



Australian
Competition &
Consumer
Commission

Draft Notice

in respect of notification N93402

lodged by

Football Queensland Ltd

Date: 9 September 2011

Commissioners: Sims
Schaper
Court
Dimasi
Walker
Willett

Notification no.: N93402

Public Register no.: C2008/678

Summary

The Australian Competition and Consumer Commission has issued a draft notice, proposing to revoke third line forcing notification (N93402) lodged by Football Queensland Ltd.

Based on the information available, the ACCC is not satisfied that the public benefits resulting from the notified conduct outweigh the public detriments resulting from the notified conduct.

The notification

Football Queensland Ltd (**FQ**) lodged a third line forcing notification (N93402) with the Australian Competition and Consumer Commission (**ACCC**) on 28 April 2008, in relation to their licensing program for 'Teamwear' football apparel (the **Notification**).

Under the Notification, FQ requires its member football (soccer) clubs to use only 'Teamwear' purchased from licensed suppliers during FQ competitions (the **Teamwear Program**).

Teamwear includes:

- tracksuits
- playing shirts
- playing shorts
- playing socks and
- soccer balls.

The 'Teamwear Program' requires that all apparel must exhibit FQ's 'Q logo' and socks must have the 'Q' stitched in or have the name of the licensed supplier visible. The products covered by the Teamwear Program also include:

- all zone, association and State representative squad apparel
- club/associate specified warm up shirts only and
- match and training balls.

The Teamwear Program does not apply to apparel worn during training unless required by the club as team apparel.

Background

A notification will be allowed to stand when the ACCC is satisfied that the likely benefit to the public from the conduct will outweigh the likely detriment to the public from the conduct.

At the time of lodging the Notification in 2008, FQ submitted that the Teamwear Program delivers public benefits, including: ensuring a minimum standard of quality; timely supply of Teamwear apparel/equipment; promotion of the game image; promotion of the FQ brand and generation of income for FQ.

The ACCC initially assessed the Notification in 2008 and allowed the statutory protection provided by the Notification to stand. A number of complaints were made in 2010 and 2011 expressing concern that the Teamwear Program was restricting competition and resulting in higher prices for football apparel. In response to these complaints, the ACCC commenced a review of the notification and sought further information from FQ and interested parties.

The notified arrangements (Teamwear Program) have now been in place for over 3 years and the ACCC has the ability to consider what public benefits and detriments have been realised and what benefits and detriments are likely to result in the future.

ACCC assessment

The ACCC recognises that licensing programs have the potential to deliver benefits to sporting clubs and participants where they result in lower prices for sporting apparel and equipment by enabling sporting associations to use their bargaining power to negotiate lower prices than clubs may be able to negotiate individually. Licensing programs may also enable licensees to realise economies of scale that would not otherwise be available. Licensing programs can also reduce transaction costs and time spent searching for appropriate apparel and equipment by clubs and/or can provide greater assurance of requisite standards and quality than would otherwise be the case.

Sporting clubs, participants and the wider community may receive indirect benefits if the revenue raised from a licensing arrangement is used to promote and develop sport, potentially increasing participation and promoting community fitness and recreation more generally.

However, there is the potential for some of the benefits of licensing programs to be directly offset by the costs incurred by sporting clubs and participants if reduced competition and higher costs are reflected in higher prices for apparel/equipment than would otherwise be the case. The costs of administering licensing programs can mean that the return to clubs and participants is less than the revenue raised by the licensing program.

The ACCC received a number of submissions regarding the Teamwear Program. Based on the information provided, the ACCC considers the Teamwear Program is delivering some public benefit through the funding of initiatives and equipment for coaches and football clubs. However, FQ has not provided sufficient financial information about the extent of revenues received by FQ from licensees and the manner in which FQ has returned revenues generated by the Teamwear Program back to the sport for the ACCC to be satisfied that this is a significant public benefit. The ACCC is not satisfied that the Teamwear Program has provided a minimum quality standard of apparel or that it has significantly reduced transaction costs for football clubs and participants.

The ACCC considers that the Teamwear Program is resulting in public detriment through reduced competition in the supply of football apparel in Queensland; likely higher prices for Teamwear products; and increased administrative and supplier costs than would otherwise be the case.

The ACCC is not satisfied that the Teamwear Program is an efficient way to generate funds to meet FQ's objectives or that FQ's claimed benefits could not be realised without the Teamwear Program.

Draft notice

Having taken account of issues raised by interested parties and responses by FQ, the ACCC considers that the public benefits from the conduct do not outweigh the public detriments resulting from the conduct. Accordingly, the ACCC has issued this draft notice proposing to revoke the Notification.

Statutory protection for the notified conduct automatically came into effect on 12 May 2008. This draft notice does not remove the statutory protection afforded by the Notification.

The ACCC will now undertake public consultation on this draft notice, including the public benefits and detriments likely to result from the notified conduct. The ACCC welcomes additional information on the amount of revenue FQ receives from the Teamwear Program and how it is being distributed. The ACCC is also interested to receive further information from interested parties on what costs the Teamwear Program may be imposing on clubs through higher apparel/equipment prices. In particular, information comparing the prices of football apparel from licensed suppliers with similar quality apparel from non-licensed suppliers, including online and via imports.

After consideration of further comments from interested parties, the ACCC will then decide whether to issue a final notice. If the ACCC issues a final notice, statutory protection ceases to be in force on the 31st day after a final notice is issued, or on a later date specified in writing by the ACCC.

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1. Introduction

- 1.1. This document is a draft notice proposing to revoke notification N93402 lodged by Football Queensland Ltd (FQ). Notification N93402 was lodged with the Australian Competition and Consumer Commission (the ACCC) on 28 April 2008 and relates to third line forcing conduct under section 47 of the *Competition and Consumer Act 2010* (the Act) (the **Notification**).
- 1.2. The ACCC is the independent Australian Government agency responsible for administering the Act. A key objective of the Act is to prevent anti-competitive arrangements, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.
- 1.3. Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as ‘third line forcing’ which involves the supply of goods or services on condition that the consumer also acquires goods or services from a third party. Third line forcing conduct is prohibited per se, meaning that it amounts to a contravention of the Act regardless of its effect on competition.
- 1.4. Businesses may obtain statutory protection for conduct that might risk breaching the third line forcing provisions of the Act by lodging a ‘notification’ with the ACCC. Once lodged, statutory protection for the notified conduct commences automatically after 14 days, unless the ACCC has advised the notifying party that it has decided not to allow the notification to stand. The ACCC may proceed to revoke a third line forcing notification where it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.
- 1.5. The ACCC conducts a comprehensive public consultation process before making a decision to revoke a notification.
- 1.6. Where the ACCC forms the view that the conduct the subject of a third line forcing notification is likely to generate a detriment to the public which outweigh the benefits to the public, it may commence the revocation process. This involves the ACCC issuing a draft notice advising the notifying party, and interested parties that the ACCC intends to revoke the notification.
- 1.7. Where the ACCC decides to issue a draft notice, the ACCC must provide a written statement of its reasons. Upon issuing a draft notice the ACCC must invite the notifying party and/or any other interested party to request a conference in relation to the draft notice. The conference, if requested, must be held within 30 days.
- 1.8. The ACCC must then decide whether to leave the notification undisturbed or issue a final notice revoking the notification.
- 1.9. A final notice has the effect of revoking any statutory protection from legal proceedings under the Act for the notified conduct and takes effect on the 31st day after the ACCC gives the notice, or on a later date specified in writing by the ACCC.

