



**LPO Group Ltd & Ors –
applications for authorisation A91583 & A91584
Interim authorisation decision
30 June 2017**

Decision

The Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the applications for authorisation lodged by LPO Group Pty Ltd (LPO Group) on 11 May 2017.

Interim authorisation is granted for the Applicants (LPO Group and its current and future members) to collectively negotiate, enter into and give effect to an agreement with Australia Post. Participation is voluntary; interim authorisation does not impose any obligation for any licensed post office or for Australia Post to participate in collective bargaining if they do not wish to do so.

The scope of negotiations with Australia Post and arrangements given effect to during interim authorisation will be limited to changes to licensee payments and commissions as part of the annual review of licensee payments under the LPO Agreement, as well as the appropriate level of remuneration for any new services introduced by Australia Post during the period of interim authorisation.

Interim authorisation does not extend to any form of collective boycott activity.

Under interim authorisation there is no restriction on LPO Group members seeking to individually negotiate with Australia Post. Given the arrangements are voluntary, interim authorisation does not compel parties to participate in the proposed collective bargaining conduct.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

LPO Group seeks authorisation, on behalf of itself and its current and future Licensed Post Office (LPO) members (the Applicants), to enter into and give effect to an arrangement that LPO Group represent its LPO members in collective bargaining negotiations with Australian Postal Corporation (Australia Post). LPO Group proposes to negotiate a new agreement with Australia Post, or to vary the agreements that are currently in place on behalf of its LPO members that opt-in to the collective bargaining group, and those wishing to do so in the future.

The Applicants are also seeking authorisation to engage in a 'limited collective boycott' of Australia Post where the Applicants will agree not to negotiate with Australia Post on an

individual basis while collective negotiations are occurring (hereafter referred to as 'exclusivity arrangements'). The proposed exclusivity arrangements will only apply to LPO Group members who opt-in to the collective bargaining group.

LPOs will be able to opt-out of the process at any time should they wish to individually negotiate with Australia Post.

The Applicants are seeking authorisation for a period of 5 years. The ACCC expects to publish a draft determination on this application in August 2017.

Scope of interim authorisation

The Applicants seek interim authorisation to negotiate and not enter into agreements with Australia Post on terms more narrow in scope than the substantive application. Specifically the Applicants have sought to limit negotiations to licensee payments and commissions as part of the annual review of licensee payments under the LPO Agreement, as well as the appropriate level of remuneration for any new services introduced by Australia Post during the period of interim authorisation.

The Applicants also propose not to impose any restrictions on LPOG members to be bound by LPOG in negotiations during the period of interim authorisation, if granted by the ACCC.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (the Act). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation without making a decision on the merits of the application.

The ACCC will only grant interim authorisation in appropriate circumstances. In many circumstances it is not appropriate to do so because interim authorisation allows an applicant, for a limited period, to engage in conduct before the ACCC has been able to fully assess whether the conduct satisfies the authorisation test.

Consultation

On 16 May 2017, the ACCC invited submissions from interested parties in order to consider the request for interim authorisation.

Two public submissions in support of the interim authorisation were received from the Seaford LPO, and a further LPO whose identity is undisclosed.

Submissions were also received from Australia Post and the Post Office Agents of Australia Ltd (POAAL), who opposed interim authorisation. Australia Post and POAAL argue that there is no urgent need for interim authorisation, considering that Australia Post already engages in consultation with both LPOG and POAAL prior to implementing changes to the LPO Agreement. Further, they submit that granting interim authorisation would disrupt the annual review of LPO payments, such that any resultant increases to licensee payments would be delayed.

Subsequent submissions were received from the Applicants on 9 June 2017 and 21 June 2017. These submissions responded to concerns raised by interested parties regarding interim authorisation.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

Interim authorisation will provide the opportunity for collective negotiation and, subject to the agreement of both parties, implementation of licensee payments under the Annual Payment Review between the Applicants and Australia Post, with legislative protection, for the coming financial year pending the ACCC's consideration of the application for authorisation.

The ACCC considers that the proposed conduct is unlikely to result in harm to competition or interested parties. In granting interim authorisation, the ACCC considers that the conduct appears likely to result in some public benefit and limited public detriment.

The likely public benefits in granting interim authorisation include:

- providing some transaction cost savings in negotiations
- leading to more efficient outcomes by improving the Applicants' ability to have input into the negotiations
- the potential for some degree of increased competitiveness within the Australian postal and retail markets.

The interim authorisation is likely to result in limited public detriments due to:

- the voluntary nature of the proposed collective bargaining for all parties involved
- the limited scope of terms to be the subject of collective bargaining
- no collective boycott activity of Australia Post
- no restriction on LPO Group members being able to negotiate separate agreements with Australia Post, and
- the non-exclusive nature of membership of LPO Group.

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.