QUEENSLAND TREASURY

Ministerial Guideline

Competitive Neutrality

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DELIVERING FOR QUEENSLAND
Queensland Government

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Status of this guideline

This guideline has been approved by the Minister for Finance, Trade, Employment and Training under section 43 of the *Queensland Competition Authority Act 1997* (QCA Act).

Under section 43, the Minister may approve a guideline that sets out the process for dealing with competitive neutrality complaints, including methods for determining whether a government agency carrying on a significant business activity enjoys a net competitive advantage over competitors or potential competitors in a particular market solely because of the agency's public ownership. Where this guideline does this, the Queensland Competition Authority (QCA) is required to comply with it when dealing with a competitive neutrality complaint as per section 43(1)(b) of the Act.

Any part of this guideline that is outside of that statutory scope should be understood as policy guidance to Queensland Government agencies in their implementation of competitive neutrality.

1.0 Definition of competitive neutrality

Competitive neutrality is the principle that a government-owned business should not enjoy a net competitive advantage over its actual or potential private sector competitors arising solely from public sector ownership.

Competitive neutrality ensures that Queensland government businesses compete in markets on their commercial merits alone. By creating a level playing field, competitive neutrality supports competitive processes, encourages innovation, and ensures resources are used efficiently across the economy. This leads to more efficient production, the development of new and improved services, better allocated resources, and ultimately greater benefits for consumers.

The *principle of competitive neutrality* is defined in section 38 of the QCA Act as:

> *The principle of competitive neutrality is the principle that a government agency carrying on a significant business activity should not enjoy a net competitive advantage over competitors or potential competitors in a particular market solely because of the agency's public ownership, including because the agency's activities are not subject to 1 or more of the following —*
>
> a. *full Commonwealth or State taxes or tax equivalent systems;*
> b. *debt guarantee fees directed towards offsetting the competitive advantages of government guarantees;*
> c. *procedural or regulatory requirements of the Commonwealth, the State or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.*

A *competitive neutrality complaint* is a complaint about the alleged failure of a government agency[1] to comply with the principle of competitive neutrality.[2] Part 4 of the QCA Act sets out how competitive neutrality complaints are to be dealt with.

[1] The term *government agency* is defined in Schedule 2 of the QCA Act

[2] QCA Act, s 40

2.0 Coverage of competitive neutrality complaints regime

2.1 Government Owned Corporations

Most Queensland government business activities are performed by government-owned corporations (GOCs).[3] The competitive neutrality complaints regime applies to all GOCs and their subsidiaries.[4,5]

2.2 Significant business activities

In addition to GOCs, it is possible for other government agencies, such as departments or statutory authorities, to perform activities that compete with the private sector. These activities are subject to the competitive neutrality complaints regime if they have been decided to be *significant business activities* by the Minister[6] on the recommendation of the QCA.

The list of decided significant business activities is available on the QCA's website.[7]

2.2.1 Deciding a significant business activity

The QCA can recommend that a government business activity be decided to be a significant business activity. Any interested party can also request that the QCA make a recommendation regarding a potential significant business activity. The request should be made to the QCA.[8]

The Minister may, on the recommendation of the QCA, decide that a government business activity is a significant business activity.[9]

In making a recommendation to the Minister, the QCA will have regard to whether:

1. the activity is a ***business*** activity;
2. the business activity is ***significant;*** **and**
3. the ***benefits*** of introducing competitive neutrality outweigh the costs.

Business activity

The Schedule 2 Dictionary of the QCA Act defines a business activity as "trading in goods or services".

The Schedule 2 Dictionary of the QCA Act also defines service (in the context of Part 4 of the QCA Act) to include:

a. the supply of goods; and
b. the making available for use of facilities of any kind; and
c. the conferring of rights, benefits or privileges; and
d. the exercise of the general functions of a government agency.

[3] As established under the Government Owned Corporations Act 1993
[4] QCA Act, s 39(3)(b)
[5] Government-owned corporations - QLD Treasury
[6] The responsible Minister for the QCA Act
[7] qca.org.au
[8] qca.org.au
[9] QCA Act, s 39(1)

Significance

The QCA Act does not define significance. In practice, significance is determined first by the QCA (in the context of their recommendation) and ultimately by the Minister (in their decision).

