





CAPEC competitive neutrality complaint

Further submission to the AGCNCO

Final

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1 Introduction

This submission supplements CAPEC's complaint dated 24 February 2022 and responds to the matters disclosed to CAPEC in April 2023 in a submission from the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **DITRDCA**).

CAPEC Members continue to suffer harm as a result of the commercial and competitive advantages enjoyed by Australia Post. These advantages are derived from regulatory regimes surrounding parcel delivery services that have not evolved to accommodate today's digital economy. There are actions available to the AGCNCO, Australia Post and the Australian Government to rectify these distortions by implementing changes to the regulatory frameworks surrounding domestic and international parcel delivery markets.

In support of its submission, CAPEC notes the following in relation to Australia Post's competitive advantages and how a more equitable parcel delivery market can be achieved:

- **There are domestic legislative and regulatory changes that can be made by the Australian Government to create a more equal competitive environment:** Changes in domestic legislation and policy by the Australian Government could give effect to a more equitable and competitive parcel delivery market at a domestic level. This could include, for example, aligning customs reporting requirements and regulatory costs, or implementing and mandating electronic data reporting.

Despite existing Universal Postal Union (**UPU**) regulations, governments around the world (including in the US and EU) are currently considering and implementing policy changes which will have the effect of addressing competitive distortions created by existing inequitable data reporting requirements between postal and non-postal operators. The UPU regulations are not a barrier to Australia implementing changes to domestic law and policy to ensure more equitable treatment of commercial operators and Australia Post, particularly in circumstances where Australia has not formally adopted the current (and in force) version of the UPU Convention.

- **Australia Post's existing CSO losses are not sustainable and do not justify maintenance of distortionary import regulation:** In its submission, the DITRDCA emphasised existing Community Service Obligations (**CSOs**) that Australia Post is subject to and highlighted that the calculated cost of complying with these obligations was \$348.5 million in 2022.¹ However, there is increasing recognition that these CSOs are no longer financially sustainable and the cost of providing these services are expected to rise. The sustainability of these obligations are currently being considered as part of the DITRDCA's inquiry into Postal Services Modernisation (**PSM Inquiry**).

Reforms to the *Australian Postal Corporation (Performance Standards) Regulations 2019* (Cth) (**Performance Standards**) could help reduce the financial burden placed on Australia Post. The Australian Government has introduced legislative changes to Australia Post's Performance Standards in the past,² and is not restricted from making future changes that would ease Australia Post's ability to meet its CSOs.

Because of this, any cost associated with meeting Australia Post's CSOs should not be seen as an immutable or structural feature of the relevant postal landscape. The existence of these costs should also not be seen as in any way justifying the maintenance of discriminatory regulatory regimes in respect of Australia Post's commercial operations – in fact, the DITRDCA in its submission does not suggest that is necessary or desirable.

¹ Australia Post, 2022 Annual Report, p 149: https://auspost.com.au/content/dam/auspost_corp/media/documents/2022-australia-post-annual-report.pdf

² For example, see the *Australian Postal Corporation (Performance Standards) Amendment (Speed of Mail Delivery) Regulation 2015* which implemented a two-speed letter service: <https://www.legislation.gov.au/Details/F2015L01179>

- **Reforms proposed through the UPU, STS or PSM Inquiry processes will not adequately address CAPEC’s complaint:** The scope and impact of any proposed reforms by the UPU, Simplified Trade System (STS) or PSM Inquiry are uncertain, unlikely to address CAPEC’s complaint, and will not be implemented within a sufficiently meaningful timeframe. The AGCNCO is best placed to assess issues of competitive neutrality, and make recommendations to Government about legislation and policy to address existing regulations that provide advantages to Australia Post as a result of its status as a government-owned business.

The competitive advantages enjoyed by Australia Post are real and ongoing. CAPEC does not fault Australia Post for acting in accordance with the laws and regulations that govern it. However, CAPEC strongly submits that the regulatory framework regarding parcel deliveries – where Australia Post competes with commercial operators – can and should be changed by the Australian Government to be fairer and more equitable in accordance with competitive neutrality policy. In this submission, CAPEC has identified specific issues the AGCNCO should consider in its investigation and the recommendations that the AGCNCO can make to the Australian Government to address competitive neutrality concerns. These recommendations are summarised at section 2 and are discussed in further detail at Annexure 1.



As an additional matter, CAPEC notes that in its submission the DITRCDA has stated that Australia is a member of the UPU and is bound by its treaty obligations. However, CAPEC considers that this position is not correct. CAPEC understands that Australia has not yet ratified the current 2021 version of the UPU Convention, which is the only version which is legally in force and adopted by the UPU.³ The “Countries’ legal situation” section of the UPU’s website⁴ describes the 2016 version of the UPU Convention as the most recent Treaty ratified by Australia.⁵ This is in contrast to Malta, the only country that CAPEC has identified as formally adopting the current Convention.⁶ Notwithstanding, CAPEC has sought to frame its specific recommendations in a way that it considers would be consistent with the UPU treaty arrangements, and as such, the AGCNCO should not restrict any policy recommendations on the basis that it may not be consistent with the UPU.

Lastly, CAPEC has provided definitions at Annexure 3 which should be relied on for the purposes of this submission.

2 Recommendations to address competitive neutrality

Described below are the key recommendations that CAPEC Members submit the AGCNCO should consider in its investigation and should be further recommended to the Australian Government.

Recommendation 1: Commercial parcel operators and Australia Post should be subject to equivalent reporting and enforcement obligations for the import and export of equivalent goods under the *Customs Act 1901* (Cth) (**Customs Act**).

³ CAPEC notes that Article XVIII of the [11th Additional Protocol - Abidjan 2021](#), states “This Additional Protocol shall come into force on 1 July 2022 and shall remain in force for an indefinite period.” In circumstance where Australia has not ratified this treaty, it will have no legislative or legal effect in Australia.