2. Background

- 2.1. Notification N93402 was lodged by FQ on 28 April 2008 for conduct that may be in breach of sections 47(6) and 47(7) of the Act (i.e. 'third line forcing').
- 2.2. Under the Notification, FQ requires football (soccer) clubs which participate in FQ competitions to use only 'Teamwear' from licensed suppliers during FQ competitions (the **Teamwear Program**). Teamwear includes:
 - tracksuits
 - playing shirts
 - playing shorts
 - playing socks and
 - soccer balls.
- 2.3. The Teamwear Program requires that all clothing must exhibit the 'Q logo' and socks must have the 'Q' stitched in or have the name of the supplier visible. The products covered by the Teamwear Program also include:
 - all zone, association and State representative squad apparel
 - club/associate specified warm up shirts only and
 - match and training balls.
- 2.4. The Teamwear Program does not apply to apparel worn during training unless required by the club as team apparel.
- 2.5. Football clubs and players may continue to use Teamwear apparel provided by a supplier indefinitely after the supplier ceases to be licensed.
- 2.6. FQ submits that it monitors the Teamwear Program by auditing club teams on an irregular random basis. If clubs/teams are found to be non-compliant they are audited weekly until they conform. Penalties are imposed on teams for non compliance: 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.
- 2.7. Following the FQ tender process in September/October 2010, there are currently 13 licensed Teamwear suppliers.¹ The 2010 tender process was undertaken as a result of the expiration of the previous licence agreements which were granted in October 2007 for 3 years.
- 2.8. Under FQ licence agreements, licensees are required to pay FQ:
 - \$20 000 p.a. licence fee (made in quarterly payments of \$5000)
 - 5% royalty on all Teamwear products sold and
 - \$0.60 for each Q logo.

¹ Currently, FQ has licensed the following suppliers: Attack Sports; Gorilla Sports; Covo; Veto Sports; Mitre; SSI; Statewide Sports (UhlSport); Alanic Group; NSB Sports; Only Sport; Living Edge Designs & Apparel (LE); Nike; and Adidas.

- 2.9. Football clubs and players may continue to use Teamwear apparel provided by a supplier indefinitely after the supplier ceases to be licensed.
- 2.10. FQ's arguments in support of the Notification are discussed in Chapter 5.

Football Queensland Ltd

- 2.11. Football Queensland Ltd (FQ) is an Australian public company, limited by guarantee. FQ is responsible for the administration of football (soccer) in Queensland, including the collection of national fees on behalf of Football Federation Australia.
- 2.12. FQ describes its primary function as providing for the orderly conduct of football in Queensland. Clause 1.1. of the FQ Constitution ('Objects of the Company') states that FQ's objects are 'to facilitate the provision and maintenance of grounds, playing fields, materials, equipment and other facilities for Soccer in the State'. Clause 2.2. of the Constitution titled 'Company's Application of Income' states that 'All the Company's profits (if any), other income and property, however derived, must be applied only to promote its objects'.
- 2.13. FQ divides itself into 9 regional areas in Queensland: Brisbane; Central Qld; Far North Qld (Cairns); Gold Coast, Mackay & Regional Football Zone (Mackay – Whitsunday Region); North Qld (Townsville Region); South West Qld (Stanthorpe – Toowoomba – Kingaroy Region); Sunshine Coast (Cooroy – Caboolture Regions); and Wide Bay (Bundaberg – Gympie Regions).
- 2.14. There are approximately 340 clubs with 66 000 players participating in FQ competitions. Table 1 sets out the number of FQ players and fees paid to FQ (these fees represent only a component of the total player registration fees paid to football clubs) for the period 2008-2010.

Table 1: Number of FQ players and state/national fees paid

Year	Total no. of players	Breakdown of players	No. of players	National Fees ² (\$) per player	FQ/State Fees ³ (\$) per player	Fees per player (National and State) (\$)
2008	69 012	Junior	58 011	8.90	23.60	32.50
		Snr Women	2 866	20.00	60.00	80.00
		Snr Men	8 135	20.00	60.00	80.00
2009	66 912	Junior	55 572	10.50	23.50	34.00
		Snr Women	2 779	21.00	62.50	83.50
		Snr Men	8 561	21.00	62.50	83.50
2010	66 330	Junior	54 544	11.00	24.00	35.00
		Snr Women	2 934	22.00	64.00	86.00
		Snr Men	8 852	22.00	64.00	86.00

² National fees are forwarded by FQ to Football Federation Australia.

³ FQ retains state fees to pay insurance for club public liability, director insurance, and player accident insurance.

ACCC previous consideration of notification N93402

- 2.15. FQ lodged the Notification on 28 April 2008. On 6 June 2008, the ACCC wrote to interested parties, inviting them to make a written submission on the likely public benefit and detriment associated with FQ's Teamwear Program. The ACCC received one submission in support of the Notification.
- 2.16. On 4 July 2008, the ACCC advised FQ that on the basis of the information provided and following consultation with a randomly selected group of football clubs in Queensland, it did not intend that further action would be taken in the matter at that time. At that time, the ACCC considered the following:
- The Teamwear Program was likely to generate some benefit through ensuring a minimum quality standard for Teamwear products
 - The revenue generated by suppliers paying FQ a licence fee is a public benefit to the extent that it is used by FQ for the benefit of clubs/participants. However, this fee increases the cost of supply for Teamwear suppliers and is likely, at least to some extent, to be passed through to clubs in the price for apparel.
 - The licence fees payable by suppliers are a public detriment to the extent that they are passed through to clubs. The ACCC placed weight on FQ's submission that costs to clubs for Teamwear had not increased as a result of the licensing program and that no clubs had complained that apparel costs have increased.
 - FQ stated that administrative costs to run the licensing program were negligible. The ACCC considered that any administrative costs were likely to be a detriment, since the overall cost of running FQ is recovered through fees from clubs.
- 2.17. In March 2010, the ACCC received a complaint regarding the Teamwear Program. The ACCC wrote to FQ identifying this complaint and inquiring whether FQ had received any other complaints about the Teamwear Program and, if so, how many and raising what issues.
- 2.18. On 22 April 2010, FQ advised that
- ...there has been one other written complaint which alleges that Clubs are paying a premium for apparel purchased under the conditions imposed by the Program. In our visits to Clubs and Competition Administrators around the State, I can report that it is not a matter of interest that is raised in our discussions with stakeholders, leading me to believe the Program is considered by them to be fair and a useful tool to fund various programs of which, they are the beneficiaries.⁴*
- 2.19. At this time, FQ also advised that 'The current cycle of the State Marketing Program concludes on 30 September 2010 and it is our intention to survey our Members, Associate Clubs and Licensees to review the suitability and possible alternatives'. FQ noted that 'We expect that should the program continue in its current form, a submission will be lodged with the ACCC before the end of July to allow a reasonable time for process prior to expiration of the current term'.

