**  
BSc in Economics

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## PROFESSIONAL EXPERIENCE

- **The Brattle Group (2025–Present)**  
Principal
- **HoustonKemp (2014-2025)**  
Senior Economist (2016–2025)  
Economist (2014–2016)
- **NERA (2011–2014)**  
Consultant
- **Office of Fair Trading, United Kingdom (2001–2004, 2009–2011)**  
Economist (2009–2011)  
Assistant Economist (2001–2004)
- **Department for Business, United Kingdom (2008–2009)**  
Assistant Economist

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## EXPERT EVIDENCE AND TESTIMONY

- ***Application by the Transport Workers' Union for a Minimum Standards Order*** | Fair Work Commission | Expert report and oral testimony (2026, report available [online](#)) – prepared an expert report on the effects on competition of different minimum standard orders affecting the cost of engaging employee-like workers to deliver goods.
- ***MSA 4x4 Accessories Pty Ltd v Clearview Towing Mirrors Pty Ltd*** | Federal Court of Australia | Expert reports (2025) – prepared three expert reports examining the effect of some misleading conduct on the revenues and profits of those firms involved.
- ***Merrifield Corporation Pty Ltd v FAL Mickleham Pty Ltd*** | Supreme Court of Victoria | Expert report and oral testimony (2024) – prepared a report on the effect on competition of an occupancy restriction for a business park near Melbourne.
- ***Viva Energy Refining Pty Ltd v Sumervale Pty Ltd & Anor*** | Supreme Court of Victoria | Expert report (2023) – prepared an expert report on the effect that a new entrant would

have on competition between service stations and the resulting impact on the profits and value of the land owned by the service station operator.

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## SELECTED CONSULTING EXPERIENCE

### COMPETITION

- **Effect on competition of Minimum Standards Order (2026)**  
Prepared an expert report and gave oral testimony on the effects on competition of different minimum standard orders that affect the cost of engaging employee-like workers to deliver goods.
- **Effect of consumer law (2026)**  
Prepared a report that examined the cost to the economy of applying consumer law in such a way that logistics firms had to ensure products they transported complied with the law.
- **Proposed merger (2026)**  
Prepared an expert report for the ACCC regarding a phase 2 merger review. The report provided a critique of the market definition and analysis of competitive effects provided by another expert.
- **Proposed merger (2025-2026)**  
Provided advice and analysis to King & Wood Mallesons and a confidential client regarding the potential effect of a proposed merger on competition in an industrial sector. This included the preparation of interactive maps showing market shares and catchment areas for different firms under various assumptions.
- **ACCC Supermarkets Inquiry (2024-2025)**  
Provided advice to a grocery provider regarding competition in the supermarket industry. Examined the nature and intensity of competition, and what conclusions can be drawn from assessments of profitability.
- **Concerted practices (2024)**  
Provided advice to King & Wood Mallesons and a confidential client in relation to whether some conduct may have been an illegal concerted practice. Examined whether the conduct could be said to have substantially lessened competition.
- **Competitive effect of an exclusive contract (2024)**  
Assisted with the preparation of an expert report in relation to the effect on competition of an exclusive contract.
- **Misuse of market power (2024)**  
Provided advice and analysis to Resolve Litigation Lawyers and a confidential client regarding whether the entry of a firm may have the effect of lessening competition. The

advice focused on market definition and comparing the degree of competition with and without the conduct.

- **Effect of mergers on innovation (2024)**

Prepared a report on the role of acquisitions in driving innovation in the economy that was submitted as part of the merger reform process. The report examined the economic literature on mergers and innovation to understand the effect that mergers have on innovation, and thus economic growth.

- **Misuse of market power (2022-2024)**

Led the team that provided advice and assisted in the preparation of expert reports in the Epic v Apple matter. Set out the economics of two-sided markets and used this to examine the appropriate market definition and effect of alleged conduct on competition.

- **Proposed merger (2023)**

Provided advice to Clayton Utz and a confidential client in relation to the geographic dimension of the market for certain retailers. Undertook novel analysis of the degree of competition between retailers based on geospatial data and prepared slides to be provided to the ACCC on the extent of competition at a local level.

- **Proposed merger (2023)**

Provided advice and analysis to Ashurst regarding the effect on competition of a merger in the retail sector. Examined local competition issues using geospatial data.

