



Our ref: AA1000433
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10 November 2021

Ms Kate Haddock
Partner
Banki Haddock Fiora

By email: [REDACTED]

Dear Ms Haddock

Re: Authorisation AA1000433 – Condition C1.2 – ACCC not satisfied with Fee Methodology explanation in revised guides

We refer to the ACCC's Authorisation AA1000433. As you are aware, under Condition C1.2 of authorisation, APRA is required to revise the comprehensive plain English guide for each licence category required by condition C1.1. By email dated 13 October 2021, APRA provided 22 'Fee Methodology explanations' to the ACCC pursuant to condition C1.2.

This letter constitutes formal notice in writing in accordance with condition C5.1 that the ACCC considers that the Fee Methodology explanations provided are not sufficiently clear and detailed to provide licensees with a reasonable understanding of the methodologies APRA adopts in setting its licence fees for the relevant licence category.

Additionally, it appears APRA did not provide a Fee Methodology explanation for the following categories and sub-categories listed on the OneMusic Australia website:

- Caravan and Tourist Parks
- Dramatic Context: Theatre, Dance & Shows
- Events
- Film Screenings
- Funeral Directors
- Hotels, Pubs, Taverns, Bars and Casinos
- Motels, Resorts, Accommodation and Guest Houses
- Retail (Website Use)
- Schools
- Sports
- Transport (Cruise Ships)

Consequently, the ACCC requests that, in accordance with condition C5.2, APRA appoints an independent person or persons ('Independent Reporter') to prepare a report ('Independent Report') in respect of **all** licence categories.

Further, we consider APRA is still required under the terms of the authorisation to publish the guides until they can be replaced with the Independent Reports.

Reasons

As anticipated in your 13 October 2021 email, the ACCC is not satisfied that the Fee Methodology explanations provided meet the requirements or intent of condition C1.2. The ACCC considers the information provided in each Fee Methodology explanation are insufficiently detailed to enable licensees to properly understand the basis for the rates charged and is of limited utility to licensees wishing to engage in effective negotiations or dispute resolution about the rates. For example (but not limited to):

- None of the Fee Methodology explanations contain a description of the methodologies adopted by APRA to calculate licence fees used to set that rate, nor refer in sufficient detail to the underlying data used in the formulation.
- The Fee Methodology explanations refer to industry consultations as the processes used to set fees. However, there is no detail of the content of those consultations or how the relevant licence fees were reached.¹
- The Fee Methodology explanations include sentences to the effect that *"APRA generally uses a mix of relevant data sources to determine licence rates and impact on a particular business. This includes common sources of music, shifts in demand and changes in technology"*. Consistent with previous communications in response to draft versions, such statements are too vague to offer any tangible benefit to licensees.²
- References to Tribunal decisions that were used in setting rates are inadequate without an explanation of how the decision was used in setting the rates.³
- References to tariffs that were modelled on other categories, international rates or even existing rates for the same licence category are inadequate without explaining how the set rates were arrived at from these benchmarks.⁴
- Fee Methodology explanations that state direct licencing is available are inadequate without an explanation of how the licence schemes will be adjusted.⁵

This statement of reasons is not exhaustive but the ACCC considers that the reasons provided are sufficient for APRA to proceed to appoint an Independent Reporter under Condition C5.2.

¹ All Fee Methodology explanations.

² All Fee Methodology explanations except Recorded Music for Dance Use.

³ See the Councils and Local Government Areas, Places of Interest, Activity and Amusement (POIAA), Recorded music for dance use, and Retail (Background music) Fee Methodology explanations.

⁴ See the Adult Entertainment, Childcare, Community Halls, Dance and Performance Instructors and Dance Schools, Dining, Karaoke, Places of interest, activity and amusement (POIAA), Recorded music for dance use, Retail (Background music), Retail (Car parks), Retail (Music videos), Public vehicles and vehicle for hire, and Workplace music and telephone on hold Fee Methodology explanations.

⁵ See the Airlines, Childcare, Clubs, Community halls, Community music groups, Council's and Local Government Areas, Dance and Performance Instructors and Dance Schools, Eisteddfodau and competitions, Function and events, Recorded music for dance use, Retail (Background music), Retail (featured music), Public vehicles and vehicle for hire, and Workplace music and telephone on hold Fee Methodology explanations.

Next steps

Under condition C5.2, within 120 days of receiving this notice APRA must appoint an independent person or persons to prepare a report, in accordance with Condition 5. This reporter must be approved by the ACCC prior to their appointment by APRA.

Before the ACCC can make a decision about whether to approve the appointment of a proposed Independent Reporter, APRA must provide to the ACCC:

- (i) the agreement, or proposed agreement, setting out the terms and conditions on which the proposed Independent Reporter (as relevant) will be engaged, and
- (ii) any other information requested by the ACCC that the ACCC considers relevant.

We note APRA's suggestion of Mr Charles Alexander as an Independent Reporter. Please forward to us:

- A copy of the proposed agreement consistent with condition C5.5 APRA will enter with Mr Charles Alexander.
- Mr Charles Alexander's CV outlining the relevant qualifications and experience necessary to carry out the role.
- A statement of any interactions or dealings Mr Charles Alexander has had with APRA, AMCOS, PPCA and/or OneMusic Australia.

This letter will be placed on our public register.

Yours sincerely



Sharon Deano
General Manager
Competition Exemptions