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National Competition Policy Unit
Competition Taskforce Division
The Treasury
Submitted [online](#) - nationalcompetitionpolicy@treasury.gov.au

Revitalising National Competition Policy

Australia Post welcomes the opportunity to respond to The Treasury's consultation on Revitalising National Competition Policy (*the Consultation Paper*) to ensure long-term pro-competitive reforms for Australia.

As a Commonwealth Government Business Enterprise (GBE), Australia Post has a deep appreciation and regard for the National Competition Principles (Principles), and the significant reforms to the competitive landscape that have occurred because of reform agendas since the Intergovernmental Agreement (IGA) of 1995.¹

In addition to rigorous internal policies and processes, Australia Post and its subsidiaries operate subject to the Australian Government's Competitive Neutrality Policy. The policy aims to promote efficient competition between public and private businesses, and we take that obligation very seriously.

We welcome the Consultation Paper and review of the Principles. It is appropriate for the government to review policies and legislation to ensure they remain fit-for-purpose. In our submission below, we note that on balance the current Principles are delivering positive outcomes for consumers and competitive markets and identify opportunities to ensure alignment with relevant and current legal and policy considerations (such as those made under the Competition and Consumer Act).

We do not consider any new principles are necessary at this time. However, should this be pursued by Treasury then we strongly recommend further consultation. The current Principles have established a range of outcomes within the market and influenced policy and legislative development over decades. Understanding how new principles may interact and influence established Principles is essential to ensuring positive economic outcomes.

We welcome the opportunity to discuss this submission and any of our recommendations further with your team. Please feel free to reach out to Kat Burela, Head of Industry, Policy and Regulatory Affairs at kat.burela@auspost.com.au.

¹ https://ncc.gov.au/images/uploads/cpa_amended_2007.pdf

Overview of Australia Post

As Australia's postal service for more than 200 years, we are at the heart of every community. As community needs change, so do we. We are constantly evolving to meet the changing expectations of our customers, communities, team members and our owner, the Commonwealth Government.

Over the decades, our business has changed to make use of rail and aviation in the early 1900s, the telephone in the 1930s, the introduction of the four-digit postcode in the 1960s, and email in the latter years of the 20th century. The 21st century saw the introduction of smart devices, automated parcel sorting machines, and digital infrastructure to support ecommerce and online transactions. We have invested in our infrastructure, by upgrading our parcel facilities and improving our technology, to ensure we remain competitive and relevant in the future eCommerce and parcel delivery landscape.

We are focused on our customers and providing them with more flexible and reliable parcel deliveries, new and innovative services across our enterprise, greater online accessibility through our market-leading app and a better customer experience online and in our retail outlets.² Some of the ways we do this include:

- Launching Australia Post Metro, a new next-day delivery service available to contracted customers in Sydney, Melbourne, Brisbane, Adelaide and Perth.
- New highly-automated processing and delivery facilities – including the Melbourne Parcel Facility and the Boorna Wangkiny Mia Parcel Facility in Perth.
- Transforming telecommunications infrastructure across our network of Post Offices and other sites to help provide our critical Post Office partners with more reliable connectivity and communications.
- Developing eCommerce and integration platforms to help senders better manage their online orders and deliveries, streamline their parcel processes and reduce costs.

We do this without receiving financial support from the Government for our Community Service Obligation (CSO), which imposes significant cost and operational constraints on our business. Under the Australian Postal Corporations Act, we are expected to generate a return and remain financially sustainable.³ Due to the history of Australia Post, the way our obligations have been designed⁴, and the highly competitive and evolving parcel market, we cannot afford to be inefficient in how we deliver. We continue to try and meet our dual obligations under the CSO while generating a return.

In 2023, we announced a pre-tax loss of \$200.3 million in our financial results and in 2024, we announced a pre-tax loss of \$88.5 million. While our performance has improved, thanks to the rigorous implementation of our Post26 strategy and the modernisation program instigated by Government, we continue to find ourselves operating in a difficult and increasingly competitive environment.