- **Declaration of the mobile termination access service for SMS (2023)**

Prepared two reports that were submitted to the ACCC in relation to the competitive effects of the declaration of the mobile termination access service for SMS.

- **Market study (2023)**

Provided advice and support to a large bank in New Zealand to assist with responding to the Commerce Commission's market study into personal banking services.

- **Proposed levy on digital platforms (2023)**

Prepared a report reviewing analysis set out by Competition Economists Group (CEG) that recommended Internet Service Providers should be allowed to charge a levy on content and application providers.

- **Proposed merger (2022-2023)**

Assisted with the preparation of an expert report examining the effects on competition from the acquisition of Origin Energy Limited by Brookfield and MidOcean. Primary focus was examining the incentive and ability of the merged firm to vertically foreclose rivals.

- **Proposed merger (2022-2023)**

Provided advice and reports to Norton Rose Fulbright examining the effect of a vertical

merger on competition in the dairy industry. The reports were provided to the ACCC, and the merger was allowed to proceed.

- **Proposed merger (2022-2023)**  
Provided advice on the likely effect of a merger between two retailers on competition. Prepared two reports for the ACCC and Commerce Commission on the likely effects of the merger.
- **Proposed merger (2022-2023)**  
Provided advice and analysis on the closeness of competition between two retailers, including through the analysis of the movement of people visiting the retailers.
- **Proposed merger (2022)**  
Assisted with the preparation of an expert report, submitted to the ACCC, in relation to the proposed merger of Armaguard and Prosegur. Examined the effects on competition, the failing firm argument and the potential for public benefits.
- **Application for Authorisation (2022)**  
Assisted with the preparation of an expert report on whether and to what extent net public benefits would arise from the proposed conduct, which involved the collective bargaining by private health insurers.
- **Freedom of Interstate Trade (2022)**  
Assisted with the preparation of an expert report regarding the appropriate market definition of a gambling product and the effects on competition of several state-based restrictions applying to certain gambling products.
- **Market study (2022)**  
Prepared a report summarising the comments by third parties in response to the ACCC's inquiry into competition between online marketplaces.
- **Proposed merger (2022)**  
Assisted with the preparation of expert reports for Minter Ellison on behalf of Optus regarding the application to the ACCC for authorisation of a proposed set of arrangements between Telstra and TPG.
- **Proposed merger (2021)**  
Prepared reports on the competitive effects of the proposed acquisition by Are Media of the retail distribution business of Ovato in Australia and New Zealand. The reports were submitted to the ACCC and the Commerce Commission.
- **Market study (2021)**  
Prepared a report for Amazon examining competition in the retail sector in Australia in the context of the ACCC's study of online marketplaces.

- **Proposed merger (2021)**  
Provided advice and reports to examine the potential public benefits and effect on competition of a proposed merger between wholesalers of pharmaceutical products in Australia.
- **Proposed merger (2021)**  
Assisted with the preparation of an expert report on the effect on competition of a proposed merger between two suppliers of fertility services.
- **Retail competition (2021)**  
Led a team that prepared a report on the effect on competition of the entry of a retailer.
- **Market value and effective competition (2021)**  
Assisted with the preparation of expert reports examining whether Perth Airport had exercised substantial market power.
- **Market study (2021)**  
Prepared two reports that were submitted to the Commerce Commission as part of its market study into the grocery sector in New Zealand. One report examined the empirical evidence on the nature and intensity of competition set out in the Commerce Commission's draft report, whilst the other report examined the international comparison of grocery prices undertaken by the Commerce Commission.
- **Authorisation of exclusive dealing (2020)**  
Provided advice and a report to Ashurst examining the competitive effects of exclusive dealing conduct that had been notified to the ACCC.
- **Proposed merger (2020)**  
Provided advice to a confidential client regarding the potential effects of a proposed merger on competition.
- **Misuse of market power (2020)**  
Assisted with the provision of advice to a confidential client regarding Federal Court proceedings involving an allegation of the misuse of market power.
- **Anti-competitive agreement (2019)**  
Provided advice to the ACCC regarding whether an agreement had led to a substantial lessening of competition.
- **Anti-competitive agreement (2019)**  
Provided advice to Shearn Delamore & Co in Malaysia regarding whether an agreement may harm competition.
- **Proposed merger (2019)**  
Assisted with the preparation of an expert report setting out the likely effect on

competition of a proposed merger and an assessment of the public benefits that would be caused by the merger.

