



**Screen Producers Australia –
Application for authorisation AA1000535
Interim authorisation decision
16 December 2020**

Decision

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of the application for authorisation AA1000535, lodged by Screen Producers Australia (**SPA**) on 18 November 2020.
2. SPA has applied for authorisation on behalf of its current and future members to enable them to collectively negotiate model terms of engagement with the Australian Writers' Guild (**AWG**), the Media Entertainment and Arts Alliance (**MEAA**) and the Australian Directors' Guild (**ADG**), and to give effect to existing and future model terms of engagement when contracting with current and future members of the AWG, MEAA and ADG. The conduct applied for is described in paragraphs 9(a) to (d) below.
3. The ACCC has granted interim authorisation to SPA and its members only with respect to the conduct described in paragraphs 9(a) to (c) of this decision document. Interim authorisation does not extend to SPA and its members creating and giving effects to new contracts or arrangements that include new model terms.
4. Interim authorisation commences immediately and remains in place until it is revoked, or the date on which the application for authorisation is withdrawn, or the date the ACCC's final determination comes into effect.

The Application for Authorisation

5. Production companies producing audio visual projects generally engage writers, actors, directors and crew members as employees or independent contractors.
6. SPA is an industry body that represents the interests of independent Australian film and television producers on issues affecting the commercial and creative aspects of screen production. SPA currently has approximately 400 members.
7. As part of its services to members, SPA provides industrial advice and services to its members, including negotiation of model terms of engagement with the AWG, MEAA and ADG. These model terms of engagement cover matters such as minimum rates of pay, model terms and conditions of engagement, termination and dispute resolution and where relevant, contractual arrangements for dealing with copyright, moral rights and credit in artistic work.

8. Independent contractors are often competitors and therefore acting together to negotiate model terms of supply gives rise to a risk that they will breach competition laws.
9. SPA is seeking authorisation for:
 - a) SPA, including current and future members of SPA, to collectively negotiate model terms of engagement with AWG, MEAA, and ADG; and
 - b) SPA, including current members of SPA, to give effect to existing contracts or arrangements containing model terms of engagement already negotiated with the AWG, MEAA, and ADG; and
 - c) SPA, including current and future members of SPA, to create new contracts or arrangements with current and future members of AWG, MEAA, and ADG that contain existing model terms of engagement and to give effect to those new contracts or arrangements; and
 - d) SPA, including current and future members of SPA to create new contracts or arrangements with current or future members of AWG, MEAA and ADG that contain new model terms of engagement and to give effect to those new contracts or arrangements.

(the **Proposed Conduct**)

10. SPA seeks interim authorisation for 9(a) to (c) of the Proposed Conduct.
11. All of the model terms negotiated by SPA are minimum terms and are not binding on SPA, AWG, ADG or MEAA members. The model terms do not inhibit the parties from negotiating terms more beneficial for writers, directors, actors and crews and do not restrict the parties from negotiating other terms which are not covered by the model terms of engagement.
12. SPA is seeking authorisation for ten years.

The authorisation process

13. The authorisation process provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (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 proposed conduct results in a net public benefit.
14. The ACCC granted authorisation to SPA for similar conduct on 13 August 2015 for five years. Those authorisations expired on 4 September 2020.

Interim authorisation

15. The ACCC may, where it considers it appropriate, grant an interim authorisation which allows parties to engage in proposed conduct while the ACCC is considering the substantive application.
16. SPA has requested interim authorisation to enable it and its members to engage in the Proposed Conduct, while the ACCC considers the application for authorisation. SPA advised that due to the impact on the industry and on the work of SPA from the COVID-19 pandemic the 2015 authorisation expired before a new application was lodged. SPA has requested interim authorisation to preserve the status quo while the application for authorisation is considered.

17. SPA notes that, absent interim authorisation, SPA would be unable to collectively negotiate model terms or give effect to existing and new agreements based on current model terms.
18. SPA submits that, in the context of screen companies struggling to secure finance and insurance as well as starting, resuming and stop-starting production due to the COVID-19 pandemic, predictability and certainty of industrial arrangements is essential.

Consultation

19. The ACCC invited submissions from a range of potentially interested parties including broadcasters, industry associations, and government bodies. AWG and ADG both noted that they do not object to the interim authorisation. The ACCC received no further submissions in respect to the application for an interim authorisation
20. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, is accessible on the [ACCC's public register](#).

Reasons for decision

21. The ACCC has granted interim authorisation only with respect to the Proposed Conduct described at paragraphs 9(a) to (c) of this decision document. The ACCC considers it appropriate to grant interim authorisation, noting:
 - interim authorisation will maintain the status quo that existed under the 2015 authorisations, which expired only recently, while the ACCC considers the substantive application for authorisation;
 - the urgency of the request for interim authorisation as the current authorisation has expired and without interim authorisation SPA and its members will need to revert to individual negotiations in light of the competition law risk; and
 - the Proposed Conduct is substantially similar to the conduct authorised in 2015. In 2015, the ACCC concluded that the likely public benefits outweighed the likely public detriments.

Reconsideration of interim authorisation

22. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation.
23. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.