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**Australian  
Competition &  
Consumer  
Commission**

14 February 2014

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Canberra ACT 2601

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Dear Sir/Madam

[www.accc.gov.au](http://www.accc.gov.au)

### **Australasian Performing Right Association Ltd application for revocation and substitution A91367-A91375**

I am writing to you in relation to the above applications for re-authorisation lodged by the Australasian Performing Right Association Ltd (APRA). The purpose of this letter is to:

- seek submissions commenting on whether Resolve Advisors' revised alternative dispute resolution (ADR) system addresses the substantive concerns raised in the Australian Competition and Consumer Commission's (ACCC) draft determination; and
- advise you that the pre-decision conference convened on 8 November 2013 in relation to the above matter is to be reconvened on 21 March 2014.

#### **Background**

On 15 October 2013, the ACCC released a draft determination proposing to grant conditional authorisation to APRA in relation to its standard arrangements for the acquisition and licensing of the performing rights in its music repertoire. The draft determination stated that the ACCC was likely to be satisfied that, subject to the conditions of authorisation, the public benefit flowing from the proposed arrangements was likely to outweigh any anti-competitive detriment. A copy of APRA's applications and the ACCC's draft determination can be found on the ACCC's website: <[www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister)>.

#### **Review of APRA's alternative dispute resolution system**

In its draft determination, the ACCC proposed a condition of authorisation (C5) that would require APRA to revise its ADR scheme to include certain features with the aim of encouraging parties in dispute with APRA, including small businesses, to utilise the ADR system.

To address the matters raised by proposed condition C5, APRA engaged Resolve Advisors to develop a new ADR system. Resolve Advisors has now completed its review of the ADR system as it applies to APRA's licensees. The documents comprising the revised ADR system are available on the Resolve Advisors' website (in particular, see: 'Overview of dispute resolution processes options'; 'Effective Dispute Resolution- Proposed dispute resolution process'; and 'Consultant Report - summary of consultations and recommendations'): <<http://www.resolveadvisors.com.au/dbpage.php?pg=apradesign>>.

I note that features set out in condition C5 are still being considered by the ACCC and the final form of the condition has yet to be determined. In developing the final form of the condition, the ACCC will take into account the proposals put forward by Resolve Advisors and feedback from interested parties and APRA.

The ACCC invites written submissions from interested parties about the proposed ADR system in advance of the pre-decision conference. In particular, the ACCC is interested in your views on the following matters:

- Does the revised ADR system address any concerns you may have with the existing ADR system?
- Resolve Advisors proposes that options be made available in the ADR system (i.e. direct negotiation, assisted negotiation in the form of mediation, as well as both binding and non-binding expert processes). Are you supportive of these three options?
- Resolve Advisors has proposed that applicants pay a filing fee when they bring a matter to ADR and that the parties in dispute share the hourly rate for the mediator/independent expert. Is this fee structure appropriate? Who should be responsible for determining the cost to each party?
- Resolve Advisors proposes that there be a pool of mediators and independent experts available to resolve disputes (see Resolve Advisors' 'Summary of recommendations'). Do you think there should be involvement of interested parties in the initial selection of the panel of mediators and independent experts and if so what form should this involvement take?
- How should the independence of the dispute facilitator and the independent experts and mediators appointed to the pool be assured?
- What mechanism, if any, should be put in place for addressing any concerns about the way in which the dispute facilitator is managing the dispute resolution process once it is up and running?
- Resolve Advisors has recommended that any binding decisions be published (without including the confidential information of the parties) (see Resolve Advisors' 'Summary of recommendations'). Do you support this proposal?
- Resolve Advisors has recommended that there be reporting on the ADR system. What types of information about the ADR system should be reported to the market and how (for example, the number of matters that were considered under each option, the time taken and the outcome)? Who should compile the reports (e.g. an independent marketing firm)?
- The ACCC would be interested in other views you may have on the proposed ADR system and the final form of condition C5.

If you wish to make a submission, please lodge your submission by **14 March 2014**. Submissions should be emailed to [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au) with the subject 'A91367-A91375 – Australasian Performing Right Association Ltd – submission'.

Submissions will be placed on the ACCC's public register subject to any request for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

### **Reconvening the pre-decision conference**

On 21 October 2013 the Australian Hotels Association National Office requested that the ACCC convene a conference in relation to the draft determination issued by the ACCC on 15 October 2013 proposing to grant conditional authorisation to APRA.

The pre-decision conference was opened and adjourned by Commissioner Dr Jill Walker on 8 November 2013. The purpose of adjourning the conference was to allow a further

opportunity to discuss APRA's ADR system following the development of a revised ADR system by Resolve Advisors.