² Australia Post [2024 financial results](#)

³ Under the Australian Postal Corporation Act 1989, Australia Post is obliged by law to, as far as practicable, perform its functions in a manner consistent with sound commercial practice – and has related financial obligations such as to: earn a reasonable rate of return on assets; pay a dividend to Government; maintain a reasonable level of reserves; and remain financially viable.

⁴ Australian Postal Corporation (Performance Standards) Regulations 2019, Australian Postal Corporation Act, etc

National Competition Principles

The National Competition Principles play an important role in promoting competition and ensuring fair market conditions. This review provides an opportunity to ensure Australia's competition policy responds to the current landscape and remains dynamic for future needs. We welcome further consultation on any proposed new Principles to understand the potential interactions between new and existing principles, and how these will be applied in practice.

We also recommend building in health checks for the Principles along the proposed ten-year reform agenda, with the aim of understanding the practical implications and any potential adjustments to the reform agenda.

Access Principle

Australia Post supports the policies underpinning the Access Principle in clause 6 of the Competition Principles Agreement (CPA) (*Access Principle*). We consider there is an opportunity for Treasury to refresh the Access Principle to reflect the operation of Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA), and the National Access Regime (NAR) criteria and exceptions.

We recognise the benefits offered under the NAR for third parties to gain access to the services provided by infrastructure that cannot be economically duplicated. While not specifically noted in the Consultation Paper, the Access Principle also operates as a set of guiding principles for many industry-specific access regimes (including both statutory and non-statutory regimes, such as those enforced via court-enforceable undertakings under the CCA).

Accordingly, we support minor amendments to the Access Principle to reflect the more recent legislative amendments to the declaration criteria in Part IIIA of the CCA, following the judicial and policy considerations of the NAR (including by the High Court and Harper Committee), in the interests of promoting harmonisation with the NAR. This is particularly the case when the interpretation of these criteria continues to have importance for access regimes that rely on the Access Principle, rather than being subject to the statutory framework in Part IIIA.

As part of the process of revising the Access Principles, to fully align the regimes we would also be supportive of recognising the other existing exceptions to Part IIIA within the revised Access Principle as well. In particular, this would include recognising the following exceptions:

- 1) the supply of a telecommunications service by a carrier or under a class licence, in accordance with s 235A of the *Telecommunications Act 1997* (Cth);
- 2) services supplied by a pipeline to which, either:
 - a) a 15-year no-coverage determination is in force under the *National Gas Law*; or
 - b) a price regulation exemption in force in respect of the pipeline in accordance with the *National Gas Law*; and

- 3) any service supplied by Australia Post, in accordance with s 32D of the *Australian Postal Corporation Act 1989 (APC Act)*.

Competitive Neutrality Principle

Australia Post supports the Competitive Neutrality Principle (CN Principle) as it is currently drafted; and understands the importance of competitive neutrality to promote fair and efficient competition between public sector and private businesses. Australia Post takes seriously its obligation to comply with the CN Principle and carefully considers, and obtains necessary advice, as potential competitive neutrality issues arise.

In our experience, concerns around compliance with competitive neutrality are often raised by competing market participants. The claims generally suggest that a GBE, such as Australia Post, should not leverage government ownership to gain advantage for its purely commercial operations in competitive markets.

There are existing mechanisms for these concerns to be considered and investigated through the Australian Government Competitive Neutrality Complaints Office (**AGCNCO**). This is a process that has been used by competing market participants for GBE's, including NBN⁵ and most recently, Australia Post.⁶

In addition to the formal channels, we note that government also addresses competitive neutrality concerns at an industry or targeted level. For example, the Department of Agriculture, Fisheries & Forestry (DAFF) recently issued Industry Advice on a charging model, following concerns raised by industry about perceived competitive advantages being received by Australia Post. In this advice, DAFF noted that some market participants had raised concerns, and confirmed that Australia Post has no unique arrangement.⁷

We consider that overall, the CN Principle is operating effectively and supports competition. We do not consider that significant changes to the CN Principle are required.

