Australian Competition & Consumer Commission

Applications for revocation and substitution and applications for authorisation lodged by the Australasian Performing Right Association (APRA) in relation to the standard arrangements for the acquisition and licensing of the performing rights in its music repertoire[1]

PRE-DECISION CONFERENCE

13 October 2005

The Grace Hotel
York Street, Sydney

Minutes

[1] Authorisation nos: A90918; A90919; A90921; A90922: A90924; A90925; A90944 & A90945

Stephen King, a Commissioner with the Australian Competition and Consumer Commission (the ACCC) chaired the conference.

The conference commenced at 10 am, Thursday 13 October 2005.

Commissioner King opened the conference by welcoming participants and outlining a number of procedural matters in relation to the conduct of the conference.

Commissioner King asked the Cinema Operators[2], as the party requesting the conference, if they wished to make an opening statement.

Guy Jalland – Corporate Counsel, Consolidated Press Holdings

Mr Jalland made an opening statement on behalf of the Cinema Operators.

Mr Jalland stated that Cinema Operators, from small family run operations through to the large chains, were united in their opposition to the Australasian Performing Right Association's (APRA) proposed arrangements.

Mr Jalland argued that APRA's arrangements deny Cinema Operators the opportunity to reduce their operating costs by negotiating performing rights licences[3] directly at source. Instead, Mr Jalland argued, Cinema Operators are forced to deal with APRA, which he contended is able to demand licences fees set with regard to its position as the monopoly supplier of performing rights licences. Mr Jalland cited by way of example, APRA's recent proposal to increase licence fees paid by Cinema Operators by 257%. Mr Jalland stated that APRA's proposed licence fee represent approximately one percent of box office revenue.

Mr Jalland contended that the efficiencies identified by the ACCC in its draft determination as flowing from APRA's collective administration of performing rights have no application in respect of APRA's dealings with Cinema Operators. Mr Jalland stated that the works for which Cinema Operators require performing rights licences are specific, known and limited to works embedded in films. Mr Jalland stated that United States movie studios/producers are able to negotiate rights for these works for Australian Cinema Operators at the same time as they purchase the rights for the US market. Mr Jalland argued that this would place some competitive constraint on APRA in its pricing of performing rights licences.

Mr Jalland said that under such an arrangement Cinema Operators could still require a licence from APRA in respect of those works where rights were not negotiated directly, but that this licence could, assuming it was in the form of the traditional blanket licence offered by APRA, provide for a discount on the licence fee paid equivalent to the

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[2] Village Cinemas Australia, The Greater Union Organisation, Birch, Carroll & Coyel, Reading Entertainment Australia, Australian Multiplex Cinemas, Hoyts Cinemas, Cinema Operators Association of Australia and Australian Entertainment Industry Association – referred to throughout these minutes as the 'Cinema Operators.'

[3] In these minutes performing rights/performance rights refers to public performance rights, live public performance rights and broadcast rights, but not grand rights.

percentage of box officer revenue generated by films where performing rights licenses had been negotiated directly. However, Mr Jalland contended that without provision for such discounts, there was currently no incentive for Cinema Operators to source rights other than through APRA.

More generally, Mr Jalland stated that cinema attendances were declining, although the industry was hopeful that box office revenue will be able to be maintained, while at the same time costs such as leasing premises and labour costs, were increasing. Mr Jalland stated that Cinema Operators were looking at various ways of reducing their costs and that they considered sourcing performing rights directly as one means of doing so.

Commissioner King then asked APRA if they wished to make an opening statement.

Brett Cottle – Chief Executive, APRA

Mr Cottle noted the concerns expressed by the Cinema Operators regarding licence fees and argued that licensing arrangements between APRA and the Cinema Operators were a matter for negotiation between the parties, or, failing that, consideration by the Australian Copyright Tribunal (Copyright Tribunal).

With respect to concerns that its arrangements restrict composers and music users ability to deal with each other directly in respect of performing rights licences, Mr Cottle stated that APRA has noted the concerns raised by the ACCC in its draft determination and recognises that they needed to develop alternative licensing arrangements to facilitate direct dealing. Mr Cottle contended that the type of licence scheme proposed by the Cinema Operators, as discussed in the ACCC's draft determination, was one of a number models by which increased direct dealing could be facilitated.