Significance may be assessed having regard to the overall circumstances of the activity, rather than by reference to a single criterion. A business activity may be considered significant having regard to a range of factors including its:

- scale of operation, including annual expenditure and the resources committed to the activity;
- market share and competitive significance, including the extent to which the activity operates in a market with other providers; and
- impact on the economy.

Net benefit

The *2024 National Competition Policy Intergovernmental Agreement*[10] states that:

> *Government decisions must not allow significant government business activities to receive a net competitive advantage from their government ownership unless it can be demonstrated that the benefits of the restriction to competition to the community as a whole outweigh the costs [and there is no alternative approach which would achieve the same benefits with less competitive impact].*

While competitive neutrality has large potential benefits for the Queensland economy, there may be costs from imposing competitive neutrality compliance on a government business. Deciding a significant business activity should not occur if the expected benefits of competitive neutrality are less than the expected costs.

Costs are more likely to outweigh the benefits when the business activity has a low monetary value or is temporary.

If the QCA assesses that the activity should be decided to be a significant business activity, it will make a recommendation to the Minister.[11] Following a decision by the Minister, the activity will become subject to the competitive neutrality complaints regime.

2.3 Businesses with multiple jurisdictional owners

Multi-jurisdictional government businesses[12] carrying out significant business activities of which the Queensland Government is a shareholder should be covered by competitive neutrality requirements, in line with the following principles:

- jurisdictions should agree up front between themselves which competitive neutrality policy and set of requirements will apply, with this formalised in the governance arrangements of the business activity;
- by default, the competitive neutrality policy and requirements of the jurisdiction owning the largest share of the business should apply;

[10] Intergovernmental Agreement on National Competition Policy (2024) between Commonwealth and State and Territory governments

[11] QCA Act, s 39(1)

[12] A multi-jurisdictional business is a business that is owned by more than one of the Australian Government, the state governments or the territory governments

- if ownership shares are equal, the competitive neutrality policy and requirements of the jurisdiction where the greatest amount of the business' activities will occur should apply;
- if ownership or activity shares were to change over time, the default is for the existing arrangements to apply until a new arrangement is formally agreed to by jurisdictions;
- implementation of competitive neutrality requirements on multi-jurisdictional businesses should be led by Queensland Treasury on a case-by-case basis; and
- any of these principles may be varied where necessary in the course of negotiating agreements with other jurisdictions and to ensure that the competitive neutrality policy and requirements applied to any business where Queensland is a shareholder are acceptable to Queensland.

For clarity, where Queensland's competitive neutrality policy and requirements apply to a multi-jurisdictional business, that business would not be subject to the competitive neutrality complaints mechanism as multi-jurisdictional business activities cannot be significant business activities under the QCA Act as the definition of government agency under the QCA Act does not encompass entities with multi-jurisdictional ownership. However, the substantive requirements of the QCA Act would be applied through the embedding of those requirements in the business' governance arrangements.

3.0 Competitive neutrality complaints mechanism

Competitive neutrality complaints are to be made to the QCA.[13]

The QCA's competitive neutrality complaints process is set out in the QCA Act. Key sections of the QCA Act are summarised in Appendix 1.

3.1 Receiving a complaint

When the QCA receives a competitive neutrality complaint it may seek further information from the person making the complaint, to support the complaint and to assist its investigations. Any further information requested must be information that is necessary and reasonable to decide whether or not to investigate the complaint.

The QCA may give the person who is making the complaint a written notice to request clarifying or additional information, within a reasonable time-period as stated in the notice. When providing information, the person can request that information provided to the QCA is kept confidential.[14]

3.2 The decision to investigate the complaint

Once the QCA receives a competitive neutrality complaint, it is required to investigate that complaint unless:

- the person making the complaint is not, and could not be, in competition with the government agency;
- the person making the complaint has not made a genuine attempt to resolve the complaint with the government agency;
- the QCA issues a written request for more information from the person making the complaint,[15] and the person has failed to provide this information without reasonable excuse; and/or
- the complaint is frivolous or vexatious.

