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4th December 2011

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
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Dear General Manager,

The Football Queensland (FQ) submission dated 11/112011 contains statements that I am compelled to respond to.

Quality

FQ's latest submission states that they work actively to ensure minimum quality standards. As with most claims by FQ they simply assert this without any evidence or detail.

As I have stated previously, FQ should provide evidence of standards required, tests undertaken and test results. Indeed, where are the test results published? How does a club know the performance of garments they are considering buying? How do suppliers know whether garments meet FQ standards? The simple answer is there are no standards, there are no tests and there no test results.

FQ has changed their evidence on this matter. In April 2008 FQ said 'Apparel not subject to the Licensed Program would be of a similar value.' Value of course includes both price and quality. Now they say they actively ensure a higher standard is provided because of their third line forcing.

In their 10th June 2011 submission they claimed:

Clubs are guaranteed that they are purchasing a quality garment or product which gives assurance to those without experience in the apparel or football equipment industry.

That implies if not directly asserts that FQ test suppliers' garments against some predetermined standard to ensure a specific standard is met. That is not true. It is also different to their most recent submission. At no time have they provided evidence of any standards, tests or test results.

Most telling though, is their statement in their submission of 12 July 2011;

'Quality is monitored most efficiently by the end user,'

The truth is that not only is quality monitored most effectively by the end user i.e. the clubs, the only quality monitoring that exists is at club level.

They also confuse after sales disputes assistance that they rarely provide with actual quality control of marketed garments. By confusing post sales disputes with an actual quality control scheme, they are admitting that clubs have received faulty products from their approved suppliers.

FQ can't even get their story consistent.

The evidence and indeed FQ's own submissions confirm that their restrictive scheme has nothing at all to do with quality.

Those who have expressed concerns about foreign supplied goods do so with a notable qualification. They refer to clubs being tempted to buy directly from overseas. They may or may not be right about that. However, those who raise this concern source their products from overseas. Their point seems to be it is alright to purchase garments from overseas if they import them, but not if someone else imports them.

I would rather see Australian produced garments and balls supplied. Sadly, they are not supplied and as far as I know, not even available.

FQ's restrictive scheme is and always has been about one thing; getting easy money without regard for the impact it has on clubs, players or suppliers.

Apparel Prices

FQ would have us believe that suppliers who are charged \$20,000 for the right to tender for the supply of garments, i.e. before they have sold one shirt, and also to pay a fee for every garment sold, do not seek to recover those costs. It defies common sense and logic. More importantly, any company behaving that way would be in breach of their responsibility to shareholders.

It also defies the facts. I have previously referred to personal experience buying garments where an additional charge was made to have the 'Q' logo added. Clubs have submitted the same. But let there be absolutely no doubt about this – suppliers web sites include pricing that clearly shows an extra charge to use the 'Q' logo.

Red Lion or SSI as they are known still display an extra charge for the 'Q' logo.

<http://www.redlionagencies.com.au/proddetail.php?prod=SSISHORTSTORIN O&cat=9>



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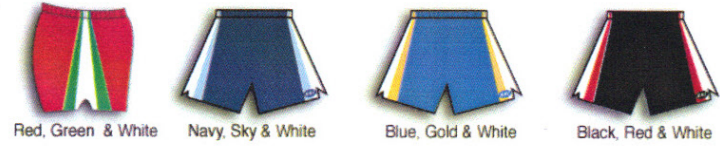
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 Sizes - 24",26",28",SM, - \$17.00 + GST
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file:///I:/Users/ahavic/Documents/ACC%20FOOTBALL%20QLD/Back%20log... Page 1 of 1

Amazingly, Red Lion provided a submission to the ACCC supporting FQ saying they do not have a different price for FQ garments. The ACCC should consider why a company would provide such a submission contrary to their own published price lists and the experience of clubs.

FQ in their latest submission go so far as to say only one supplier adds a charge to their invoices for the 'Q' logo. Either they are grossly ignorant of the practices in the industry or they are choosing their words carefully for other reasons.

