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The General Manager  
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Dear General Manager

Firstly, I wish to thank and congratulate the ACCC on the draft determination concerning Football QLD's third line forcing scheme. The decision will facilitate transparent, open business activity in this sector and eliminate inbuilt costs and anticompetitive practices that add to the total cost for clubs and players.

I wish to comment briefly on some of the matters contained in the ACCC's draft decision.

1) *'The ACCC is not satisfied that the Teamwear Program has provided a minimum quality standard of apparel'.*

It is clear that FQ have no criteria against which apparel quality is tested. Suppliers are not provided with any quality criteria that their garments must meet. FQ do not make determinations about the quality of apparel. In short, FQ's claims in this respect are without foundation.

2) *'the ACCC considers the Teamwear Program is delivering some public benefit through the funding of initiatives and equipment for coaches and football clubs'*

On the face of it, revenue raised by the third line forcing scheme goes to FQ, which in turn spends money on various administrative, and development matters involved in football. However, it is not possible to make a direct link between a given source of income and a particular expenditure. There is no evidence FQ's decisions about the scheme were motivated by a desire to fund a particular program, nor that they have been administered in that way. This income goes to what might best be called 'general revenue'.

Moreover, FQ have cash on hand of \$1.5m.

Any assessment of a claimed link between a single source of income and a particular expenditure must be seen in the context of the overall budget of FQ and their management of that budget.

3) *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 absolutely correct in this finding. The \$20,000 plus fee companies must pay to be admitted to the scheme is a cost that they naturally seek to recover from clubs. Any suggestion that suppliers simply absorb these costs is absurd.

There is also no doubt that it has destroyed competition in this market. The testimony in the court case between FQ and VETO has demonstrated that beyond any debate. Two companies have 70% of the market. They have a duopoly, the antithesis of competition.

*The ACCC was correct to note that '... 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.'*

The up front payment of \$20,000 for the right to even offer apparel for sale is a huge barrier to any new entrants. The two companies that currently dominate the market know they can spread this cost over the sale of thousands of garments. For a new entrant, any attempt to recover that \$20,000 on a non-existent or small sales base places them at a serious competitive disadvantage.

It is not unreasonable to assume that the dominant suppliers are well aware of this advantage. They would know that all new entrants face these higher unit costs, giving them the opportunity to further inflate their own prices.

The ACCC is right to conclude that the scheme has adversely affected competition. There is a public benefit in ensuring open competition in this market.

4) *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.*

The counterfactual would see clubs in Queensland once again free to best meet their own needs as they used to. It would also enable Queensland clubs to enjoy the same opportunities as those available to football clubs in most other states. It would restore a competitive system that operates in other states.

FQ's submission demonstrates that even under their scheme, the only quality control operates at a club level. Their response, included in the ACCC draft decision said '*Quality is monitored most efficiently by the end user,*'

The ACCC noted that '*a relevant consideration is whether these standards would be maintained absent the arrangements*'. All of the evidence confirms clubs can and do in fact undertake this task.

Further, the ACCC said, '*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.*'

The ACCC is correct in this conclusion. Quality control does not require a third line-forcing scheme. It does however require objective, measurable standards; something FQ has not produced.

Similarly, use of the 'Q' logo is not dependent on a third line-forcing scheme.

Clubs operate budgets with annual revenues of hundreds of thousands of dollars. They administer contracts for equipment, grounds, staff, administration and in many cases, clubhouse operations. They are more than capable of administering contracts for apparel in an open market place.

5) *The ACCC understands that FQ's tender process does not make any comparisons between suppliers on price, quality or service.*

The ACCC understanding is supported by all of the available evidence.

6) *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.*

The ACCC is right to draw this conclusion.

7) *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.*

The information supplied by Gorilla Sports included in the ACCC draft decision stated,

*'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.'*

This information confirms that Gorilla were not required to supply pricing or other details for the current scheme.

Perhaps FQ carefully chose their words to the ACCC when they said,

*'a range of apparel and balls were submitted for assessment of quality and price'. (My emphasis).*

That is so vague as to be meaningless or worse, misleading, especially when taken together with their 2008 statements and that of Gorilla Sports.

What exactly was the 'range' they assessed? What were the assessment criteria and metrics? What were the assessment methods? What were the results of each assessment? FQ have not provided information to answer any of these questions. What is more, no advice is given by FQ to clubs about these test results, something that might inform club decision when they purchase items, assuming of course that the assessment information actually exists.

8) *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 is right to draw this conclusion. I note that the ACCC has arrived at this conclusion based on both public and confidential submissions.

It should be noted that the counterfactual would see an end to the inefficiencies and additional costs of the FQ scheme. That presents the opportunity for substantial offsets to any increase in registration fees.

With 66,000 – 69,000 registered players, a very small increase in fees would cover the gross income generated by the scheme. Having regard to the inefficiencies and costs created by the scheme, an honest assessment of the fee increase needed to meet the net revenue loss from the removal of third line forcing would be very small. It may in fact be revenue neutral.

Sadly I fear there will be a temptation for FQ to exaggerate any adjustment in fees for a number of reasons. Amongst those reasons is the fact that to do otherwise would be an admission that they have been wrong.

## Conclusion

This matter has raised important questions. I appreciate that the ACCC has diligently reviewed this issues in recent months and again congratulate the ACCC on its draft decision.

Third line forcing has a place where there are demonstrable benefits in the restriction of trade it requires. It is clear that is not the case with respect to the FQ scheme.

We are all familiar with product sponsorships and exclusive endorsements for particular products at major events like the Olympics or the FIFA World Cup or the Rugby World Cup. There are major differences between these events and their organizing bodies and FQ.

Those responsible for these events, the IOC, FIFA or IRB, do not administer the game on a week to week or game to game basis. They oversee rules and administration. They do not set player fees, they do not decide who can and can't play every week, they do not run coach or player clinics etc. National, state and regional bodies for individual sports do that.

I believe there is a real danger of serious conflicts of interest where those who run a sport on a week by week basis, who decide who can and can't play that sport, who decide which clubs can field teams and under what circumstance they can do that, to also have the power to dictate which companies can sell to those clubs. It extends the total and absolute control they have over weekly operations of clubs and players to the companies that supply the clubs.

The actions of the IOC, FIFA the IRB and the like are subject to public scrutiny. Sadly there is real concern about the efficacy of their operations from time to time, notwithstanding this scrutiny. Power corrupts and absolute power corrupts absolutely. It is not healthy for an organization that has absolute power as FQ does, to have that power extended to the commercial market place.

The third line forcing applied by the IOC, FIFA, IRB etc applies to national teams only and official merchandise voluntarily bought by fans. The national teams are outfitted by big name brands usually at no cost to the sporting body. They make their money out of sales to fans and others. This is not the case with FQ and similar bodies.

Exclusive schemes for these elite competitions are an efficient source of income for the event and for national sporting teams. The same benefits do not easily apply, if at all, to a single sport at a local club level with schemes such as FQ's.

**The ACCC's draft decision is in the public interest, is well founded and should stand.**

Yours Sincerely

Hon Arch Bevis  
29<sup>th</sup> September 2011