



Australian Writers' Guild Limited – application for authorisation A91573 Interim authorisation decision 28 February 2017

Decision

Pursuant to section 91 of the *Competition and Consumer Act 2010* (Cth) (the Act), the Australian Competition and Consumer Commission (the ACCC) has granted interim authorisation in respect of the application for authorisation lodged by the Australian Writers' Guild Limited (AWG) on 3 February 2017.

Interim authorisation is granted to enable current and future members of the AWG to continue to collectively bargain on behalf of its members in relation to the terms and conditions of model terms of engagement with Screen Producers Australia (SPA) for use by writers when contracting with film or television producers. Interim authorisation does not extend to negotiations between AWG members and producers who are not members of SPA.

Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

The application for authorisation

The AWG seeks revocation of its existing authorisation (A91274) and the substitution of a new authorisation to enable current and future members of the AWG to collectively negotiate model agreements which can be used by current and future members of the AWG when contracting with producers of film, television and digital media.

The existing authorisation allows AWG members to collectively negotiate with SPA. The AWG wishes to expand the scope of the authorisation to also include negotiations between AWG members and producers who are not members of SPA (the expanded conduct). The AWG is seeking authorisation for a period of 10 years.

The authorisation process

Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the Act. Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

Interim authorisation

Section 91 of the Act allows the ACCC to grant interim authorisation where the ACCC considers it appropriate to allow the parties to engage in the conduct while the ACCC is considering the substantive application for authorisation.

The AWG requested interim authorisation to engage in the expanded conduct on the basis that:

- The existing authorisation (A91274) is due to expire on 28 February 2017.
- Negotiations with SPA, as authorised under A91274 are ongoing and require authorisation to continue.
- The terms of engagement previously negotiated by the parties are currently in widespread use, and without an interim authorisation the applicant is concerned that public benefits arising from the conduct will no longer be enjoyed.

Consultation

The ACCC sought submissions from eight interested parties potentially affected by this application, including relevant industry associations, the relevant government departments and statutory authorities and television broadcasting companies.

One submission was received from SPA in relation to the request for interim authorisation. SPA has no objection to the ACCC granting interim authorisation so as to allow the negotiations between the AWG and SPA to continue. However, SPA requests more time to consider the expanded conduct.

Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

Reasons for decision

In granting interim authorisation for the existing collective bargaining arrangement to continue (but not for the expanded conduct), the ACCC considers that:

- There is likely to be minimal public detriment arising from the existing collective bargaining arrangement having regard to the following:
 - the level of competition between film and television writers is unlikely to be significantly affected
 - the collective bargaining arrangements are voluntary for both AWG members and producers, and use of the model terms of engagement is voluntary for both writers and producers
 - the arrangements do not include collective boycott activity.
- Based on the existing authorisation (A91274), it is likely that the existing collective bargaining arrangement will continue to result in public benefits by reducing transaction costs and by providing AWG members with greater bargaining power to have effective input into the terms and conditions of their contracts. Further, collective negotiations have the potential to improve the level of information available to AWG members and producers, which also enhances the potential for more efficient outcomes to be achieved.
- Granting interim authorisation will not permanently alter the competitive dynamics of the market and rather will maintain the market status quo by enabling the negotiations between the AWG and SPA to continue and to enable the terms of engagement previously negotiated by the parties to remain in operation.

The ACCC has decided not to extend interim authorisation to negotiations between AWG members and producers who are not members of SPA. Unlike the conduct for which interim authorisation is granted, such negotiations have not been previously authorised. The limited consultation conducted to date has indicated a need for the ACCC to consider the likely public benefits and detriments arising from this expanded conduct in more detail. The ACCC will undertake this assessment before making a decision as to whether to grant authorisation for the expanded conduct and will progress the matter in accordance with the timeline on the ACCC's website (which indicates a draft determination in March/April 2017).

Reconsideration of interim authorisation

The ACCC may review the interim authorisation at any time. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.