



Australian
Competition &
Consumer
Commission

Notice

in respect of notification **N93402**

lodged by

Football Queensland Ltd

Date: 15 December 2011

Notification no.: N93402

Public Register no.: C2008/679

Commissioners: Sims
Schaper
Court
Dimasi
Walker
Willett

Summary

The Australian Competition and Consumer Commission has decided to revoke the third line forcing notification (N93402) lodged by Football Queensland Ltd.

The ACCC considers that the notified conduct is likely to be delivering benefits by generating revenue to be used for the promotion and development of football (soccer) in Queensland, potentially increasing participation and promoting greater fitness and recreation levels.

However, the ACCC considers that the notified conduct is resulting in significant public detriment by reducing competition for the supply of football apparel in Queensland, resulting in higher prices for football apparel and equipment than would otherwise be the case. For this reason, 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 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 its 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 (**Teamwear Products**).

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. Teamwear Products 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.

The ACCC allowed the Notification to stand on 4 July 2008. Statutory protection conferred by the Notification came into effect on 12 May 2008.

Background

Following the receipt of several complaints regarding the Teamwear Program, the ACCC commenced a review of the Notification on 20 May 2011. As part of this review, the ACCC sought further information from FQ and interested parties on the public benefits and detriments arising from the notified conduct.

On 9 September 2011, the ACCC issued a draft notice proposing to revoke the Notification (**Draft Notice**). The ACCC was not satisfied that the Teamwear Program was delivering a net public benefit. The ACCC subsequently sought further submissions from FQ and interested parties on the issues arising from the Draft Notice.

ACCC assessment

The ACCC recognises that some sports licensing programs have the potential to deliver public benefits, such as:

- ensuring a minimum standard of quality
- enabling efficiencies from realisation of economies of scale for suppliers, lower transaction costs and search costs for clubs in searching for appropriate apparel, and allocative efficiencies where sporting associations are able to use their bargaining power to negotiate lower prices than clubs may be able to negotiate individually
- generating revenue for sporting associations to use in the promotion and development of sport, potentially increasing participation and promoting greater fitness and recreation.

However, the ACCC notes that there is the potential for some of the benefits of licensing programs to be offset if the licensing program results in public detriments, such as:

- reducing competition, increasing costs and prices for apparel/equipment
- increasing administrative and compliance costs
- inefficiencies in fundraising.

The ACCC received a number of submissions regarding the Teamwear Program in response to the Draft Notice. Based on the information provided, the ACCC is not satisfied that the public benefits arising from the Teamwear Program outweigh the public detriments.

The ACCC considers that the Teamwear Program delivers public benefits through the funding of initiatives for the promotion and development of football in Queensland. The ACCC notes that the Teamwear Program may also be delivering marginal public benefits by indirectly ensuring minimum quality standards and allowing FQ to intervene in some quality disputes between clubs/participants and licensed suppliers. However, the ACCC does not consider that the Teamwear Program is enabling efficiencies for suppliers or clubs/participants. For instance, by giving suppliers greater certainty for supply thereby allowing them to capture economies of scale, or by ensuring that only suppliers who offer the best price/quality combination are selected as licensees thereby reducing search costs for clubs/participants in searching for and acquiring appropriate apparel.

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

The ACCC has received a number of submissions from football clubs stating that the Teamwear Program prevents them from buying similar quality apparel from non-licensed suppliers at lower prices. Some suppliers have also submitted that the upfront licensing fees make it uneconomic for them to supply apparel to Queensland football clubs.

Although the ACCC notes that the method under which FQ raises revenue is generally a matter for it to determine, in this instance the Teamwear Program creates inefficiencies and may disguise the true cost of participating in FQ's competitions. The ACCC notes that FQ may obtain similar revenue to the Teamwear Program through alternative fundraising methods which do not restrict competition in the supply of football apparel and are more transparent.

On balance, the ACCC is satisfied that the likely public benefits from the conduct will not outweigh the likely public detriments resulting from the conduct.

Accordingly, the ACCC issues this notice to revoke notification N93402 lodged by FQ.

If no application for review of this notice is made to the Australian Competition Tribunal, the statutory protection conferred by the notification will cease to be in force on 16 January 2012.

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1. Introduction

- 1.1. This document is a notice pursuant to section 93(3A) of the *Competition and Consumer Act 2010* (the Act) 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 Act (the **Notification**).
- 1.2. Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as ‘third line forcing.’ Third line forcing 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.
- 1.3. Businesses may obtain statutory protection for conduct that risks 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.
- 1.4. However, the ACCC may revoke a third line forcing notification at any time where 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.
- 1.5. The test for revocation of a third line forcing notification is contained in section 93(3A) of the Act. This section states that, 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 is to revoke the statutory protection afforded by the lodgement of the notification.

2. Background

Football Queensland Ltd

- 2.1. 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.
- 2.2. 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’.

- 2.3. FQ divides itself into 10 regional areas in Queensland: Brisbane; Central Qld; Far North Qld (Cairns); Gold Coast, Mackay & Regional Football Zone (Mackay – Whitsunday Region); North Qld (Townsville Region); North West Zone Qld (Mt Isa); South West Qld (Stanthorpe – Toowoomba – Kingaroy Region); Sunshine Coast (Cooroy – Caboolture Regions); and Wide Bay (Bundaberg – Gympie Regions).
- 2.4. In 2010, there were 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 for the period 2008-2010. These fees represent only a component of the total player registration fees paid to football clubs.¹

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
		Senior Women	2,866	20.00	60.00	80.00
		Senior Men	8,135	20.00	60.00	80.00
2009	66 912	Junior	55,572	10.50	23.50	34.00
		Senior Women	2,779	21.00	62.50	83.50
		Senior Men	8,561	21.00	62.50	83.50
2010	66 330	Junior	54,544	11.00	24.00	35.00
		Senior Women	2,934	22.00	64.00	86.00
		Senior Men	8,852	22.00	64.00	86.00

The notified conduct

- 2.5. Notification N93402 was lodged by FQ on 28 April 2008 for conduct that may be third line forcing, as prohibited in sections 47(6) and 47(7) of the Act.
- 2.6. Under the Notification, FQ requires football clubs that 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
- (together, the **Teamwear Products**).

