



AUSTRALIAN  
COMPETITION  
& CONSUMER  
COMMISSION

# Statement of Reasons

Notification CB10000483

lodged by

Coalition of Major Professional and Participation Sports  
Association Inc

in respect of

collective negotiation with Australasian Performing Right  
Association

Notification number: CB10000483

Date: 15 December 2021

Commissioners: Keogh  
Rickard  
Brakey  
Ridgeway

## Summary

The Australian Competition and Consumer Commission (**ACCC**) does not object to the notification lodged by the Coalition of Major Professional and Participation Sports Association Inc (**COMPPS**) on 26 November 2021. Under the notification, COMPPS seeks to collectively negotiate agreements on behalf of its seven members with Australasian Performing Right Association (**APRA**), including when trading as 'OneMusic' or 'OneMusic Australia'.

The ACCC is satisfied that the notified collective negotiations are likely to result in public benefits due to transaction cost savings and increased opportunity for COMPPS members to have input into contracts for the acquisition of music copyright licences from APRA, a near monopolist. The ACCC considers that the notified collective negotiations are likely to result in minimal – if any – public detriment due to the collective negotiations being voluntary, music copyright licences being non-exclusive goods, the members representing a minor portion of acquirers of music licences, and the conduct unlikely to have an impact on the quality or prices of sporting events. The ACCC is satisfied that the likely public benefits will outweigh the likely public detriments.

The ACCC has decided to allow the notification to remain in force for a period of 10 years, as requested by COMPPS. The notification was lodged on 26 November 2021 and the legal protection commenced on 10 December 2021. It will remain in force until 25 November 2031 unless or until the ACCC ends the protection provided by the notification or the notification is withdrawn by COMPPS.

The ACCC may revisit this assessment at any time if circumstances change or the ACCC receives information that the public benefits no longer outweigh the public detriments.

## 1. The notification

1.1 On 26 November 2021, the Coalition of Major Professional and Participation Sports Association Inc (**COMPPS**) lodged a notification to enable it to collectively negotiate the terms and conditions (including licence fees) of copyright licences with Australasian Performing Right Association (**APRA**) on behalf of its seven members (each, a **Member**; collectively, the **Members**).

1.2 The current Members are:

- Australian Football League
- Australian Rugby League Commission
- Cricket Australia
- Football Australia Limited
- Netball Australia Limited
- Rugby Australia Ltd, and
- Tennis Australia Limited.

## The Notified Conduct

- 1.3 As notified, COMPPS proposes to negotiate on behalf of its Members with APRA, including when trading as 'OneMusic' or 'OneMusic Australia' (hereafter only referred to as APRA). This includes COMPPS:
- (a) negotiating with APRA, on behalf of its Members, the terms and conditions (including licence fees) of copyright licences
  - (b) representing the Members through the Resolution Pathways alternative dispute resolution process in respect of matters which are about the acquisition of the licences described in 1.3(a)
  - (c) representing its Members before the Copyright Tribunal of Australia the **Copyright Tribunal**) in respect of matters which are about the acquisition of the licences described in 1.3(a), and
  - (d) in the event that OneMusic is restructured or ceases to operate as it is current constituted, negotiate directly with APRA, AMCOS and PPCA on behalf of its Members relating to the matters listed in 1.3 (a)-(c)

(the **Notified Conduct**).

- 1.4 The Notified Conduct does not include a collective boycott, membership of the Negotiating Group is not open to other governing bodies of major professional and participation sports and Members will be free to also negotiate their own separate contracts with APRA.
- 1.5 Businesses which meet certain criteria may lodge notifications to gain protection from legal action under the competition provisions in Part IV of the *Competition and Consumer Act 2010* (the **CCA**) for arrangements that may otherwise risk breaching those provisions in the CCA, but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.6 By lodging a notification with the ACCC, COMPPS seeks legal protection for itself and its Members to participate in collective bargaining that may otherwise breach competition laws because it involves joint action by competitors.
- 1.7 COMPPS submits that publicly playing and performing music at live sporting events are integral inputs into the production of a live sporting event and OneMusic is essentially the only supplier of those rights.
- 1.8 As such, COMPPS submits the rationale for the Notified Conduct is, to some extent, to redress the substantial imbalance of bargaining power that currently exists between OneMusic and each Member which is seeking to acquire an integral input for its business from OneMusic.

## 2. Background

- 2.1 COMPPS plays an industry leadership role to:
- harness common issues and represent the interests of the Members to governments and other relevant bodies

- maximize the impact of the sports by combining resources and speaking with one voice;
  - propose sport initiatives that deliver on government outcomes, and
  - stimulate opportunities for innovation and grow the global reputation of Australia as a leading sports nation.
- 2.2 COMPPS believes sport is entrenched in the Australia way of life and plays a major role in the economic and social health of the Australian community. COMPPS provides a single voice and collective response on behalf of its member sports where their interests are aligned.
- 2.3 Each Member is a sporting body responsible for the long-term development and sustainability of its respective sport in Australia. Their duties involve organising, offering and broadcasting live sporting events to the public and administering grassroots participation programs for their respective sports.
- 2.4 The music licences concerning the rights to the public playing and performance of music which are offered by OneMusic are integral inputs into the production and operation of a live sporting event.
- 2.5 The target, OneMusic, is the intermediary body that supplies bundled performing rights in musical works and sound recording licences to organisations in Australia, including to the Members. APRA, AMCOS and PPCA's members are the content creators or other rights' holders. In turn, OneMusic pays royalties to the music creators or other rights' holders of copyright, whose music is used by each organisation.
- 2.6 In the 2018/2019 financial year, APRA had group revenue (inclusive of AMCOS) of \$471.8 million.<sup>1</sup> Based on this figure, COMPPS conservatively estimates that, combined, the value of licences acquired by the Members represents well under 0.01% of APRA's revenue.
- 2.7 In its Final Determination of APRA's application for re-authorisation AA1000433 in 2020, the ACCC noted:
- APRA is a 'near monopolist supplier and acquirer of rights to commercially popular music rights in Australia' and is therefore able to maximize its profit by engaging in price discrimination across user groups – offering different groups different licencing terms and conditions according to their willingness to pay.<sup>2</sup>
  - While APRA does not restrict output in the sense that it does not refuse access to its works as a bundled product, the conduct of only supplying

