

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ANNUAL REPORT 2017

10QW: Music industry (composers, songwriters and publishers): APRA-AMCOS –authorisation process

The Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society, collectively known as APRA-AMCOS, is currently authorised to operate as a monopoly by the ACCC. Under those arrangements, their members – composers, songwriters and publishers – assign their rights under an exclusive arrangement. The organisation is then mandated to represent the interests of its members in deriving revenue for its members, who are, for all intents and purposes, Australian artists and songwriters and their publisher members. This is achieved via a number of revenue routes: radio and TV broadcast revenue, digital sales and streaming, reproduction revenue, public performance use, etc. It is fair to say that APRA has broad blanket coverage in the market and there are limited to no alternatives with respect to negotiating rights. There are certainly benefits for the Australian market but there are clearly some perceived detriments as well.

Will the upcoming authorisation process seek to confirm whether the granting of a license by APRA-AMCOS constitutes a small business / standard form contract, and by extension would be subject to unfair contract terms under Australian Consumer Law?

Answer: The ACCC can grant authorisation for conduct that may breach the competition provisions of the *Competition and Consumer Act (2010)* (the CCA) where the conduct is not harmful to competition and/or where it is likely to result in overall public benefits. In 2013, APRA sought re-authorisation of its standard arrangements for the acquisition and licensing of the performing rights in its music repertoire because aspects of those arrangements have the potential to breach the CCA. In 2014, the ACCC granted authorisation to APRA until June 2019 subject to a number of conditions.

If and when APRA seeks re-authorisation, the ACCC will consult publicly and assess all public benefits and detriments that are likely to arise from the conduct.

Authorisation is a separate process to the application of the Australian Consumer Law (ACL). The ACL declares that certain terms in standard form contracts, which are unfair, can be declared void and unenforceable. The unfair contract terms provisions applies to standard form contracts entered into by a business which employs less than 20 people and the upfront price payable does not exceed \$300 000 or the contract is for longer than 12 months and the upfront price payable does not exceed \$1 000 000.

The granting of a license, depending on the specific circumstances, may be a standard form contract that the ACL unfair contract terms provisions will apply to.