A frivolous complaint is one that has no serious purpose or value. It may be a complaint about a minor issue that would not justify the resources required to investigate it, or a complaint about an issue that is not reasonable to spend time complaining about.

A vexatious complaint is one (or a series of many) that is made to harass, annoy, frustrate or waste the time and money of the person against whom the complaint is made. Vexatious complaints include ones that are made:

- to abuse the complaints process;
- without fair or reasonable grounds; and/or
- for a wrongful purpose, such as to pressure the person against whom the complaint is made to take action in another matter that is unrelated to the complaint.

[13] qca.org.au

[14] QCA Act, s 52

[15] QCA Act, s 42

If the QCA refuses to investigate the complaint, it must give the person who made the complaint a notice that states its decision to refuse to investigate, and the reasons for the decision. This notice must be given within 14 days after the QCA decides to refuse to investigate the complaint.

3.3 Commencing an investigation

If the QCA decides to investigate the complaint, it must give written notice of investigation to:[16]

- the person who made the complaint;
- the government agency that is the subject of the complaint;
- the Minister responsible for the government agency; and
- any other person appropriate to contact about the investigation.

3.4 Consultation

During the investigation, the QCA may consult with various parties, including the person making the complaint, the government agency that is the subject of the complaint, and any other person considered appropriate. This can include an invitation to provide a written submission, meet, discuss on the phone or exchange emails.

Information collected during the investigation may be included in the investigation report.

3.5 Required information from the government agency

The QCA may require the government agency that is the subject of the complaint to give information that is relevant to the complaint, or to produce a document relevant to the complaint.[17] It will do so by giving the government agency a written notice that states the information and/or documents required, and the timeframe that it must be provided within.

The government agency is required to comply with such a notice, unless:

- the information or document is subject to legal professional privilege, parliamentary privilege or public interest immunity;
- giving the information or document to the QCA is prohibited under an Act; and/or
- giving the information or document could reasonably be expected to prejudice an investigation into a possible contravention of a law.

3.6 Timing

The time taken for an investigation will vary depending on the complexity of the matters under investigation, the quality of the information available, and whether the information has been provided in a timely manner.

All investigations must be completed as soon as practicable.

[16] QCA Act, s 47

[17] QCA Act, s 48

3.7 Investigation report and outcome

Upon completion of its investigation, the QCA must prepare a written report about the investigation and the results of the investigation and provide the report to the responsible Minister.[18]

Prior to the report being provided to the Minister, the QCA should provide a draft of the report, including its recommendations, to the relevant government agency to seek its feedback on the report's conclusions and any suggested remedies. The government agency should be offered reasonable time to consider the report and provide feedback.

The QCA may amend its report in light of any feedback received by the government agency, if it considers that it is appropriate to do so. The final report provided to the Minister should outline any feedback provided by the government agency and detail how the QCA has considered that feedback.

It may make recommendations about how the government agency may address any failure to comply with the principle of competitive neutrality. The report provides advice and recommendations only. The Minister is not required to accept the advice or to take any action in response to the report, other than to give the QCA a response to the report as soon as practicable after receiving it.

The QCA must publish the Minister's response to the report on its website. The QCA may recommend that the publication of the report be delayed, and the reasons for this recommendation will be included in the report. If such a recommendation is accepted by the Minister, the report will be published at the end of the recommended delay period.

The QCA must advise the party who made the complaint once the report and the Minister's response are published.

3.8 Confidential information

The QCA may receive information or documents from a person or government agency during an investigation that they consider confidential. A person or government agency may ask the QCA in writing to keep particular information or documents confidential where disclosure could reasonably be expected to damage their commercial activities.[19]

The QCA will consider the request and, if it agrees that the information should be kept confidential, will not disclose the information or include it in its report, except where it can do so without identifying the person or government agency.

[18] QCA Act, s 49

[19] QCA Act, s 52

4.0 Net competitive advantage

A competitive advantage arising solely from public ownership is a benefit or favourable competitive condition that a government business receives or enjoys solely because it is publicly-owned.