- **Proposed merger (2019)**

Assisted with the preparation of a report on the competitive effect of a proposed merger that was submitted to the ACCC.

- **Access to facilities (2018)**

Assisted with the preparation of expert reports submitted to the National Competition Council (NCC) on matters arising in applying the criteria for declaration under Part IIIA, in the context of the application by Port of Newcastle Operations that the NCC should recommend that the designated Minister revoke the declaration of the shipping channel service at the Port of Newcastle.

- **Alleged cartel and competitive effect of an agreement (2018)**

Assisted with the preparation of an expert report and joint expert report examining whether two firms were 'in competition' with each other, and whether an alleged agreement led to a substantial lessening of competition. The reports were filed in the Federal Court.

- **Proposed merger (2018)**

Provided advice on the competitive effects of the acquisition of Adshel by oOh!media Limited, including how to respond to various potential theories of harm. The acquisition was not opposed by the ACCC.

- **Competition analysis (2018)**

Assisted with the preparation of an expert report that was submitted to the Productivity Commission in response to the draft finding of its banking competition inquiry that each of Australia's major banks holds substantial market power.

- **Assessment of market power (2017-2018)**

Assisted with the preparation of four reports for Brisbane, Sydney, Perth and Melbourne airports in the context of the Productivity Commission's inquiry into the economic regulation of airport services. The reports examined whether these airports have market power in the provision of car parking and ground access services.

- **Assessment of market power (2017-2018)**

Assisted with the preparation of an expert report examining whether four major airports had used market power by setting prices for aeronautical services that exceeded the long run economic cost of those services.

- **Anti-competitive bundling (2017-2018)**

Provided advice and reports to Ashurst in relation to an ACCC investigation of bundled discounts that were alleged to have had an anti-competitive effect. Examined whether a

bundling strategy led to a substantial lessening of competition by excluding rivals using the discount attribution test.

- **Competition analysis for a digital platform (2017-2018)**  
Provided advice to a major digital platform service provider on potential competition concerns arising in the ACCC's digital platforms inquiry.
- **Competitive effects of a merger (2017-2019)**  
Led the team that assisted in the preparation of an expert report examining the competitive effects of an already completed merger transaction. The report examined the actual effect of the transaction, the statistical relationship between prices and market concentration, and the application of an upward pricing pressure test.
- **Access to facilities (2017-2018)**  
Assisted with the preparation of two expert reports submitted to the Queensland Competition Authority's review of the declared status of services provided by the Dalrymple Bay Coal Terminal.
- **Alleged cartel conduct (2017-2018)**  
Prepared a report on whether there was a significant increase in prices paid by certain customers and/or margins increased over a period in which ACCC alleged there was cartel conduct. Undertook a difference in difference analysis to isolate the changes in prices as a result of the alleged conduct.
- **Misuse of market power/exclusive dealing (2017-2018)**  
Provided economic advice to a confidential client that the ACCC had alleged took advantage of its market power and/or engaged in exclusive dealing. Assisted with the preparation of an expert report in this matter.
- **Proposed merger (2017)**  
Assisted with the preparation of an expert report and a joint expert report in relation to the proposed acquisition of Tatts by Tabcorp. Assisted with the preparation of the analysis on the appropriate market definition and likely effect of the merger on competition in the wagering.
- **Proposed merger (2017)**  
Assisted with the preparation of two expert reports on the competitive effects of a proposed merger in New Zealand. The reports were filed in the High Court in New Zealand in support of a claim that the proposed merger contravened section 47 of the Commerce Act 1986. An injunction preventing the merger was granted and the merger was abandoned.
- **Proposed merger (2017)**  
Prepared a joint report with Clayton Utz which provided a preliminary assessment of the

competition approval issues for a project that involved the merger of two large industrial firms in Australia. The focus of the report was the potential effects on competition from the horizontal overlap between the parties, including the scope of competition to be reduced due to an increase in buyer power.