⁴ Football Queensland letter to ACCC, 22 April 2010

2.20. On 30 September 2010, the ACCC wrote to FQ noting that it had not yet received a submission from FQ to allow the ACCC's consideration of it prior to the expiration of the current licence term.

2.21. On 14 October 2010, FQ wrote to the ACCC advising that:

... We confirm that a survey of Member Association Clubs and Licensees was conducted on 31 May 2010 to monitor the effectiveness and market objection, if any, to the existing arrangement requiring Football clubs participating in FQ competitions to use only Teamwear from licensed suppliers...

...Response was 5 submissions received, 3 from existing Licensees supporting the Program and only 2 from the association clubs (out of 330 clubs) suggesting that the program should be replaced by a levy on our playing population.

The Board concluded from the lack of response that there was a general satisfaction of the existing arrangements and accordingly there was no need to review the terms and conditions of the Program. Having made this decision, considering the interests and thoughts of the market, expressions of interest were sought resulting in 13 licences being awarded. It is coincidental that this is the same number as 3 years ago, but it does introduce 4 new Licensees not previously involved in the Program.⁵

2.22. In May 2011, the ACCC received further complaints about FQ's Teamwear Program and began this current review of the Notification. Further details of submissions received by the ACCC are provided at Chapters 4 and 5 of this draft notice.

2.23. Table 2 sets out a chronology of significant dates in consideration of the FQ notification N93402.

Table 2: Timeline for ACCC's consideration of the Notification

DATE	ACTION
28 April 2008	Notification N93402 lodged with the ACCC
6 June 2008	ACCC public consultation on the Notification
4 July 2008	ACCC advised no further action at this time
1 April 2010	ACCC wrote to FQ requesting information following complaints received about the notified conduct
22 April 2010	FQ to ACCC interim response regarding proposed survey of clubs and licensees
30 September 2010	ACCC to FQ requesting results of FQ club and licensee survey
1 October 2010	New FQ licence agreements signed for 3 years

⁵ Football Queensland letter to ACCC, 14 October 2010

DATE	ACTION
14 October 2010	FQ response to ACCC regarding club and licensee survey
25 May 2011	ACCC interested party consultation and request for information from FQ following further complaints received
10 June 2011	Deadline for interested party comments / FQ response
23 June 2011	ACCC requests further information from FQ
12 July 2011	FQ responds to ACCC information request
July – August 2011	Further submissions received from interested parties
9 September 2011	ACCC issues a draft notice proposing to revoke the Notification
30 September 2011	Deadline for comments on draft notice

3. Statutory test

- 3.1. Under section 93(3A) of the Act, if a corporation has notified the ACCC of conduct of the type described in subsections 47(6) or 47(7) and the ACCC is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct, the ACCC may give the corporation a written notice stating that the ACCC is so satisfied. The effect of giving such a notice (**final notice**) is to revoke the statutory protection afforded by the lodgement of the notification.
- 3.2. Before revoking the statutory protection obtained by a notification, the ACCC must issue a draft notice of its intention (section 93A(1) of the Act). This document is a draft notice.

4. Submissions received

- 4.1. To assist the ACCC with its assessment of notifications, the ACCC tests claims made by notifying parties in support of notified conduct through an open and transparent public consultation process. The ACCC aims to consult with interested parties that may be affected by the proposed conduct to provide them with the opportunity to comment on the Notification.
- 4.2. On 25 May 2011, the ACCC sought submissions from interested parties potentially affected by the Notification, including football clubs and FQ licensees. The ACCC received 12 submissions from interested parties, of which some were confidential. The majority of submissions received did not support FQ's notified arrangements or Teamwear Program.
- 4.3. The ACCC has sought further information from FQ on a number of occasions since the Notification was lodged in 2008. In 2011, the ACCC wrote to FQ twice, requesting information about the operation of the Teamwear Program, the 2010 request for tender process and financial information identifying how revenues obtained through the program had been distributed.
- 4.4. The views of FQ and interested parties are outlined in the ACCC's assessment of the Notification in Chapter 5 of this draft notice. Copies of public submissions may be obtained from the ACCC's website (www.accc.gov.au/AuthorisationsRegister) and by following the links to this matter.

5. ACCC assessment

- 5.1. The ACCC's assessment of the notified conduct (the FQ Teamwear Program) is in accordance with the statutory test set out in the section 3 above.

Area of competition

- 5.2. The first step in assessing the effect of the notified conduct is to consider the relevant area of competition affected by that conduct. This assists in assessing the public benefits and public detriments resulting from the notified conduct.
- 5.3. Third line forcing conduct can distort both demand for, and supply of, the product which consumers are forced to purchase. In this case, football clubs are forced to purchase Teamwear products (which include: tracksuits, playing shirts, playing shorts, playing socks and soccer balls⁶) from licensed suppliers.
- 5.4. In support of the Notification, FQ submitted that the relevant markets are the wholesale and retail markets for sporting apparel. FQ is of the view that football apparel is part of a broader sporting apparel market and is not a market in its own right.
- 5.5. The ACCC did not receive any submissions from interested parties which directly addressed the relevant areas of competition.
- 5.6. The ACCC does not consider its assessment of the notified conduct is significantly affected by possible variations in market definition. As such the ACCC has focussed its assessment of the notified conduct on the area of competition involving the wholesale and retail supply of football apparel. However, the ACCC notes that there is a degree of supply side substitution between the manufacture of football apparel and other sporting apparel.
- 5.7. The ACCC also notes the following points in relation to the demand for Teamwear products:
- under the Teamwear Program all FQ football participants must wear Teamwear products purchased from licensed suppliers in FQ competitions
 - demand for Teamwear Products is primarily driven by football clubs and participants (there are approximately 340 clubs with 66 000 players participating in FQ competitions)
 - individual players do not usually purchase directly from Teamwear suppliers. Generally, football clubs/teams purchase Teamwear direct from suppliers and then sell this apparel players. However, ownership of football playing shirts is usually retained by the clubs so they can be used again in the following season.
- 5.8. The ACCC notes the following in relation to the supply of Teamwear products:
- FQ grants three year licences for the right to supply Teamwear products to football clubs, teams and participants

⁶ In the FQ license agreements 'Licensed Commodities' can be categorised as teamwear and soccer footballs.

