



Australia Post

Australian Government Competitive Neutrality Complaints Office

Investigation no. 19

The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.

The Productivity Commission

The Productivity Commission (PC) is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long-term interest of the Australian community.

The PC's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

The Australian Government Competitive Neutrality Complaints Office, a separate unit within the PC, operates as the Australian Government's competitive neutrality complaints mechanism. It provides independent advice to the Government following complaints about unfair competition from the public sector.

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23 October 2024

The Hon Dr Jim Chalmers MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with section 21 of the *Productivity Commission Act 1998* and the Commonwealth Competitive Neutrality Policy Statement, I have pleasure in submitting the results of the Australian Government Competitive Neutrality Complaints Office's investigation of Australia Post.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S King'.

Dr Stephen King
Commissioner
Australian Government Competitive Neutrality Complaints Office

Competitive neutrality policy

Competitive neutrality policy aims to promote efficient competition between public and private businesses. The Australian Government's approach is set out in its *Competitive Neutrality Policy Statement* (Australian Government 1996):

Competitive neutrality requires that government business activities should not enjoy net competitive advantages over their private sector competitors simply by virtue of public sector ownership (p. 4).

In particular, competitive neutrality policy:

... requires that governments should not use their legislative or fiscal powers to advantage their own businesses over the private sector (p. 5).

While the policy recognises that government ownership confers advantages and disadvantages to, its primary focus covers competitive advantages that are widespread and relatively easy to observe and correct (Australian Government 1996, p. 6), including:

- exemptions from various taxes (taxation neutrality)
- access to borrowings at concessional interest rates (debt neutrality)
- exemptions from complying with regulatory arrangements imposed on private sector competitors (regulatory neutrality)
- other benefits associated with not having to achieve a commercial rate of return on assets (commercial rate of return requirements).

The policy is applied to significant government businesses where the benefits from doing so outweigh the costs. For the purpose of competitive neutrality policy, a business activity is defined as one where:

- there is user charging
- there is an actual or potential competitor (that is, users are not restricted by law or policy from choosing alternative sources of supply)
- managers of the activity have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Competitive neutrality policy deems the following organisations as significant since they operate along commercial lines:

- all government business enterprises (listed under the *Commonwealth Authorities and Companies Act 1997*) and their subsidiaries
- other share limited trading companies
- all designated business units.

Other activities which operate in accordance with the definition of a business and generate more than \$10 million in revenue from commercial activities are also deemed to be significant.

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Overview

Key points

- * **Australia Post experiences competitive advantages and disadvantages as a result of its government ownership.**
- * **Australia Post is meeting the requirements of competitive neutrality (CN) policy regarding tax neutrality, earning a commercial rate of return and including CN commentary in its annual report.**
- * **Australia Post is not meeting the requirements of CN policy regarding debt neutrality.**
 - Australia Post enjoys an uplifted credit rating because of its government ownership. This allows it to borrow at a lower rate than otherwise. Despite enjoying modest cost-of-debt savings as a result, it has made no corresponding debt neutrality adjustment payments to the Official Public Account to counteract this advantage.
- * **Whether Australia Post is meeting the regulatory neutrality requirements of CN policy could not be determined.**
 - Australia Post and CAPEC members face differing regulatory regimes for their parcel traffic over Australia's borders – and differing costs as a result. However, the AGCNCO was not able to obtain data on the relative costs those parties face. As a result, we were not able to assess Australia Post's aggregate net advantage/disadvantage position and whether Australia Post is meeting its regulatory neutrality obligations.
 - We recommend a separate process to identify those differing costs (and to propose alternative regulatory arrangements as warranted).
- * **Australia Post incurs a major disadvantage of government ownership because it has a legislated requirement to deliver community service obligations (CSOs) and to fully fund the cost of doing so.**
 - Australia Post's mandated internal funding of its loss-making CSOs runs contrary to the intent of the Australian Government's CN policy.
- * **The AGCNCO recommends:**
 - Australia Post should make annual debt neutrality adjustment payments. An independent entity with requisite financial expertise should verify the accuracy of those payments.
 - The Treasurer should initiate a public inquiry to consider the regulatory asymmetries between Australia Post and CAPEC members regarding border regulation of parcel traffic, their relative costs and possible reforms to address disparities in those costs. (This approach, though, will need to be judged against the alternative of Customs addressing these issues through an internal examination.)
 - Australia Post's CSOs should be funded directly from the Budget.

In February 2022, the Conference of Asia Pacific Express Carriers (Australia) Limited (CAPEC) lodged a complaint with the Australian Government Competitive Neutrality Complaints Office (AGCNCO) against the Australia Postal Corporation (Australia Post). The complaint alleged that Australia Post was not complying with the Australian Government's competitive neutrality (CN) policy.

The initial complaint from CAPEC alleged that Australia Post has an unfair competitive advantage over CAPEC's members resulting from:

- various regulatory advantages relating to:
 - the importation of parcels into Australia
 - the inspection of imported goods into Australia by customs officials and related inspection processes
 - the manner in which Australia Post may be complying with its export reporting obligations as a result of it being exempt from the requirement for an Export Declaration for 'mail' items
 - an apparent exemption from the New South Wales *Transport Industry – General Carriers Contract Determination 2017*
 - the preferential use of public roads
- access to borrowings at concessional interest rates
- undue support from the Australian Government in the form of COVID-19 relief under the Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 and Australia Post's leveraging of publicly funded infrastructure networks to deliver and distribute parcels.

CAPEC elaborated on these areas of concern in two supplementary submissions.

Of these areas of alleged advantages, the AGCNCO deemed support from the Government via COVID-19 relief and Australia Post's leveraging of publicly funded infrastructure networks were outside the scope of this investigation.

However, this investigation has not confined itself to these regulatory and debt neutrality concerns. Assessing whether Australia Post enjoys net competitive advantages over its competitors (and any action needed to address those advantages) necessitates examining its compliance with the full suite of CN policy obligations.

Accordingly, this investigation embraces Australia Post's compliance with debt, tax and regulatory neutrality and whether it is earning a commercial rate of return. That assessment also requires considering any competitive disadvantages Australia Post incurs because of its government ownership. This information is needed to determine the extent to which those disadvantages might offset its advantages and, as above, to help identify the form and scale of measures that might best achieve CN.

Debt neutrality

Australia Post's capital structure includes debt in the form of medium-term bonds and revolving credit facilities.

As of 30 June 2023, Australia Post's outstanding debt in the form of medium-term bonds was \$555 million, which enjoyed cost-of-debt savings for the 2022-23 year of at least \$1.2 million, simply by virtue of its government ownership. Despite these savings, Australia Post has made no corresponding debt neutrality adjustment payments into consolidated revenue. This absence of any payments indicates that Australia Post is not conforming with the debt neutrality requirement of CN policy.

In addition to its debt from issuing bonds, Australia Post has a three-year revolving credit facility. The facility is available for draw down for a minimum of 15 days and is used to manage short-term liquidity requirements. The facility was originally established in June 2021 (for \$450 million) and was to expire on

31 July 2024. In July 2023, the facility was extended for three further years (due to mature 31 July 2026) and the amount reduced to \$300 million.

Determining whether Australia Post enjoys any cost-of-debt savings by virtue of its government ownership and quantifying the value of any such savings on this facility is problematic for multiple reasons. The AGCNCO considers these reasons provide compelling grounds for Australia Post's debt from its line-of-credit facility to be exempt from CN considerations.

Tax neutrality

Australia Post is subject to all Commonwealth, State or Territory and local government taxes and charges that its competitors face, and its compliance with its tax obligations is independently reviewed by the ATO. Based on the ATO's understanding of Australia Post's tax affairs, the ATO has publicly stated that it has confidence in its tax compliance. On that basis the AGCNCO is confident that Australia Post is fully compliant with its tax neutrality obligations under CN policy.

Regulatory neutrality

CAPEC alleged that Australia Post – because of its government ownership – enjoys regulatory advantages compared with its competitors in the parcel delivery market. It identified various areas where it claimed this was the case:

- asymmetries between Australia Post and CAPEC members in the regulatory regimes governing their import and export of parcels
- Australia Post's exemption from compliance with the applicable industry award in New South Wales
- Australia Post's preferential use of public roads in ways not available to CAPEC members.

Asymmetries in border regulation of parcel traffic

The existence of asymmetries in the regimes Australia Post and CAPEC operate under is not in dispute. What is in dispute is what those asymmetries mean for the costs incurred by Australia Post and CAPEC members.

Both parties provided examples of where those asymmetries allegedly resulted in their costs being higher than comparable costs for their competition. Those examples, though, did not provide comprehensive costings nor did they put those costs into perspective by comparing them to those incurred by their competitor/s. As a result, it is not possible to determine who is more competitively disadvantaged under existing regulatory arrangements.

Notwithstanding that lack of costings, the CAPEC examples provide plausible grounds to believe the regulatory burden facing its members is excessive relative to that faced by Australia Post, and changes to the regulatory regime it faces might be warranted.

However, assessing those concerns and proposing practical changes to the regulatory arrangements was constrained by Customs declining to provide a submission with their expert assessment of those matters.

As the AGCNCO was unable to fully assess CAPEC's claims regarding regulatory asymmetries and suggested reforms to address that issue, it has proposed that these be considered via a public inquiry. The appropriateness of that action, though, will need to be judged against an alternative approach whereby Customs addresses these issues through an internal examination (which, apparently, it has already started).

Regulatory non-neutrality arising from state-based legislation

CAPEC's other concerns about regulatory non-neutrality were about Australia Post's exemption from Chapter 6 of the *Industrial Relations Act 1996* (NSW) and from certain road rules in all states and territories. Both areas provide Australia Post with cost advantages relative to its competitors, although their size is unknown.

Because, in both those cases, the value of any cost advantage is unknown, the option of 'neutralising' that benefit by requiring a regulatory neutrality adjustment payment is off the table. Similarly, because the advantages arise from state-based legislation, changing that legislation to remove those advantages is beyond the ability of the Australian Government to do so. In these circumstances, the AGCNCO has no means to counter the effects of regulatory non-neutrality and achieve a level playing field between Australia Post and its competitors.

Fortuitously, the advantage Australia Post enjoys because of its exemption from parts of the NSW Industrial Relations Act has been addressed by developments independent of this investigation.

One of the NSW Government's 2023 election commitments was to extend the protections contained within Chapter 6 to gig economy workers. On 28 July 2024 the NSW Minister for Industrial Relations announced that the NSW Government will pass legislation that will remove Australia Post's exemption from Chapter 6, although the exact form of that removal is still to be determined.

The exemptions from certain road rules accorded to Australia Post are the result of states and territories adopting model Australian Road Rules developed by the National Transport Commission (NTC). As such, those exemptions lie outside the jurisdiction of the Australian Government and the sphere of influence of the AGCNCO.

However, among other responsibilities, the role of the NTC is to review the appropriateness of those model laws and to amend them where warranted. In accord with this role, the NTC could conduct a detailed review of those exemptions. The NTC advised the AGCNCO that a written submission from CAPEC, making the case for a formal consideration of those exemptions, would be an appropriate avenue to initiate such a review.

Competitive disadvantages

Australia Post and its shareholders argued it faced various competitive disadvantages and the cost of these should be used to offset any competitive advantages of government ownership (like cost-of-debt advantages) or to justify a lower rate of return target. They claimed those disadvantages arose primarily from the obligation under its Act to deliver and fund various Community Service Obligations (CSOs), but also from numerous obligations and expectations arising from it being a statutory authority of the Australian Government – which are not applicable to private businesses.

The AGCNCO's assessment of those claims determined that only its loss-making CSOs could confidently be deemed to be a significant (and enduring) competitive disadvantage.

Community Services Obligations

Australia Post's enabling legislation (the *Australian Postal Corporation Act 1989*) requires that it deliver various CSOs. Australia Post is fully responsible for funding those CSOs.

In 2022-23, the cost of delivering those CSOs amounted to some \$442 million. This is a significant competitive disadvantage arising simply by virtue of government ownership. Moreover, that cost is expected to grow, notwithstanding the Government's commitment to introduce reforms to improve Australia Post's

long-term sustainability and Australia Post's own Post26 Strategy to better position it for a financially sustainable future.

Options for neutralising this disadvantage so that Australia Post and its competitors can operate on a level playing field are limited. A lack of reliable estimates for Australia Post's aggregate advantages and disadvantages means the option of netting off those aggregates has no credibility and can provide no guarantee that its CSO disadvantage is counterbalanced by advantages elsewhere.

This situation means the only way of addressing this competitive disadvantage is to tackle it directly. The most effective way to do this is to have the cost of those CSOs funded directly from the Budget.

As well as removing a major disadvantage of government ownership, this approach delivers significant benefits over funding via internal cross subsidies or out of its profits. It eliminates the potential emergence of perverse incentives within Australia Post to not pursue greater efficiency in the delivery of those CSOs and it replaces them with enduring positive incentives to do so within the agency responsible for direct funding those CSOs. In addition, the Budget process central to the working of this option offers increased transparency, accountability and scrutiny over the cost of delivering those CSOs.

Given its potential for effectively and immediately eliminating a major competitive disadvantage of government ownership and for delivering a raft of other significant benefits, the AGCNCO considers direct funding of Australia Post's CSOs is warranted.

Earning a commercial rate of return on assets

The raw data on Australia Post's reported profitability indicates an average rate of return on assets over the past decade of 0.92% and over the past five years of 0.98%. This rate of return would not comply with the CN policy requirement for earning a commercial rate of return.

However, as Australia Post is compelled under its Act to meet various loss-making CSOs its annual profitability is reduced by the extent of those losses. Accounting for that drain on profitability leads to a very different picture of its return on assets. After adjusting for the substantial cost of providing mandated CSOs, Australia Post's average return on assets over the past decade was some 10.9%. Over the past five years, its adjusted average rate of return on assets was around 12.4%.

Comparing these rates of return on assets with likely upper bound weighted average cost of capital estimates for Australia Post's overall business operations of 8.84% to 9.73% or with a risk broad-banding estimate of some 11.0% indicates it is meeting its obligation under CN policy to earn a commercial rate of return.

Other matters

This investigation encountered several obstacles that limited the AGCNCO's ability to fully assess parts of the complaint, to propose changes to achieve a level playing field for government and private businesses, and to do so in a timely manner.

In addition, Australia Post's submission observed that it was unaware of any specific government policy order or instrument applying CN policy to it. This observation has potentially significant implications for the adoption of CN policy among other government businesses more generally if they, too, are similarly unaware that CN applies to their business.

Difficulties in getting submissions from key parties

This investigation was hindered by difficulties in getting submissions from Australia Post and Customs. In Australia Post's case, the issue was the excessive time (2+ years) it took for it to provide a submission in response to the initial CN complaint by CAPEC. In Customs' case, the issue was its decision to not provide a submission in response to our invitations to do so.

While the *Productivity Commission Act 1998* (PC Act) confers some power on the AGCNCO to facilitate its information gathering, invoking that power is problematic. For example, some of the penalties available lack gradation and proportionality, and applying those penalties could introduce the risk of lengthy delays in legal proceedings— the very problem the penalties are aimed at avoiding. Given the AGCNCO's reliance on submissions to inform its deliberations and recommendations, it is important that the limitations that currently hinder an AGCNCO investigation be addressed. To that end, the AGCNCO will develop a hierarchy of measures to help elicit the timely provision of information and analytical insights from other government bodies.

Australian Government businesses advantaged by state legislation

CAPEC claimed exemptions from parts of the *Industrial Relations Act 1996* (NSW) and from various road rules in all states and territories provided Australia Post with regulatory advantages. Although CAPEC could not specify the dollar value of those advantages, the AGCNCO accepts they stem from regulatory non-neutrality and confer cost advantages on Australia Post.

However, as the source of that advantage arises from state legislation, the Australian Government's complaint handling mechanism is powerless to eliminate that advantage and achieve regulatory neutrality in the process.

While the advantages conferred on Australia Post in these cases are likely to be modest, this might not be the case for Australia Post (or other Australian Government businesses) in the future. This cross-jurisdictional issue is a weakness in Australia's approach to achieving CN that, if left unaddressed, could in some circumstances prevent the policy from achieving its aim of facilitating the flow of resources to their most productive use.

A national approach is required to tackle this cross-jurisdictional source of regulatory non-neutrality. That approach could include developing procedures for a complaint agency in one jurisdiction to notify the CN policy and/or complaint agency of another jurisdiction whose legislation is providing the competitive advantage and to establish protocols to deal with this situation. Such procedures and protocols could be within a broader agreement by governments to commit to reviewing and amending legislation that provides regulatory advantages to government businesses.

A risk that Government businesses are unaware they are subject to competitive neutrality

The body of Australia Post's submission opens with an observation that it is unaware of any government policy order or similar instrument applying CN policy to that business.

That observation is concerning insofar as it raises the prospect that other significant government businesses may also be unaware of the broad nature of application of CN policy to government businesses and, as a result, wrongly believe CN does not apply to their business.

This confusion has potentially significant implications for the implementation of CN among other government businesses more generally and puts at risk the potential productivity gains that CN policy might otherwise deliver.

The AGCNCO does not have access to the information needed to identify misperceptions about CN policy among significant government business activities or, if such misperceptions exist, to recommend actions to correct those misperceptions.

To address this situation will require a stocktake of all significant Australian Government business activities to identify those who should be subject to CN and whether and how they are applying CN.

Non-compliance with reporting obligations and improving transparency and accountability

The Australian Government's 1996 *Competitive Neutrality Policy Statement* sets out the reporting obligations of government businesses subject to CN, which are intended to enhance transparency and accountability.

However, Australia Post's reporting against these obligations has been seriously inadequate.

Australia Post's annual reports over the past 10 years (2014 to 2023), for example, make no mention that it is subject to CN. This is despite it being clearly identified as an entity subject to CN in the Government's 1996 CN policy statement and in each *Heads of Treasuries Competitive Neutrality Matrix report*, and despite it having been the subject of three CN investigations (in 2000 and 2005, and this current investigation).

To comply with CN reporting requirements, Australia Post needs to include information in its future annual reports that indicates:

- it is subject to CN policy, the requirements that policy obliges it to comply with, and its actions to achieve compliance with those requirements
- whether any changes to its CN arrangements have been made in the previous 12 months
- whether it was subject to any CN complaints and the status and/or outcome of any such complaint investigations.

Findings and recommendations

Debt neutrality



Finding 2.1

Australia Post enjoys a cost-of-debt saving on its bond issues, but has made no debt neutrality adjustment payments to address this advantage

Over the 2022-23 financial year, Australia Post has benefitted from cost-of-debt savings on its \$555 million bond issues simply by virtue of its government ownership. The competitive advantage from government ownership for that level of debt amounted to an annual reduction in interest costs of at least \$1.2 million.

Notwithstanding those savings, Australia Post has made no debt neutrality adjustment arrangements to address this competitive advantage.



Finding 2.2

Revolving line-of-credit facilities like Australia Post's are not amenable to debt neutrality considerations under competitive neutrality policy

A lack of comprehensive public information on the market for revolving lines of credit, together with the potential for multiple factors (unrelated to ownership status) to affect the margin cost for such facilities, means it is impractical to determine whether Australia Post enjoys any cost-of-debt savings from that source simply by virtue of its government ownership.



Recommendation 2.1

Short-term line of credit facilities should be excluded from debt neutrality considerations

Short-term debt from non-government line-of-credit facilities (such as those used by Australia Post to manage short-term liquidity requirements) should be excluded from debt neutrality considerations under competitive neutrality policy.

**Finding 2.3****Credible estimates of the aggregate value of Australia Post's competitive advantages and disadvantages are not possible**

Although Australia Post incurs a range of competitive advantages and disadvantages simply by virtue of its government ownership, it is not possible to determine the aggregate value of each of these. Accordingly, the AGCNCO is unable to determine, in total, if Australia Post operates with a net competitive advantage or disadvantage simply by virtue of its government ownership.

This inability to establish whether Australia Post is operating under a net competitive advantage or disadvantage effectively rules out netting off competitive advantages and disadvantages as a means of addressing its debt neutrality obligations.

**Recommendation 2.2****Australia Post should make annual debt neutrality adjustment payments into the Official Public Account**

Australia Post should calculate its annual cost-of-debt savings and make annual debt neutrality adjustment payments equal to this amount directly into the Official Public Account.

The value of those cost-of-debt adjustment payments should be calculated on the basis set out in the *Guidelines for Managers* and in this report.

**Recommendation 2.3****Australia Post's debt neutrality payments should be verified by an independent agency**

The Australian Government should request that an entity independent of Australia Post and with the financial expertise needed to calculate the difference between Australia Post's actual and benchmark cost of debt should verify that Australia Post has accurately identified that interest rate advantage. The Australian Competition and Consumer Commission or the National Competition Council would be options to fulfill this role.

Tax neutrality

**Finding 3.1****Australia Post is complying with its tax neutrality obligations**

Australia Post is fully complying with its tax neutrality obligations under competitive neutrality policy.

Regulatory neutrality



Finding 4.1

A lack of information on the costs of regulatory asymmetries means it is not possible to determine who is worse off

CAPEC members and Australia Post provided some information on the cost disadvantages they incurred as a result of regulatory asymmetries. However, that information was neither comprehensive nor put those costs into perspective compared to those incurred by their competitor/s. In the absence of that information, it is not possible to determine who is the more competitively disadvantaged under existing regulatory arrangements.



Finding 4.2

CAPEC is right to attribute certain regulatory asymmetries as a result of government ownership

Differences in regulation referred to by CAPEC under current arrangements derive from both the community services Australia Post is obliged to provide and a government owner prepared to accept the loss-making consequences of those arrangements. Thus, the premise underlying CAPEC's complaint – that various regulatory asymmetries are the result of government ownership – is soundly based.



Recommendation 4.1

The Treasurer should call a public inquiry into certain areas of CAPEC's complaint against Australia Post

The Treasurer should initiate a public inquiry to consider the regulatory asymmetries between Australia Post and CAPEC members in regard to border regulation of parcel traffic, the relative costs of those regulations, whether the reforms proposed by CAPEC are appropriate to deal with those asymmetries and, if those proposed reforms are not appropriate, what alternative changes could be implemented to ensure competitive neutrality.



