



qpc
Queensland
Productivity
Commission



**COMPETITIVE
NEUTRALITY
COMPLAINT**

CITEC CONFIRM

February 2017

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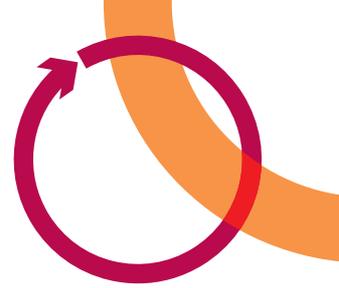
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THE ROLE OF THE COMMISSION

The role of the Queensland Productivity Commission (**Commission**) is to provide independent advice on complex economic and regulatory issues, and propose policy reforms, with the objective of driving economic growth, lifting productivity, and improving living standards across Queensland.

Under the *Queensland Productivity Commission Act 2015* (Qld) (**Act**) and the *Queensland Productivity Commission Regulation 2015* (Qld) (**Regulation**), the Commission's work encompasses:

- public inquiries into productivity, economic development and industry matters;
- regulatory advice and guidance to departments; and
- policy research.

It is also the role of the Commission to undertake the State's competitive neutrality functions, including:

- advise government agencies about complying with the principle of competitive neutrality; and
- receive, investigate and report on complaints about alleged failures of government agencies to comply with the principle of competitive neutrality.

The philosophy and principles under which the Commission operates are independence, rigour, responsiveness, openness, transparency, equity, efficiency and effectiveness.

The Commission assumed responsibility for competitive neutrality in November 2015. Prior to this time, competitive neutrality investigations were being conducted by the Queensland Competition Authority (**QCA**).

EXECUTIVE SUMMARY

The Queensland Competition Authority (**QCA**) received a competitive neutrality complaint lodged by InfoTrack Pty Ltd (**InfoTrack**) on 16 September 2015 against CITEC Confirm.

At the time that the complaint was lodged, the QCA was the agency responsible for competitive neutrality in Queensland. The governing legislation was the *Queensland Competition Authority Act 1997* (Qld) (**QCA Act**) and, accordingly, the process of considering and investigating the competitive neutrality complaint lodged by InfoTrack was commenced under the QCA Act.

The subject matter of the complaint is that CITEC Confirm does not comply with the principle of competitive neutrality under section 38(c) of the QCA Act. The substance of the complaint is that CITEC Confirm's access to, and provision of, the following services breaches the principle of competitive neutrality:

- document lodgement services in the Queensland Magistrates Court, Queensland Civil and Administrative Tribunal, Magistrates' Court of Victoria, County Court of Victoria and Supreme Court of Victoria;
- vehicle registration number searches on the Queensland Motor Vehicle Register;
- Queensland property crime and traffic incident reports; and
- Victorian crime incident reports,

because its access to those services:

- gives it a competitive advantage over competitors or potential competitors in the market for information brokerage services; and
- is alleged to be a consequence of procedural or regulatory requirements of the State (through various departments and agencies) that only CITEC have access, or direct access, to their databases or systems and that competitors or potential competitors not have access, or direct access, to their databases or systems.

At the time of the complaint, CITEC was a declared 'significant business activity' (**SBA**) being carried on by a Government agency for the purpose of Part 4 of the QCA Act. This meant that CITEC must comply with the competitive neutrality principle as defined under section 38 of the QCA Act.¹

The QCA made the decision to commence an investigation of the complaint under section 46 of the QCA Act.

On 20 November 2015, the responsibility for the Government's competitive neutrality regulatory function was transferred from the QCA to the Queensland Productivity Commission (**Commission**) on commencement of the Act. As such, the Commission assumed responsibility for the investigation into InfoTrack's competitive neutrality complaint.

CITEC continues to be a SBA being carried on by a Government agency for the purpose of part 5 of the Act. Accordingly, CITEC must comply with the principle of competitive neutrality as defined under section 32 of the Act.

This Report sets out the findings of the Commission's investigation into the competitive neutrality complaint against CITEC Confirm.

¹ The *Queensland Productivity Commission Act 2015* (the Act), s 33, defines a SBA as a business activity carried out by a government owned corporation, or a business activity carried out by another government agency that the Minister decides, on the recommendation of the Commission, is a significant business activity. CITEC is prescribed as a SBA under the Act.

Findings and Recommendations

The Commission's investigation into InfoTrack's complaint concludes that CITEC Confirm's Services do not breach the principle of competitive neutrality as defined in the Act.

Access to the services

Based on the information provided, the Commission found there is no agreement-based or contractual arrangement providing CITEC Confirm with exclusive access to the Queensland Services. The Commission also found no government directive, policy, legislation or standards, pertaining to information brokerage that would give CITEC Confirm an advantage over its private sector competitors.

The Commission notes that the document lodgement services with the Queensland Courts, vehicle registration number searches, and property, crime and traffic incident reports services provided by CITEC Confirm to Queensland Government agencies are 'in-house' arrangements (no market for the service). The decision of whether a Queensland Government department or agency engages with an information broker that is not 'in-house', is a matter for the Queensland department or agency. If a decision is made to 'open up' provision of services (in this instance information brokerage), CITEC Confirm would be entitled to tender for the services and must do so on a competitively neutral basis.

The Queensland Office of State Revenue (**Queensland OSR**) land tax certificate services are conducted in a competitive market, with more than one information broker providing access to the certificates. The Commission found that CITEC provides these services on a competitively neutral basis. CITEC Confirm is subject to the same search delivery fee as InfoTrack and other providers. Prices were found to fully incorporate costs of delivering the services, including the search delivery fee (refer to chapter 7).

The Commission is required, as per relevant Queensland legislation, to consider the complaint as it applies to the Victorian agencies and services.

The Commission determined CITEC does not have exclusive access in the provision of eFiling to the Victorian Magistrates Court as there are two additional information brokers also providing eFiling services.

For the remaining Victorian services, the Commission is unable to determine whether CITEC Confirm has exclusive access to the services, as it does not have sufficient information to inform a conclusion, nor does the Commission have information gathering powers in Victoria to obtain the necessary information.

Competitive Neutrality Adjustments

Based on the information provided, the Commission found that CITEC does not enjoy a competitive advantage over its competitors, or potential competitors on the basis that it is not subject to: full Commonwealth or State taxes (or tax equivalents) and debt guarantee fees (directed to offset the competitive advantages of government guarantees) or procedural or regulatory requirements of the Commonwealth, the State or a local government.

Structure of the report

This report is presented in seven chapters:

- Chapter 1 – Introduction;
- Chapter 2 – Legal and Policy Framework;
- Chapter 3 – Competitive Neutrality complaints;
- Chapter 4 – The Complaint and decision to investigate;
- Chapter 5 – Background;
- Chapter 6 – Access to Services; and

- Chapter 7 – Competitive Neutrality Adjustments and Other Matters.

Chapter 1 provides an overview of competitive neutrality in Queensland and provides background information on how the policy objective of competitive neutrality was developed. It provides a general overview of InfoTrack’s complaint and discusses CITEC’s information brokerage services.

Chapter 2 provides a detailed discussion of the legal and policy framework in which competitive neutrality operates. It examines the applicable competitive neutrality policy and contemplates how competitive neutrality is achieved including discussions on the concept of commercialisation and its application to competitive neutrality.

Chapter 3 outlines the competitive neutrality complaints process as it is set out in the Act. It discusses who can make a competitive neutrality complaint, the basis upon which a competitive neutrality complaint may be lodged and the process for dealing with, and investigating a competitive neutrality complaint. It concludes by discussing the legislative requirement for a report on a competitive neutrality investigation.

Chapter 4 is an in-depth discussion on the elements of InfoTrack’s complaint. The complaint includes the following Government agencies:

Queensland Services	Document lodgement services in the Queensland Magistrates Court
	Document lodgement services in the Queensland Civil and Administrative Tribunal
	Vehicle registration number searches on the Queensland Motor Vehicle Register
	Queensland property crime and traffic incident reports
	Queensland Office of State Revenue (OSR) land tax certificates
Victorian Services	Document lodgement services in the Magistrates Court, County Court and Supreme Court of Victoria
	Victorian crime incident reports

Chapter 5 provides background on the information brokerage industry, the role of information brokers, and an overview of InfoTrack and the other stakeholders named in the complaint, namely InfoTrack, CITEC Confirm and the relevant State government agencies.

Chapter 6 of the Report sets out the critical analysis of whether CITEC Confirm has exclusive access to the Services by virtue of its government ownership. It includes a discussion of the market in which CITEC Confirm is operating in and what services are offered by each of the Government entities the subject of InfoTrack’s complaint. It also analyses the applicability of the ‘*Queensland Government Policy on the Contracting-out of Services*’.

Chapter 7 discusses the Commission’s analysis of CITEC’s adherence with implementing a tax equivalent regime and debt neutrality fees, to remove any advantages it may benefit from, by virtue of its government ownership.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

<i>Relevant section in the Report</i>	<i>Box Number</i>	<i>Finding or Recommendation</i>
6.3	6.1	In accordance with section 4 of the Act, the Commission is required to consider the complaint as it applies to the Victorian agencies and services.
6.4.1	6.2	Based on the service agreements provided, the Commission found no evidence of provisions granting CITEC Confirm with exclusive access to the Services.
6.4.2	6.3	CITEC Confirm does not have an advantage over its private sector competitors that may arise from applicable Queensland legislation.
6.4.2	6.4	CITEC Confirm does not have an advantage over its private sector competitors resulting from Queensland Government policies relating to information brokerage.
6.4.2	6.5	The overarching principles and standards governing the management of access to government information and databases do contain provisions restricting a Queensland government agency's ability to engage private sector information brokers, where it is in the public interest to do so.
6.4.3	6.6	The Commission did not find that CITEC Confirm has a competitive advantage over its competitors on the basis that it is engaged as an 'in-house' provider for the following services. (a) document lodgement services in the Queensland Magistrates Court; (b) document lodgement services in the Queensland Civil and Administrative Tribunal; (c) vehicle registration number searches on the Queensland Motor Vehicle Register; and (d) Queensland property crime and traffic incident reports.
6.4.3	6.7	If a Queensland Government department or agency decides to 'open up' provision of services, (in this instance information brokerage), CITEC Confirm would be entitled to tender for the services, and must do so on a competitively neutral basis.
6.4.3	6.8	The Commission found CITEC Confirm does not have a competitive advantage over InfoTrack in the provision of Queensland OSR land tax certificates.
6.4.4	6.9	Based on the information made available to the Commission, it is unable to determine if CITEC Confirm enjoys exclusive access to the following services: (a) document lodgement services in the County Court of Victoria; (b) document lodgement services in the Supreme Court of Victoria; and (c) Victorian crime incident reports.
6.4.4	6.10	Based on the information provided to the Commission, it is found that CITEC Confirm does not have a competitive advantage over InfoTrack in the provision of eFiling to the Victorian Magistrates Court.
7.1	7.1	The Commission found that CITEC has implemented tax equivalent regimes for both Commonwealth and State level taxes, and accordingly, CITEC does not enjoy a competitive advantage over competitors or potential competitors due to it not being subject to full Commonwealth or State taxes or tax equivalent systems. Therefore, CITEC is not in breach of the principle of competitive neutrality under section 32 of the Act.
7.2	7.2	The Commission found that CITEC has a mechanism in place to account for the market cost of debt at the commercial rate and accordingly, CITEC does not enjoy a competitive advantage over competitors or potential competitors due to it not being subject to debt

<i>Relevant section in the Report</i>	<i>Box Number</i>	<i>Finding or Recommendation</i>
		guarantee fees directed towards offsetting the competitive advantages of government guarantees. Therefore, CITEC is not in breach of the principle of competitive neutrality under section 32 of the Act.

1 INTRODUCTION

The Commission has responsibility for investigating competitive neutrality complaints about significant business activities. The objective of competitive neutrality is to ensure that a public sector business does not have a competitive advantage (or disadvantage) over the private sector solely due to its government ownership.

The Commission's approach to competitive neutrality, assessing competitive neutrality complaints, undertaking investigations and providing recommendations to Government is set out in the Competitive Neutrality Policy (CN Policy) and administered through the Act.

This section provides an overview of competitive neutrality and the key elements of this Report.

1.1 Background to competitive neutrality

The principle of competitive neutrality in Australia was born out of the National Competition Policy (NCP) reforms in the 1990's. The NCP was Australia's landmark microeconomic reform program, with the key principle being that competitive markets will generally best serve the interests of consumers and the wider community. The NCP was agreed to by all Australian Governments in 1995 and is comprised of three agreements, being the Conduct Code Agreement, Competition Principles Agreement and the National Competition Policy and Related Reforms Agreement.

Competitive neutrality reform was a commitment under clause 3 of the Competition Principles Agreement, which has, as its underlying policy objective, *"the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership"*.² The Australian Government and all States and Territories committed to ensuring that government owned businesses did not enjoy a competitive advantage simply due to government ownership. The objective in clause 3 is grounded on the premise that, if Government business activities have unfair advantages (or disadvantages), this could promote inefficient production and pricing practices. Inefficient production and pricing practices may cause an excess flow of resources to the public sector, limiting resource availability to the private sector, which ultimately increases the overall costs of service provision to the community. Under clause 7 of the Competition Principles Agreement, Australian State and Territory Governments committed to apply this reform to the local government level.

In 1996, each State Government published a competitive neutrality statement, outlining its competitive neutrality policy implementation program and mechanism for handling complaints. The Queensland Government's 1996 CN Policy remains the working policy statement today.

Importantly, competitive neutrality is not aimed at removing comparative advantages or disadvantages related to superior performance or inherent advantages of firms operating in the same or similar legal and regulatory frameworks. Rather, the aim of the Queensland Government's CN policy is to remove a competitive advantage (or disadvantage) a government entity may have over private businesses due to its government ownership.³

Competitive neutrality does not require that all businesses should compete on equal footing or that the Government is obliged to open up to competition the in-house provision of goods and services, even if those

² National Competition Policy Competition Principles Agreement, clause 3, viewed at <https://www.coag.gov.au/node/52>

³ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, pp. 9-10

goods and services could reasonably be provided by the private sector. While there is a presumption that in such cases exposure to private sector competition will tend to lead to superior outcomes, the Government has the discretion to decide, on a case-by-case basis, whether there are net benefits to be found through purchasing from the private sector.⁴

1.2 The nature of the complaint

On 16 September 2015, the Queensland Competition Authority (**QCA**) received a complaint from InfoTrack Pty Ltd (**InfoTrack**). In the complaint, InfoTrack alleged that the Centre for Information Technology and Communications (**CITEC**), failed to comply with the principle of competitive neutrality.

Specifically, InfoTrack contends that CITEC Confirm, which is a commercialised business unit of the Department of Science, Information Technology and Innovation (**DSITI**) has access to, and provision of, exclusive services which breaches the principle of competitive neutrality.⁵

InfoTrack is a national information broker providing property, corporate and personal searching and affiliated services including court filing, electronic and manual document lodgement and settlements. These products involve either the collection and delivery of information from a government agency (such as a land title or company search) or delivery of information to a government agency (such as court filing or electronic document lodgement).⁶ Accordingly, InfoTrack considers that it is in direct competition with CITEC to provide the information brokerage services to government department and agencies.

After consideration of the complaint, the QCA made the decision to commence an investigation of the complaint under section 46 of the QCA Act. The Commission subsequently assumed responsibility for the complaint in November 2015.

1.3 Scope of the investigation and report

The principle of competitive neutrality is clearly set out in section 32 of the Act. In accordance with section 37 of the Act, the Commission must investigate a competitive neutrality complaint that satisfies the requirements of section 34 unless the complaint falls within one of the categories described in section 37(1). If the Commission investigates the competitive neutrality complaint, it must prepare a written report about the investigation, including the results of the investigation, and give the report to the Minister.

