

## The Australian Business Growth Fund

The final report investigating competitive neutrality was released on 11 February 2022, with a pre-release copy provided to the Treasurer's Office and the Treasury on 23 December. All stakeholders received the (same) report on 10 February 2022 — APRA, the ABGF, the specific officers responsible for the ABGF in the Treasury, and OnMarket BookBuilds, who was the complainant.

The nature of the complaint was that the ABGF — a joint venture between several Australian ADIs and the Australian Government providing equity capital to SMEs — had benefited from the change to the capital adequacy tests used by APRA for ADIs. The concern was that this lowered the cost of capital for the ABGF and allowed it to operate on non-neutral grounds with OnMarket BookBuilds, which was a specialist non-ADI also providing equity capital to promising SMEs. The core issue from a CN issue is not that the ABGF benefited from the new capital adequacy criteria, but that APRA had given this new treatment *because* of the involvement of Government as a shareholder in the fund.

After its investigations, the Australian Government Competitive Neutrality Complaints Office (housed in the PC) determined that there was no breach. The main reasons for this were:

- the provisional capital treatment afforded by APRA — which accorded with that ultimately applied — occurred prior to a commitment by the Australian Government to hold equity in the ABGF
- the capital adequacy requirements put in place were broadly consistent with (although not identical to) the internationally-agreed Basel III capital framework. Similar growth funds operating in the United Kingdom (UK) and Canada are also subject to comparable (and at times more generous) capital adequacy requirements, without government shareholding

There was concern by the complainant that several documents he was unable to access contained evidence of non-neutral treatment (namely the ABGF's shareholder agreement and the ABGF Summary of Key Terms). the AGCNCO was able to examine these documents, and these did not indicate any breach.

The case was complicated by the fact that Australian Government support for the fund's development was a key factor in the creation of the fund, and for APRA's decision about its capital treatment. However, the influence on APRA of government policy support for a fund is different from one based on an ownership stake.

While rejecting the CN complaint, the AGCNCO recommended that:

- To remove any appearance of exclusivity of the capital adequacy test for investments by authorised deposit-taking institutions in the Australian Business Growth Fund, the Australian Prudential Regulation Authority could provide greater specificity about the circumstances in which investments by ADIs in any competing fund would be eligible for the same capital treatment.

The AGCNCO also noted that assessing and remedying a breach of competitive neutrality may be more difficult for a partly owned government business than one fully owned by government. For instance, correcting any non-neutrality could be difficult when there are also private parties in the business, with contractual obligations between the Government and those parties. This

increases the imperative for a careful and transparent assessment of competitive neutrality prior to government becoming a part owner of a business.

The AGCNCO also observed that, notwithstanding its conclusion that the balance of probabilities favoured no finding about a breach, a number of claims made by APRA were not backed by full documentary evidence, such as background papers, complete minutes of meetings, or records of decision. This made the task of the AGCNCO more difficult.