Finding 4.3

Australia Post's exemption from Chapter 6 of the Industrial Relations Act 1996 (NSW) provides it with a competitive advantage of unknown value

Australia Post's exemption from chapter 6 of the *Industrial Relations Act 1996* (NSW) confers a competitive advantage on Australia Post, although no credible estimate of that benefit is available.

**Finding 4.4****Removal of Australia Post's part-exemption from the Industrial Relations Act 1996 (NSW) will help restore regulatory neutrality**

The New South Wales Government's decision to remove Australia Post's exemption from Chapter 6 of the *Industrial Relations Act 1996* (NSW) will help eliminate the competitive advantage that this exemption confers on Australia Post. To that extent, this decision will help to restore regulatory neutrality between Australia Post and its competitors in this area.

**Finding 4.5****Under some circumstances, AGCNCO options to address regulatory non-neutrality stemming from state/territory government legislation are non-existent**

The AGCNCO's options to address regulatory non-neutrality are non-existent where credible estimates of the value of those exemptions are not available and the source of regulatory advantage is state or territory legislation – which the Australian Government has no authority to change.

Competitive disadvantages

**Finding 5.1****Losses incurred by Australia Post in meeting its CSOs are a consequence of its government ownership**

Australia Post's delivery of its community service obligations, which are funded entirely by Australia Post, has resulted in it incurring annual losses of hundreds of millions of dollars. These losses are a direct consequence of the Government requiring Australia Post – via provisions in its enabling legislation – to meet the Government's social and policy objectives for a letter service, at a uniform rate, and reasonably accessible to all Australians at a specified standard to meet the social, industrial, and commercial needs of the community.

**Finding 5.2****CSO funding arrangements distort otherwise competitive markets and could result in Australia Post having little to no incentive to deliver CSOs more efficiently**

Australia Post's major competitive disadvantage is the result of its government owner mandating that it delivers various community service obligations and fully funds the cost of doing so.

Australia Post's funding of its community service obligations via internal cross subsidies has the potential to distort otherwise competitive markets. Moreover, if credible estimates for its net competitive advantages become available, the combination of that form of funding and competitive neutrality obligations could potentially result in Australia Post having little to no incentive to deliver its community service obligations more efficiently.

**Recommendation 5.1****Australia Post's CSOs should be funded directly from the Budget**

Australia Post should continue to deliver the mandated community service obligations specified in the *Australian Postal Corporation Act 1989* (Cth), but the cost of providing those services should be funded directly from the Budget.

Australia Post's costs in performing the community service obligations should be subject to continued scrutiny through:

- the legislative functions of the Australian Competition and Consumer Commission and the Minister for Communications
- the Australian Government, when approving funding through the Budget process.

Earning a commercial rate of return

**Finding 6.1****Australia Post is earning a commercial rate of return**

Australia Post's reported profitability has not delivered a commercial rate of return on assets as required under competitive neutrality policy. However, its mandated requirement to deliver loss-making community service obligations and to fund the full cost of doing so explains why this is so.

Adjusting its profitability to account for the drain on profits from its internally funded community service obligations produces a rate of return on assets comfortably above its likely WACC and at least equal to a risk broad-banding benchmark value. On this basis, Australia Post is complying with the requirement under competitive neutrality policy to earn a commercial rate of return on assets.

Other matters



Finding 7.1

Relying on powers in the PC Act to compel government bodies to provide a submission to AGCNCO investigations is impractical

The powers available under section 46 of the PC Act to compel government bodies to provide information to the AGCNCO are of limited use by themselves.



Finding 7.2

Cross-jurisdictional sources of regulatory non-neutrality are tricky to address – change is needed

Where a government business in one jurisdiction benefits from regulatory non-neutrality arising from legislation in another jurisdiction, it can be beyond the ability of competitive neutrality complaint machinery to remedy. In those cases, non-compliance with competitive neutrality policy and any associated resource misallocation risk going unaddressed.

The Australian Government's competitive neutrality policy and *Guidelines for Managers* are silent on how to address this issue. To address this cross-jurisdictional source of regulatory non-neutrality, additional procedures and protocols on how this issue can be addressed are needed to augment existing complaint handling arrangements.



Finding 7.3

A lack of a specific policy order or similar instrument to apply competitive neutrality to government businesses could be limiting its implementation, but data to gauge this is not available

Information needed to assess whether the lack of a specific policy order or similar instrument applying competitive neutrality to government businesses is resulting in them not applying competitive neutrality when they should be is not readily available.

The potential for widespread misperceptions among Australian Government businesses (that the policy does not apply to them) is of sufficient concern to warrant action. Left unaddressed, this issue has the potential to undo some of the benefits of competitive neutrality policy.



Recommendation 7.1

Treasury should conduct a stocktake of Australian Government businesses to determine their competitive neutrality status

The Australian Treasury should undertake a stocktake of Australian Government GBEs and other significant government business activities. That stocktake should identify which businesses are subject to competitive neutrality and what measures they have taken to meet with their obligations under that policy.

That stocktake of businesses subject to competitive neutrality should be made publicly available.



Finding 7.4

Historically, Australia Post has not met the reporting requirements of competitive neutrality policy, but is now doing so

Historically, Australia Post has not met the minimum reporting requirements expected of it under the Australian Government's competitive neutrality policy. A major contributor to that state of affairs is that the various statutory and Government reporting requirements do not explicitly mention competitive neutrality reporting as a requirement.

However, Australia Post is now committed to meet those requirements and will do so with its *2024 Annual Report*.



Recommendation 7.2

Reporting requirements for Australian Government businesses should include specific reference to competitive neutrality reporting requirements

Current statutory and Government reporting requirements (like those set out in the *Resource Management Guide 136*) should include specific references to the need to observe competitive neutrality reporting.

1. About the complaint

On 24 February 2022, the Conference of Asia Pacific Express Carriers (Australia) Limited (CAPEC) lodged a complaint with the Australian Government Competitive Neutrality Complaints Office (AGCNCO) against the Australia Postal Corporation (Australia Post). The complaint alleged that Australia Post was not complying with the Australian Government's competitive neutrality (CN) policy.

A preliminary assessment of the complaint indicated it had merit and warranted investigation by the AGCNCO.

This chapter outlines the nature of the complaint brought by CAPEC, provides background on Australia Post, establishes the jurisdiction of the AGCNCO, describes the scope and conduct of the complaint investigation and outlines the structure of this report.

1.1 Nature of the complaint

CAPEC's complaint evolved over the course of a lengthy investigation, as it submitted supplementary complaints to account for various new developments relevant to their original complaint.

The initial complaint from CAPEC (an industry association representing the interests of DHL, FedEx and UPS) alleged that Australia Post has an unfair competitive advantage over CAPEC's members resulting from:

- various regulatory advantages relating to:
 - the importation of goods into Australia, such as Australia Post's use of the Postal Letter Stream to limit import reporting obligations and differing import declarations and modes of declaration applicable to Australia Post and CAPEC members
 - the inspection of imported goods into Australia by customs officials and related inspection processes
 - the manner in which Australia Post may be complying with its export reporting obligations as a result of Australia Post being exempt from the requirement for an Export Declaration for 'mail' items
 - an apparent exemption from the New South Wales Transport Industry – General Carriers Contract Determination 2017
 - the preferential use of public roads
- access to borrowing at concessional interest rates
- undue support from the Australian Government in the form of COVID-19 relief under the Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 and Australia Post's leveraging of publicly funded infrastructure networks to deliver and distribute parcels.¹

A supplementary complaint from CAPEC noted that some aspects of the regulatory regimes surrounding parcel delivery services that favour Australia Post are currently the subject of Universal Postal Union and Simplified Trade System reviews. That complaint also noted the impact of any reforms resulting from those

¹ As discussed in section 1.4, the AGCNCO considers these issues are not within the domain of CN policy.

reviews are uncertain and unlikely to be implemented within a meaningful timeframe or to address CAPEC's concerns. This, it argues, means those reviews cannot be relied on to address regulatory advantages enjoyed by Australia Post and does not provide a reason for the Government to abstain from considering changes to domestic regulations that would deliver a more equal competitive environment.

The supplementary complaint argued that the regulatory framework for parcel deliveries can and should be changed by the Australian Government to be fairer and more equitable in accordance with competitive neutrality policy. The complaint identified seven areas where changes are required.

The supplementary complaint also argued that the cost to Australia Post from delivering its community service obligations (CSOs) – a cost that could, in practice, offset the value of regulatory cost advantages enjoyed by Australia Post arising simply by virtue of its government ownership – is inflated and needs to be revalued. That revaluation should take account of recent changes introduced following the Government's Postal Services Modernisation review.

A further supplementary complaint from CAPEC in March 2024 drew the AGCNCO's attention to developments since the initial complaint was lodged, which are expected to reduce the financial burden of Australia Post's CSOs – notably changes flowing from the Government's Postal Services Modernisation review and the ACCC's consideration and approval of Australia Post's proposed letter price increase. That complaint also raised concerns about Australia Post's cost allocation methodology, which has the potential to inflate costs incurred by its reserved letter operations and, in doing so, misrepresent the real cost of its CSOs and commensurately reduce its costs (and prices) applicable to its parcel and express services.

1.2 About Australia Post

Australia Post is a Corporate Commonwealth Entity and Government Business Enterprise that must comply with specific legislation, regulations and requirements that relate to commercial, community and international treaty obligations. The most relevant of these governing instruments are:

- *Australian Postal Corporation Act 1989*
- *Australian Postal Corporation (Performance Standards) Regulations 2019*
- *Public Governance, Performance and Accountability Act 2013*
- Universal Postal Union Conventions, Regulations and other international requirements (Australia Post 2023c, p. 13).

The Australian Postal Corporation is the ultimate parent and controlling entity of the Australian Postal Corporation Group, which is comprised of 27 100%-owned subsidiaries, as listed in table 1.1 (Australia Post 2023b, p. 152).

Table 1.1 – Australia Post’s controlled entity structure

	% owned in 2023		% owned in 2023
AP Global Holdings Pty Ltd	100	AUX Investments Pty Ltd	100
AP International Holdings Pty Ltd	100	Decipha Pty Ltd	100
APost Accelerator Pty Ltd	100	Mardarne Pty. Ltd	100
APost Innovation Pty Ltd	100	POLi Payments Pty Ltd	100
Australia Post Digital iD Pty Ltd	100	POSTlogistics (Hong Kong) Pte Limited	100
Australia Post Licensee Advisory Council Limited	100	PostSuper Pty Ltd	100
Australia Post Services Pty Ltd	100	Private Syndicate Pty Ltd	100
Australia Post Transaction Services Pty Ltd	100	SecurePay Holdings Pty Ltd	100
Australia Post Global eCommerce Solutions Private Limited	100	SecurePay Pty. Ltd	100
Australia Post Global eCommerce Solutions (Aust) Pty Ltd	100	Star Track Express Holdings Pty Limited	100
Australia Post Global eCommerce Solutions (UK) Limited	100	Star Track Express Investments Pty Limited	100
Australia Post Global eCommerce Solutions (USA) Inc.	100	Star Track Express Pty Limited	100
Australian Express Freight Pty. Limited	100	StarTrack Retail Pty Ltd	100
Australian Express Transport Pty. Limited	100		

Source: Australia Post (2023b).

Although the Australian Postal Corporation is comprised of 27 subsidiaries, this structure is irrelevant from an investigation and outcome perspective as any CN obligations on Australia Post and any recommended changes will be applicable to Australia Post as an entity, which includes all its subsidiaries.

The company is wholly owned by the Australian Government, with the Government’s shareholding represented jointly by the Minister for Communications and the Minister for Finance.

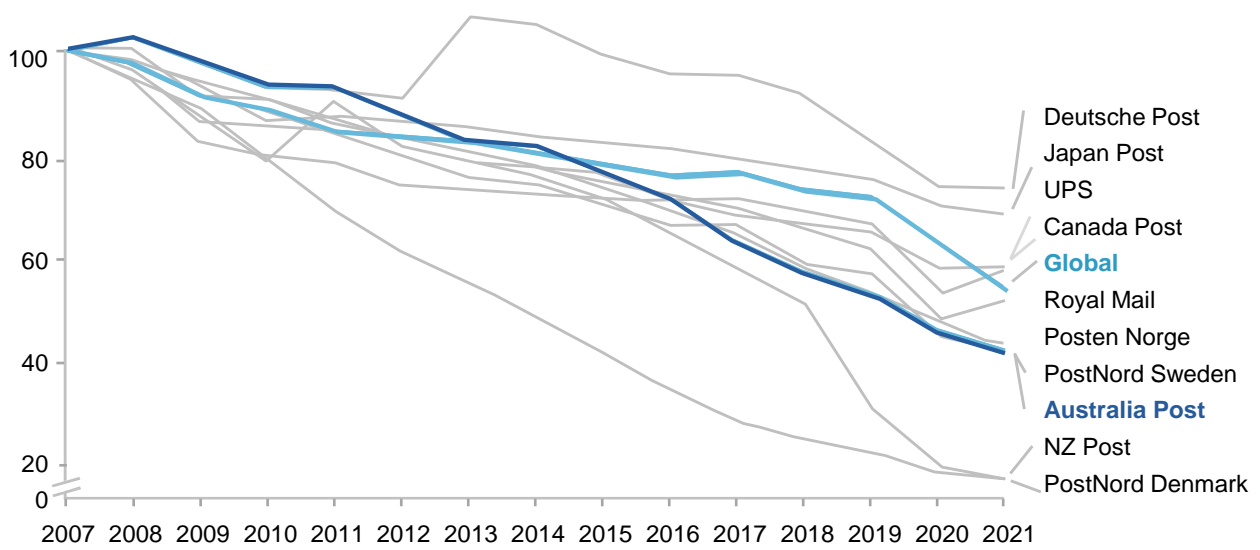
Australia Post provides domestic and international mail services including express mail and parcel deliveries, as well as a range of other commercial activities, such as banking services through its Bank@Post operations.

Australia Post is a completely self-funded business with both commercial and non-commercial obligations. Those non-commercial obligations (or community service obligations – CSOs) are set out in section 27 of the *Australian Postal Corporation Act* and require Australia Post to provide an accessible and reliable letters service, at a uniform price, for all Australians, regardless of where they live. Australia Post’s annual report for the financial year 2023 notes that the annual cost of meeting its CSOs was \$442.2 million (2023b, p. 3).

While mail deliveries have historically represented the core of Australia Post’s operations, the growing ubiquity of digital communications and eCommerce has seen letter traffic undergo an inexorable and rapid decline.

This decline is one mirrored by other national postal operators (figure 1.1).

Figure 1.1 – Postal organisation letter volume: 2007 to 2021



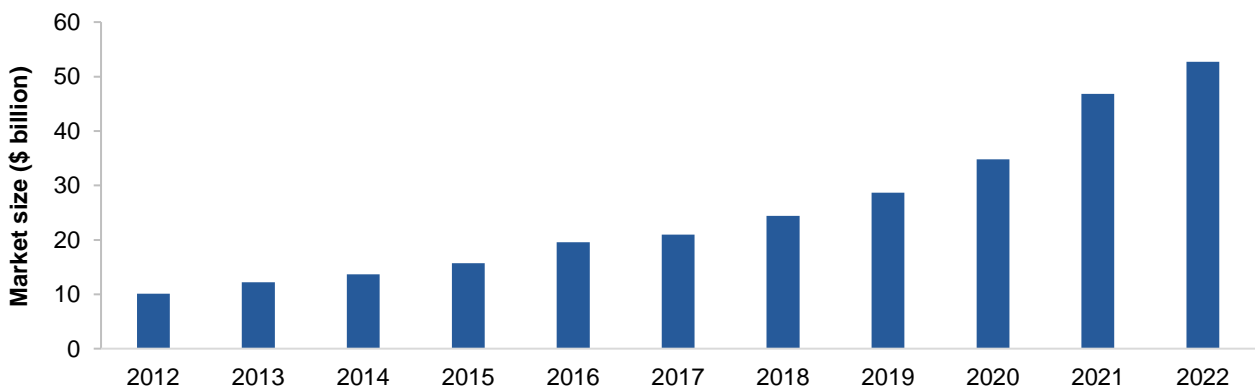
Source: DITRDCA (2023).

At the same time, the growth of eCommerce has contributed to a rapid growth in the demand for parcel deliveries (figure 1.2).

eCommerce, with its associated demand for parcel deliveries, is expected to continue to grow, consistent with international trends (Australia Post 2023a, pp. 16, 17; 2024, p. 2, 3). This feature of Australia Post’s market will result in it competing increasingly with private parcel delivery companies, such as CAPEC members:

Over the past 10–15 years there has been a significant change in postal markets as volumes of letters have fallen while volumes of parcels have significantly grown, in line with growth in e-commerce ... As Australia Post has moved into parcel delivery, it has competed directly with commercial parcel operators including CAPEC Members. (CAPEC 2022, pp. 5, 6)

Figure 1.2 – Online shopping market size in Australia – 2012 to 2022



Source: DITRDCA (2023).

1.3 Jurisdiction of the AGCNCO

In accordance with the Australian Government’s *Competitive Neutrality Policy Statement* of June 1996, Australia Post is a government business to which CN arrangements are intended to apply (Australian

Government 1996, p. 25). This has been acknowledged in the Commonwealth Government entries in each of the annual *Heads of Treasuries Competitive Neutrality Matrix Report* since 2010 (for example, Australian Government 2019).

Section 21(1)(a) of the PC Act empowers the AGCNCO to investigate complaints that an Australian Government business or business activity subject to CN policy is not being conducted in accordance with CN requirements. In addition, Australia Post has been the subject of previous AGCNCO complaint investigations.

In deciding to investigate a complaint, the office must have regard to the PC Act (part 4, division 2) and the Australian Government's *Competitive Neutrality Policy Statement* and ensure that the complaint:

- is not better handled by another body
- does not relate to CN policies being finalised or currently the subject of review by government
- is not vexatious
- raises issues of substance and with non-trivial resource allocation effects.

Is the complaint better handled by another body?

The AGCNCO is aware that some aspects of the complaint are currently being reviewed by the Universal Postal Union (UPU) – a specialised agency of the United Nations that coordinates postal policies among member nations and facilitates a uniform worldwide postal system. That reform process is intended to 'open up' the UPU to wider industry participants (box 1.1). Australia Post, as the designated national carrier for Australia, is a member of the union, along with 191 other member bodies.

Box 1.1 – Opening up the Universal Postal Union to the wider postal industry

The international postal environment has changed significantly since the Universal Postal Union (UPU) was established in 1874. Technological advances and changes in consumer behaviours have seen global parcel post volumes increase and conventional letter volumes decline. At the same time, a higher volume of items is being moved outside of the UPU established global postal channel, with around two-thirds of international parcels handled by operators that are not members of the UPU.

In response to these trends, the UPU has initiated a process aimed at opening up the UPU to wider postal sector players to modernise the institution and deliver better end-user experiences. This could involve:

- a new organisational and membership model that provides designated and commercial operators as well as wider sector players such as airlines, customs bodies, e-retailers, courier and logistics companies with the opportunity to participate in the UPU and/or
- some other form of increased interoperability of the commercial and mail logistics channels, standards and customs clearance arrangements.

Source: DITRDCA (2022).

However, the AGCNCO considers that the CAPEC complaint would not be better handled by the UPU. There are several reasons for this. The UPU review (and any reforms flowing from it) will only touch on some of the issues raised by CAPEC and, in any case, is not focussed on addressing CN concerns. The review and any ensuing reforms have a global, rather than Australian-specific, focus. And finally, given that the

reforms arising from the review must be considered by the 192 member states and achieve a majority consensus before being adopted by the UPU, any outcome is unlikely to be achieved in a timely manner.

The AGCNCO is also aware of an ongoing review of Australia's import and export regime by the Australian Government (2023b), which is being conducted by the Simplified Trade System (STS) Taskforce, in partnership with other government agencies (box 1.2). That review also touches on some issues raised in the CAPEC complaint.

Box 1.2 – Simplified Trade System review

The Australian Government is working to make cross-border trade cheaper, faster, and easier for Australian businesses. The Simplified Trade System initiative is a significant microeconomic reform agenda aimed at streamlining Australia's international trade regulations and modernising outdated information and communication technology systems.

Proposed reforms include:

- implementing a 'Tell us once' trade system
- digital verification platforms to enable trade documentation
- aligning accreditation and authorisation schemes across government.

Source: Australian Government (nd), CAPEC (2023b).

Nonetheless, the AGCNCO considers the complaint would not be better handled by the STS Taskforce because the STS review (and any reforms flowing from it) does not encompass the full range of concerns raised by CAPEC nor has a focus on addressing CN concerns.

Accordingly, for the reasons stated, the AGCNCO has determined that the CAPEC complaint is not better handled by a body other than the AGCNCO. On this matter the AGCNCO and CAPEC agree:

... because there are deficiencies with the UPU, STS Taskforce and [Postal Service Modernisation] Inquiry processes ... 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 2023a, p. 11)

Does it relate to policies being finalised or the subject of review?

The AGCNCO considered whether a Treasury review of CN policy (Australian Government 2023a) or the National Competition Policy analysis being conducted by the PC (2024) might give cause to not investigate or defer consideration of the complaint (box 1.3).

The AGCNCO discussed this prospect with the secretariat responsible for that review and with the PC team undertaking the competition policy analysis. In the light of these discussions the AGCNCO is confident that these initiatives provide no grounds that would warrant the AGCNCO not investigating the complaint against Australia Post.

Box 1.3 – Review and analysis of National Competition Policy settings (including competitive neutrality)

The Australian Government has established a Competition Taskforce to undertake a review of competition policy settings. At the Australian Government level those policies include competitive neutrality policy.

The aim of the Competition Review is to ensure competition policy settings are fit for purpose in the face of the changing economy. The Competition Review is looking at competition laws, policies and institutions to ensure they remain fit-for-purpose for the modern economy, with a focus on reforms that would increase productivity, reduce the cost of living and/or lift wages.