Accordingly, the scope of the Commission's investigation and report is limited to the legislative requirements in section 32 of the Act and the issues expressly raised in a competitive neutrality complaint.

1.4 CITEC's information brokerage services

CITEC (including CITEC Information Communication and Technology (**CITEC ICT**) and CITEC Information Brokerage⁷) delivers consolidated data centre, network and infrastructure services, including solutions integration and aggregation services as an in-house provider for the Queensland Government. CITEC also provides information brokerage services.⁸

⁴ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p.10

⁵ McCullough Robertson, letter to the Queensland Competition Authority, 16 September 2015, p. 1

⁶ McCullough Robertson, letter to the Queensland Competition Authority, 16 September 2015, p. 1

⁷ CITEC Information Brokerage includes CITEC Confirm and CITEC Access.

⁸ Queensland Government, *Queensland Budget 2015-2016 Service Delivery Statements Department of Science, Information Technology and Innovation*, p. 2

CITEC is a declared SBA being carried out by a government agency for the purpose of part 5 of the Act.⁹ As a SBA, CITEC must comply with the principle of competitive neutrality as defined under section 32 of the Act.

CITEC Confirm has operated for more than 27 years and has offices in Brisbane and Melbourne. Although owned by the Queensland Government, access to CITEC's services is not restricted to the public sector.¹⁰

CITEC Confirm provides electronic search and retrieval facilities for more than 40 Government organisations (federal, state and local). CITEC Confirm also provides commercial information sources and electronic filing (**eFiling**) services of court documents for a number of Australian jurisdictions. Clients use services provided by CITEC for a variety of purposes, including property conveyancing, asset discovery, debt recovery, and insurance claim processing and court eFiling.¹¹

1.5 Tasks and timing

The Commission has responsibility for the Queensland State Government's competitive neutrality complaints mechanism.

The Queensland Government's approach to implementing competitive neutrality, and the Commission's role in receiving complaints, undertaking investigations and providing recommendations to the Government are set out in the CN Policy and the relevant legislation. In undertaking an investigation of a competitive neutrality complaint, the Commission must comply with Part 5 of the Act. However, the Commission has a high degree of flexibility in the manner in which it conducts an investigation.

Accordingly, the Commission considered it important to seek submissions from stakeholders. On 4 March 2016, submissions were received from the following stakeholders:

- InfoTrack Pty Ltd; and
- joint submission by Crown Law on behalf of the Minister for Innovation, Science and the Digital Economy and Minister for Small Business, CITEC, Department of Transport and Main Roads and Queensland Police Service.

Following a thorough review of each stakeholder submission, the Commission determined that further information was required to aid its investigation into InfoTrack's complaint against CITEC. On 8 July 2016, the Commission requested CITEC provide the necessary additional information in accordance with section 46 of the Act. On 26 July, 2016, CITEC sought, and was subsequently granted, an extension until 31 August 2016 to provide the further information. The extension was granted on 28 July 2016.

In its response to the request for further information, CITEC provided only a portion of the requested information on 31 August 2016 and the information was then reviewed by the Commission as part of its investigation. Consequently, the Commission issued a second request for further information. Following the second request for information, the Commission undertook in-person interviews with CITEC as part of the information gathering process. The information provided to the Commission during these interviews has been taken into consideration when determining the findings and recommendations in this Report.

The Commission also met with and interviewed the Queensland Court Service, Queensland Government Procurement and InfoTrack. The information gathered in these interviews has also been taken into consideration.

⁹ Queensland Productivity Commission, *Significant Business Activities to be published under Part 5 of the Queensland Productivity Commission Act 2015*, viewed at <http://www.qpc.qld.gov.au/files/uploads/2016/02/Significant-Business-Activities-List.pdf>

¹⁰ CITEC Confirm, viewed at <https://www.confirm.citec.com.au/citecConfirm/index.shtml>

¹¹ CITEC Confirm, viewed at <https://www.confirm.citec.com.au/citecConfirm/about/index.shtml>

1.6 Structure of the report

This report is presented in the following chapters:

Chapter 2: sets out the legal and policy framework for competitive neutrality in Queensland

Chapter 3: sets out the competitive neutrality complaints process

Chapter 4: discusses the complaint and the decision to investigate

Chapter 5: provides background on the industry, InfoTrack and stakeholders to the complaint.

Chapter 6: contains the Commission's assessment of whether CITEC has exclusive access to the Services.

Chapter 7: discusses the Commission's assessment of whether CITEC uses tax equivalent regimes and cost of debt equivalents.

2 LEGAL AND POLICY FRAMEWORK

This chapter outlines the legislative and policy framework the Commission must adhere to when investigating a competitive neutrality complaint.

The Act is the key piece of legislation which defines the principle of competitive neutrality and outlines the process the Commission must follow when investigating and reporting on a competitive neutrality complaint.

2.1 The principle of competitive neutrality

Section 32 of the Act states that competitive neutrality is the principle that a Government agency carrying on a SBA should not enjoy a competitive advantage over competitors or potential competitors in a particular market solely because the agency's activities are not subject to one or more of the following:

- full Commonwealth or State taxes or tax equivalent systems;
- debt guarantee fees directed towards offsetting the competitive advantages of government guarantees; or
- procedural or regulatory requirements of the Commonwealth, the State, or a local government on conditions equivalent to the conditions to which a competitor or potential competitor may be subject, including, for example, requirements about the protection of the environment and about planning and approval processes.

Section 33(2) of the Act, defines a SBA as a business activity carried out by a government owned corporation, or a business activity carried out by another government agency that the Minister decides, on the recommendation of the Commission, is a significant business activity.

CITEC is a prescribed SBA under the Act.

In undertaking its investigation to determine if a SBA is complying with the principle of competitive neutrality, the Commission is limited to assessing whether a SBA enjoys a competitive advantage over its competitors, in a particular market solely because the SBA's activities are not subject to any of the three matters listed in section 32 of the Act.

While the CN Policy discusses other matters related to financial advantages that may accrue to a SBA, such as pricing, the principle of competitive neutrality (and any potential breaches of the principle) is defined to include only the three matters listed in section 32 of the Act.

2.2 The Queensland competitive neutrality policy

Building on the legislative definition, the CN Policy provides that competitive neutrality refers to the process of identifying and, where appropriate, removing any advantages (and disadvantages) that may accrue to a Government business by virtue of its Government ownership. Once this has been achieved, the Government business competes on the same basis as its competitors.¹² The CN Policy highlights that Government businesses are often seen as enjoying a unique set of competitive advantages by virtue of their ownership, including:

- exemption from taxes and charges;

¹² Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 9.

- cost of finance advantages - as SBAs may have access to less expensive funds due to an implicit or explicit government backing;
- regulatory advantages - as they may not be required to comply with certain regulations that apply to private sector businesses; and
- not being required to achieve a commercial rate of return on assets.¹³

Competitive neutrality requires that these advantages be removed. It is not the intention of the CN Policy to restrict competition where comparative advantages relating to the superior performance or inherent advantages of organisations that operate within the same legal and regulatory framework. In this regard, the CN Policy states:

It is important to note that competitive neutrality "does not require that all firms should compete on an equal footing; indeed, differences in size, assets, skills, experience and culture underpin each firm's unique set of competitive advantages and disadvantages. Differences of these kinds are the hallmark of a competitive market economy." ¹⁴

Further, the CN Policy also notes that competitive neutrality does not mean that the Government is obliged to open the in-house provision of goods and services to competition - even if the private sector already provides those goods and services.

While it is presumed that exposure to private sector competition will tend to lead to a superior outcome, under the CN Policy it is up to the Government to determine whether there are net benefits arising from competition.

Nonetheless, where there is competition for the provision of the services, there must be a level playing field.¹⁵

2.2.1 How competitive neutrality is achieved

As the basis of the CN Policy, clause 3 of the Competition Principles Agreement requires that, where appropriate, significant Government business activities should either be corporatised or placed on a level playing field basis - to remove major competitive advantages or disadvantages. The CN Policy offers that competitive neutrality between a Government business and its competitors can be achieved by:

- identifying areas where a Government business activity enjoys an advantage (or disadvantage) because of its Government ownership; and
- where appropriate, introducing measures to address those advantages or disadvantages.

Specifically, the CN Policy considers that:

Generally speaking, competitive neutrality is best achieved by restructuring a Government business so that its corporate structure, and its incentives, resemble those in the private sector. Where restructure is not feasible, for example in smaller scale operations, or where a Government business is in the process of restructuring while in competition, then the adoption of an appropriate pricing policy may be a viable alternative. ¹⁶

¹³ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, pp. 9-10.

¹⁴ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 10

¹⁵ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 10

¹⁶ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 11

Three methods of achieving competitive neutrality considered under the Competition Principles Agreement are:

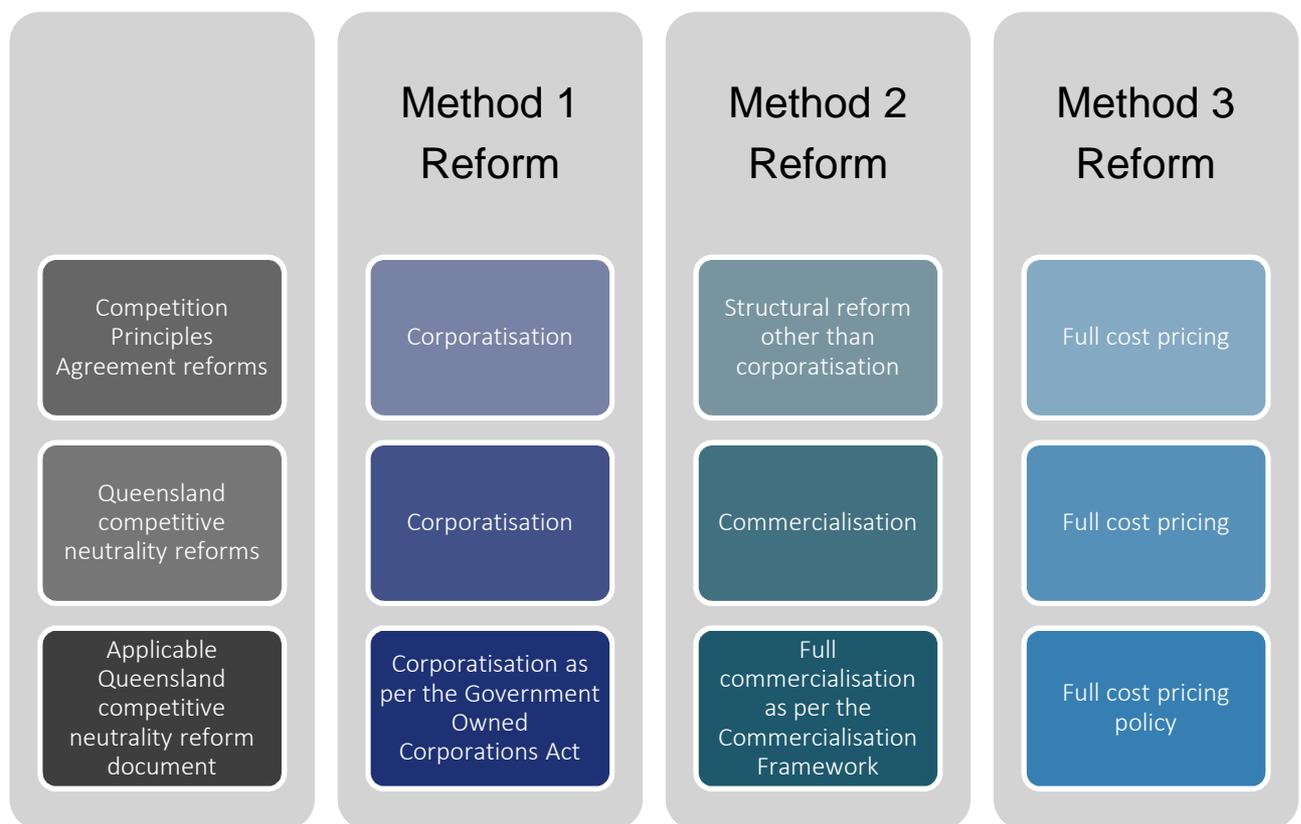
- (a) preferably, but where appropriate, corporatisation of significant business activities;
- (b) some other type of structural reform; or
- (c) at the very least, full cost pricing should be employed.

In keeping with the aim of the Competition Principles Agreement, the Queensland Government implements competitive neutrality by adopting the three methods of achieving competitive neutrality. These are:

- (a) corporatisation;
- (b) commercialisation; or
- (c) full cost pricing.¹⁷

Figure 1 below depicts the relationship between the Queensland reforms, the various competitive neutrality policies and reforms under Clause 3 of the Competition Principles Agreement.

Figure 1: Link between Competition Principles Agreement reforms and Queensland Competitive Neutrality reforms and policies



Source: *Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 14

¹⁷ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 13

2.2.2 Commercialisation

Commercialisation is a governance framework used by Queensland Government departments to deliver commercial activities of Government by adopting, to various degrees, features of a commercial environment including a commercial pricing framework. The policy framework is contained in the Queensland Government's *Commercialisation of Government Business Activities in Queensland Policy Framework (2010)* (**Commercialisation Framework**). The Commercialisation Framework has legislative backing in the *Financial and Performance Management Standard 2009 (FPMS)*.

CITEC is a commercialised business unit of DSITI.¹⁸

The Commercialisation Framework provides that the aim of commercialisation is to achieve value for money in the consumption and delivery of government services by applying commercial principles. It provides frameworks for ensuring resources are used in the most productive manner when providing Queensland Government services. For that reason, commercialisation must have as its primary goal, the efficient utilisation of resources across the Queensland Government sector.¹⁹

The FPMS, defines commercialisation as:

The process by which a department or a commercialised operation of a department:

- (a) *charges for the goods or services it provides; and*
- (b) *adopts, in varying degrees, other features of the commercial environment, including –*
 - (i) *the principles of competitive neutrality;*
 - (ii) *clear and non-conflicting objectives;*
 - (iii) *an appropriate level of management responsibility; and*
 - (iv) *authority and autonomy and accountability for performance.*²⁰

Under full commercialisation, commercialised business units (**CBU**) trade with clients in a competitive environment. Full commercialisation reflects the simulation of market conditions in the provision of government services and generally implies considerably more change to traditional servicing than simply full cost pricing/user charging. In addition, there is an overarching obligation for a CBU to ensure that its commercialisation arrangements are to achieve at least a budget neutral outcome.²¹

The Commercialisation Framework states that market distortion arises where a CBU is not subject to the same commercial pressures as its private sector counterparts. For instance, a CBU could have the capacity to under-price its services on the basis of Government ownership. This could potentially price private competitors out of the market.²²

Further, commercialisation requires agencies to adopt a commercial culture. This includes application of:

- commercial pricing arrangements;
- performance monitoring;
- taxation;
- capital structure and dividend policy; and

¹⁸ <https://www.confirm.citec.com.au/citecConfirm/legal/termsfuse.shtml>

¹⁹ Queensland Treasury 2010, *Commercialisation of Government Business Activities in Queensland Policy Framework*, p. 11

²⁰ *Financial and Performance Management Framework Standard 2009*, pp. 52-53

²¹ Queensland Treasury 2010, *Commercialisation of Government Business Activities in Queensland Policy Framework*, p. 6

²² Queensland Treasury 2010, *Commercialisation of Government Business Activities in Queensland Policy Framework*, p. 11

- community service obligations, where appropriate.

Commercialisation Framework's application to competitive neutrality

Under commercialisation, a Government entity charges for the goods and services produced and should adopt other features of a commercial environment – to varying degrees. This ranges from minor cost recovery and user charging, through to full competition on equal terms with the private sector.²³

The Queensland Government has a number of potential competitive advantages when compared to the private sector. By way of example, disparities may exist if a Government business:

- is exempt from all or some taxation;
- is exempt from a requirement to pay dividends to the owner of the business (the State);
- is exempt from various regulatory requirements; and
- has access to cheaper sources of finance (where the State has a higher credit rating and hence lower interest rate for borrowings).