Perhaps only one company has been honest and transparent and included the cost of the 'Q' logo in their invoices. However, others certainly include such a charge on their published price list and/or in the calculation of the price they charge. Perhaps these other suppliers don't itemise it in their invoices. If this is the case, FQ's use of words is misleading. FQ should be asked whether they chose their words to misrepresent which companies charge for applying the 'Q' logo as distinct from itemise it on their invoice.

Can FQ really be that ignorant of the situation when clubs know about it and when a company web site clearly displays a charge for the 'Q' logo?

FQ point to one supplier that has shirts and shorts at \$10. I understand this is a run out sale. These prices are not available throughout the year. If this is correct, why did FQ supply the information without that critical qualification?

FQ assert that their restrictive scheme is somehow responsible for prices being less now than some years ago. They do so without providing any evidence of cause and effect.

Price changes in the last few years have much more to do with the strong Australian dollar than anything else. All garments come from overseas. The strengthening \$A has meant these garments are cheaper, like all imports.

Unlike FQ's unsubstantiated claims, the effect of the rising \$A is a fact. In January 2009 the \$A was about 70 cents \$US. It is now about parity. That very substantial movement gives plenty of scope for importers and suppliers to improve their margins and reduce prices.

FQ then say their restrictive scheme is no different to a marketing program for a company. This is wrong on so many levels I hardly think it necessary to elaborate. If the ACC would like me to do so I am happy to expand on this brief comment.

Marketing programs are totally within the domain of the company. Whether they run one, how they run it and how much they allocate to it are totally the decisions for the company. Not so with this restrictive scheme. FQ determine all of these matters, not companies.

The only thing they have in common is that they are both input costs that have to be recovered from sales. In other words, the final sale price has to cover that cost, along with all others and then provide a margin for profit.

The Sydney market is the most competitive in Australia. Yet there is no marketing scheme. There is just a lot of competition. Unfortunately these

cheaper prices are not available to Queensland, as these companies cannot market their team wear in Queensland due to FQ's restrictive scheme.

FQ claim that without the license scheme clubs would be at the mercy of suppliers. This is a ridiculous statement. **The rest of Australia (except Victoria) operates successfully without a license scheme.** Suppliers and clubs work in harmony. That's how successful business works in a free market. Where a supplier fails to perform the club simply finds another supplier.

Barriers to entry

The barrier to entry is an economic one. I have always said FQ would let anyone into their scheme if they pay the money and do what they are told. Disobey either of these provisions, and it doesn't matter how good your product is or what its price is, they will reject you. In addition to all other start up cost, \$20,000 as a payment to just get the right to tender for a contract is a substantial barrier.

Market Share

FQ submit that the market share information I have previously referred to is 'baseless'.

I am very interested in their assertion. Those estimates are based on sworn affidavits provided by two companies in support of FQ in a case before the QLD Supreme Court. I assume the ACCC has access to these sworn statements.

When someone swears in an affidavit to the Supreme Court that their company has 50% of the market share of merchandising to FQ and its clubs, it should be able to be relied upon.

Either the sworn statements in the Supreme Court are incorrect, raising very serious implications for those involved in providing and/or procuring them, or the latest submission from FQ to the ACCC is wrong.

Either way serious questions remain to be answered, both before the ACCC and Supreme Court, if the real truth on this point is to be found.

Player Registration fees

FQ refer to clubs that charge entry-level players no fees at all and one club that has comparatively low fees between \$95 and \$200.

Accepting the two cases supplied as correct, a few points need to be made.

I am surprised that any club has players that pay no fee at all. FQ and Football Brisbane charge \$49.50 for players from U6 to U11. Clubs are also careful to have insurance cover for all players, and typically provide in house referees for very young players. Both involve some cost. The prospect of players not being covered by insurance would run counter to both FQ requirements and good management. It would be interesting to know how that club covers these costs. Perhaps they have a charge per game, or factor it into garment sales.

Any suggestion that most clubs, which are in southeast Queensland, charge about \$100 for registration is untrue.

