



Australian
Competition &
Consumer
Commission

Our ref: 2148127
Contact officer: Sarah Paloni
Contact phone: (02) 6243 1007

23 Marcus Clarke Street
Canberra ACT 2601

10 July 2015

GPO Box 3131
Canberra ACT 2601

Mr Gillon McLachlan
Chief Executive Officer
Australian Football League
GPO Box 1449
Melbourne VIC 3001

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Dear Mr McLachlan

During the last six months, the Australian Competition and Consumer Commission (ACCC) has received information alleging that two member leagues of the Australian Football League (AFL) have implemented team apparel arrangements that place them at risk of engaging in third line forcing in breach of the *Competition and Consumer Act 2010 (CCA)*.

Given the possibility of broader compliance implications, we wanted to bring the issue to your attention. We are keen to ensure that the AFL and its member leagues and clubs understand their obligations under the CCA.

The ACCC would be pleased to meet with representatives of the AFL to discuss team apparel arrangements.

The ACCC and the CCA

The ACCC is an independent statutory authority responsible for enforcing the CCA. The purpose of the CCA is to enhance the welfare of all Australians through the promotion of competition and fair trading and provision for consumer protection.

The ACCC exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for competition and consumers.

Sections 47(6) and 47(7) of the CCA prohibit third line forcing, which occurs when a business will only supply goods or services, or give a particular price or discount on the condition that the purchaser buys goods or services from a particular third party. Third line forcing is prohibited no matter its effect on competition.

The team apparel arrangements



ACCC consideration

For information about the ACCC's views on sports apparel supply arrangements more generally, please see the enclosed ACCC publication: *What you need to know about: Competition issues in the supply of team wear and equipment*.

As set out in this publication, sporting associations are able to structure apparel supply arrangements in a way that does not raise concerns under the CCA.

Alternatively, if a business can demonstrate that there are public benefits that outweigh any public detriments from arrangements that involve third line forcing conduct, it can seek protection from legal action under the CCA by lodging a notification with the ACCC. Further information about the notification process is available at www.accc.gov.au/business/applying-for-exemptions/notifications.

The ACCC's view on whether notified third line forcing conduct concerning team apparel arrangements will result in a net public benefit will depend on the particular facts and circumstances of the arrangement.

For example, in December 2012 the ACCC allowed a notification lodged by Queensland Rugby Football League Limited (QRL). QRL proposed to offer the right to participate in rugby league matches and competitions conducted by it on condition that the club/player compete in uniforms and use equipment displaying the QRL logo. Uniforms and equipment displaying the QRL logo were available from a limited range of suppliers licensed by the QRL. The ACCC considered that QRL's licensing scheme sought to actively balance maximising the benefits of competition between suppliers (through a competitive tender every three years) with providing greater certainty and reducing the cost of supply by limiting the number of licensed suppliers. More information about this matter is available from the ACCC website at <http://registers.accc.gov.au/content/index.phtml/itemId/956551/fromItemId/909727>.

In contrast, in December 2011, the ACCC revoked a notification lodged by Football Queensland Limited concerning a requirement that its member football (soccer) clubs use only 'Teamwear' purchased from licensed suppliers during Football Queensland competitions. Teamwear included tracksuits, playing shirts, playing shorts, playing socks and soccer balls. The ACCC considered that the notified conduct would result in

significant public detriment by reducing competition for the supply of football apparel in Queensland, resulting in higher prices for football apparel and equipment than would otherwise be the case. More information about this matter is available from the ACCC website at <http://registers.accc.gov.au/content/index.phtml/ItemId/826296>

Next steps

The ACCC requests that the AFL ask its member leagues and clubs to review their team apparel arrangements and ensure that the arrangements satisfy the requirements of the CCA. I seek your written confirmation that this has occurred by 7 August 2015.

As stated earlier in this letter, ACCC would be pleased to meet with representatives of the AFL to discuss team apparel arrangements if that would be helpful. Please do not hesitate to contact Sarah Paloni on (02) 6243 1007 to arrange a suitable time for a meeting, or if you have any queries about this letter.

Yours sincerely



Marcus Bezzi
Executive General Manager
Competition Enforcement

This page and the subsequent 5 pages have been redacted on the basis that they are irrelevant to this FOI request.



Australian
Competition &
Consumer
Commission

A factsheet for business

WHAT YOU NEED TO KNOW ABOUT:

Competition issues in the supply of team wear and equipment

April 2015

Sporting associations often restrict which suppliers clubs and participants can buy team wear and equipment from as a condition of taking part in the sport.

Entering into exclusive arrangements with suppliers can provide funds for the association to use in the promotion of the sport, and may result in lower prices and better quality and consistency of team wear and equipment.