Mr Cottle stated that when other users have approached APRA in the past seeking other than blanket licences, it has considered these proposals on a case by case basis. Mr Cottle cited APRA's arrangements with commercial radio stations and concert promoters as two such examples. Mr Cottle contended that these examples reflected APRA's willingness to respond to requests from users for alternative forms of licenses. Mr Cottle expressed disappointment that APRA's willingness to accommodate such requests was not reflected in the ACCC's draft determination.

With respect to APRA's input arrangements, Mr Cottle noted that members had the option of taking a non exclusive license back in respect of works or opting out in respect of categories of works. Mr Cottle stated that, for example, any APRA member could opt to withdraw their works form its repertoire in respect of cinema exhibition and negotiate directly with Cinema Operators.

Mr Cottle stated that the Cinema Operators were contending that APRA members should be able to opt out in respect of particular users within a particular category of works but that this was impractical because:

- opting out involves the re-assignment of copyright to the member and that such transfer of ownership may be limited by reference to class of act, geographic area and time under the Copyright Act;

- the utility of such a provision would be limited as it is more practical for rights owners to deal with Cinema Operators as a category of users rather than individually; and

- transaction costs for APRA would increase significantly as it is required to keep records of works it is and is not entitle to license.

With respect to APRA's licence back provisions, Mr Cottle noted the suggestions of the ACCC and users that these provisions could be streamlined. Mr Cottle stated that APRA was proposing to modify its licence back provisions to:

- reduce the formal period of notice from two months to one;

- only require the member to identify classes of persons with whom the member seeks to deal directly rather than specify precise names of users;

- require that the member only notify the date or dates of performances, or the period of the sub licence, as appropriate for the circumstances of the case; and

- only require specification of the geographical location of performances to the extent necessary to reasonably identify whether the licence extends to a particular area or venue.

With respect to APRA's international input arrangements, Mr Cotter argued that the same issues as noted in respect of APRA's domestic input arrangements arise. Specifically, Mr Cotter contended that APRA required ownership of the performing rights of overseas artists in order to be able to enforce these rights in court. Mr Cotter also stated that the ability of any overseas artist to deal directly with Australian users was dictated by the rules of the overseas society to which the artist belonged.

With respect to US musical works, which Mr Cottle noted comprise the vast majority of works embedded in films, Mr Cottle noted that these works are assigned to US collection societies on a non-exclusive basis and that there was nothing currently preventing Cinema Operators, or any other music users, sourcing these rights directly. Mr Cottle stated that APRA did acknowledge the need to modify its output arrangements to reflect such direct dealing should it occur.

Mr Cottle stated that it appeared that the Cinema Operators were suggesting that APRA was attempting to impose a significant increase in licence fees on them. Mr Cottle stated that all APRA had done was refer a proposed license scheme to the Copyright Tribunal and that the existing licence scheme will remain in place unless or until the Cinema Operators agree to a new scheme of the Copyright Tribunal makes a decision on what is a fair and equitable licence scheme.

With respect to concerns that the Copyright Tribunal does not have adequate regard to economic principles in determining licence schemes, Mr Cottle argued that the most recent decision of the Copyright Tribunal in respect of the licence scheme applicable to Screenrights showed that the overwhelming majority of evidence presented before the Copyright Tribunal is economic in nature.

Commissioner King asked Free TV if they wished to make an opening statement.

Pam Longstaff – Director, Legal and Broadcast Policy, Free TV

Ms Longstaff stated that Free TV represents all Australia's free to air commercial television networks and is the single largest contributor of revenue to APRA.

Ms Longstaff contended that APRA's current arrangements generate significant anti-competitive detriment and that, in particular, its propensity to only grant blanket licences, along with its restrictive opt out and licence back provisions, are fundamental impediments to direct dealing between composers and music users. Ms Longstaff argued that APRA's restrictive input and output arrangements allowed it to exercise maximum leverage in negotiations with music users, that the efficiency of the prices offered by it were unable to be tested and that music users were forced to pay monopoly prices to APRA. Ms Longstaff also argued that so long as these arrangements remained in place, APRA had no incentive to develop alternative, perhaps more efficient, means of licensing.

Ms Longstaff contended that these concerns could be addressed by amendments to APRA's arrangements to:

- allow opt out on a work by work basis; and
- require APRA to offer alternatives to blanket licences to take account of direct dealing.