The Australian Government has also requested the PC undertake a study to assess the impacts of competition reforms proposed by the Commonwealth, states and territories as part of a revitalised National Competition Policy being progressed through the Council on Federal Financial Relations.

Source: NSW Treasury (2024), PC (2024).

Is not vexatious and deals with issues of substance?

The CAPEC complaint is a considered document, with detailed examples of what could be breaches of CN policy by Australia Post. It provides plausible grounds for an investigation to determine whether Australia Post is operating in compliance with the CN obligations it is subject to and, if not, what changes might be needed to achieve that compliance. It is not some vexatious witch hunt.

The complaint deals with issues that have the potential to materially affect the cost of parcel deliveries for business and individual consumers, and the share of that market held by government and private players. The potential effects on the input costs of businesses (and, thus, their competitiveness) and on the incidence and relative burden (equity) of reduced purchasing power for individual consumers are likely to be non-trivial.

In view of the above, the AGCNCO is confident that an investigation of CAPEC's CN complaint against Australia Post is an appropriate course of action.

1.4 Scope and conduct of the investigation

Scope of the investigation

CAPEC's complaint raised concerns about mainstream competitive neutrality issues of regulatory neutrality and debt neutrality.

However, assessing whether Australia Post enjoys net competitive advantages over its competitors (and what action might be needed to address those advantages) necessitates examining its compliance with the full suite of CN policy obligations – not just regulatory and debt neutrality. Accordingly, the scope of this investigation embraces Australia Post's compliance with debt, tax and regulatory neutrality and whether it is earning a commercial rate of return.

Moreover, that assessment also requires the AGCNCO to consider any competitive disadvantages that Australia Post incurs because of its government ownership. This information is needed to determine the extent to which those disadvantages might offset its competitive advantages and, as above, to help identify the form and scale of measures that might best achieve competitive neutrality. Thus, the scope of the investigation considers these disadvantages.

CAPEC also raised concerns about support from the Government to Australia Post via changes to legislated performance standards for the delivery of letters and operation of retail outlets and about Australia Post's leveraging publicly funded infrastructure networks to deliver and distribute parcels.

Regarding the support via changes to legislated standards, the AGCNCO considers this does not constitute a CN issue for this investigation. There are three grounds on which this view is based.

The first of these is that the support provided by amending legislated performance standards was essentially about giving Australia Post the flexibility to respond to a changing marketplace resulting from the COVID-19 pandemic (box 1.4). That flexibility was readily available to (and used by) its competitors. For example, in late March 2020, FedEx and UPS unilaterally suspended their respective service guarantees for all shipments from any origin to any destination in response to unprecedented disruption in their markets as a result of the COVID-19 pandemic (Cosgrove 2020, Hockett 2020). Similarly, before the lockdown in Victoria, DHL decided to close their customer service receptions to limit face-to-face interactions (DHL LoT 2020).

Box 1.4 – Rationale for amending regulations governing performance standards

The intent of the *Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020* was to provide urgent and temporary (16 May 2020 to 30 June 2021) changes to performance standards for the delivery of letters to enable Australia Post to manage impacts on its operations related to COVID-19. The amendments also provided Australia Post with an exemption from its retail outlet requirements should it need to temporarily close outlets due to COVID-19.

Australia Post identified several factors that led (then) Group Chief Executive Officer and Managing Director, Ms Christine Holgate to approach the Australian Government seeking temporary changes to statutory service standards because of the COVID-19 pandemic. These included adverse effects on customer demand for some services and, particularly, on transport and logistics, which posed significant challenges for Australia Post during the pandemic.

Australia Post noted that much of its letter traffic is transported in domestic passenger airplanes by Qantas. The reduction in their passenger flights 'to virtually zero', announced on 8 April 2020, removed 'critical capacity'. Australia Post submitted that '... it was at this point that it became physically impossible for us to continue meeting our delivery speed'. Much of the cargo was then shifted to 'road movements', but the smaller-capacity, slower land vehicles were unable to meet the transit times required by the existing regulations.

Source: PoA (2020).

Part of CAPEC's complaint about this form of support referred to its potential to advantage Australia Post's parcel delivery operations – that is, beyond just Australia Post's letter delivery operations:

Although the relief measures related to Australia Post's letter delivery operations, they may have nevertheless supported Australia Post's parcel delivery functions. The Finance Minister at the

time stated that “under the adjustments, Australia Post will be able to redeploy its workforce to critical areas experiencing a surge in volume, such as parcels and essential services”.

... for such support to be extended to the Australia Post’s commercial operations exacerbates an unfair advantage in already difficult economic conditions. (CAPEC 2022, p. 18)

However, while those measures may have allowed Australia Post to redeploy staff from letter to parcel operations, the AGCNCO considers this is simply a particular expression of a government-owned business having (and using) the flexibility available to its competitors to re-order resources in response to changing market conditions.

Against this backdrop, amending legislation that constrained Australia Post’s ability to respond to changed market conditions is more akin to providing a level playing field between Australia Post and its competitors than providing it with an advantage. Accordingly, the AGCNCO accepts Australia Post’s characterisation of this support:

Rather than being an example of advantage of Government ownership, the temporary changes to the prescribed performance standards were instead an instance of a competitive disadvantage of government ownership (i.e. the obligation to satisfy prescribed performance standards, including when not commercial to do so) being temporarily reduced ... (Australia Post 2024c, p. 8)

The second of these grounds is the context in which that support was provided. Amending Australia Post’s legislated performance standards was a small part of a much larger suite of assistance measures introduced at that time (like JobKeeper – which Australia Post was not eligible for). That support was not an isolated Australian Government intervention intended to selectively assist Australia Post but, rather, was merely one of multiple, temporary initiatives aimed at helping businesses survive in a COVID-19 disrupted economy (Morrison 2020a).

Finally, the third of these is that the amended performance standards were introduced as a temporary measure, and proved to be so in practice – commencing on 16 May 2020 and terminating on 30 June 2021 (PoA 2020, Australian Government 2021). As those amendments are no longer in force, they do not represent a contemporary CN issue and, accordingly, do not warrant inclusion within the scope of this investigation.

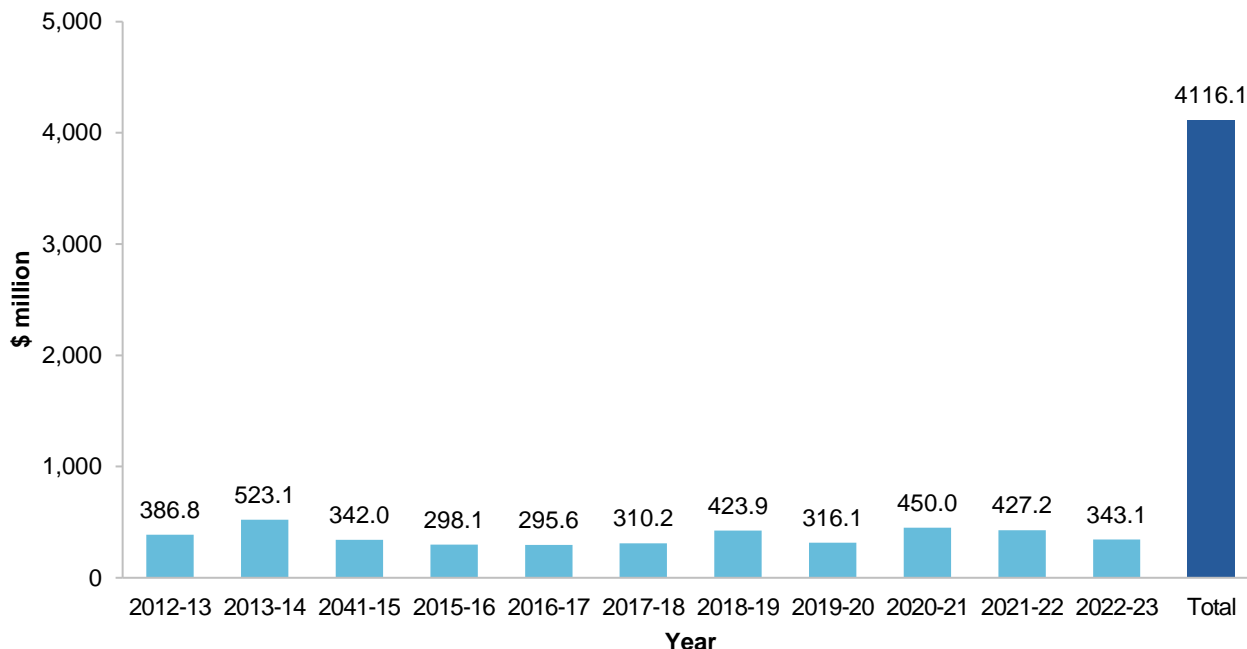
With regard to CAPEC’s complaint about Australia Post leveraging publicly funded infrastructure networks to deliver and distribute parcels, the AGCNCO considers that this, too, is not an issue for this investigation. There are two (interrelated) reasons for this position.

The first of these is that CAPEC’s description of Australia Post’s infrastructure network as ‘publicly funded’ (which, if so, would confer a major competitive advantage on Australia Post) is not correct.

Today’s Australia Post is a successor of the Postmaster-General’s Department. In 1975, that department was abolished, and its postal functions and (then) infrastructure networks were taken over by the Australian Postal Commission (a government trading commission). In 1989, that Commission ceased to exist when Parliament passed the *Australian Postal Corporation Act 1989* and it was re-formed as Australia Post – a government-owned corporation with a board of directors, operating as a commercial business enterprise (Australia Post 2024b). That Act established Australia Post as a legally and financially separate entity from the Australian Government.

Thus, for the past 35 years, Australia Post’s delivery network has not been ‘publicly funded’ by Government and taxpayers’ dollars. Instead, over that period, all maintenance and investment in that network has been funded by Australia Post from its own revenues or borrowings, as required. Australia Post’s submission illustrates the scale of that investment over the financial years 2012-13 to 2022-23 (figure 1.3).

Figure 1.3 – Australia Post investment in network and related systems 2012-13 to 2022-23



Source: Australia Post (2024c).

The second reason (building on the dismissal of the claim that Australia Post’s delivery network is publicly funded) is that any assertion that its extensive delivery network represents an unfair competitive advantage is not supported by the Government’s CN policy.

It is true that Australia Post has Australia’s largest national letter and parcel delivery network (DITRDCA and DoF 2022, p. 4, Australia Post 2023b, p. 10). And it is equally true that its extensive delivery network confers on Australia Post a significant competitive advantage over its competitors:

The AusPost brand connects [to] the largest retail network in Australia ... and this represents a significant incumbent advantage to meet the growing demand for parcel delivery ... (Lateral Economics 2023, p. 18)

Australia Post’s position as the government-owned monopoly supplier of the carriage of letters and the infrastructure and resources that Australia Post has built over decades in providing this service also means that it has the ability to engage in conduct that no commercial parcel delivery operator can, which has the potential to distort competition in that market. (CAPEC 2022, p. 7)

However, this situation does not represent an ‘unfair’ competitive advantage (i.e. an advantage arising simply by virtue of government ownership). The Australian Government’s CN policy is not intended to deny a government business a competitive advantage arising from its intrinsic strengths. As that policy states:

Competitive neutrality does not imply that government businesses cannot be successful in competition with private businesses. Government businesses can achieve success as a result of their own merits and intrinsic strengths, but not as a consequence of unfair advantages flowing from government ownership. (Australian Government 1996, p. 5) [emphasis in original]

The AGCNCO considers that Australia Post's extensive delivery network is an inherent feature of that business and is not an advantage simply by virtue of its government ownership. As such, this feature of Australia Post's business is outside the scope of this investigation.

Conduct of the investigation

Following the AGCNCO's assessment that the complaint had merit and warranted investigation, the office provided the complaint to Australia Post and its two shareholder departments (the Department of Finance and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts) for their information and response.

On 22 October 2022, those departments provided the AGCNCO with a confidential joint submission in response to CAPEC's complaint. Following a request from CAPEC to see that submission, those departments provided a redacted version of it to CAPEC in April 2023.

On 17 August 2023, the AGCNCO received a supplementary submission from CAPEC. That submission expanded on aspects of their initial complaint and responded to matters disclosed to the complainant in the joint submission from the shareholder departments.

On 21 March 2024, the AGCNCO received a further supplementary submission from CAPEC (although their approval to make it public was not provided until early May). That submission provided an overview of recent developments (such as the Postal Services Modernisation review) and their relevance to the investigation.

On 1 May 2024, Australia Post provided a submission to the AGCNCO in response to CAPEC's initial complaint and to their supplementary submission of 17 August 2023.

During its investigation, the office held discussions with and/or sought information from: the complainant; Australia Post; the Department of Finance and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Minister for Finance and the Minister for Communications are Australia Post's two shareholder Ministers); the NSW Premier's Department; Transport for NSW; and global credit rating agencies.

As CAPEC's complaint had a particular focus on regulatory issues that fell within the responsibility of the Customs division of Australian Border Force, the AGCNCO also met with Customs to discuss border inspection and reporting arrangements. Given Customs' breadth and depth of understanding of these issues and appreciation of the practicality of any changes to current arrangements, the AGCNCO invited that agency to provide a submission in response to the CAPEC complaint. Despite multiple requests for Customs to provide a submission on these matters that agency declined to do so.

Before finalising this report, the AGCNCO provided a draft to CAPEC, Australia Post and its shareholder departments, and the NSW Premier's Department for comment, to ensure matters of fact were correct and no confidential or sensitive information had inadvertently been included.

The feedback from those parties was incorporated into the report as appropriate.

1.5 Structure of the report

CAPEC's complaint explicitly raised concerns about mainstream CN issues of regulatory neutrality and debt neutrality.

However, determining whether Australia Post enjoys net competitive advantages over its competitors (and what action might be needed to address those advantages) necessitates examining its compliance with the full suite of CN policy obligations – not just regulatory and debt neutrality.

Accordingly, this report discusses Australia Post's performance in relation to Debt, Tax and Regulatory neutrality (chapters 2, 3, and 4), Competitive disadvantages (chapter 5), and Earning a commercial rate of return (chapter 6).

In addition, over the course of this investigation the AGCNCO encountered several issues pertinent to CN policy and complaint handling arrangements more generally, which it deemed worthy of examining further. These issues have been addressed in the final chapter – Other matters (chapter 7).

2. Debt neutrality

The competitive neutrality (CN) complaint against Australia Post raised concerns that it enjoys access to cheaper funding because of its government ownership. The complainant alleged that Australia Post may borrow at concessional interest rates due to it being able to benefit from a higher credit rating than would otherwise apply, simply by virtue of its government ownership (CAPEC 2022, p. 18).

With regard to this possible source of competitive advantage, the Australian Government's CN policy statement notes that:

Markets confer borrowing cost advantages on government owned entities as a result of explicit government guarantees and perceptions of implicit government support. Debt neutrality will be achieved by subjecting identified organisations to similar borrowing costs to those faced by private sector businesses. (Australian Government 1996, p. 17)

The *Australian Government Competitive Neutrality Guidelines for Managers* (2004) expands on what this means for businesses subject to CN and what they must do to comply with that policy:

Managers must adjust their cost base, and therefore prices, where they borrow money at a rate that reflects the credit risk of the Australian Government as a whole rather than a rate reflecting the credit risk of that type of business activity. (p. 21)

In circumstances where you are able to borrow funds at a lower rate than your competitors (as a result of your government ownership), you will need to make adjustments to the cost of your debt. This is known as debt neutrality. The objective of a debt neutrality adjustment is to place your borrowing costs on par with the borrowing costs that would apply if you were not a government business. In practice, this is done by comparing the cost of your debt against a benchmark cost of debt and identifying the difference. (p. 22)

Significant business activities that receive a cost advantage in borrowing as a result of government ownership need to make a debt neutrality payment to the [Official Public Account]. ... Debt neutrality charges should reflect the difference in your actual cost of borrowing (cost of debt) and the cost you would incur if you were borrowing as a non-government entity (benchmark cost of debt). (p. 23)

Against this backdrop, the rest of this chapter describes Australia Post's debt portfolio and assesses the debt within it against the CN policy requirement for debt neutrality. That assessment primarily revolves around:

- identifying Australia Post's debt
- identifying the actual and benchmark cost of debt for each tranche of that debt, and whether a debt neutrality charge is warranted by any difference between these costs
- whether Australia Post has made debt neutrality payments to the Official Public Account to address any cost-of-debt advantage on their borrowings and, in the light of that information,
- where debt neutrality payments are required but have not been made, whether and at what level payments are required to comply with CN policy.

2.1 Australia Post's debt portfolio and cost of debt

Australia Post's annual report notes that the capital structure of the Group includes debt in the form of medium-term bonds and revolving credit facilities (2023b, p. 143).

Bonds

The joint shareholders argued that Australia Post's cost of borrowings is set by the parties lending to it, and the Government has accorded no explicit guarantee over its borrowings, namely:

Interest rates obtained by Australia Post are commercially derived based on the independent decision of parties willing to lend to Australia Post, and it has not received an explicit guarantee from the Australian Government to support its credit rating. (DITRDCA and DoF 2023, pp. 16–17)

The unstated implication of this being that because the rate of interest is set by the market there is no debt neutrality issue involved. This, however, is not correct.

As public credit advisories from Standard and Poor's make clear, the market has taken account of Australia Post's government ownership and has provided it with an uplifted credit rating relative to its standalone rating. That competitive advantage was conferred on Australia Post as a result of its government ownership, which means this is a CN issue.

How this advantage plays out and the potential scale of any cost of debt savings is set out below.

Taking a point in time as an example, as of 30 June 2023, Australia Post's outstanding debt in the form of fixed rate bond issues was \$555 million. For each of those bond issues, Australia Post's corresponding uplifted issuer credit rating (reflecting its government ownership) and its standalone credit rating (were it not government-owned) are available or can be inferred from public credit advisories produced by Standard and Poor's or financial publications like KangaNews. This information is set out in table 2.1.

Table 2.1 – Australia Post's bond debt portfolio: as of 30 June 2023

AUD millions

Bond issue date	Value	Term	Price (%)	Uplifted issuer credit rating	Standalone credit rating
13 Nov 2013	\$175 million	10 year	5.5	AA	a
1 Dec 2016	\$180 million	10 year	4.0	AA-	bbb+
8 Dec 2022	\$100 million	5 year	4.9921	A+	bbb-
22 May 2023	\$100 million	6 year	4.7637	A+	bbb-
Total debt	\$555 million				

Source: Australia Post (pers. comm., 11 July 2023), KangaNews (2013, 2016, 2022, 2023), S&P Global (2016, 2022), S&P Ratings Services (2013).

To determine whether Australia Post enjoys a lower cost of debt for its bond issues than would otherwise be the case were it not government-owned, the AGCNCO compared its actual cost of debt for each issue with its corresponding estimated standalone cost of debt.

For each of those bond issues, the AGCNCO compared Australia Post's actual issuance margin to bank bill swap rates (based on its uplifted issuer credit rating), on the date those issues were priced, with a 'benchmark' issuance margin for an entity whose bonds were priced on the same date for the same tenor and with the same rating as Australia Post's estimated standalone rating (table 2.2). The spread between

these margins is a proxy for the difference between Australia Post's actual cost of debt and its estimated benchmark cost of debt for its various bond issues.

Table 2.2 describes that spread between Australia Post's actual issuance margin and its estimated standalone issuance margin for each bond issue and the corresponding estimated annual cost-of-debt savings arising from that spread for the 2022-23 financial year.

Table 2.2 – Australia Post's estimated annual cost-of-debt savings

AUD millions

Bond issue/term	Pricing date	Actual issuance margin to swap (basis points)	Estimated standalone margin to swap (basis points)	Actual/standalone margin spread (basis points)	Estimated benefit for FY2023
\$175m 10 year	01 Nov 2013	115	94.55 ^a	20.45	\$358,000
\$180m 10 year	24 Nov 2016	130	259.3	129.3	\$2,327,000
\$100m 5 year	01 Dec 2022	128	169.5	41.5	\$232,000
\$100m 6 year	15 May 2023	117	189.7	72.7	\$78,000
Total					\$2,995,000

a. As there were no 10-year bond transactions available for a generic standalone rated entity on the day this bond was priced, the AGCNCO used the spread for a 7-year bond priced for a generic standalone rated entity on that day as a proxy.

Source: KangaNews (2013, 2016, 2022, 2023).

The information displayed in table 2,2 indicates Australia Post derives a competitive advantage from cost-of-debt savings on its \$555 million bond issues simply by virtue of its government ownership. In this example, those savings amount to almost \$3 million annually.

Australia Post considered this example overstates the value of any cost-of-debt savings arising from its government ownership. It argued the standalone credit rating for the 2022 and 2023 bond issues were more accurately bbb rather than a bbb- rating (with this half notch adjustment representing around 15 basis points). A higher rating along these lines would mean a lower cost-of-debt saving from government ownership should apply to these issues. As the AGCNCO was unable to find public advisories for December 2022 and May 2023 that specified a standalone credit rating it accepts that a lower margin spread as suggested by Australia Post could well apply. Australia Post also did not agree with the estimated standalone margin to swap for the November 2016 bond issue. It claimed this margin should be closer to 30 basis points rather than the nearly 130 points listed in table 2.2 – a view based on S&P's 2019 report *The Cost of a Notch* (S&P Global Ratings 2019).

Accounting for Australia Post's concerns still delivers a cost-of-debt saving that exists simply by virtue of government ownership, although the sum of those savings reduces to some \$1.2 million in this case.

Notwithstanding the existence of annual cost-of-debt savings of at least \$1.2 million in FY2023, Australia Post has informed the AGCNCO that it has made no debt neutrality adjustment arrangements to account for this advantage.



Finding 2.1

Australia Post enjoys a cost-of-debt saving on its bond issues, but has made no debt neutrality adjustment payments to address this advantage

Over the 2022-23 financial year, Australia Post has benefitted from cost-of-debt savings on its \$555 million bond issues simply by virtue of its government ownership. The competitive advantage from government ownership for that level of debt amounted to an annual reduction in interest costs of at least \$1.2 million.

