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13 February 2019

Mr Gavin Jones
Director
Australian Competition and Consumer Commission
25 Marcus Clarke Street
Canberra, ACT 2601

By email: adjudication@accc.gov.au

Dear Mr Jones

Australasian Performing Right Association Ltd application for revocation of authorisations A91367 – A91375 and substitution of new authorisation A1000433 – interested party consultation (APRA re-authorisation application)

Free TV thanks the ACCC for the opportunity to comment on the APRA re-authorisation application.

Free TV represents Australia's commercial free-to-air television broadcasters. At no cost to the public, our members provide a variety of channels of content across a broad range of genres, in addition to a range of online and mobile offerings. The value of commercial free-to-air television to the Australian public remains high. On any given day, free-to-air television is watched by an average of 13 million Australians.

As major owners, licensors and licensees of copyright material, Free TV recognises the importance of the role of copyright collecting societies for both rightsholders and licensees. Rather than negotiating licence arrangements with individual artists and creators, collecting societies can be an efficient intermediary to manage the rights on behalf of the content owners.

However, in order for the benefits of the efficiency gain from collecting societies to be realised, it is important that the authorisation provisions effectively regulate the potential for the misuse of the privileged monopoly position that the collecting society will enjoy. This is because the exclusive collective administration of rights by a single collecting society can remove or significantly limit competitive pressures on those organisations.

In the absence of effective authorisation conditions, there is a risk that licence fees and conditions will be imposed that are far in excess of what would be achieved in a competitive market. In such cases, a licensee's only recourse is often limited to the commencement of expensive, protracted and ultimately uncertain Copyright Tribunal proceedings.

While we consider that the existing conditions on the current authorisation remain relevant, we submit that a further condition is required to better protect against the potential mis-use of APRA's monopoly position. Specifically, we consider that APRA's re-authorisation should also be conditional on it being required to take into account structural changes in an industry or sector, including

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objective markers such as a decline in industry revenues, when formulating industry licence schemes (including the renewal of such schemes). The condition should contain an express acknowledgement that licence fees may be reduced as a result.

In Free TV's experience, collecting societies approach licence fee negotiations on the basis that licence fees should increase or at least not decrease, regardless of market conditions. As the ACCC is undoubtedly aware, the television sector (broadly described) has been the subject of much disruption in recent years with the introduction into the market of many OTT competitors and other new entrants, all of which have resulted in significant structural change within the sector.

Commercial free-to-air broadcast revenues (derived from advertising) have significantly declined in recent years as a result of competition from new entrants, and driven by new technologies, business models and changing consumer behaviour. In our view, such structural changes and resulting declines in industry revenue must be relevant considerations in the ongoing determination of licence fees to organisations such as APRA.

A condition as outlined above would reduce the risk of the collective administration of copyright leading to excessive licence fees, or lengthy negotiations or disputes which would not occur in more competitive markets.

Contact

If you have any queries or wish to discuss any of the matters raised in this letter, please do not hesitate to contact me on [REDACTED].

Kind regards,

A handwritten signature in cursive script, appearing to read 'Bridget Fair', with a long horizontal flourish extending to the right.

Bridget Fair
Chief Executive Officer
Free TV Australia