Ms Longstaff stated that Free TV was pleased that APRA had indicated that it proposed to develop alternatives to its tradition blanket licences but that a condition of authorisation should be imposed requiring it to do so. Ms Longstaff also argued that such a condition would only address one half of APRA's arrangements and that modifications were also required to its opt out and licence back provisions.

Ms Longstaff submitted that such amendments would remove barriers to direct dealing for music users who only require limited access to musical works and whose use of such works is predictable and planned, without undermining the essential features of APRA's collective administration of performing rights.

Ms Longstaff cited the example where a television network directly commissions a composer to create music for a specific television program. Ms Longstaff submitted that in such circumstances the network should be able to ensure exclusivity in respect of the works commissioned, but that APRA's opt out provisions, by preventing opt out on a work by work basis, and licence back provision, by preventing exclusive licence back, prevent this. Further, Ms Longstaff argued that even if these restrictions were removed, APRA's propensity to offer blanket licences meant that there is no incentive for the television network to negotiate performance rights in the works directly with the composer.

Ms Longstaff argued that facilitating direct dealing would not undermine the essential features of APRA's collective administration of musical works more generally, as there is no need for works commissioned exclusively for a specific television program to be included in APRA's repertoire. Consequently, Ms Longstaff stated, excluding such works from its repertoire would not increase APRA's monitoring or enforcement costs.

Ms Longstaff stated that while Free TV agreed with the view expressed by the ACCC that the appropriate forum to consider the reasonableness of specific licence fee arrangements was the Copyright Tribunal, Free TV contends that the ACCC should consider general amendments to APRA's arrangements, as postulated by Free TV, to reduce the anti-competitive detriment of APRA's arrangements. In this respect, Ms Longstaff argued that unless a general framework to facilitate direct dealing is required by the ACCC as a condition of authorisation, it can not be guaranteed that the Copyright Tribunal will be able to adequately take account of competition issues in assessing specific license schemes.

Ms Longstaff argued that the ACCC should require such changes to APRA's arrangements now rather than wait four years to see how these arrangements are tested if authorisation is granted as currently proposed. In this respect, Ms Longstaff contended that it was obvious now that the existing arrangements were not working.

Mr Cottle noted that composers can currently opt out in respect of categories of works, for example, television broadcasts, but only in respect of all of their works in that category. Similarly, Mr Cottle noted that a composer could take a non exclusive licence back of a work and negotiate directly with a television network, but that in this case, APRA would still collect royalties in respect of all other users of the work.

Mr Cottle explained that if members were able to licence specifically commissioned works exclusively to a television network as proposed by Free TV then when, for example, the television program was broadcast in public, such as for example at a pub or club, the proprietor of the premises would not be licensed for the public performance of the work. Mr Cottle stated that it was for this reason that APRA's license back provisions need to remain non-exclusive, allowing it to license the performance of works in such contexts.

With respect to Free TV's submission that APRA's output arrangements do not provide any incentive for direct dealing, Mr Cottle stated that APRA proposed an alternative licensing scheme in 2001 which reflected use of works but that the television networks decided not to explore this option and instead negotiated a lump sum blanket licence fee. Mr Cottle argued that this was the reason that composers have not sought to avail themselves of APRA's licence back provisions to deal directly with television networks to date.

Andrew Dawson, Corporate Counsel – Intellectual Capital, Nine Network, noted that he was not party to the 2001 negotiations and therefore could not comment on them, but that at the present time APRA's blanket licensing arrangements were preventing direct dealing. Mr Dawson stated that Free TV wished to ensure that going forward, there was a framework in place which allowed it to explore the option of dealing directly with composers and that a condition of authorisation could be imposed to facilitate this.

Commissioner King noted that less restrictive opt out arrangements might create additional costs for APRA, particularly if it were required to inform license holders of any holes in its repertoire created by members opting out in respect of some works.

Mr Dawson contended that if this was the case, such additional costs would be reflected in the license fees negotiated by APRA and, for example, the television networks taking advantage of the opt out arrangements. Mr Dawson stated that it may be that, ultimately, dealing solely with APRA may be the most cost effective means of licensing performing rights in musical works, but that opportunities to explore whether other alternatives are or could be cost effective should at least be made available.