⁴ UPU, *Acts of the Union and other decisions: Countries’ legal situation*: <https://www.upu.int/en/Universal-Postal-Union/About-UPU/Acts#countries-legal-situation>

⁵ UPU, *Countries’ legal situation: Australia*: <https://www.upu.int/UPU/media/upu/files/aboutUpu/acts/10-memberCountriesLegalSituation/ausEn.pdf>

⁶ UPU, *Countries’ legal situation: Malta*: <https://www.upu.int/UPU/media/upu/files/aboutUpu/acts/10-memberCountriesLegalSituation/mltEn.pdf>

Recommendation 2: Small Packets which are imported by Australia Post under the Postal Letter Stream should be subject to the same or equivalent obligations to Small Packets that are imported outside of the Postal Letter Stream. Recent moves by the European Union to impose and enforce Electronic Advanced Data (**EAD**) requirements on designated postal operators provides an appropriate model for such a change.

If this recommendation is accepted, then as an alternative to Recommendation 1, Customs Act obligations could be modified to provide for commercial parcel operators to be subject to the same EAD requirements and obligations as Australia Post.

Recommendation 3: Australia Post should not be exempt from Export Declarations with respect to “goods” that are treated as “mail”.

Recommendation 4: Australia Post should be liable for costs associated with depot licence applications.

Recommendation 5: The AGCNCO should confirm whether Australia Post is meeting any Import Processing Charges where appropriate in the same manner as commercial parcel operators. If not, Australia Post should be subject to equivalent Import Processing Charges as commercial parcel operators.

Recommendation 6: The Australian Government should prepare a submission in advance of the 2025 UPU conference to propose reforms to facilitate competitive neutrality.

Recommendation 7: Domestic customs laws should apply equally to all imports to Australia sent through the Extra Territorial Offices of Exchanges, regardless of location.

3 CAPEC Members are at a significant competitive disadvantage relative to Australia Post

(a) Overview of CAPEC Members’ competitive disadvantage in the parcel industry

The majority of harm suffered by CAPEC Members is derived from asymmetries in customs reporting requirements. CAPEC Members are required to submit customs declarations under the Customs Act. These obligations for imports mainly arise with respect to cargo reports under section 64AB and Self-Assessed Clearance (**SAC**) declarations under section 71AAAF.⁷ For exports, this relates to the processing of Export Declarations under section 114.

The significance of the competitive advantages that are underpinned by disparate reporting obligations cannot be overstated; particularly given the size and value associated with the parcel delivery market. Industry statistics from 2022 are outlined below:

- The total small package market (including Australia Post’s operations) was over \$1bn in size; and
- CAPEC members completed:
 - approximately ██████████ SAC declarations at a total cost in Australia of over ██████████;
 - approximately ██████████ N10 Non-Post Import Declarations; and

⁷ Each of the “approved forms” required to be completed by CAPEC Members as part of their reporting obligations can be found here: ABF, *Approved Statements*: <https://www.abf.gov.au/help-and-support/approved-statements>

- Export Declarations to the Australian Border Force (**ABF**) for almost ██████ cargo consignments.

Given the volume of reports and declarations that are submitted by CAPEC Members and other industry players, any asymmetries in reporting requirements between competitors will confer a significant advantage to one party over another.

(b) The regulatory obligations under the Customs Act are unequal

The Australian import and export regime is complex.⁸ It is in this context that parcel delivery businesses (including Australia Post) compete to provide timely and efficient deliveries at competitive prices, which is contingent on successfully managing the Australian customs import and export regime. CAPEC's disadvantages and Australia Post's advantages are described below:

(i) Imports

(A) Cargo reports and SAC declarations

CAPEC Members are required to complete, as necessary, the following customs forms:

- various section 64AB cargo reports (i.e., air and sea cargo reports);
- various section 71AAAF SAC declarations (i.e., short form and long form declarations);
- section 71L Import Declarations (i.e., N10 Import Declarations and N10 (Post) N10 Import Declarations);
- section 71L Warehouse Declaration (N20);
- section 71L Import Declaration (warehouse Goods) (N30); and
- section 64ABAA Outturn Report.

CAPEC's disadvantage is particularly acute with respect to Australia Post's ability to utilise the Postal Letter Stream for the import of Small Packets (as discussed at section 4.2 of CAPEC's original submission to the AGCNCO). Australia Post recognises the importance of these Small Packets, and is actively growing its presence in this segment, stating:

To address the change in profile and volume growth in small packets, Australia Post has invested heavily in the Sydney Gateway Facility through its Future Network program to increase the footprint by over 4000m², and has also invested in small parcel automation with the installation of a multi-product sorter.⁹

CAPEC understands that low value goods imported by Australia Post are subject to different customs treatment, and are exempt from submitting cargo reports and SAC Declarations. In addition to a legislative basis for excluding Australia Post from the requirement to complete SAC Declarations,¹⁰ the ABF has also stated that "*It is expected*

⁸ A summary of the relevant customs requirements and processes is available on the ABF's website for [imports](#) and [exports](#) respectively.

⁹ Australia Post, *Submission: Productivity Commission consultation on Collection Models for GST on Low Value Imported Goods*, 5 September 2017: https://www.pc.gov.au/data/assets/pdf_file/0017/221543/sub037-collection-models.pdf

¹⁰ Section 71AAAD of the Customs Act defines specified low value goods as "goods of a kind referred to in paragraph 68(1)(e), (f) or (j)". In summary, section 68(1)(e) states that goods include goods that are consigned through Australia Post and do not exceed \$1,000 in value. This has the effect of exempting Australia Post from SAC Declarations for low value goods which is otherwise required under section 71AAAF(1) (i.e., the definition of 'specified low value goods' means that Australia Post is not

that goods that arrive by post will be exempt from the requirement to lodge a SAC". In this way Australia Post is able to avoid processing low value, Small Packets through SAC declarations.

Cargo reports are required under section 64AB, and are prescribed by the ABF in relation to air and sea cargo under section 64AB(4B) of the Customs Act.¹¹ These forms specify the necessary information required to comply with the Customs Act. Similarly, section 71 is the relevant provision mandating completion of SAC declarations. These declarations must be in the form referred to under section 71AAAF,¹² and the approved form specifies the necessary information required to comply with the Customs Act. These declarations vary depending on the value of the goods being imported.¹³ SAC declarations can be submitted jointly with cargo reports.

As noted in CAPEC's original complaint, Australia Post is able to access CN 22 forms for the purposes of importing low value goods. There is an obvious difference in the volume of data required to be processed through cargo reports and SAC declarations compared to the CN 22 forms used by Australia Post, placing CAPEC Members at a clear disadvantage.