¹ Registration costs paid by clubs/participants in FQ’s competitions will be discussed further in the Public Detriment section on ‘Efficiency of fundraising’ below.

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.

- 2.7. 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. Teamwear Products also include:
- all zone, association and State representative squad apparel
 - club/associate specified warm up shirts only and
 - match and training balls.
- 2.8. The Teamwear Program does not apply to apparel worn during training unless required by the club as team apparel.
- 2.9. Football clubs and players may continue to use Teamwear Products provided by a supplier after the supplier ceases to be licensed.
- 2.10. 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 \$1,000; third and further breaches \$2,000 per non-compliance and a show cause notice as to why affiliation should not be cancelled.
- 2.11. Following FQ’s process for selecting new licensees in September/October 2010, FQ awarded 13 licences for the Teamwear Program.⁴ Currently, there are 12 licensed Teamwear suppliers: Adidas, Attack Sports; Gorilla Sports; Covo; Mitre; SSI; Statewide Sports (UhlSport); Alanic Group; Only Sport; Living Edge Designs & Apparel; Nike; and Veto Sports.⁵
- 2.12. Under FQ licence agreements, licensees are required to pay FQ:
- \$20,000 p.a. licence fee (made in quarterly payments of \$5,000)
 - 5% royalty on all Teamwear Products sold
 - \$0.60 for each Q logo.
- 2.13. FQ’s arguments in support of the Notification are discussed in Chapter 5.

⁴ 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.

⁵ A list of current licensees is available on FQ’s website, <http://www.footballqueensland.com.au/index.php?display=cat&id=49>.

Football apparel/equipment arrangements in Australia

- 2.14. The arrangements of other state/territory administrators of football with regards to apparel and equipment are outlined in the table below:

Table 2: Apparel/equipment arrangements in other states and territories

Football Administrator	Arrangements	ACCC notification
ACT Football Federation Incorporated	No licensing arrangements	N/A
Football NSW Limited	No licensing arrangements – but, Football NSW does operate its own retail store for the supply of football apparel/equipment ⁶	N/A
Football Federation Victoria	Licensing program for balls and apparel	Notifications N92852 and N92853 lodged on 15 March 2007, allowed to stand 31 October 2007
Football Federation South Australia	No licensing arrangements	N/A
Football Federation Tasmania	No licensing arrangements	N/A
Northern NSW Football	No licensing arrangements	N/A
Football Federation Northern Territory	No licensing arrangements	N/A
Football West Limited	No licensing arrangements	N/A

- 2.15. The ACCC notes that only FQ and Football Federation Victoria appear to place restrictions on clubs regarding purchasing apparel. Football clubs/participants in other states and territories remain free to purchase apparel from any supplier.

3. ACCC previous consideration of notification N93402

- 3.1. FQ lodged the Notification on 28 April 2008. On 6 June 2008, the ACCC wrote to interested parties, inviting them to make a submission on the likely public benefits and detriments associated with the Teamwear Program. The ACCC received one submission in support of the Notification.
- 3.2. 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 be taken in the matter at that time. The statutory protection conferred by the Notification came into effect on 12 May 2008.

⁶ The ACCC notes that clubs/participants in Football NSW Limited's competitions are not required to buy football apparel/equipment from its retail store.

- 3.3. Following the receipt of several complaints that the Teamwear Program was restricting competition and resulting in higher prices for football apparel, the ACCC commenced a review into the Notification on 20 May 2011. As part of this review, the ACCC sought further information from FQ and interested parties on the public benefits and detriments arising from the notified conduct.

Draft notice

- 3.4. Section 93A(1) of the Act requires that before issuing a final notice revoking the statutory protection obtained by a notification, the ACCC must prepare a draft notice.
- 3.5. The ACCC issued a draft notice proposing to revoke the Notification on 9 September 2011 (**Draft Notice**).
- 3.6. At the time of issuing the Draft Notice, the ACCC considered that the Teamwear Program was delivering some public benefit through the funding of initiatives and equipment for coaches and football clubs. However, the ACCC did not consider that FQ had provided sufficient financial information about the extent of revenue generated from the Teamwear Program or the manner in which FQ had returned revenue to the sport, for the ACCC to be satisfied that this constituted a significant public benefit. The ACCC was also not satisfied that the Teamwear Program had provided minimum quality standards for apparel or that it had significantly reduced transaction costs for football clubs and participants.
- 3.7. The ACCC considered that the Teamwear Program was 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 was also not satisfied that the Teamwear Program was 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.
- 3.8. For these reasons, the ACCC was not satisfied that the public benefits arising from the Teamwear Program outweighed the public detriments. However, the ACCC welcomed further comments from interested parties on the Draft Notice and the benefits and detriments arising from the notified conduct. The submissions received by the ACCC in relation to the Draft Notice will be discussed in Chapters 4 and 5.
- 3.9. A chronology of the significant dates in the ACCC's consideration of and review of the Notification is contained in Attachment A

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. In its assessment of the Notification, the ACCC sought comments from a range of interested parties including clubs/participants in FQ's competitions, current licensees and other suppliers.