Competitive neutrality is achieved by identifying if any of the above disparities exist and, where appropriate, removing the competitive advantages so that Government businesses are competing on equal terms with their competitors.²⁴

Queensland Treasury ensures the policy framework is properly implemented and the detailed arrangements for the CBU operate effectively. Queensland Treasury also has a role in considering whether a CBU should be declared a 'significant business activity' under the competitive neutrality provisions of the Act.

2.2.3 Which businesses must comply with competitive neutrality?

The principle of competitive neutrality applies to SBAs. The Commission maintains a list of SBAs on its website.

The CN Policy provides three principles to be taken into account when applying the principles of competitive neutrality to Queensland Government business activities.

Principle 1 — Must be a “business activity”

Government business activities are taken to include any activity undertaken by Government departments (including business units within departments and trust funds), statutory authorities (not subject to private sector taxation and regulatory regimes), Government owned corporations, and other statutory bodies which:

- (1) fall within the Australian Bureau of Statistics' classification of a Public Financial Enterprise (PFE) or Public Trading Enterprise (PTE); and/or
- (2) the business:
 - (a) trades goods and/or services as their predominant activity;
 - (b) meets a substantial part of their operating costs or earn a substantial part of their operating revenue from user charges; and
 - (c) is expected to have a predominantly commercial or profit-making focus.²⁵

²³Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 17

²⁴Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 11

²⁵Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 25

Such activities may provide commercial goods and services either to the public, private firms or other Government agencies. While the application of competitive neutrality is clearly pertinent when Government businesses are competing with other (Government or private) firms, allocative efficiency requires the application of competitive neutrality reforms also to monopoly or near-monopoly government businesses.

Principle 2 — Must be of a significant scale of operation

The Competition Principles Agreement requires that competitive neutrality reform applies only to significant business activities of Government. In the absence of criterion for determining the significance of a government business activity, the CN Policy provides that when deciding whether the business activity is “significant”, the following considerations should be taken into account:

- scale of operation as indicated by annual expenditure. As a guide, the implementation costs of corporatisation are such that this type of reform will generally be appropriate only for those Government business activities which have an annual current expenditure in the vicinity of \$15 million or more;
- market share; and
- the impact on the Queensland economy of poor performance by the business activity.²⁶

Principle 3 — The benefits of introducing competitive neutrality, taking into account all sectors of the community, must outweigh the costs

The Competition Principles Agreement provides for competitive neutrality reform to be implemented only where the benefits expected from reform exceed the costs. Clause 1(3) of the Competition Principles Agreement provides for the following matters, where relevant, to be taken into account in undertaking a benefit/cost assessment:

- Government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.²⁷

In Queensland, each of the following is to comply with principles of competitive neutrality:

- government owned corporations and agencies undertaking a significant business activity
- a local government undertaking a significant business activity, or an activity prescribed under regulation.

Competitors of Government businesses are able to complain if they believe Government businesses are not adhering to the principle of competitive neutrality. The Act provides an independent mechanism for competitors of certain government businesses to lodge a complaint with the Commission where they believe

²⁶ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, pp. 27-28

²⁷ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 28

the business enjoys a competitive advantage by virtue of its government ownership. This complaints mechanism applies to business activities declared by the Ministers (the Premier and the Treasurer) by gazette notice to be a 'significant business activity'.

3 COMPETITIVE NEUTRALITY COMPLAINTS PROCESS

This section discusses the competitive neutrality complaints process that a person must follow to lodge a complaint as well as the legislative and policy requirements the Commission must follow in investigating and reporting on the matter.

3.1 About competitive neutrality complaints

In determining whether the Commission will undertake an investigation in response to a competitive neutrality complaint made under section 34 of the Act, the Commission is to assess a number of matters, including whether the complaint meets the criteria set out in the Act.

Section 31 of the Act defines a competitive neutrality complaint as:

"A complaint about the alleged failure of a government agency to comply with the principle of competitive neutrality".

Section 34(1) of the Act provides that a complaint may be made by a person that is, or could be:

- in competition with a government agency in a particular market;
- adversely affected by a competitive advantage the person alleges is enjoyed by the government agency.

Under section 34(2), a competitive neutrality complaint must:

- (a) *be in writing; and*
- (b) *contain details of the alleged failure of a government agency to comply with the principle of competitive neutrality; and*
- (c) *include sufficient details to show -*
 - (i) *the person and the government agency are, or could be in competition in the particular market; or*
 - (ii) *how the person is, or could be, adversely affected by the competitive advantage the person alleges is enjoyed by the government agency; and*
 - (iii) *include sufficient details to show whether the person has made a genuine, but unsuccessful attempt to resolve the subject matter of the complaint with the government agency.*

The Commission may, by written notice given to the person making a competitive neutrality complaint, require the person to provide further information about the complaint within a reasonable time as stated in the notice. A notice for further information must relate to information that is necessary and reasonable to help the Commission decide whether or not to investigate the complaint.

3.1.1 Who can lodge a complaint?

The CN Policy provides that a complaint may only be lodged by a genuinely disaffected party. A genuinely disaffected party should be a firm, Government business or person:

- (a) which is in competition with a SBA; and
- (b) whose complaint is based upon one or more of the prescribed grounds (discussed in 3.1.2 of this Report).

A complaint may only be lodged against government business activities that are prescribed SBAs, SBAs which have met the first two principles but for which an assessment of the costs and benefits of introducing reform has yet to be undertaken or additional activities which are subsequently identified as SBAs in the Queensland Government's annual competitive neutrality implementation report to the National Competition Council.²⁸

3.1.2 Basis upon which a complaint may be lodged

The CN Policy stipulates that a complaint may be lodged on the basis that a SBA enjoys a competitive advantage by virtue of its public ownership. That is, a complainant must show that the SBA in question enjoys a competitive advantage relating to:

- financial advantage (e.g. taxes, cost of funds);
- legal or administrative advantage (e.g. due to exemption from regulation); or
- procedural advantage (e.g. in a tender process).

The complaints mechanism will be concerned only with complaints regarding competitive neutrality. The mechanism will not deal with anticompetitive behaviour.

3.1.3 When can a complaint be lodged?

A competitive neutrality complaint may be lodged at any time during the course of competition. SBAs may elect to submit to a "competitive neutrality audit" which would, if the outcome is positive, effectively bar complaints for a period of time.²⁹

3.2 Process for dealing with complaints

If a competitive neutrality complaint is received, the Commission, as per section 36 of the Act, must follow the process for dealing with competitive neutrality complaints set out in the CN Policy.

Section 5.2.5 of the CN Policy sets out the key elements for the process of a competitive neutrality complaint. Those key elements are:

- (a) the claim must be in writing;
- (b) there will be clear timeframes within which a complaint should be dealt with;
- (c) there will be a requirement that aggrieved competitors and the SBA concerned must attempt to resolve any complaints face-to-face before resorting to the complaints mechanism;
- (d) the investigatory process should allow key stakeholders (including the Government/minister as owner) to make submissions;
- (e) where appropriate, there should be a process of consultation with key stakeholders. While not meant to be an exhaustive list, key stakeholders would include customers, the SBA concerned, and competitors;
- (f) there will be an option of initiating mediation between the parties as an alternative, or as a preliminary step, to the investigatory route;
- (g) there will be provision for maintaining commercial confidentiality; and

²⁸ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, pp. 41-42

²⁹ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 42

- (h) there will be provision for the written reporting of outcomes.

Under section 37 of the Act, the Commission must investigate a competitive neutrality complaint unless:

- (a) the Commission reasonably believes the complaint is not, and could not be, in competition in a particular market with the government agency;
- (b) if the Commission has sought further information about the complaint and the complainant has failed, without reasonable excuse, to give the information to the Commission within the time stated in the notice; or
- (c) the Commission reasonably believes the complaint is frivolous or vexatious.

Following a decision to investigate a competitive neutrality complaint, section 38 states that, within a reasonable period before starting an investigation of a competitive neutrality complaint, the Commission must give written notice of its intention to conduct the investigation to:

- (a) the government agency the subject of the complaint;
- (b) the responsible Minister for the government agency the subject of the complaint; and
- (c) the complainant.

The Commission may also give notice of its intention to conduct the investigation to any other person the Commission considers appropriate.

3.3 Investigation report

Under section 39 of the Act, if the Commission has made a decision to investigate a competitive neutrality complaint in accordance with section 37, it must prepare a written report about the investigation, including the results of the investigation, and give the report to the Minister.

Section 40 of the Act provides that the Commission may recommend delaying the public availability of the report, or parts thereof. If the Commission recommends a delay, it must (within the report) say that the report, or part thereof, is not to be made available for public inspection until the end of a stated period. If such a recommendation is included in the report, the Commission must also include the reasons for its recommendation in the report.³⁰

The Minister must give the Commission a response to the report as soon as practicable after receiving it. When the Commission receives the Minister's response to the report, it must also, as soon as practicable after receiving the Minister's response, publish the report on its website. In the event the Minister accepts a recommendation by the Commission to delay public availability of the report (or part thereof) - the Commission must publish the report (or the relevant part of the report) on its website at the end of the period stated in the Commission's recommendation.³¹

3.4 Allegation of non-compliance substantiated

Under the CN Policy, where an investigation into an alleged non-compliance with the principle of competitive neutrality results in a substantiation of the allegation, the Commission is to present a report to the Treasurer stating that the business activity is not complying and make recommendations for remedial action.

³⁰ Section 40 of the *Queensland Productivity Commission Act 2015*

³¹ Sections 41 and 42 of the *Queensland Productivity Commission Act 2015*

Once the report is received by the Treasurer, the Treasurer will, in consultation with the minister responsible for the SBA in question, either accept or reject the Commission's recommendations, with reasons for the decisions made available.

The Commission is to publish an annual report setting out all allegations of non-compliance, including those not substantiated, and the findings of the associated investigation.³²

³² Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 43

4 THE COMPLAINT AND DECISION TO INVESTIGATE

InfoTrack submitted a competitive neutrality complaint regarding CITEC Confirm to the QCA. This chapter discusses the complaint, the decision to investigate and transfer of investigation to the Queensland Productivity Commission.

4.1 Complaint received from InfoTrack

In accordance with section 42 of the Act, InfoTrack contends that, in carrying on a SBA, CITEC Confirm does not comply with the principle of competitive neutrality under section 32(c) of the Act.

InfoTrack alleges that CITEC Confirm's exclusive access to, and provision of, certain services³³:

- gives it a competitive advantage over competitors or potential competitors in the market for information brokerage services; and
- is a consequence of procedural or regulatory requirements of the Queensland Government (through various departments and agencies) that only CITEC has access, or direct access, to their databases or systems and that competitors or potential competitors do not have access, or direct access, to their databases or systems.

The relevant CITEC Confirm services that are the subject of InfoTrack's complaint include:

- (a) document lodgement services in the Queensland Magistrates Court;
- (b) document lodgement services in the Queensland Civil and Administrative Tribunal;
- (c) vehicle registration number searches on the Queensland Motor Vehicle Register;
- (d) Queensland property crime and traffic incident reports;
- (e) Queensland Office of State Revenue's land tax certificates;
- (f) document lodgement services in the Magistrates' Court of Victoria, County Court of Victoria and Supreme Court of Victoria; and
- (g) Victorian crime incident reports.

(collectively the **Services**).

InfoTrack asserts CITEC Confirm has access to the Services due to its status as a government agency and because of its status, CITEC Confirm has access to certain databases or systems as a result of particular procedural and regulatory requirements of the Queensland Government (through various departments and agencies). InfoTrack asserts that competitors, or potential competitors of CITEC Confirm, do not have access, to department and agency databases or systems to which CITEC does have access by virtue of its Government ownership. Given this, InfoTrack states that CITEC Confirm is not subject to the same regulatory requirements of the State as those faced by InfoTrack and other competitors in the market for provision of information brokerage services.³⁴

In its complaint, InfoTrack notes that most customers prefer to only have one information broker due to consolidation, ease of training and the ability for information brokers to integrate into third-party systems to

³³ McCullough Robertson, letter to the Queensland Competition Authority, 16 September 2015, p. 2

³⁴ McCullough Robertson, letter to the Queensland Competition Authority, 16 September 2015, p. 4

drive efficiency and automation across their business. InfoTrack also notes, however, that some customers are happy to have more than one information brokerage service.³⁵

InfoTrack contends that CITEC Confirm enjoys a competitive advantage over its competitors, including InfoTrack, in the market for information brokerage services because it has access to, and can therefore provide, the Services.

Based on its own investigation, InfoTrack says it has been able to ascertain that:

- the Department of Transport and Main Roads (DTMR) said access to Queensland Motor Vehicle Register is limited with an exception made for CITEC Confirm; and
- the Queensland Magistrate's Court said that InfoTrack would not be permitted to provide eFiling services for reasons of privacy, public safety, security, commercial confidentiality or legal compliance and that CITEC Confirm is permitted to provide the eFiling services.

Accordingly, InfoTrack states that these procedural and regulatory requirements appear to restrict or refuse access for competing information brokers to certain information or services, while making exceptions for CITEC Confirm.³⁶

In its 4 March 2016 submission to the Commission, InfoTrack also noted the following:

- customers who wish to have access to the Services can only access those services through CITEC and InfoTrack and its other competitors cannot compete with CITEC with respect to price or quality of access
- a review should be undertaken to ensure CITEC's prices are being charged at an appropriate commercial rate in accordance with Queensland Treasury's policy statement.³⁷

4.2 The QCA's review of InfoTrack complaint and decision to investigate

On 16 September 2015, the QCA received a competitive neutrality complaint from InfoTrack against the information brokerage service CITEC Confirm. After review of the complaint, the QCA decided to commence an investigation under section 46 of the QCA Act for all matters other than where the complaint relates to the Queensland OSR.³⁸

The QCA provided a notice of the investigation, by way of a letter dated 23 October 2015, to the each of the stakeholders listed in Table 2.

Table 1: Stakeholders provided notice of the QCA's investigation into CITEC

<i>Category of stakeholder</i>	<i>Stakeholder</i>
The government agency carrying on the significant business activity	CITEC
The responsible Minister for the government agency	Minister of the Department of Science Information Technology and Innovation (DSITI)
The complainant	InfoTrack

³⁵ McCullough Robertson, letter to the Queensland Competition Authority, 16 September 2015, p. 2

³⁶ McCullough Robertson, letter to the Queensland Competition Authority, 16 September 2015, p. 4

³⁷ InfoTrack Pty Ltd, Submission to the Queensland Productivity Commission dated 4 March 2016, *Competitive Neutrality complaint against CITEC, Submission on behalf of InfoTrack Pty Ltd*, paragraphs 5 – 8, 13

³⁸ This section of the QCA Act is now defunct.

<i>Category of stakeholder</i>	<i>Stakeholder</i>
Any other person the authority considers appropriate	Queensland Civil and Administrative Tribunal (QCAT) Queensland Magistrates Court (QMC) Queensland Police Services (QPS) Department of Transport and Main Roads (DTMR) Magistrates Court of Victoria, County Court of Victoria, Supreme Court of Victoria (Victorian Courts) Victoria Police (VP) Queensland OSR ³⁹

As required by the QCA Act, letters to stakeholders (notices of investigation) included the following information:

- (a) *stated the authority's intention to conduct the investigation;*
- (b) *stated the subject matter of the complaint;*
- (c) *invited the person to whom the notice is given to make written submissions to the authority on the subject matter within a reasonable time stated in the notice; and*
- (d) *state the authority's address.*

Stakeholders were invited to make written submissions on the complaint to the QCA by 4 January 2016.

In the notice of investigation stakeholders were also notified, that should the *Queensland Productivity Commission Bill 2015* be assented to, the responsibility for the competitive neutrality regulatory function would transfer to the Commission, along with responsibility for the investigation.