It is not uncommon for clubs to charge about \$200-\$300 for juniors, \$300 for social seniors, \$350 plus for competitive seniors and \$700 plus for elite teams. As I have previously mentioned, I know one club that charged \$1,400 per player for their elite teams.

The examples supplied by FQ seem carefully chosen. I submit they are not representative of clubs in southeast Queensland. A check of a few Brisbane club websites confirms that e.g.

<http://www.pinehillsfootball.com/datafiles/LettertoJuniorMembers2011.pdf>

<http://olympicfc.net.au/registration/>

<http://www.gapfootball.org.au/information/rego/>

<http://www.mitchiefc.org.au/general-information/general-club-information/registration-fees---2011.html>

FQ Funding

The key thing this is all about is money. This is about FQ being able to demand money for nothing more than the right of a supplier to tender to sell a product. It is not about quality. It is not about helping overworked club officials. It is about money.

FQ received \$885,000 from the Queensland Government for the period 2011-14. That is a very substantial amount of money. It is much more than the funds they receive from their restrictive scheme.

I am sure the Queensland football community would like to know where that money is going. Sadly, the published financial records of FQ disclose very little detail to determine that or where the third line forcing funds go.

FQ cannot cry poor, especially given the very substantial public support they have just received, without fully disclosing their financial position, especially to the football community that has to pay the bills.

Since the ACCC issued the draft notice, a scare campaign has been conducted to make the football public believe that due to the ACCC's actions, players fee's would be hugely increased. In an earlier submission I foreshadowed this would occur.

As I have commented previously, even without taking into account savings that would accrue to clubs from removing this restrictive scheme, FQ could get the same level of income with an increase in fees of no more than \$5. In fact \$3 should cover it given player registrations in excess of 74,000. Notwithstanding FQ's latest submission, that would be a small increase in fees for the overwhelming majority of players. The net increase required to be income neutral would be much less than that \$5.

Conclusion

This has no doubt been a frustrating experience for everyone involved. It is however important that open and transparent competition be restored to this market.

Since this first began, FQ has changed their evidence on key points. I find it difficult to rely on the accuracy of their unsubstantiated assertions, especially when other hard evidence contradicts their claims.

It is instructive that a number of those who have made submissions have wanted to have their identity withheld from publication or their submission dealt with confidentially. This applies to clubs, individuals and suppliers.

Whether real or imagined, many in the football community believe they or their club would be disadvantaged if they publically take a stand against FQ. I submit that is a primary reason for their desire to be anonymous.

That in itself raises serious questions about whether the monopolistic power provided by the third line forcing should be extended to FQ. The unrepresentative collegiate structure of FQ enables a few individuals to have extraordinary power. This casts further doubt over the desirability of this privilege being provided to FQ by the ACCC.

Extending FQ's monopolistic powers over the game to the industry that supplies it is not in the public interest.

There is no doubt that FQ's restriction on trade increases the cost of garments to clubs. That cost is passed on to players in one way or another.

There can also be no doubt that the \$20,000 up front charge FQ make for any supplier to be able to sell to clubs is a real barrier to new entrants and a cost that companies must recover.

It is alarming that a submission from a supplier claims they do not charge extra for the 'Q' logo, when their website clearly shows they do.

It is alarming that clubs and others make clear that suppliers, not just one, do charge for the 'Q', but FQ and some suppliers claim otherwise. I have first hand knowledge they charge extra and find their claims offensive.

It is alarming that FQ submit to the ACCC that evidence in sworn statements supplied in support of their case in the Supreme Court is not correct.

It is alarming that FQ rely on examples that are not representative.

The ACCC's draft decision is correct. It should be endorsed. Every other state except Victoria operates well without resorting to restrictive anti-competitive and costly schemes like this FQ third line forcing.

If the ACCC has received information that causes it to reverse that interim decision, I (and I expect others) would seek the opportunity to comment on that information.

I have no objection to this submission being published.

Yours Sincerely

Hon A R Bevis