Prior to the draft notice

- 4.3. On 25 May 2011, the ACCC commenced its review of the Notification. As part of this review, the ACCC sought submissions from interested parties affected or potentially affected by the notified conduct. The ACCC received submissions from 12 interested parties, of which some were confidential.
- 4.4. The following table outlines the public submissions received by the ACCC prior to the Draft Notice and their position in relation to the notified conduct:

Table 3: Public submissions received prior to the Draft Notice

Interested Party	Position in relation to notified conduct
Gorilla Sports (Licensed Supplier)	Supporting
The Hon Arch Bevis (former MP)	Opposing
Samford Sporting Association (club)	Opposing
Kangaroo Point Rovers (club)	Opposing
Bernie Ripoll (MP)	Opposing

Following the draft notice

- 4.5. On 9 September 2011, the ACCC issued the Draft Notice proposing to revoke the Notification. The ACCC subsequently sought submissions from interested parties on the issues arising from the Draft Notice, and the benefits and detriments arising from the notified conduct. The ACCC received submissions from 26 interested parties, of which some were confidential. Some submissions were also placed on the ACCC's public register with the identity of the author excluded.
- 4.6. The following table outlines the public submissions received by the ACCC since the Draft Notice and their position in relation to the notified conduct:

Table 4: Public submissions received following the Draft Notice

Interested Party	Position in relation to notified conduct
An individual	Supporting
2 x individuals	Opposing
3 x suppliers (unlicensed)	Opposing
1 x supplier (licensed)	Opposing

Interested Party	Position in relation to notified conduct
4 x soccer clubs	Opposing
Jason Sorenson (individual)	Supporting
Kangaroo Point Rovers (club)	Opposing
Grange Thistle Soccer Club (club)	Opposing
Football Central Queensland (club)	Supporting
Sunshine Coast Football Club (club)	Supporting
Robina City Raiders (club)	Opposing
Runaway Bay Soccer (club)	Opposing
Gympie Region Soccer (club)	Supporting
Samford Sporting Association (club)	Opposing
North Queensland Football (club)	Supporting
Adidas (licensed supplier)	Supporting
Gorilla Sports Pty Ltd (licensed supplier)	Supporting
Statewide Sports Pty Ltd (licensed supplier)	Supporting
Red Lion Agencies (licensed supplier)	Supporting
The Hon Arch Bevis (former MP)	Opposing

Applicant's submissions

- 4.7. The ACCC has sought further information from FQ on a number of occasions since the Notification was lodged in 2008.
- 4.8. In 2011, the ACCC wrote to FQ three times, requesting information about the operation of the Teamwear Program, the 2010 licence application process and financial information identifying how revenue obtained through the Teamwear Program had been distributed.
- 4.9. The ACCC also met with FQ on 3 November 2011 in order to discuss the Draft Notice and clarify the benefits arising from the Teamwear Program.⁷
- 4.10. The views of FQ and interested parties are outlined in the ACCC's assessment of the Notification in Chapter 5.

⁷ A file note of this meeting has been placed on the ACCC's public register.

- 4.11. Copies of public submissions may be obtained from the ACCC's website (www.accc.gov.au/ExclusiveDealingRegister) and by following the links to this matter.

5. ACCC assessment

- 5.1. The ACCC's assessment of the notified conduct (Teamwear Program) is in accordance with the statutory test set out in section 93(3A) of the Act.
- 5.2. Section 93(3A) states that, 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.

Area of competition

- 5.3. The first step in assessing the effect of the notified conduct is to consider the relevant area/s of competition affected by that conduct. This assists in assessing the public benefits and public detriments resulting from the notified conduct.
- 5.4. The ACCC notes that 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 balls⁸) from licensed suppliers.
- 5.5. FQ submits 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.⁹
- 5.6. The ACCC has not received any submissions from interested parties which directly address the relevant areas of competition.
- 5.7. 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.
- 5.8. The ACCC also notes the following points in relation to the demand for Teamwear Products:
- under the Teamwear Program all participants in FQ's competitions must wear Teamwear Products purchased from licensed suppliers

⁸ In the FQ license agreements 'Licensed Commodities' can be categorised as Teamwear and soccer footballs.

⁹ See for instance, FQ's submission in response to the Draft Notice, dated 30 September 2011.

- demand for Teamwear Products is primarily driven by football clubs and participants (in 2010, there were 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. Ownership of playing shirts is usually retained by the clubs so they can be used again in subsequent seasons. Other apparel, such as shorts and socks, are typically sold by clubs to players.

5.9. 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
- there are currently 12 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
- FQ licensed suppliers supply apparel in other states and to other sporting codes.

5.10. 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 likely future with and without the conduct

5.11. The ACCC applies the 'future with-and-without test' established by the Australian Competition Tribunal (the **Tribunal**) to identify and weigh the public benefits and public detriments generated by the notified conduct.¹⁰

5.12. Under this test, the ACCC compares the public benefits and detriments with the notified conduct in place and without the notified conduct.

5.13. FQ notes that, absent the Teamwear Program, it would need to seek alternate methods of raising revenue. FQ submits that the option it would most likely take would be to increase individual player fees (**player levies**).¹¹

5.14. Red Lion Agencies and North Queensland Football Club also submit that in the absence of the notified conduct, FQ would raise player levies. The issue of potential impacts on the player levy is considered in the Public Detriment section on 'efficiency of fund raising'.

¹⁰ *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.

¹¹ See FQ's submission in response to the Draft Notice, dated 30 September 2011.

- 5.15. Football Central Queensland submits that absent the notified conduct, FQ could implement alternative methods of ensuring minimum quality standards for football apparel/equipment, however, questions the efficiency of such alternative methods. The issue of minimum quality standards will be considered in the Public Benefit section.
- 5.16. The ACCC considers that the likely future without the notified conduct 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. Given its objectives, the ACCC considers that in this situation, FQ is likely to seek alternative ways to raise revenue. For example, it could increase player levies or acquire and sell apparel itself, as Football NSW does. The ACCC notes that FQ would also be free to assist clubs by providing a list of suppliers it considered provided suitable quality apparel on a timely basis at a good price.