However, it is possible for the ABF to make changes to its approved forms to create a level customs reporting playing field. Sections 64AB(6) and 71AAAT(1) each provide that the Comptroller-General of Customs (**ABF Commissioner**) can approve different statements in relation to cargo reports and SAC declarations respectively. This means that the ABF Commissioner has the discretion and ability to amend the data required under the various forms, and reflect equivalent reporting obligations that are available to Australia Post through the CN 22 and CN 23 Forms.

(B) Import Declarations

Section 71K(1) is the relevant provision that governs import entry forms (i.e., N10 Import Declarations), including the type of approved form that must be used and the specific information that is required to be submitted to the ABF.

Australia Post is exclusively able to access the N10 (Post) Import Declaration forms, while CAPEC Members are required to utilise the N10 Non-Post Import Declaration forms. A review of these two forms shows that there is less data required to be included in the N10 Post Import Declaration which allows Australia Post to process data more efficiently. This issue was raised in CAPEC's original submission to the AGCNCO.

CAPEC notes that section 71K(2) provides the ABF Commissioner with the ability to "*approve different forms for documentary communications to be made in different circumstances or by different classes of persons.*" Again, in this way, the ABF Commissioner is able to amend the relevant customs reporting forms to ensure equivalence in reporting requirements between CAPEC and Australia Post.

(C) Depot licence applications

Depots are places licensed by ABF for use by importers to hold goods, typically for short periods of time. To operate the relevant premise, a licence must be held under section 77G of the Customs Act. There is significant time and cost associated with the application

the owner of specified low value goods for the purposes of section 71AAAF, and is exempt from submitting a SAC Declaration under that section).

¹¹ See also section 64AB Cargo Report (AIR) approved form: <https://www.abf.gov.au/help-and-support-subsite/files/64ab-cargo-report-air-updated-2021.pdf> and section 64AB Cargo Report (SEA) approved form: <https://www.abf.gov.au/help-and-support-subsite/files/64ab-cargo-report-sea-updated-2021.pdf>

¹² See section 71AAAF approved form: <https://www.abf.gov.au/help-and-support-subsite/files/71aaaf-self-assessed-clearance-sac-short-form-updated-2021.pdf>

¹³ ABF, *Declarations for imported goods*: <https://www.abf.gov.au/imports/Pages/How-to-import/Import-declarations.aspx>

of a licence under section 77G.¹⁴ CAPEC notes that under section 77H(3), “if Australia Post makes an application under this section for the whole or a part of an International Mail Centre to be covered by a depot licence, it is not liable to pay the depot licence application charge under subsection (2).” In circumstances where both CAPEC and Australia Post compete for parcel delivery services, there is a clear financial advantage available to Australia Post simply by virtue of seeking a depot licence which relates to its International Mail Centre (**IMC**). This is particularly problematic where the IMC is used by Australia Post to store identical goods to CAPEC (for example, low value goods). CAPEC submits that equivalent treatment with respect to depot licence application charges should apply to CAPEC and Australia Post.

CAPEC is not only concerned with the disparate regulatory framework, but the limited transparency over Australia Post’s operations and reporting obligations, and the extent to which Australia Post complies with these requirements.

(ii) Exports

For Postal Goods being exported from Australia, Export Declarations are required to be made by exporters, owners of the Postal Good or their agent under section 114 of the Customs Act. CAPEC notes that goods that are exempt from Export Declarations include “Australia Post or diplomatic bags of mail”.¹⁵ The ambiguous and uncertain definition of ‘mail’ in this context may mean that Australia Post treats some Postal Goods as ‘mail’, and therefore, as exempt from requiring an Export Declaration. Where there is the option to send identical Postal Goods via an avenue that requires the customer to fill out an Export Declaration compared to one that does not, which may arise because of Australia Post’s discretionary characterisation of ‘mail’ items, senders are more likely to choose Australia Post. This increases Australia Post’s revenue, volume and scale to compete for Postal Good deliveries.

(iii) Enforcement and civil penalties

In addition to the import and export reporting asymmetries, Australia Post derives advantages with respect to the penalties that are enforced by ABF for non-compliance with customs reporting obligations. Relevant penalty provisions are summarised below:

- Section 64AB(9) and (10): breach of cargo reporting requirements may attract a fine of 120 penalty units for intentional contraventions, and 60 penalty units for a non-intentional contravention (\$37,560 and \$18,780 respectively).
- Section 64AE(2): requires cargo reporters to respond or produce documents to ABF officials with respect to cargo reports. Breach of this section may attract a fine of 30 penalty units (\$9,360).
- Section 74(1), (3), (5) and (6): an ABF official may issue a direction to comply to cargo reporters (i.e., CAPEC Members) regarding the storage or movement of goods where there are reasonable grounds to suspect that the cargo report has not identified particular goods, or that the particular goods are prohibited. Intentionally contravening section 74(1) or (3) can result in a fine of 120 penalty units (section 74(5)), and a non-intentional contravention may result in a fine of 60 penalty units (section 74(6)).

Each of these enforcement provisions are strict liability offences, and are tied to regulatory obligations that are applicable to CAPEC Members as cargo reporters; there is no similar

¹⁴ An application fee of \$3,000 is payable for each depot application, and is non-refundable if the application is unsuccessful or it is subsequently withdrawn. See relevant information at ABF, *Applying for a Depot Licence – Application Guidelines*: <https://www.abf.gov.au/licensing-subsite/files/depot-application-guidelines.pdf>

¹⁵ *Customs Regulation 2015*, Sch 4, cl 1, item 6. See also ABF, *Export Requirements*: <https://www.abf.gov.au/importing-exporting-and-manufacturing/exporting/how-to-export/export-requirements>

enforcement mechanism applicable to Australia Post where Postal Goods are imported under the Postal Letter Stream or under the *Australian Postal Corporation Act 1989* (Cth) (**APC Act**).

