

31 March 2023

Naomi Lizak  
Contact Officer  
Competition Exemptions  
Australian Competition & Consumer Commission

**BY EMAIL - [exemptions@accc.gov.au](mailto:exemptions@accc.gov.au)**

Dear Ms Lizak

### **LIVE PERFORMANCE AUSTRALIA – APPLICATION FOR AUTHORISATION**

We act for Australasian Performing Right Association Limited (**APRA**), which trades as APRA AMCOS and OneMusic Australia. APRA understands that a copy of this letter will be placed on the public register.

We are instructed to respond to your letter dated 17 March 2023 regarding the Australian Entertainment Industry Association trading as Live Performance Australia's (**LPA's**) application for authorisation dated 7 March 2023. The proposed conduct referred to in the application includes collective bargaining between LPA and OneMusic Australia.

APRA supports LPA's application, including because the ability to negotiate with bodies such as LPA creates efficiencies that in APRA's view benefit APRA members, (in this instance) LPA members, and members of the public generally. APRA has a longstanding relationship with LPA and its members, and respects the roles they play in the music economy.

However, APRA does have some comments on the content of the LPA application, which are set out below.

1. LPA makes a number of comments regarding the OneMusic consultation process. Specifically, LPA suggests that its ability to negotiate on behalf of its members will streamline and perhaps replace consultation. The Collecting Societies Code of Conduct requires societies such as APRA to "*where appropriate consult in good faith with relevant industry associations in relation to the terms and conditions applying to licences or licence schemes offered by the Collecting Society*". OneMusic has adopted the practice of publishing consultation papers with respect to proposed licence schemes, as a way of obtaining comments from as wide a range of stakeholders as possible. As far as APRA is aware, LPA does not represent all licensees or potential licensees under any OneMusic licence scheme, and so it is unlikely that the authorisation if granted will have as significant a benefit as may have been suggested by LPA.
2. Further, as noted by LPA, OneMusic seeks to license all similar licensees on equivalent terms, under licence schemes that are available to all licensees in a 'class of cases' (to adopt the terminology of s 136 of the *Copyright Act 1968* (Cth)). It would follow that terms offered to LPA members would also be offered to other relevant music users regardless of their membership of LPA. By way of background, the OneMusic consultation that initiated LPA's application was, in fact, completed in December 2022 and resulted in OneMusic's current published licensing scheme for events. Many LPA members and other non-member event organisers have already entered into OneMusic licences on the terms of that licensing scheme, which commenced operation on 1 January 2023. OneMusic has been responsive to the dispute that LPA and some

of its members have raised, and in that regard, has agreed to continue to discuss the disputed aspects of the published licence scheme with LPA. However, should the outcome of those discussions result in any alteration to the terms of the events scheme as currently published in the market, it will be incumbent upon OneMusic to reopen its consultation in respect of that market and offer any amended licence scheme to all music users of a similar class, whether an LPA member or not.

3. APRA does not accept LPA's characterisation of the circumstances surrounding the introduction of a new licence scheme for certain music events, including the consultation process for the new music events licensing arrangements, the termination of previous music events licences, and the granting of interim licences. In particular, LPA was closely involved with the development of the new licensing scheme and was well aware of OneMusic's intentions throughout the entire process. Many aspects of the new licence scheme were the direct result of LPA's comments. APRA has detailed records of the entire consultation process, including its numerous meetings with LPA and LPA members.
4. LPA's suggestion that OneMusic behaved unreasonably in the aftermath of the Covid-19 pandemic is baseless. APRA and LPA have worked closely together to ensure that the whole music industry did not collapse under the unique challenges caused by the pandemic, and to suggest that APRA has been anything other than supportive of the industry as a whole is to overlook the thousands of hours of work done together by APRA and LPA executives, with others, in service of the industry, as well as the numerous concessions made in good faith to licensees by APRA.
5. APRA does not accept LPA's characterisation of the Resolution Pathways process. Resolution Pathways is a transformative ADR process that is available to all licensees and potential licensees.
6. LPA has failed to properly acknowledge the effect of APRA's opt out and licence back facilities, in circumstances where music events licensing tends to be an area where those facilities are well utilised. Moreover, the rights that seem to comprise the bulk of LPA's dispute are rights held by PPCA (and by extension, OneMusic) on a non-exclusive basis. It is APRA's understanding that some LPA members have been seeking and receiving these rights directly from the owners, being, in the most part, the record labels.
7. With respect to LPA's comments regarding power imbalance generally, APRA notes that LPA members include Live Nation Australasia, TEG entities, AEG entities, and Frontier Touring Company.

Please let me know if we can provide anything further.

Yours sincerely



Kate Haddock  
Partner

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