- **Proposed merger (2016-2017)**  
Prepared a report setting out the likely effect of a proposed merger in the gas sector and provided a framework for examining the competitive effect of mergers to be used for future transactions.
- **Proposed merger (2016-2017)**  
Provided advice as to the likely effect of a proposed merger in the manufacturing industry. Analysed whether the supply by the merging firms was strongly constrained by imported products.
- **Proposed merger (2016)**  
Provided advice as to the likely effect of a proposed merger in the construction industry. This involved an analysis of the horizontal overlap and in particular, the likelihood that the merged firm would foreclose downstream rivals.
- **Economic effect of allowing a planning application (2016)**  
Assisted with the preparation of an expert report that set out the likelihood and economic effect of two thoroughbred horse farms leaving the Hunter Valley after expansion of a coal mine and the potential economic effect of those farms leaving the region.

## COMMERCIAL DAMAGES

- **Assessment of damages (2026)**  
Assisted with the preparation of an expert report examining the economic loss allegedly caused by the conduct of a firm that was selling a business.
- **Assessment of damages (2026)**  
Assisted with the preparation of an expert report examining the economic loss caused by an alleged breach of contract and/or misuse of market power.
- **Assessment of damages (2024-25)**  
Prepared three expert reports examining the effect of some misleading conduct on the revenues and profits of the two firms involved. Undertook statistical analysis to estimate the volume of sales that would have taken place in the counterfactual.
- **Assessment of damages (2019)**  
Undertook an initial assessment of the damages for a pharmaceutical firm.

- **Assessment of damages (2017)**  
Provided advice on the calculation of damages that resulted from a pharmaceutical firm agreeing not to supply a generic medicine whilst a court case was proceeding.
- **Assessment of damages (2016-17)**  
Provided advice to Maurice Blackburn as to the damages suffered as a result of conduct by a firm in the vehicle industry.
- **Assessment of damages (2016)**  
Assisted with the preparation of expert reports that examined a claim to damages as a result of a generic drug being introduced. This involved setting out how the market worked, the key economic principles that applied, and undertaking an empirical assessment of the effect of the introduction of the generic on the quantity of the innovator drug sold.
- **Assessment of loss (2015)**  
Assisted with the preparation of an expert report that calculated the loss incurred by a company in the gas sector. This involved a detailed analysis of the gas price and revenue that would have been earned, and the calculation of the net present value of the loss. The report was submitted to the Supreme Court of Victoria.

## ENERGY AND INFRASTRUCTURE REGULATION

- **Pricing of ethanol (2024)**  
Provided advice to Manildra in relation to the price of wholesale petrol.
- **Regulation of a gas pipeline (2024)**  
Provided advice in relation to the decision by a Minister to change the regulation of a gas pipeline.
- **NBN Co's Special Access Undertaking (2022)**  
Prepared a report that reviewed the regulatory prices and revenues under the proposed Special Access Undertaking variation, having regard to the long-term interest of end users and economic efficiency.
- **Review of residential energy efficiency assessment methods (2021)**  
Prepared a report for the Commonwealth to identify and review a range of methods to assess the energy performance of residential dwellings for consideration of inclusion in a national disclosure framework.
- **Electricity supply (2019-2021)**  
Led the team supporting an expert providing economic evidence in relation to whether a large electricity supplier in WA was bidding in line with WEM regulations. Provided advice on this issue after the litigation had completed.

- **Proposed rule change (2019)**  
 Led a team that prepared a report for the AEMC in relation to a proposed rule change from ERM Power regarding improving transparency and extending the duration of the medium-term projected assessment of system adequacy.
- **Communications towers on Crown Land (2019)**  
 Reviewed the proposed IPART methodology for determining rental arrangements for the communication towers on Crown Land.
- **Forecast demand for waste (2019)**  
 Prepared a report that forecasted demand for waste for the purpose of applying for regulatory approval to build a new waste facility.
- **Market monitoring (2018)**  
 Reviewed the NDIA's market monitoring policy and provided a strategy for how this could be undertaken and implemented.
- **Assessing the options and effect of gas reservation policies (2017)**  
 Prepared a report that identified and evaluated the merits of policies that reserved ethane for the domestic market, or which have the effect of ensuring there is sufficient supply of ethane for the domestic market.
- **Declaration of infrastructure services (2017)**  
 Provided economic advice in relation to the application by Alinta Energy for coverage of electricity transmission and distribution assets that form part of the North West Interconnected System.
- **Declaration of infrastructure services (2017)**  
 Prepared a wide range of economic advice in relation to whether the services provided by a port should be declared. This included advice in relation to criterion (a) and (b) set out by the Competition and Consumer Amendment (Competition Policy Review) Bill 2017.
- **Impact assessment of changes to price regulations (2017)**  
 Prepared a report setting a framework for how the NDIA should assess the effect of different options for changing the regulation of prices for disability services. Applied the method in the framework to undertake impact assessment of various options to change price controls. Prepared a consultation paper on those options to elicit feedback from stakeholders.
- **Price for public lighting services (2016-2017)**  
 Assisted with the preparation of an expert report that examined the appropriate price for public lighting based on the use of a standard regulatory approach.