Notwithstanding those savings, Australia Post has made no debt neutrality adjustment arrangements to address this competitive advantage.

Revolving line of credit facility

In addition to its debt from issuing bonds, Australia Post has a three-year revolving credit facility. The facility is available for draw down for a minimum of 15 days and is used to manage short-term liquidity requirements.

The facility was originally established in June 2021 (for \$450 million) and was to expire on 31 July 2024. In July 2023, the facility was extended for three further years (due to mature 31 July 2026) and the amount reduced to \$300 million (Australia Post 2023b, p. 116). During FY2023-24, Australia Post drew on this facility for one tranche only, being 10 November to 30 November 2023, for \$60 million, to assist with short term liquidity needs. The facility was undrawn as of 30 June 2024 (Australia Post, pers. comm., 25 July 2024).

The cost of debt from this (unsecured) facility is set by a 'floating' interest rate determined by the 90-day bank bill swap rate (BBSW) at the time of drawing, plus an agreed set margin (for example, if the BBSW was 4.5% at the time of a draw down and the margin was 1.0%, then the all-in rate would be 5.5%).

The use of the 90-day BBSW as the base floating cost for revolving lines of credit is standard procedure and represents a common generic cost that would apply to government and non-government borrowers. In this regard, this cost-of-debt element confers no competitive advantage on Australia Post as a result of its government-owned status.

The margin over that common BBSW cost, however, is a variable additional cost tailored to each borrower. As such, there is scope for this margin to be a source of a cost-of-debt advantage for Australia Post arising simply by virtue of its government ownership.

However, determining whether an advantage exists and quantifying any cost-of-debt difference is problematic.

There are multiple reasons for this.

Unlike the bond market, where the price of debt and the credit rating on which that price is based are publicly available and transparent, there is no corresponding transparency in the market for debt from revolving lines of credit and the margin costs applicable to that debt. This absence of comprehensive information means it is not possible to compare the margin cost of, for example, AA and BBB rated businesses across revolving lines of credit of comparable tenor and scale.

Moreover, in contrast to bond markets where the cost of a business's debt is largely determined by the credit rating the market assigns to that business, this is not necessarily the case for debt sourced from a revolving line of credit. Various factors contribute to this. For example, banks offering a revolving line of credit to a business can have other commercial arrangements with that business. This may open the scope for cross-subsidisation between those arrangements or to offering favourable margin costs in order to cement existing or attract further commercial relationships. In addition, margin costs will differ depending on whether

and to what extent debt drawn from a line-of-credit facility is secured or not. The significance of these factors is that their existence and influence is not a result of government ownership. As such, to the extent they are present, they confound our understanding of the effect of government ownership on the cost of debt from line-of-credit facilities.

The lack of information on the market for revolving lines of credit means that the absolute and relative incidence and effect of these confounding factors on the margin cost applied to Australia Post debt are unknown.

In practice, this situation means that Australia Post (or any government business) would either:

- be unable to determine with any confidence whether and to what extent it has any competitive advantage regarding the cost of debt from its revolving line of credit facility arising simply by virtue of its government ownership, or
- incur considerable expense in chasing down the information needed to determine whether and to what extent it has any competitive advantage, and what debt neutrality adjustment payment might be needed to counter that advantage.

This situation also means that if Australia Post were to estimate any advantage and corresponding debt neutrality adjustment payment, its shareholder departments or the AGCNCO would face significant administrative costs to confirm those payments were sufficient to comply with its debt neutrality obligations under CN policy.

In addition, given the scale and limited duration of Australia Post's debt from this facility, any potential cost-of-debt advantages resulting from its government ownership would be relatively small – likely to be in the low hundreds of thousands of dollars per year at most. This suggests that even if it were possible to identify any such cost-of-debt savings arising from government ownership, the costs of doing so would likely outweigh the benefits.

The AGCNCO believes these considerations provide compelling grounds for Australia Post's debt from its revolving line-of-credit facility to be exempt from CN considerations. This position is similar to that adopted by Queensland, which does not include borrowings from this type of debt facility as being within the scope of CN policy (box 2.1).

Box 2.1 – Queensland's approach to short-term debt from working capital facilities

Queensland treats working capital debt as debt not subject to competitive neutrality policy (although it applies strict definitions to what qualifies as such competitive neutrality-exempt debt). For example, the Queensland Government's *Code of Practice for Financial Arrangements* states:

No [competitive neutrality fee] margin will be applied to working capital facilities. However, these are to be used as a source of temporary short-term funding only (i.e. to assist with liquidity management). Where [Government owned corporations] are using the working capital facility as a source of longer-term funding, a [competitive neutrality fee] margin will be applied.

Source: Queensland Government (2020).

**Finding 2.2****Revolving line-of-credit facilities like Australia Post's are not amenable to debt neutrality considerations under competitive neutrality policy**

A lack of comprehensive public information on the market for revolving lines of credit, together with the potential for multiple factors (unrelated to ownership status) to affect the margin cost for such facilities, means it is impractical to determine whether Australia Post enjoys any cost-of-debt savings from that source simply by virtue of its government ownership.

**Recommendation 2.1****Short-term debt facilities should be excluded from debt neutrality considerations**

Short-term debt from non-government line-of-credit facilities (such as those used by Australia Post to manage short-term liquidity requirements) should be excluded from debt neutrality considerations under competitive neutrality policy.

2.2 How to achieve debt neutrality?

Australia Post has benefitted from annual cost-of-debt savings simply by virtue of its government ownership but has made no debt neutrality adjustment arrangements to address this competitive advantage. What then is needed for Australia Post comply with its debt neutrality obligation under CN policy?

The AGCNCO assessed two possible approaches to achieve this – netting off competitive advantages and disadvantages and direct debt neutrality adjustment payments.

Netting off competitive advantages and disadvantages

One approach to address cost-of-debt savings is to explicitly offset the value of any such savings against the value of Australia Post's competitive disadvantages. This approach is set out in the *Guidelines for Managers*:

CN is only concerned with offsetting **net** competitive advantages that government business activities enjoy over their private sector competitors simply by virtue of public sector ownership. (Treasury and DoFA 2004, p. 4) [emphasis added]

However, while this approach is appealing in theory, it faces insurmountable obstacles that render it unsuitable in practice. Key among those obstacles is the difficulty in quantifying Australia Post's competitive disadvantages and advantages.

Quantifying competitive disadvantages

On the competitive disadvantages side of the equation, Australia Post noted:

... Australia Post continues to be subject to a number of costly and ongoing disadvantages. These are in the form of both obligations and expectations – that do not apply to private sector competitors like CAPEC Members. (Australia Post 2024c, p. 3)

The most prominent of these listed disadvantages is its CSOs, with an estimated cost in FY2023 of some \$442.2 million (Australia Post 2023b, p. 3).²

The balance of the disadvantages listed in Australia Post's submission cover an extensive array of general Governmental and other obligations, such as:

- act consistent with any relevant government policy orders or Ministerial directions
- perform its functions consistent with Australia's obligations under international conventions, particularly those under the Universal Postal Union treaty
- comply with a broad portfolio of obligations relating to governance, performance, accountability and the proper use of resources set out in the *Public Governance, Performance and Accountability Act 2013* and related instruments, and to a number of reporting, disclosure and transparency obligations as a commercial commonwealth entity and Government Business Enterprise, including under the *Freedom of Information Act 1982*. (Australia Post 2024c, p. 11)
- maintain high standards as an employer
- be subject to annual audits by the Auditor-General
- participate in Senate Estimates processes and relevant inquiries by Parliamentary committees
- mandatory membership of the Postal Industry Ombudsman Scheme (costed at \$1.7 million for 2022)
- be subject to the jurisdiction of the Commonwealth Ombudsman
- be subject to a range of regulatory mechanisms involving the ACCC, including price surveillance of notified letters services; record keeping requirements and cross-subsidy assessment (the cost of compliance with the ACCC's record keeping rules in 2022-23 was estimated to be \$155 000)
- assist other Government agencies in ensuring the integrity of Australian border security (costed at some \$62 million for 2021-22 and 2022-23)
- be subject to a volume of other transparency and accountability mechanisms that do not apply to its private sector competitors, including obligations under the *Archives Act 1983*.

In addition to these obligations, Australia Post noted that it is required to manage a range of expectations from the Government of the day, from the Australian Public Service, from Parliament and from the Australian community.

However, as only four of these other various disadvantages were costed by Australia Post it is not possible to determine the aggregate level of competitive disadvantages it incurs simply by virtue of its government ownership. Assuming the cost estimates are accurate, the best estimate possible from the information provided by Australia Post is that these disadvantages are, at a minimum, of the order of \$475 million for FY2023.

Quantifying competitive advantages

On the competitive advantages side of the equation, CAPEC detailed a number of alleged competitive advantages enjoyed by Australia Post, although (as noted in chapter 1) some of these were outside the scope of this investigation. The remaining areas within scope and relevant for this investigation are:

- various regulatory advantages relating to:
 - the importation of goods into Australia, such as Australia Post's use of the Postal Letter Stream to limit import reporting obligations and differing import declarations and modes of declaration applicable to Australia Post and CAPEC members
 - the inspection of imported goods into Australia by customs officials and related inspection processes

² The AGCNCO considers Australia Post's estimates of its CSO costs are credible, given the regular review of those costs by the ACCC for the purposes of setting letter pricing (ACCC 2024).

- the manner in which Australia Post’s may be complying with its export reporting obligations as a result of it being exempt from the requirement for an Export Declaration for ‘mail’ items
 - an apparent exemption from the New South Wales *Transport Industry – General Carriers Contract Determination 2017*
 - the preferential use of public roads
- access to borrowings at concessional interest rates (CAPEC 2022, pp. 1–3).

Of these areas, the AGCNCO found that quantifying the value of these advantages was only possible for Australia Post’s access to borrowings at concessional rates.

Estimates for the remaining areas were simply not possible. For example, for the first two areas (costs relating to the importation of goods and inspection of imported goods) the competitive advantage referred to by CAPEC is the difference between the allegedly lower compliance costs faced by Australia Post and those costs faced by CAPEC members. However, while CAPEC provided fulsome information on the onerous processing and clearing requirements that its members were subject to relative to Australia Post (CAPEC 2022, pp. 11–17), it was unable to quantify the advantage that Australia Post received as a result of the different regulatory arrangements it and CAPEC were subject to. This inability was partly due to a significant proportion of costs being incurred offshore from Australia, and isolating these costs across the disparate parts of multiple global organisations was not possible. And in part because comparative costs incurred by Australia Post were not available.

Given the difficulties in quantifying Australia Post’s competitive advantages and disadvantages, it is not possible to establish whether it is operating under a net competitive advantage or disadvantage. This situation means that netting off competitive advantages and disadvantages is not a viable option for addressing its debt neutrality obligations under CN policy.



Finding 2.3

Credible estimates of the aggregate value of Australia Post’s competitive advantages and disadvantages are not possible

Although Australia Post incurs a range of competitive advantages and disadvantages simply by virtue of its government ownership, it is not possible to determine the aggregate value of each of these. Accordingly, the AGCNCO is unable to determine, in total, if Australia Post operates with a net competitive advantage or disadvantage simply by virtue of its government ownership.

This inability to establish whether Australia Post is operating under a net competitive advantage or disadvantage effectively rules out netting off competitive advantages and disadvantages as a means of addressing its debt neutrality obligations.

Direct debt neutrality adjustment payments

Another approach to address cost-of-debt savings is for Australia Post to make annual debt neutrality adjustment payments equal to those savings (as discussed earlier, that would represent a payment of at least \$1.2 million) – paid into the Official Public Account. This approach, which directly targets any competitive advantage from lower debt costs, is also described in the *Guidelines for Managers*:

CN does not require that your business borrow from the market at a full debt neutral rate. Rather, if you manage a significant business activity and are able to borrow funds at a lower rate than

your competitors as a result of your government ownership, you must pay ... a debt neutrality charge. (Treasury and DoFA 2004, pp. 22, 23)

(The *Guidelines* also allow for a business to notionally include a debt neutrality charge in their cost base. However, this approach lacks the transparency and accountability inherent in a debt neutrality payment and, accordingly, is not favoured by the AGCNCO.)

The AGCNCO's preferred approach to address cost-of-debt savings

As noted, the lack of credible estimates of Australia Post's competitive advantages and disadvantages means it is not possible to establish whether it is operating under a net competitive advantage or disadvantage. This situation means that netting off competitive advantages and disadvantages is not a credible option for addressing Australia Post's noncompliance with its debt neutrality obligations under CN policy.

Under these circumstances the most appropriate approach to address the cost-of-debt savings Australia Post enjoys by virtue of its government ownership is to make debt neutrality adjustment payments equal to its annual cost-of-debt savings – paid into the Official Public Account.



Recommendation 2.2

Australia Post should make annual debt neutrality adjustment payments into the Official Public Account

Australia Post should calculate its annual cost-of-debt savings and make annual debt neutrality adjustment payments equal to this amount directly into the Official Public Account.

The value of those cost-of-debt adjustment payments should be calculated on the basis set out in the *Guidelines for Managers* and in this report.

As the example in section 2.1 shows, calculating cost-of-debt savings is not necessarily a simple off-the-shelf exercise. A similar situation arose in the AGCNCO's NBN Co investigation and in that case the AGCNCO proposed that those estimates be undertaken (or verified) at arms' length from NBN Co. That investigation concluded there was value in having an independent agency (with the appropriate financial expertise) calculate or verify a government business's interest rate advantage and any associated cost-of-debt savings. The AGCNCO considered the ACCC or the National Competition Council (NCC) would be suitable candidates for this role.

This proposal is equally relevant here. The AGCNCO considers it would help ensure that any Australia Post debt neutrality adjustment payments are no more than appropriate while at the same time giving comfort to its competitors about the integrity of those payments.



Recommendation 2.3

Australia Post's debt neutrality payments should be verified by an independent agency

The Australian Government should request that an entity independent of Australia Post, with the financial expertise needed to calculate the difference between Australia Post's actual and benchmark cost of debt, should verify that Australia Post has accurately identified the value of its interest rate advantage. The Australian Competition and Consumer Commission or the National Competition Council would be options to fulfill this role.

3. Tax neutrality

Where Australian Government businesses are exempt from certain taxes and charges, they will face lower costs than their private sector competitors. The Australian Government's competitive neutrality (CN) policy addresses this potential source of artificial cost advantage through its requirement for tax neutrality:

Taxation neutrality will be achieved by removing taxation exemptions from identified organisations where this can be achieved in a cost effective and administratively simple manner. Alternatively, taxation neutrality may be achieved by retaining taxation exemptions and establishing taxation equivalent regimes (TERs), providing it is cost effective to do so. (Australian Government 1996, p. 16)

The Australian Government Competitive Neutrality Guidelines for Managers (2004) elaborates on what this means for businesses subject to CN and what they must do to comply with that policy:

As a government business, you may benefit from taxation exemptions or concessions that are not available to your private sector competitors. ... Taxation exemptions can be addressed by amending the legislation to remove these advantages or by putting in place a comparable tax equivalent regime ... (pp. 16–17)

It is against this background that the AGCNCO has examined Australia Post's compliance with the CN policy requirement for tax neutrality.

3.1 Australia Post's exposure to taxes and charges

Australia Post is generally required to pay all Commonwealth taxes – just as any private sector taxpayer. Similarly, as a government business operated through a separate legal entity and governed by the *Public Governance, Performance and Accountability Act 2013*,³ it is subject to state, territory and local government taxes and charges (Treasury and DoFA 2004, p. 17).

The AGCNCO notes that Australia Post's Tax Governance Policy includes a commitment to publish an annual Tax Transparency Report. The latest published report – for the year ended 30 June 2023 – notes the various taxes that Australia Post is subject to and reports the amount paid for each for the 2022 and 2023 financial years (table 3.1).

³ Which replaced the *Commonwealth Authorities and Companies Act 1997* on 1 July 2014.

Table 3.1 – Australia Post taxes subject to and paid

	2022	2023
	\$ millions	\$ millions
GST	307.8	320.9
Payroll tax	171.4	179.1
Income tax – net amount paid / (refunded)	123.7	(10.7)
Land tax	22.2	22.5
Rates and registrations	20.9	20.5
Federal excise duty^a	11.1	11.9
Fringe benefits tax	3.5	3.6
Total	660.6	547.8

a. Fuel tax credits are not included as an offset in net GST paid. Fuel tax credits are instead reflected in Federal excise duty. Source: Australia Post (2023a, p. 7).

The ATO independently reviews Australia Post's compliance with its tax obligations through an annual Pre-Lodgement Compliance Review Program. That review has been completed for the 2024 income year but has (at the time of writing) not yet been published. The ATO's 2021 and 2022 reviews reported an unqualified high level of assurance that the right Australian tax outcomes were reported in Australia Post's tax returns in that year (Australia Post, pers. comm., 20 September 2024).

Notwithstanding the pending outcome of the ATO's review for the 2023 income year, the Commissioner of Taxation advised Australia Post in December 2023 that 'based on our current understanding of Australia Post's tax affairs ... we have confidence in your tax compliance and your ongoing commitment to maintaining an open and transparent relationship with us' (pers. comm., 20 September 2024).

Thus, while the review outcome for the 2023 income year is not yet public, the AGCNCO is confident that Australia Post is fully compliant with its tax neutrality obligations under CN policy.



Finding 3.1

Australia Post is complying with its tax neutrality obligations

Australia Post is fully complying with its tax neutrality obligations under competitive neutrality policy.

4. Regulatory neutrality

Competitive neutrality (CN) policy requires that government business activities do not enjoy regulatory advantages simply by virtue of their government ownership and, as far as practicable, should operate in the same regulatory environment as their competitors (Australian Government 1996, p. 18; (Treasury and DoFA 2004, p. 28).

Against this background, the complaint from the Conference of Asia Pacific Express Carriers (Australia) Limited (CAPEC) alleged that Australia Post – because of its government ownership – enjoys regulatory advantages compared with its competitors in the parcel delivery market. It identified various areas where it claimed this was the case:

- asymmetries between Australia Post and CAPEC members in the regulatory regimes governing the import and export of parcels
- Australia Post's exemption from compliance with the applicable industry award in New South Wales
- Australia Post's preferential use of public roads in ways not available to CAPEC members.

The following sections examine each of these areas of potential regulatory advantage and explore what action is warranted to address CAPEC members' concerns.

4.1 Asymmetries in reporting and compliance obligations and the inspection of imported and exported goods

The existence of asymmetries in the regulatory regimes facing Australia Post and CAPEC members, which govern the import and export of letters and parcels, is not in dispute.

These differences stem from Australia Post holding the exclusive right to supply the carriage of letters in Australia⁴ and its status as Australia's sole 'designated operator' under the Universal Postal Union (UPU) treaty, and thus being subject to regulations set out in that treaty and various other international agreements.

As the joint shareholders' submission notes:

In Australia and other countries regulatory arrangements have been in place for decades ... In the most part these arrangements reserve traditional postal services (i.e. letters) for national carriers, and impose social obligations such as service quality, accessibility and price that do not apply to commercial operators. ...

International regulatory arrangements for mail and cargo have also developed over decades, and international Treaties establish different transport, customs clearance, reporting and liability arrangements for international postal and cargo items. As a member of the UPU, World Customs

⁴ With some exceptions, such as letters weighing more than 250g (unless the letter consists of, for example, a parcel containing two or more separate letters) and the carriage of letters relating to goods that are sent and delivered with the goods (CAPEC 2022, p. 9).

Organisation (WCO), International Civil Aviation Organisation, and International Maritime Organization, Australia has ratified and is bound by these Treaties, which have resulted in two different systems:

- A UPU network, with both economic and social development objectives, a universal service, mandatory standards, and operators who are subject to intergovernmental oversight via the UPU. Users of this network must meet obligations imposed as a result of intergovernmental treaty obligations, such as supplying a universal service, and are subject to pricing controls; and
- Various commercial networks, with economic objectives and operational practices developed within rules set by various international institutions and countries. (2022, pp. 1, 3)

However, the extent to which these asymmetries provide cost advantages for Australia Post in the import and export of goods and what can be done to address CAPEC's concerns on this issue is less certain.

CAPEC concerns about regulatory asymmetries

Australia Post and its shareholder departments disputed CAPEC's claim that regulatory asymmetries put its members at a competitive disadvantage. The shareholder departments also claimed that legal precedence suggested CAPEC's concerns on this issue had no merit, while Australia Post challenged the fundamental premise underlying CAPEC's complaint on this issue (i.e. that regulatory asymmetry was not a result of government ownership and, thus, was not a CN issue).

In addition, Australia Post and its shareholder departments drew attention to other, ongoing reviews that touched on some aspects of CAPEC's complaint, with the implication that those reviews could deal with some of its concerns.

Asymmetries and disadvantages – both sides claim the high ground

CAPEC's complaint drew attention to asymmetries in reporting and compliance obligations between CAPEC members and Australia Post for the importation of goods into Australia. These asymmetries, it argued, allow Australia Post to gain an unfair competitive advantage over CAPEC members in the parcel delivery market.

CAPEC cited various examples of these alleged advantages, such as:

- Australia Post's use of the Postal Letter Stream to limit reporting obligations. The Postal Letter Stream relates to Australia Post's treatment of small parcels or packets weighing less than 2 kgs and a combined length, width and depth under 900 mm as mail items. The UPU requires designated operators, such as Australia Post, use CN 22 and CN 23 as a customs declaration for small packets. In practice, this means that for all packets under 2 kg and meeting the required dimensions, Australia Post can process and clear such items in the same way it would for letters. CAPEC submits this allows Australia Post to process and clear such items as part of the import component of the Postal Letter Stream, whilst identical items imported by CAPEC members would be subject to more onerous processing and clearing
- differing import declarations that apply to Australia Post and CAPEC Members and the mode by which these declarations are made requirements (see box 4.1)
- Australia Post being exempt from requiring an Export Declaration for small parcels weighing less than 2 kg and a combined length, width and depth under 900 mm
- in the local distribution of parcels, CAPEC Members are required to deliver each package to a specific residential or commercial address whereas Australia Post is not so required (2022, pp. 1, 3, 10, 2023, p. 4).

