



AUSTRALIAN HOTELS ASSOCIATION

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30 April 2014

Tess Macrae
Senior Project Officer
Adjudication Branch
Australian Competition and Consumer Commission
Level 35, 360 Elizabeth St
Melbourne Vic 3000

Dear Ms Macrae,

APRA application A91367-A91375

I am writing in regard to your letter dated 11 April 2014 advising the revised draft conditions for the reauthorisation lodged by the Australian Performing Rights Association Ltd (APRA). First let me acknowledge the progress made by APRA during this process. We also thank the ACCC for taking into account the submissions made by AHA and other interested parties. I have set out other various comments and observations below.

Period of authorisation

AHA acknowledges the progress made between APRA and the interested parties during and since the pre-decision conferences. As the ACCC has noted, we are generally encouraged by APRA's willingness to discuss issues. However, we have a strong view that the period of reauthorisation should remain at three years, and not be extended to four or five years. Our reasons include:

- The plain English guides are still not yet approved and are not tested in the commercial environment
- APRA has tabled a draft "single form" application which is far easier to read than the previous multiple forms. ACCC should respectfully condition APRA to provide such a single licence application form.
- The ADR may need fine tuning (or major tuning) over the next three years
- Given its market power, we believe it is not unreasonable that a three year authorisation is granted until all the changes bedded down and able to be assessed
- APRA's improved behaviour is still to be proved over the longer term

We are hopeful that the positive signs being shown by APRA continue beyond the date of authorisation. We must say that we do believe APRA is acting legitimately to change its long term behaviour. Provided that the new environment was working over the next three years, we would see a longer authorisation period being appropriate from 2017, e.g. six years.

Condition C3.6

AHA recognises the efforts that the ACCC has undertaken to provide a "broad pool" for the Committee. However, AHA also believes a nominee of relevant interested parties (such as AHA), should be able to nominate a person to the Committee.

Regular reviews of the scheme

The Conditions should include a provision that where the Committee believes a variation should be made to the Scheme, then the Committee have the capacity to apply to the ACCC for a formal variation to the authorisation.

Schedule C(v)

In regard to Schedule C(v), we are concerned that the presence of judges or barristers are a pre-requisite in the pool of independent experts/mediators. AHA is that disputes before the ADR will largely be of a commercial nature. Therefore, rather than singling out the legal profession as having to form part of the pool, that equal weighting and words be given to persons experienced in the commercial arena. We fear a preponderance of lawyers deciding commercial issues – “the specific words excluding the general words”. A weighting towards judges and barristers will also increase costs.

AHA agrees for this submission to be made public.

Yours faithfully,



STEPHEN FERGUSON
NATIONAL CEO