4 The Australian Government can take practical measures to address competitive neutrality concerns

(a) Australian Government can implement legislation or regulatory change to resolve CAPEC's complaint

The Australian Government has the authority to amend domestic legislation in a way that would directly address CAPEC's concerns. Although CAPEC acknowledges that the Australian Government is unable to resolve CAPEC's competitive neutrality complaint by seeking to implement unilateral changes to the UPU (for example, by declaring a CAPEC Member(s) as Australia's DO), it is not prevented from introducing legislative and regulatory changes at a domestic level. This could include, for example, making recommendations to amend the Customs Act or introducing legislation to enforce EAD reporting obligations.

As shown in Annexure 1, there are practical recommendations the AGCNCO can make to the Australian Government to achieve competitive neutrality. CAPEC has outlined below the key changes that would address its competitive neutrality concerns in the parcel delivery market.

(i) Recommendations supporting domestic legislative changes

The discrepancies in the reporting requirements and data processing between CAPEC Members and Australia Post under the Customs Act are outlined elsewhere in this submission. Given the size and value tied to the import of Small Packets, and Australia Post's access to a more streamlined reporting arrangement, ensuring that equivalent reporting obligations apply equally to CAPEC Members and Australia Post will promote more competition and better prices in the parcel delivery market. The Australian Government and the ABF are empowered to change domestic customs reporting obligations for both CAPEC Members and Australia Post to align these obligations.

CAPEC notes that the Australia Government has previously considered the AGCNCO's investigation in the context of making legislative amendments which address issues of competitive neutrality, amongst other things. This is seen in the explanatory memorandum to the Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 (Cth).¹⁶ Commenting on different export entry thresholds, the explanatory memorandum states that *"this causes confusion in the exporting industry, particularly with the reference to statistical items, and may provide Australia Post with a competitive advantage with regard to export entry requirements. Similar differences with respect to import entry thresholds have recently been the subject of a report by the Commonwealth Competitive Neutrality Complaints Office."* As such, there is a clear precedent for the Government implementing legislative changes in the context of a competitive neutrality investigation that had been undertaken by the CCNCO.

As described above at section 3(b), other domestic laws and regulations which can be amended by the Australian Government (or the ABF Commissioner where appropriate) relate to:

- costs associated with depot licence applications;
- exemption of mail from Export Declarations;

¹⁶ Explanatory Memorandum, Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000 (Cth) at section 6.5 (p 56): https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r1211_ems_6189db60-50b3-4f40-8787-7009f8561fbb/upload_pdf/36613.pdf;fileType=application%2Fpdf

- application of enforcement and penalty provisions under the Customs Act; and
 - Import Processing Charges (as outlined at section 4.2(d) of CAPEC's original complaint).
- (ii) Recommendations to adopt enforceable EAD reporting and access to the EAD or an equivalent system
- (A) EAD reporting by Australia Post should be mandatory and enforced

The EAD involves the capture and transmission of Postal Goods data (such as sender and receiver details, article contents etc), which is sent in advance to customs officials in the destination country prior to the item physically arriving at the border. EAD applies to Small Packets and parcels, and Australia Post has commented that "*all articles and express letters sent to the destination countries... will need EAD*".¹⁷ CAPEC understands that Small Packets are currently imported by Australia Post through the Postal Letter Stream. Under UPU rules, Small Packets are subject to EAD and must also be accompanied by CN 22 or 23 Import Declarations which are provided by Australia Post to ABF. Essentially, EAD transforms information contained in CN 22 and 23 forms into electronic data.

CAPEC understands that Australia Post¹⁸ and overseas post operators are currently utilising EAD for Small Packets, however, EAD reporting is only enforced in the US and a number of countries in the European Union. The enforcement of EAD reporting ensures that Small Packets without the requisite information are not imported to the destination country. [REDACTED]

[REDACTED].¹⁹

What this means is that operators such as Australia Post can import Small Packets without complying with the necessary reporting obligations expected of other commercial operators. This lesser reporting burden provides Australia Post with a competitive advantage. CAPEC submits that by implementing an enforcement model for EAD reporting, Australia Post would be required to uphold the same standard of compliance that commercial parcel operators are subject to.

One model for compliance is that which is currently being adopted in the European Union. The European Union is currently in stage 2 of the rollout of the "Import Control System 2" (ICS-2), which is designed to facilitate the sharing of electronic information with customs authorities, enabling better and faster security and safety analysis. This effectively provides an 'EAD' system for major goods players in the European Union, including Postal Operators, maritime, rail, air and road carriers, express carriers and various other operators.²⁰

CAPEC considers that an enforceable EAD reporting regime is an appropriate measure to introduce equivalency in reporting requirements by CAPEC Members and Australia Post, while at the same time managing Australia Post's regulatory requirements as Australia's DO. Given that there are enforcement models in place in other countries, there is a precedent for Australia to implement legislation that would have the similar effect of mandating the supply of EAD data for parcel importations that is not inconsistent with UPU requirements.

¹⁷ Australia Post, *Electronic Advance Data (EAD)*: <https://auspost.com.au/sending/send-overseas/customs-forms-regulations/electronic-advance-data-ead>

¹⁸ Australia Post, *Electronic Advance Data (EAD)*: <https://auspost.com.au/sending/send-overseas/customs-forms-regulations/electronic-advance-data-ead>

¹⁹ [REDACTED]

²⁰ European Union, *Import Control System 2 (ICS2)*: https://taxation-customs.ec.europa.eu/customs-4/customs-security/import-control-system-2-ics2-0_en

(B) Access to the EAD or an equivalent reporting regime

EAD also allows Australia Post to streamline data processing requirements associated with Postal Goods by processing CN 22 and 23 Forms more efficiently and securely than any alternative arrangement available to CAPEC Members. Another potential recommendation that the AGCNCO should consider is whether access to the EAD, or an equivalent scheme, could be provided to CAPEC Members and other couriers.

For Small Packets, Australia Post's access to the EAD and CN 22 Form means that its reporting obligations are streamlined through digitisation while the amount and quality of data requirement to be reported is substantially less than the equivalent reporting requirements for CAPEC Members under the SAC declarations (this is discussed in CAPEC's original complaint at section 4.2). This is not a fair reporting regime where CAPEC Members and Australia Post are importing identical Small Packets. An added benefit of EAD applying to both CAPEC Members is that it enhances border security by increasing data requirements and improving how data is communicated. This position is recognised by Australia Post, who has stated that "**to improve border control and security, we (Australia Post) need to digitally capture and transmit information for your items to the applicable destination countries**" (emphasis added).²¹ Accessing the EAD or an equivalent regime will enhance efficiency and improve security around customs reporting, and create a more competitive Postal Goods delivery market.