Nick Abrahams, representing Free TV argued that if composers were able to opt out on a work by work basis, then in the case of the example but forward by Free TV, APRA's costs would not increase because a work commissioned directly by the television network would never enter APRA's repertoire in the first instance.

Commissioner King asked Creative Commons if they wished to address the conference.

Brian Fitzgerald – Project Leader, Creative Commons Australia

Mr Fitzgerald acknowledged APRA's role as the collective administrator of performing rights in Australia. However, Mr Fitzgerald stated that creative commons was a new form of copyright management that neither APRA or the ACCC's draft determination adequately addresses.

Mr Fitzgerald explained that creative commons provides a means whereby copyright owners can share their music with others via the internet, which includes mechanisms to allow copyright owners to place conditions on the downstream use of their works. Mr Fitzgerald explained that, in effect, this allowed users to access the work on the internet and to use the work, including making derivative use of the work, but only if the user met the conditions stipulated by the copyright owner.

Mr Fitzgerald contended that use of creative commons did not mean that the copyright owner had to forgo commercial streams of revenue which the work may generate. Mr Fitzgerald contended that while making the work available through creative commons allowed others to use it under stipulate conditions, persons seeking to use the work commercially are still required to hold the appropriate licence to do so.

Mr Fitzgerald argued that APRA's opt out and licence back provisions prevent Australian composers from using creative commons to distribute their works, even in a non-commercial manner. Mr Fitzgerald stated that APRA's requirement that members opt only in respect of entire categories of works means that these provisions are of little practical utility. Similarly, Mr Fitzgerald argued that the specific conditions which must be met for members to take a non-exclusive licence back of works limits the utility of these provisions.

Mr Fitzgerald argued that the ACCC should consider options which would make APRA's opt out and licence back arrangements more flexible so as to facilitate open licensing, such as through creative commons.

Commissioner King asked Mr Fitzgerald how copyright was protected when works were made available through creative commons.

Mr Fitzgerald noted that if unlicensed use of works occurred, the copyright owner could take legal action, but that most artists were unlikely to have the means to do so.

However, Mr Fitzgerald stated that the creative commons community had a culture of social enforcement whereby users infringing copyright tended to be excluded from the community. Mr Fitzgerald also noted that Creative Commons International has a legal unit to which copyright owners can turn for assistance.

Mr Cottle noted that APRA had only received Creative Commons submission yesterday and would be providing a short written response to the issues raised by Creative Commons shortly.

More generally, Mr Cottle stated that one thing the world was not short on was unremunerated online use of music. Mr Cottle argued that composers were not looking for more ways to distribute their work for free. Mr Cottle further stated that creative commons was part of the open source software movement and as such was not a means of self administration of existing works.

In response to comments made by Free TV, Mr Cottle noted that APRA licences use of the vast majority of musical content embedded in television programs. Mr Cottle explained that typically each program has a cue sheet which details musical works embedded in the program, some of which have been directly commissioned for the program and many of which have not. Mr Cottle stated that there are millions of such cue sheets, each typically containing details of dozens of works. Mr Cottle noted that APRA has to determine which of the works contained in each cue sheet it has licence over. Mr Cottle contended that a system whereby members were able to remove works from its repertoire on a work by work basis would be unworkable, particularly as most users require blanket licences covering all works they are likely to broadcast or perform.

Mr Cottle stated that the non-exclusive licence back provisions developed by APRA as a condition of the authorisation granted by the Australian Competition Tribunal in 2000 were designed to address the concerns raised by Free TV. Mr Cottle acknowledged that its current licensing arrangements with Free TV did not provide incentives for the licence back provisions to be used. However, Mr Cottle stated that APRA's existing agreement with Free TV expires in 2006, that APRA accepted the concerns raised by the ACCC in its draft determination regarding the need for it to offer users alternatives to the existing standard blanket licence, that APRA was exploring potential alternative schemes and that several alternatives would be offered to Free TV.

Mr Cottle stated that while APRA was exploring alternative licensing schemes, it did not favour a condition of authorisation requiring it to develop such schemes. Mr Cottle argued that the ACCC should not become the default regulator of licence schemes between APRA and music users as any alternative schemes developed should be case specific having regard to the fairness and operability of the scheme in the specific circumstances. Mr Cottle contended that issues regarding the equity and fairness of specific licensing schemes are matters for the Copyright Tribunal.

