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Draft Record Keeping Rules for Australia Post

Introduction

1. We are a New Zealand law firm who have been instructed to act for a number of New Zealand postal operators, being Rural Couriers Society Ltd, Pete's Post Ltd, DX Mail Ltd, PMP Distribution Ltd and Fastway Post Ltd ("the NZ Postal Operators").
2. NZ Postal Operators have noted that the Australian Competition & Consumer Commission ("the ACCC") has requested comment on the issues raised in its issues paper and the draft record keeping rules for Australia Post which it has released in connection with the proposed amendments under the Postal Services Legislation Amendment Bill 2003 to the Australian Postal Corporation Act 1989.

Because of growing trends towards harmonisation of legislation between Australia and New Zealand, any measures to improve competition in Australia have a high probability of influencing similar areas of legislation and disclosure in New Zealand.

It is for this reason, and also because similar serious concerns in New Zealand have recently resulted in NZ Postal Operators making joint submissions to the New Zealand Government on ways to improve competition under the Postal Services Act 1988, that NZ Postal Operators have taken the opportunity to comment on the Draft Record Keeping Rules for Australia Post.

As part of their submissions to the New Zealand Government, the NZ Postal Operators called for greater transparency and disclosure in NZ Post Ltd's financial reports to ensure that the virtual monopoly which NZ Post has in the New Zealand letters market is not used to cross-subsidise other divisions of their operations where open competition exists.

3. The NZ Postal Operators wish to comment briefly on the ACCC's issues paper and its draft record keeping rules. This submission is divided into four parts being:

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- 3.1 a brief background to the NZ Postal Operators;
- 3.2 their reasons for making submissions in relation to regulatory developments in Australia;
- 3.3 the difficulties faced by the NZ Postal Operators as a result of the lack of record keeping rules for New Zealand Post in New Zealand; and
- 3.4 the submission of the NZ Postal Operators.

Brief Background

4. The NZ Postal Operators are Registered Postal Operators under the Postal Services Act 1998 which was introduced in New Zealand to provide competition for postal services with the intention of benefiting consumers by removing the total monopoly enjoyed by New Zealand Post Ltd (the equivalent of Australia Post in New Zealand) on the carriage of standard letters up until that time.
5. The enactment of the NZ Postal Services Act 1998 is part of a four pronged regulatory framework to allow competition to the New Zealand postal services market. The other elements are the Postal Services (Information Disclosure) Regulations 1998, a Deed of Understanding between New Zealand Post and the NZ Government dated 17 February 1998, and the existing Commerce Act 1986. Importantly in the context of these submissions, none of these pillars of the regulatory framework require New Zealand Post to provide records about the profitability or otherwise of each of its divisions, in a way that would allow any cross-subsidisation to be identified.
6. Despite the introduction of competition in the New Zealand postal services market, New Zealand Post still retains 97% of the letter market.

Reason for Making a Submission

7. There are increasingly close links between Australian and New Zealand legislative developments. An example of this is the changes that have been made to the New Zealand Commerce Act 1986 to more closely align it with the Australian Trade Practices Act 1974. As a result, legislative and regulatory changes in Australia are likely to be closely examined by government ministers and officials in New Zealand with a view to considering whether they should be implemented in New Zealand as well.
8. Therefore the NZ Postal Operators are making this submission as an interested party on the assumption that the introduction of records keeping rules for Australia Post is likely to be highly influential on whether similar rules are introduced to govern disclosure by New Zealand Post (the monopoly equivalent of Australia Post in this country).

Cross-Subsidisation Issues Faced by the Postal Operators in New Zealand

9. The NZ Postal Operators are particularly concerned about cross-subsidisation of loss-making non-reserved services divisions within New Zealand Post from its sales of the domestic 45 cent stamp. The price of this stamp has, from 1st April 2004, gone up from 40 cents, and there is a complete absence of financial information to allow any assessment of whether or not this increase is justified. We understand that similar concerns have been expressed by competitors of Australia Post about cross-subsidisation of non-reserved services with revenue generated from reserved services (p8 of the ACCC's Issues Paper).
10. The NZ Postal Operators, some of whom also operate extensive courier and unaddressed mail services in competition with New Zealand Post, have reported increased price pressure from New Zealand Post in those other areas since the price increase of the domestic stamp was announced.
11. As stated above, contrary to the proposed changes in Australia, there are no requirements on New Zealand Post to disclose the profitability of its divisions. Therefore it is difficult for the NZ Postal operators to identify the extent to which cross-subsidisation is taking place.

Submissions Made by the Postal Operators

12. As a general point the NZ Postal Operators affirm their support for the introduction of record keeping rules over Australia Post's services. The introduction of similar rules in New Zealand would help significantly in raising the level of competition in the postal services market in this country.
13. We note that the ACCC has requested submissions on a number of aspects of the record keeping rules. These include segmentation and "service group" definition, appropriate cost measures and allocation principles, asset valuation, account items, account mapping, the regulatory accounting procedures manual, the auditing of regulatory accounts and whether Australia Post should provide a statement of financial position.
14. Because the NZ Postal Operators have only just become aware of the ACCC's proposals, they wish to restrict themselves to making a submission only about the issue of segmentation and "service group" definition as set out in part 5.1 of the Issues Paper. Their comments are as follows:
 - 14.1 As a starting point, in order that cross-subsidisation can be prevented, it is vital that Australia Post should disclose information about both reserved and non-reserved services.
 - 14.2 The higher the level of segmentation within reserved and non-reserved goods, the greater the chances will be of preventing such cross-subsidisation since the disclosure will be more transparent.

- 14.3 With this in mind the NZ Postal Operators support the proposed segmentation of service groups in Schedule I, and the overall intentions of the proposed Record Keeping Rules – “to provide for transparency between different parts of Australia Post’s business.”
15. The NZ Postal Operators consider that it is important that this information is publicly disclosed by Australia Post. Public disclosure would mean that competitors reviewing this information can alert the ACCC to potential cross-subsidisation issues. We note that a separate consultation process is being held by the ACCC to determine principles for the disclosure of record keeping rule information at a later stage (p10 of the ACCC Issues Paper). The NZ Postal Operators may well make submissions in relation to this issue at a later date.

We thank you for the opportunity to comment on these highly important regulatory developments in Australia. If you have any questions or would like any further information from the NZ Postal Operators, please do not hesitate to contact us.

Yours sincerely
SIMPSON GRIERSON



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