(b) Australian Government should engage with the UPU in a way that is consistent with Australia's policy framework of competitive neutrality

To the extent that the Australian Government does participate in conferences and other forums relating to the UPU framework, CAPEC considers that the AGCNCO should encourage the Australian Government to do so in a way that is supportive of and reflects Australia's commitment to competitive neutrality. There are a number of opportunities to do so, including at the UPU's extraordinary congress which is scheduled from 1 – 5 October 2023 in Riyadh, Saudi Arabia and at a regularly scheduled UPU congress for 2025 in the United Arab Emirates.

The AGCNCO should recommend that the Australian Government engage with UPU processes in a principled way, reflecting the domestic policy commitment to competitive neutrality, and make submissions in relation to reforms to the UPU framework arrangements which would support competitive neutrality.

(c) Postal Goods delivered through ETOEs should be subject to the same customs standards as CAPEC members

Article 13 of the Universal Postal Convention permits DOs to use documents and forms associated with the UPU through Extra Territorial Offices of Exchange (**ETOE**) to facilitate postal services and the exchange of Postal Goods. Currently, Postal Goods which are processed through ETOEs are subject to the same (lesser) import and export requirements as Postal Goods transported by Australia Post.

Australia Post currently operates fourteen ETOEs and a number of international DOs. We understand that Germany, Sweden, Belgium, France, the Netherlands and Switzerland operate ETOEs in Australia. CAPEC submits that any Postal Goods which originate from an ETOE should be subject to the same customs and biosecurity obligations that apply to equivalent goods carried by commercial operators.

²¹ Australia Post, *Electronic Advance Data (EAD)*: <https://auspost.com.au/sending/send-overseas/customs-forms-regulations/electronic-advance-data-ead>

5 Australia Post's existing CSO losses are not sustainable and the existence of these costs does not justify maintenance of distortionary import regulation

CAPEC acknowledges that there are costs associated with Australia Post's CSOs. However, these costs are widely acknowledged to be unsustainable, with Australia Post recently deciding to increase prices for certain Postal Goods services to take steps to address these unsustainable costs.²² The ongoing PSM Inquiry is further considering how Australia Post can be modernised to ensure that it operates on a more commercial basis and is fit for purpose.

As noted in the ANAO Performance Report²³ and the WIK Final Report,²⁴ there are operational efficiencies that can be implemented by Australia Post. These reports consider a number of ways that Australia Post could be more efficient, and to the extent not already undertaken, should include:

- **Reducing labour costs:** Australia Post can look to improve its labour productivity through process optimisation, automation, reducing the number of penalty shifts worked, and better using its fixed delivery network to grow revenue from existing sources and develop new sources of revenue. CAPEC understand that a significant amount of the processing required to ensure the delivery of packages and letters is done by Postal staff members during times of the day where their overtime or penalty rates apply. A continued focus on transitioning workers to day shift would reduce operating costs.
- **Condensing the network:** In some circumstances, Australia Post is performing above its Performance Standards requirements. For example, in 2022 Australia Post reported that it maintained 14,982 street posting boxes,²⁵ 149% above the standard required.²⁶ Given the CSOs require Australia Post to service 99.7% of its total network at least 2 days per week,²⁷ the additional sites may be creating an unnecessary burden on Australia Post's resources.

The costs associated with Australia Post's CSOs are widely acknowledged to be unsustainable, with Australia Post relying on cross-subsidization and competitive advantages in order to remain operational. However, the effect of allowing Australia Post's competitive advantages to fund the CSOs is that the \$350 million deficit that must be funded is business that is taken away from the private sector. This provides an inherent and disproportionate disadvantage to importers of merchandise in Australia. Because of this, CAPEC submits that the AGCNCO should not treat the existing CSOs as a disadvantage arising from Australia Post's government ownership. Further, there should be no suggestion that Australia Post in some way needs to be "protected" by discriminatory and competitively distortionary import and data reporting rules in order to generate "excess profits" to offset its CSO costs. CAPEC does not understand the DITRDCA or any other stakeholder to be suggesting that this should be the case and it would be perverse to do so when there are a range of other much less intrusive policy mechanisms that can and are being explored to address the current issues associated with Australia Post's CSO costs. Policy mechanisms that could even the burden to ensure no one industry or player is unfairly discriminated against include the direct funding of providing CSOs by the Australian Government.

²² Australia Post, *Price changes – effective 3 July 2023*: <https://auspost.com.au/service-updates/pricing-updates/price-changes>

²³ Australian National Audit Office, *Australia Post's Efficiency of Delivering Reserved Letters Services*, 2017 (ANAO Report).

²⁴ WIK Consult, *Assessment of Australia Post's Cost Allocation Methodology and Operations' Efficiency*, 2019 (WIK Report).

²⁵ Australia Post, *2022 Annual Report*, September 2022, p 97: https://auspost.com.au/content/dam/auspost_corp/media/documents/2022-australia-post-annual-report.pdf

²⁶ *Australia Postal Corporation* (Performance Standards) Regulations 2019 s 10(1).

²⁷ *Australia Postal Corporation* (Performance Standards) Regulations 2019 s 7(1)(b).

6 Proposed reforms will not address competitive neutrality concerns

(a) The AGCNCO is the proper body to investigate CAPEC's complaint

CAPEC considers that the most practical and timely pathway for meaningful action on its competitive neutrality complaint is through a complete investigation and favourable recommendations made by the AGCNCO (if the AGCNCO considers CAPEC's complaints are substantiated). This is because there are deficiencies with the UPU, STS Taskforce and PSM Inquiry processes. For the reasons outlined below, CAPEC submits that while it is possible that aspects of these processes may address CAPEC's complaint, the scope of these reform processes are highly uncertain, do not seem likely to resolve any element of CAPEC's complaint, and in any event, will not be implemented within a reasonable timeframe. Although CAPEC considers the proposed reforms will help create a more efficient and effective trade regime, they do not adequately deal with competitive neutrality. As such, CAPEC submits that the AGCNCO remains the appropriate forum to identify and suggest action to redress CAPEC's concerns.

