

8 August 2017

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Ms Marie Dalins  
Director  
Adjudication  
Merger and Authorisation Review Division  
Australian Competition & Consumer Commission  
Level 35, 360 Elizabeth Street  
Melbourne VIC 3000

Dear Ms Dalins,

### **Application for Authorisation A91583 and A91584 – LPO Group Ltd**

We refer to previous correspondence between Australia Post and the ACCC in relation to the Applications for Authorisation A91583 and A91584 (**Application**) by LPO Group Limited (**LPOG**) on behalf of itself and its members. We also refer to a letter from LPOG dated 27 July 2017 (**LPOG Letter**) that was published on the ACCC's public register, which responds to questions raised by the ACCC.

We write to you for two reasons. First, to correct a number of factual inaccuracies contained in the LPOG Letter. Secondly, to reiterate a number of aspects in our 26 May 2017 letter, in order to assist the ACCC in its assessment of the Application.

#### **1 Response to the LPOG Letter**

##### *Exclusivity arrangements*

It appears the ACCC asked LPOG for further clarity around the scope of authorisation. Australia Post considers that the explanation in the LPOG Letter is an attempt to reframe the scope of authorisation to be broader than what was originally intended. In the Application, LPOG states that it seeks authorisation to:

*...enter into and give effect to a proposed arrangements that LPOG will represent certain of its member LPOs in collective bargaining negotiations with Australia Post in relation to the terms and conditions of the LPO Agreement between Australia Post and LPOG's members. The proposed collective bargaining negotiations with Australia Post will extend to negotiation of the terms and conditions, including price, under which LPOs acquire goods and services from Australia Post.<sup>1</sup>*

The Application also notes that LPOG is seeking authorisation to engage in a limited collective boycott, notes that the proposed arrangement is voluntary and LPOG's members and Australia Post may elect not to participate.<sup>2</sup>

In contrast, in the LPOG Letter, LPOG states that, in addition to covering the negotiations with Australia Post in relation to the Licensed Post Office Agreement (**LPO Agreement**), it also covers "any material changes implemented by Australia Post outside of the annual review process."

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<sup>1</sup> Section 2(a) in Form A and Form B, 10 May 2017.

<sup>2</sup> Ibid.

“Any material changes implemented by Australia Post” is very broad. Australia Post submits that, should the ACCC be minded to grant authorisation, it should only relate to negotiations under the LPO Agreement, consistent with the scope of authorisation sought in the Application.

LPOG have kindly provided a number of examples in the LPOG Letter to illustrate what it considers to be a ‘material change’. We disagree that the trialling of a new passport application process within certain LPOs (73 LPOs in South Australia of 2,879 LPOs nationally) amounts to a ‘material change’. We note by way of our own example of what would not be considered material, we recently introduced a slight procedural change that saw the removal of paper-based collection of signatures.

We also note while a change may be ‘material’ by nature of its impact, it may be one that benefits licensees and involves no costs. Examples of this sort of ‘material change’ include allowing the return of excess Christmas postage stamps, the introduction of prepaid satchels, the introduction of new technology such as EPOS terminals at no additional cost, and the extension of stock debt repayment times.

#### *LPOG membership and fees*

There are currently 2,879 LPOs nationally. LPOG has provided information that, as at 19 July 2017, there were 870 registered LPOG members and of those, 525 were financial members. It is not clear which of these members are opting into the collective bargaining group.

As per the LPOG Letter, Australia Post will request a list of the members who have opted into the group and whether those members are individual LPOs.

#### *Negotiations between LPOG and Australia Post*

It is simply inaccurate to state that there have been no discussions to date on the annual review between either LPOG or individual LPOs and Australia Post. Each year, there is a process of consultation and negotiation that takes one to two months. 2017 was no exception.

In 2017, this process commenced in 26 May 2017 and was concluded on 27 June 2017. Both licensee associations, LPOG and POAAL, were given the opportunity to provide details on a range of payments. Submissions received were considered by Australia Post before any final decision(s) were reached.

Further, we believe LPOG’s characterisation of the annual review process or other consultation processes between LPOs, the Associations and Australia Post as one-sided to be untrue. There are many instances where Australia Post has sought to introduce a new product or service and as a result of its consultations and discussions with LPOs, LPOG and POAAL, revisions have been made to Australia Post’s original proposal. For instance, the following revisions were made in the most recent annual review process following consultation:

- no negative CPI impact on licensee payments;
- CPI increases to the minimum payment allowance;
- continuation of the security loan; and
- increases in the number of prospective licensees’ staff who can be trained.

