
D Competitive neutrality complaints

The Productivity Commission Act and the Government's Competitive Neutrality Policy Statement require the Commission to report annually on the number of complaints it receives about the competitive neutrality of government businesses and business activities and the outcomes of its investigations into those complaints. The Australian Government Competitive Neutrality Complaints Office (AGCNCO) received two formal complaints in 2007-08 and completed an investigation for a complaint received during 2006-07. Details of the investigation and action taken in relation to the two complaints are summarised in this appendix.

Investigations completed in 2007-08

Real Estate Institute of Australia

In May 2007, the AGCNCO received a competitive neutrality complaint from the Real Estate Institute of Australia (REIA) regarding Defence Housing Australia's (DHA) exemptions from licensing requirements for the provision of property sales and management services.

The REIA alleged that DHA acts as a real estate agent in the sale of its properties and the lease back arrangements it had with private investors. As such, the REIA claimed that DHA's exemption from licensing and other subsequent regulatory requirements is 'anti-competitive, providing a more favourable business environment for DHA than for private sector real estate business'. In particular, the REIA considered that DHA was advantaged as a result of it being exempt from having to employ licensed real estate agents and the subsequent requirements placed on businesses employing licensed agents, including:

- continued professional development for agents (mandated in some jurisdictions)
- maintaining a registered office
- complying with prudential requirements such as trust accounts for bonds paid by customers and insurances, including professional indemnity and fidelity insurance.

After an initial investigation, which included meetings with both REIA and DHA, the AGCNCO proceeded to a formal investigation. DHA subsequently provided the AGCNCO with a written response to the REIA's complaint, as well as formal legal advice from the Australian Government Solicitor on the application of State and Territory real estate legislation to DHA.

The findings of the investigation report, released in April 2008, were that in relation to the purchase and sale of property, DHA conducts these operations as a property owner and does not act on the behalf of others. Leaseback arrangements under the sale and lease back program are also formed as a commercial relationship between DHA and individual private investors. As the various State and Territory legislation (with the exception of South Australia) does not require a person or business to be licensed when purchasing, selling or leasing their own property, DHA or its staff are not required to be licensed as a real estate agent or to comply with the subsequent regulations relating to licensed agents. Irrespective of this, DHA uses licensed real estate agents to conduct the majority of its transactions.

In the case of South Australia, where the activities of the DHA could be considered as conducting business consisting of dealing with property on their behalf (the *Land Agents Act 1994* requires those the dealing with property on a commercial basis to be licensed as real estate agents), DHA employs licensed agents, thereby complying with the legislation.

The AGCNCO found that DHA did not gain a regulatory advantage as a result of being government owned. Thus, DHA did not breach regulatory neutrality provisions. Consequently, the AGCNCO found that no further action was required in relation to this complaint.

Complaints received in 2007-08

The AGCNCO received two formal complaints during the 2007-08 period. One complaint was not investigated as the matter fell outside the purview of the AGCNCO. The other complaint was subject to an initial investigation, after which it was found there were no grounds to proceed.

In September 2007, the AGCNCO received a complaint from an individual regarding the Australian Taxation Office's (ATO) use of an on-line tax system (e-tax service). The complainant alleged that in order to use the on-line tax system a copy of a particular operating system has to be purchased and this places competing operating systems at 'a disadvantage'. The complainant alleged that 'the ATO could therefore be considered to be favouring one commercial product and thus reducing

competition'. The complainant was advised that the issue fell outside competitive neutrality policy.

In October 2007, the AGCNCO received a complaint in relation to Airservices Australia's (Airservices) provision of aerodrome rescue and fire fighting (ARFF) services at Townsville airport. The complainant alleged that, because of the cross-subsidy pricing model applied by Airservices, they were unable to compete for the provision of ARFF services.

Following discussions with Airservices, the AGCNCO did not proceed to investigation as the revenue generated from ARFF services at Townsville airport amounted to \$1.5 million in 2006-07 and this is below the \$10 million revenue threshold for the application of competitive neutrality.