Public benefit

- 5.17. 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.¹²

- 5.18. 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.
- 5.19. Further, 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.
- 5.20. FQ submits that the notified conduct (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
 - generation of income for FQ.

¹² *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.

- 5.21. 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.

Generation of revenue for Football Queensland

- 5.22. The ACCC considers that licensing programs 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 revenue earned through a licence program is returned to the sport (e.g. through 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.
- 5.23. At the time of issuing the Draft Notice, the ACCC was not satisfied that the revenue earned from the Teamwear Program was being returned to the sport. In particular, the ACCC was concerned that FQ had provided conflicting and incomplete figures regarding the initiatives funded by the Teamwear Program, in particular with regards to the Red Kits program.¹³
- 5.24. Following the Draft Notice, FQ provided further confidential information on the revenue raised through the Teamwear Program. FQ also provided copies of its financial reports for the 2008, 2009 and 2010 periods, which contain more detail regarding the operation of and initiatives funded under the Teamwear Program.
- 5.25. The following table outlines how much of the revenue earned from the Teamwear Program was returned to the sport in the 2008 – 2010 period:

Table 5: Initiatives funded by FQ under Teamwear Program, 2008 -2010

Period	Funds spent by FQ on Teamwear Program initiatives
Year ending September 2008	\$550,394
Year ending September 2009	\$260,415
September 2009 – December 2009	\$2,408
Year ending December 2010	\$93,197

- 5.26. FQ clarified that \$556,503.08 of these funds were spent on the Red Kits program in 2008 and 2009. Other initiatives funded by the Teamwear Program include approximately \$46,000 worth of grant writing assistance in 2008 and 2009, as well as funding for coach and referee education and the provision of competition management software for competition organisers.
- 5.27. FQ also clarified the cost of administering the Teamwear Program. In the Draft Notice, the ACCC had accepted FQ's submission that the cost of administering the Teamwear

¹³ Under this Program, which was sponsored by Red Rooster, FQ provided every registered team with a set of footballs and coaching equipment free of charge.

Program from 2008-2010 was \$74,277. However, FQ now submits that this sum is inclusive of the purchase of the Q logos by FQ and actual administration is in the order of \$24,000 over the period.

- 5.28. In light of the additional information provided by FQ, the ACCC is satisfied that the vast majority of revenue raised by the Teamwear Program is being used to fund initiatives for the development and promotion of the sport.
- 5.29. As such, the ACCC considers that the Teamwear Program delivers public benefits by generating revenue which is returned to the sport in ways which are likely to promote greater participation and hence increased fitness and recreation levels.

Minimum standard of quality

- 5.30. FQ submits that the Teamwear Program was introduced largely to ensure that the quality of Teamwear Products met a certain minimum quality standard.¹⁴ FQ submits that the Teamwear Program establishes a minimum standard of quality for Teamwear Products and delivers a public benefit by saving football clubs money over time and promoting the image of the game.
- 5.31. 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.’¹⁵
- 5.32. The ACCC recognises that licensing programs can ensure that apparel and equipment meet minimum quality requirements and that 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.
- 5.33. At the time of issuing the Draft Notice, the ACCC was not satisfied that the Teamwear Program was delivering minimum quality standards.
- 5.34. Following the Draft Notice, the ACCC sought further information from FQ and interested parties regarding the role FQ plays in setting and enforcing minimum quality standards under the Teamwear Program.

¹⁴ See clauses 8.1 and 8.3 of FQ’s licence agreements.

¹⁵ Football Queensland Notification, lodged 28 April 2008.

- 5.35. In terms of setting quality standards, FQ submits that it requires all *new* licence applicants to produce product samples during the licence application process. However, FQ notes that it does not require suppliers who have previously been successful in obtaining a licence to re-submit product samples during subsequent application processes.¹⁶
- 5.36. FQ states that it undertakes an assessment of product samples on a ‘common sense’ basis, however, does not generally place much weight on product samples (unless they are poor) as FQ considers that it is in suppliers’ interests to submit good quality samples and these may not be reflective of the product actually supplied to clubs.¹⁷ FQ notes that although it does not have formal quality standards as such (for instance, a minimum thread count requirement), it does have base level minimum quality requirements. For example, FQ indicated that t-shirts with numbers drawn on in texta would be clearly unacceptable.¹⁸
- 5.37. In terms of enforcing quality standards, FQ reiterates that it requires football clubs to raise any quality issues directly with licensed suppliers in the first instance. FQ states that if clubs are unsatisfied with the supplier’s response, it will then intervene on their behalf. FQ notes that in its experience, most quality disputes are resolved at the club/supplier level. However, FQ submits that it has become involved on ‘several occasions’ in providing assistance to clubs to reach a satisfactory solution on product quality issues. In this regard, FQ provided the example of when it assisted North Queensland Football Club in a dispute with a licensed supplier over defective balls. In particular, FQ notes that it helped to organise for the recall and replacement of the balls and a gift of free balls for the next season. FQ submits that without the licence program, it would not have the authority to intervene in quality disputes between clubs and suppliers.¹⁹
- 5.38. In addition, FQ submits that the Teamwear Program protects clubs from inferior products, poor service and exploitation by suppliers. For instance, FQ submits that if clubs were allowed to purchase apparel from overseas suppliers on the internet, they would be at increased risk of encountering fraud, defective products or supply difficulties.²⁰
- 5.39. FQ also raises concerns regarding the possibility of clubs being induced into entering unconscionable supply agreements, for example, through the offer of a percentage of apparel ordered at no cost. In particular, FQ states that it has received complaints from clubs alleging that they have been induced into entering long term supply arrangements with licensed suppliers under which clubs are restricted from purchasing or receiving

¹⁶ See FQ’s further submission in response to the ACCC’s information request and interested party submissions, dated 11 November 2011.