For matters of the complaint relating to the Queensland OSR, the QCA decided to request further information from InfoTrack in the letter of investigation dated 23 October 2015. The QCA noted the following:

Regarding the Queensland Office of State Revenue land tax certificates element of your complaint, your letter states there are commercial arrangements in place for this service and there is no supporting material to explain this element of the complaint. The QCA therefore requests further information on this element be provided before a decision to investigate (or not to investigate) is made by the QCA. The QCA also requests this information by 31 December 2015.

InfoTrack provided further information in respect of the Queensland OSR land tax certificates after the investigation transferred to the Commission. The information and response is discussed further in the next section.

4.3 Investigation transfer to the Commission

Responsibility to investigate the complaint transferred to the Commission following assent of the Act on 20 November 2015.

Section 37 of the Act requires the Commission to investigate and report on a competitive neutrality complaint. In late November 2015, the Commission wrote to stakeholders noting the commencement of the Act and that the investigation into CITEC transferred to the Commission as of the date of commencement.

³⁹ As discussed in section 4.3 of this report, the notice of investigation was issued by the Commission to OSR on 14 January, 2016.

After the transfer of responsibility to the Commission⁴⁰, further information was received from InfoTrack relating to CITEC's access to, and provision of, the Queensland OSR land tax certificates.

The Commission considered the additional information in respect of land tax certificates and decided to broaden the investigation to include this matter. Stakeholders (listed in Table 2) were notified of the widened scope of the investigation on 14 January 2016. On 11 December 2015, all stakeholders were invited to make written submissions to the Commission on the subject matter of the complaint by 4 March 2016.

Further matters of process

The following table (Table 3) outlines the timeline for the complaint from receipt of the complaint by the QCA.

Table 2: Timeline of the complaint investigation

<i>Date</i>	<i>Milestone</i>
16 September 2015	InfoTrack lodged its complaint with the QCA
23 October 2015	QCA made the decision to investigate and notified interested parties (deadline for submissions 4 January 2016)
23 October 2015	InfoTrack was invited to provide further information in support of its complaint relating to CITEC's access to, and provision of, the Queensland OSR land tax certificates
20 November 2015	Responsibility to investigate the complaint transferred to the QPC
20-24 November 2015	Stakeholders notified of transfer of investigation and asked to provide submissions by 4 January 2016
11 December, 2015	Stakeholders sent letters informing them of the extended deadline for submissions to 4 March 2016
13 January 2016	InfoTrack provided further information relating to CITEC's access to, and provision of, the Queensland OSR land tax certificates
14 January 2016	The Commission considered the additional information and decided to broaden the investigation to include this matter. Stakeholders were notified of the widened scope of the investigation and requested to provide submissions by 4 March 2016.
4 March 2016	Stakeholder submissions received
8 July 2016	Letter from the Commission to CITEC requesting further information –deadline of 4 August 2016
26 July 2016	CITEC requested an extension of the deadline for the provision of further information from 4 August to 31 August 2016
28 July 2016	The Commission agreed to extend the timeline to provide further information.
31 August 2016	Further information received from CITEC in response to 28 July extension.

On 4 March 2016, two submissions were received, including a submission on behalf of InfoTrack and a joint submission on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, the Minister for Innovation, Science and the Digital Economy and the Minister for Small Business.

⁴⁰ InfoTrack, letter to the Queensland Competition Authority, 24 November 2015.

Victoria Police and Court Services Victoria notified the Commission that they would not be providing submissions.

In response to the Commission's request for further information dated 8 July 2016, CITEC provided a submission on 31 August 2016.

5 BACKGROUND

This chapter provides background to the complaint. It begins with a brief discussion on the information brokerage industry and the role of information brokers. It then provides an overview of InfoTrack and other stakeholders named in the complaint, namely: CITEC Confirm and the relevant State government agencies.

5.1 What is information brokerage?

For the purposes of this report, an "information broker" is an agent that can freely search, gather and integrate information on behalf of a customer for an agreed price. A number of Australian-based information brokers have direct access to information maintained in different government databases, and have the ability to provide their respective customers with proprietary products and reports based on customer requirements and needs.

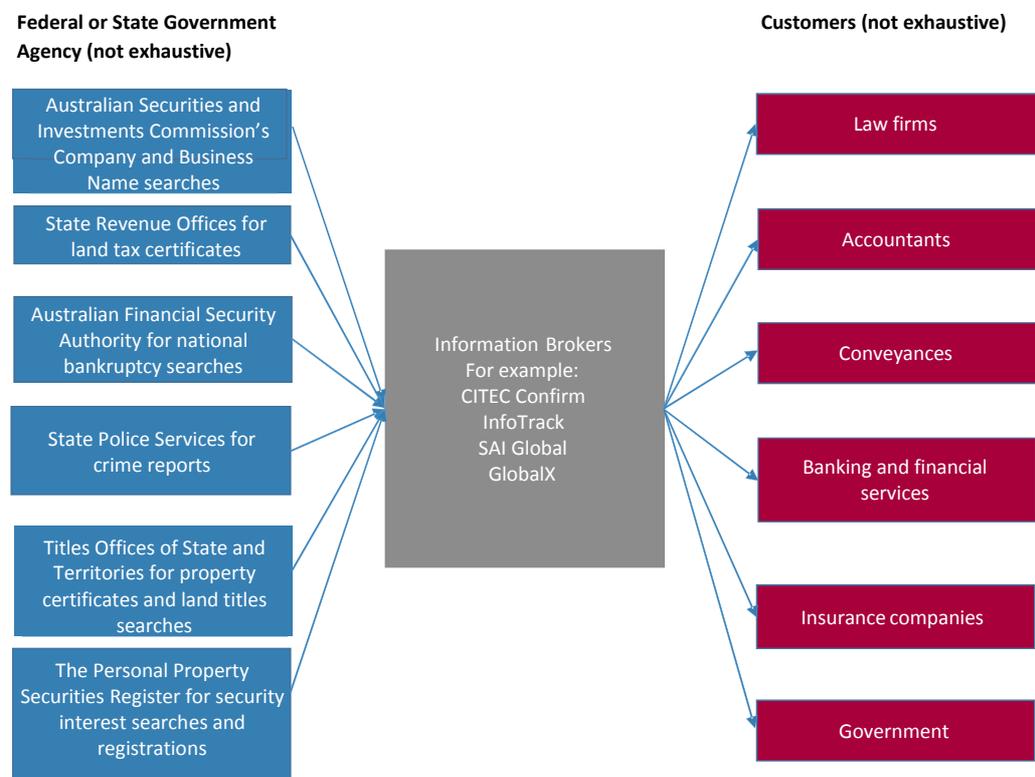
In Australia, the key information brokerage organisations include, but are not limited to, CITEC, Veda, InfoTrack, SAI Global and GlobalX.

Although individuals and companies can directly access the publicly available databases of many Government agencies for basic information, brokers can provide more detailed searches to facilitate business decisions and streamline business processes. Brokers can provide detailed reports and access to information maintained by a variety of Government agencies with the option to combine them into one product.⁴¹

Figure 2 sets out examples of typical customers, both Governmental and non-Governmental, of an information brokerage in Queensland.

Figure 2: Information searches conducted by information brokers

Collection and delivery of information from a Federal or State Government Agency



⁴¹ Australian Securities & Investments Commission (ASIC), *Information Brokers*, viewed at <http://asic.gov.au/online-services/search-asics-registers/information-brokers/>

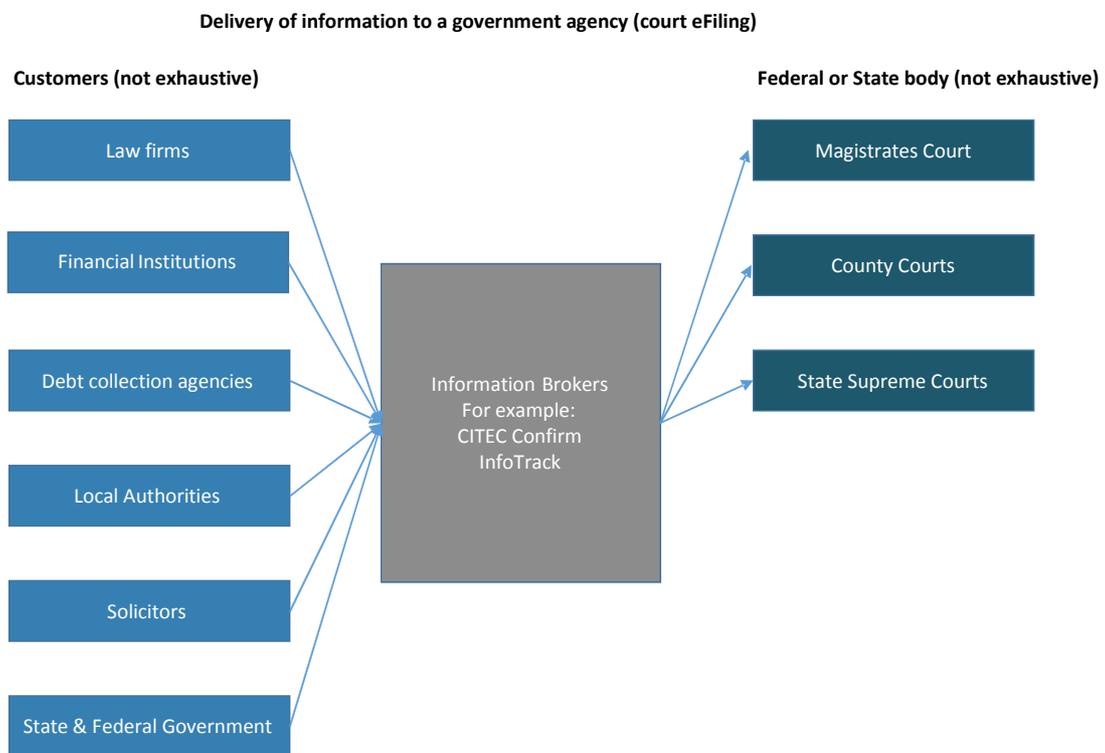
With development in technologies and an increasing demand for online services, many companies providing information brokerage services may also provide an electronic platform that allows for some activities to be completed online. Electronic filing or eFiling is the process of lodging documents and fees with a Court online instead of over the counter. Systems enable the customer to file 24 hours a day, 7 days a week whilst providing real time, online tracking of lodgements.⁴²

Such activities include:

- eFiling court documents are filed online rather than in person; and
- eConveyancing via a platform called PEXA (Property Exchange Australia), which facilitates property exchange by allowing for lodgements and property settlements online.⁴³

Figure 3 illustrates the online delivery of information to a government agency (court eFiling).

Figure 3: An eFiling platform provided by information brokers



5.1.1 Competition

Information brokers are able to differentiate themselves from their competitors by offering their respective customers access to information contained in databases. Some information brokers provide a comprehensive range of services and access to information, including:

- land and property reports;

⁴² CITEC Confirm, *County Court of Victoria eFiling*, viewed at <https://www.confirm.citec.com.au/citecConfirm/services/court/vic-county-court-e-filing.shtml>

⁴³ GlobalX, *Welcome to the GlobalX eConveyancing Hub*, viewed at <https://www.globalx.com.au/products-services/conveyancing-legal-support-services/e-conveyancing-hub/faqs>

- Australian Securities and Investments Commission (**ASIC**) registers and reports;
- credit reports;
- police crime reports;
- Personal Property Securities Register (**PPSR**); and
- legal support such as eFiling.

Other brokers may only specialise in services that target a specific market, such as property and conveyancing through offering property settlement services. For example SAI Global focusses on delivering services and information to the Australian property industry.⁴⁴

Information brokers can also differentiate themselves from their competitors by developing and providing additional unique services.⁴⁵ For example:

- SAI Global provides conveyancing software and company and personal information searches in addition to end-to-end settlement services for the legal, financial and conveyancing sectors⁴⁶; and
- InfoTrack provides a product called REVEAL, a data visualisation tool that aggregates results from multiple sources and maps out relationships between people, companies and assets in one visualisation.⁴⁷

5.2 About InfoTrack

InfoTrack is a national information broker which provides company, property, corporate and personal searches of Federal and several State Government databases including ASIC, PPSR, Australian Financial Security Authority (**AFSA**) and eFiling of court documents. InfoTrack's clients are primarily law firms but also include conveyancing, mercantile, accountancy, insolvency and government sectors.⁴⁸

InfoTrack was formerly an organisation called LEAP, which was the searching division of LEAP Legal in 2000. In 2011, InfoTrack began selling products and services as a standalone product to LEAP Office.⁴⁹ The following table (Table 4) is a high-level list of the services and products InfoTrack provides to its clients.

Table 3: List of InfoTrack's client services

<i>Type of Search</i>	<i>Information</i>
Property	<ul style="list-style-type: none"> • Ordering Images (Plans, Dealings, Instruments) • Property Enquiries • Ordering Title Searches • Organisation Extract & ASIC Searches, including Company and Business Name Search • Person Locator Search
Company and personal searches	<ul style="list-style-type: none"> • ASIC Company and Business Names searches • PPSR

⁴⁴ SAI Global Property, viewed at <https://www.saiglobal.com/property/>

⁴⁵ Discussed in interview conducted by the Commission with CITEC on 2 November 2016.

⁴⁶ SAI Global, *Property Services*, viewed at https://www.saiglobal.com/en-au/about_sai_global/our_business/property_services/

⁴⁷ InfoTrack, *REVEAL data visualisation tool*, viewed at <https://www.infotrack.com.au/products/disruptive-technology/reveal/>

⁴⁸ InfoTrack, *About Us*, viewed at <https://www.infotrack.com.au/about-us/about-infotrack/>

⁴⁹ InfoTrack, *About Us*, viewed at <https://www.infotrack.com.au/about-us/about-infotrack/>

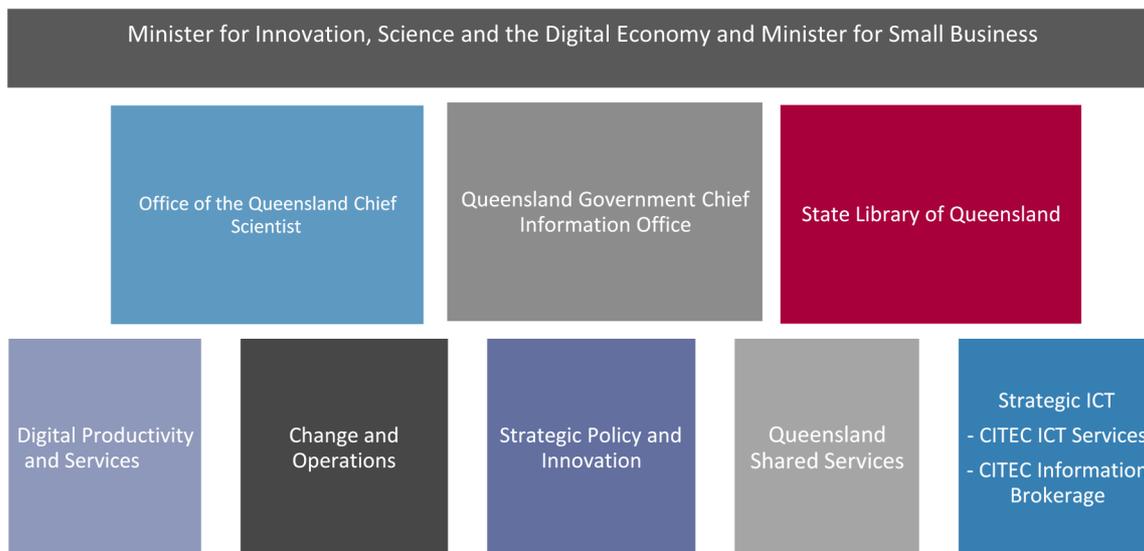
Type of Search	Information
	<ul style="list-style-type: none"> • Company Litigation • AFSA Bankruptcy • Credit Reports • International Company Search • Anti-Money Laundering • Company Overview and credit Status report • Property Ownership • Civil Litigation • Electoral Roll
Court eFiling	<ul style="list-style-type: none"> • NSW Civil Registry e-Filing Service: can lodge court forms for any local, district or supreme registry court
National	<ul style="list-style-type: none"> • National Litigation • National Police Check • National Property Ownership • International Company Search

Source: <https://www.infotrack.com.au/>

5.3 Department of Science Information Technology and Innovation

The DSITI is the Government department responsible for administering CITEC. The following diagram sets out the agencies and services which are the responsibility of the Minister for Innovation, Science and the Digital Economy and Minister for Small Business.