- there are currently 13 licensed suppliers
- FQ licensed suppliers are responsible for providing Teamwear to all FQ football clubs in Queensland
- FQ licensed suppliers sell a range of sporting apparel in addition to FQ's Teamwear products and
- FQ licensed suppliers supply apparel in other states and to other sporting codes.

5.9. FQ provided the following description of the supply chain for Teamwear products:

- Direct: manufacturer/importer → licensee → club → player/participant
- Retail: manufacturer/importer → licensee → retailer → club

The counterfactual

5.10. The ACCC applies the 'future with-and-without test' established by the Australian Competition Tribunal to identify and weigh the public benefits and public detriments generated by the notified conduct.⁷

5.11. Under this test, the ACCC compares the public benefits and detriments with the notified conduct in place and without the notified conduct. This requires the ACCC to form a view as to how the competitive environment will react if the notifying party does not engage in the notified conduct. This prediction is referred to as the 'counterfactual'.

5.12. The ACCC did not receive any submissions from interested parties which directly addressed the issue of the likely counterfactual. However, a number of interested parties suggested that the Teamwear Program could be replaced by an increase in FQ's individual player fees (i.e. the player levy). The issue of a player levy is considered in the Public Detriment section on 'efficiency of fund raising' of this draft notice.

5.13. The ACCC considers that the relevant counterfactual is where FQ would remove the requirement for football clubs to only purchase Teamwear from licensed suppliers (i.e. the Teamwear Program). This would leave clubs free to purchase sporting apparel from other potential suppliers in addition to existing suppliers, based on a range of considerations including price, quality and service.

5.14. In the absence of the notified conduct, the ACCC notes that FQ could still set minimum quality standards for football apparel/equipment. FQ could also require the use of its Q logo and charge for use of its intellectual property. However, FQ may need to seek alternative methods of raising revenue in the absence of the Teamwear Program.

⁷ *Australian Performing Rights Association* (1999) ATPR 41-701 at 42,936. See also for example: *Australian Association of Pathology Practices Incorporated* (2004) ATPR 41-985 at 48,556; *Re Media Council of Australia* (No.2) (1987) ATPR 40-774 at 48,419.

Public benefit

5.15. Public benefit is not defined in the Act. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁸

5.16. The ACCC recognises that licensing programs have the potential to deliver benefits to sporting clubs and participants where they result in lower prices for sporting apparel and equipment by enabling sporting associations to use their bargaining power to negotiate lower prices than clubs may be able to negotiate individually. Licensing programs may also enable licensees to realise economies of scale that would not otherwise be available. Licensing programs can also reduce transaction costs and time spent searching for appropriate apparel and equipment by clubs and/or can provide greater assurance of requisite standards and quality than would otherwise be the case.

5.17. Furthermore, sporting clubs, participants and the wider community may receive indirect benefits if the revenue raised from a licensing arrangement is used to promote and develop the sport, potentially increasing participation and promoting community fitness and recreation more generally.

5.18. FQ submits that the Teamwear Program (notified conduct) delivers public benefits, including:

- ensuring a minimum standard of quality
- timely supply of Teamwear apparel/equipment
- promotion of the game image
- promotion of the FQ brand and
- generation of income for FQ.

5.19. The ACCC's assessment of FQ's claimed public benefits from the notified conduct follows. The ACCC has also considered whether the notified conduct is likely to deliver other public benefits not specifically identified by FQ.

Minimum standard of quality

5.20. FQ submits that the Teamwear Program was introduced largely to ensure that the quality of Teamwear met a certain minimum quality standard.⁹ FQ submits that the Teamwear Program establishes a minimum standard of quality for Teamwear products and delivers a public benefit by:

⁸ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677. See also *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242.

⁹ Clauses 8.1 and 8.3 of FQ's licence agreements refer to the quality requirements for Teamwear products. Pursuant to these agreements, Teamwear products (i.e. Licensed Commodities) must be of good quality, design, material and workmanship and must be suitable for their intended purpose.

- saving football clubs money over time and
- promoting the image of the game.

5.21. The ACCC notes that the benefit claimed from the quality of sporting apparel/equipment in promoting the image of the game is also linked to the public benefit claimed by FQ in terms of promoting the FQ brand. On this point, FQ submits that:

...The level of quality and the timeliness of supply of apparel help to lift the profile of football and assists in attracting sponsors to the sport. It is essential for the long term success of football in Queensland that FQ's brand be used during games and in an organised manner.¹⁰

5.22. The ACCC recognises that licensing programs can ensure that apparel and equipment meet minimum quality requirements. Such standards may enhance the overall image of the competition. Requiring clubs to purchase apparel from licensed suppliers can ensure the decisions made by a club in sourcing apparel/equipment align with the best interests of the competition as a whole. However, a relevant consideration is whether these standards would be maintained absent the arrangements, and whether the standards are actually necessary to meet the objectives of the sporting association. Regardless, it could be expected that individual clubs would generally be well placed to set and enforce quality standards if necessary, particularly for lower grades and junior competitions.

5.23. The ACCC notes that even without the requirement to purchase Teamwear products from licensed suppliers (i.e. the Notification), it would still be possible for FQ to set minimum quality standards for football apparel/equipment. FQ would also be entitled to require the use of its Q logo and charge for use of its intellectual property. However, it may be the case that quality standards could be more efficiently enforced through the Teamwear Program.

5.24. FQ conducted a tender process in September 2010. The ACCC asked FQ what criteria were used to determine whether a potential licensee was suitable for participation in the Teamwear Program, including in relation to quality. The ACCC also asked FQ to provide quality comparisons with similar non-licensed products (i.e. products without the Q logo). In response, FQ submitted that:

...After examination of product offered and assurances on financial stability, applications were processed with none being rejected... We conducted examination only of that product where an application for licence had been received as our responsibility is to guarantee the quality of only the product coming onto the market in which we have an influence.¹¹

5.25. The ACCC inquired of FQ what steps are taken to ensure the quality of Teamwear products, other than the FQ tender process and licence agreement clauses. FQ advised:

¹⁰ Football Queensland Notification, lodged 28 April 2008

¹¹ Football Queensland letter to ACCC, 10 June 2011

...Quality is monitored most efficiently by the end user, who is encouraged to lodge directly with Football Queensland, any concerns raised over quality so that we may investigate. Our experience records a high level of satisfaction other than with some batches of balls. By negotiating with Licensees, we arranged replacement free of charge and that range was subsequently withdrawn from sale.¹²