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<sup>1</sup> ACCC, Final Determination for Application for revocation of A91367 - A91375 and the substitution of authorisation AA1000433 lodged by Australasian Performing Right Association Ltd (AA1000433) (13 July 2020) (ACCC, **Final Determination on APRA re-authorisation (2020)**), page 10, paragraph 1.16. Available [here](#).

<sup>2</sup> ACCC, Final Determination on APRA re-authorisation (2020), paragraph 4.76.

an ‘all or nothing’ bundle is itself a restriction on the form of supply and therefore output.<sup>3</sup>

- Some businesses are likely to be deterred from using the Copyright Tribunal to resolve a dispute with APRA because of the cost and time involved. In particular, the ACCC considers the Copyright Tribunal constrains APRA’s ability to exercise its market power only beyond the point where the cost to the user of seeking recourse to the Copyright Tribunal would be less than the difference between the price which the user could negotiate with APRA directly and that which it considers that the Copyright Tribunal would be likely to impose. For many users, this means that the Copyright Tribunal is unlikely to impose any constraint at all on the exercise of market power by APRA.<sup>4</sup>

### 3. Consultation

- 3.1 The ACCC consulted with APRA about the notification. The ACCC also published the notification on its public register.
- 3.2 APRA supports the notification and provided a submission to this effect which can be viewed on the ACCC notifications public register page.<sup>5</sup>

### 4. ACCC’s assessment

- 4.1 The Notified Conduct would or might constitute collective bargaining within the meaning of Division 1 of Part IV of the CCA. The ACCC has considered the Notified Conduct in accordance with section 93AC of the CCA.
- 4.2 In assessing the Notified Conduct, the ACCC considers that:
- the acquisition of music copyright licences occurs nationally, and
  - the likely future without the Notified Conduct is that COMPPS Members will continue to deal with APRA individually and acquire licences on a take-it-or-leave-it basis.

### Public benefit

- 4.3 The CCA does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*...we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as*

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<sup>3</sup> ACCC, Final Determination on APRA re-authorisation (2020), paragraph 4.79.

<sup>4</sup> ACCC, Final Determination on APRA re-authorisation (2020), paragraph 4.195.

<sup>5</sup> <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/collective-bargaining-notifications-register/coalition-of-major-professional-and-participation-sports-association-inc-compps-on-behalf-of-its-members>

*one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>6</sup>

4.4 The ACCC considers that the Notified Conduct is likely to result in public benefits in the form of:

- providing the opportunity for COMPPS Members to have greater input into contracts with APRA relative to individually negotiated or take-it-or-leave-it contracts. Collective negotiations may enable COMPPS Members to negotiate more tailored licence agreements that are fit for purpose across each sport's varied activities
- reduced transaction costs through being able to streamline the negotiation, dispute resolution and Tribunal process, and
- in the event that agreement cannot be reached on licence terms, increased efficiencies in the alternative dispute resolution and/or Copyright Tribunal processes.

## Public detriment

4.5 The CCA does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*<sup>7</sup>

4.6 The ACCC considers the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition because:

- the Notified Conduct is voluntary for both COMPPS Members and APRA
- the acquisition of copyright licences from APRA is non-exclusive – the Notified Conduct does not affect any other business's ability to acquire copyright licences from APRA.
- the Members represent a very small portion of potential acquirers of music licences from APRA
- the Notified Conduct is unlikely to have any material adverse effect on the quality or prices of sporting events.

## Balance of public benefit and detriment

4.7 Therefore, for the reasons outlined in this Statement of Reasons, the ACCC is satisfied that the Notified Conduct is likely to result in a public benefit and that

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<sup>6</sup> *Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.*

<sup>7</sup> *Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.*

this public benefit would outweigh any likely detriment to the public from the Notified Conduct.

## Period for which the notification will be in force

- 4.8 A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.<sup>8</sup>
- 4.9 In this case, COMPPS requests the notification to be in force for a period of 10 years to ensure the negotiations remain efficient and productive for both APRA and the Members.
- 4.10 The ACCC considers that it is appropriate for the notification to remain in force until 25 November 2031 for the following reasons:
- The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
  - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.
  - The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.<sup>9</sup>

## 5. Decision

- 5.1 The ACCC considers that the Notified Conduct is likely to result in public benefits that will outweigh the likely public detriment resulting from the lessening of competition.
- 5.2 With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 4.21, in accordance with s 93AD(5), the ACCC is satisfied that a 10 year notification period is appropriate in all the circumstances, being the period ending on 25 November 2031.
- 5.3 Accordingly, the ACCC does not object to the notification at this time. The protection provided by notification CB10000483 commenced on 10 December 2021 and will continue until 25 November 2031. However, the ACCC may revoke the notification at any time if it forms the view that the public benefits do not outweigh the public detriments.
- 5.4 This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

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<sup>8</sup> Section 93AD(3)(c) of the CCA.

<sup>9</sup> Section 93AC of the CCA.