Figure 4: Agencies and Services under DSIT⁵⁰



⁵⁰ Queensland Government, *Queensland Budget 2016-17, Service Delivery Statement Department of Science, Information Technology and Innovation*, pp. 1-2

DSITI, as shown in Figure 4 above, is split into a number of divisions including: the Science Division, Digital Productivity and Services Division, Strategic Policy and Innovation Division, Change and Operations, Strategic ICT Division and Queensland Shared Services. The Strategic ICT Division comprises of both CITEC ICT and CITEC Confirm, wherein the business division of the Strategic ICT Division states that, using specialist knowledge it (amongst other things):

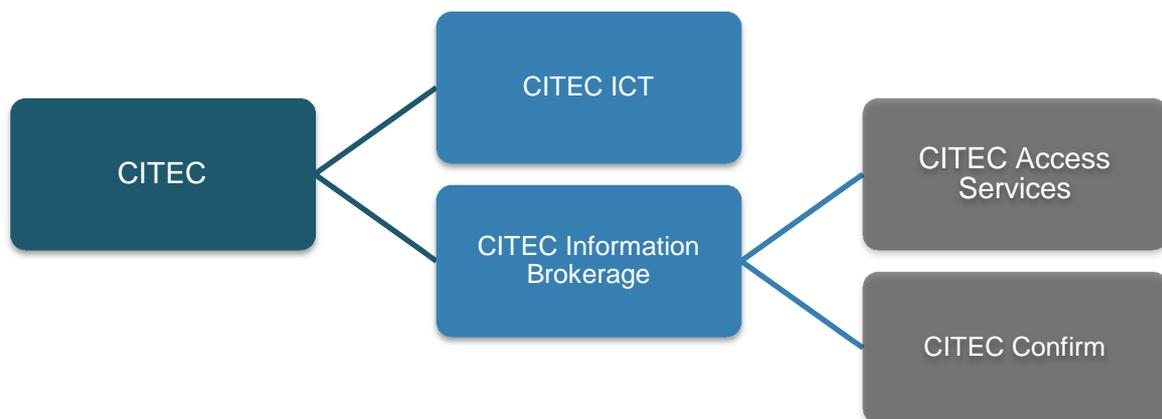
- provides ICT infrastructure, network and storage services to government agencies through CITEC ICT; and
- delivers leading information brokerage services through CITEC Confirm.⁵¹

5.4 About CITEC

CITEC was formed in 1988 out of a computer centre held within Queensland Treasury. CITEC is now a fully self-funded commercialised business unit of DSITI.⁵²

Figure 5 represents the internal structure of CITEC, including ICT and CITEC Confirm.

Figure 5: Structure of CITEC



Queensland Government agencies purchase information and communication infrastructure and information management services from CITEC. CITEC delivers consolidated ICT infrastructure services for the Queensland Government, including: data centre, network, storage, data protection and ICT platform and solution integration services.⁵³

5.4.1 About CITEC Information Brokerage

CITEC Information Brokerage is a business unit of CITEC that provides information brokerage services on a fully commercial basis. It consists of:

- CITEC Access Services (wholesale); and
- CITEC Confirm (retail).

⁵¹ Queensland Government, *DSITI Business Areas*, viewed at <https://www.qld.gov.au/dsiti/about-us/business-areas/>

⁵² CITEC was commercialised in 1991 (CITEC Confirm's website, viewed at <https://www.confirm.citec.com.au/citecConfirm/index.shtml>).

⁵³ Queensland Government, *Queensland Budget 2016-17, Service Delivery Statement Department of Science, Information Technology and Innovation*, p. 41

CITEC Access

CITEC Access Services provides users with a portal allowing them to securely lodge and retrieve information. Each year, approximately 5 million transactions are run through the CITEC Access portal, which enables Government-to-Government, Government-to-business and business-to-Government interactions.⁵⁴

CITEC Access provides users with access to the portal to securely lodge and retrieve information.

CITEC Confirm

CITEC Confirm provides information brokerage services, including protected, unique and commercial information services to the legal, banking, insurance and commercial sector Australia-wide in relation to property, vehicle, police and courts (legal documents) information.^{55,56}

In DSITI's 2011-12 annual report, the vision for CITEC Confirm (for 2012-13) was to deliver information brokerage services through CITEC Confirm.⁵⁷

The following table (Table 5) includes the services provided by CITEC Confirm.⁵⁸

Table 4: Services provided by CITEC Confirm

Type of Search	Information
Land searches	<ul style="list-style-type: none"> • Land searches for every state and territory • NSW Office of State Revenue certificates • Contaminated Land Search—Qld • Land Tax certificates—Qld • Valuation and Sales—Qld • Telco Cable search • Queensland Civil and Administrative Tribunal Register of Proceedings search • Energy searches—Qld • Queensland Department of Transport and Main Roads property search • Conveyancing certificates—Vic • Property Sales History report—Vic
Corporate and individual searches	<ul style="list-style-type: none"> • ASIC Company and Business Names searches • Commercial enquiries • Bankruptcy Register search • PPSR
Vehicle searches and lodgements	<ul style="list-style-type: none"> • Queensland Motor Vehicle Register
Court eFiling	<ul style="list-style-type: none"> • Queensland Civil and Administrative Tribunal

⁵⁴ Queensland Government, *CITEC Access Services*, viewed at <https://www.qld.gov.au/dsiti/about-us/business-areas/citec/access-services/>

⁵⁵ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 6

⁵⁶ Queensland Government, *Queensland Budget 2016-17, Service Delivery Statement Department of Science, Information Technology and Innovation*, p.41

⁵⁷ Queensland Department of Science, Information Technology and Innovation, *Annual Report 2011-12*. p. 29

⁵⁸ Queensland Government, *CITEC Confirm*, viewed at <https://www.qld.gov.au/dsiti/about-us/business-areas/citec/citec-confirm/>

<i>Type of Search</i>	<i>Information</i>
	<ul style="list-style-type: none"> • Queensland Magistrates Court • County Court of Victoria • Magistrates' Court of Victoria • Supreme Court of Victoria
Police searches	<ul style="list-style-type: none"> • Traffic incident reports—Queensland • Property crime reports—Queensland • Crime reports—Victoria

5.5 Agencies named in the complaint

The following sections discuss the agencies listed in InfoTrack's complaint, along with a description of the information InfoTrack is seeking access to.

5.5.1 Department of Transport and Main Roads

The DTMR provides many online services for members of the public including:

- renewing and replacing driver's licenses;
- checking and renewing vehicle registration;
- booking driver testing and vehicle inspections;
- paying fines and infringements; and
- applying for accreditations.

Many of the services listed are provided directly by DTMR.⁵⁹

The DTMR engages CITEC Confirm to provide restricted access to the Queensland Motor Vehicle Register (QMVR). CITEC Confirm provides up-to-date information about the registration of motor vehicles, caravans, trailers and marine vessels registered in Queensland to QMVR.⁶⁰

Specifically, CITEC's vehicle registration searches for the QMVR are able to retrieve motor vehicle, marine vessel, caravan or trailer using information such as the:

- Customer Reference Number;
- name and address of the registered owner;
- vehicle details;
- registration details;
- time of the last record update; and
- registration effective date.

⁵⁹ Queensland Department of Transport and Main Roads, *Online Services*, viewed at <http://www.tmr.qld.gov.au/Online-services.aspx>

⁶⁰ CITEC Confirm, *Vehicle searches and lodgements*, viewed at https://www.confirm.citec.com.au/citecConfirm/services/vehicle/infokit/confirm_portfolio_vehicle.pdf

CITEC Confirm offers services that provide the ability for approved State and Federal Government departments to search for current and historical vehicle registration information using an owner's name.⁶¹

5.5.2 The Queensland Office of State Revenue

The Queensland OSR is part of Queensland Treasury and is responsible for collecting state taxes (relevantly, stamp duties, payroll tax and land tax) and royalties, and administering the Queensland First Home Owners' Grant.⁶²

Under the *Land Tax Act 2010 (Qld)*, the Queensland Government imposes land tax on the owners of freehold land each financial year. A land tax clearance certificate is an official advice stating there is no tax owing on a piece of land.⁶³

Purchasers of land can apply for a land tax clearance certificate online using the following information brokers:

- CITEC Confirm;
- SAI Global Property; and
- SearchESS.

Agents acting for purchasers (for example, legal professionals or conveyancers) can additionally apply through:

- GlobalX;
- InfoTrack; and
- Veda.

Queensland OSR also provides the same service by mail lodgement.⁶⁴

5.5.3 Queensland Magistrates Court and the Queensland Civil Administrative Tribunal

The QMC and the QCAT engage CITEC Confirm to provide restricted online document lodgement services.

The QMC is the first level of the Queensland Courts system and hears both criminal cases and civil actions.⁶⁵

The QMC also deals with:

- traffic infringements;
- minor offences such as shoplifting or disorderly behaviour; and
- less serious offences such as burglary, assault, fraud and drugs.⁶⁶

QCAT is an independent tribunal which resolves disputes in respect of issues such as adult administration and guardianship, administrative decisions, anti-discrimination, building disputes, children and young

⁶¹ CITEC Confirm, *Vehicle searches and lodgements*, viewed at

https://www.confirm.citec.com.au/citecConfirm/services/vehicle/infokit/confirm_portfolio_vehicle.pdf

⁶² Queensland Treasury, *Taxes, royalties & grants*, viewed at <https://www.treasury.qld.gov.au/taxes-royalties-grants/index.php>

⁶³ Queensland Government, *Land Tax Clearance Searches*, viewed at <https://www.qld.gov.au/environment/land/tax/payment/clearance/>

⁶⁴ Queensland Government, *Land Tax Clearance Searches*, viewed at <https://www.qld.gov.au/environment/land/tax/payment/clearance/>

⁶⁵ Queensland Courts, *Magistrates Court*, viewed at <http://www.courts.qld.gov.au/courts/magistrates-court>

⁶⁶ Queensland Courts, *Magistrates Court*, viewed at <http://www.courts.qld.gov.au/courts/magistrates-court>

people, customer disputes, debt disputes, minor civil disputes, occupational regulation, residential tenancy disputes, retail shop leases and tree disputes.⁶⁷

Subscribers to CITEC Confirm are able to electronically file documents for all Magistrates Courts and Tribunals, including QCAT, throughout Queensland. Subscribers of these services are typically legal practitioners, licenced commercial agents and self-represented Plaintiffs and Applicants.⁶⁸

5.5.4 Queensland Police Service

The QPS engages CITEC Confirm to provide restricted access to Queensland property crime reports and Queensland traffic incident reports.

QPS makes several documents available for purchase, as detailed in the table below (Table 6).

Table 5: QPS documents for purchase

<i>Document available for purchase</i>	<i>Information brokers providing access to the document</i>
Court Briefs; criminal history; Police Certificates; fingerprint; person history; photographs	No information brokers used. Customers purchase directly from QPS.
Crime Report. A person can obtain an extract of a crime report in which they are the complainant.	CITEC Confirm
Traffic Incident Reports. A person can obtain a copy of a Traffic Incident Report (and related documents) if they are a party to the incident or have a bona fide interest in the incident.	CITEC Confirm
Traffic history and traffic statistics	DTMR provides this data

Source QPS website <https://www.police.qld.gov.au/corporatedocs/purchase/default.htm>

5.5.5 County Court of Victoria

The County Court of Victoria is the major trial Court in Victoria, with jurisdiction over the following:

- all civil matters;
- criminal jurisdiction;
- criminal appeals; and
- making orders relating to adoption.

As of 1 August 2016, the County Court of Victoria made civil eFiling mandatory. CITEC Confirm is the court's eFiling provider.⁶⁹

CITEC Confirm enables eFiling of documents including Subpoenas, Writs, Notices of Appearance and Setting Down for Trial Fees at any County Court of Victoria location.⁷⁰

⁶⁷ Queensland Civil and Administrative Tribunal, *About QCAT*, viewed at <http://www.qcat.qld.gov.au/about-qcat>

⁶⁸ CITEC Confirm, *Queensland Magistrates Court and QCAT eFiling CITEC Confirm eLearning*, viewed at https://www.confirm.citec.com.au/citecConfirm/elearning/court/qld_magi_court_qcat.shtml

⁶⁹ County Court of Victoria, *Civil eFiling*, viewed at <https://www.countycourt.vic.gov.au/efiling>

⁷⁰ CITEC Confirm, *Court eFiling and online lodgements*, viewed at https://www.confirm.citec.com.au/citecConfirm/services/court/infokit/confirm_portfolio_courts.pdf

5.5.6 Magistrates Court of Victoria

The Magistrates' Court of Victoria manages the following areas:

- criminal matters and traffic offences;
- money claims and civil disputes;
- family law;
- family violence and intervention orders;
- fines and penalties, including the Infringements Court; and
- specialist court jurisdictions, including the Drug Court and Koori Court.⁷¹

The Magistrates Court of Victoria introduced an Electronic Data Exchange program in 1993, providing authorised solicitors with the ability to electronically lodge court documents. Three data interchange providers include: CompuCourt⁷², Litigation Guardian⁷³, and CITEC Confirm.⁷⁴

5.5.7 Supreme Court of Victoria

Victoria's Supreme Court is the highest court in Victoria, dealing with the state's most serious criminal and civil cases.⁷⁵

Legal practitioners can electronically lodge, process and retrieve court documents relating to civil cases through CITEC Confirm⁷⁶. CITEC Confirm enables eFiling of more than 100 documents including Writs, Defences, Affidavits, Applications for Default Judgment and Subpoenas.⁷⁷

⁷¹ Magistrates' Court of Victoria, *About the Court*, viewed at <https://www.magistratescourt.vic.gov.au/about-us/about-court>

⁷² CompuCourt, *Electronic Document Issuing with the Magistrates Court of Victoria*, viewed at <http://www.compu-court.com.au/>

⁷³ Tailored Computer Systems Pty Ltd, *Litigation Guardian*, viewed at <http://www.tcspl.com.au/content/litigation-guardian>

⁷⁴ CITEC Confirm, *Court eFiling and online lodging*, viewed at https://www.confirm.citec.com.au/citecConfirm/services/court/infokit/confirm_portfolio_courts.pdf

⁷⁵ Supreme Court of Victoria <http://www.supremecourt.vic.gov.au/>

⁷⁶ Supreme Court of Victoria, *eFiling and case management*, viewed at <http://www.supremecourt.vic.gov.au/home/forms+fees+and+services/efiling+and+case+management/>

⁷⁷ CITEC Confirm, *Court eFiling and online lodging*, viewed at https://www.confirm.citec.com.au/citecConfirm/services/court/infokit/confirm_portfolio_courts.pdf

6 ACCESS TO THE SERVICES

This chapter discusses whether CITEC Confirm enjoys a competitive advantage over its competitors by virtue of its government ownership and due to it not being subject to the same procedural or regulatory requirements (at the State level) as its competitors. This chapter considers whether CITEC's access to the Services is exclusive and breaches the principle of competitive neutrality.

This chapter includes a discussion of whether there are procedural or regulatory requirements:

- *built into contracts or agreements between CITEC Confirm and relevant Queensland departments; and*
- *set out in a government directive or policy restricting government departments from engaging alternate information brokers.*

This chapter also discusses a government department's purchasing decision and any requirements the departments must follow in making those decisions.

