

**Australian
Competition &
Consumer
Commission**

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Our Ref: CB00059 - CB00066
Contact Officer: Gina D'Ettorre
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16 December 2008

<<Name>>

Dear <<Salutation>>

**Collective Bargaining Notifications CB00059 - CB00066 lodged by Australian
Independent Record Labels Association
- interested party consultation**

Introduction

The Australian Competition and Consumer Commission (the ACCC) has received collective bargaining notifications from the Australian Independent Record Labels Association (AIR). AIR proposes to collectively bargain, on behalf of its participating members, with Telstra, Optus, BigPond, Austar, Foxtel, MTV Networks, XYZ Networks and Fuel TV in relation to the licensing of its members' audio and visual rights in respect of public performance and transmission of music videos.

The purpose of this letter is to invite your comments as a party who may be interested in providing a submission to the ACCC in relation to these arrangements.

Collective bargaining notification process

The ACCC is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). The broad objective of the Act is to benefit all Australians by promoting competition and to ensure consumers are treated fairly.

The competition provisions of the Act prohibit certain forms of anti-competitive agreements or conduct including agreements which typically occur during collective bargaining. Collective bargaining refers to an arrangement where one or more competitors in an industry come together to negotiate terms and conditions (including price) with a supplier or a customer.

While the Act prohibits certain forms of anti-competitive conduct, it does recognise that conduct which may otherwise breach the Act may, in some circumstances, be of benefit to the public. The Act accordingly allows businesses that are considering engaging in anti-competitive arrangements to seek immunity from legal action. One way businesses may obtain immunity to engage in collective bargaining and collective boycott conduct that may be at risk of breaching the Act is to lodge a notification with the ACCC.

Once a notification has been validly lodged with the ACCC, immunity from legal action in respect of the notified conduct commences 28 days after the notification was lodged, unless the ACCC issues a draft objection notice proposing to prevent the immunity coming into effect.

The ACCC may proceed to remove the immunity provided by a collective bargaining notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

Collective bargaining notification lodged by AIR

On 15 December 2008, AIR lodged collective bargaining notifications proposing to negotiate on behalf of 61 of its members, with each of Telstra, Optus, BigPond, Austar, Foxtel, MTV, XYZ and Fuel TV in relation to licensing of its members' audio and visual rights in respect of public performance and transmission of music videos.

The immunity from legal action provided by notifications CB00059 - CB000066 will commence on **Monday, 12 January 2009** provided the ACCC does not issue a draft objection notice proposing to prevent the immunity coming into effect prior to 12 January 2009.

The collective bargaining notifications lodged by AIR are available on the ACCC's public register and an electronic copy of the notifications can be found on the collective bargaining notification register, available on the ACCC's website at www.accc.gov.au.

Request for submissions

To assist the ACCC in its consideration of the notifications it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC in conducting its assessment of the notified arrangements. Guidelines for seeking exclusion from the public register are attached for your information.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Submissions can also be lodged by email to adjudication@accc.gov.au or by facsimile on 02 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

Please ensure that your submission is lodged with the ACCC by **Wednesday, 24 December 2008**.


Timetable

As noted, absent ACCC objection, legal immunity afforded by the collective bargaining notifications will come into effect on 12 January 2009. The ACCC's indicative timetable for considering the notifications is set out below for your information.

15 December 2008	Lodgement of notifications
16 December 2008	Public consultation process begins
24 December 2008	Closing date for submissions on the notifications
early January	ACCC assessment of notified arrangements issued
12 January 2009	Absent ACCC objection, legal immunity afforded by the collective bargaining notifications comes into effect.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact me on 03 9290 1475 or by email at gavin.jones@accc.gov.au.

Yours sincerely


for
Gavin Jones
Director
Adjudication Branch

Interested Parties
Austar United Communications Limited
BigPond Music (Telstra Corporation)
Foxtel Management Pty Limited
Fuel TV (Premier Media Group Pty Limited)
MTV Networks Australia Pty Limited
Optus Vision Pty Limited
Telstra Multimedia Pty Limited
XYZnetworks Pty Limited
Australasian Performing Rights Association
Australian Communications and Media Authority
Australian Film Institute
Australian Subscription Television and Radio Association
Attorney-General's Department
SBS Corporation
Phonographic Performance Company of Australia
Australian Recording Industry Association
Australian Broadcasting Commission
Free TV Australia