A copy of the minutes from the conference can be found on the ACCC's website: [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

The ACCC will reconvene the conference on **21 March 2014**, at the ACCC's Melbourne office with video conferencing facilities available in the ACCC's offices in Brisbane, Canberra, Perth and Sydney. The conference will commence at 1pm. Commissioner Dr Jill Walker will chair the conference.

Under the *Competition and Consumer Act 2010* (the Act), the conference may be attended by the applicant and other interested parties. If you wish to attend, you must notify the ACCC of your intention by **7 March 2014**. Notifications must be in writing and addressed to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

You can also notify the ACCC by post to GPO Box 3131, Canberra ACT 2601, or by facsimile on (02) 6243 1212.

You should provide details of a contact name, telephone number, e-mail address or facsimile number, and mailing address so that you can be notified of any late changes to conference arrangements. Please also indicate in which ACCC office you wish to attend.

If you represent a company or organisation you should identify the company or organisation, provide a list of attendees and their position titles, and indicate who will be the chief spokesperson.

I would also note that, while conference participants may bring outside legal or other professional advisers to assist them, the Act prohibits these advisers from participating in conference discussions.

Attached for your information are procedures usually followed at pre-decision conferences.

You can also forward this letter to any other party who may be interested in this matter.

A copy of this letter has been placed on the ACCC's public register. If you require any further information in regard to the conference or wish to clarify whether you may be considered an 'interested person' within the terms of the Act, please do not hesitate to contact Tess Macrae on (03) 9290 1835 or email [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch

## **AN OUTLINE OF THE PROCEDURES USUALLY FOLLOWED AT CONFERENCES IN RELATION TO APPLICATIONS FOR AUTHORISATION**

The Australian Competition and Consumer Commission (ACCC) tries to conduct such conferences as informally, flexibly and speedily as possible.

An interested party attending a conference may have the assistance of outside legal or other professional advisers, however, they are not entitled to participate in the discussion.

The conference will serve a useful purpose in that it gives the ACCC and all interested parties the opportunity to meet face-to-face to discuss the operation and effect of the applicant's conduct and the ACCC's draft determination. The applicant and/or interested persons have the opportunity to persuade the ACCC to accept their view. The ACCC benefits from direct contact with the parties, and its perceptions of public benefits and detriments are tested in a forum of interested parties where points are often quickly and forcefully made.

### **1. Preliminary procedures**

- (a) When you arrive at the conference you should identify yourself to ACCC staff before the conference begins. Further, please complete the attendance book when arriving at the conference. This assists ACCC staff to identify attendees for the purpose of recording the discussion.
- (b) The Chair (a Commissioner) will open the conference by welcoming those present and outlining the requirements of the *Competition and Consumer Act 2010* and the manner in which the conference will be conducted.
- (c) If you intend to present a written comment (and you are encouraged to do so), it is helpful if the ACCC receives it before the conference date. It can then be copied and distributed at the conference. In this way, both the ACCC and other parties present are assisted, and your submission forms part of the conference record. If you cannot complete the written submission earlier, it is helpful if you come to the conference with extra copies which can be distributed.
- (d) Any document you present without making any request for it to be excluded from the public register will be placed on the ACCC's public register.

If you intend to present a submission at the conference and you wish it (or certain details in it) to be excluded from the public register, you should make your request to the Chair at the time of presenting the document, and you should state in general terms the reason for your request. (See the ACCC's [Guidelines for excluding information from the public register](#)).

### **2. General procedures**

- (a) The conference has been convened to discuss the draft determination, to canvass points of view and to assist the ACCC's weighing of issues and its interpretation of the information given to it.
- (b) The procedure is discretionary. The Chair controls the order of discussion, and may take particular topics separately, so that all the discussion on any given topic may be heard at the one time.

- (c) The conference is not a court, and there is no right of cross-examination. You may request the Chair to ask questions of other parties present, but the Chair retains the discretion as to whether your questions will be put. The Chair, of course, may also directly question the parties at the conference, and they have discretion whether or not to answer.
- (d) ACCC staff present will make a record of the discussion. This will be in minute form, not a verbatim record. The conference record is placed on the public register, and all who attend the conference will receive a copy.
- (e) When the Chair believes that all present have been given a reasonable opportunity to express their views, he/she may terminate the conference.
- (f) The Chair (and any other Commissioner at the conference) cannot give a final decision at the close of the conference. Each Commissioner is only a representative of the ACCC and is required to report back to the ACCC, which will make the final decision.

### **3. Other matters**

- (a) Following the pre-determination conference, the ACCC will review its draft determination in the light of discussion and further submissions made at the conference (or within a set period of time after the conference), and will publish its final determination as soon as possible thereafter.
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