6.1 InfoTrack's submission

InfoTrack states in its submission that CITEC has the advantage of exclusive access to the Services because the government departments or agencies that operate the relevant databases will not allow any direct access, by other information brokers. Therefore, InfoTrack submits that CITEC Confirm's exclusive access provides it with a competitive advantage over other information brokers. Further, and more significantly according to InfoTrack, is that customers who have demands for the Services in Queensland, or Victoria, or both, must choose between using either CITEC Confirm exclusively or using CITEC Confirm together with another information broker, and consequently incurring the cost and inconvenience of doing so. By way of example, InfoTrack notes that there are Queensland based customers that have elected not to become customers of InfoTrack because they cannot access the Services through InfoTrack.⁷⁸

In addition, InfoTrack submits that other detrimental consequences of CITEC's exclusive access to the Services are:

- it inhibits the quality of access to the Services and therefore increases the indirect costs to customers of using the Services;
- it discourages innovation as the Services are not driven by competition to develop innovative methods of using and combining information from sources; and
- it is inconsistent with the State of Queensland's Open Data Strategy and contrary to the community interest in the promotion of transparency and open access to information.⁷⁹

Specifically, InfoTrack differentiates access to land tax certificates. InfoTrack considers that CITEC Confirm has a competitive advantage with respect to Land Tax Certificates from Queensland OSR, because to access the certificates through CITEC Confirm (pursuant to a Reseller Agreement), InfoTrack must pay the statutory fee charged by Queensland OSR, as well as a separate search delivery fee charged by CITEC Confirm. InfoTrack submits that CITEC does not incur the separate search delivery fee.⁸⁰

⁷⁸ InfoTrack Pty Ltd, Submission to the Queensland Productivity Commission dated 4 March 2016, *Competitive Neutrality complaint against CITEC, Submission on behalf of InfoTrack Pty Ltd*, paragraph 5 - 8

⁷⁹ InfoTrack Pty Ltd, Submission to the Queensland Productivity Commission dated 4 March 2016, *Competitive Neutrality complaint against CITEC, Submission on behalf of InfoTrack Pty Ltd*, paragraph 8

⁸⁰ InfoTrack Pty Ltd, Submission to the Queensland Productivity Commission dated 4 March 2016, *Competitive Neutrality complaint against CITEC: Submission on behalf of InfoTrack Pty Ltd*, p. 12

InfoTrack submits that the appropriate remedy to address CITEC Confirm's exclusive access to the Services is for the relevant government departments or agencies that control one or more of the Services to make the services available to any information broker using a web service or API. It argues that this is consistent with best practice across Australia utilised by many agencies such as, for example, ASIC. InfoTrack submits that adopting best practice will enable open competition between information brokers to provide best quality of service to customers.⁸¹

In addition, InfoTrack questions whether CITEC is complying with the CN Policy and is charging at full cost including showing a return on equity (after income tax) consistent with the private sector in the medium term.⁸²

6.2 CITEC's submission

CITEC submitted a joint submission on behalf of CITEC, DTMR, QPS and the Minister for Innovation, Science and the Digital Economy and the Minister for Small Business.

In its submission, CITEC refutes the assertion that its access to, and provision of, the Services does not comply with the principle of competitive neutrality. CITEC submits that:

*Competitive neutrality is not aimed at removing comparative advantages or competitive advantages related to the superior performance or inherent advantages of firms operating within the same legal and regulatory framework.*⁸³

CITEC notes it was not aware of any directive given to it, or to any other agency, requiring use of CITEC's Services to the exclusion of any other service provider. CITEC also said it was not aware of any requirement that is imposed on InfoTrack and other competitors that does not also apply to CITEC Confirm. CITEC submitted that although there are some restrictions on access to the Services, CITEC is not exempt from those restrictions.⁸⁴

To accompany its submission, CITEC provided the Commission with the service agreements listed in the following table (Table 7).

Table 6: Service agreements supplied to the Commission

	<i>Department</i>	<i>Agreement</i>
Queensland Services	Department of Transport and Main Roads	Queensland Motor Vehicle Registry (TRAILS)
	Queensland Police Service	Traffic Information Reporting System
	Queensland Police Service	Crime Reporting Information System for Police

⁸¹ InfoTrack Pty Ltd, Submission to the Queensland Productivity Commission dated 4 March 2016, *Competitive Neutrality complaint against CITEC, Submission on behalf of InfoTrack Pty Ltd*, paragraph 10

⁸² InfoTrack Pty Ltd, Submission to the Queensland Productivity Commission dated 4 March 2016, *Competitive Neutrality complaint against CITEC, Submission on behalf of InfoTrack Pty Ltd*, paragraph 54

⁸³ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 15

⁸⁴ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraphs 18

	<i>Department</i>	<i>Agreement</i>
	Department of Justice and Attorney General	Queensland Magistrates Courts - Electronic Filing of Documents
	Department of Justice and Attorney General	Queensland Civil and Administrative Tribunal - Electronic Filing of Documents
	The Commissioner of State Revenue	Land tax clearance certificates
Victorian Services	Department of Justice (Vic)	Electronic data interchange trading agreement
	Department of Justice (Vic)	County Court of Victoria Electronic Filing Agreement
	Department of Justice (Vic)	Victorian Supreme Courts Electronic Filing of Documents

Further, the submission states that CITEC has:

*... developed systems at its own cost that allow it to interface with the agency's database and disseminate information to authorised user clients. CITEC has made considerable investments in developing the relevant interfaces that allow it to access and provide the Services and retains ownership of those systems*⁸⁵

The submission raises other factors not related to CITEC's status as a Government business that are relevant to a decision by agencies to use CITEC's services. These include the long-standing and strong commercial relationship between the parties and the significant investment made by CITEC to develop interfaces with each agency's systems. Further, CITEC submits that there are also many commercial reasons why an agency may decide not to allow InfoTrack access to the Services. It states that it would be uncommercial for the agency to enter into an arrangement that was on less advantageous commercial terms than its existing arrangements with CITEC.⁸⁶

CITEC's submission concludes that any advantage it may have in the market place arises wholly as a result of commercial factors. CITEC's submission points to a Queensland Treasury publication which notes that:

*It is important that Government SBAs are not restricted from operating commercially because of competitive neutrality. The policy framework for competitive neutrality does not restrict SBAs from using valid private sector practices in relation to pricing matters and tied clients.*⁸⁷

On the matter of access to the Services to the Victorian Police and Courts of Victoria, CITEC considers there would be no authority for CITEC or the Queensland Government to seek to attempt to impose a requirement on interstate agencies. Further in its submission, CITEC states that:

⁸⁵ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraphs 34, 35, 44, 45

⁸⁶ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraphs 19

⁸⁷ Queensland Treasury 2001, *Queensland's Competitive Neutrality Complaints Process*, Queensland Government, Brisbane, p. 6

- CITEC has been nominated as an authorised provider of eFiling services in accordance with the legislative requirements under the *County Court Civil Procedure Rules 2008 (VIC)*,⁸⁸
- CITEC is a non-exclusive provider of eFiling services to the Victorian Magistrates Court - there are two other providers, namely CompuCourt Pty Ltd and Tailored Computer Systems Pty Ltd;⁸⁹
- CITEC has been nominated as an authorised provider of eFiling services to the Victorian Supreme Court in accordance with the legislative requirements under the *Supreme Court (General Civil Procedure) Rules 2015 (VIC)*,⁹⁰
- CITEC does not have access to Victorian Police crime incident reports. Rather, it acts as a search engine whereby its clients may submit a request, through the CITEC website, for information from Victoria Police,⁹¹ and
- CITEC is not aware of any requirement or restriction that would prevent any other service provider from acting as a search engine for information from Victoria Police (Victorian Crime Incident Reports). The CITEC arrangement is not exclusive.⁹²

CITEC submits that, for InfoTrack to provide eFiling services similar to those provided by CITEC to the Victorian courts, InfoTrack would need to request approval as an authorised provider for the purposes of the relevant court rules. CITEC notes that it is a matter for the individual Court to decide whether:

- it is satisfied with the service currently provided by CITEC;
- there is any need or advantage in appointing another service provider to provide similar services; and
- InfoTrack or any other service provider satisfied its requirements.⁹³

In relation to the search delivery fee charged by CITEC for access to Queensland OSR land tax certificates, CITEC advised that all brokers, including CITEC Confirm, are charged the same fee.⁹⁴

6.3 Victorian Services

The Commission notes that, in its submission, CITEC states at paragraphs 20 to 22:

Section 32(1)(c) of the Productivity Act [sic] only applies to requirements of the Commonwealth, the State or a local government. For the purpose of that section, 'the State' refers to the State of

⁸⁸ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 33

⁸⁹ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 26

⁹⁰ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 43

⁹¹ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 48

⁹² Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraph 51

⁹³ Crown Law 4 March 2016, *Joint submission to the Queensland Productivity Commission regarding the complaint by InfoTrack Pty against CITEC*, on behalf of CITEC, Department of Transport and Main Roads, Queensland Police Service, Minister for Innovation, Science and the Digital Economy and Minister for Small Business, paragraphs 34, 35, 44, 45

⁹⁴ CITEC meeting 2 November 2016

Queensland, not any other State. Therefore, any requirements imposed by a Victorian body are irrelevant for the purpose of the section and the principle of competitive neutrality.

Any requirement that the Victorian Police and Victorian Courts only use CITEC for the Services must, as a matter of common sense, be imposed by those agencies themselves or the Victorian Government. There would be no authority for CITEC or the Queensland Government to seek to attempt to impose such a requirement on interstate agencies.

For this reason, it is submitted that the complaint in so far as it relates to access to Services relating to Victorian agencies should be dismissed, because any requirement imposed by a Victorian agency, even if it did exist, falls outside the scope of s 32(1)(c).

Section 4 of the Act states that it is the intention of Parliament that the Act applies, as far as possible, to land, things, acts and transactions (wherever situated, done, entered into or happening) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction (including a foreign country). In addition, Schedule 1 the *Acts Interpretation Act 1954* (Qld) defines 'State' to mean 'a State of the Commonwealth, and includes the Australian Capital Territory and the Northern Territory'.

Accordingly, a State of the Commonwealth is interpreted to mean any State of the Commonwealth. This means that, for the purpose of applying the principle of competitive neutrality under section 32 of the Act, the words "the Commonwealth, the State or a local government" in section 32 captures both the State of Queensland and the State of Victoria.

The Commission's position is that section 4 of the Act makes it clear that the legislature's intent is that the Act has extraterritorial application. Therefore, the Commission is required to consider the complaint as it applies to the Victorian agencies and services.

Finding

6.1 In accordance with section 4 of the Act, the Commission is required to consider the complaint as it applies to the Victorian agencies and services.

6.4 The Commission's analysis

In undertaking its review of whether CITEC Confirm has exclusive access to the Services, the Commission considered the following questions:

- Does CITEC Confirm have exclusive access to the Services granted via an agreement, or contract?
- Does CITEC Confirm have exclusive access to the Services due to government legislation or policy?
- Are InfoTrack and CITEC Confirm competing to provide the services?

6.4.1 Exclusive access via contract or agreement

The Commission examined the Agreements provided by CITEC, to identify whether any exclusive arrangements are imposed. In undertaking this examination, the Commission was aware that exclusivity could be granted expressly within the Agreements, or by imposing a barrier to entry such as entering a prolonged Term of Agreement.

The Commission found no provisions within the Agreements that would act to provide CITEC Confirm with exclusive access to the Services. Further, the Commission refers to the Agreements between CITEC Confirm and the following agencies where they expressly provide for the engagement of other information brokers:

Queensland Transport:

The Provider agrees not to offer the Data available for access from the TRAILS Database on the CITEC Confirm System to any other party at a cost less than the information fee charged to Authorised Users pursuant to the Agreement.⁹⁵

Department of Justice and Attorney General:

... nothing herein shall be deemed to: (a) confer any right or impose any obligation or restriction on either party with respect to any other project, services, effort or marketing activity at any time undertaken by either party hereto, jointly or separately; or (b) limit the rights of either party to promote, market, sell, lease, license or otherwise dispose of its standard products or services.⁹⁶

Queensland Office of State Revenue:

The Commissioner has agreed to engage Access Services to facilitate the online receipt of applications for and issue of Certificates to Applicants by Brokers, subject to the terms of this MOU...

Upon the Commencement Date of this MOU, CITEC Confirm will be placed in the position of a Broker, such position to be on terms and conditions no more favourable than those afforded by ACCESS Services to any other Broker.⁹⁷

Department of Justice, Victoria

... the Department grants to CITEC, subject to the terms and conditions of this Agreement, a non-exclusive licence to access the CLMS and to facilitate electronic filing of Documents by Authorised Users.⁹⁸

Having regard to section 32 of the Act and the provisions of the CN Policy, the Commission considers that, based on the service agreements provided (as listed in Table 7 above), there are no agreements or contractual arrangements providing CITEC Confirm with exclusive access to the Services.

Findings

6.2 Based on the service agreements provided, the Commission found no evidence of provisions granting CITEC Confirm with exclusive access to the Services.

6.4.2 Regulatory advantage and exclusive access due to government legislation or policy

The Commission explored whether Queensland Government legislation or policies, as they may apply to competitive neutrality in the context of the complaint, exist which provide CITEC Confirm with an advantage over its private sector competitors.

CITEC's submission to the Commission listed a number of legislative and policy requirements that govern access to, and dissemination of, information from Queensland agencies' databases. The Commission reviewed the following documents:

- *Information Privacy Act 2009;*
- *Public Records Act 2002;*

⁹⁵ Memorandum of Understanding for Public Access to Queensland Transport's Vehicle Registration Database via the TRANSPORT REGISTRATION AND INTEGRATED LICENSING SYSTEM (TRAILS) between The Director-General Queensland Transport and The State of Queensland Acting through CITEC Confirm, clause 25.1

⁹⁶ Memorandum of Understanding between CITEC a fully commercial business of the Queensland Government ("CITEC") and Department of Justice and Attorney General (Justice), clause 2.2

⁹⁷ Memorandum of Understanding between the Commissioner of State Revenue and CITEC Access Services, Recital C.

⁹⁸ County Court of Victoria Electronic Filing Agreement, clause 4.1

- *Right to Information Act 2009*;
- Quality Management Standard: ISO 9001:2008;
- The Payment Card Industry Data Security Standard; and
- Queensland Government Enterprise Architecture Customer Details Management Policy and Information Standards.

The Commission also reviewed the following Queensland legislation and policies to determine whether CITEC Confirm benefits from being government owned, and whether the legislation or policies restrict privately owned information brokers from competing with CITEC Confirm:

- *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010*;
- Queensland’s Open Data policy;
- Queensland Government Policy on the Contracting-out of Services; and
- *Industrial Relations Act 1999*.

After considering the above policies and legislation, the Commission found that CITEC Confirm does not face a less stringent regulatory system compared with the private sector and accordingly, CITEC Confirm has no advantage over the private sector based on which regulations it must adhere to. The Commission also considers that CITEC Confirm does not appear to be advantaged over the private sector as a result of the application of Queensland Government policies, or standards.

During the Commission’s review of Queensland legislation and policies, The Commission also considered whether any of legislation or policies would, in anyway, restrict a Queensland Government agency or department from engaging a private sector information broker.

The Commission notes it is the policy of the Queensland Government that there will be no contracting-out of services currently provided in-house, other than where Cabinet is satisfied that there is a shortage of in-house skills, an inability to meet the cost of new technology, or it is clearly demonstrated to be in the public interest that services should be contracted out.⁹⁹ This is provided for in the Queensland Government Policy on the Contracting-out of Services and is discussed in greater detail below.

The Commission determined that, based on the legislation and policies reviewed, a Queensland government department or agency would not be prohibited from engaging a private sector information broker where it is in the public interest to do so.