Prices Oversight

We are generally supportive of the principle of prices oversight as set out in clause 2 of the CPA (Price Oversight Principle), and the ongoing role for price monitoring and price surveillance (being the policies summarised in Appendix B of the Consultation Paper). There are opportunities to consider the Price Oversight Principle in the context of the CCA and the pricing notification regime to ensure that where interventions are placed on the market, they remain relevant and necessary after implementation.

We strongly endorse the comments in the Consultation Paper regarding the potential adverse effects of direct pricing controls – in that they can be costly, inefficient and lead to suppression of incentives for new market entrants. We note that regulatory regimes around

⁵ <https://www.pc.gov.au/competitive-neutrality/investigations/nbn-co/nbn-co-report18.pdf>

⁶ <https://www.pc.gov.au/competitive-neutrality>

⁷ 202-2024: Self-Assessed Clearances (SAC) cost recovery charge: One charging model for all SAC reporters - DAFF (agriculture.gov.au)

the world have approached the prospect of imposing ‘ex-ante’ price regulation with caution, given the significant impact it may have on markets.

There is a recognition generally that identification of a specific issue of market failure should not – by itself – be sufficient to justify a policy response that features direct pricing controls. Instead, in addressing instances of market failure it is always critical to ensure the response is proportionate and does not lead to unintended adverse consequences. This should be done by first putting any proposed regulatory solution through a rigorous economic cost-benefit test.⁸

Pricing notification regime

The pricing notification regime would benefit from being simplified, with inbuilt reviews on the ongoing need and appropriateness of pricing oversight in individual circumstances.

As a GBE, Australia Post reports principally to the Australian Competition & Consumer Commission (ACCC) in respect of pricing oversight under the pricing notification regime (as summarised in Appendix B of the Consultation Paper). The ACCC has responsibility for assessing price notifications under Division 4 of Part VIIA of the CCA. The objective of these provisions is to have prices surveillance applied only to those markets where, in the view of the Minister, competitive pressures are not sufficient to achieve *efficient* prices and protect consumers.

The price notification provisions also allow for additional transparency around price increases in these markets.

In the case of Australia Post, its reserved ordinary letter services are classified as services for which Australia Post has a statutory monopoly. As a result, these services are officially designated as "notified services" under s 95Z of Part VIIA of the CCA. This means Australia Post cannot increase the price of these services without first notifying the ACCC and the Minister for Communications. Under both the CCA and the APC Act, Australia Post is unable to increase the price of notified services until a certain period of time of consideration by, and without objection/ disapproval of, the ACCC and the Minister.

As noted in the Consultation Paper, in accordance with the requirements of Part VIIA, the ACCC must have *particular regard* to the following matters when considering whether or not to object to a proposed price increase:

- the need to maintain investment and employment, including the influence of profitability on investment and employment;
- the need to discourage a person who is in a position to substantially influence a market for goods and services from taking advantage of that power in setting prices; and
- the need to discourage cost increases arising from increases in wages and changes in conditions of employment inconsistent with principles established by relevant industrial tribunals.

⁸ See, for example, Joshua D. Wright, *Regulation in High-Tech Markets: Public Choice, Regulatory Capture, and the FTC*, (2 April 2025) https://www.ftc.gov/system/files/documents/public_statements/634631/150402clemson.pdf

The price notification regulatory framework as summarised above imposes a more prescriptive form of regulation than originally contemplated by the Pricing Oversight Principle. For this reason, there is a trigger mechanism for application of Part VIIIA to a service, which requires a Ministerial declaration under section 95X of the CCA.