CAPEC also understands that some stakeholders have raised with the AGCNCO that there are a number of international and domestic regulatory reforms in the parcel delivery sector which may address certain elements of CAPEC's complaint (CAPEC understands this to be referring to the UPU, STS Taskforce and PSM Inquiry processes). For the same reasons noted above and as outlined in detail in this section, the AGCNCO is the proper authority that should assess CAPEC's complaint.

The harm suffered by CAPEC Members by Australia Post's unfair competitive advantages as described at section 3 are ongoing. Unless the underlying cause of these issues are addressed by the AGCNCO, CAPEC will continue to suffer from unfair competitive disadvantages relative to Australia Post.

(b) Universal Postal Union reforms

(i) Background

The UPU has sought to engage with private sector players so that it maintains universality and meets citizens' changing needs, and has proposed reforms to "open up" to "wider postal sector players" (**WPSP**). This culminated in a survey that was conducted in August 2022 by the DITRDCA on behalf of the UPU.

The UPU defines "opening up" to mean making certain UPU products and services available to non-post organisations (i.e., CAPEC Members), including e-commerce development, postal payment services and postal quality of service and supply chain integration as facilitating greater access to non-UPU entities. The full details of the proposed changes to products and services are described at Resolution C 11/2021²⁸ of the Abidjan Congress and Annex 2 of the stakeholder survey.²⁹

As of August 2023, CAPEC is not aware of any material progress with respect to these reforms by either the UPU or DITRDCA.

(ii) It is not clear that UPU reforms will address CAPEC's competitive neutrality concerns

²⁸ Decision of the 2021 Abidjan Congress, Resolution C 11/2021: <https://www.upu.int/UPU/media/upu/files/aboutUpu/acts/07-actsAndOtherDecisions2021AbidjanCongress/actsAndOtherDecisions2021AbidjanCongressEn.pdf>

²⁹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, "Public consultation on opening up the UPU to wider postal sector players—questionnaire", Annex 2: <https://www.infrastructure.gov.au/sites/default/files/documents/questionnaire-for-wpsps.pdf>

The proposed reforms to “open up” the UPU may generally result in some benefits to CAPEC Members. However, based on the information currently available, it is unlikely that the UPU reforms will result in any wholesale changes to importation reporting requirements, or other regulatory changes, that help level the playing field between CAPEC Members and Australia Post. Although CAPEC understands that the UPU has developed an EAD Steering Committee under the Postal Operations Council,³⁰ it is unclear to what extent there are any proposals to facilitate access by private operators to the EAD system.³¹

Even if one of the possible outcomes of the UPU reform processes involved CAPEC Members becoming a DO jointly with Australia Post, it is unclear how and whether CAPEC Members would benefit from this arrangement. For example, there is no guidance as to whether CAPEC Members would also be required to comply with CSO obligations, or how Australia Post’s infrastructure would be shared between CAPEC Members. Because of this, the UPU reforms are highly uncertain, and the Australian Government should not rely on these reforms for the purposes of addressing CAPEC’s competitive neutrality complaint.

As identified above, there are options available to Australia Post to better align its operations with commercial couriers while complying with UPU requirements. Although CAPEC appreciates that Australia Post is bound by legislation to conduct its operations in accordance with the UPU rules, CAPEC does not consider that this means the Australian Government should restrain from advocating for a more equitable parcel delivery framework at an international level.

CAPEC notes that the UPU has formed a task force to progress its reforms,³² and is considering how to give effect to interoperability and interconnection between WPSPs and DOs (i.e., between CAPEC Members and Australia Post). CAPEC understands that the model currently contemplated by this UPU task force explicitly precludes the use of CN forms, international mail processing centre codes, EAD, UPU remuneration rates and any other operational procedures that are exclusive and specific to the processing of postal items governed by the UPU Acts. As has been previously noted by CAPEC, Australia Post’s access to CN forms provide it with a distinct competitive advantage. It does not appear that the reforms currently being considered by the UPU go any way to address this issue.

(iii) UPU reforms will not address CAPEC’s concerns in a reasonable time frame

Because of the structure of the UPU and the size of its membership base any substantial reform to its processes involve substantial periods of time.

The UPU has considered some form of “opening up” or engagement with broader industry stakeholders since at least 2004.³³ Other references by the UPU to “opening up” were made during the 2012 Doha Congress,³⁴ 2016 Istanbul Congress³⁵ and 2021 Abidjan

³⁰ UPU, Postal Operations Council, EAD Steering Committee: https://www.upu.int/UPU/media/upu/files/postalSolutions/programmesAndServices/postalSupplyChain/SupplyChainIntegration/ead/eadRoadmap_EN.pdf

³¹ Notably, the stakeholder survey conducted by DITRDCA only mentions that there is a “EAD customs declarations app” which allows postal customers to pre-fill draft declarations. It does not consider whether the app or broader system is available to CAPEC Members: See the stakeholder survey here: <https://www.infrastructure.gov.au/sites/default/files/documents/questionnaire-for-wpsps.pdf>

³² UPU, Council of Administration, ‘Task force on the opening up of the UPU to wider postal sector players’, 22 June 2023.

³³ UPU, *Opening up of the Universal Postal Union to the wider postal industry*: <https://www.upu.int/en/Newsletter/Opening-up-of-the-Universal-Postal-Union-to-the-wider-postal-industry>

³⁴ Decision of the 2012 Doha Congress, Resolution C 7/2012: <https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/actsOfPreviousCongress/act2012DecisionsDohaEn.pdf>

³⁵ Decision of the 2016 Istanbul Congress, Resolution C 10/2016: <https://www.upu.int/UPU/media/upu/files/UPU/aboutUpu/acts/actsOfPreviousCongress/acts2016DecisionsIstanbulEn.pdf>

Congress.³⁶ The reforms set out in the 2021 Abidjan Congress and stakeholder survey, as identified above, are proposed to be discussed at the Riyadh 2023 Extraordinary Congress in October 2023.³⁷

Even if measures are agreed to be adopted by the UPU, the timing for the implementation of any changes by the UPU is highly uncertain. In CAPEC's opinion, any material changes to UPU rules would take at least 7 – 10 years to adopt and implement.

