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**From:** Fabricius, Theadora <Theadora.Fabricius@klgates.com>  
**Sent:** Wednesday, 9 August 2017 6:00 PM  
**To:** Dalins, Marie; Pound, Anna  
**Cc:** Jones, David; Martin, Jaime; Guirguis, Ayman; Mandla, Jessica  
**Subject:** A91583/4 - LPO Group Ltd & Ors Authorisation [KLG-AU\_Active01.FID1577012]

Dear Marie and Anna

We refer our recent telephone calls in relation to this matter.

We also refer to the submission of Australia Post dated 8 August 2017.

We understand that the ACCC is seeking some additional information from our client regarding the contentions made by Australia Post at pages 2, 6 and 10 of its submission to the ACCC dated 26 May 2017 and by POAAL in its submission to the ACCC dated 30 May 2017 that, at present, around 30% of LPOs negotiate directly with Australia Post in relation to their LPO Agreements with Australia Post. We note that Australia Post has provided further detail about these individual negotiations in its submission dated 8 August 2017.

In particular, at page 2 of its submission dated 26 May 2017, Australia Post states "*around 30% of licensees have negotiated fee arrangements or special terms with Australia Post, with these changes typically reflected in Special Conditions to their LPO Agreement.*" At page 10, Australia Post notes, "*most negotiations conducted by individual LPOs relate to their specific circumstances, rather than some global concern.*"

Similarly, at page 4 of its submission dated 8 August 2017, Australia Post states "*Australia Post will often engage in discussions and negotiations across a number of matters including, payments, services, product offers, fitouts, relocations and signage. These discussions and negotiations are often only relevant to that individual licensee and their LPO.*"

LPOG recognises that some LPOs do enter into additional individual arrangements with Australia Post, either in relation to:

- those payments in Annexure A to the LPO Agreement which are specifically stated in the LPO Agreement to be subject to negotiation; and
- the Special Conditions set out at pages 19 – 26 of the LPO Agreement concerning fixtures and fittings, the Disability Discrimination Act, security, post office box services, licensee conveyance of post articles, additional insurance, stock ordering arrangements and uniforms.

LPOG notes that, in both cases, these arrangements are a result of circumstances particular to an individual LPO and any individual negotiations between individual LPOs and Australia Post do not extend to matters that affect the LPO network as a whole.

LPOG would like to re-emphasise its position that the exclusivity arrangements envisioned under its application for authorisation to engage in a limited collective boycott of Australia Post would not operate to prevent individual LPOs negotiating directly with Australia Post in relation to the types of issues set out below, which fall outside the annual review process and material changes which affect the LPO network as a whole.

#### **Annexure A – Payments**

In Annexure A to the LPO Agreement, there is provision for LPOs to negotiate certain payments with Australia Post additional to the payments that apply to most or all LPOs. In general, these negotiations are intended to take account of geographic location or greater than "normal" volumes of work performed by LPOs. Annexure A to the LPO Agreement sets out the payments that are subject to negotiation by individual LPOs. These include:

- Representation Allowance (in relation to which the LPO Agreement provides "*in exceptional cases where large quantities of these transactions are performed a negotiable payment pay apply*");
- Mail Management Fee (negotiated amount applies where the licensee is required to serve over 1000 private delivery points of over 400 business delivery points); and
- Conveyance of Mail Fee.

From time to time, Australia Post may also negotiate in respect of other fees such as the Outward Mail Processing Fee or the Counter Mail Delivery Fee.

However, LPOG notes that there remains a significant imbalance in bargaining power between individual LPOs and Australia Post in relation to negotiating these payments as provided in the LPO Agreement. Although the LPO Agreement provides individual LPOs with the right to negotiate certain payments, in practice, individual LPOs have very limited opportunity to negotiate reasonable or equitable payments for these additional services they provide to Australia Post. In addition, to LPOG's knowledge and experience, in recent times, Australia Post has engaged in no or very limited negotiation with individual LPOs who seek to engage Australia Post in relation to these payments.

### **Special Conditions**

As noted above, the LPO Agreement also provides scope for individual LPOs and Australia Post to agree special terms in relation to certain operational matters which are the subject to Special Conditions at pages 19 – 26 of the LPO Agreement.

LPOG notes that these Special Conditions are intended to address site-specific issues and do not constitute the key terms and conditions of the relationship between Australia Post and LPOs. By way of example, Australia Post and an individual LPO may agree which security systems and insurance policies an individual LPO is required to maintain, or what order period will apply for stock ordering arrangements.

In many cases, the licence to an LPO is assigned subject to the Special Conditions negotiated by the previous licensee, without Australia Post providing the new licensee with the opportunity to renegotiate more favourable terms. In fact, LPOG understands that a number of the LPOs have in fact had the same Special Conditions attached to their LPO Agreement since it was first negotiated with Australia Post in 1993. Further, LPOG is aware that, in recent times, Australia Post has, in a number of cases, refused to assign the license for an LPO with special conditions unless the incoming licensee agrees to accept the assignment under different (less favourable) terms.

We confirm that our client is content for this communication to be placed on the ACCC's public register.

We will provide a further submission responding to the other issues raised in Australia Post's recent submission shortly.

In the meantime, if the ACCC requires any further information in order to assess our client's applications, please let us know.

Kind regards  
Thea and Ayman



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