Analysis undertaken by the Commission can be found in Appendix A.

⁹⁹ Department of the Premier and Cabinet, *Queensland Government Policy on the Contracting-out of Services*, 16 January 2016 viewed at <https://www.qld.gov.au/gov/system/files/documents/contracting-out-of-services-policy.pdf?v=1467945952>

Findings

- 6.3 CITEC Confirm does not have an advantage over its private sector competitors that may arise from applicable Queensland legislation.
- 6.4 CITEC Confirm does not have an advantage over its private sector competitors resulting from Queensland Government policies relating to information brokerage.
- 6.5 The overarching principles and standards governing the management of access to government information and databases do contain provisions restricting a Queensland government agency's ability to engage private sector information brokers, where it is in the public interest to do so.

6.4.3 Are InfoTrack and CITEC in competition to provide the services?

As noted above, the general premise of section 32(1)(c) of the Act is that a government agency carrying on a significant business activity should not enjoy a competitive advantage over competitors, or potential competitors, in a market due to Government ownership.

In its competitive neutrality complaint, InfoTrack noted that:

CITEC ... is owned and operated by the State of Queensland. It provides a number of the services that are also provided by InfoTrack.

There are other information brokers that provide access to the same or similar services.

Information brokers compete to be the "supplier of choice" for customers, ideally servicing all of that customer's needs. It is a very competitive market, and information brokers are constantly innovating, looking for new product and services to differentiate from their competitors.

In those circumstances, there is market for information brokerage services.¹⁰⁰

Given InfoTrack's submission, the Commission examined the market for the provision of services and considered whether CITEC and InfoTrack are competing to provide the services. Key to this examination is review of a government department's decision to engage an information broker.

A Government Department's purchasing decision

In its submission, InfoTrack provided examples of correspondence it had with government departments and agencies, where InfoTrack requested the department (or agency) provide it with access to:

- departmental databases in order to provide this information to its clients; and
- provide eFiling services on behalf of its clients to the courts.

For instance, in respect of gaining access to provide eFiling, InfoTrack wrote the following to the QMC:

Due to demand from our QLD clients to provide e-filing services, InfoTrack formally requests the opportunity to offer e-filing directly via an API or web services. We intend to provide e-filing services Court via an API understanding as with our other Government providers there are specific rules around formatting data.

We are aware that CITEC Confirm provides e-filing for QLD Magistrates Courts and it is our desire to offer this same service to our clients.¹⁰¹

¹⁰⁰ InfoTrack, Competitive neutrality complaint to the Queensland Competition Authority, 16 September 2015, pp. 1-2

¹⁰¹ InfoTrack, letter to the Registrar of the Courts, 24 April 2015.

The following table (Table 8) summarises various agencies' responses to InfoTrack's requests for access to the respective databases. Not all agency (or department) responses were provided to the Commission.

Table 7: Agencies' responses to InfoTrack's requests for access

<i>Department</i>	<i>Response to InfoTrack</i>
Department of Transport and Main Roads	The Registration Regulation ¹⁰² expressly limits the persons and entities which are entitled to obtain information from the vehicle register and is clear that access to information is restricted to specific persons for specific circumstances. ¹⁰³
Department of Justice and Attorney General	The Queensland Court Services civil database is a legacy system and as such it would be prudent to delay the processing of your request until the attitude of both the Queensland Government's ICT strategy and the Open Data Initiative in relation to the database and its viability has been clarified. This will ensure that any access to the data is via an installed interface that meets the required specifications. ¹⁰⁴
The Commissioner of State Revenue	OSR delivers its wholesale services through CITEC Access (not Confirm), on the basis that they offer all retailers the same level of service at the same price (to address the competitive neutrality issue). CITEC, through Access Services is the gateway for the provision of electronic land tax certificates. The Queensland OSR does not have the capability to directly link with external brokers. ¹⁰⁵
CITEC Confirm	CITEC does not have the ability to grant InfoTrack access to the services requested....it is suggested that InfoTrack engages with the relevant information holding agencies in order to seek access to their services. ¹⁰⁶

Based on the responses back to InfoTrack, the Commission concluded that each of the agencies and departments have specific and dissimilar reasons for not engaging, or procuring the services of more than one information broker.

A key consideration for the Commission during its examination was whether Queensland Government departments or agencies are obliged to engage with more than one information broker, or in other words, open-up service provision to the private sector, where the same services can be provided in-house. Services provided by CITEC Confirm can be considered 'in-house' provision, given both the purchaser and the provider of the service are Queensland Government agencies or departments. Victorian Services are considered in section 6.4.4.

In coming to a view, the Commission considered both the Queensland Government's Policy on the contracting out of services (discussed below) as well as the CN policy which states:

Neither does competitive neutrality mean that the Government is obliged to open up to competition the in-house provision of goods and services, even though they may reasonably be provided by the private sector.¹⁰⁷

¹⁰² *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010*

¹⁰³ InfoTrack, e-mail to the Department of Transport and Main Roads, 6 September 2012.

¹⁰⁴ Queensland Department of Justice and Attorney General, letter to InfoTrack, 25 January 2013

¹⁰⁵ InfoTrack, e-mail to the Queensland Office of State Revenue, 5 June 2015.

¹⁰⁶ CITEC Confirm, letter to InfoTrack, 4 September 2015.

¹⁰⁷ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 10

Queensland Government Policy on the Contracting-out of Services

On 16 January 2016, the Queensland Department of the Premier and Cabinet released the 'Queensland Government Policy on the Contracting-out of Services'.¹⁰⁸ This policy applies to all Queensland Government agencies (including departments, public service offices, statutory authorities, and other government entities as defined under the *Public Service Act 2008*) and all tenured employees of these agencies. Section 3.1 of the policy states that it is the policy of the Government that, in order to maintain existing government jobs, there will be no contracting-out of services currently provided in-house other than in circumstances where:

- actual shortages exist in appropriately skilled in-house staff;
- there is a lack of available infrastructure capital or funds to meet the cost of providing new technology; or
- it can clearly be demonstrated that it is in the public interest that services should be contracted-out.¹⁰⁹

For the purposes of this policy, contracting-out refers to a contractual arrangement to deliver a service to government or the provision of a government service by a non-government service provider. It also states that the purchase of services by government agencies from an internal government provider is not regarded as contracting-out.¹¹⁰

Having considered the CN Policy and the Queensland Government Policy on the Contracting-out of Services, the Commission considers that whether a Government department or agency decides to engage a private sector information broker is a matter to be decided by the Government department or agency. In light of the Government's position in respect of contracting out services, the Commission does not consider that Government departments and agencies are obliged to offer the private sector the opportunity to have access to, and provide, its databases to provide the Services. Given this, it is the Commission's view that CITEC Confirm and InfoTrack are not competing to provide the following services, as the services are being provided on an in-house basis:

- document lodgement services in the QMC;
- document lodgement services in the QCAT;
- vehicle registration number searches on the QMVR; and
- Queensland property crime and traffic incident reports.

If in the future, a government agency should make the decision to engage services from a provider outside of its in-house provider (namely, CITEC Confirm), CITEC Confirm would be entitled to bid against private sector providers, but must do so on a competitively neutral basis¹¹¹, and in accordance with the Queensland Government Policy on the Contracting-out of Services.

Having regard to section 32 of the Act and the CN Policy, the Commission does not consider that CITEC Confirm has a competitive advantage in the provision of certain Queensland services, on the basis that it is engaged as an 'in-house' provider of services. The purchasing decisions of a government department or agency are the discretion of those government departments and agencies and any decision in respect of the

¹⁰⁸ Department of the Premier and Cabinet, *Queensland Government Policy on the Contracting-out of Services*, 16 January 2016 viewed at <https://www.qld.gov.au/gov/system/files/documents/contracting-out-of-services-policy.pdf?v=1467945952>

¹⁰⁹ Department of the Premier and Cabinet, *Queensland Government Policy on the Contracting-out of Services*, 16 January 2016 viewed at <https://www.qld.gov.au/gov/system/files/documents/contracting-out-of-services-policy.pdf?v=1467945952>, p. 2

¹¹⁰ Department of the Premier and Cabinet, *Queensland Government Policy on the Contracting-out of Services*, 16 January 2016 viewed at <https://www.qld.gov.au/gov/system/files/documents/contracting-out-of-services-policy.pdf?v=1467945952>, p. 1

¹¹¹ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities (July 1996)*, p. 10

engagement of external service providers must be in accordance with the applicable government policies. Such decisions do not create a competitive advantage and therefore, the Commission does not consider that CITEC Confirm has breached the principle of competitive neutrality in this regard.

Findings

- 6.6 The Commission did not find that CITEC Confirm has a competitive advantage over its competitors on the basis that it is engaged as an ‘in-house’ provider for the following services.
- (a) document lodgement services in the Queensland Magistrates Court;
 - (b) document lodgement services in the Queensland Civil and Administrative Tribunal;
 - (c) vehicle registration number searches on the Queensland Motor Vehicle Register; and
 - (d) Queensland property crime and traffic incident reports.
- 6.7 If a Queensland government department or agency decides to ‘open up’ provision of services, (in this instance information brokerage), CITEC Confirm would be entitled to tender for the services, and must do so on a competitively neutral basis.

6.4.4 Services not provided in-house

Not all of the Services are provided on an in-house basis. Examples of such services are:

- land tax certificates from Queensland OSR are provided by more than one information broker, through CITEC Access acting as a conduit to the OSR database; and
- the services located in Victoria.

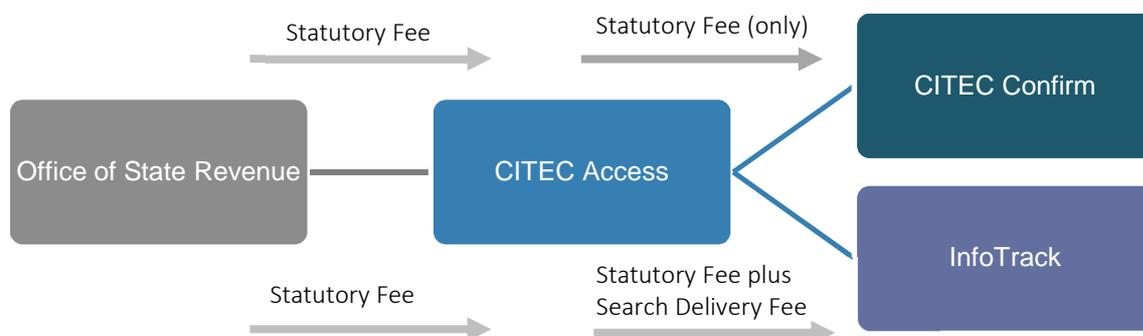
The Commission’s consideration of these services is discussed in the following sections.

Queensland Office of State Revenue land tax certificates

The Commission notes both CITEC Confirm and InfoTrack provide access (for their respective customers) to land tax certificates from Queensland OSR.

InfoTrack’s Reseller Agreement with CITEC Access requires that InfoTrack pay a statutory fee, plus a search fee. InfoTrack believes CITEC Confirm only pays the statutory fee, giving it a competitive advantage. Figure 6 depicts InfoTrack’s assertion of how charges flow under the reseller agreements.

Figure 6: Diagram outlining InfoTrack's claim of charges under reseller agreements for provision of Queensland OSR land tax certificates



As part of its investigation of InfoTrack’s complaint, the Commission conducted an interview with CITEC Confirm’s management personnel, and reviewed the internal electronic journal entries accounting for the

charge of the search delivery fee by CITEC Access Services to CITEC Confirm. The agreement between CITEC Access Services (as wholesaler) and InfoTrack was also examined, and applicable fees compared.

The Commission's review of the journals of transfer accounting evidences that CITEC Confirm incurs the search delivery fee on the same basis as InfoTrack. Accordingly, having regard to section 32 of the Act and the CN Policy, the Commission does not consider that CITEC Confirm has a competitive advantage in the delivery of services to the Queensland OSR by virtue of its fee arrangements with CITEC Access. The Commission is satisfied that CITEC Confirm is subject to the same fee arrangements as InfoTrack, and that the delivery fees are included in the CITEC Confirm cost base.

Finding

6.8 The Commission found that CITEC Confirm does not have a competitive advantage over InfoTrack in the provision of Queensland OSR land tax certificates.

The Victorian Services

The Commission invited the Victorian Police to make a submission in respect of its investigation of InfoTrack's complaint on 20 November 2015. The Victorian Police declined the invitation to provide a submission in relation to this investigation.¹¹²

A response was received from the Chief Executive Officer of Court Services of Victoria, on behalf of the Victorian Supreme Court, the Victorian County Court and the Victorian Magistrates Court (collectively, the **Victorian Courts**). In that response, the Victorian Courts advised that it would not make a written submission at that stage.¹¹³

Although the Commission is required by law to consider the complaint as it applies to the Victorian agencies and services, the Commission does not have sufficient information from those Victorian agencies to determine whether CITEC Confirm is breaching the principle of competitive neutrality in the provision of those services. In addition, the Commission does not have information gathering powers in Victoria to require agencies to provide it with the information required to come to a conclusion. Given this, the Commission is unable to determine whether CITEC Confirm enjoys exclusive access to the Victorian Services.

The Commission can however, based on the information provided by CITEC and information available publicly, conclude that CITEC Confirm does not enjoy an exclusive arrangement with the Victorian Magistrates Court, on the basis there are two other information brokers able to provide eFiling services:

- CompuCourt Pty Ltd; and
- Tailored Computer Systems Pty Ltd.

¹¹² Chief Commissioner of Victorian Police Ashton, letter to the Queensland Productivity Commission, March 1, 2016

¹¹³ Court Services Victoria, letter to the Queensland Productivity Commission, 11 February 2016

Finding

- 6.9 Based on the information made available to the Commission, it is unable to determine if CITEC Confirm enjoys exclusive access to the following services:
- (a) document lodgement services in the County Court of Victoria
 - (b) document lodgement services in the Supreme Court of Victoria
 - (c) Victorian crime incident reports.
- 6.10 Based on the information made available to the Commission it is found that CITEC Confirm does not have a competitive advantage over InfoTrack in the provision of eFiling to the Victorian Magistrates Court.

7 COMPETITIVE NEUTRALITY ADJUSTMENTS AND OTHER MATTERS

To ensure a SBA is operating on a competitively neutral basis, both the Act and the CN policy require a tax equivalent regime be followed and debt neutralisation fees be put in place. The 'equivalents' are designed to neutralise any competitive advantage a government business may have, due to being government owned.

This chapter discusses whether CITEC Confirm enjoys a competitive advantage over its competitors by virtue of its government ownership and due to it not being subject to: full Commonwealth or State taxes (or a tax equivalent system) and debt guarantee fees directed towards offsetting the competitive advantages of government guarantees.

7.1 Taxes and tax equivalents

In the Commercialisation Framework, it is noted that to ensure competitive neutrality, CBUs are required to pay tax equivalents. The Commercialisation Framework explains that:

In the absence of an appropriate taxation regime for the agency, the SBA's performance is overstated relative to private sector benchmarks. This serves to mask any inefficiencies, ... and may distort decision making.¹¹⁴

Further, the CN Policy states that for SBAs which are corporatised and fully commercialised, a Tax Equivalent Regime providing for the payment of Commonwealth income and sales tax to the state will apply. It is stated that all SBAs will also be liable for State taxes, as if they were privately owned.¹¹⁵

7.1.1 CITEC's Submission

CITEC provided its Annual Reports, and Service Delivery Statements in support of its tax and tax equivalents for both Commonwealth and State taxes.

Commonwealth taxes

On 31 August 2016, CITEC advised:

- CITEC has forecast an operating deficit and as such has not paid any dividends or taxation obligations during the 2015-16 financial year, nor has budgeted for any such payments during the 2016-17 financial year; and
- CITEC has therefore a nil dividend target and nil forecast taxation obligations as at 30 June 2016 (for the 2016-17 and future budget periods).¹¹⁶

The Commission interviewed CITEC staff and was provided access to CITEC Confirm's digital records.

