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Ms Susan Philp,  
Director Adjudication Branch,  
Australian Competition & Consumer Commission

Dear Ms Philp,

The current legal dispute between Football Queensland (FQ) and GSM (Veto Sports) has exposed a serious flaw in FQ's case before the ACCC.

Only a few months ago, in their submission to the ACCC of 10<sup>th</sup> June, FQ advised that "With thirteen licenses taken up, there are strong competitive tensions between the licensees which drive them to minimise margins."

Yet in an affidavit this month to the court, Michael Hayes of Gorilla sports has attested that his company has 50% market share of merchandised equipment to FQ and its clubs. Mr Bruce Leggatt from Statewide claims 20% of this market. Both statements have been provided to the court in support of FQ. This evidence tendered to a court, establishes that two companies have 70% of the market. That leaves 30% of the market to be split amongst the eleven (11) remaining suppliers.

A situation where two companies command 70% of a market is a duopoly not a 'competitive' market. The kindest interpretation is that it is an oligopoly, assuming one other supplier may have 15-20%. Of course if that is the case, the remaining ten (10) companies would have no chance of surviving. The one thing it cannot be called is a market with "strong competitive tensions between the licensees which drive them to minimise margins".

I understand that one of the 13 licensed suppliers has already withdrawn from the scheme, although I do not have confirmation of this. Given the above testimony to the court, that would not be surprising.

In practice, FQ's restrictive scheme has resulted in between three and probably five suppliers participating in a meaningful way. That is an extremely small percentage of potential sports suppliers.

It is difficult, if not impossible to reconcile FQ's submissions to the ACCC with the court affidavits.

It is not possible for FQ to argue their scheme promotes competition or to talk about thirteen approved suppliers, when just two suppliers overwhelmingly dominate the market.

This new information illustrates how much damage the FQ licensing scheme has done to competition. It has either sidelined or eliminated the many sports stores and suppliers that would otherwise be able to market their products to clubs.

Other claims by FQ about competition in their scheme also require examination. In their 2008 application they said "After a competitive tender process, FQ has granted licenses to thirteen apparel manufacturers". Companies wanting to be licensed were and are required to pay \$20,000 plus a turnover fee etc. All suppliers are subject to the same arrangements. There is no evidence that they participate in a 'competitive tender' as FQ claim.

In addition and as I have previously mentioned, FQ even failed to honor its undertaking to the ACCC prior to the establishment of their 2011 scheme.

The adverse impacts of this scheme extend to suppliers, clubs and players. They dramatically exceed any claimed benefits.

Every chapter in this sorry saga uncovers cause for deeper concern about FQ's third line forcing scheme and their governance.

I again urge the ACCC to remove the approval for FQ's third line forcing scheme

Yours Sincerely,

Hon Arch Bevis  
22 August 2011