¹⁷ Ibid.

¹⁸ See File Note of meeting between FQ and ACCC on 3 November 2011.

¹⁹ See FQ’s further submission in response to the ACCC’s information request and interested party submissions, dated 11 November 2011

²⁰ Ibid.

apparel from other suppliers, subject to unilateral price increases over the term of the agreement, onerous penalties for breach and no recourse for poor service or supply.²¹

- 5.40. Several interested parties including an individual,²² Gorilla Sports and Red Lion Agencies (both licensed suppliers), also submit that the Teamwear Program allows FQ to keep suppliers accountable in relation to the quality of apparel supplied. For instance, North Queensland Football Club submits that FQ provided assistance in resolving a dispute they had with a licensed supplier over defective footballs, as discussed above. Football Central Queensland also submits that the current licensing regime protects clubs from potential exploitation.
- 5.41. However, other interested parties including the Hon Arch Bevis and an unlicensed supplier²³ submit that the Teamwear Program does not ensure minimum quality standards. For instance, a Club²⁴ notes that quality is not an issue for it under the Teamwear Program, as it selects apparel based on brand and then purchases that particular brand from a FQ licensed supplier.
- 5.42. 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 notes that FQ does not have formal quality standards and undertakes only limited quality assessments as part of its process for accepting licensees into the Teamwear Program. As such, it is not apparent to the ACCC that FQ selects licensees on the basis of quality
- 5.43. Nevertheless, the ACCC accepts that the Teamwear Program may indirectly operate to ensure minimum standards of quality, as suppliers may have incentive to ensure that apparel is of a certain standard because of the threat of withdrawal of their license by FQ. However, the ACCC considers that this benefit is likely to be marginal when compared to the likely future without the conduct, because absent the Teamwear Program, suppliers are still likely to have incentive to supply good quality products to clubs because of normal competitive disciplines. That is, suppliers of poor quality apparel would expect to lose business over time to suppliers of better quality apparel.
- 5.44. The ACCC does not accept FQ's submission that the Teamwear Program protects clubs from exploitation. The ACCC considers that clubs are capable of making their own quality assessments and sourcing apparel on the basis of this assessment, particularly for lower grades and junior competitions. In this regard, the ACCC notes that football associations in all but one of the other states and territories do not restrict clubs/participants to purchasing apparel from particular suppliers.²⁵ To the extent that clubs *may* purchase products which are unfit for purpose or be induced into entering

²¹ See File Note of meeting between FQ and ACCC on 3 November 2011 and FQ's further submission in response to the ACCC's information request and interested party submissions, dated 11 November 2011.

²² See submission dated 13 September 2011, name excluded from public register at author's request.

²³ See submission dated 30 September 2011, name excluded from public register at author's request.

²⁴ See submission dated 22 September 2011, name excluded from public register at author's request.

²⁵ See Table 2 above.

unconscionable supply arrangements, the ACCC considers that this would be a general consumer protection or contractual issue which could be dealt with under the relevant law, as opposed to an issue arising specifically because of the absence of the Teamwear Program.

- 5.45. The ACCC considers that the Teamwear Program may be delivering some public benefits by giving FQ the ability to intervene in some quality disputes between clubs and suppliers and that this may result in more timely resolution of those disputes than in the future without the conduct. However, the ACCC considers that these benefits are likely to be marginal because clubs are still required to resolve quality disputes directly with suppliers in the first instance and by FQ's own admission, it is not apparent that many disputes are actually referred to FQ. Further, if clubs do receive goods which are unfit for purpose, clubs have recourse under consumer protection or contract law.

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

- 5.46. 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:
- 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 price/quality combination 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.
- 5.47. At the time of issuing the Draft Notice, the ACCC was not satisfied that the Teamwear Program delivered any of these efficiencies, as it was not clear whether FQ selected licensees on the basis of a competitive tender process having regard to price, quality and service (including timely supply).
- 5.48. Following the Draft Notice, FQ provided further information regarding its process for accepting licensees into the Teamwear Program. In particular, FQ submits that it

requires all new suppliers (that is, suppliers who have not previously been licensed suppliers under the Teamwear Program) to submit product samples when applying for a licence (although FQ notes that it 'does not place significant weight on samples...as nearly universally suppliers supply a superior product for inspection.'). FQ also submits that it conducts due diligence checks on the reputation of new applicants. However, FQ continues to submit that it does not select licensees on the basis of price and explicitly leaves prices to be set by suppliers in competition with each other.²⁶ FQ also acknowledges that it has never refused an application for a licence.²⁷ However, the ACCC notes that FQ is currently in dispute with one supplier, Veto Sports, regarding an alleged breach of its licensing agreement and the purported termination of this agreement by FQ.

- 5.49. On the basis of the information provided by FQ, the ACCC remains of the view that the Teamwear Program does not involve a competitive tender process and therefore may not provide public benefits associated with lower transaction costs, economies of scale or lower prices for clubs/participants. However, the ACCC notes that FQ has provided further information which seeks to demonstrate how, in the absence of a competitive tender process, the Teamwear Program nevertheless results in lower prices and better service and quality for clubs.
- 5.50. In relation to price, FQ submits that, when requested by clubs, it negotiates with licensed suppliers on their behalf to secure the best possible price for apparel from suppliers.²⁸ This is supported by Sunshine Coast Football Club, which submits that FQ was able to broker a deal with Adidas on its behalf, under which Adidas agreed to supply apparel to it at a substantial discount to retail prices.²⁹ However, the ACCC is not aware of any other similar deals being brokered by FQ. Further, the ACCC understands that although FQ introduced the parties, Sunshine Coast Football Club now negotiates directly with Adidas for the supply of its apparel. The ACCC also notes that Sunshine Coast Football Club is a state league club and does not currently participate in any junior competitions, such that the lower priced apparel is not broadly available.
- 5.51. The ACCC considers it likely that suppliers have entered into agreements with particular clubs under which they offer apparel to those clubs at a substantial discount, because of the advantages of being affiliated with that specific club. For instance, suppliers may gain increased exposure by being affiliated with a state league team and increase their sales as a result. As such, the ACCC considers that these types of arrangements are still likely to arise in the future without the conduct. However, the ACCC considers that for most clubs/participants, prices of Teamwear Products are not

²⁶ See FQ Notification, lodged 28 April 2011 and FQ's submission in response to the draft notice, dated 30 September 2011.

