



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2009/1687
Contact Officer: Gavin Jones
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8 February 2009

Kate Haddock
Partner
Banki Haddock Fiora
Level 10, 179 Elizabeth Street
SYDNEY NSW 2000

Dear Ms Haddock

Australasian Performing Right Association Ltd – applications for revocation and substitution A91187 to A91194 and A91211 – draft determination

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the application for re-authorisation lodged by APRA on 30 September 2009.

Draft determination

A copy of the ACCC's draft determination is attached, including a summary of its reasons. For the reasons set out in its draft determination, the ACCC proposes to grant re-authorisation, subject to conditions, for three years.

The ACCC proposes to re-authorise APRA's arrangements subject to conditions:

- requiring streamlining of APRA's licence back provisions to make it easier for members who want to negotiate licences directly with some users to get permission from APRA to do so
- requiring the independent expert appointed to consider disputes under APRA's alternative dispute resolution process to report whether APRA's has offered genuine discounts on licences to accommodate or reflect direct dealing if requested by the licensee
- requiring APRA to report to the ACCC annually on the outcome of disputes with users considered under the alternative dispute resolution process.

These proposed conditions are summarised in detail on pages 44 to 48 of the draft determination.

The ACCC is seeking the views of APRA and interested parties about these proposed conditions. In particular, the ACCC has deliberately not been prescriptive at this time in drafting the proposed condition about streamlining of APRA's licence back provisions. Rather, the ACCC seeks the views of interested parties about what categories of use this streamlined licence back process should apply to and what information should be required to be provided by members to APRA, to assist in drafting this condition.

The ACCC is also invites APRA and interested parties to comment on alternatives to APRA's present system of expert determination for disputes, including whether more comprehensive alternative dispute resolution processes are required. This issue is discussed on pages 38 to 40 of the draft determination.

Next steps

Once the ACCC issues a draft determination, the Applicants or any interested party may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Conferences are conducted informally and while legal or professional advisers are able to attend they are not entitled to participate in the discussion.

If you wish the ACCC to hold a pre-decision conference in relation to the draft determination, you must notify the ACCC in writing by **Monday 22 February 2010**.

Alternatively, you are invited to make a written submission about the conditions proposed by the ACCC, or any other aspect of the draft determination. Submissions should be lodged by **Monday 1 March 2010**.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-decision conference be called, and will then release a final determination in relation to these applications.

Timetable

The ACCC will continue to progress its assessment of the application in a timely manner. An updated indicative timetable is set out below for your information.

30 September 2009	Lodgement of application and supporting submission.
11 November 2009	Closing date for submissions from interested parties on the application.
16 December 2009	Submission received from APRA in response to interested party submissions.
8 February 2010	Draft determination issued.
February/March	Public consultation on draft determination including

2010	any conference if called.
March 2010	Final determination.

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 Gavin Jones 03 9290 1475.

Yours sincerely



Dr Richard Chadwick
General Manager
Adjudication Branch