Box 4.1 – CAPEC members’ reporting burden compared with Australia Post

CAPEC members must fill out self-assessed clearance (SAC) forms for all air cargo valued below \$1,000, whereas Australia Post has no such obligation for parcels sent through the Postal Letter Stream. To put this in context, in 2022 CAPEC members completed over 15 million of these SAC declarations at a total cost of more than \$40 million.

For parcels valued at over \$1000, CAPEC members must also fill out more complex N10 Non-Post Declarations as compared with the simpler N10 Post Declarations that are required of Australia Post for such parcels. In 2022, CAPEC members completed some two million N10 Non-Post Declarations.

In 2022, CAPEC members completed Export Declarations to the Australian Border Force for almost 500,000 cargo consignments. Australia Post is exempt from the requirement to complete export declarations for mail items.

CAPEC argued that these examples indicate the significant volumes of shipments where CAPEC members are subject to more stringent (and costly) data collection and importation procedures than those applicable to Australia Post.

Source: CAPEC (2023b).

As a result of these and other asymmetries, CAPEC argued its members are at a competitive disadvantage to Australia Post in providing timely deliveries at competitive prices and are suffering significant commercial harm as a result. To assess the materiality of that harm, the AGCNCO sought from CAPEC an estimate of the cost advantage Australia Post allegedly enjoys because of these asymmetries. It was, however, unable to provide that information as the task of isolating and estimating costs across the logistic chains of global organisations and comparing them with comparable Australia Post costs was simply not possible.

Australia Post and its shareholder departments acknowledged the presence of regulatory asymmetries but were adamant they did not confer a net competitive advantage on Australia Post. Rather, they countered, the different regulatory regimes put Australia Post at a cost disadvantage relative to its CAPEC competitors.

In support of this view, they provided examples of significant disadvantages incurred by Australia Post that stem from the regulatory regime it operates under. Those examples included:

- Australia Post is required by law to maintain infrastructure for screening (and other purposes) that private cargo reporters are not required to maintain. This comes at a significant cost to Australia Post, which negates any advantage that Australia Post purportedly enjoys.
- Australia Post assists other Government agencies in ensuring the integrity of Australian border security by participating in border clearance and security activities in relation to the postal system – primarily by working with the Department of Agriculture, Fisheries and Forestry (DAFF) and Australian Border Force to support arrangements contemplated under the *Customs Act 1901* and the *Biosecurity Act 2015*. The cost of its participation in border clearance and security activities over FY2022-23 is estimated to be some \$29.4 million, with a significant proportion of this comprised of a biosecurity service fee charged by DAFF to recover the costs of biosecurity activities undertaken on international mail.
- Broader costs that Australia Post incurs to meet additional requirements which are not addressed in CAPEC’s submissions, such as EU-related pre-departure reporting costs for consumer-to-consumer traffic that Australia Post has an obligation to handle (Australia Post 2024c, pp. 7, 13, DITRDCA and DoF 2022, p. 14).

However, as only some of those examples were costed, they do not provide a full picture of the competitive disadvantages those regulatory burdens impose on Australia Post. Moreover, they also fail to put those costs into perspective relative to the comparable costs its CAPEC competitors face. As a result, the AGCNCO is unable to assess whether those examples of regulatory disadvantages are relatively higher or lower than those imposed on CAPEC members (this discussion and conclusion mirrors that in chapter 2).

Accordingly, while both sides cited areas where regulatory asymmetries result in higher costs or less timely deliveries than their competitor, neither party was able to provide a comprehensive estimate of the scale of these disadvantages and a like-with-like comparison to put those costs in perspective. In the absence of that information, it is not possible to determine who is the more competitively disadvantaged under existing arrangements.



Finding 4.1

A lack of information on the costs of regulatory asymmetries means it is not possible to determine who is worse off

CAPEC members and Australia Post provided some information on the cost disadvantages they incurred as a result of regulatory asymmetries. However, that information was neither comprehensive nor put those costs into perspective compared to those incurred by their competitor/s. In the absence of that information, it is not possible to determine who is the more competitively disadvantaged under existing regulatory arrangements.

Joint shareholders claim legal precedent indicates CAPEC concerns have no merit

The shareholder departments also supported their view that CAPEC's concerns did not warrant changes to current arrangements by referring to similar concerns brought by UPS and UPS Canada against the Canadian Government and Canada Post (its designated operator) – an action that was ultimately unsuccessful.

They noted that over the period 2000–2007, arbitration proceedings were brought by UPS and UPS Canada under the North America Free Trade Agreement against the Canadian Government and Canada Post. Part of the proceedings alleged that UPS and Canada Post were providing like services and should be afforded like importation arrangements on generally analogous terms to the matters raised in CAPEC's complaint.⁵

The Tribunal arbitrating the matter concluded that the complainants were not providing like services that should be afforded the same arrangements, namely:

... the evidence before our Tribunal is overwhelming. We conclude that UPS and Canada Post are not in like circumstances in respect of the Customs treatment of goods imported as mail and goods imported by courier. (DITRDCA and DoF 2022, p. 15)

The joint submission went on to state that globally, these arrangements have not materially changed since the 2007 decision (and, by implication, that the outcome of those proceedings is equally applicable today).

However, the underlying assumption that those proceedings and outcome mirror CAPEC's complaint about regulatory asymmetries and its merit needs to be treated with caution. There are two main reasons for this.

The first is the difficulty in determining the extent to which the experience in one country is transferable to another (in this case, from Canada to Australia). Multiple factors are at work here to complicate genuine comparability – for example, different institutional arrangements, actors and regulatory regimes to mention a

⁵ A summary of the proceedings is available at [JUS MUNDI](#) (Kenneth Keith et al. 2007).

few. Moreover, the Canadian decision revolved around the test of ‘like circumstances’. This test, though, is not the relevant test for a CN issue. In Australia (and for this investigation), the relevant test is whether the parties are in competition and whether one party receives a regulatory advantage due to its government ownership. This two-part CN test may be satisfied even though the relevant parties are not in like circumstances.

Regarding the second reason, the joint shareholders implied that the 2007 decision is still relevant today because globally these arrangements have not materially changed since then. But the evidence indicates this is patently not the case. Since 2007, letter traffic globally has been in a significant downward trend (figure 1.1). In Australia, letter traffic volume fell almost 70 per cent over the period from 2007 to 2021. Moreover, this decline in letter volumes has occurred against a backdrop of massive growth in the demand for parcel deliveries – Australia’s online shopping market size has grown from \$10 billion in 2012 to over \$50 billion in 2022 (figure 1.2). And eCommerce, with its associated demand for parcel deliveries, is expected to continue to grow (Australia Post 2024a, pp. 2, 3).

Australia Post is acutely aware of their changing market and has recognised it must reshape how it operates or fall by the wayside:

... customer needs have evolved, and Australia Post needs to change with them ... Letter volumes have reduced by two thirds since the peak of letters in 2008 due largely to increased digitisation ... (Australia Post 2023b, p. 14)

Digital technology has permanently changed the landscape for postal services around the world ... Today, the headwinds facing the business have never been stronger ... We expect that the growth in online shopping will continue to attract new eCommerce competitors who specialise in segments of the supply chain. Remaining competitive in our parcel delivery business is integral to our ability to remain profitable as an organisation ... (Australia Post 2023c, pp. 8, 10)

These features of Australia Post’s market indicate a future of increasing competition with private parcel delivery companies, such as CAPEC members. Accordingly, under these circumstances, one would expect the incentives for Australia Post to harness the regulatory regime it operates under so as to maximize the competitiveness of its parcel delivery services would be far greater today than would have been so in 2007.

Against the backdrop outlined above, the AGCNCO considers the outcome of the proceedings referred to by the joint shareholders is not a persuasive reason for dismissing CAPEC’s concerns about differences in the regulations they and Australia Post operate under.

Australia Post claimed some advantages do not arise simply by virtue of government ownership

Australia Post also challenged the premise underlying CAPEC’s complaint – that the allegedly damaging asymmetries were the result of government ownership. It stated:

CAPEC’s complaint also asserts that any advantages to Australia Post that arise from differences in regulation are a result of “Australia Post’s government ownership”. Australia Post, however, considers that any differences instead derive as a consequence of the community services it is obliged to provide. The regulatory differences referred to in CAPEC’s complaint are tied not to the entity providing the services (i.e. Australia Post) but to the services themselves (i.e. postal services and the delivery of mail). (Australia Post 2024c, p. 8)

The AGCNCO accepts that the services referred to impose specific regulatory arrangements on Australia Post and, consequently, contribute to the regulatory asymmetries between it and its competitors.

However, this is only part of the story. Under the *Australian Postal Corporation Act 1989*, Australia Post must provide community services. Those community services are loss-making activities on a significant scale (some \$442 million in FY2023) and, under that Act, must be funded by Australia Post. In those circumstances, the value of those internal cross-subsidies comes directly off Australia Post's bottom line.

It is inconceivable that a private business would accept responsibility for the delivery and funding of loss-making activities on this scale. Thus, in practice, the differences in regulation referred to by CAPEC under current arrangements derive from both the services Australia Post is obliged to provide (as designated operator and CSO provider) and a government owner willing to accept the consequences on profitability of those arrangements. In this regard, government ownership is a necessary condition for Australia Post being subject to the regulatory regime it operates under, and which gives rise to asymmetries between it and its competitors.

Accordingly, the AGCNCO has determined that the premise underlying CAPEC's complaint – that various regulatory asymmetries are the result of government ownership – is soundly based.



Finding 4.2

CAPEC is right to attribute certain regulatory asymmetries as a result of government ownership

Differences in regulation referred to by CAPEC under current arrangements derive from both the community services Australia Post is obliged to provide and a government owner prepared to accept the loss-making consequences of those arrangements. Thus, the premise underlying CAPEC's complaint – that various regulatory asymmetries are the result of government ownership – is soundly based.

Other, contemporary reviews are considering aspects of CAPEC's complaint

All parties drew attention to various contemporary reviews that touch on some of the concerns raised by the CAPEC complaint.

The shareholder departments, for example, noted current efforts to reform Australia's current complex cross-border trade environment:⁶

For international mail, Austrade is leading a whole-of-government micro-economic trade reform, to develop the Simplified Trade System, with some work streams considering a number of the issues raised in the CAPEC importation complaint. (DITRDCA and DoF 2022, p. 4)

Those departments also drew attention to efforts to open the UPU to the wider postal sector:

Globally, 192 UPU member countries have agreed to consider whether and how to open up the UPU to wider postal sector players such as CAPEC members. An Extraordinary Congress will ... determine the extent of this major reform, including providing access to standards and services to the wider postal sector. (DITRDCA and DoF 2022, p. 4)

The UPU held its fourth Extraordinary Congress from 1 to 5 October 2023. The Congress considered ways in which to open up the UPU to the wider postal sector and adopted proposals to improve commercial interoperability between UPU designated postal operators and wider postal sector players. The detail of these reforms will be developed over coming years ... (DITRDCA and DoF 2023, p. 2)

⁶ More information about this review is available at Australian Trade and Investment Commission webpage, *Simplifying Australia's Trade System* (Austrade 2024).

Australia Post, too, noted those reviews and their relevance to CAPEC's complaint:

... some of the matters raised in CAPEC's Importation (and exportation) Complaint ... relate to matters being considered by the Australian Government under its Simplified Trade System reforms, and/or by the Universal Postal Union in potentially opening up to other commercial industry participants. (Australia Post 2024c, p. 7)

In addition to these reviews, CAPEC noted that during the complaint investigation the Australian Government embarked on a *Postal Services Modernisation* (PSM) review. That review had the aim of developing a package of reforms that, among other things, would support Australia Post's financial sustainability and its parcel delivery services (DITRDCA no date). Given these intended outcomes, changes resulting from this review can be expected to enhance the competitive position of Australia Post in the parcel delivery market in Australia. The *PSM Discussion Paper* reinforces this interpretation, stating 'There is potential for changes to improve parcel services, supporting businesses and consumers who choose to use Australia Post ...' (DITRDCA 2023, p. 21), and then going on to list several areas where changes could be made to achieve this. The implication from this focus is that reforms flowing from the PSM review are more likely to increase the value of regulatory asymmetries favouring Australia Post's delivery operations than to decrease them.

While the ongoing UPU and STS reviews have the potential to affect the regulatory regime under which Australia Post operates (and, thus, the regulatory asymmetries between it and its competitors), CAPEC was sceptical that any meaningful benefits for its members would eventuate:

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. (CAPEC 2023a, p. 2)

The AGCNCO considers CAPEC's view is an accurate assessment of the likely effect of those reviews. The flip side of this view is that any meaningful action to address regulatory disadvantages that CAPEC members face would need to focus on those regulations governing the import and export of parcels that the Australian Government can unilaterally change.

How to address CAPEC's concerns about regulatory asymmetries?

Despite a lack of quantification of the net disadvantages facing CAPEC members from regulatory asymmetries, their complaint provides plausible grounds to consider what might be done to address their concerns about regulatory non-neutrality and an excessive regulatory burden.

There are several possible approaches to address those concerns.

The preferred approach set out in the Australian Government's CN policy statement and its *Guidelines for Managers* is to achieve regulatory neutrality by subjecting a government-owned business to the same regulatory environment as their private sector competitors (Australian Government 1996, p. 18, Treasury and DoFA 2004, p. 28).

However, this approach is not feasible for Australia Post, given its role as the monopoly provider of the carriage of letters and its status as Australia's designated operator under the UPU treaty. Those attributes mean it is subject to unique regulatory requirements that cannot be unilaterally cast off in favour of the regulatory regime its competitors operate under.

Where this preferred approach is not practical, an alternative is for the government business (Australia Post in this case) to quantify any net competitive advantages and offset these against any competitive disadvantages arising simply by virtue of government ownership. If those disadvantages are insufficient to

offset the advantages, the government business should seek to neutralise any remaining net cost advantage by making annual regulatory adjustment payments to the Official Public Account equal in value to that remaining advantage (Treasury and DoFA 2004, p. 28).

However, this approach is also not feasible. As noted above and in chapter 2, it has not been possible to quantify the value of any net competitive advantages that regulatory asymmetries might confer on Australia Post.

Given the unsuitability of these approaches to address the damaging commercial effects of regulatory non-neutrality, a different approach is required.

One such alternative was suggested by CAPEC (box 4.2). It proposed a package of reforms to the regulatory regime it operates under – aimed at reducing what it sees as excessive regulatory compliance costs relative to what Australia Post incurs (e.g., the \$40 million cost to CAPEC members of filling out some 15 million SAC forms for air cargo in 2022). CAPEC argued these changes would deliver a fairer and more equitable outcome consistent with the aims of CN policy. Moreover, CAPEC noted, unlike changes to regulations under the UPU treaty or trade agreements these reforms are within the ability of the Australian Government to unilaterally implement.

Box 4.2 – CAPEC’s suggested reforms

To address the perceived additional (and excessive) regulatory burden that its members incur relative to Australia Post, CAPEC proposed a package of seven reforms:

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*.

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 European Union moves 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, it 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.

Source: CAPEC (2023a).

A hurdle in assessing CAPEC's fix for regulatory asymmetries

Assessing the merit of CAPEC's proposed reforms has proved difficult.

From the AGCNCO's initial examination of CAPEC's claims and proposed reforms it was apparent the office did not have the experience, expertise or information necessary to assess the veracity of CAPEC's claims and whether their reforms would achieve intended outcomes. Nor, for the same reason, was the AGCNCO in a position to suggest practical alternatives if CAPEC's reforms were unworkable.

To address this shortcoming, the AGCNCO sought information on these matters from Australia Post and the shareholder departments. Those agencies, though, noted they too lacked expertise in these areas and directed the office to the Australian Border Force as the best source for information on customs and border clearance and reporting issues, namely:

We note the complaint raised by CAPEC is focused on customs and border clearance and reporting matters outside the portfolio responsibility of both the Department of Finance and Department of Infrastructure, Transport, Regional Development, Communications and the Arts ... Concerns regarding these matters are best directed to the Department of Home Affairs and Australian Border Force ... (DITRDCA and DoF 2023, p. 1)

Following that advice, the AGCNCO arranged a meeting with Customs to discuss the complaint and invited it to provide the office with a formal submission addressing CAPEC's complaint and proposed reforms.

That meeting highlighted Customs' breadth and depth of understanding of border clearance and inspection requirements and how these affected parcel traffic carried by CAPEC members and Australia Post. It also made apparent that Customs was the agency best placed to assess the veracity of CAPEC's claims, the feasibility of their proposed reforms to achieve their ends, and to offer effective alternatives should those reforms be unworkable.

Subsequent to that discussion, the AGCNCO extended further invitations to Customs to provide a submission responding to CAPEC's complaint and proposed changes. While Customs have acknowledged the invitation no submission was forthcoming. This situation, coupled with the AGCNCO's rudimentary understanding of how the regulatory environment works in practice, means this investigation has been unable to adequately address a core element of CAPEC's complaint.

However, the Government's CN policy provides an avenue to resolve this issue:

Where the Productivity Commission (after preliminary investigations) considers that there is a strong possibility that competitive neutrality arrangements are not being followed or potentially should be implemented it will be able to propose to the Treasurer, if it thinks necessary, that there be a public inquiry into the circumstances surrounding the complaint. (Australian Government 1996, p. 21)

CAPEC's examples of asymmetries affecting parcel traffic over Australia's borders (box 4.1) provide plausible grounds to believe CN arrangements are not being followed or potentially should be implemented. Accordingly, and given this issue is at the heart of the CAPEC complaint, the AGCNCO considers recourse to this public inquiry avenue is justified.

The AGCNCO notes that the terms of reference for this inquiry should emphasise contributions from those agencies responsible for border controls – primarily, but not necessarily confined to: DAFF; the Australian Border Force; and (especially) Customs. This will allow the inquiry to address CAPEC's concerns about regulatory asymmetries and the advantages they confer on Australia Post while being mindful of border agencies' requirements for efficiency, efficacy and practicality in the prosecution of their border protection role. Moreover, given the narrow subject area (CAPEC's concerns about regulatory asymmetries affecting

the import and export of parcel traffic and the relative costs involved) the AGCNCO envisages that this inquiry would have a relatively short reporting timeframe.



Recommendation 4.1

The Treasurer should call a public inquiry into certain areas of CAPEC's complaint against Australia Post

The Treasurer should initiate a public inquiry to consider the regulatory asymmetries between Australia Post and CAPEC members in regard to border regulation of parcel traffic, the relative cost of those regulations, whether the reforms proposed by CAPEC are appropriate to deal with those asymmetries and, if those proposed reforms are not appropriate, what alternative changes could be implemented to ensure competitive neutrality.

Late in this investigation, the AGCNCO became aware that Customs has been in discussions with CAPEC on these or similar concerns and how those concerns might be addressed. However, Customs' consideration of those matters has since been put on hold, pending the completion of this CN complaint investigation.

While not privy to the content and progress of Customs' consideration of these matters, the AGCNCO considers that these Customs/CAPEC discussions may well be an effective alternative for identifying the relative costs associated with regulatory asymmetries and resolving CAPEC's concerns in this arena. Accordingly, it may be more expeditious for the Treasurer to direct Customs to continue its efforts in this regard and to ensure that those efforts are adequately resourced. Australia Post lent support to this view. It suggested that an alternative to an inquiry could be for the Treasurer to require or request that Customs and other relevant agencies identify the relative regulatory costs and to assess the efficacy of CAPEC's proposed reforms to address any regulatory asymmetries (pers. comm., 20 September 2024).

4.2 Exemption from part of NSW's Industrial Relations Act

The problem

CAPEC cited Australia Post's exemption from the *Transport Industry – General Carriers Contract Determination 2017* under section 309(4)(c) of the *Industrial Relations Act 1996* (NSW) as a regulatory neutrality concern (box 4.3).

The origin of this exemption was, in part, based on the view that subjecting a Commonwealth Government agency (the then Post-Master General's Department) to New South Wales regulation would present serious constitutional difficulties (NSW Premier's Department 2024, p. 3). Accordingly, the AGCNCO accepts that any regulatory advantage conferred by this exemption is a consequence of Australian Government ownership and, as such, is a legitimate concern for this CN complaint investigation.

This exemption, CAPEC argued:

... gives Australia Post an advantage in terms of its ability to engage contractors to deliver parcels in New South Wales at lower rates than its competitors. (CAPEC 2022, p. 20)

This interpretation by CAPEC is consistent with advice from the New South Wales Premier's Department on the effect of that exemption (provided in response to a request for information by the AGCNCO).

Although CAPEC was unable to quantify the value of this exemption to Australia Post, the AGCNCO nonetheless accepts it is likely to confer some competitive advantage. In that regard, the exemption represents a regulatory advantage that (at least in principle) warrants an examination under CN.

Box 4.3 – Australia Post’s advantage under the *Industrial Relations Act 1996* (NSW)

Under Chapter 6 of the *Industrial Relations Act 1996* (NSW), the New South Wales Industrial Relations Commission can make Contract Determinations (which are akin to awards) which provide for minimum terms and conditions (including minimum rates) that must be paid to contract carriers ...

Under section 309(4)(c) *Industrial Relations Act 1996* (NSW), there is an express exclusion for the carriage of mail by or on behalf of Australia Post. However, the term ‘mail’ is not defined in the *Industrial Relations Act 1996* (NSW).

Section 3 of the [Australian Postal Corporation] Act also does not define ‘mail’ but uses the term ‘article’. Relevantly, the term “article” includes an envelope, packet, parcel, container or wrapper containing any matter or thing ...

The view taken by Australia Post appears to be that given the term ‘mail’ is not defined in the *Industrial Relations Act 1996* (NSW), the term is not restricted to envelopes or letters but should be read as a reference to all ‘articles’ carried by or on behalf of Australia Post.