²⁷ See File Note of meeting between FQ and ACCC on 3 November 2011 and FQ's further submission in response to the ACCC's information request and interested party submissions, dated 11 November 2011.

²⁸ See FQ's further submission in response to the ACCC's information request and interested party submissions, dated 11 November 2011.

²⁹ See File Note of meeting between FQ and ACCC on 3 November 2011, in which Noel Woodall (FQ's solicitor and Chairman of Sunshine Coast Football Club) submitted that the club was able to obtain significant discounts on apparel, including socks at \$6 a pair from Adidas, where the recommended retail price for such socks is around \$15 a pair.

likely to be substantially lower because of the use of FQ's bargaining power, as Teamwear licences are not awarded on the basis of the lowest price for a given quality standard.

- 5.52. In relation to service and quality, FQ submits that the Teamwear Program ensures that companies who are less capable or less committed to meeting the requirements set by the Teamwear Program are filtered out of the selection process.³⁰
- 5.53. The ACCC does not accept FQ's submissions that the Teamwear Program has resulted in significant increases in service levels and quality of apparel from suppliers for the same reasons as those outlined above in the 'Minimum standards of quality' section.
- 5.54. As such, the ACCC is not satisfied that the Teamwear Program is delivering benefits through enabling lower prices or increased service levels or quality standards for clubs, when compared to the likely future without the conduct.

ACCC conclusion on public benefits

- 5.55. The ACCC considers that the Teamwear Program is likely to deliver public benefits through the funding of initiatives for the development and promotion of football in Queensland. However, the ACCC is not satisfied that the Teamwear Program is delivering significant public benefits through ensuring minimum quality standards for Teamwear Products or by facilitating more timely resolution of quality disputes between clubs and suppliers. The ACCC is also not satisfied that the Teamwear Program is providing lower prices or increased quality and service levels for apparel/equipment.

Public detriment

- 5.56. 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.³¹

- 5.57. 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.
- 5.58. Broadly, FQ submits that there is no significant anti-competitive detriment associated with the notified conduct for the following reasons:

³⁰ Ibid and FQ's further submission in response to the ACCC's information request and interested party submissions, dated 11 November 2011.

³¹ *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 remains a choice of suppliers of Teamwear Products and clubs are free to choose any supplier [from this number] they wish
- there is no wastage of Teamwear Products, as clubs can continue to use them after a licensee's licence ceases
- administration costs are absorbed by FQ
- suppliers are not required to supply details of pricing in the licence application process and FQ does not seek to control competition between the licensed suppliers.

5.59. 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
- inefficiencies in the way funds are raised.

5.60. An assessment of the likely public detriment generated by the Teamwear Program follows.

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

5.61. The ACCC considers that 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 may deter some suppliers from participating in the program, even though they would otherwise be able to supply apparel/equipment of the requisite standard. This reduced competition may result in higher prices, lower quality and poorer service compared to a situation without the licensing program.

5.62. Under the Teamwear Program, clubs in FQ's competitions are restricted to purchasing Teamwear Products from licensed suppliers. In order to become a licensed supplier, potential suppliers must participate in the FQ licence application process (run approximately every 3 years) and pay the \$20,000 annual licence fee and 5% royalties on each item sold. The ACCC considers that this annual licence fee is a payment for exclusivity which suppliers will only be prepared to pay if it reflects the value of exclusivity to suppliers.

5.63. The ACCC notes that the Teamwear Program also imposes additional production costs on licensees, for instance, for the purchase and application of the Q logo. The ACCC notes that, absent competitive tender arrangements, these additional costs are likely to be passed through in the form of higher prices for Teamwear Products.

5.64. At the time of issuing the Draft Notice, the ACCC was of the view that the Teamwear Program was reducing competition in the supply of football apparel by deterring existing suppliers from supplying Teamwear. The ACCC was of the view that this

reduction in competition was likely to result in higher prices, lower quality and poorer service than would otherwise be the case.

- 5.65. Following the Draft Notice, the ACCC has received further information from FQ and interested parties regarding whether the Teamwear Program reduces competition in the supply of football apparel and results in higher prices for Teamwear Products.
- 5.66. In relation to whether the Teamwear Program reduces competition in the supply of football apparel, an unlicensed supplier submits that the licence fees charged by FQ are a barrier to trade which prevents him from supplying football apparel in Queensland. In particular, this supplier states that he ‘simply cannot afford these expenses, and as a new supplier ... would not be able to reach the sales volume to justify the expenses of participating...[in the Teamwear Program].’³²
- 5.67. The ACCC also understands that in other states and territories, the absence of a licensed apparel program means that both large suppliers and a number of medium and small region-specific suppliers, supply football apparel.
- 5.68. In response, FQ submits that some current licensed suppliers would be considered in volume terms to be ‘small’ but that they have obviously made a commercial decision to participate in the Teamwear Program.³³
- 5.69. However, the ACCC remains of the view that the need to pay an upfront annual license fee of \$20,000 is likely to deter suppliers, particularly smaller or regional suppliers, from participating in the Teamwear Program and thus restricts competition. The ACCC also notes that the Teamwear Program prevents clubs from potentially purchasing lower priced apparel from online retailers, direct from manufacturers or through local suppliers that source their products from manufacturers.
- 5.70. In relation to whether this restriction in competition has resulted in higher prices, the ACCC notes that a number of clubs have submitted that the Teamwear Program prevents them from purchasing apparel and equipment from non-licensed suppliers at competitive prices.³⁴ For instance, Runaway Bay Football Club submits that they currently pay \$55 per player to purchase uniforms (shirts, shorts, socks) from a licensed supplier but that a non-licensed supplier has quoted them \$22.50 per player for equivalent uniforms.³⁵ Similarly, another Club³⁶ submits that they are able to purchase an Australian Spirit designed and manufactured shirt from an unlicensed local supplier

³² See submission dated 7 December 2011, name excluded from public register at author’s request.