We also note the numerous obligations to consult with LPOG and POAAL contained in the LPO Agreement:

- as part of the annual fee review process;
- as part of any change to the products and services offered in connection with the operation of a LPO;
- prior to amending the terms and conditions of the LPO Agreement; and
- prior to amending the Licensed Post Office Manual.

In terms of correspondence, discussions, consultation and negotiations between Australia Post and LPOG around the time of the ACCC's decision to grant interim authorisation, we note the following events have occurred:

- there were consultations associated with the annual review process, which concluded on 27 June so that changes could be effective from 1 July;
- on 11 July, we received a letter from LPOG dated 1 July, in which LPOG sought to reopen discussions with regard to the annual review;
- on 12 July, Australia Post acknowledged receipt of LPOG's letter via email, noting it would respond shortly;
- on 28 July, Australia Post responded in writing to LPOG's letter dated 1 July, noting that the annual review process had been concluded but welcomed consultation around broader changes to payments, fees and commissions under the LPO Agreement, including a review of the appropriate indexation mechanism for delivery and mail related payments (this letter concluded with a statement that Australia Post would contact LPOG in relation to those issues shortly);
- on 2 August, Australia Post wrote to LPOs, including LPOG, in relation to an upcoming round of consultations on payment changes, a formal review of the LPO Payment Scheme and the Post Office Transformation Program.

In short, LPOG received a response from Australia Post in relation to its request to re-establish discussions around the annual review process. Further, the above timeline of interaction between Australia Post and LPOG shows that Australia Post intends to engage with LPOG in relation to proposed future changes and authorisation is not needed for that consultation to occur.

## 2 Summary of Australia Post's views

LPOG has consistently stated that the proposed exclusivity arrangements will not change the competitive dynamics under the status quo. We agree with this statement.

As set out in our letter to the ACCC dated 26 May 2017, we query the need for authorisation in these circumstances. The benefits that LPOG has identified are neither created nor enhanced by authorisation. A future with the authorisation is virtually identical to a future without the authorisation.

We note for your particular reference:

Possible public benefits	Status quo / without authorisation	With authorisation
Increase in bargaining power for licensees	Individual LPOs and groups (LPOG and POAAL) are able to engage in discussions and negotiate with Australia Post. As set out above, there a number of examples of processes where Australia Post changed its initial position based on feedback from LPOs, LPOG and POAAL.	Only change to status quo is that LPOG members will no longer be able to negotiate individually with Australia Post.
Transaction cost savings	Under the LPO Agreement, LPOs already benefit from cost sharing and jointly negotiating with Australia Post.	Status quo - no additional savings

Possible public benefits	Status quo / without authorisation	With authorisation
Sustainability of LPO model	Statutory, contractual and commercial incentives are in place to ensure that Australia Post's network of LPOs remains sustainable. LPOs receive payments from Australia Post and these payments cover the costs of providing products and services as a licensee of Australia Post.	Status quo – no additional drivers related to sustainability
Industrial harmony	Lowest level of disputes in five years with only two disputes this financial year. Dispute resolution mechanisms both internal and external are contained within the LPO Agreement.	Status quo – no increased level of harmony

By suggesting that these benefits will be created or enhanced by authorisation, LPOG is simply misconstruing the impact that authorisation will have.

Further, Australia Post maintains its view that there is a possible public detriment arising from authorisation. As noted to you in our letter of 26 May 2017, consultation between an individual licensee and Australia Post is a common occurrence. For an individual licensee's viewpoint, 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. Preventing individual licensees from engaging in these dealings with Australia Post has the potential to be to their detriment.

Finally, we maintain our views that any authorisation allowing for a collective boycott should be limited to negotiations relating to the LPO Agreement and must not empower licensees to not perform their obligations under the LPO Agreement. The range of statutory community service obligations Australia Post is required to comply with must be borne in mind.

Please do not hesitate to contact me at [makarla.cole@auspost.com.au](mailto:makarla.cole@auspost.com.au) or on 03 9106 7628 if you have any further questions.

Yours sincerely,



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