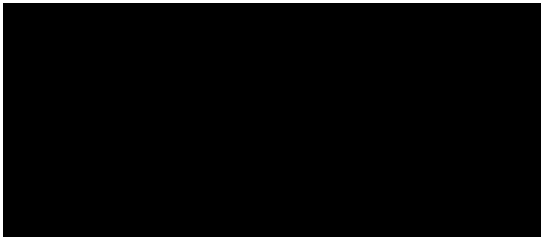


7 February 2023



Official Information Act #22.093 Response

1. We refer to your Official Information Act 1982 (OIA) request received on 9 December 2022, and clarified on 19 December 2022 for the following information:
 - 1.1 All information related to the Commerce Commission's (the Commission) consideration of the principle of competitive neutrality, internationally and in a New Zealand context, and how this relates to New Zealand Competition laws.
 - 1.2 All information related to the joint consideration of the principle of competitive neutrality by the Commission and the Ministry of Business, Innovation and Employment (MBIE) in preparation of the Competition Assessment Guidelines (the Guidelines), published in September 2022.
 - 1.3 Information related to the selection of the example: competitive neutrality as an exemplar for competitive neutrality in New Zealand.
 - 1.4 Information related to the Callaghan Innovation 'funding model for contestable services' and how this is broadly consistent with the principle of competitive neutrality.
 - 1.5 Information related to the Commission's interpretation of the Callaghan Innovation Act 2012.

Our response

All information related to the Commerce Commission's consideration of the principle of competitive neutrality

2. We have listed the documents responsive to your request at [1.1] in **Appendix A**.

3. In 2021 MBIE consulted the Commission on the OECD draft Recommendation on Competitive Neutrality, which New Zealand subsequently associated with. <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0462#mainText>. We have included the correspondence in Appendix A.
4. We have also included in Appendix A draft versions of the competitive neutrality section of the Guidelines. The versions differ. Some of the versions were shared with MBIE, and the 2022 draft versions did not include examples. However, it was later decided to re-include the examples in the Guidelines as they were thought to be useful. We have not included the final version of the Guidelines in Appendix A which are available on our [website](#).

All information related to the joint consideration of the principle of competitive neutrality by the Commission and MBIE in preparation of the Competition Assessment Guidelines

5. The Commission was responsible for drafting the competitive neutrality section of the Guidelines. We did not receive any specific feedback or comments from MBIE in relation to the example during the drafting process.
6. No documents or information exists which is responsive to your request at [1.2] and we are therefore refusing your request at [1.2] under section 18(e) of the OIA.

Information related to the selection of the example: competitive neutrality as an exemplar for competitive neutrality in New Zealand

7. When drafting the Guidelines, we considered it would be useful to provide an example of competitive neutrality. *The Gazette* notice for Callaghan Innovation was selected as an example that expressly referred to competitive neutrality.
8. When choosing the New Zealand example, we focused on the information available in *The Gazette* and did not analyse the co-funding guidelines for Callaghan Innovation nor consider how they operate in practice. We did not consider it be an exemplar for competitive neutrality in New Zealand.

Information related to the Callaghan Innovation 'funding model for contestable services' and how this is broadly consistent with the principle of competitive neutrality

9. As discussed above, Callaghan Innovation was chosen as an example of competitive neutrality. We focused on the information available in *The Gazette* and did not analyse the co-funding guidelines for Callaghan Innovation, consider how they operate in practice or whether the funding model is consistent with the principle of competitive neutrality.

Information related to the Commission's interpretation of the Callaghan Innovation Act 2012

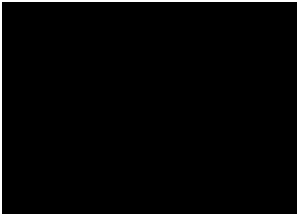
10. The Callaghan Innovation Act 2012 is administered by MBIE and is not monitored by the Commission.
11. We have previously considered the Callaghan Innovation Act 2012 in the context of assessing complaints relating to Callaghan Innovation received by the Commission in 2016. However we did not need to interpret the Callaghan Innovation Act 2012, as

the focus of our assessment was whether the alleged conduct raised any competition issues under the Commerce Act 1986.

Further information

12. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
13. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
14. Please do not hesitate to contact us at ويا@comcom.govt.nz if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

| Appendix A | | |
|--------------|------------------|---|
| Number | Date | Document |
| CC.0008 | 16 November 2018 | MBIE paper to the OECD |
| CC.0010.0002 | 3 June 2020 | Email |
| CC.0010.0001 | | Document attached to CC.010.0002 |
| CC.0010 | 28 August 2020 | Email |
| CC.0001 | 6 April 2021 | Extract from early draft Guidelines Out of scope material redacted |
| CC.0006.0001 | 2 August 2021 | Extract from early draft Guidelines Out of scope material redacted |
| CC.0011.0001 | 15 May 2022 | Extract from draft Guidelines Out of scope material redacted |
| CC.0011.0002 | 15 May 2022 | Extract from draft Guidelines Out of scope material redacted |
| CC.0011.0003 | 15 May 2022 | Extract from draft Guidelines Out of scope material redacted |