The reference to a **net competitive advantage** does not require the QCA to determine whether the government business has an overall competitive advantage over its competitors or potential competitors. Rather, the QCA will:

1. identify the competitive advantages and disadvantages that arise solely from the government business' public ownership; and
2. balance those ownership-related advantages and disadvantages to determine whether, overall, the government business has a **net competitive advantage arising solely from its public ownership**.

The QCA's assessment will first seek to identify all competitive advantages and disadvantages that are solely due to public ownership. Competitive advantages that are not solely due to public ownership, such as reputation, size or incumbency, will not be considered. The second step in the assessment will be to balance the identified advantages against any identified disadvantages to determine whether there is a net competitive advantage.

Where the QCA identifies a net competitive advantage arising solely from public ownership, the QCA will recommend how the advantage should be removed or otherwise offset, consistent with the principle of competitive neutrality.

4.1 Pricing advantages

A common source of competitive advantage is avoided or shared costs, which allow government businesses to charge a lower price than private competitors. To maintain competitive neutrality, government businesses should price their goods and services to reflect their full cost. Full cost pricing includes:

- **Rate of return**. A private business must make profit over the long-term, or risk going out of business. By contrast, a government business may be able to make losses indefinity due to public funding. To ensure competitive neutrality, a government business' prices should include a commercial rate of return on assets.
- **Tax**. A private business must meet all applicable tax obligations as part of its normal cost base. By contrast, a government business may be exempt from Commonwealth, state or local taxes because of government ownership. To ensure competitive neutrality, a government business should make tax equivalent payments or have equivalent costs recognised in pricing.
- **Debt**. A private business must borrow on the strength of its own creditworthiness and risk profile. By contrast, a government business may receive cheaper finance if lenders assume government will guarantee its debts. To ensure competitive neutrality, any debt advantage should be addressed through a debt neutrality fee calculated according to the methodology provided in the *Code of Practice for Financial Arrangements,*[20] regardless of whether the business activity is being carried out by a GOC or a decided significant business activity.

[20] Code of Practice for Financial Arrangements

- **Depreciation**. A private business must recover asset use and replacement costs through prices. By contrast, a government business may use shared assets without bearing their cost or rely on public funding for asset replacement. To ensure competitive neutrality, prices should include an appropriate depreciation allowance.
- **Insurance**. A private business needs to manage its risks, including through the purchase of insurance. By contrast, a government business may rely on public funds to recover from a risk event. To ensure competitive neutrality, prices should include an appropriate allowance for insurance or self-insurance.

Government businesses that seek guidance on full cost pricing implementation should contact the QCA.

4.2 Other advantages

Government businesses can have substantially different operating environments to their private competitors, which may lead to competitive advantages, including:

- **Regulation.** A private business must meet market regulatory requirements. By contrast, a government business may avoid or streamline some obligations because of its public status. To ensure competitive neutrality, the same obligations should apply, or equivalent costs should be imposed.
- **Procedure.** A private business must obtain inputs and opportunities through normal market processes. By contrast, a government business may receive preferential access to information, assets, customers or procurement opportunities. To ensure competitive neutrality, these advantages should be removed, priced or offset.

4.3 Competitive disadvantages

Government businesses can have requirements or constraints that do not apply to private competitors, which may give rise to competitive disadvantages, including:

- **Reporting.** Parliamentary scrutiny, ministerial reporting, freedom of information obligations, public-sector auditing and transparency requirements may impose costs on a government business that private competitors do not experience.
- **Procurement policies.** Government procurement rules, including whole-of-government or local-content policies, may supplement a government business' decision regarding the cheapest or most efficient inputs.
- **Capacity requirements.** Government may require a government business to maintain capacity for resilience, emergencies or service provision for public policy reasons.

The QCA will balance any competitive disadvantages against competitive advantages to determine whether there is a net competitive advantage.

5.0 Government policy

Government agencies may receive public funding to achieve a specific public policy objective.[21] Where the activities undertaken to achieve those objectives affect a market in which private businesses compete, the manner in which the policy objective is implemented may give rise to a conflict with the principle of competitive neutrality.

Where the QCA's investigation of a competitive neutrality complaint identifies a potential conflict between competitive neutrality and a specific public policy objective, the QCA should:

1. identify and describe the nature of the conflict;
2. assess and, where practicable, quantify the impact on actual or potential private competitors; and
3. identify alternative approaches to achieving the public policy objective that may reduce or avoid the identified competitive neutrality conflict.