However, beyond the criteria specified in Part VIIA and the APC Act, there is limited guidance about when Part VIIA may be invoked. In Australia Post's view, given the more prescriptive nature of Part VIIA, we support the proposal to develop more guidance for when the use of pricing oversight is appropriate, as an addition to the Pricing Oversight Principle.

This change would be particularly welcome given the requirement for the National Competition Council to have regard to the Principles in assessing whether there is efficient supervision of prices under section 95Y(4), for the purposes of assessing any proposed declaration under Part VIIA by a State or Territory.

This guidance could include a need for governments to carefully consider the extent (both in terms of scope and duration) of any regulatory pricing intervention before and after implementation. We note that in December 2023 the Government announced it would work with Australia Post to develop a pricing oversight mechanism to give Australia Post and its customers more certainty over a longer-term price path for basic postage.⁹ We look forward to continuing to work with the Government as it considers this.

The need for ongoing review of regulatory regimes in the context of changing economic circumstances is rightly identified in the Consultation Paper (which notes the Principles were originally agreed when approximately 2% of Australians used the internet). It is also neatly illustrated by our own situation, where the volume of letters sent by Australians continues to decline dramatically year-on-year, as other technologies and communication forms continue replace traditional mail.

Legislation Review Principle

Australia Post supports the Legislation Review Principle as it is currently drafted, given it provides a robust and adequate framework for decision-makers to avoid regulatory overreach (and the risk of ensuing detriments to competition). However, we do not consider it necessary to include a new requirement regarding public interest (*Competition Promoted Requirement*) as it appears to be duplicative of existing government laws and processes and potentially inconsistent with the NCP reforms.¹⁰ We note that such an approach may have the unintended effect of interfering with, or creating unnecessary policy inertia, in respect of legislative proposals which would have a benefit to the community but may not be capable of (or appropriate for) promoting competition.

Further, the Competition Promoted Requirement may also be inconsistent with section 51(1) of the CCA, which provides an express mechanism for Commonwealth and State or Territory legislation to prescribe that all (or part) of the anti-competitive prohibitions in Part IV of the CCA are to be disregarded by parties in complying with specific legislative regimes.

⁹ <https://minister.infrastructure.gov.au/rowland/media-release/ensuring-australia-post-can-deliver-more-australians>

¹⁰ National Competition Council *National Competition Policy: Some Impacts on Society and the Economy* (January, 1999) at 95, which reflects the NCP supporting competition as a means rather than as an end in itself.

A Competition Promoted Requirement introduces a further hurdle which may discourage legislation that has a net public benefit for the community as a whole; but does not promote competition.

For example, state and territory legislation permit co-operation among market participants to facilitate the operation of container deposit schemes, where such schemes would not be economically feasible without co-operation. Another example is legislation which require public health organisations to acquire certain goods and services from designated bodies to ensure the efficient and coordinated functioning of the public healthcare system.

While these examples may have the effect of reducing competition in relation to waste management and procurement in public health systems respectively, there are acknowledged net public benefits for the community which the legislature has considered and determined as warranting a statutory override of consequences from any adverse effects on competition.¹¹

Public Interest Test

Australia Post supports the public interest test as it is currently drafted in the NCP.

The public interest test was designed to be “neither exclusive nor prescriptive” and is “open-ended”. As the National Competition Council explains:¹²

Weighing benefits and costs involves difficult judgments which can only be assessed on a case-by-case basis. This is because outcomes will be determined, to some degree, by the subject matter of the review which in turn defines the community relevant to the assessment of benefits and costs.

It would be prudent to assess how adjustments to the public interest test in the NCP would be balanced against other standards such as those established under the merger control and authorisation regime, where the meaning of a public benefit or detriment is undefined in the CCA. The ACCC has traditionally given it broad meaning.

