

8 February 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

AA1000433 – APRA – submission

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

Thank you for the opportunity to provide comment to the Australian Competition and Consumer Commission (ACCC) on the above application.

Our interest principally relates to the license arrangements for the use of music in the common area (or mall) and car parks of shopping centres (i.e. the 'output' arrangements – the licensing arrangements between APRA and the users of musical works).

For background, we held discussions with APRA AMCOS in 2018 in relation to the proposed *OneMusic Australia* model; the joint initiative between APRA AMCOS and the Phonographic Performance Company of Australia (PPCA) to provide a 'single source' for music licenses in Australia scheduled to commence in mid-2019.

We understand that *OneMusic Australia* will be operated by APRA, and that the conditions of APRA's authorisation will apply to its activities. We note that the launch of *OneMusic Australia* is reported as an 'immediate priority' (page 3) in APRA AMCOS's *2018 Year in Review*.

We also note that the *OneMusic Australia* model is specifically addressed in the application (e.g. Part B, pars. 102-120) (certain pars. omitted).

The purpose of those discussions was to understand the proposed new approach (including fee structure) to obtain a music license, and its impact on our industry.

In this regard, to avoid any perception or suggestion of anti-competitive behaviour, conduct or practice, including against the spirit and intent of the *Competition and Consumer Act 2010*, discussion around *OneMusic's* proposed fee structure (e.g. tiers) and fees was a matter left to individual SCCA members to analyse and make their own assessment, and engage with *OneMusic* as necessary.

A collective view, understanding or position on fees and pricing was not discussed, investigated or established.

In the case of one our member's portfolios, which includes several shopping centres of various sizes, we understand that *OneMusic's* proposed initial approach for our sector (*Retail and Service Providers: First Consultation Document*), released on 2 May 2018, could have led to an increase on existing license fees of up to 50%.

It's fair to say that this was considered a substantial increase.

We understand that under *OneMusic's* revised and 'final' approach (*Retailers and Service Providers: Final Position Paper – 14 December 2018*), which is 'expected to commence from mid-2019', the potential impact against current license fees has been reduced (e.g. as a result of a revised fee structure and associated fees, which are based on escalating tiers, based on the size of the location where music is audible).

Despite the adjustment noted above, our main concern with the proposed re-authorisation relates to the potentially concentrated, or monopolistic, nature of the arrangement and future fees for music licences whereby the potential market power position of the *OneMusic* arrangement could be abused.

In this regard, we note from APRA AMCOS's *2016-17 Year in Review* (page 2) (available online) that there is an anticipated growth in current collections following the introduction of *OneMusic Australia*.

We also note from APRA AMCOS's *2018 Year in Review* (page 3) (available online) that in relation to *OneMusic*, 'in addition to a better service for licensees', APRA AMCOS forecasts 'considerably increased market penetration and return for our members over coming years'.

We draw attention to par. 119 of the application that the applicant raises that (we assume in relation to *OneMusic Australia*; pars. 115-118 have been omitted) 'a single source of public performance licenses can only be in the best interest of consumers, provided the licenses are clear, the pricing transparent, and the terms of the licenses have been the subject of consultation as much as possible agreement'.

It is in the context of the above issues, including the claim at par. 119, that in its assessment of the re-authorisation application, and in any potential granting of the re-authorisation, we recommend the ACCC considers applying a condition to ensure that pricing is transparent, the subject of consultation with relevant sectors and stakeholders, and possible agreement (as appropriate).

In addition, given the potential for substantial price increases (as per our understanding of *OneMusic's* proposed initial approach for our sector, including a cost increase of up to 50%, as noted on the previous page), we respectfully submit that the ACCC should consider the merits of price monitoring and/or control, as appropriate (e.g. relating to product or service quality and/or the cost to produce the product or service).

I would be happy to discuss this submission.

We would welcome an opportunity for future engagement with the ACCC, including in relation to any draft determination.

Yours sincerely,

 8.2.2019

Angus Nardi
Executive Director