- 5.26. The ACCC also sought comments from interested parties on whether the Teamwear Program had ensured a minimum quality standard for Teamwear products and asked for quality comparisons with similar non-licensed products (i.e. without the Q logo).
- 5.27. Gorilla Sports (an FQ licensed supplier) considered the Teamwear Program had ensured a minimum quality standard for Teamwear products. It submitted that 'FQ provide a great deal of support to their member clubs and, in the event that a club raised concerns over the quality of Teamwear products, FQ would follow this up directly with suppliers'. Gorilla Sports noted that they had been a preferred supplier for a number of years and were unable to comment specifically on FQ's current process for engaging new suppliers.
- 5.28. Other interested parties were generally more sceptical about whether the Teamwear Program had delivered a minimum quality standard for Teamwear products. For example, one football club (Kangaroo Point Rovers) submitted that 'this scheme increases the administrative burden upon our Volunteers, but does not increase the safety, quality or enjoyment for our members'.
- 5.29. The ACCC also received confidential submissions from a number of interested parties who advised that licensed suppliers were not required to provide pricing information or product samples to FQ for assessment as part of the 2010 tender process. These interested parties considered that FQ was prepared to grant a licence to anyone willing to pay the licence fees, and that FQ did not grant licences on the basis of pricing or quality assessments.
- 5.30. The ACCC notes that the Teamwear Program could deliver a minimum quality standard by ensuring that only suppliers who met certain quality criteria were granted a licence to supply Teamwear products. However, the ACCC considers it is unclear whether the Teamwear Program is delivering a quality standard significantly beyond what would be achieved in the absence of the notified conduct where clubs source apparel based on their own quality assessment. Based on submissions from interested parties and the limited information provided by FQ on their quality criteria/assessments, the ACCC is not satisfied that the Teamwear Program delivers a public benefit by effectively ensuring a minimum quality standard for Teamwear products compared with the counterfactual.

Efficiencies arising from tender processes (including timely supply of Teamwear products)

- 5.31. The ACCC considers the benefits of sport licensing programs are likely to be greater where approved licensees are determined through an open, transparent, competitive tender process having regard to price, quality and service (including timely supply). A competitive tender process may enable the following efficiencies:

¹² Football Queensland letter to ACCC, 12 July 2011

- Transaction cost savings – a competitive tender process run by a sporting association can reduce costs for clubs in negotiating their own supply arrangements and can reduce search costs for clubs/participants. For example, search costs are incurred by football clubs in determining which products are available on the market, which suppliers provide the best quality, lowest price, and have good after sales services (including arrangements for timely supply). Where the sporting association monitors and enforces the terms of supply contracts this can also reduce the costs for individual clubs.
- Economies of scale – where a sporting association grants exclusive licences to supply apparel/equipment or provides quantity guarantees, this can provide licensed suppliers with greater certainty for production (e.g. labour and equipment) thereby enabling them to achieve economies of scale that would not otherwise be available. However, if licensing arrangements allow approved suppliers to retain a significant share of any available additional savings, this can limit the benefit to the sporting association and its clubs/participants.
- Allocative efficiency – a tender process may enable sporting associations to use their bargaining power to negotiate lower prices for clubs and participants than might be the case if clubs negotiated individually. For example, a sporting association may receive lower prices by requiring potential suppliers to nominate their pricing while they are still subject to the competitive pressures of the tender process.

5.32. FQ conducted a tender process in September 2010 and granted licences for 3 years. In support of the Notification in 2008, FQ submitted that:

...Licensing 13 apparel manufacturers ensures that clubs have a wide choice of supplier and will be able to access appropriate apparel in a timely manner. Lead times and distribution methods are considered in the tender process for licensees. This assists in ensuring that the clubs obtain Teamwear in a timely manner.¹³

5.33. The ACCC understands that FQ's tender process does not make any comparisons between suppliers on price, quality or service. Nor does FQ negotiate with licensees on behalf of clubs. It is therefore unlikely that the Teamwear Program results in lower prices or better service/quality through the exercise of FQ's bargaining power. The ACCC also understands that FQ does not provide any guarantee of exclusivity or quantity to enable suppliers to realise economies of scale. The ACCC would welcome further information from licensees on the extent to which the Teamwear Program allows economies of scale to be realised.

5.34. In support of its Notification FQ submitted that 'suppliers are not required to supply details of pricing in the tender process and FQ does not seek to control competition between the licensed suppliers'. The ACCC asked FQ to clarify whether FQ considered the prices and/or service offered by licensees as part of its 2010 tender process. FQ stated:

...With each application, a range of apparel and balls were submitted for assessment of quality and price. New applicants were interviewed during which we confirmed their

¹³ Football Queensland Notification, lodged 28 April 2008

*ability to service a geographically diverse market, commitment to quality, and asked of additional benefits offered that were not specifically requested in the agreement.*¹⁴

- 5.35. The ACCC received FQ's 2010 request for tender documents. The ACCC notes that these documents do not indicate that either existing licensees or potential licensees were required to submit pricing information or product samples as part of the FQ tender process. FQ's 2010 request for tender letter states that:

*... We advise that the program has not altered from the previous period and full details of licensed property and payment schedules are shown on the enclosed Licence Agreement. Due to current ACCC regulations we can not limit the number of licensees and therefore we strongly recommend that you complete normal due diligence when entering into the agreement. If you wish to apply for a licence, please complete the attached agreement and return to this office by COB 24th September 2010.*¹⁵

- 5.36. Despite the above statement by FQ, the ACCC notes that the Act does not regulate the number of licensed suppliers that FQ can select to participate in its Teamwear Program. The ACCC also notes that granting 13 Teamwear licences may provide for a greater level of competition between licensees for supply to some clubs, particularly in metropolitan areas. However, the ACCC considers that there is a trade off between limiting the anti-competitive public detriment (by having a larger number of licensed suppliers) and the ability to deliver transaction cost savings or economies of scale. A larger number of licensees:

- is unlikely to reduce transaction or search costs for football clubs in determining which Teamwear suppliers provide the best price, quality and services and/or timely supply arrangements
- is unlikely to provide sufficient certainty to enable licensed suppliers to realise economies of scale that would not otherwise be available and
- may make it more difficult or costly for FQ to ensure its minimum quality standards when it has to monitor and enforce a number of licence agreements.

- 5.37. More generally, the ACCC considers that FQ has only provided limited information on its tender processes, including the criteria used for assessment. The ACCC considers it is unclear whether the tender process has resulted in lower prices or transaction cost savings for clubs and/or enabled suppliers to realise greater economies of scale than would otherwise be the case. Based on the information available, the ACCC is not satisfied that FQ's tender process has provided public benefits through timely supply of Teamwear products, lower prices or other efficiencies.

