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28 February 2014

Ms Tess Macrae
Senior Project Officer
Adjudication Branch
Australian Competition & Consumer Commission
Level 35, 360 Elizabeth Street
MELBOURNE VIC 3000

BY EMAIL

Dear Ms Macrae

AUTHORISATION A91367 – A91375 SUBMITTED BY AUSTRALASIAN PERFORMING RIGHT ASSOCIATION LIMITED – APPOINTMENT OF EXTERNAL FACILITATOR

I refer to your email dated 14 February 2014.

As you are of course aware, Resolve Advisors has conducted a series of stakeholder consultations regarding the design of an alternative dispute resolution system to be implemented by APRA, following the ACCC's draft determination. Resolve Advisors has proposed a system design that is to be the subject of submissions prior to the reconvened pre-decision conference on 21 March 2014.

Although APRA anticipates there will be submissions that propose changes to the proposed design, it also anticipates that a new ADR system will be implemented at least broadly in accordance with the proposed design, which already incorporates many of the elements set out in proposed condition C5 of the draft determination.

A significant element of the implementation of the ADR system, whether in its current form or modified, is the appointment of members of the panel of third party experts and mediators. APRA is advised by Resolve Advisors that these appointments would ideally be made by the external facilitator, in consultation with stakeholders.

The purpose of this letter is to seek the ACCC's views on the appointment of Resolve Advisors as the external facilitator. APRA has also written to those stakeholders that took part in the system design consultation process to seek their views.

APRA feels that Resolve Advisors would be well placed to continue with the system implementation in the role of independent facilitator. The reasons for this include:

1. It is APRA's view that the engagement of Resolve Advisors to design the ADR system has been extremely successful, both in the production of a system design and in the strengthening of APRA's relationships with key licensees.
2. Resolve Advisors is independent of APRA. In particular, this is the first time that APRA or any of its management team has worked with Resolve Advisors or Ms Kirschner. At all times during the process, Resolve Advisors has taken steps to ensure its independence of APRA, notwithstanding that it has been retained by APRA to design the system. This has included numerous private meetings with stakeholders, as well as consultations with the ACCC.
3. APRA believes that Resolve Advisors has developed knowledge of the industries likely to be participating in the ADR process, as well as an understanding of APRA's business. This would be invaluable in the further implementation of the system, given the unusual nature of the collective licensing environment and the breadth of licensee interests. A different facilitator would be required to acquire this knowledge, resulting in duplication of effort and cost.
4. Resolve Advisors has gained the trust of APRA's licensing staff, which will greatly assist with the implementation of the system within APRA.
5. APRA has not been advised by any of its stakeholders that they would have any objection to the appointment of Resolve Advisors in the role.
6. APRA believes that Resolve Advisors will be able to implement the system by 30 June 2014, but would be more concerned about this timing were a new facilitator be required to familiarise itself with the process and the relevant industries.

APRA has found the process of working with Resolve Advisors to be illuminating and instructive. It has every confidence that Resolve Advisors would provide independent, professional services as the facilitator of the new ADR system.

APRA welcomes the views of the ACCC.

Yours sincerely



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