To the extent the UPU reforms might ultimately address some of the concerns raised by CAPEC, the substantial period of time that will elapse before any resolution means that these process are not an effective answer to the significant competitive harm that CAPEC members are experiencing as a result of Australia Post's competitive advantages. This is acknowledged by the UPU itself. The task force responsible for developing reforms for WPSP has noted that submissions around interoperability and interconnection between DOs and WPSPs are expected to be made for the 2025 Congress. This is the starting point for regulatory reform in the UPU, and CAPEC Members would not expect any meaningful change to occur within a commercially acceptable timeframe.

(c) Simplified Trade System reforms

(i) Background

The STS Implementation Taskforce (**Taskforce**)³⁸ was announced in June 2021 by the Australian Government to simplify trade processes at the Australian border. The Taskforce is ongoing – and is developing regulatory reforms to streamline Australia's import and export trading regime. In developing these reforms, the Taskforce undertook a consultation process seeking views from key industry stakeholders, including CAPEC and Australia Post, on the development of a "tell us once" service for import and export interactions, as well as changes to trade regulations, ICT systems and data reporting. The consultation period ended on 14 January 2022.

In summary, CAPEC submitted in its response to the survey³⁹:

- consistent policies and procedures, documentation duplication and better access and transparency around reporting requirements need to be addressed;
- cross-border trade could be simplified through a single regulatory authority; and
- improvements to ICT system and data are needed, including, for example, providing a single portal for access to Government agencies to ensure all documentation can be completed online, or facilitating the transfer of data and information between import and export destinations.

Australia Post made similar observations around changes to ICT systems in its submission.⁴⁰

Australia Post also noted that "*having a clear ability to utilize current ABF and other Government Department infrastructure to assist with defining mail and cargo would be*

³⁶ Decision of the 2021 Abidjan Congress, Resolution C 11/2021: <https://www.upu.int/UPU/media/upu/files/aboutUpu/acts/07-actsAndOtherDecisions2021AbidjanCongress/actsAndOtherDecisions2021AbidjanCongressEn.pdf>

³⁷ UPU, *UPU to discuss WPSPs at 2023 Extraordinary Congress*: <https://www.upu.int/en/News/2021/9/UPU-to-discuss-WPSPs-at-2023-Extraordinary-Congress>

³⁸ Austrade, Simplified Trade System Implementation Taskforce: <https://www.simplifiedtrade.gov.au/>

³⁹ CAPEC submission to the STS Consultation Paper, November 2021: <https://www.austrade.gov.au/ArticleDocuments/10767/Conference%20of%20Asia%20Pacific%20Express%20Carriers.pdf.aspx>

⁴⁰ Australia Post submission to the STS Consultation Paper, November 2021: <https://www.austrade.gov.au/ArticleDocuments/10767/Australia%20Post.pdf.aspx>

useful (emphasis added). This statement gives credence to CAPEC's complaint that Australia Post may be using the Postal Letter Stream to import Small Packets, given the ability for Australia Post to use multiple importation streams and the ambiguous characterisation of "mail" which seems to be subject to Australia Post's interpretation.

CAPEC submits that if Australia Post itself is not certain as to how mail and cargo should be defined, it is not possible for CAPEC members to have confidence that Australia Post is not utilising its access to the Postal Letter Stream to its competitive advantage.

(ii) The STS reforms will not address CAPEC's competitive neutrality concerns

CAPEC understands that the STS has developed or is in the process of implementing a number of reforms, including:⁴¹

- a business case for a 'tell us once' trade system;
- digital verification platform to enable the creation and use of trusted digital trade documents;
- improvements to customs processes including providing business with real time notifications on the operational status of the Integrated Cargo System; and
- improving cross-border trade alignment by aligning accreditation and authorisation schemes across government.

CAPEC endorses these proposed reforms, and considers that they will provide significant benefits to industry and reduce red tape. However, CAPEC has reservations that the proposed regulatory reforms will not lessen the volume of data required to be reported due to regulators' increasing appetite for data. CAPEC also considers that these reforms are limited to process improvements of an existing regime and they do not address the disparity in reporting requirements between CAPEC and Australia Post as outlined in the Importation Complaint.

(iii) Any broadening of the scope of the STS Taskforce is uncertain and unlikely to occur in a timely manner

The current STS reform process has been ongoing since 2021. Following the October 2022-23 budget, 5 key measures were identified to support the Taskforce's regulatory reforms.⁴² The latest information from the Taskforce indicates that it is "working closely with key government agencies to ensure that Budget measures are implemented from a whole-of-government perspective to deliver the best outcomes for business." This highlights the uncertainty surrounding what, and if any, of the proposed reforms raised by the STS Taskforce will be implemented.

(d) Postal Services Modernisation Inquiry

(i) Background

⁴¹ Simplified Trade System, *2021-22 Mid-Year Economic and Fiscal Outlook (MYEFO) measures*, December 2021: <https://www.austrade.gov.au/ArticleDocuments/10769/2022-23%20Budget%20factsheet%20for%20STS%20March%202022.pdf.aspx>

⁴² Simplified Trade System, *2022-23 Budget measures*, March 2022: <https://www.austrade.gov.au/ArticleDocuments/10769/Simplified%20Trade%20System%202021-22%20MYEFO%20Measures%20Factsheet.pdf.aspx>

The PSM Inquiry was opened on 2 March 2023 by the DITRDCA to modernise the postal service and support the long-term financial sustainability of Australia Post.⁴³ While part of the review considered the Postal Goods business, it also sought to understand the broader social role that Australia Post plays, including its delivery of identity and document services, financial services and supporting Australians with diverse needs.

(ii) The PSM Inquiry will not address CAPEC's competitive neutrality concerns

The PSM Inquiry is concerned with ensuring that Australia Post remains profitable, rather than considering the extent of barriers to creating a competitive parcel industry in Australia. As noted in CAPEC's submission to the inquiry, wholesale consideration of regulatory environments relating to parcels is required to ensure that competition is not adversely affected, and to support a viable Australia Post. In summary, CAPEC submitted that the PSM Inquiry should consider:

- the unsustainability of Australia Post's CSOs;
- opportunities to make Australia Post's financial arrangements more commercially rational;
- the cost allocation methodology Australia Post takes to complying with the CSOs;
- streamlining Australia Post's regulatory and security compliance; and
- changes to Australia Post's financial arrangements.