Commissioner King then opened the floor to general discussion.

Mr Jalland stated that given that APRA's input and output arrangements raise concerns under the *Trade Practices Act* 1974 (TPA) the authorisation process is the relevant forum within which to address those arrangements. Mr Jalland argue that

while the Copyright Tribunal is able to address the issue of the appropriate licence fee in particular circumstances, the structure of the arrangements which allow APRA to conduct business is a matter for the ACCC to consider through the authorisation process.

Mr Jalland noted that APRA had indicated that it accepts the view put by the ACCC in its draft determination that alternatives to its standard blanket licensing arrangements should be developed to suit particular users needs. However, Mr Jalland stated that it was only through being exposed to the authorisation process that APRA was considering alternative licensing schemes. Mr Jalland contended that it was critical that a condition requiring the development of alternative licensing schemes be incorporated into any authorisation granted. Mr Jalland argued that if this were not the case, APRA would continue with its existing arrangements and these issues would not be raised again until re-authorisation of these arrangements was sought.

With respect to Cinema Operators, Mr Jalland reiterated that it would not be difficult to negotiate rights directly, particularly in the US, as part of a films production process, with the films producers acquiring performing rights for Australian at the same time the US rights are acquired. However, Mr Jalland argued that there is no incentive for Cinema Operators to explore this option at the moment as APRA's blanket licensing arrangements mean that they would, in effect, be paying to use the works twice.

Ms Longstaff stated that Free TV concurred with the views expressed by the Cinema Operators that it was the role of the ACCC to set the general framework within which APRA operates and then for the Copyright Tribunal to consider specific disputes regarding licence terms and conditions.

Ms Longstaff cited the US example where as a condition of consent decrees entered into by US collection societies they were required to offer alternatives to blanket licences which accommodate direct dealing, with the specifics of what rates should apply in respect of particular users left to the US equivalent of the Copyright Tribunal.

With respect to concerns raised by APRA regarding members opting out on a work by work basis, Ms Longstaff noted that members can licence back on a work by work basis and that it was not clear my work by work opt out could not also be accommodated as is the case in the US and Canada.

Commissioner King asked how non-exclusive collection societies worked in the US.

Mr Cottle stated that members of US collection societies were able to licence use of their works directly, but that the work also remained within the collection societies repertoire such that it was also able to license use of the work. Therefore, Mr Cottle contended, the US arrangements are more accurately characterised as licence back rather than opt out arrangements.

With respect to Canada, Mr Cottle stated that he understood that there was no provision for composers to take their works out of the collection societies repertoire, on an exclusive or non exclusive basis. Mr Cottle stated that similarly, amongst European collection societies there are no provisions allowing opt out on a work by work basis.

Mr Fitzgerald stated that given that the ACCC was considering arrangements which in effect allowed APRA to operate as a monopolist, it was important to consider alternatives to that monopoly. Mr Fitzgerald stated that APRA's licence back provisions do not have the same flexibility as the US system. Mr Fitzgerald contended that the inflexibility of APRA's opt out and licence back provisions mean that members who wanted to put some of their works on the internet were unable to do so.

Mr Cottle replied that APRA members could utilise its licence back provisions to put their works on the internet but that of its 40,000 members only 10 had approached it enquiring about doing so and none had actually sought to do so.

Commissioner King noted that APRA's existing licence back provisions were subject to notice of the specific details of the identity of users to whom the member proposes to grant a sub licence and the dates and location of proposed performances under the sub licence being given.

Mr Cottle explained that while this was the case, if a member was merely seeking to put some of their music on their web site, they would not be sub-licensing use of the work to any other party and therefore would only need to inform APRA that the work was being placed on their website.

Mr Fitzgerald stated that APRA's constitution seemed to require that other, more onerous, conditions be met before a member was able to place their work on their own web site.

Mr Cottle stated that APRA was putting forward a streamlined proposal to remove perceptions that having to provide details of who would be using works was a barrier to members placing works on their websites. Mr Cottle explained that it would be made clear that all members needed to do was notify APRA in advance of their intention to place a work on their website.

Mr Cottle noted that if members were able to take exclusive control of their works in such circumstances, this would result in holes in APRA's repertoire which it would have to notify to users. Mr Cottle stated that this would be an onerous and expensive process and if too many holes were created in its repertoire, making APRA's collective administration of performing rights unworkable.

