



Australian Government

The Treasury

27 November 2013

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee,

Re: Inquiry into the Performance, importance and role of Australia Post in Australian communities and its operations in relation to licensed post offices

The Treasury provides advice to the Government on matters relating to small business, competition and consumer policy issues. This role encompasses advice regarding the *Competition and Consumer Act 2010* (CCA) and the regulation of franchising. The Treasury has policy responsibility for advising the Government regarding the Franchising Code of Conduct (Franchising Code), which is enforced by the Australian Competition and Consumer Commission (ACCC).

Treasury understands that the agreements between Australia Post and Licensed Post Office operators are franchise agreements and that Licensed Post Office operators are represented by two industry groups, the Post Office Agents Association Limited (POAAL), and the Licensed Post Office Group (LPO Group). Accordingly, Treasury would like to provide some information to the Committee about the Franchising Code and the general provisions of the CCA that may be relevant.

The Franchising Code of Conduct

The Franchising Code is a mandatory code of conduct prescribed by regulation under the CCA. The purpose of the Franchising Code is to regulate the conduct of participants in franchising towards other participants in franchising.¹ The Franchising Code contains a number of rules regulating the parties' relationship, in addition to establishing a regime for comprehensive disclosure to be provided to franchisees prior to entering into a franchise agreement, and setting out procedure for dispute resolution.

¹ Refer to *Trade Practices (Industry Codes - Franchising) Regulations 1998*, Schedule 1: Franchising Code of Conduct, Clause 2.

Review of the Franchising Code

Earlier this year, an independent review of the Franchising Code was conducted by Mr Alan Wein. Mr Wein's final report was published on 17 May 2013, with a total of 18 recommendations. Key recommendations made by Mr Wein include:

- that the Franchising Code contain an explicit obligation on parties to a franchising relationship to act in good faith in their dealings with one another;
- that franchisors be required, at their first point of contact with a prospective franchisee, to provide a short summary of the key risks and matters franchisees should be aware of when going into franchising;
- recommendations relating to enhanced and simplified pre-entry disclosure. For example, a requirement that, prior to entering into a franchise relationships, franchisors disclose the respective rights of the franchisee and franchisor to conduct and benefit from online sales;
- recommendations relating to dispute resolution between parties to a franchise agreement; and
- recommendations relating to enhanced enforcement tools, to allow the ACCC to pursue breaches of the Franchising Code with more flexibility.

Both POAAL and the LPO Group made submissions to Mr Wein in the course of his review of the Franchising Code. A copy of Mr Wein's report, in addition to the submissions made by POAAL and the LPO Group, can be found on the Department of Industry website.²

The Government has committed to refine the Franchising Code to strengthen its effectiveness, improve its responsiveness to the sector's unique commercial characteristics and tensions, and guard against state-based regulation. The Government is considering Mr Wein's report and the recommendations made therein in this context.

Dispute resolution for franchisors and franchisees

The Government also provides funding for the Office of the Franchising Mediation Adviser (OFMA). OFMA operates a free 'early intervention' information and advice service over telephone and email for parties in a franchising dispute. In appropriate cases, this can extend to facilitating contact between the parties to a dispute with a view to resolving the dispute at an early stage. OFMA also facilitates formal, low-cost mediation for parties upon request, in accordance with the procedure set out in the Franchising Code.

The Competition and Consumer Act 2010

Treasury also notes that the general competition and consumer law provisions of the CCA are applicable to Australia Post.³ Among other things, the CCA prohibits businesses from engaging in

² <http://www.industry.gov.au/smallbusiness/codesofconduct/Pages/Library%20Card/ReviewoftheFranchisingCodeofConduct.aspx>. Note this content will shortly be migrated to the Treasury website.

³ However, the *Australian Postal Corporation Act 1989* provides an exemption from the CCA to ensure that postage stamps are not sold for less than the usual retail price.

anti-competitive conduct and sets out rules regulating business conduct towards consumers and other businesses, including small businesses. For example, these protections include prohibitions on the misuse of market power and unconscionable, misleading or deceptive conduct.

The CCA is enforced by the ACCC and, in the case of the consumer protection provisions of the Australian Consumer Law, state and territory fair trading agencies also play a role.

The Government has committed to undertake a ‘root and branch’ review of competition policy, which will include the operation of the CCA.

Changing retail environment

Treasury notes that the broader retail environment is undergoing change with the growth in online trading, and that this growth is contributing significantly to the rapidly increasing volumes of air cargo and international mail entering Australia. It is anticipated that this upward trend will continue, as more international retailers adapt their business models to appeal to the Australian market.

Similarly, Australian businesses are receiving an increasing amount of orders via the internet. In the 12 months ended 30 September 2013, online retail spending by Australians was estimated to be \$14.3 billion, up 17 per cent from \$12.2 billion in the year earlier and up 46 percent from 2011’s \$9.8 billion.⁴ Australia Post is one of a number of delivery and logistics firms competing in the growing market for parcel delivery. Treasury understands that Australia Post uses its Licensed Post Office network to deliver parcels to consumers.

Yours Sincerely

Anne Scott
Principal Adviser, Small Business
Small Business, Competition and Consumer Division
Commonwealth Treasury

⁴ Source: National Australia Bank, Online Retail Sales Index, Monthly update – September 2013.