On receiving the QCA's recommendations, the Minister will assess whether, having regard to the benefits of achieving any relevant public policy objectives, the identified competitive impacts are justified and whether any alternative implementation should be adopted.

[21] These objectives and their corresponding funding are typically formalised as a Community Service Obligation

6.0 Implementation

Competitive neutrality should be implemented in a way that is practical, transparent and proportionate. The objective is to avoid material market distortions while avoiding unnecessary compliance costs. Implementation should be tailored to the nature of the business, the market(s) in which it operates and the significance of any competitive effects.

6.1 Publication of recommendations and remedies

The QCA should publish its recommendations and proposed remedies following a competitive neutrality investigation, subject to confidentiality and public interest constraints.[22] Published material should explain the business activity considered, the source of any net competitive advantage, the evidence relied on, and the reasons for the QCA's conclusions.

Recommendations should identify practical remedies for removing or offsetting the advantage.

The QCA should also, in consultation with the relevant government agency, publish information on the remedies subsequently adopted or applied by the government agency, subject to confidentiality and public interest constraints including, for example, those discussed in section 3.8.

6.2 Competitive neutrality guidance

The QCA should take a constructive and collaborative approach to government businesses that are subject to competitive neutrality. When requested, it should provide advice and assistance to government businesses that are subject to competitive neutrality.

The QCA should publish guidance documents[23] that assist with competitive neutrality compliance. This may include:

- tax equivalent payments guidance; and/or
- rate of return guidance.

[22] QCA Act, s 51

[23] The QCA may rely on guidance published by other agencies, such as Queensland Treasury or Queensland Treasury Corporation

Appendix 1: Complaints process in the QCA Act

Section	Subject	Summary
s 41	Making a competitive neutrality complaint	A complainant must be, or potentially be, in competition with the government agency or adversely affected by its alleged net competitive advantage. The complaint must be in writing, identify the alleged non-compliance, establish the relevant competitive relationship or adverse effect, and indicate whether the complainant has made a genuine but unsuccessful attempt to resolve the matter with the agency.
s 42	Further information to support complaint	Allows the QCA to require the complainant to provide further information that is necessary and reasonable to enable the QCA to decide whether to investigate.
s 44	Requirement to investigate complaint	Requires the QCA to investigate a competitive neutrality complaint unless it refuses to deal with, or continue dealing with, the complaint under section 45.
s 45	Refusing complaint	Allows the QCA to refuse a complaint where the complainant is not, and could not be, in competition with the government agency; the complainant has not made a genuine attempt to resolve the matter with the agency; required further information has not been provided without reasonable excuse; or the complaint is frivolous or vexatious. The QCA must give the complainant written reasons within 14 days.
s 47	Notice of investigation	Requires the QCA to give reasonable prior written notice of the investigation to the government agency, the responsible Minister and the complainant. The QCA may also notify other appropriate persons.
s 48	Power to require information	Gives the QCA power to require the government agency to provide specified relevant information or documents. There are exceptions, including legal professional privilege, parliamentary privilege, public interest immunity and certain statutory prohibitions or risks to other investigations.
s 49	Investigation report	After completing the investigation, the QCA must prepare a written report on the investigation and its results and provide it to the Minister. The QCA may recommend that the report, or part of it, not initially be made public, giving reasons for the recommendation.
s 50	Minister's response	Requires the Minister, as soon as practicable after receiving the QCA's investigation report, to provide the QCA with a response.

s 51	Publication of report	Requires the QCA to publish its investigation report on its website as soon as practicable after receiving the Minister's response, subject to any accepted recommendation to delay publication.
s 52	Confidentiality requests	Allows a person who considers disclosure of information likely to damage their commercial activities to request confidentiality. The QCA may accept the request where the concern is justified and disclosure would not be in the public interest. Accepted confidential information cannot generally be disclosed or included in the published investigation report, subject to de-identified disclosure.

QUEENSLAND TREASURY
1 William Street, Brisbane, Q 4000

treasury.qld.gov.au