Mr Dawson stated that APRA's website has a search function which allows music users to ascertain whether a particular work is contained within its repertoire. Mr Dawson argued that, while the situation might be different for, for example, a café owner, at least in respect of large users like television networks, this was a useful function which allowed them to identify any holes in APRA's repertoire without undermining the essential features of APRA's collective administration of performing rights.

Margaret Brown, representing the Cinema Operators noted that the requirement that US collection societies only take assignment of members rights on a non-exclusive basis came about as a result of the legality of these societies arrangements being challenged under anti-trust law. Ms Brown argued that concerns regarding the inflexibility of APRA's input and output arrangements should be similarly addressed through the authorisation process. Ms Brown contended that the framework within

which APRA granted licenses needed to be addressed before the Copyright Tribunal could have regard to appropriate license terms and conditions in specific instances.

Kate Haddock, representing APRA submitted that the reason the Copyright Tribunal was established in the first instance was to curtail APRA's exercise of its monopoly power and that it was surprising to hear concerns expressed that it did not adequately consider economic issues, as this was the specific reason that it was established.

Ms Haddock stated that matters before the Copyright Tribunal are heard by a presiding member, being a member drawn from a panel of Federal Court judges, and two lay members drawn from a panel of lay members including economic experts.
Ms Haddock argued that the Copyright Tribunal is able to have adequate regard to all matters put before it or which it raises itself.

Ms Haddock noted that APRA is able to file references with the Copyright Tribunal to confirm or vary license schemes and that any licensee or potential licensee may also apply to the Copyright Tribunal for a determination on reasonable charges and licence conditions, which, Ms Haddock stated, the television networks did in 1993.

Ms Haddock noted Mr Jalland's comments that it was only through being exposed to the authorisation process that APRA was considering alternative licensing schemes and that if authorisation was granted to APRA's arrangements as sought APRA would continue with its existing arrangements and these issues would not be raised again until re-authorisation of those arrangements was sought. Ms Haddock stated that APRA intended to file a reference with the Copyright Tribunal tomorrow, seeking to vary its proposed licensing scheme for Cinema Operators to facilitate greater direct dealing between Cinema Operators and composers.

Mr Jalland stated that irrespective of the jurisdiction of the Copyright Tribunal the appropriate body to deal with competition laws and their effect in Australia is the ACCC.

Mr Jalland argued that the Cinema Operators would like to see greater competition in the offering of performing rights licences so as to address issues such as APRA's proposed 257% increase in license fees paid by Cinema Operators. Mr Jalland further stated that the authorisation process provided an opportunity to facilitate greater competition through the impositions of conditions on any authorisation granted.

Mr Jalland noted that 80% of Cinema Operators annual box office revenue is generated by 25 films, but that APRA's arrangements provided disincentives to negotiate performing rights licences directly in respect of the music contained in these films.
Mr Jalland argued that APRA adopts a one size fits all approach to negotiations whereas users like Cinema Operators do not require a blanket licence covering APRA's entire repertoire.

Mr Abrahams stated that Free TV was not asking for the ACCC to examine what appropriate licence fees would be in any particular instance, as this is a matter for the Copyright Tribunal. However, Mr Abrahams argued that APRA's input arrangements were not working and that it was within the ACCC's jurisdiction to impose conditions through the authorisation process to address these concerns.

Similarly, Mr Abrahams argued that it was within the ACCC's jurisdiction to require APRA to provide alternatives to its traditional blanket licence which take account of direct dealing.

Ms Brown also expressed the view that it was the ACCC's role to consider these issues through the authorisation process. In this respect, Ms Brown contended that, absent authorisation, APRA's arrangements would be in breach of the restrictive trade practices provisions of the TPA.

Ms Brown stated that the jurisdiction of the Copyright Tribunal clearly does not extend to making order in respect of anti-competitive conduct and, specifically, music users were seeking changes to APRA's input, output and overseas arrangements which are clearly outside the Copyright Tribunals jurisdiction to require.

Commissioner King confirmed that no party wished to raise further issues. Commissioner King then closed the conference, noting that the ACCC would be providing interested parties with a further opportunity to provide written submissions in respect of its draft determination and requesting that such submissions be provided by 4 November 2005.

The conference closed at 12:05pm.