Revitalising the public interest test by extending it to all the Principles or introducing guidance which prescribes the factors for consideration will not necessarily clarify how the public interest test should be applied in each new circumstance. This is consistent with the recommendations of the Harper Review, which noted the “factors to consider in assessing the public interest should be determined on a case-by-case basis and not narrowed to a specific set of indicators”¹³ which was accepted by the government at the time.¹⁴

Government has demonstrated that it makes appropriate interpretations of the public interest test on a case-by-case basis.

¹¹ Examples include the *Waste Management and Resource Recovery Act 2016* (ACT); *Waste Avoidance and Resource Recovery Act 2001* (NSW); *Environmental Protection (Beverage Containers and Plastic Bags) Act 2011* (NT); *Waste Reduction and Recycling Act 2011* (Qld); *Container Refund Scheme Act 2022* (Tas); *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic); *Waste Avoidance and Resource Recovery Act 2007* (WA).

¹² National Competition Council Annual Report 1997-97 at 26.

¹³ Competition Policy Review Final Report (March 2015) at 43.

¹⁴ Australian Government Response to the Competition Policy Review (November 2015) at 9.

New Principles and enhanced accessibility

Given the significant impact the NCP had on the competition landscape in Australia from 1995,¹⁵ any planned adjustment of the NCP will need to be subject to further consultation.

It is our position that, except for minor adjustments identified under the existing principles, there is otherwise no need to adjust the current scope of the Principles. However, if Treasury considers that substantial changes are necessary (either the scope of existing principles, or introducing new principles), a larger program of work should be undertaken. If a new principle was introduced – whether consumer empowerment or market design and stewardship – it will be imperative to understand how this would practically be applied by decision-makers and interpreted by the legal system under the current competition framework.

In particular, we urge caution in seeking to establish any additional principles which impose obligations on new legislation (or on GBEs specifically) that are not otherwise required to be adhered to under the CCA.

For example, in the context of the suggested “Consumer Empowerment” principle, it is well understood that the administration and enforcement of many competition laws (including the CCA in Australia) requires choice about the appropriate welfare standard against which to apply, for the purposes of enforcing competition law and assessing the effectiveness of competition policy outcomes.¹⁶

If any future Consumer Empowerment principle is regarded (or intended) as being more consistent with the “Consumer Choice” welfare standard,¹⁷ rather than standards such as the total welfare standard or the consumer welfare standard,¹⁸ there is a risk that this could lead to an inconsistent set of requirements as between the Principles and the CCA – especially taking into account the statutory objective of the CCA¹⁹ and the legal approach that has been adopted in Australia in relation to enforcement of the CCA, including that of the High Court²⁰ and the Competition Tribunal,²¹ each of which have considered various formulations of what “standard” to apply.

Finally, in relation to the layout and accessibility of the Principles, we encourage Treasury to consider updating the 1995 IGA to a more contemporary document that is easily accessible in terms of format and readability. This should include simplified language and clear numbering of the principles (rather than reference to “CPA”).

¹⁵ Both the aforementioned Harper and Hilmer reviews

¹⁶ See, e.g., Bork, R *The Antitrust Paradox: A Policy at War with Itself* (Basic Books 1978)

¹⁷ As described in, for example, Lande, R *Consumer Choice as the Ultimate Goal of Antitrust*, 62 U. PITT. L. REV. 503 (2001)

¹⁸ A summary of the respective standards is set out in OECD Background Note - *The Consumer Welfare Standard - Advantages and Disadvantages Compared to Alternative Standards* MP(2023)4 | 1 Unclassified Organisation for Economic Co-operation and Development DAF/COMP(2023)4 April 2023. See also, Jacobson, J *Another Take on the Relevant Welfare Standard for Antitrust* - The Antitrust Source, August 2015

¹⁹ CCA, section 2

²⁰ See for example *Boral Besser Masonry Ltd v ACCC* (2003) 215 CLR 373; and *ACCC v Baxter Healthcare Pty Ltd* (2007) 232 CLR 1

²¹ *Re Qantas Airways Limited* [2005] ATPR ¶42-065