As such, Australia Post appears to treat itself as exempt from the minimum rates for contract carriers set out in the *Transport Industry – General Carriers Contract Determination 2017*, both in terms of contract carriers engaged directly by Australia Post to deliver parcels and contract carriers engaged by private service providers for the delivery of parcels on behalf of Australia Post. (CAPEC 2022, p. 20)

AGCNCO options to address this regulatory non-neutrality

Where a government business enjoys a net advantage from favourable regulation that is not available to its competitors, the AGCNCO has two options to ‘neutralise’ that advantage:

- address the cost advantage resulting from that favourable treatment, or
- address the source of the cost advantage.

Under the first option, neutralising the cost advantage would involve quantifying the year-on-year value of that advantage and requiring Australia Post to pay an equivalent amount into consolidated revenue each year. This approach effectively offsets any ‘artificial’ cost advantage from that favourable treatment and creates a level playing between a government business and its competitors (i.e. competitive neutrality between those businesses).

However, the information needed to accurately quantify the value of this regulatory advantage is not available. As a result, this option is not feasible.

Under the second option, neutralising the source of the advantage would involve removing the exemption accorded to Australia Post. Doing so would eliminate the competitive advantages available to Australia Post and place it and its competitors on an equal footing. An example of this ‘equal footing’ approach is described in our

investigation of a complaint against NBN Co. In that investigation, NBN Co enjoyed a regulatory advantage not available to its competitors. To address that advantage, the AGCNCO recommended the regulation in question be amended to enable other businesses to access that regulatory advantage (AGCNCO 2022, pp. 52–54).

However, the issue of jurisdiction takes this second option off the table as well. Australia Post is an Australian Government business subject to that government’s CN policy and all the obligations that go with it. But the regulation that confers an advantage on Australia Post in this case is the result of New South Wales legislation – which is outside the jurisdiction of the Australian Government.

The upshot of this is that the AGCNCO has nothing in its armoury to deal with this particular CN concern.

Serendipity to the rescue

While the AGCNCO’s options to address this instance of regulatory non-neutrality are non-existent, all is not lost. Developments unrelated to this complaint investigation may resolve this issue.

One of the NSW Government’s 2023 election commitments was to extend the protections contained within Chapter 6 of the *Industrial Relations Act 1996* (NSW) to gig economy workers in New South Wales. This commitment has now been realised. On 28 July 2024 the NSW Minister for Industrial Relations announced that the NSW Government will legislate long-overdue protections for gig workers who currently have ‘... no minimum rates of pay or conditions ... no unfair dismissal protections, and no recourse to an independent industrial umpire’ (Cotsis 2024).

The removal of Australia Post’s current exemption from parts of Chapter 6 is currently being considered by the NSW Government. Options under consideration include the removal of the exemption entirely or qualifying that removal to apply only to parcel traffic. An Exposure Draft Bill to give effect to the NSW Government’s decision will be released to industry stakeholders for their feedback prior to the government introducing legislation to amend Chapter 6.



Finding 4.3

Australia Post’s exemption from Chapter 6 of the *Industrial Relations Act 1996* (NSW) provides it with a competitive advantage of unknown value

Australia Post’s exemption from chapter 6 of the *Industrial Relations Act 1996* (NSW) confers a competitive advantage on Australia Post, although no credible estimate of that benefit is available.



Finding 4.4

Removal of Australia Post’s part-exemption from the *Industrial Relations Act 1996* (NSW) will help restore regulatory neutrality

The New South Wales Government’s decision to remove Australia Post’s exemption from Chapter 6 of the *Industrial Relations Act 1996* (NSW) will help eliminate the competitive advantage that this exemption confers on Australia Post. To that extent, this decision will help to restore regulatory neutrality between Australia Post and its competitors in this area.

4.3 Preferential use of public roads

The problem

CAPEC listed various examples of Australia Post's preferential use of public roads relative to their competitors (box 4.4).

Box 4.4 – Examples of Australia Post's preferential use of public roads

Each State and Territory has exempted Australia Post from adherence with certain road rules in relation to the delivery of mail. Set out below are some examples relating to the operation of these exemptions in New South Wales under the *Road Rules 2014* (NSW):

- Prohibition on stopping in mail zones: Although regular drivers are prohibited from stopping in mail zones, this does not apply to drivers of postal vehicles. A postal vehicle means a vehicle driven by a postal worker, which is an employee of Australia Post, or another person engaged by Australia Post to deliver post.
- Prohibition on driving up one-way streets: Drivers cannot drive in the opposite direction of a one-way street. This prohibition does not apply to riders of a motor bike that is a postal vehicle.
- Prohibition on stopping at the side of clearway: Drivers cannot stop at the side of the road in a clearway, except for postal vehicles engaged in the clearance of mail from an Australia Post public post box.

CAPEC stated that if its members engaged in the same activity, they would be subject to a fine.

Source: CAPEC (2022).

CAPEC has no objection to Australia Post's accessing preferential road rules for the purpose of executing its mail operations. However, it argues that doing so to benefit its parcel delivery operations results in an unfair distortion of competition in that market.

While CAPEC did not join the dots to show that these preferential rules arose simply because of government ownership, the AGCNCO considers there are sound reasons to conclude that the regulatory neutrality status of those rules qualify as a legitimate CN issue for this investigation.

Australia Post's submission, for example, suggests this is the case where it notes that the favoured treatment of Australia Post workers driving postal vehicles is a regulatory response to support the delivery of mail items by the government-owned monopoly provider of mail services (2024c, p. 9). As the commercial viability of delivering these mandated services (as specified in the Australian Postal Corporation Act) is such that no private business would undertake those operations, the AGCNCO is prepared to accept that any competitive advantage conferred by these preferential rules is a consequence of government ownership.

AGCNCO options to address this regulatory non-neutrality

The AGCNCO's options to address regulatory non-neutrality resulting from Australia Post's exemption from certain road rules mirror those for dealing with its exemption from part of the *Industrial Relations Act NSW*. And they run into similar problems.

As accurately estimating the value of this regulatory advantage is not possible, it follows that the option of neutralising any cost advantage through annual payments into consolidated revenue is also not possible. Similarly, the option of subjecting Australia Post and its competitors to the same regulatory regime jurisdiction is rendered unusable by dint of jurisdiction. While Australia Post is an Australian Government business subject to CN, the regulations giving it a competitive advantage are state and territory (not Australian Government) regulations. Hence, changing those regulations is outside the jurisdiction of the Australian Government, which makes this option unusable too.

Nonetheless, while the options available to the AGCNCO are incapable of addressing the advantages that Australia Post's exemption from certain road rules confers on it, there is another more appropriate avenue that might prove useful. That avenue is to tap into the workings of the National Transport Commission (NTC) and is discussed in the following section.

A possible way forward

As CAPEC noted, each state and territory has exempted Australia Post from adherence with certain road rules. However, those exemptions are not arrived at independently by each state and territory. Instead, they are based on model Australian Road Rules that are developed by the NTC (2024a). While the rules are a template only, each state and territory generally adopt the Rules as legislation, although not every provision of the Rules is copied exactly in each state and territory.

Among other responsibilities, the NTC's role is to review, maintain and amend model laws (NTC 2024b). To this end, the AGCNCO discussed with it the scope for a review of Australia Post's exemptions, with a view to bringing Australia Post and its competitors under the same regulatory regime. In theory, this objective could be achieved by removing Australia Post's exemptions (unlikely, given their role in facilitating Australia Post's mandated mail services) or by extending those exemptions to its recognised competitors.

While the NTC regularly reviews the model Australian Road Rules, that process only deals with minor amendments to those rules. A review of Australia Post's exemptions would, however, involve issues beyond the scope of its routine maintenance reviews and would require a more detailed review of those Rules and analysis of the costs and benefits involved (NTC, pers. comm., 23 July 2024).

Accordingly, the NTC suggested that the path to a more detailed review to consider changing the Rules conferring a unique benefit to Australia Post would be for CAPEC to provide a written submission to the NTC, requesting a formal consideration of those exemptions contained in the model Australian Road Rules.



Finding 4.5

Under some circumstances, AGCNCO options to address regulatory non-neutrality stemming from state/territory government legislation are non-existent

The AGCNCO's options to address regulatory non-neutrality are non-existent where credible estimates of the value of those exemptions are not available and the source of regulatory advantage is state or territory legislation – which the Australian Government has no authority to change.

5. Competitive disadvantages

Competitive neutrality (CN) policy is based on the premise that significant government business activities should not enjoy **net** competitive advantages over their competitors simply by virtue of public sector ownership (emphasis added) (Australian Government 1996, p. 4).

In doing so, the policy recognises that there may be advantages and disadvantages of government ownership and that the role of the complaints mechanism (among other things) is to determine whether businesses have net competitive advantages or disadvantages arising simply by virtue of public sector ownership (Australian Government 1996, pp. 4, 6, 21).

Significantly for this chapter, CN policy is also concerned with addressing competitive disadvantages as a means of achieving a level playing field between government businesses and their competitors:

Fully implemented, competitive neutrality arrangements will assist government business activities address certain competitive disadvantages they also face; for example, conflicting non-commercial goals, clarification of community service obligations and funding for those services and more onerous accountability requirements. (Australian Government 1996, p. 9)

Earlier chapters have considered whether Australia Post enjoys any competitive advantages of government ownership, what the value of those advantages might be and how any such advantages might be neutralised.

To help understand whether Australia Post has any net competitive advantages arising simply by virtue of its public ownership, the AGCNCO must determine whether Australia Post suffers from any competitive disadvantages of government ownership and, if so, what the likely value of those disadvantages might be. Following this, the AGCNCO must also consider whether changes to specifically address or neutralise those disadvantages are warranted.

Australia Post identified a range of disadvantages in the form of various obligations under the regulatory framework set by the *Australian Postal Corporation Act 1989* (Cth) and from the expectations arising from it being a statutory authority of the Australian Government.

The disadvantages it incurs from those various obligations and expectations (which, it argues, are not applicable to private business) include:

- the delivery of community service obligations (CSOs) and responsibility for fully funding the costs of doing so
- financial governance of government bodies – audit by the Auditor-General and Department of Finance policy
- legislative obligations – the Australian Postal Corporation Act 1989 (Cth) requires Australia Post to maintain high standards as an employer, including terms and conditions, safety, and occupational health (section 90)
- government oversight – Postal Industry Ombudsman scheme, Commonwealth Ombudsman, transparency and accountability mechanisms (Freedom of Information, Archives, etc), government expectations and informal communication with shareholder departments
- participation in border clearance activities

- regulatory oversight by the Australian Competition and Consumer Commission – price monitoring and surveillance, record keeping requirements, cross-subsidy assessment and a framework for ACCC enquiries into disputes between Australia Post and bulk mail senders
- parliamentary oversight – participation in Senate Estimates and other inquiries and responding to recommendations from inquiries, providing services (e.g. parcel services for medical and educational supplies) at reduced cost
- community expectations – post office and post box presence, proximity of delivery services (e.g. for businesses and multi-residential properties).

Of these disadvantages, the most significant is the obligation to deliver and fund CSOs. Accordingly, while the following chapter discusses a range of disadvantages, its primary focus is on describing the origin and nature of Australia Post's CSOs, exploring developments that have the potential to increase or decrease the cost of those CSOs, discussing whether the current funding arrangements are justified and, if not, what alternative arrangements are warranted.

5.1 Australia Post's CSOs and performance standards

Origin of Australia Post's CSOs

Australia Post's CSOs derive from its history as part of government agencies providing communication services to the public. Originally, as part of a department of the Australian Government (Post-Master General's Department 1901 to 1975), and then as a statutory authority of the Australian Government (Australian Postal Commission 1975 to 1988). Australia Post was established as a corporate body separate to the Commonwealth (the Australian Postal Corporation) by amendments to the *Postal Services Act 1975* (Cth) passed by the Parliament in 1988. The *Australian Postal Corporation Act 1989* (Cth) continued the corporation's existence and sets out much of the regulatory framework for Australia Post's operations, including its CSOs (box 5.1).

Box 5.1 – Australia Post's Community Service Obligations

To provide a letter service ...

Australia Post's CSOs are set out in section 27 of the *Australian Postal Corporation Act 1989* (Cth), which requires that:

- Australia Post provide a letter service at a single uniform rate for standard letters carried by ordinary post within Australia
- the letter service Australia Post is obliged to provide be reasonably accessible to all Australians on an equitable basis, in view of the social importance of the letter service (Australia Post 2023b, p. 158)

The *Australian Postal Corporation Act 1989* (Cth) defines a 'letter' as (section3):

- (a) any standard postal article
- (b) any envelope, packet, parcel, container or wrapper containing such a communication
- (c) any unenclosed written communication that is directed to a particular person or address.

Box 5.1 – Australia Post’s Community Service Obligations

Australia Post has a statutory monopoly over certain letter services, to assist it in meeting its CSOs (ACCC 2024, p. 3). Generally, Australia Post has the exclusive right to collect, carry and deliver letters within Australia (whether the letters originated within or outside Australia) and the exclusive right to issue postage stamps (section 29). The *Australian Postal Corporation Act 1989* (Cth) contains a number of exceptions to these exclusive rights (particularly in section 30).

... and meet prescribed performance standards

Australia Post’s performance standards are set out in the *Australian Postal Corporation (Performance Standards) Regulations 2019* (Cth). The performance standards are set to meet the social, industrial and commercial needs of the Australian community⁷. Australia Post has advised:

Australia Post is also subject to a range of performance standards prescribed by regulations – including in relation to the frequency, speed and accuracy of letter delivery, and in relation to the maintenance of retail outlets and mail lodgement points (including street posting boxes). (2024c, p. 10)

Funding and revenue for the CSOs

Australia Post does not receive any funding from the Australian Government for the performance of its CSOs or for meeting the performance standards (Australia Post 2023b, p. 14).

The revenue that Australia Post earns from its CSOs is regulated by the Minister for Communications and the ACCC. The Minister for Communications is able to object to changes in postal charges for the postage of standard postal articles by ordinary post within Australia (section 33, *Australian Postal Corporation Act 1989* (Cth)). Reserved letter services are also ‘notified services’ under Part VIIA of the *Competition and Consumer Act 2010* (Cth). In practice, this means that Australia Post is unable to increase its prices for these services where either the Minister or the ACCC objects to the price increase.

From this it is clear that Australia Post’s obligation to deliver and fund its various CSOs (and the competitive disadvantage this represents) is a consequence of its government ownership.

Current and future cost of Australia Post’s CSOs

Current cost and trends

In 2022-23, the cost of delivering those CSOs exceeded the revenue earned in performing those services by \$442 million, and losses are expected to grow in the future (Australia Post 2023b, p. 14).

For many years, Australia Post was subject to annual price monitoring by the ACCC, which reviewed whether it was using profits from its CSO activities to subsidise its activities in competitive markets. The ACCC discontinued this following its 2014-15 report, when it found that the reserved letter business had not been a potential source of cross-subsidy for Australia Post’s other business activities for at least 10 years (ACCC 2015, p. 14). Decreasing demand for letter services and increased costs have seen Australia Post incur increasing losses.

⁷ Paragraph 27(4)(b) of the *Australian Postal Corporation Act 1989* (Cth).

In its submission, Australia Post set out the impact of the CSOs on its financial position:

Australia Post is obliged to provide the nation's letters service in a way that is accessible to all on an equitable basis, to meet or exceed prescribed performance standards for the letters service, and to ensure its performance standards meet the needs of the Australian community. . . The cost to Australia Post of meeting its CSOs from financial years 2012-13 to 2022-23 totals almost \$3.53 billion ... (2024c, p. 10)

Over the last 10 years, the cost of delivering those CSOs has increased significantly (table 5.1).

Table 5.1 – Estimated net cost of Australia Post's CSOs

Financial year	CSO cost estimate (\$m)
2012-13	173.9
2013-14	203.5
2014-15	210.8
2015-16	182.5
2016-17	389.9
2017-18	403.5
2018-19	392.2
2019-20	393.3
2020-21	348.3
2021-22	348.5
2022-23	442.2

Source: Australia Post (2024c, p. 10).

The validity of those CSOs costs

CAPEC criticised Australia Post's methodology for calculating the cost of its CSOs, claiming that Australia Post's estimated costs are inflated and warrant revaluation:

There are serious questions about the basis on which Australia Post calculates its CSO losses. CAPEC also wishes to bring to the AGCNCO's attention issues which have arisen in the context of the ACCC's assessment of the price notification by Australia Post, pursuant to which Australia Post proposes to increase the price of its reserved ordinary letter services from April 2024. . . These methodological issues call into serious question the quantum of costs associated with Australia Post meeting its CSOs and, therefore, raise questions about the robustness of the data which underpins the calculation of the size (or even existence) of losses faced by Australia Post in meeting its CSOs. (2024, p. 4)

This exact issue was dealt with by the ACCC in its most recent decision on letter pricing:

The ACCC is also concerned about WIK Consult's finding that Australia Post's cost allocation method has the effect of inflating the costs allocated to reserved services, which increases the value of the estimated under-recovery. We have concerns that the method of allocating unattributable costs, such as from corporate overheads, may have the effect of disproportionately increasing costs allocated to reserved services. Further, we consider that Australia Post should more accurately capture the incremental costs of [electric delivery vehicles] according to cost

causation. In addition, it is particularly concerning that WIK Consult found Australia Post's current methodology provides it the flexibility to distort the cost allocation in favour of StarTrack⁸ to support its position in the parcel market. We acknowledge that WIK did not argue that the cost allocation system is strategically distorted, but nevertheless, the potential for it to be distorted raises concerns. (2024, p. 45)

Overall, the ACCC was satisfied that Australia Post's cost allocation model was appropriate. That said, the ACCC stated that Australia Post should make further improvements to the model in the manner suggested by WIK consulting to better support the ACCC's regulatory processes (ACCC 2024, p. 45). Based on this, the AGCNCO is satisfied that, while improvements to cost allocation are necessary, Australia Post's cost estimates are credible and reflect a competitive disadvantage for the organisation.

Future costs of CSOs – the Modernisation review

In December 2023, the Australian Government announced the outcomes of its review into *Australia Post Modernisation and Long-Term Financial Sustainability* (Rowland and Gallagher 2023). That review identified the pressures that were causing the escalating costs of Australia Post's CSOs shown in table 5.1, and resulted in the Government announcing its intention to introduce reforms to the current regulatory framework, including:

- reduction of delivery frequency and relaxation of the timetable for letter delivery
- adoption of modern area classification definitions in the Performance Standards Regulations
- removal of the regulated requirement for a priority letter service
- reform of letter pricing oversight.

In relation to the impact of the modernisation review on the regulatory disadvantages experienced by Australia Post, CAPEC noted:

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. 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. (2024, p. 12)

Australia Post was more guarded on the outcome of the reforms flowing from Modernisation review:

While Australia Post expects that the reforms announced may ease the financial burden of it meeting its CSOs, in any modernisation scenario, there will still be an obligation to fund the CSOs and an expectation to continue to invest in Australia Post's networks, services and people (consistent with the Government's modernisation principles). Accordingly, any argument that modernisation will diminish the disadvantages associated with funding the CSOs should be rejected. (2024c, p. 6)

These reforms will tend to reduce the cost of delivering Australia Post's CSOs. However, the trends in demand for letter delivery and cost pressures that have seen CSO costs increase in recent years are not expected to be outweighed by the reforms proposed by the modernisation review. On this matter Australia Post noted:

While Australia Post expects that the reforms announced may ease the financial burden of it meeting its CSOs, in any modernisation scenario, there will still be an obligation to fund the CSOs and an expectation to continue to invest in Australia Post's networks, services and people (consistent with the

⁸ A fully-owned subsidiary of Australia Post.

Government's modernisation principles). Accordingly, any argument that modernisation will diminish the disadvantages associated with funding the CSOs should be rejected. (2024c, p. 6)

Notwithstanding those reforms abating some costs, the AGCNCO considers that Australia Post's obligation to deliver and fund its legislated CSOs will remain a significant competitive disadvantage unless things change. This situation highlights the need to address the source of that disadvantage – the funding of those CSOs from internal cross subsidies – which, as noted, is relevant for the application of CN policy:

... competitive neutrality arrangements will assist government business activities address certain competitive disadvantages they also face; for example, ... clarification of community service obligations and funding for those services ... (Australian Government 1996, p. 9)



Finding 5.1

Losses incurred by Australia Post in meeting its CSOs are a consequence of its government ownership

Australia Post's delivery of its community service obligations, which are funded entirely by Australia Post, has resulted in it incurring annual losses of hundreds of millions of dollars. These losses are a direct consequence of the Government requiring Australia Post – via provisions in its enabling legislation – to meet the Government's social and policy objectives for a letter service, at a uniform rate, and reasonably accessible to all Australians at a specified standard to meet the social, industrial, and commercial needs of the community.

Funding Australia Post's CSOs

Australia Post does not currently receive external funding from government to cover its losses in performing the CSOs. This means the costs of the CSOs must be met internally to Australia Post. While it is not possible to unpick the operations of Australia Post to definitively attribute where those costs are recovered, in theory, they will be reflected either in the prices charged for other services (internal cross subsidies) or in a reduced rate of return (Chapter 6). If these CSOs are retained, then any funding of those CSOs needs to be consistent with Australia Post's CN obligations (box 5.2).

Box 5.2 – How does competitive neutrality policy view funding CSOs by cross-subsidies?

The *Australian Government's Competitive Neutrality Policy Statement*, while not rejecting the use of cross-subsidies to fund CSO activities, nonetheless leans towards the use of direct budget funding:

Where CSOs exist, competitive neutrality and other competition policy reforms may limit the ability for these CSOs to be financed through cross subsidies within the business.

Transparent, non-discriminatory funding of CSOs through budget funding or specific charges is thereby encouraged. (Australian Government 1996, p. 5)

The Government's *Competitive Neutrality Guidelines for Managers* is more emphatic on this issue:

CSO payments or subsidies should be transparent, appropriately costed and directly funded by the Government. (Treasury and DoFA 2004, p. 40)

Against this backdrop, Australia Post's internal funding of its CSOs is at odds with the Australian Government's CN policy and its Guidelines for implementing CN.