³³ See FQ’s further submission in response to the ACCC’s information request and interested party submissions, dated 11 November 2011.

³⁴ For instance, see the submissions of a Club (name withheld) dated 23 September 2011, Denise Bills dated 29 October 2011, a Club (name withheld), Robina City Soccer Club dated 6 November 2011, Runaway Bay Football Club dated 7 November 2011 and a Club (name withheld) dated 11 November 2011.

³⁵ Submission of Runaway Bay Football Club dated 7 November 2011.

³⁶ Name of club excluded from ACCC’s public register at club’s request.

for \$22 with no minimum order, but that a licensed supplier charged them \$26 with a minimum order of 10.³⁷

- 5.71. Several interested parties have also submitted that they are charged an additional fee for the application of the Q logo.³⁸ For instance, a Club³⁹ submits that when ordering from licensed suppliers, an additional charge of \$1.10 per Q logo is always added to the price of Teamwear Products.
- 5.72. FQ submits that as far as it is aware, only one supplier is adding a charge to their invoices for the purchase of the Q Logo. Further, FQ submits that licensed suppliers do not add the cost of participating in the Teamwear Program onto the price of apparel. This is supported by the submissions of some licensed suppliers. For instance, Gorilla Sports and Red Lion Agencies submit that they have one price list for all clubs, regardless of whether they are part of FQ's competitions.
- 5.73. However, FQ acknowledges that the licensing program is akin to a marketing cost for suppliers and it is logical that a business would build marketing costs into their costs of operation.⁴⁰ Red Lion Agencies also submits that the 'cost of the license is part of running a specialised clothing business and is absorbed into the everyday running of the business.'⁴¹
- 5.74. The ACCC notes that the price effect of the Teamwear Program may not be uniform across licensed suppliers. Nevertheless, the ACCC considers that the Teamwear Program places upward pressure on the prices of Teamwear Products and that restrictions on the number of licensed suppliers means that Teamwear prices in general are higher than would arise in the likely future without the conduct.
- 5.75. In response, FQ submits that prices for Teamwear have been falling over the last few years, as evidenced by the fact that the royalties payable to FQ by licensed suppliers have been declining whilst apparel sales have been increasing.⁴² FQ considers that these lower prices are attributable to the strong competition between licensees and has emphasised that royalties significantly decreased following FQ's decision to expand the number of licensees from 5 to 13 in 2007, which reflects lower prices.⁴³ FQ considers that the higher level of imports from overseas may also have contributed to lower prices, although notes that most clothing was imported even prior to 2007.⁴⁴
- 5.76. However, the Hon Arch Bevis (former MP) submits that price changes in the last few years have more to do with the strong Australian dollar than the Teamwear Program.

³⁷ Submission of a Club (name withheld) dated 11 November 2011.

³⁸ Submission of an individual dated 18 October 2011 and Club dated 11 October 2011, in addition to confidential submissions.

³⁹ Name of club excluded from ACCC's public register at club's request.

⁴⁰ See File Note of meeting between ACCC and FQ on 3 November 2011.

⁴¹ Submission of Red Lion Agencies dated 30 September 2011.

⁴² See File Note of meeting between ACCC and FQ on 3 November 2011.

⁴³ Ibid.

⁴⁴ Ibid.

Mr Bevis notes that as Teamwear Products are sourced from overseas, the strengthening of the Australian dollar has meant these products are cheaper, as is the case with all imports.⁴⁵

- 5.77. The ACCC notes FQ's submission that apparel prices have been decreasing over the last 3 years and that this is due to competition between licensees. The ACCC accepts that the price reductions may have arisen, at least in part, because of increased competition between licensees to supply Teamwear Products, in particular following FQ's decision to increase the number of licensees in 2007. However, because the Teamwear Program restricts competition, the ACCC would expect that, to the extent that price reductions are the result of competition between licensees, there would be even greater price reductions in the future without the conduct. The ACCC also accepts that price rises may be attributable to other factors, including the higher level of imports for Teamwear Products and strengthening of the Australian dollar.
- 5.78. The ACCC considers that the Teamwear Program reduces competition in the supply and acquisition of football apparel. The key lessening of competition is the prevention of clubs from accessing other suppliers, particularly smaller regional or locally based suppliers, manufacturers and online retailers. The ACCC also notes that the Teamwear Program is likely to increase a supplier's costs and places additional upwards pressure on prices. As a result of this, the ACCC considers that the Teamwear Program is likely to result in higher prices and/or lower quality and availability of apparel/equipment. The ACCC considers that this constitutes a public detriment which would not arise in the future without the conduct.

Increased administrative and compliance costs

- 5.79. The ACCC notes that there are costs associated with administering the Teamwear Program for FQ and compliance costs for licensed Teamwear suppliers.
- 5.80. In particular, the FQ licence agreements contain record keeping requirements and monthly reporting obligations for suppliers. 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.⁴⁶ 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 in the future without the conduct.
- 5.81. Following the Draft Notice, FQ clarified that the cost of administering the Teamwear Program over the 2008-2010 period is approximately \$24,000, as opposed to \$74,227 as quoted in the Draft Notice. FQ notes that the discrepancy in these figures is due to the cost of purchasing the Q logos being included in the initial figure. However, FQ notes that this is not an administrative cost arising from the Teamwear Program, as the cost of purchasing the Q logos is recovered through on-selling the logos to licensed suppliers.