However, limiting competition among suppliers can also reduce choice for clubs and participants and result in price increases and lower quality.

In some cases exclusive licensing arrangements can also breach the *Competition and Consumer Act 2010* (the Act).

This guide is to help sporting associations, clubs, participants and suppliers to better understand whether their supply arrangements are likely to breach the Act, and how the ACCC assesses exclusive supply arrangements.

When will supply arrangements breach the Act

Many arrangements put in place by sporting associations for the supply of team wear and equipment to clubs and participants are unlikely to breach the Act.

For example, where a sporting association sets objective quality and consistency standards and allows individual clubs

to source team uniforms from any manufacturer, wholesaler or retailer that can meet the standards, this is unlikely to raise issues under the Act.

A sporting association which itself exclusively supplies team wear and equipment to clubs or participants will not breach the Act unless this arrangement has the purpose or effect of substantially lessening competition.

On the other hand, where a sporting association enters into exclusive licensing arrangements with one or a number of suppliers and requires clubs and/or participants to purchase only from these suppliers, the sporting association may be in breach of the third line forcing provisions of the Act. Third line forcing is a type of exclusive dealing and is a breach of the Act regardless of its effect on competition.

If possible, sporting associations should structure their arrangements to avoid exclusive dealing issues. Alternatively, if sporting associations can demonstrate that there are public benefits from arrangements that involve exclusive dealing (including third line forcing), they can seek statutory protection from legal action under the Act by lodging an exclusive dealing notification with the ACCC. Further information about the notification process is available from the ACCC's *Guide to exclusive dealing notifications*.



UWA/USERS/OW/11

What you need to know about: Competition issues in the supply of team wear and equipment



If in doubt, sporting associations should obtain legal advice. The assessment of risk and whether to lodge a notification ultimately lies with the sporting association. The ACCC is unable to provide legal advice but can provide guidance on the notification process and the type of information the ACCC is likely to consider relevant if a notification is lodged.

How the ACCC assesses exclusive licensing arrangements

From time to time the ACCC receives complaints about the limited choice and higher prices resulting from exclusive licensing arrangements. The ACCC also receives exclusive dealing notifications from sporting associations where their particular exclusive licensing arrangement may breach the Act but they nonetheless claim it should be allowed in the public interest.

The ACCC assesses exclusive licensing arrangements on a case by case basis in accordance with the following broad analytical framework.

The ACCC acknowledges that exclusive licensing arrangements, particularly where suppliers are selected via a competitive tender process (having regard to price, quality and service), may result in public benefits by:

- ensuring a minimum standard of quality
- enabling efficiencies from:
 - realisation of economies of scale by suppliers. Providing greater volume certainty enables licensed suppliers to achieve lower costs in manufacturing the products. These efficiencies may result in lower prices to clubs and participants. (However, if licensing arrangements allow licensed suppliers to retain a significant share of any available additional savings, this can limit the benefit to the sporting association and its clubs/participants.)
 - lowering transaction costs and search costs for clubs and players. By running a competitive tender process a sporting association can reduce the time and costs spent by individual clubs and/or participants searching for which products are available, which suppliers provide the best price/quality combination and have good after sales services (including arrangements for timely supply)
- sporting associations negotiating lower prices for team wear and equipment than individual clubs and players can. A competitive tender process may enable sporting associations to use their greater bargaining power to achieve lower prices for member clubs than might be the case if clubs negotiated individually, particularly if suppliers nominate their pricing as part of the tender process, and/or
- generating revenue to use for the promotion and development of the sport.

However, these benefits may sometimes be offset by the additional costs incurred by sports clubs and participants. For example, the costs associated with higher prices for team wear and equipment and administration of a licensing program may be greater than the revenue raised by the sporting association. In these cases, it is unlikely the ACCC would consider them to be in the public interest.

Exclusive arrangements can also result in potential public detriment from:

- reduced competition in the supply of team wear and equipment, resulting in increased prices and/or lower levels of quality and service
- increased costs for suppliers, including licence fees and royalty payments, administrative and compliance costs. Licensed suppliers are likely to seek to recover these costs as part of their business operations which may result in higher prices for clubs/participants
- increased administrative and compliance costs for sporting associations which may reduce the extent to which funds raised by licensing arrangements are returned to the sport, and
- inefficiencies in fund raising. Raising funds through exclusive licensing arrangements may be less transparent and less efficient than alternate methods of fundraising, such as increasing upfront player levies.

When selecting suppliers for an exclusive arrangement, sporting associations should consider all the costs and benefits for everyone involved. They should be transparent to clubs and participants about how the suppliers were selected and how the prices and quality of the products will be monitored.