While CAPEC welcomes the review, it is not targeted to addressing issues of competitive neutrality, and is unlikely to advocate for a fair playing in the parcel delivery market between CAPEC Members and Australia Post.

⁴³ Minister for Communications, *Consultation begins on delivering a modernised postal service*, 2 March 2023 https://minister.infrastructure.gov.au/rowland/media-release/consultation-begins-delivering-modernised-postal-service?_ga=2.60069933.1890878439.1683587797-554293564.1681858692

Annexure 1: Overview of specific issues and potential resolutions

Described below are the key issues and resolutions that form CAPEC's complaint, and should be considered by the AGCNCO as part of its investigation.

#	Issue	Australia Post obligation	Commercial parcel operator obligations	Resolution / Recommendation
1.	<p>Disparity in import reporting obligations, particularly in respect of cargo reports and SAC declarations.</p> <p>This issue is also tied to Australia Post leveraging its Postal Letter Stream to negate equivalent reporting obligations. For example, Australia Post treats Small Packets the same as "mail" for customs reporting purposes.</p>	<p>The extent of Australia Post's compliance with equivalent customs reporting obligations is unclear.</p> <p>CAPEC understands that Australia Post is exempt from reporting obligations tied to low value goods.</p> <p>Australia Post's use of the Postal Letter Stream means that it can negate reporting requirements for Small Packets.</p>	<p>Commercial parcel operators must complete more onerous cargo reports, SAC declarations, and Import Declarations.</p> <p>Commercial parcel operators do not have the ability to import Small Packets under a similar Postal Letter Stream.</p>	<p>Regulatory and customs reporting under the Customs Act should be aligned so that identical Postal Goods receive identical customs treatment.</p> <p>The ABF Commissioner has the prerogative to align reporting obligations for cargo reports, SAC declarations and Import Declarations. See sections 64AB(6), 71AAAT(1) and 71K(2) of the Customs Act respectively.</p> <p>The AGCNCO should also recommend that the Australian Government define how Small Packets are imported into Australia. This will ensure that mail is treated as distinct from Small Packets for importation purposes. Conversely, commercial parcel operators should otherwise have equal access to less restrictive customs reporting for Small Packets.</p>
2.	<p>Small Packets which are imported by Australia Post under the Postal Letter Stream are not subject to mandatory and enforced data reporting requirements.</p>	<p>Australia Post currently has access to the EAD systems. However, EAD requirements are currently not enforced on Small Packets imported under the Postal Letter Stream.</p>	<p>As above, commercial parcel operators must complete onerous cargo reports, SAC declarations and Import Declarations.</p>	<p>Legislative change to make EAD data collection and reporting mandatory, as is being done in the European Union and US.</p> <p>Access to the EAD by CAPEC Members would streamline the customs reporting process, as</p>

#	Issue	Australia Post obligation	Commercial parcel operator obligations	Resolution / Recommendation
	Australia Post has access to EAD systems but data requirements are not enforced.			well as alleviating the volume of data required to be entered or processed.
3.	Export Declarations exemptions for "Australia Post or diplomatic bags of mail".	Exporters are not required to submit Export Declarations for "Australia Post or diplomatic bags of mail".	Export Declarations must be made to the ABF as applicable.	Where there is the option to send identical Postal Goods via an avenue that requires an Export Declaration compared to one that does not, senders will choose Australia Post. The exemption that applies for "mail" should be clarified so that Small Packets are not similarly captured.
4.	Different charges for depot licence applications.	Australia Post is exempt from the costs associated with depot licence applications under section 77H(3) of the Customs Act.	Commercial parcel operators are not exempt. The depot application fee of \$3,000 is payable by CAPEC Members.	To the extent that Australia Post warehouses identical goods to Australia Post separately to the IMC, Australia Post should also be liable to pay the \$3,000 application fee (or this fee should be on a pro rata basis).
5.	Enforcement of civil penalties may operate unevenly under the Customs Act.	Because Australia Post is not subject to certain regulatory obligations, such as cargo reporting or responding to notices issued by the ABF, the relevant penalty provisions under the Customs Act do not apply to Australia Post.	Commercial parcel operators and other courier businesses must comply with the relevant enforcement provisions or otherwise be subject to civil penalties.	The enforcement regime under the Customs Act should apply equally to Australia Post and commercial parcel operators. This can be achieved by ensuring that Australia Post and CAPEC operate under the same import and export regime for all goods other than mail.
6.	There are no effective lobbying efforts made at the UPU to improve competitive neutrality barriers under the convention.	N/A	N/A	The Australian Government should continue to support a positive policy stance to the UPU at the next conference to improve competitive neutrality barriers in the convention.

#	Issue	Australia Post obligation	Commercial parcel operator obligations	Resolution / Recommendation
				<p>The Australian Government has supported the need for reform at the UPU, including at the latest round of discussions in July 2023, regarding the general opening up of the postal sector to WPSPs. CAPEC encourages the Australian Government to continue to advocate for reform, and to expand its advocacy to include improving competitive neutrality between DOs and commercial couriers.</p>
7.	<p>ETOE's are currently exempt from customs law</p>	<p>Australia Post, when using ETOEs to consolidate Postal Goods to come to Australia from a foreign country, can utilise their customs and biosecurity advantages as outlined above, despite ETOEs being a commercial entity.</p>	<p>Commercial parcel operators and other courier businesses must comply with the relevant customs and biosecurity provisions or otherwise be subject to civil penalties.</p>	<p>Postal Goods that are routed through either a commercial parcel operator, courier business or ETOE should be subject to the same customs and biosecurity regulations and standards.</p>

Annexure 3: Definitions

Low value goods – has the meaning given to it under s 71AAAD *Customs Act 1901*

Parcel – unless otherwise stated, means a parcel, package, or other good with a weight of between 0-20kg,

Postal Letter Stream – the UPU designation that provides for the regulations and prices that apply to Small Packets and letters.

Postal Goods – means the sum of all goods, letters, parcels, packets or otherwise that are transported by a Designated Operator, Commercial parcel importer, or courier business.

Small Packet – Unless otherwise stated means a parcel, package, or letter, with a weight of less than 0-2kg