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## D Competitive neutrality complaints

The Productivity Commission Act and the Government's Competitive Neutrality Policy Statement require the Commission to report annually on the number of complaints it receives about the competitive neutrality of government businesses and business activities and the outcomes of its investigations into those complaints. The Australian Government Competitive Neutrality Complaints Office (AGCNCO) received four formal complaints in 2005-06. Details of the action taken in relation to these complaints, and complaints on hand from the previous year, are summarised in this appendix.

### Complaints on hand from 2004-05

#### CBD Chauffeured Transport

In April 2005 CBD Chauffeured Transport lodged a complaint with the AGCNCO alleging that:

- COMCAR had a number of regulatory advantages over potential private competitors; and
- COMCAR's activities in relation to provision of vehicles for 'Guests of Government' did not comply with competitive neutrality policy.

Following initial investigation and consultation with interested parties, the AGCNCO determined that, while COMCAR charges for its services, it nevertheless has no discretion to refuse to supply 'Guest of Government' transport services up to certain limits, or to vary its price for doing so (COMCAR's charging structure is set by the Government). COMCAR's activities in this area were therefore found to fail the business activity test and the complaint did not proceed to full investigation and report.

However, in considering the complainant's specific concern that they were prevented from competing with COMCAR for 'Guest of Government' work, advice received from the Department of the Prime Minister and Cabinet was that the policy on such work is that, the Australian Government covers expenses for a maximum of

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four vehicles for visits to Australia by Heads of Government and Heads of State, and for a maximum of two vehicles for visits by Ministers. Beyond this there are *no* restrictions on the source of vehicle supply. The provision of cars for ‘Guest of Government’ work beyond these mandated levels is therefore fully contestable, with the only issue being that additional vehicles must be placed after government supplied vehicles in a motorcade for security reasons. The complainant and the Departments of Finance and Administration and Prime Minister and Cabinet, were advised of this outcome.

## **Complaints received in 2005-06**

### **ACT College of Natural Therapies**

The AGCNCO received a written complaint from the ACT College of Natural Therapies in July 2005 asking that it investigate the commercial activities of the Canberra Institute of Technology (CIT). The complainant alleged that the CIT were offering courses in natural therapies in direct competition with private sector providers at unrealistically low prices and that this represented a breach of competitive neutrality. Following initial inquiries, the AGCNCO found that the CIT is a statutory authority established under the *ACT Institute of Technology and Further Education Act 1987*, and that its activities therefore fall under the jurisdiction of the ACT Government rather than the Australian Government. The complainant was therefore referred to the Independent Competition and Regulatory Commission in the ACT.

### **Australian Mayoral Aviation Council**

In August 2005 the AGCNCO received a complaint from the Australian Mayoral Aviation Council (AMAC) alleging a lack of neutrality between the regulatory regime applying to commercial land on airports and surrounding land subject to local council requirements.

In examining this complaint, the Office assessed whether the leasing arrangements for Commonwealth land constitute a business activity. It found that the 99 year leases for airport land are more appropriately characterised as a sale of land subject to a regulatory regime, rather than the Department operating a business activity. The AGCNCO therefore found that, as the airports in question were privately operated and the Australian Government did not have a business entity in leasing airport land, the activities in question did not meet the criteria for full investigation.

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While the complaint did not proceed to full investigation, the Office considered that it raised a number of significant broader public policy matters, including that:

- Airport Lessee Companies are effectively the developer, assessor and approver for developments on airport land; and
- since privatisation, airports appear to be undertaking developments on adjacent land that may not be consistent with local council planning and land use legislation.

These matters were drawn to the attention of the Department of Transport and Regional Services and the Parliamentary Secretary to the Treasurer for further consideration.

### **Greyhound Australia**

In March 2006 the AGCNCO received a complaint from Greyhound Australia requesting that it investigate the pricing of aviation rescue and firefighting services (ARFF) by Airservices Australia. The complainant claimed that the pricing structure introduced by Airservices on 1 January 2006 (as approved by the Australian Competition and Consumers Commission) for the provision of ARFF services represented a breach of competitive neutrality. Specifically, Greyhound Australia alleged that the new pricing structure introduced for ARFF services acted to reduce the cost of airline operations in regional Australia and impaired its ability to compete on regional routes in providing bus services.

Following consultation with the relevant parties, the AGCNCO found that the activities of Airservices Australia can be separated into two categories:

- regulated monopoly services (including ARFF services and Air Traffic Control) which operate in non-contestable markets; and
- other commercial business activities which (in most cases) operate in a competitive environment.

Under the current regulatory arrangements, the provision of ARFF services is restricted by Government policy — Airservices is a monopoly provider of ARFF services. As such, the provision of ARFF services by Airservices Australia failed the business test criteria which requires that there be actual or potential competitors.

A further related concern raised by Greyhound Australia was that the current cost allocation and pricing methodology for network-based ARFF charges did not conform to the pricing principles recommended by the AGCNCO. In relation to this issue the AGCNCO noted that a key issue for compliance with competitive neutrality, as set out in the Office's 1998 *Cost Allocation and Pricing* paper, is that

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the prices set by a stand-alone government business, over all of its products and services, generate sufficient revenue to cover all relevant costs and yield a commercially acceptable rate of return. The AGCNCO noted that the paper does not deal with product or location-specific pricing issues. The complainant, Airservices Australia and the Parliamentary Secretary to the Treasurer were advised of this outcome.

### **Board of Airlines Representatives of Australia**

In March 2006 the Board of Airline Representatives of Australia (BARA) also placed a complaint with the Office concerning the pricing of ARFF services by Airservices Australia. BARA claimed that Airservices Australia had breached its competitive neutrality obligations, alleging that Airservices were charging below the incremental cost of providing ARFF services at regional locations. Also, that Airservices' current charges exceeded the stand alone cost of providing these services at major airports. BARA alleged that 'in effect, international airlines are now required to subsidise the activities of airlines operating at regional locations'.

As with the complaint lodged by Greyhound Australia, the BARA complaint did not proceed to full investigation and report. In responding to this complaint, the Office considered the current regulatory arrangements described above for the provision of ARFF services and noted the current lack of contestability in the market for the provision of ARFF services due to Government policy. BARA, Airservices Australia and the Parliamentary Secretary to the Treasurer were advised of this outcome.