

5 July 2019

Mr Gavin Jones
Director, Adjudication
Australian Competition and Consumer Commission (ACCC)
GPO Box 3131
CANBERRA ACT 2601

And via email: adjudication@accc.gov.au

Dear Mr Jones

ACCC Draft Determination: Application for revocation of authorisations A91367 – A91375 and substitution of new authorisation A1000433

Thank you for the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) Draft Determination, dated 5 June 2019 and noted above, on the application by the Australasian Performing Right Association (APRA).

We note that the ACCC proposes 'to grant conditional authorisation to enable APRA to continue its arrangements for the acquisition and licensing of performing rights in musical works' for a 5-year period. We have also reviewed Attachment A of the Draft Determination which provides the Proposed conditions of authorisation.

As per our previous submission on APRA's application, our interest principally relates to the license arrangements for the use of music in shopping centres, such as common mall areas and/or car parks.

In our earlier submission, noting that the *OneMusic Australia* joint initiative was addressed in APRA's application (e.g. Part B, pars 102-120), we provided as follows: "We understand that *OneMusic Australia* will be operated by APRA, and that the conditions of APRA's authorisation will apply to its activities".

This was based on our review of APRA's *Application for Revocation / New Authorisation*, which at pages 25-26, section 8 (c), expressly provides as follows: "As *OneMusic Australia* will be operated by APRA, conditions of APRA's authorisations (including plain English guides to license schemes and access to Resolution Pathways) will apply to its activities, which will benefit licensees".

However, having reviewed the Draft Determination (including noting par 1.3, at page 7; and pars 2.48-2.56, at pages 18-19 of the Determination) and Attachment A, and while we broadly support the ACCC's approach and proposed conditions of authorisation (see more detailed comments below), we remain unclear whether the Draft Determination (or a Final Determination/Authorisation) expressly applies to the *OneMusic Australia* initiative as noted in the application, and intended.

For this reason, we recommend that any Final Determination expressly provides (for the avoidance of any doubt) that it applies to the *OneMusic Australia* initiative, and that *OneMusic* must be the subject of any relevant APRA publishing and reporting requirements or relevant material (e.g. C1.1: publishing of plain English guides; C1.2: method for calculating license fee for each licence category and matters taken into consideration; C1.3: plain English guides must be prominently displayed on APRA's website; C1.4 plain English guides provided to the ACCC; C4.1: publishing of an annual Transparency Report).

Our comments above are also in the context of *OneMusic's* commencement on 1 July 2019, which includes a recently published information sheet¹ which outlines the licence fee structure, and license fees (up to 30 June 2022), for *Retail and Service Providers*. In this regard, we also seek clarification if any Final Determination would apply to *OneMusic* activities that occurred before any such Determination.

¹ <https://onemusic.com.au/licences/retail-and-service-providers/>

Broadly, and noting our recommendation in our previous submission that the ACCC should apply authorisation conditions that ensure that pricing is transparent and the subject of consultation, we support the ACCC's proposed approach which covers issues such as: (1) Transparency of license fees, (2) Transparency of distribution arrangements, and (3) Comprehensive plain English guide for the opt out and license back provisions.

We note that Condition C1.6 provides that *"APRA must publish on its website, and make available to any party upon request, each time there is an increase in a licence fee in any licence category other than increases in line with consumer price index (CPI), an explanation of the matters taken into consideration in determining the increase in the licence fee."*

The Draft Determination refers to 'CPI', including in relation to licence fee increases and APRA's publishing of any relevant explanation, but without the term being fully defined. We understand that this may be a reference to the 'All groups Consumer Price Index' published by the Australian Bureau of Statistics. We recommend that any Final Determination fully defines this term and its application, including whether it is the 'All groups' CPI or the respective 'Capital City' CPI for each jurisdiction, and also if it relates to (for instance) the previous annual or current quarter CPI.

We note at par 4.242 of the Draft Determination that APRA has submitted that it does not increase fees other than in accordance with CPI without industry consultation or Copyright Tribunal proceedings.

In this respect, and noting the intent of C1.6, we recommend that the ACCC considers amending C1.6 to provide that APRA (and *OneMusic*) should also (in addition to the proposed requirement to publish on its website and make available to parties on request) notify relevant licensees in writing of any increases not in line with CPI.

Thank you for the opportunity to provide this submission to the ACCC for its consideration.

We would welcome an opportunity to discuss this submission with the ACCC. Please don't hesitate to contact me on anardi@scca.org.au or 0408 079 184.

Yours sincerely,

 *OB. ANGUS NARDI*

Angus Nardi
Executive Director

5.7.19