

Copy of letter sent to attached list .



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: N93402  
Contact Officer: David Hatfield  
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6 June 2008

Dear Sir/Madam

### **Notification N93402 lodged by Football Queensland Limited**

I am writing to you as a party that may be interested in providing a submission to the Australian Competition and Consumer Commission (ACCC) in relation to the above notification.

#### **The notification process**

As you may be aware, the competition provisions of the *Trade Practices Act 1974* (TPA) prohibit certain forms of anti-competitive conduct or arrangements. Section 47 of the TPA prohibits conduct known as exclusive dealing where it has the purpose or effect of substantially lessening competition. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.

Subsections 47(6) and (7) of the TPA prohibit exclusive dealing of the type known as third line forcing. Third line forcing occurs where a corporation supplies goods or services on condition that customers acquire other goods or services from another business or refuses to supply because customers will not agree to that condition. Third line forcing conduct is currently a *per se* provision, meaning that it amounts to a contravention of the TPA regardless of its effect on competition.

Businesses wishing to engage in third line forcing conduct can 'notify' the ACCC of the conduct. Notification provides immunity from legal action by the ACCC and any other party for potential breaches of the exclusive dealing provisions of the TPA where the conduct is in the public interest.

Under the notification process, immunity from third line forcing conduct is obtained automatically 14 days after the date of lodgement, and continues unless the ACCC issues a notice revoking the immunity.

For third line forcing notifications, the ACCC may issue a notice revoking the immunity only if it is satisfied that the likely benefit to the public from the notified conduct would not outweigh the likely detriment to the public resulting from the conduct. Provided it is so satisfied, the ACCC may act to remove the immunity afforded by a notification at any stage.

## **The notification**

On 28 April 2008 Football Queensland Limited (FQ) lodged a third line forcing notification. The conduct the subject of the notification involves a licensing program under which FQ requires football clubs participating in FQ competitions to use only Teamwear from licensed suppliers during FQ competitions. Teamwear includes tracksuits, playing shirts, playing shorts, playing socks and balls. In the event that Licensed Balls or Apparel are not used in matches in FQ competitions, the following penalties are imposed:

- first breach - \$500
- second breach - \$1000
- third and further breaches - \$2000 per non-compliance and a show cause notice as to why affiliation should not be cancelled.

A copy of the notification is attached.

## **Comparison to similar conduct in Victoria**

In October 2007, the ACCC released its assessment of a similar licensing program, operated by the Football Federation of Victoria (FFV).

The ACCC had initially proposed to revoke FFV's notification, due to concerns that it forced clubs to acquire products from a limited range of suppliers (4) thereby restricting choice in terms of price, quality and service. The ACCC was also concerned that clubs were required to replace uniforms purchased from a licensed supplier if that supplier did not have its license renewed. This would result in significant wastage of apparel and impose additional costs on clubs. The ACCC considered this arrangement was not in the public interest.

Following a Draft Notice proposing to revoke FFV's notification, FFV amended its licensing program, increasing the number of suppliers to 8 and removing the requirement to replace uniforms.

The ACCC then decided to take no further action with respect to FFV's notification at that time – providing it with immunity to engage in its licensing program. A copy of the ACCC's decision on the FFV notification can be downloaded from its website: [www.accc.gov.au](http://www.accc.gov.au) following the 'public registers' link.

The ACCC notes that FQ's licensing program involves 13 licensed suppliers and clubs and players may continue to use apparel indefinitely after a Licensee ceases to be licensed.

## **Opportunity to make a submission**

As a potentially interested party, you are invited to make a written submission to the ACCC regarding the likely public benefit and detriment associated with FQ's licensing program.

In particular, you may wish to make a submission in relation to:

- the likely benefits and detriments of FQ's licensing program
- whether the ACCC's analysis of a similar licensing program implemented by the Football Federation of Victoria is applicable to this conduct.

As noted, the ACCC may act to remove the immunity afforded by the notification at any stage if it is satisfied that the balance of the public benefit and anti-competitive detriment arising from the licensing program no longer results in a net public benefit.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose. The ACCC may, where it is deemed appropriate, supplement written submissions with discussions with relevant parties on a mutually convenient basis.

Persons lodging a submission with the ACCC may request that information included in the submission not be placed on any public register. If a request to exclude information from the public register is made in relation to a notification the applicant is expected to provide the ACCC with reasons justifying the claim for the information to be excluded. The ACCC will not grant a request for documents which are clearly not of a confidential nature to be excluded from the public register unless there are compelling reasons to do so. Guidelines for requesting exclusion from the public register are attached for your information.

If you wish to lodge a submission please address the submission to:

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Submissions can also be lodged by email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

If you intend to lodge a submission, it would be appreciated if you could do so by **Friday 27 June 2008**. At this stage, the ACCC is writing to a random sample of FQ clubs, covering a cross section of levels and locations across Queensland. Please feel free to forward this letter to any other party who may wish to make a submission to the ACCC regarding this notification.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of this matter.

If you would like to discuss any of the issues raised in this letter, please do not hesitate to contact David Hatfield on (02) 6243 1266.

A copy of this letter has been placed on the ACCC's public register.

Yours sincerely



Dr Richard Chadwick  
General Manager  
Adjudication Branch

## **Football Queensland exclusive dealing notification (N93402)**

### **Initial consultation – interested parties**

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- Gympie Miners FC
- 2. Maroochydore FC
  - Lions Seniors
- 4. Magpies Juniors
  - Burdekin Football Junior
- 6. Heatley Warriors Soccer Club
  - Herbert Valley Senior Soccer Assn
- 8. Trinity Anglican School Soccer Club
- 9. Grammarians Soccer Club
- 10. Central Junior & Senior Soccer Club
- 11. Gladstone United Junior & Senior Soccer Club
- 12. Ipswich City
- 13. New Farm United Junior Soccer Club Inc
- 14. St James
- 15. St. Alban's Sports Club
- 16. Gympie Diggers Soccer
- 17. Fraser Coast Anglican College
  - Granville Soccer