Generation of revenue for Football Queensland

- 5.38. A licensing program may deliver public benefits if the revenue raised by the program is returned to the association or individual clubs for use in the promotion and development of the sport. In assessing the extent to which sporting apparel licensing arrangements generate these types of public benefits, an important factor is whether revenues earned through a licence program are returned to the sport (e.g. through

¹⁴ Football Queensland letter to ACCC, 12 July 2011

¹⁵ Ibid

enhanced sporting facilities) rather than being consumed in excessive administration costs or captured by licensed suppliers as monopoly profits that would not be earned absent the program.

- 5.39. The ACCC received some confidential information from FQ on revenues raised through the Teamwear Program. FQ submits that the revenue generated by the Teamwear Program is spent to promote, foster and develop the sport of football in Queensland. FQ states that the Teamwear Program has been used to supply equipment, deliver free coaching courses and provide administrative support to football clubs.¹⁶
- 5.40. The ACCC asked FQ to provide specific details of initiatives funded by the Teamwear Program for 2008-2010, including costs and where and when they were provided. FQ provided the following response:

Table 3: FQ initiatives funded by the Teamwear Program 2008-2010

FQ Teamwear program initiatives (2008 – 2010)	Total Cost (\$)
Provision of Red Kits to clubs (including top ups)	703 463
Provision of grant writing assistance to clubs	41 973
Attendance of 40 coaches at 2009 National conference in Sydney	41 330
Attendance of 300 referees at State conference in Brisbane	31 825
Attendance of 120 coaches at National conference in Brisbane	55 173
Provision of 3555 free grass roots coaching course placements	88 875
Total cost (2008-2010)	962 639

- 5.41. The ACCC notes that the Red Kits initiative in Table 3 accounts for more than 70% of the value of all initiatives claimed by FQ for 2008-2010. The Red Kits program provided every FQ registered team with a set of footballs and coaching equipment free of charge. FQ submitted that the Red Kits program saved each club a minimum of approximately \$300 per team.
- 5.42. In October 2007, FQ issued a media release¹⁷ stating that ‘Through the \$1.6 million ‘Red Kits’ initiative, supported by Red Rooster, each of the states 5 774 coaches will be provided with quality training equipment including footballs, bibs and markers’. At the time of lodging the Notification in 2008, FQ identified the Red Kits as an example of an initiative funded by the Teamwear Program to the extent of \$466 000. In April 2010, FQ advised that ‘The [Teamwear] Program netted approximately \$230 000. Over two seasons, the Red Kits cost was in excess of \$540 000 after contribution from Red Rooster’.¹⁸

¹⁶ Football Queensland Notification, lodged 28 April 2008

¹⁷ Football Queensland media release, ‘Football Queensland announces \$1.6m healthy state of play’, 10 October 2007.

¹⁸ Football Queensland letter to ACCC, 27 April 2010

- 5.43. The ACCC asked FQ to provide its financial reports for 2008, 2009 and 2010, including details of administrative costs, costs of administering the Teamwear program and funding sources other than the Teamwear program. FQ advised that the cost of administering the Teamwear program for 2008-2010 was \$74 227¹⁹, but did not provide the other financial information requested by the ACCC.
- 5.44. In the absence of information that explicitly demonstrates expenditure of revenues for each year, the ACCC finds it hard to be satisfied whether revenues earned from the Teamwear Program have been returned to the sport. FQ has sought statutory protection from the Act. The onus therefore falls on FQ to properly support its submissions for expenditure of revenues from the Teamwear Program (particularly in light of the significant costs imposed on licensed suppliers).
- 5.45. Based on the limited information provided by FQ, the ACCC is not satisfied that the Teamwear Program is delivering a significant public benefit by returning revenues to the association or individual clubs for use in the promotion and development of the sport.

ACCC conclusion on public benefits

- 5.46. The ACCC notes that the Teamwear Program may have provided some public benefit through the funding of initiatives and equipment for coaches and football clubs. However, FQ has not provided sufficient financial information about how it has returned revenues generated by the Teamwear Program back to the sport to enable the ACCC to be satisfied that this has resulted in significant public benefits. In addition, the ACCC is not satisfied that the Teamwear Program is ensuring a minimum quality standard for Teamwear products, providing lower prices or significantly reducing transaction costs for football clubs and players.

Public detriment

- 5.47. Public detriment is also not defined in the Act but the Tribunal has given the concept a wide ambit, including:

...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.²⁰

- 5.48. Generally, agreements which impose restrictions on purchasing and supply decisions can result in allocative inefficiencies. By restricting entry and/or imposing entry costs, such agreements can distort market signals and suppress the dynamics that would ordinarily exist in a competitive market, leading to higher prices and reduced choice for consumers.
- 5.49. Broadly, FQ submits that there is no significant anti-competitive detriment associated with the notified conduct for the following reasons:

¹⁹ Football Queensland letter to ACCC, 12 July 2011

²⁰ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

- the Teamwear Program is not likely to lead to any increase in prices for Teamwear products
- there are thirteen suppliers of Teamwear products and clubs are free to choose any supplier [from this number] they wish
- there is no wastage of Teamwear as clubs can continue to use it after a licensee's licence ceases and
- administration costs are absorbed by FQ and
- suppliers are not required to supply details of pricing in the tender process and FQ does not seek to control competition between the licensed suppliers.

5.50. The ACCC considers that the Teamwear Program is likely to result in the following public detriments:

- reduced competition, increased costs and prices in the supply of football apparel
- increased administrative and compliance costs and
- inefficiencies in the way funds are raised.

5.51. An assessment of the likely public detriment generated by these arrangements follows.

Reduced competition, increased costs and prices in the supply of football apparel

5.52. Sports licensing programs have the potential to result in public detriment by restricting the number of apparel suppliers competing to supply sporting clubs/participants. Licensing programs often require payment of an annual licence fee and other fees which create entry costs that may deter some suppliers from participating in the program. This reduced competition may result in higher prices, lower quality and poor service compared to a situation without the licensing program.

5.53. Under the Teamwear Program FQ football clubs are restricted to purchasing Teamwear products from licensed suppliers. In order to become a licensed supplier of Teamwear products, potential suppliers must participate in the FQ tender process (run approximately every 3 years) and pay the \$20 000 annual licence fee and 5% royalties on each item sold. This annual licence fee imposes an entry cost, which suppliers will only be prepared to pay if it reflects the value of exclusivity to suppliers.

5.54. Generally, interested parties raised concerns that the Teamwear Program prevents the possibility of obtaining apparel and equipment from non-licensed suppliers at competitive prices. For example, Samford Sporting Association (a football club) submits that the Teamwear Program is 'restricting the number of suppliers accessible to the club' and 'restricts competition resulting in additional costs to the clubs'. Samford Sporting Association also considers that the duration of the FQ arrangements limits and restricts the negotiation potential in respect to long-term sponsor and supply agreements.

