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To all Heads of Agency
Tasmanian State Government Departments

Dear Sir/Madam,

COMPETITIVE NEUTRALITY COMPLAINTS MECHANISM GUIDELINE

I am writing to advise you of changes to the Competitive Neutrality Complaints Mechanism Guideline issued by the Tasmanian Economic Regulator and remind agencies of their obligations with respect to the application of competitive neutrality principles.

As you would be aware, one of the National Competition Policy Agreements, the Competition Principles Agreement (CPA) requires that government businesses are not to enjoy any net competitive advantage in the market place simply as a result of their public ownership. This is the principle of 'competitive neutrality'.

The principles of competitive neutrality refer to the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities, so that ultimately all government businesses compete on fair and equal terms with private sector businesses.

The CPA was signed by all heads of government in 1995 and requires that each state and territory government set up a complaints mechanism to oversee the application of the Competitive Neutrality Principles. The Government Prices Oversight Commission was given this role in Tasmania. On 1 June 2010 the functions of the Commission were vested with the Tasmanian Economic Regulator under the *Economic Regulator Act 2009* and the Commission abolished.

The Commission prepared a guideline in relation to the review of competitive neutrality complaints, which has now been updated to reflect the role of the Tasmanian Economic Regulator. The Guideline sets out an overview of the processes for the review of complaints from businesses or persons about alleged breaches of, and non-compliance with, competitive neutrality principles under the National Competition Policy and is available on the OTTER website.

The CPA places government business in two categories, with a different model for applying the principles in each case. Significant government business enterprises (SGBEs) are to be subject to the corporatisation model and, as a general principle, should be corporatised and their costs should reflect:

1. full Commonwealth, state and territory taxes or tax equivalent systems; and
2. debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees.

Corporatised entities should also be subject to the same regulations to which private sector businesses are normally subject, such as those relating to the protection of the environment, and planning and approval processes, on an equivalent basis to private sector competitors.

Significant business activities (SBAs), which are undertaken by a State or local government agency as part of a broader range of functions should, at a minimum, ensure that the prices charged for goods and services reflect full cost attribution for these activities.

Since 1995 there has been a number of complaints in regard to the costing and pricing of services provided by state and local government agencies.

More recently the complaints have focused on activities undertaken by local government. In 2008 and 2009 the Commission received a number of complaints from private building surveyors alleging that fees charged by three councils for their building surveying services did not comply with competitive neutrality principles.

The Commission concluded in two of the cases that neither council was applying full cost attribution to the pricing of its building services and, in the third case, the Commission found that the council concerned had not considered all costs in its application of full cost attribution to its business's fees and charges.

More recently, the Regulator has received a number of inquiries from caravan park operators around Tasmania concerned with their local council's provision of cheap or free services for recreational vehicles (overnight parking) and campers (camp sites). Two formal complaints have been lodged with the Regulator.

These recent cases are a reminder to all government agencies, state and local, that they are responsible for adherence to the CPA and the Competitive Neutrality Principles. However, it should be noted that, in the event that a complaint is received, it is the Regulator not the Government agency that determines whether a business activity is an SBA to which the CNPs are to be applied. In considering whether a Government business activity is 'significant', the general approach adopted by the Regulator in investigating CNPs complaints is to look to the influence, or the potential influence, of the Government business activity on the market. The factors considered in this regard are:

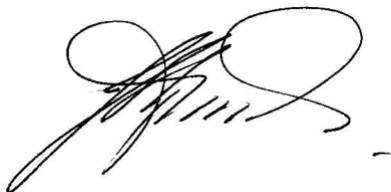
- the relevant market for the good or service, including whether there are ready substitutes for the good or service;
- the barriers to entry in the market;
- the degree of concentration in the market, including the number of competitors and market shares;
- the dynamic characteristics of the market;
- the relative importance of that market in the economy, including the criticality of the good or service provided; and
- the potential impact on other markets (eg the loss of efficiency in an upstream or downstream market).

As markets naturally change over time, the Regulator can only establish whether a business activity is an SBA by taking into account the facts of each case at the time the complaint arises. Therefore, the Regulator recommends that all Government agencies undertake regular reviews to assess whether circumstances have changed. An example of the process for determining whether a Government business activity is 'significant' is provided in Appendix 4 of the Regulator's Guideline.

Further information about competitive neutrality and a copy of the Competitive Neutrality Complaints Mechanism Guideline can be found on the website of the Office of the Tasmanian Economic Regulator (OTTER). In addition to the Guideline, the Department of Treasury and Finance has published a number of documents that may help councils to meet their obligations under the CPA. These are also available on the Prices Oversight page on the OTTER website: www.economicregulator.tas.gov.au.

I hope this is of assistance to your agency in undertaking future reviews of your business activities and national competitive policy obligations. If you have any queries in relation to the above, please contact the office on telephone (03) 6233 6323 or by email to office@economicregulator.tas.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Glenn Appleyard', with a stylized flourish at the end.

for

Glenn Appleyard
CHAIRMAN
TASMANIAN ECONOMIC REGULATOR

11 November 2010

cc Mr M Aird MLC, Treasurer