Accordingly, the AGCNCO considers that, for Australia Post to operate on a competitively neutral basis, its internal funding of its CSOs should cease. The current arrangements could be replaced with direct appropriations from the Budget.⁹ Among other things, this approach would offer increased transparency, accountability and scrutiny to the cost of delivering those CSOs.

Direct funding from the Budget would also avoid potentially adverse effects associated with the current funding approach – the distortion of competitive markets and the risk of perverse incentives that would lessen Australia Post's commitment to pursue more efficient delivery of its CSOs.

Adverse effects of the current funding approach

Continuing with the internal funding of Australia Post's CSO risks creating two distortions of concern.

Distortion to potentially competitive markets

Australia Post would only be able to fund its CSO activities from cross-subsidisation if it can raise the required funds through its other activities, including its operations in markets that are, *prima facie*, competitive. This linkage between CSO and competitive activities is implicitly recognised, for example, in statements from Australia Post's Chair in its *Annual Report 2023*:

This year we recorded our first financial loss since 2015, as our customers continue to move away from letters in favour of digital communications, and digitisation also replaces over-the-counter service. This is unlikely to be the last loss we make if there is an absence of reform

Australia Post is doing what we can to modernise our business and remain in step with the evolving needs of the nation and our customers, who are increasingly focused on parcel services and their delivery experience. (2023b, p. 8) (2023b, p. 8)

To fund on-going cross subsidies from its competitive activities, Australia Post would need to make supracompetitive profits in those activities. Put another way, Australia Post would need to make returns in its competitive activities that are above a competitive level, so that it can use those excessive returns to fund its CSO obligations. Competition will generally make this impossible – and submissions from both CAPEC and Australia Post have highlighted that the transportation and delivery of parcels is highly competitive. Competition between CAPEC's members and Australia Post will reduce its profits from competitive activities back to a competitive level unless it has an on-going advantage in those competitive markets. Of course, as noted in chapter 4, there are plausible grounds to believe that Australia Post does have competitive advantages (although they defy quantification), and these advantages are at the heart of CAPEC's complaint.

In brief, CAPEC argued that Australia Post's funding of its CSOs via cross subsidies distorts the market its members were operating in:

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 [then] \$350 million deficit that must be funded is business that is taken away from the private sector. (2023a, p. 10)

⁹ It is not the task of the AGCNCO to consider all possible alternatives for funding Australia Post's CSOs. That is a matter for the government. However, any alternative funding would need to meet CN criteria. Direct funding is one such option.

Australia Post's CSO obligations, the funding of those obligations and Australia Post's advantages in competitive markets are intrinsically linked. To the extent internal-cross subsidies are relied upon (rather than a reduced rate of return), the funding mechanism for Australia Post's CSOs depends on it having advantages in competitive markets which are not operating in line with CN. That funding of CSOs through internal cross-subsidisation would rely on the failure of Australia Post to meet its CN obligations in competitive markets and result in economic harm through the distortion of those otherwise competitive markets. An alternative funding mechanism that removes the potential for economic harm should be pursued.

Potential to distort Australia Post's incentives to reduce the cost of delivering its CSOs

CN policy can create a perverse incentive for government businesses to not pursue the more efficient delivery of their CSOs when the cost of those CSOs is funded internally. This situation is unique to government businesses subject to CN, and works as follows:

- CN policy can require a government business to make CN adjustment payments to offset any net competitive advantages that business enjoys
- any efficiencies that reduce the costs (and thus the competitive disadvantages) of its CSOs will create a commensurate increase in that business's net competitive advantage and higher associated CN adjustment payments
- for a government business that has a net competitive advantage, investing in reducing the cost of delivering its internally funded CSOs would (all else being equal) see a commensurate increase in its CN adjustment payments
- as a result, none of the cost savings associated with efficiency improvements would accrue to the business
- in the face of this CN-driven outcome, such a business would have little to no incentive to chase efficiency gains.

Currently, Australia Post is not in this position as there is insufficient information available to determine what, if any, net competitive advantages it might enjoy by virtue of its government ownership. Thus, at present, any cost savings it can achieve through the more efficient delivery of its CSOs accrue entirely to Australia Post – they are not 'lost' to it through having to make higher CN adjustment payments. Under these circumstances, it retains an incentive to reduce the cost of delivering those CSOs.

However, should credible estimates for its net competitive advantages become available, it will be in a situation where complying with CN policy will mean any efficiency gains in delivering its CSOs could be lost to Australia Post as any savings would trigger a commensurate increase in CN adjustment payments. Under these circumstances it would have little to no incentive to reduce the cost of delivering those CSOs.

These perverse incentives would not exist if a separate agency directly funded Australia Post's CSOs, as that agency would have strong and enduring incentives to pursue efficiency gains to reduce the cost of those CSOs.



Finding 5.2

CSO funding arrangements distort otherwise competitive markets and could result in Australia Post having little to no incentive to deliver CSOs more efficiently

Australia Post's major competitive disadvantage is the result of its government owner mandating that it delivers various community service obligations and fully funds the cost of doing so.

Australia Post's funding of its community service obligations via internal cross subsidies has the potential to distort otherwise competitive markets. Moreover, if credible estimates for its net competitive advantages become available, the combination of that form of funding and competitive neutrality obligations could potentially result in Australia Post having little to no incentive to deliver its community service obligations more efficiently.

Direct budget funding of CSOs would address these concerns

Direct budget funding of CSOs offers increased transparency and scope for significantly increased incentives (within the funding agency) to realise efficiencies, while also avoiding the adverse efficiency effects associated with funding from internal cross subsidies. This approach would also bring increased transparency, accountability and scrutiny to the cost of delivering those CSOs.

The PC has previously recognised the benefits of direct funding for CSOs through the budget process:

Transparency about the cost of meeting a universal service policy can impose a discipline on government and providers, regardless of the funding approach adopted.

The annual budget process provides the opportunity for regular scrutiny of funding – whether it is within the current funding envelope or through raising taxes. This process allows the public to access information on changes in funding of universal service policies and to compare this against other budget priorities ... (PC 2017, p. 314)

Accordingly, to avoid the adverse efficiency outcomes associated with internally funding its CSOs, and to create positive and enduring incentives to pursue more efficient ways and means of delivering those CSOs, the AGCNCO recommends that Australia Post be directly funded by the Australian Government.

The AGCNCO considers that ongoing scrutiny of the efficient costs of performing the CSO will be required to avoid concerns of cost padding or gold plating, which could provide Australia Post with the ability to use excess funds from its budget allocation to subsidise its other business activities. Similarly, addressing the above-mentioned concerns with the cost allocation model will be necessary to ensure any budget allocation provides for the efficient cost. To provide confidence in the quantification of this competitive disadvantage of government ownership and the budget funding that Australia Post should receive, the AGCNCO recommends that ongoing scrutiny of CSO costs should be performed by:

- the ACCC through its price monitoring and surveillance functions
- the Minister for Communications, through their consideration of price increases for the reserved letter service and
- by government, through approving the amounts payable to Australia Post from the Budget.



Recommendation 5.1

Australia Post's CSO should be funded directly from the Budget

Australia Post should continue to deliver the mandated community service obligations specified in the *Australian Postal Corporation Act 1989* (Cth), but the cost of providing those services should be funded directly from the Budget.

Australia Post's costs in performing the community service obligations should be subject to continued scrutiny through:

- the legislative functions of the Australian Competition and Consumer Commission and the Minister for Communications
- the Australian Government, when approving funding through the Budget process.

5.2 Other competitive disadvantages

Australia Post listed various competitive disadvantages arising from the regulatory framework established by the *Australian Postal Corporation Act 1989* (Cth) and from the expectations inherent as a statutory authority of the Australian Government (table 5.2) (Australia Post 2024c, pp. 11–14).

Table 5.2 – Potential competitive disadvantages for Australia Post: obligations and expectations

Potential disadvantage	Private sector comparator
Meeting Australia's International Obligations – Australia's obligations as a member of the Universal Postal Union and costs incurred as Australia's Designated Operator. This includes guaranteeing delivery for internationally prescribed fees.	No direct comparison. However, this potential disadvantage has not been quantified. These costs may overlap (in part) with Australia Post's CSOs, as delivery of letters that originate outside Australia forms part of the reserved letter business.
High standards as an employer – the <i>Australian Postal Corporation Act 1989</i> (Cth) requires Australia Post to maintain high standards as an employer, including terms and conditions, safety, and occupational health	Compliance with legislative obligations including workplace relations law, workplace health and safety law. Competition among firms for workers may also require high standards.
Auditor requirements – financial statement, performance standard and performance audit by the Australian National Audit Office.	Financial reporting and audit requirements under the Corporations Act 2001. Internal governance and performance assessment.
ACCC oversight – regulatory oversight by the Australian Competition and Consumer Commission. Complying with the ACCC's record keeping obligations has been costed at \$155,000 per year.	No direct comparison for the record keeping rule obligations. This represents a competitive disadvantage to Australia Post.
Border clearance activities – participating in border security by working with Australian Border Force and the Department of Agriculture, Fisheries and Forestry. Costs	Biosecurity services fees paid to the Department of Agriculture Fisheries and Forestry applicable to parcels processed via the air cargo pathway, data and information provision costs.

Potential disadvantage	Private sector comparator
across 2021-22 and 2022-23 estimated to be \$62 million. ¹⁰	
Postal Industry Ombudsman – Australia Post is a mandatory member of this scheme, no CAPEC members have joined to date. Costs of scheme paid by Australia Post (\$1.7 million in 2022-23). Australia Post incurs further costs in assisting with enquiries.	Internal complaint handling mechanisms and fair-trading laws.
Financial management policy – Department of Finance Resource Management Guides, particularly RMG 126, the GBE Guidelines.	Meeting appropriate standards of governance and shareholder/owners' expectations for the management of the business.
Government oversight – Commonwealth Ombudsman, transparency and accountability mechanisms (Freedom of Information, Archives, etc), government expectations and informal communication with shareholder departments.	No direct comparison, other than communication with shareholders. This potential disadvantage has not been quantified although appears comparatively small compared to other disadvantages.
Parliamentary oversight – participation in Senate Estimates and other inquiries and responding to recommendations from inquiries, providing services (e.g. parcel services for medical and educational supplies) at reduced cost (foregoing \$54 353 in revenue in 2022-23).	No direct comparison for Senate Estimates participation and responding to question on notice, although listed companies would participate in shareholder meetings and face oversight from corporate regulators. For other aspects, private sector businesses may also make appearances before relevant Senate inquiries.
Meeting community expectation – post office and post box presence, proximity of delivery services (e.g. for businesses and multi-residential properties).	Private sector businesses may also need to meet the expectations of the community and their customers.

However, that information proved to be of limited use.

Assessing whether and to what extent a competitive disadvantage exists requires quantifying the cost of any alleged disadvantage and comparing that to corresponding costs incurred by private sector competitors. However, most of the listed disadvantages were not costed, while those that were cited an absolute dollar cost with no attempt to identify how those costs might compare with CAPEC members' equivalent costs.

Thus, while Australia Post identified some \$31.3 million in aggregate 'disadvantages' (with some \$29.4 million from border clearance activities) the AGCNCO was only able to confidently identify some \$1.9 million of those costs as representing a competitive disadvantage relative to its competitors. (From complying with the ACCC's Record Keeping Rules, Australia Post's costs relating to the Postal Industry Ombudsman and providing some services at reduced cost.)

This difficulty in identifying relative disadvantages was compounded by a similar absence of quantification on the part of CAPEC members.

For all the other alleged disadvantages, the AGCNCO is neither able to verify whether these aspects of Australia Post's business represent a competitive disadvantage nor their extent.

¹⁰ Australia Post's *Annual Report 2023* states 'The cost of Australia Post's participation in border clearance and security activities in FY23 is estimated to be \$29.4 million' (Australia Post 2023b, p. 171).

6. Earning a commercial rate of return

The Australian Government's competitive neutrality (CN) policy requires government businesses to earn a commercial rate of return on assets over a reasonable period:

[Government Business Enterprises] are specifically required to achieve, over time, as a minimum benchmark, economic rates of return on assets for their commercial operations equivalent to the long-term bond rate plus an appropriate margin for risk. (Australian Government 1996, p. 18)

The Government's Competitive Neutrality Guidelines for Managers expands on this:

Over time, government businesses should earn a RoR [rate of return] equal to the Commonwealth long-term bond rate, plus a margin for risk. In this way, the target RoR should be equivalent to the average RoR of the business's competitors. (Treasury and DoFA 2004, p. 30)

These CN requirements are consistent with broader obligations acknowledged by Australia Post in its response to the CAPEC complaint and in its Statement of Corporate Intent for 2020/21–2023/24, respectively:

Australia Post is obliged by law to, as far as practicable, ... earn a reasonable rate of return on assets ... (2024c, p. 10)

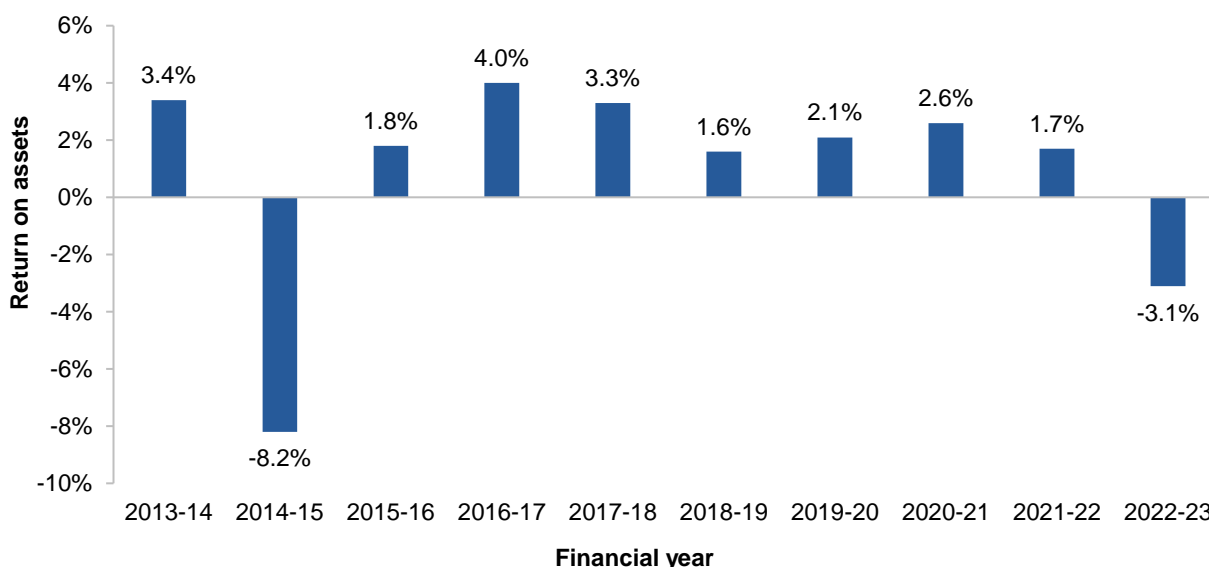
we will ... operate commercially and achieve a reasonable return on assets. (2021, p. 2)

Against this backdrop the following sections examine Australia Post's rate of return record, assess whether this complies with its obligation under CN policy and examines those factors that might affect its future compliance.

6.1 Australia Post's rate of return record

Australia Post's reported rate of return on operating assets over the past 10 years is shown in figure 6.1.

These numbers represent an average rate of return on assets of some 0.92% over the past 10 years or 0.98% over the past five years. These average returns are clearly below the Commonwealth long-term bond rate.

Figure 6.1 – Australia Post: reported rate of return on assets 2013-14 to 2022-23

Source: Australia Post (2023b, 2018).

However, as Australia Post is compelled under the Australian Postal Corporation Act 1989 to meet various loss-making community service obligations (CSOs) its annual profitability is reduced by the extent of those losses. In view of this and the material scale of those losses, the AGCNCO has accounted for that drain on profitability to derive a proxy rate of return that would apply if Australia Post did not have to meet the cost of those CSOs (table 6.1).

Table 6.1 – Australia Post: Rate of return on assets 2013-14 to 2022-23**Adjusted for CSO losses**

Financial year	Pre-tax profit (loss)	Return on assets	CSO loss	Adjusted pre-tax profit (loss)	Adjusted return on assets
	Million	%	Million	Million	%
2013-14	\$103.0	3.4	\$203.5	\$306.5	10.1
2014-15	(\$352.1)	(8.2)	\$210.8	(\$141.3)	(3.2)
2015-16	\$41.0	1.8	\$182.5	\$223.5	9.8
2016-17	\$126.1	4.0	\$389.9	\$516.0	16.4
2017-18	\$125.7	3.3	\$403.2	\$528.9	13.9
2018-19	\$41.1	1.6	\$392.2	\$433.3	16.8
2019-20	\$53.6	2.1	\$393.3	\$446.9	17.5
2020-21	\$100.7	2.6	\$348.3	\$449.0	11.6
2021-22	\$55.3	1.7	\$348.5	\$403.8	12.4
2022-23	(\$200.3)	(3.1)	\$442.2	\$241.9	3.7

Source: Australia Post (2024c); (2023b); (2018).

As shown in table 6.1, after adjusting for the substantial cost of providing mandated CSOs, Australia Post's average rate of return on assets over the past decade is some 10.9%. Over the past five years, its adjusted average rate of return on assets is around 12.4%.

6.2 Performance relative to a benchmark rate of return

The Government (through its shareholder Ministers) has not specified a benchmark rate of return target for Australia Post. Instead, the shareholder Ministers' Statement of Expectations for Australia Post only call for a reasonable (undefined) rate of return, namely:

the Government expects that Australia Post will ... Within its legal and policy parameters, target an optimal capital structure with a focus on ... working towards earning a reasonable rate of return on its assets. (Gallagher and Rowland 2024)

In the absence of an Australian Government-specified rate of return, the AGCNCO has explored what other benchmarks might best be used to compare Australia Post's rate of return record against.

What benchmark rate of return to use for comparison

The AGCNCO considered three options to derive a benchmark rate of return:

- the average rate of return of Australia Post's competitors or for the industry it operates in more generally
- Australia Post's weighted average cost of capital (WACC)
- the risk broad-banding approach outlined in the Competitive Neutrality Guidelines for Managers.

On the first of these options, the office asked CAPEC for information on the average rate of return for its members or for the industry in which they and Australia Post operate. However, while CAPEC provided some rate of return information it was unsuitable for use as a comparator for a couple of reasons. The first and most significant was that CAPEC was not able to provide data attributable solely to its members' respective Australian operations. The second was that CAPEC members, with their core focus on parcel traffic and supply chain solutions, operate in a materially different market from Australia Post, whose operations focus on postal and parcel services – representing some 36% and 64%, in revenue terms, respectively (ACCC 2024, p. 15). Given the different product mix CAPEC–Australia Post rate of return comparisons would therefore not provide a like-with-like comparison.

Australia Post expanded on the limitations of CAPEC data as a comparator. It noted its operations cover a blend of letters, parcels and retail over-the-counter services with an integrated post office and delivery network. Each of the separate components involve separate industries and competitors, and few organisations would operate across all those products/services. Additionally, its competitors do not have to maintain over 4000 post offices (Australia Post, pers. comm., 19 June 2024).

In view of these qualifications, the AGCNCO considers rate of return data for CAPEC members or for the industry in which they operate is not an appropriate benchmark against which Australia Post's rate of return should be judged.

The second benchmark comparator is Australia Post's own WACC. The WACC calculates a business's cost of capital and sets it as the minimum hurdle the business should achieve. It is based on the premise that to be financially viable, a business must earn returns above the threshold cost of capital (Treasury and DoFA 2004, pp. 31–32).

As a contemporary WACC for Australia Post's total business operations was unavailable in the public domain, the AGCNCO sought that information directly from Australia Post. However, the commercially sensitive nature of that WACC meant it was not able to provide that information.

As a fallback, the AGCNCO has used the WACC contained in the ACCC's decision on Australia Post's price notification for an insight into what the WACC for Australia Post's total operations might be. That report contains Australia Post's and the ACCC's view of the WACC for Australia Post's reserved letters business – 9.73% and 8.84%, respectively (ACCC 2024, p. 48). While this WACC is only applicable to Australia Post's reserved letter business (which is in a long-term decline) and not to its generally profitable and growing parcel operations (DITRDCA 2023, p. 4), it is nonetheless useful in signalling a likely upper bound value for Australia Post's WACC for its overall business operations.

The third benchmark comparator is the sum of the long-term bond rate plus a margin for market risk (the risk broad-banding approach).

To derive a value under this approach, the AGCNCO used the Australian Government 10-year bond rate as of 30 June 2023 (to match the final year of the data in table 6.1) – which was 4.025% (RBA 2024). In deciding on what market risk premium might be appropriate, the AGCNCO has referred to estimates from the ACCC decision on Australia Post's price notification and CAPEC's view of the risk applicable to the parcel industry.

That ACCC publication reported Australia Post's and the ACCC's view of the market risk premium appropriate for its reserved letter operations – some 5.75% and 6.2%, respectively (ACCC 2024, p. 48). Accordingly, the AGCNCO has adopted a crude simple average of these values (5.98%) to reflect the market risk premium for this area of its operations.

CAPEC's view of the parcel industry its members operate in is that it warrants a high-risk premium due to its exposure to macroeconomic and market risks (box 6.1). CAPEC considered a risk premium of 7% was appropriate for that industry.

Box 6.1 – CAPEC's view of the market risk premium for its parcel industry operations

Key factors include:

- high inflation and interest rates, which are negatively affecting consumer and business spending
- high and variable costs, such as fuel prices, wages and supply chain disruptions
- structural shifts in demand, including a higher proportion of disposable income being spent on services as opposed to goods, increasing preferences for slower and less expensive shipping services, and more proximal production and storage of goods as part of supply chain changes (reducing distances travelled)
- rapid technological changes and the corresponding need for digital transformation, necessitating substantial capital investment, including automated package sorting, handling and delivery, safety systems, cyber infrastructure and applications of artificial intelligence
- a capital-intense high fixed cost structure, with large amounts of pre-existing committed capital investment, limiting flexibility to respond to changing volume levels
- being subject to changes in government policies and regulations, including reporting requirements, taxes and charges
- intense competition between providers imposing substantial pricing pressure.