5.55. The ACCC notes that FQ granted licences to all suppliers who participated in the 2010 tender process. This may reduce the anti-competitive detriment compared to a licensing arrangement with fewer licensees. However, the need to pay an upfront annual licence fee of \$20 000 is likely to deter some existing suppliers, particularly smaller suppliers,

from participating in the program even though they would otherwise be able to supply apparel and equipment of the requisite standard. This is likely to be particularly evident in regional areas where a local supplier may be willing to provide apparel for teams in that region, but would be unlikely to sell sufficient volumes to be able to justify the \$20 000 licence fee. The ACCC also notes that the Teamwear Program prevents clubs/participants from purchasing potentially lower-priced apparel/equipment direct from manufacturers online and via imports.

- 5.56. The ACCC notes that although 13 licences were granted in 2008, in 2010 the number of licensed suppliers had fallen to 9 due to insolvency and withdrawal from licence arrangements.²¹ This suggests that the upfront \$20 000 licence fee may be deterring suppliers from participating in the Teamwear Program.
- 5.57. The ACCC considers the Teamwear Program results in fewer suppliers of Teamwear products (and therefore less competition) than might otherwise be the case in the counterfactual.
- 5.58. The ACCC understands that in addition to the upfront licence fee, the Teamwear Program imposes the following supply costs on licensed suppliers, which seem likely to be passed through in higher prices:
- 5% royalties on each item sold – paid by suppliers to FQ
 - \$0.60 for each Q logo – paid by suppliers to FQ and
 - costs associated with attaching the Q logo to Teamwear.
- 5.59. The combination of entry costs restricting competition and higher unit costs of supply is likely to lead to higher prices for Teamwear products absent some sort of competitive tender process.
- 5.60. To evaluate the proposition that the Teamwear Program leads to higher prices for Teamwear products (as a result of higher costs and reduced competition), the ACCC sought to obtain information about the price of Teamwear products to clubs compared with the price of non-licensed apparel of similar quality. The ACCC also considered the extent to which licensees are accepted into the Teamwear program on the basis of competitive criteria such as pricing.
- 5.61. The ACCC notes that FQ licence agreements require suppliers to submit sales information (including prices) to FQ each month.²² The ACCC asked FQ if the Teamwear Program had any effect on prices of Teamwear products and, if possible, to provide pricing comparisons with non-licensed products. FQ submitted that:

... With thirteen licences taken up, there are strong competitive tensions between the Licensees which drive them to minimise margins. Further to that, some Licensees have been innovative in offering benefits with discounted (even free of charge) product to buy loyalty from Clubs. We often see product in the retail stores at a considerable

²¹ Football Queensland letter to ACCC, 22 April 2010

²² See Clause 3.4 of Football Queensland Ltd – licence agreement.

*premium, often greater than double the price of that offered to our clubs. Licensees are prohibited from adding a premium for application of the Q logo.*²³

- 5.62. The ACCC asked interested parties about the impact of the FQ licence program on wholesale costs and retail pricing for Teamwear products and for pricing comparisons between Teamwear products and similar non-licensed products (i.e. without the Q logo). The ACCC understands that an approximate range of prices for FQ licensed football apparel are as follows:

Table 4: Approximate range of prices for football (soccer) apparel

Football apparel	Price range (\$)
Playing shirts	\$20 – \$35
Playing shorts	\$15 – \$25
Playing socks	\$5 – \$15
Soccer balls	\$10 – \$100

- 5.63. The ACCC received conflicting anecdotal information about comparative prices for Teamwear Products. Gorilla Sports (an FQ licensed supplier) stated that it charges the same price for Teamwear products as non-licensed products. However, a number of interested parties considered that the Teamwear Program had resulted in higher prices for Teamwear products. These interested parties considered that FQ licensees recover the costs of licence fees, Q logos and royalties by charging higher prices for Teamwear products.
- 5.64. While the ACCC has received some limited information regarding prices, it has not received pricing comparisons between Teamwear products and similar non-licensed products that has enabled it to reach a considered view as to whether the Teamwear Program has resulted in higher prices for football apparel.
- 5.65. FQ could potentially mitigate the likelihood of price rises as a result of the Program by selecting licensees on the basis of competitive criteria such as prices. In this way, licences could be auctioned to suppliers who offer the lowest prices for a given quality of apparel.
- 5.66. The ACCC received conflicting information on the extent to which FQ has taken pricing into account. In the Notification, FQ submitted that licensed suppliers are not required to give details of pricing to FQ as part of the tender process. However, in response to ACCC questions on the 2010 tender process, FQ advised that ‘a range of apparel and balls were submitted for assessment of quality and price’. The ACCC understands that FQ does not generally select licensees based on their pricing of Teamwear products.
- 5.67. The ACCC considers it is unclear, based on information provided to it, the extent to which FQ’s 2010 tender process selected licensees based on the prices of their apparel.

²³ Football Queensland letter to ACCC, 10 June 2011

- 5.68. The ACCC considers that the reduction in competition and increase in supplier costs under the Teamwear program is likely to result in public detriment as a result of higher prices and/or lower quality and availability of sporting apparel/equipment than would otherwise be the case.

Increased administrative and compliance costs

- 5.69. The ACCC notes that there are costs associated with administering the Teamwear Program for FQ and other costs for licensed Teamwear suppliers. FQ submitted that the cost of administering the Teamwear Program for 2008-2010 was \$74 227.²⁴
- 5.70. The FQ licence agreements contain record keeping requirements and monthly reporting obligations for suppliers. In particular, suppliers are required to report on the number, description and sale prices of Teamwear products manufactured, sold or distributed, and information on the amount of stock on hand.²⁵ The licence agreements also require Teamwear suppliers to submit to FQ for approval any advertising, promotion, point of sale or other display material in relation to Teamwear products. The ACCC understands that these requirements are likely to increase the administrative costs for licensed suppliers compared to a situation without the Teamwear Program.
- 5.71. The ACCC considers that, without the Teamwear Program, FQ would not incur the costs associated with its administration. The ACCC also considers that licensees will generally seek to recover the additional costs of participating in the Teamwear Program through higher prices for Teamwear products. These additional costs are a public detriment that would not arise in the counterfactual.

Efficiency of fund raising

- 5.72. The ACCC considers that sporting associations should be mindful of the efficiency of methods used to raise funds to promote and develop their sport. Regard should be had to the effect of the various methods on overall costs to the association, its teams and members. It is possible that the total costs of a particular method may more than offset the public benefits derived from the program.
- 5.73. The potential for public detriment is mitigated somewhat if the total costs of a particular method of raising funds are transparent to clubs/participants. This enables players to make well informed decisions as to whether to participate in a particular sport and incur those costs. The ACCC is concerned where the total costs of programs such as the Teamwear Program are not transparent.
- 5.74. The ACCC notes that the Teamwear Program potentially disguises the true costs of participating in FQ competitions. Players must pay upfront registration fees to clubs (which includes State and National fees) and are then required to purchase Teamwear products at prices which are likely to be inflated and, therefore, higher than other sporting apparel (i.e. a hidden cost).

