QUEENSLAND COMPETITION AUTHORITY

Competitive Neutrality Complaint

Complaint by a private electrical contractor against ENERGEX

January 2001

REPORT ON THE INVESTIGATION OF A COMPLAINT BY A PRIVATE ELECTRICAL CONTRACTOR AGAINST ENERGEX

1. The Complaint

The Queensland Competition Authority (the Authority) received a written a complaint from a private electrical contractor on 22 June 2000 alleging a breach by ENERGEX of the principle of competitive neutrality.

The complainant alleged that Contract Services Group (CSG), ENERGEX's internal service provider, is a competitor in the provision of electrical construction and maintenance services, and that CSG enjoys regulatory and procedural advantages not available on the same terms to private electrical service providers competing to provide services to ENERGEX. These advantages are alleged to result from ENERGEX's design, management and application of its quality rating system 'Quality Assurance – Requirements for Suppliers of Services'. In particular, ENERGEX:

- differentially imposes audits and penalties on private providers compared with CSG, producing a penalty loading for past failure to comply with the quality system that increase the dollar value of private tenders and renders them 'less competitive' compared with the CSG tender;

- uses to its advantage its position as the only provider and custodian of certain training modules and procedural instructions against which quality assurance compliance is assessed, by not making these reasonably available to the private provider. Under these circumstances, the private provider is not able to satisfy those requirements of the quality system and is subsequently subject to higher penalties imposed by ENERGEX; and,

- differentially treats CSG and private providers in that ENERGEX 'rolls over' (renews) CSG contracts while private electrical service providers' contracts are not typically renewed by ENERGEX. This practice may follow from the quality rating system under which a favourable rating would imply that a lower risk is associated with renewing a contract for a provider.

2. Legislative Requirements

The Authority decided on 12 October 2000 to investigate the complaint as it considered the legislative requirements for an investigation as set out in section 46 of the *Queensland Competition Authority Act 1997 (QCA Act 1997)* were satisfied.

According to the principle of competitive neutrality defined in section 38 of the amended *QCA Act 1997*, an agency carrying on a significant business activity can only be found to be in breach of the principle of competitive neutrality if the agency enjoys a competitive advantage over competitors or potential competitors because the agency's activities **are not** subject to: (a) full tax equivalent systems, or (b) offsetting debt guarantee fees, or (c) government procedural or regulatory requirements on conditions equivalent to the conditions which a competitor may be subject.

3. Conclusions relevant to the QCA Act 1997

Matter not Substantiated

The Authority concludes that the complaint by a private electrical contractor that CSG enjoys advantages are alleged to result from ENERGEX's design, management and application of its quality rating system 'Quality Assurance – Requirements for Suppliers of Services', does not breach the principle of competitive neutrality as defined under section 38 of the *QCA Act 1997*.

Reason for Decision

The complaint is not substantiated because ENERGEX **is** subject to:

- *the State Purchasing Policy*, which is a procedural requirement of the State for the purposes of section 38(c) of the *QCA Act 1997*; and,

- the *State Purchasing Policy* requires ENERGEX to establish a quality assurance system, and to apply that system to all service providers, including both internal and external service providers.

The Authority has no jurisdiction under the *QCA Act 1997* to investigate matters of compliance with the requirements of *State Purchasing Policy* where it is intended that the requirements be applied to both the government agency and the competitor on equivalent conditions.