

Ms Ineke Ogilvy
Competitive neutrality review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop, Sydney NSW 1240

Re: NSW Department of Premier and Cabinet's response to Review of NSW Competitive Neutrality Policies and Processes Issues Paper

Dear Ms Ogilvy,

We welcome IPART's review of competitive neutrality policies and processes in NSW and thank IPART for the opportunity to respond to the Issues Paper.

The Department of Premier and Cabinet supports competition policy as a critical driver of productivity and economic growth. Government policies which support competitive markets are fundamental to enhancing productivity and promoting fair competition between public and private businesses operating in the same market.

Since the NSW competitive neutrality policies and processes were last reviewed, the NSW economy has changed significantly. An expert, independent review of competitive neutrality policies and processes is beneficial to assist the NSW Government to ensure its competition policy is fit for purpose for the changing needs of a competitive marketplace.

For the NSW business community, this provides an opportunity to better clarify the application of the policies and processes to support private business entry in the supply of government services. For NSW consumers, a competitive market incentivises businesses to provide better quality services at lower prices.

Our response to specific questions in the Issues Paper are at **Attachment A**.

Sincerely,



Sarah Cruickshank
Deputy Secretary

Attachment A – NSW Department of Premier and Cabinet - Comments on the Issues Paper

Key issues raised within the Issues Paper and responses to specific consultation questions are outlined below.

Issues Paper Question 3: how should governments identify the activities that need to apply competitive neutrality principles?

Identifying the scope of the operation of competitive neutrality in NSW over time

The Department of Premier and Cabinet (DPC) would welcome detail on the extent and application of the existing competitive neutrality policy to better understand the extent of NSW government activity where these policies apply. DPC notes that Australia's competitive neutrality policies are well regarded globally for eliminating advantages of government ownership leading to efficiency gains. The Organisation for Economic Co-Operation and Development (OECD) has stated that Australia has the most complete competitive neutrality framework among member nations.^{1 2}

To provide context for the review and any recommendations, the Draft Report could detail the extent of activity subject to competitive neutrality policies within the NSW economy, the sectors it applies to, the size of those sectors relative to the NSW economy and the relative share and size of the public and private businesses operating within those sectors.

Changes in public and private delivery of government services over time

DPC notes that the role of public and private businesses in the delivery of government services has changed considerably since the last review of the NSW competitive neutrality policy over 20 years ago. An analysis of this change in the mix of public and private business delivery of government services will support in understanding the changed nature of competition in the sectors where competitive neutrality policies apply (or could apply) and assist in assessing the ongoing relevance of competitive neutrality policies, or whether alternative competition policy levers should or could apply. This is particularly important in the context of the increased role of the private sector in the delivery of government services both now and into the future.

As such, DPC also considers that any reforms considered in the review should be informed by the likely mix of public and private business in the delivery of NSW government services not only now, but also into the future, given the role of private business in the delivery of government services is likely to increase.

Issues Paper Question 9: Where are the regulatory and policy gaps or overlaps with respect to the scope of competitive neutrality in NSW?

Expansion of the scope of the competitive neutrality policy should undertake a cost-benefit analysis

DPC notes proposals included in the review to expand the scope of the competitive neutrality policy to other government activities are in response to recommendations from the most recent Australian Government's Competition Policy Review (the Harper Review 2015).

Any reforms which expand the scope will increase the number of government activities that are subject to competitive neutrality obligations and the role of government in those sectors, could have

¹ Capobianco, A. and H. Christiansen (2011), "Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options", *OECD Corporate Governance Working Papers*, No. 1, OECD Publishing, Paris, <https://doi.org/10.1787/5kg9xfghg6-en>.

² Rennie, M. and F. Lindsay (2011), "Competitive Neutrality and State-Owned Enterprises in Australia: Review of Practices and their Relevance for Other Countries", *OECD Corporate Governance Working Papers*, No. 4, OECD Publishing, Paris, <https://doi.org/10.1787/5kg54cxkxm36-en>.

an impact on the administration of certain government activities. DPC therefore supports the review's proposal to analyse the benefits and costs prior to expanding the scope of the NSW Competitive Neutrality Policies and Processes. This would ensure any additional compliance costs imposed are below economic benefits to the State.

Use of competitive neutrality policies in combination with other competition policy levers

Competitive neutrality policies are one of several competition policy levers available to government to increase competition in the economy. Noting this, the review could consider the interactions between competitive neutrality policies and other competition policy levers. This could include whether existing policy levers to promote and regulate competition between public and private businesses could be used or amended to address issues raised with the current NSW competitive neutrality policy.

DPC suggests reviewing any proposed reforms to the competitive neutrality policies and processes in the context of other competition policy levers. Other existing competition policy levers could be used in addition to, or instead of, any proposed changes to competitive neutrality policies. This could include: the application of the NSW procurement policy; a review of any differences in regulations for public and private businesses operating in the same sector; or enforcement of existing national competition policy and regulations through the Australian Competition and Consumer Commission (ACCC).

Review of competitive neutrality policies in this context would help to ensure competitive neutrality policies and processes are the most efficient policy lever to achieve the preferred policy outcome.

Issues Paper Question 7: How can the processes for lodging or investigating complaints be improved?

Proposals to increase transparency of the competitive neutrality complaints process

DPC welcomes a review of the competitive neutrality complaints process. It is noted there are stakeholder concerns around the transparency of the process and awareness of the current competitive neutrality policies and processes. National and state competition reviews have also recommended increasing the transparency and effectiveness of their competitive neutrality complaint and reporting processes to ensure compliance to existing competitive neutrality requirements.