The Financial Statements within the Annual Reports identify GST credits receivable from, and GST payable to, the Australian Taxation Office at the DSITI level.

State taxes

The Financial Statements within the Annual Reports identify payroll tax expense and liability, at the DSITI level. The 2013-14 Annual Report notes that from 1 July 2014 Queensland government departments (excluding CBUs) will no longer be liable for Queensland payroll tax.

¹¹⁴ Queensland Treasury 2010, *Commercialisation of Government Business Activities in Queensland Policy Framework*, p. 25

¹¹⁵ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities* (July 1996), p. 24

¹¹⁶ CITEC, letter to Assistant Crown Solicitor, 31 August 2016

During interviews conducted by the Commission, CITEC advised that payroll tax incurred by CITEC Confirm staff is directly allocated to CITEC Confirm cost centres and subsequently directly allocated to the CITEC Confirm reported cost base.

No other taxes or tax equivalents are identified in the Financial Statements.

7.1.2 The Commission's analysis

Taxes, and subsequent tax equivalents, are incurred at the CITEC level. For this reason, the Commission's review included an examination of all tax related information at the CITEC level and an investigation as to how the tax cost or tax equivalent is accounted for at the CITEC Confirm level.

Commonwealth taxes and equivalents

Income tax

The Commission notes that CITEC has agreed with Queensland Treasury to pay an income tax equivalent, in accordance with the requirements of the Tax Equivalents Regime. Income tax benefit/(expense) are identified in the Financial Statements.

On the basis of the information identified in the Financial Statements, the Commission is satisfied that DSITI has implemented a Tax Equivalent Regime and that CITEC is subject to income tax equivalent payments. Accordingly, CITEC has complied with the principle of competitive neutrality and is not in breach of section 32 of the Act.

The Commission finds that CITEC has implemented a Tax Equivalent Regime for income taxes, in accordance with the Act.

GST

The Financial Statements confirm that GST has been accounted for by DSITI for CITEC.

The Financial Statements do not provide the level of detail required to identify the proportion of GST collected, and GST input tax credits, that relate to CITEC Confirm. The CITEC Confirm Schedule of Fees outline the 'value' (GST exclusive), the GST amount and the 'price' (GST inclusive) charged for each enquiry.¹¹⁷

The Commission is satisfied that GST is appropriately accounted for. Accordingly, CITEC has complied with the principle of competitive neutrality and is not in breach of section 32 of the Act.

State taxes and equivalents

The Commission has analysed the financial information provided by CITEC Confirm to identify whether taxes and tax equivalents have been implemented, in compliance with the principle of competitive neutrality under section 32 of the Act.

Payroll tax

The yearly payroll tax threshold 2012-13 to 2016-17 is \$1.1 million.¹¹⁸ CITEC Confirm staffing levels (36 full time equivalents) suggest that CITEC Confirm would be liable for payroll tax.

The Financial Statements confirm that payroll tax has been paid by DSITI. The reduction of payroll tax expense paid by DSITI since 2013-14 aligns with cessation of Queensland Government departments' liability for payroll tax from 1 July 2014 (excluding CBUs).

¹¹⁷ CITEC Confirm, CITEC Confirm fees, viewed at [https://www.confirm.citec.com.au/htbin/pascgj\\$fees?account=ext](https://www.confirm.citec.com.au/htbin/pascgj$fees?account=ext)

¹¹⁸ Queensland Government, *Business and Industry Portal Payroll Tax Thresholds*, viewed at <https://www.business.qld.gov.au/business/employing/payroll-tax/calculating/thresholds>

The Financial Statements do not identify the proportion of payroll tax expenses apportioned to CITEC Confirm. The amount of payroll tax allocated to CITEC Information Brokerage (as advised by CITEC Confirm) is proportionate to the number of Full Time Equivalents compared to CITEC.

The Commission is satisfied that payroll tax has been properly accounted for. Accordingly, CITEC has complied with the principle of competitive neutrality and is not in breach of section 32 of the Act.

Stamp Duty and land tax

CITEC has advised that no activities were undertaken by CITEC Confirm that would generate an equivalent liability for these taxes.¹¹⁹

Table 9 summarises the Commission's findings in respect of CITEC's tax equivalent regime.

Table 8: CITEC's use of tax equivalents for Commonwealth and State Taxes

<i>Potential Benefit</i>	<i>The Commission's assessment</i>
Exemptions from Commonwealth taxes (including income tax and sales tax)	As per the CN Policy, advantages are to be removed via a tax equivalents regime. CITEC uses a tax equivalent regime to account for this advantage.
Exemptions from State taxes (including stamp duty, land tax and payroll tax)	As per the CN Policy, advantages to be removed via a tax equivalents regime. CITEC uses a tax equivalent regime to account for this advantage.

Findings

7.1 The Commission found that CITEC has implemented tax equivalent regimes at the Commonwealth and State level, in accordance with the section 32 of the Act. The Commission found that CITEC has implemented tax equivalent regimes for both Commonwealth and State level taxes and accordingly, CITEC does not enjoy a competitive advantage over competitors or potential competitors due to it not being subject to full Commonwealth or State taxes or tax equivalent systems. Therefore, CITEC is not in breach of the principle of competitive neutrality under section 32 of the Act.

7.2 Debt Guarantee Fee

To remain competitively neutral, a government business is required to pay a debt neutrality fee to remove the advantages of Government access to lower cost of funds. The CN Policy states the following:

All SBAs will be charged a fee to neutralise any cost of funds advantage by way of Government ownership. The fee will be based on the entity's stand-alone credit rating vis-à-vis its actual cost of funds.¹²⁰

¹¹⁹ CITEC, email RE: CITEC CN investigation, 9 December 2016

¹²⁰ Queensland Treasury 1996, *National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities* (July 1996), p. 24

In the Commercialisation Framework it is noted that short-term overdraft or long-term borrowing facilities will be made available to CBUs at commercial rates through Queensland Treasury Corporation, subject to normal Treasurer approval processes.¹²¹

7.2.1 CITEC's Submission

CITEC notes that it is a fully self-funded commercial business unit of DSITI. It currently holds borrowings, which it expects to be fully repaid during the 2016-17 financial year. CITEC states that the borrowings are not related to the CITEC Confirm business. CITEC also notes it has not budgeted for any additional borrowings during 2016-17.¹²²

During interviews conducted by the Commission, CITEC advised that borrowings provided to CITEC are charged at the relevant QTC rate.

7.2.2 The Commission's Analysis

The Commission notes that CITEC bears the cost of debt at a commercial rate, as verified during interviews conducted with CITEC in addition to DSITI's Financial Statements for 2015-16.¹²³

The Commission also notes there is no debt related to the operations of CITEC Confirm, therefore no cost of debt adjustments are required.

Table 9: CITEC's cost of debt

<i>Potential Benefit</i>	<i>The Commission's assessment</i>
Cheaper capital financing (no risk premium where the agency is backed by an explicit or implicit government guarantee)	Advantages to be removed by accounting for market debt. CITEC has a mechanism to include the market cost of debt at the commercial rate.

Findings

7.2 The Commission found that CITEC has a mechanism in place to account for the market cost of debt at the commercial rate and accordingly, CITEC does not enjoy a competitive advantage over competitors or potential competitors due to it not being subject to debt guarantee fees directed towards offsetting the competitive advantages of government guarantees. Therefore, CITEC is not in breach of the principle of competitive neutrality under section 32 of the Act.

¹²¹ Queensland Treasury 2010, *Commercialisation of Government Business Activities in Queensland Policy Framework*, p. 23

¹²² CITEC, letter to Assistant Crown Solicitor, 31 August 2016

¹²³ Interview conducted by the Commission with CITEC on 2 November 2016

GLOSSARY

A

Annual Reports	DSITI Annual Reports for 2013-14, 2014-15 and 2015-16
API	Application Program Interface
ASIC	Australian Securities and Investment Commission
AFSA	Australian Financial Security Authority

C

CBU	Commercialised Business Unit
CEO	Chief Executive Officer
CITEC	Centre for Information Technology and Communications
CN	Competitive Neutrality
CN Policy	Queensland Treasury 1996, <i>National Competition Policy Implementation in Queensland: Competitive Neutrality and Queensland Government Business Activities</i>
Commercialisation Framework	Queensland Treasury 2010, <i>Commercialisation of Government Business Activities in Queensland Policy Framework</i>
COAG	Council of Australian Governments
CSO	Community Service Obligations

D

DJAG	Department of Justice and Attorney-General
DSITI	Department of Science, Information Technology and Innovation
DTMR	Department of Transport and Main Roads

E

Services	Document lodgement services in the Queensland Magistrates Court, Queensland Civil and Administrative Tribunal, Magistrates' Court of Victoria, County Court of Victoria, and Supreme Court of Victoria. Vehicle registration number searches on the Queensland Motor Vehicle Register. Queensland property crime and traffic incident reports. Victorian crime incident reports.
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I

ICT	Information and Communication Technology
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N

NCP	National Competition Policy
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O

OSR	Office of State Revenue
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P

PFE	Public Financial Enterprise
PPSR	Personal Property Securities Register
PTE	Public Trading Enterprise

Q

QCA	Queensland Competition Authority
QCAT	Queensland Civil and Administrative Tribunal
QGEA	Queensland Government Enterprise Architecture
QMC	Queensland Magistrates Court
QMVR	Queensland Motor Vehicle Register
QPC	Queensland Productivity Commission
QPS	Queensland Police Service

S

SBA	Significant Business Activity
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V

Victorian Courts	Magistrates Court of Victoria, County Court of Victoria, Supreme Court of Victoria
VP	Victoria Police

APPENDIX A LEGISLATION AND POLICIES

<i>Legislation, policy or standard</i>	<i>Description and relevant sections</i>	<i>Applicable to the complainant and the stakeholders?</i>	<i>Would entry into a market be restricted?</i>
<p><i>Information Privacy Act 2009 (QLD) (IP Act)</i></p>	<p>Section 3 states that the object of the IP Act is to provide for:</p> <p>(a) the fair collection and handling in the public sector environment of personal information; and</p> <p>(b) a right of access to, and amendment of, personal information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access or allow the information to be amended.</p>	<p>The IP Act applies to all 'contracted service providers'.</p> <p>Section 34(1) states that a service arrangement is a contract or other arrangement entered into after the commencement of this section under which an entity other than an agency (the contracted service provider) agrees or otherwise arranges with an agency (the contracting agency) to provide services.</p> <p>Section 34(2) sets out the conditions for becoming a 'contracted service provider':</p> <p>(a) the services must be for the purposes of the performance of 1 or more of the contracting agency's functions; and</p> <p>(b) the services must be provided either –</p> <p>(i) Directly to the contracting agency or</p> <p>(ii) To another entity on the agency's behalf; and</p> <p>(iii) The contracted service provider must not be in the capacity of employee of the contracting agency in providing the service.</p> <p>An 'agency' as defined in section 18 of the IP Act:</p> <p>(a) a minister</p>	<p>The IP Act does not appear to restrict the ability of a private sector information broker from becoming a contracted service provider.</p> <p>The purpose of a 'contracted service provider' agreement is to bind a provider to the information privacy principles in the IP Act.</p> <p>CITEC is an agency in accordance with the definition of 'Agency' under the IP Act and as a result, is bound by the privacy laws within the IP Act. Accordingly, CITEC is not required to enter into a service arrangement.</p>

<i>Legislation, policy or standard</i>	<i>Description and relevant sections</i>	<i>Applicable to the complainant and the stakeholders?</i>	<i>Would entry into a market be restricted?</i>
		(b) a department (c) a local government (d) a public authority And a reference to an agency includes a reference to a body that is taken to be compromised within the agency (s18).	
<i>Public Records Act 2002 (Qld) (PR Act)</i>	In accordance with section 3, the main purposes of the PR Act is to ensure— — (a) the public records of Queensland are made, managed, kept and, if appropriate, preserved in a useable form for the benefit of present and future generations; and (b) public access to records under this Act is consistent with the principles of the <i>Right to Information Act 2009</i> and the <i>Information Privacy Act 2009</i> .	Under section 6, a public record is any of the following records made before or after the commencement of the PR Act: (a) a record made for use by, or a purpose of, a public authority, other than a Minister or Assistant Minister; (b) a record received or kept by a public authority, other than a Minister or Assistant Minister, in the exercise of its statutory, administrative or other public responsibilities or for a related purpose; (c) a Ministerial record; and (d) a record of an Assistant Minister Section 17 of the PR Act (Application for access to public records) notes that 'A person may apply to the archivist for access to a public record in the custody of the archives'. It does not define who can made an application.	The main purpose of the PR Act is to ensure the public records of Queensland are made, kept, managed and preserved in a useable form for the benefit of present and future generations. The PR Act promotes consistency and accountability in recordkeeping practices across government. It does not affect competitive neutrality.
<i>Right to Information Act 2009 (Qld) (RTI Act)</i>	Section 3 states that the primary object of this Act is to give a right of access to information in the government's possession or under the government's control unless, on balance, it is contrary to the public interest to give the access.	Section 23 provides that subject to the RTI Act, a person has a right to be given access under this Act to— (a) documents of an agency; and (b) documents of a Minister.	There are no restrictions on who can make an application for access to a document under the RTI Act. This act applies to public access to documents.

<i>Legislation, policy or standard</i>	<i>Description and relevant sections</i>	<i>Applicable to the complainant and the stakeholders?</i>	<i>Would entry into a market be restricted?</i>
		<p>Section 24 states that to access the information, a person who wishes to be given access to a document of an agency or a document of a Minister under the RTI Act may apply to the agency or Minister for access to the document.</p> <p>An agency, as defined in section 14, means a department, local government, public authority, government owned corporation or subsidiary of a government owned corporation. CITEC is therefore captured within this definition.</p> <p>Section 39 states that it is the Parliament's intention that if an access application is made to an agency or Minister, the agency or Minister should deal with the application unless this would, on balance, be contrary to the public interest.</p> <p>The grounds on which access may be refused are set out in section 47.</p>	<p>However, an application for access must state whether access to the document is sought for the benefit of, or use of the document by the applicant or another entity. It is then at the discretion on the decision-maker to determine whether it is in the best interest of the public to give access in accordance with section 47.</p>
<p>PCI-DSS Compliance</p> <p>The Payment Card Industry Data Security Standard (PCI DSS)</p>	<p>A proprietary information security standard for organisations that handle branded credit cards from the major card schemes.</p>	<p>It applied to both public and private information brokers.</p>	<p>It does not affect competitive neutrality.</p>
<p>Queensland Government Enterprise Architecture (QGEA)</p>	<p>QGEA is the collection of ICT policies and associated documents that guides agency ICT initiatives and investments across the government. Developed by the Queensland Government Chief Information Office the QGEA framework is intended to consolidate ICT strategy, ICT policy, Information</p>	<p>CITEC Confirm submitted that QGEA was developed for use by Queensland government agencies, however it is possible that agencies use elements of the framework for services that enable connection to datasets held by Queensland government agencies.</p>	<p>Although often associated strictly with information and communications technology, EA relates to the practice of business strategy, efficiency and effectiveness. It does not affect competitive neutrality.</p>

<i>Legislation, policy or standard</i>	<i>Description and relevant sections</i>	<i>Applicable to the complainant and the stakeholders?</i>	<i>Would entry into a market be restricted?</i>
	<p>Standards and enterprise architecture across the Queensland Government.</p> <p>Enterprise Architecture (EA) has been identified as the most appropriate decision making and management framework for enabling government and agencies to collaboratively provide seamless services and maximally leverage existing investments.</p>	<p>As an information broker, CITEC Confirm was not required to meet the requirements of QGEA in order to connect to their services.</p>	

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