Source: CAPEC, pers. comm. (1 August 2024).

Taking a crude average of market risk values indicated for Australia Post's letter and parcel operations (5.98% and 7%, respectively), weighted for their 36% and 64% share of 2022-23 revenues, suggests an overall market risk premium of 6.6% is appropriate for use in the risk broad-banding approach.

Accordingly, summing the long-term bond rate of 4.025% and a market risk premium of 6.6% suggests a benchmark rate of return of some 11.0% would be an appropriate comparator rate.

Australia Post's compliance with the rate of return requirement

The raw data on Australia Post's reported profitability indicates an average rate of return on assets over the past decade of some 0.92% (column 3, table 6.1). This rate of return would not comply with the CN policy requirement for earning a commercial rate of return.

However, the AGCNCO considers this rate is misleading because that profitability is net of the cost to Australia Post of providing mandated loss-making CSOs, which is fully funded by internal cross-subsidies. Instead, the AGCNCO considers that Australia Post's underlying profitability (after adjusting for the substantial cost of providing and funding its mandated CSOs) is a more appropriate measure of its profitability. That adjusted profitability indicates Australia Post's average rate of return on assets over the past decade is some 10.9% and over the past five years is around 12.4% (from table 6.1, column 6).

Comparing these rates of return on assets with likely upper bound WACC estimates for Australia Post's overall business operations of 8.84% to 9.73% or with a risk broad-banding estimate of some 11.0% indicates it is meeting its obligation under CN policy to earn a commercial rate of return.



Finding 6.1

Australia Post is complying with competitive neutrality policy by earning a commercial rate of return

Australia Post's reported profitability has not delivered a commercial rate of return on assets as required under competitive neutrality policy. However, its mandated requirement to deliver loss-making community service obligations and to fund the full cost of doing so explains why this is so.

Adjusting its profitability to account for the drain on profits from its internally funded community service obligations produces a rate of return on assets comfortably above its likely WACC and at least equal to a risk broad-banding benchmark value. On this basis, Australia Post is complying with the requirement under competitive neutrality policy to earn a commercial rate of return on assets.

7. Other matters

This investigation encountered several obstacles that limited the AGCNCO's ability to fully assess parts of the complaint, to propose changes to achieve a level playing field for government and private businesses, and to do so in a timely manner. Those obstacles were:

- Australia Post's excessive length of time taken to provide the AGCNCO with a submission in response to the original competitive neutrality (CN) complaint lodged by CAPEC
- ongoing challenges in getting submissions from other government agencies
- state government (rather than Australian Government) legislation being the source of competitive advantage for an Australian Government business activity.

Given their potential to confound future complaint investigations these obstacles, and possible solutions to them, are discussed in the following sections.

In addition, Australia Post's submission observed that it was unaware of any government policy or instrument authorising the application of CN policy to it. Their observation suggests that other government businesses might be in a similar situation and mistakenly assume this means they do not have to apply CN to their businesses. This issue and how to deal with it are also discussed in the following sections.

7.1 Difficulties in getting submissions from key parties

In any investigation the office depends on submissions from parties better placed to access relevant information and/or to bring to bear the expertise and experience needed to critically analyse issues under review.

In this investigation, Australia Post and Customs were the two key parties central to understanding and assessing the concerns raised by CAPEC, and to finding solutions to those concerns. Accordingly, the office invited both parties to provide submissions to its investigation. Getting a submission proved difficult.

Australia Post

In mid-March 2022, the AGCNCO forwarded CAPEC's initial formal complaint to Australia Post for their consideration and response. It took over two years for Australia Post to provide the AGCNCO with a submission responding to that complaint.

This excessive delay in providing a submission to the complaint investigation is in stark contrast to the timelines common in PC inquiries (a broadly comparable exercise in this case). For example, when the PC releases an issues paper for one of its inquiries and calls for submissions, interested parties are usually given 6 to 8 weeks to provide those submissions (PC 2023, p. 3), and most generally do so within that time.

In Australia Post's defence there were some mitigating factors. In March 2023, the Government launched a discussion paper and consultation process to modernise postal services and support the long-term sustainability of Australia Post (Rowland and Gallagher 2023). Australia Post informed the AGCNCO that the significance of the modernisation review to its future was such that participating in that review was prioritised over providing a submission to the AGCNCO's complaint investigation. Another factor was that

Australia Post chose to defer its initial submission in favour of a single, later submission responding to the initial complaint and to information in its shareholder departments' submission and supplementary submissions from CAPEC. Nonetheless, the AGCNCO considers these factors do not justify a two+ year wait for a submission from Australia Post responding to CAPEC's formal CN complaint against it.

That significant delay limited the ability of the AGCNCO to complete its investigation and to deliver any resolution of CAPEC's concerns. As CAPEC noted on this issue:

... the Investigation commenced over 2 years ago. All relevant stakeholders have had more than sufficient opportunity to respond to the matters raised in CAPEC's original submission ... CAPEC urges the AGCNCO to move towards making its final decision and not allow the primary target of the Complaint (i.e. Australia Post) to frustrate the AGCNCO's Investigation through continued obstruction and delay.

CAPEC members ... should not have to suffer ongoing harm due to Australia Post's continuing failure to make a submission ... (CAPEC 2024, pp. 1–3)

However, Australia Post's delay in providing a formal submission to the investigation did not extend to its responses to multiple requests for information over the course of the investigation. In this area, Australia Post cooperated fully with the AGCNCO and provided information in a timely manner.

Customs

As noted in chapter 4, the AGCNCO met with Customs to discuss CAPEC's concerns with asymmetries in the regulatory regimes governing the import and export of parcels and its proposals to address those differences. That meeting highlighted Customs' breadth and depth of understanding of border clearance and inspection requirements and how these affected the parcel traffic operations of those businesses. It also made apparent that Customs was the agency best placed to assess the veracity of CAPEC's claims, the feasibility of their proposed changes and, where those were unworkable, alternatives that would be effective and implementable in practice.

Following that discussion, the AGCNCO extended further invitations to Customs to provide a submission responding to the CAPEC complaint and proposed changes. Nonetheless, while Customs acknowledged the invitation, no submission has been forthcoming.

This situation, coupled with the AGCNCO's rudimentary understanding of how the regulatory environment works in practice, means this investigation was unable to adequately address a core element of CAPEC's complaint.

AGCNCO's ability to compel submissions from Government bodies is limited

The Australia Post and Customs experience described above has brought into focus a weakness in the CN complaint mechanism – how to ensure Government entities provide information essential to the successful prosecution of a CN complaint investigation.

Section 46 of the PC Act confers some power on the AGCNCO to help it induce Australian Government bodies to provide a submission to our complaint investigations (box 7.1).

Box 7.1 – PC Act, section 46**Hindering or disrupting Commission**

A person must not:

- obstruct or hinder a member of the Commission in the performance of the Commission's functions ...

Penalty: Imprisonment for 6 months.

Note 1: This penalty is a maximum penalty (section 4D, *Crimes Act 1914*). A court may impose an appropriate fine instead of or as well as imprisonment (subsection 4B(2), *Crimes Act 1914*). If a body corporate is convicted of the offence, a court may impose a fine not more than 5 times the maximum fine that the court could impose on an individual for the same offence (subsection 4B(3), *Crimes Act 1914*).

Source: *Productivity Commission Act 1998*.

In practice, however, that power is one the AGCNCO is unlikely to invoke. This is because:

- there is a lack of gradation in those powers, which renders them impractical as a means to ensure cooperation and/or elicit the provision of sought after information. For instance, imprisonment for obstructing or hindering the AGCNCO in its investigations is a somewhat draconian penalty
- invoking that power risks tainting the well of goodwill among Government agencies that the AGCNCO (and the PC) rely on to supply the information and analysis necessary to successfully prosecute our investigations and inquiries
- invoking that power introduces the risk of potentially lengthy delays as legal proceedings against individuals or corporations move through the courts and may be subject to appeals.

The AGCNCO's inability to obtain relevant information because of its lack of fit-for-purpose information gathering powers highlights the need for changes to ensure that relevant parties provide timely information to the AGCNCO.

Other investigative bodies have recognised this threat to the successful conduct to their investigations. IPART, for example, tackles this issue in a similar way to that contained in the PC Act. Section 24GK of IPART's Act provides for a maximum penalty of 100 penalty points or imprisonment for 6 months, or both, for refusing to cooperate with a CN investigation (IPART, pers. comm., 6 August 2024). However, this approach too poses some practical difficulties, containing as it does the significant step of imprisonment (which is a drastic option regardless of duration).

An alternative (and less confrontational) path to elicit information from other Australian Government bodies might be to harness provisions within the *Public Governance, Performance and Accountability Act* (2013). For example, section 15 of Subdivision A of that Act applies a Duty to encourage cooperation with others.



Finding 7.1

Relying on powers in the PC Act to compel government bodies to provide a submission to AGCNCO investigations is impractical

The powers available under section 46 of the PC Act to compel government bodies to provide information to the AGCNCO are of limited use by themselves.

To address the absence of graduated measures aimed at eliciting submissions, the AGCNCO will develop a hierarchy of measures of escalating severity (culminating in Section 46) to help elicit the timely provision of information and analytical insights from other government bodies.

7.2 Australian Government businesses advantaged by state legislation

As discussed in chapter 4, CAPEC identified two areas where Australia Post allegedly enjoyed competitive advantages as a result of being exempt from certain areas of state legislation. Those areas were Australia Post's:

- exemption from the Transport Industry – General Carriers Contract Determination 2017 under section 309(4)(c) of the *Industrial Relations Act 1996* (NSW)
- preferential use of public roads relative to their competitors.

Although CAPEC could not quantify the value of those advantages, the AGCNCO accepts they constitute areas of regulatory non-neutrality and confer competitive advantages on Australia Post.

However, because the regulatory advantage arises from state legislation, the Australian Government's complaint handling mechanism is powerless to eliminate that advantage and achieve regulatory neutrality in the process. (In theory, this situation could also occur the other way around. That is, Australian Government legislation might confer a regulatory advantage on a state/territory-owned business, with that advantage being beyond those governments' CN complaint handling mechanisms' ability to address.)

Although the advantages that state legislation confer on Australia Post are likely to be relatively modest in this case, in future this may not be universally true. To that extent, the AGCNCO considers this cross-jurisdictional issue is a weakness in Australia's approach to achieving CN. If unaddressed, this weakness could, under some circumstances, prevent the policy from achieving its aim of facilitating the flow of resources to their most productive use (Australian Government 1996, p. 10).

The Australian Government's CN policy statement and its *Competitive Neutrality Guidelines for Managers* are silent on how to tackle this cross-jurisdictional source of regulatory advantage. A new approach to this issue is needed to avoid breaches of CN (and resource misallocation) going unaddressed.

CN policy is one of the *national* competition policy reforms that the Australian, state and territory governments signed up for in the mid-1990s and that most of those governments reaffirmed in 2016 with the *Intergovernmental Agreement on Competition and Productivity-enhancing Reforms*. It follows that a national approach would be appropriate to tackle this cross-jurisdictional source of regulatory non-neutrality.

That approach could include establishing formal procedures for a CN complaint agency in one jurisdiction to notify the CN policy and/or complaint agency of another jurisdiction whose legislation is providing the competitive advantage and to establish any protocols to deal with this situation. Such procedures and

protocols could be within a broader agreement by governments to commit to reviewing and amending legislation that provides regulatory advantages to government businesses in other jurisdictions.

As above, the AGCNCO notes that the competition taskforce in Treasury is currently reviewing all elements of the National Competition Policy reforms. That review would be an appropriate forum to explore this issue and to develop more effective powers to support the AGCNCO in getting the information needed for its investigations.



Finding 7.2

Cross-jurisdictional sources of regulatory non-neutrality are tricky to address – change is needed

Where a government business in one jurisdiction benefits from regulatory non-neutrality arising from legislation in another jurisdiction, it can be beyond the ability of competitive neutrality complaint machinery to remedy. In those cases, non-compliance with competitive neutrality policy and any associated resource misallocation risk going unaddressed.

The Australian Government's competitive neutrality policy and *Guidelines for Managers* are silent on how to address this issue. To address this cross-jurisdictional source of regulatory non-neutrality, additional procedures and protocols on how this issue can be addressed are needed to augment existing complaint handling arrangements.

7.3 Are Government businesses unaware they are subject to competitive neutrality?

The body of Australia Post's submission opens with an observation:

Australia Post is unaware of a government policy order or similar instrument applying competitive neutrality aspects of Australian Governments' Competition Principles Agreement executed in April 1995 to Australia Post.¹¹ (Australia Post 2024c, p. 4)

While Australia Post's submission goes on to assure the AGCNCO that it is, nonetheless, mindful of its CN obligations and accepts that CN applies to its business and activities, the broader implications of its initial observation are of concern. Those broader implications are that other significant government businesses may have made the same observation and, as a result, believe that CN does not apply to their business in the absence of a specific government policy order or similar instrument to that effect.

However, that belief is wrong. For example, the Australian Government's CN policy statement clearly states that GBEs are subject to CN policy and identifies those GBEs in section A of Table 1 in the appendix to that statement (Australian Government 1996, p. 25). Similarly, the Government's *Competitive Neutrality Guidelines for Managers* states:

CN applies to significant government businesses ... A number of entities are automatically considered significant, for example, Government Business Enterprises (GBEs). (Treasury and DoFA 2004, p. 7)

¹¹ For example, an order issued by the Minister for Finance under section 22 of the *Public Governance, Performance and Accountability Act 2013*, or a direction issued by Australia Post's portfolio Minister under section 49 of the *Australian Postal Corporation Act 1989*.

While extrapolating from a sample of one is difficult, the prospect of misperceptions among Government businesses about CN policy and its application to their activities is of sufficient concern to warrant action. Left unaddressed, this issue has the potential to undo some of the benefits of CN policy.



Finding 7.3

A lack of a specific policy order or similar instrument to apply competitive neutrality to government businesses could be limiting its implementation, but data to gauge this is not available

Information needed to assess whether a lack of a specific policy order or similar instrument applying competitive neutrality to government businesses is resulting in them not applying competitive neutrality when they should be is not readily available.

The potential for widespread misperceptions among Australian Government businesses (that the policy does not apply to them) is of sufficient concern to warrant action. Left unaddressed, this issue has the potential to undo some of the benefits of competitive neutrality policy.

To put this threat in perspective (and inform any action to address it) requires information not readily available. Accordingly, the AGCNCO proposes a stocktake of all significant Australian Government business activities to identify those who should be subject to CN and whether and how they are applying CN.

For those business deemed to be GBEs there used to be an annual census of sorts via the publication of the *Heads of Treasuries Competitive Neutrality Matrix report* (Australian Government 2019b). Those reports – despite some shortcomings (AGCNCO 2022, p. 107) – identified which GBEs were subject to CN and whether and how well they complied with various CN criteria. However, no Matrix reports have been published since 2019. This means that information is not readily available to confirm or refute the notion that some GBEs are not applying CN because of misperceptions about the preconditions to do so. To address this shortcoming, the Australian Government could reinstate the collection of information previously gathered to populate its contribution to the annual Matrix reports.

For all other significant Australian Government businesses (i.e. other than GBEs) there is no past or current collected wisdom on which of these are subject to CN policy and how well they comply with their obligations under that policy. Historically, these businesses have not been included in the CN Matrix report and would require a separate information gathering exercise to collect that data.

Treasury, as the department with portfolio responsibility for CN policy, should be charged with collecting this information from GBEs and other significant government business activities and making it publicly available.



Recommendation 7.1

Treasury should conduct a stocktake of Australian Government businesses to determine their competitive neutrality status

The Australian Treasury should undertake a stocktake of Australian Government GBEs and other significant government business activities. That stocktake should identify which businesses are subject to competitive neutrality and what measures they have taken to meet with their obligations under that policy.

That stocktake of businesses subject to competitive neutrality should be made publicly available.

7.4 Historically, Australia Post has not met its reporting obligations, but does now

The Australian Government's 1996 CN policy statement sets out the reporting obligations of government businesses subject to CN, which are intended to enhance transparency and accountability.

Competitive neutrality is an important additional element in the financial management and accountability arrangements of government business activities. Each organisation subject to competitive neutrality arrangements is required to note that it is subject to the policy in its annual report to Parliament. ... This statement will also indicate whether any changes to an organisation's competitive neutrality arrangements have been made in the previous 12 months and the outcome of any public inquiries under the complaints mechanism. (Australian Government 1996, p. 22)

Australia Post's past reporting against these obligations has been seriously lacking. For example, a review of its annual reports for the past 10 years (2014 to 2023) finds no mention that it is subject to CN. This is despite it being clearly identified as an entity subject to CN in the Government's 1996 CN policy statement and in each *Heads of Treasuries Competitive Neutrality Matrix report*, and despite it having been the subject of three CN complaint investigations (in 2000 and 2005, and this current investigation).

In its defence of this omission in its annual reports, Australia Post stated that it takes its reporting obligations very seriously and considered it was meeting those obligations through adherence to various statutory and Government reporting requirements (box 7.2). It also noted that all of these content requirements for annual reports were issued or updated after 1996 (the date of the Australian Government's CN policy statement), but none of them specifically mention the inclusion of CN information in Australia Post's annual reports.

Box 7.2 – Sundry statutory and Government reporting requirements that Australia Post is subject to

Reporting requirements that Australia Post is subject to include:

- the *Australian Postal Corporation Act 1989* – sections 43 and 44
- the *Public Governance, Performance and Accountability Act 2013* – sections 39, 42, 43, 44 and 46
- Public Governance Performance and Accountability Rule 2014 (PGPA Rule) – sections 17BA to 17BF and Schedule 2A
- Resource Management Guide 136 (Annual Reports for corporate Commonwealth entities) issued by the Department of Finance
- Resource Management Guide 126 (Commonwealth GBEs – Governance and Oversight Guidelines) issued by the Department of Finance – paragraphs 3.13 to 3.23.

Source: Australia Post (pers. comm., 20 September 2024).

There are, though, oblique references to policy related reporting requirements in section 43 of the APC Act and in section 17BE of the PGPA Rule that Australia Post inadvertently overlooked. With the benefit of hindsight, Australia Post now realises those requirements impose on it an obligation to include CN reporting in its annual reports.

Once aware of this requirement, Australia Post moved quickly to include that reporting in its *2024 Annual Report* (which, at the time of writing, was undergoing final review processes before being tabled in Parliament in October 2024). That reporting will, among other things, acknowledge the importance of CN and its application to Australia Post as a government business and that it is currently the subject of a CN complaint that is under investigation by the AGCNCO.

While the need to move quickly to include CN reporting in the *2024 Annual Report* necessitated relatively brief content, the AGCNCO understands Australia Post will consider more fulsome reporting in future.

To meet the letter and spirit of its CN reporting obligations in future, the AGCNCO considers Australia Post ought to include information in its annual reports that indicates:

- it is subject to CN policy, the requirements that policy obliges it to comply with, and its actions to achieve compliance with those requirements
- whether any changes to its CN arrangements have been made in the previous 12 months
- whether it was subject to any CN complaints and the status and/or outcome of any CN complaint investigations.



Finding 7.4

Historically, Australia Post has not met the reporting requirements of competitive neutrality policy, but is now doing so

Historically, Australia Post has not met the minimum reporting requirements expected of it under the Australian Government's competitive neutrality policy. A major contributor to that state of affairs is that the various statutory and Government reporting requirements do not explicitly mention competitive neutrality reporting as a requirement.

However, Australia Post is now committed to meet those requirements and will do so with its *2024 Annual Report*.

Australia Post's experience identified the absence of specific references to CN reporting in the various reporting requirements mentioned in box 7.1. This experience suggests the reporting requirements in the CN Policy Statement (Australian Government 1996, p. 22) be explicitly included in those various statutory and Government reporting requirements. Doing so could be expected to improve transparency and accountability for Government businesses subject to CN.



Recommendation 7.2

Reporting requirements for Australian Government businesses should include specific reference to competitive neutrality reporting requirements

Current statutory and Government reporting requirements (like those set out in the *Resource Management Guide 136*) should include specific references to the need to observe competitive neutrality reporting.

Government agencies that have shareholder responsibility for Australia Post (the Departments of Finance and of Infrastructure, Transport, Regional Development, Communications and the Arts) can also contribute to improving transparency and accountability. Currently, their annual reports make no reference to

Australia Post being subject to CN nor provide any comment on the extent to which that business complies with the Australian Government's CN policy. However, those departments could complement Australia Post's reporting by:

- undertaking an annual audit of Australia Post's compliance with its CN policy obligations
- providing information in their own annual reports on the extent of CN compliance by Australia Post and the existence and outcome of any CN complaint investigations into that business
- ensuring the results of that annual assessment are incorporated in an accurate reporting of Australian Government businesses' performance against CN expectations in the Heads of Treasuries Competitive Neutrality Matrix report.

This belts and braces approach would have minimal incremental costs and would provide an additional layer of transparency and accountability regarding the application of CN by Australia Post.

Abbreviations

Abbreviation	Definition
ACCC	Australian Competition and Consumer Commission
AGCNCO	Australian Government Competitive Neutrality Complaints Office Competitive Neutrality
APC Act	<i>Australian Postal Corporation Act 1989</i>
ATO	Australian Taxation Office
BBSW	Bank bill swap rate
CAPEC	Conference of Asia Pacific Express Carriers (Australia) Limited
CN	Competitive neutrality
CSO	community service obligations
EAD	Electronic advanced data
EU	European Union
GBE	Government Business Enterprise
GST	Goods and services tax
IPART	Independent Pricing and Regulatory Tribunal
NCC	National Competition Council
NTC	National Transport Commission
PC	Productivity Commission
PC Act	<i>Productivity Commission Act 1998</i>
PGPA Rule	Public Governance Performance and Accountability Rule 2014
SAC	self-assessed clearance
STS	Simplified Trade System
UPU	Universal Postal Union
WACC	weighted average cost of capital

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