



5 March 2019

Director - Adjudication
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: adjudication@acc.gov.au

Dear Sir/Madam,

CB – Mood Media and Stingray Group - Submission

Phonographic Performance Company of Australia Ltd (**PPCA**) thanks the Australian Competition and Consumer Commission (**ACCC**) for advising PPCA about the collective bargaining notification which has been submitted to the ACCC from Mood Media Australia Pty Ltd (**Mood Media**) and Stingray Group Inc (**Stingray**) to enable the aforementioned parties to collectively negotiate the terms of their musical works licensing with APRA AMCOS. PPCA welcomes the opportunity to provide comments in relation to this notification.

By way of background, PPCA is an Australian copyright collecting society that grants non-exclusive licences for the broadcast, communication or public playing of recorded music and music videos. PPCA represents the interests of thousands of copyright owners and recording artists. PPCA's registered artists and record labels span the gamut of small independent Australian artists and labels, to world renowned artists and major label record companies. PPCA distributes the licence fees it collects from the provision of such licences to the record labels and Australian recording artists that are registered with it.

In principle, PPCA does not oppose the collective bargaining notification submitted to the ACCC by Mood Media and Stingray. In our view, given that the formulation and implementation of licence schemes of this nature are generally subject to an extensive consultation process which involves all affected parties, the ability to collectively negotiate the terms of the proposed scheme appears to be of limited benefit. In PPCA's experience, these types of licence schemes usually apply equally to similar businesses, to ensure that there is a level playing field so that similar services are licensed on the same terms.

Notwithstanding this, PPCA has concerns about the mischaracterisation of PPCA and OneMusic Australia that has been included in the collective bargaining notification submitted by Mood Media and Stingray.

The introduction of OneMusic Australia (the joint licensing initiative between APRA AMCOS and PPCA) into the market will not *'increase the market power (and bargaining position) currently held by APRA*

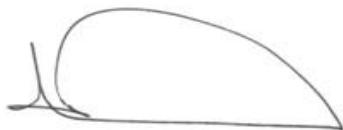
AMCOS (and PPCA)"¹. This not only misstates the nature of PPCA's licensing mandate but it also misrepresents the objective and operation of OneMusic Australia.

Contrary to the way in which PPCA is referred to in the collective bargaining notification, PPCA does not have market power and operates in an increasingly competitive landscape in relation to the licensing of sound recordings in the background music sector. PPCA is granted a non-exclusive licence from its licensors. Depending on the nature of the delivery of the service, any background music supplier that wishes to obtain a licence to supply sound recordings to venues as a background music service may obtain a licence from PPCA or from the relevant sound recording copyright holders directly. In addition, some background music suppliers may only use non-copyright protected sound recordings and therefore are not subject to such licensing fees at all. It is in this competitive environment where multiple music licensing sources are available that PPCA operates. PPCA's licensors are in fact competitors of PPCA for the purpose of licensing background music services so it is incorrect to assert that PPCA in any way wields any market power.

Similarly, it is not the aim of OneMusic Australia to increase the market power or bargaining position of APRA AMCOS and PPCA. It is difficult to recognise how Mood Media and Stingray could argue that they have "*very limited bargaining power*"² when both organisations are well established multinational background music suppliers. APRA AMCOS and PPCA have participated in productive discussions regarding the OneMusic Australia joint licensing venture with the ACCC and with the relevant industry bodies to ensure that the licence schemes offered to licensees are fair and reasonable and do not diminish competitiveness. APRA AMCOS and PPCA have published on the OneMusic Australia website³ consultation documents for each sector which makes it clear that where a licensee has directly-licensed musical works or sound recordings and does not require all of the rights that would generally be granted under the OneMusic Australia joint licence, that licensee may obtain a 'partial licence'. Such partial licences are available at a reduced licence fee in recognition of the fact that they require a licence for either only musical works or only sound recordings.

PPCA thanks the ACCC for providing us with the opportunity to make a submission in relation to this review. We would be pleased to discuss this further with the ACCC or provide any further information if required.

Yours sincerely,



Lynne Small
General Manager

¹ Page 3 of Mood Media and Stingray Collective Bargaining Notification

² Ibid at page 5

³ <http://www.onemusic.com.au/consultations/>