- **Price setting (2016)**  
Provided advice to a gas business regarding changes to the way it sets prices for its customers.
- **Tariff Structure Statement (2016)**  
Provided a Tariff Structure Statement and advice on what tariff structure would be consistent with the National Electricity Rules.
- **Public Utilities Office (2016)**  
Provided advice on why the key elements of the national regulatory framework should be adopted for the main electricity system in the southwest of Western Australia.
- **Network regulation (2016)**  
Provided advice in relation to how prices should be set for a below rail business in the context of a potential application for declaration of the network. This included advice on how the initial value of the assets should be set.
- **Electricity regulation (2016)**  
Co-authored a report that examined the extent to which there is an increased opportunity for substitution from gas to electricity as a result of significant technological, policy and market changes, and the impact of this on the incentives faced by JGN in operating its gas network. The report was submitted to the AER as part of JGN's application for a proposed gas access arrangement.
- **Electricity regulation (2014)**  
Co-authored a report that explains the conditions that must hold for an energy-only market to be an efficient market design for electricity supply in Western Australia.
- **Telecommunications regulation (2013-14)**  
Co-authored a report that assessed how revenue received by Telstra from NBN Co for access to its customer access network should affect the wholesale price of access to that network for other access seekers.
- **Arbitration in the wholesale electricity sector (2012)**  
Assisted with the preparation of an expert report regarding how the strike price of a wholesale electricity contract should change as a result of the carbon tax.

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## ARTICLES & PUBLICATIONS

- *The threat to competition from bargaining power, Australian Journal of Competition and Consumer Law*, with Zoe Odgers and Ashmit Vyas (2024)
- *ACCC's evidence regarding the market power of digital platforms, Australian Journal of Competition and Consumer Law* (2022)

- *Assessing a merger control regime: relevant factors, Australian Journal of Competition and Consumer Law* (2021)
  - *Not quite a cartel: Applying the new concerted practices prohibition, Competition & Consumer Law Journal*, Volume 25, Part 2, pp 173-215 (2017)
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#### PRESENTATIONS & SPEAKING ENGAGEMENTS

- Algorithmic Collusion in the Age of AI with Kirsten Webb and Thomas Jones, GCR Conference on Competition Enforcement (2024)
  - Normative Standards of Fairness and Reasonableness in Consumer and Competition Law: Unfair Trading Reforms and Beyond with Co-Presenter (if applicable), Law Council Workshop (2024)
  - Market Power of Digital Platforms: Review of the ACCC's Evidence, Competition Law Conference (2024)
  - Estimating the Benefit of Anti-Competitive Conduct – How the Maximum Penalty for Anti-Competitive Conduct can be Calculated, Law Council Workshop (2019)
  - Putting Your Best Case Forward Using Data: An Example of How Data Analytics Can Help Determine Geographic Markets, Rising Stars Competition Law Workshop (2017)
  - Triage for MFNs: How to Efficiently Assess Whether MFNs are Likely to Lessen Competition, Competition Law Conference (2016)
  - The Pro- and Anti-Competitive Effects of Vertical Restraints, Rising Stars Competition Law Workshop (2014)
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#### SELECTED HONORS & AWARDS

2005-2008 Melbourne International Research Scholarship and Melbourne International Fee Remission Scholarship

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#### PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

2021-Present Law Council of Australia, Competition and Consumer Committee