²⁴ Football Queensland letter to ACCC, 12 July 2011

²⁵ See Clause 3.4 of Football Queensland Ltd – licence agreement

- 5.75. The ACCC accepts that sporting associations such as FQ compete at the margin for participants with other sports and thus have an incentive to minimise up front registration fees in order to attract and retain participants. This is likely to be particularly the case for more price sensitive participants who do not have a strong preference for football compared with other sports. The use of arrangements such as the Teamwear Program can help to reduce upfront registration fees.
- 5.76. The ACCC is concerned, however, that these types of programs can lead to inefficiencies if participants place more weight on upfront fees than they do on future costs for apparel and equipment. In these circumstances, participants may find it difficult to make effective choices between sporting competitions that offer different combinations of upfront fees and future costs. These difficulties would be exacerbated by any lack of transparency as to the existence and extent of future costs.
- 5.77. By contrast, alternative methods of fund raising, such as a player levy could ensure all costs of participating in FQ competitions were reflected upfront in the club registration fees. A player levy could also reduce FQ's administrative costs to run the program (i.e. \$74 227 for 2008-2010) and would not raise the costs of licensed suppliers.
- 5.78. A number of interested parties considered that the Teamwear Program is inefficient and suggested an alternative would be to place an individual levy on the playing population. For example, Hon Arch Bevis submitted that the scheme is a very costly and inefficient means of raising funds for FQ. He suggested that the actual increase in the cost of apparel is much greater than the income FQ receives.
- 5.79. The ACCC asked FQ to identify any factors that influenced the decision not to introduce a player levy in place of the Teamwear program. FQ advised that:
- ...The Board considered replacing the licence program with a player levy prior to renewal in both October 2010 and 2007. Cost of participation has been identified as a significant deterrent to growing numbers both in Queensland and Nationally. Football (soccer) does not enjoy the flow of funds from National Sporting Organisation to Clubs as other football codes and we operate in a price sensitive market. The FQ Board has recognised the need to identify income streams other than through player levies and this program is evidence that funds can be generated outside of a player levy but retaining benefit through the whole supply chain from Licensee to participant.²⁶*
- 5.80. Based on confidential information received from FQ relating to the revenues earned through the Teamwear Program, the ACCC considered whether it would be possible to raise similar revenues by imposing an individual player levy. The ACCC understands that annual club registration fees are typically between \$350 and \$550. In some cases (e.g. the junior 'Rebel' competition) annual registration fees can be in excess of \$1000. Based on this understanding of player registration fees and FQ player numbers for 2010 (66 330), the ACCC notes that FQ could obtain similar revenues to the Teamwear Program through an increase in the individual player levy that would be a very small percentage increase in player registration fees. The ACCC considers it is unlikely that a very small percentage increase in player registration fees would have a significant impact on the number of participants in FQ competitions.

²⁶ Football Queensland letter to ACCC, 12 July 2011

ACCC conclusion on public detriments

- 5.81. The ACCC considers that the Teamwear Program restricts the number of existing suppliers of football apparel and equipment by imposing entry costs for potential suppliers, deterring participation in the Teamwear Program. Suppliers also incur additional costs per item supplied. Reduced competition among suppliers and higher supply costs under the Teamwear Program are likely to lead to public detriment in the form of higher prices, lower quality and poorer availability of football apparel/equipment compared to a situation without the Teamwear Program. Public detriments are also likely to arise from the costs of administration and compliance under the Teamwear Program. Finally, the ACCC considers that raising funds through the Teamwear Program may be less efficient than raising player registration fees if it results in higher prices for apparel and equipment and consumers making less well informed choices between sporting competitions.

Balance of public benefit and public detriment

- 5.82. Subsection 93(3A) of the Act provides that the ACCC may give notice removing statutory protection for third line forcing (i.e. conduct described in subsections 47(6) and 47(7) of the Act) if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.
- 5.83. Based on the information available, the ACCC is not satisfied that the public benefits resulting from the notified conduct outweigh the public detriments.
- 5.84. The ACCC considers the Teamwear Program is delivering some public benefit through the funding of initiatives and equipment for coaches and football clubs. However, FQ has not provided sufficient financial information about the extent of revenues received by FQ from licensees and the manner in which FQ has returned revenues generated by the Teamwear Program back to the sport for the ACCC to be satisfied that this is a significant public benefit. The ACCC is not satisfied that the Teamwear Program has provided a minimum quality standard of apparel or that it has significantly reduced transaction costs for football clubs and participants.
- 5.85. The ACCC considers that the Teamwear Program is resulting in public detriment through reduced competition in the supply of football apparel in Queensland; likely higher prices for Teamwear products; increased administrative and compliance costs and inefficiencies from the way funds are raised.
- 5.86. On balance, the ACCC considers that the likely public benefits from the conduct will not outweigh the likely public detriments resulting from the conduct.

6. Draft notice

- 6.1. For reasons set out above, the ACCC gives this draft notice under section 93A(1) of the Act. The ACCC proposes to issue a notice under section 93(3A) to revoke notification N93402 lodged by Football Queensland Ltd on 28 April 2008.
- 6.2. Statutory protection conferred by the Notification came into force on 12 May 2008 in accordance with section 93(7A)(a) of the Act. Should the ACCC decide to issue a final notice revoking the Notification, statutory protection afforded by the Notification will cease on the 31st day after the date (or on a later day specified in writing by the ACCC) of issuing a final notice.

Next steps

- 6.3. Football Queensland Ltd or any interested party may now request that the ACCC hold a conference in relation to this draft notice, in accordance with section 93A of the Act. Should Football Queensland Ltd or any interested party request a conference, they must notify the ACCC in writing by close of business 30 September 2011. If a conference is called, it must be held no later than 30 days after this date.
- 6.4. The ACCC now seeks comment from Football Queensland Ltd and interested parties on the issues raised in this draft notice. In particular, the ACCC would welcome additional information from FQ and interested parties regarding the amount of revenue raised by the Teamwear Program and how it is being distributed. The ACCC would also be interested to receive further information from interested parties on what costs the Teamwear Program may be imposing through higher apparel/equipment prices. In particular, information comparing the prices of apparel from licensed suppliers with similar quality football apparel from non-licensed suppliers, including online and via imports.
- 6.5. The ACCC will consider any submissions received in deciding whether to issue a final notice to revoke the Notification. Submissions should be lodged with the ACCC by close of business 30 September 2011.