⁴⁵ Submission of the Hon Arch Bevis dated 4 December 2011.

⁴⁶ See Clause 3.4 of Football Queensland Ltd – licence agreement.

- 5.82. Despite FQ downgrading the cost of administering the Teamwear Program, the ACCC is still of the view that the Program creates detriments by placing additional costs on FQ and licensed suppliers than would otherwise be the case. 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.
- 5.83. The ACCC considers these additional costs are a public detriment that would not arise in the likely future without the conduct.

Efficiency of fund raising

- 5.84. 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, which would constitute a public detriment.
- 5.85. The ACCC would be concerned if the total costs of programs such as the Teamwear Program are not transparent to participants in the relevant competitions. This is because the potential for public detriment is mitigated somewhat if the total costs of a particular method of raising funds are transparent to clubs/participants. Transparency enables participants to make well informed decisions as to whether to participate in a particular sport and incur those total costs.
- 5.86. 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.
- 5.87. 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 informed 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.
- 5.88. The ACCC notes that the Teamwear Program potentially disguises the total costs of participating in FQ competitions and thus makes it difficult for participants to make well-informed decisions about participation in competing sports. Players must pay upfront registration fees to clubs (which includes State and National fees) to participate in FQ competitions and these fees are likely to be the main basis upon which participation decisions are made. Although participants may be aware that they will subsequently have to purchase apparel and equipment in order to participate, they may be unaware of the Teamwear Program and, in particular, the implications of this program for the future costs that they will have to incur.

- 5.89. 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 Teamwear Program (i.e. approximately \$24,000 for 2008-2010) and would not impose costs on licensed suppliers.
- 5.90. Following the Draft Notice, several interested parties have submitted that an increase in player levies would be a more efficient method of fundraising. For instance, an unlicensed supplier⁴⁷ submits that as there are estimated to be over 60,000 registered players in Queensland and FQ only makes around \$250,000 per annum from its licensing agreement, it would be better to impose a \$4-5 per player per annum levy.
- 5.91. However, other interested parties submit that the Teamwear Program is the most efficient method of fundraising for FQ. For instance, Football Central Queensland notes that the Teamwear Program is extremely efficient, with administration costs of less than \$25,000 per annum and any alternate strategy would be likely to add costs. FQ also notes that it has considered other fundraising methods (for instance, operating a retail shop for the supply of apparel, as Football NSW does) however, has decided that the Teamwear Program is the best option for FQ.⁴⁸
- 5.92. FO also submits that an increase in player costs would result in a decrease in the number of participants in its league. In particular, FQ submits that most clubs charge low registration fees at the junior level, in order to attract players to the sport. Given this, FQ submits that even a small increase in registration fees would disadvantage younger age groups and discourage families from putting their children into the sport. Other interested parties, including Red Lion Agencies, North Queensland Football Club and Gympie Football Association, have also raised similar concerns regarding the impact of an increase in registration fees on the number of participants in the sport.⁴⁹
- 5.93. In response, the ACCC sought further information from FQ on the registration fees charged by clubs in its competition. FQ notes that the fees charged by clubs vary significantly across regions and age groups and that some clubs offer free registration for the youngest age groups in order to attract players. Broadly speaking, FQ estimates junior fees range between \$120-\$200 in metropolitan areas and \$85-\$180 in regional areas. FQ also provided the ACCC with a sample of registration fees charged by the Sunshine Coast Football Club. These fees are extracted in the following table:

Table 6: Sunshine Coast Football Club – Registration fees

Age group	Registration costs per annum (\$)
Under 6	Free
Under 7	95
Under 8	95

⁴⁷ Name withheld from ACCC’s public register at author’s request, see submission dated 3 November 2011.

⁴⁸ See File Note of meeting with ACCC, 3 November 2011.

⁴⁹ For instance, see submissions of Red Lion Agencies, North Queensland Football Club and Gympie Football Association.

Age group	Registration costs per annum (\$)
Under 9	100
Under 10	120
Under 11	130
Under 12 – under 15	175
Under 16	180
Under 17	200

- 5.94. The ACCC notes the submissions of interested parties that FQ could obtain similar revenues to the Teamwear Program through alternative methods, for instance a small increase in the player levy. The ACCC considers it unlikely that the small percentage increase required to raise the same revenue as the Teamwear Program would have a significant impact on the number of participants in FQ's competitions. Further, the ACCC considers that any increase in registration fees is likely to be more than offset by lower apparel prices due to suppliers not having to pay the upfront licence fee and due to greater competition between suppliers.
- 5.95. The ACCC notes that generally the method under which FQ raises revenue to fund its objectives is a matter for FQ to decide. In this instance, however, the Teamwear Program involves third line forcing, which is a per se breach of the Act, in addition to creating inefficiencies and disguising the true cost of participating in FQ's competitions.

ACCC conclusion on public detriments

- 5.96. The ACCC notes that the Teamwear Program restricts the number of existing suppliers of football apparel and equipment by imposing entry costs for potential suppliers, thereby deterring participation in the Teamwear Program. The ACCC considers that there is a lessening of competition from the prevention of clubs/participants accessing local and regionally based suppliers, manufacturers and online retailers. The ACCC also notes that licensed suppliers incur additional supply costs as a result of the Program and are likely to seek to recover this cost as part of their business operations. The ACCC considers that this reduced competition and higher supply costs 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.
- 5.97. The ACCC considers that public detriments are also likely to arise through the imposition of additional costs for administration and compliance under the Teamwear Program.
- 5.98. Finally, the ACCC considers that raising funds through the Teamwear Program may be less efficient than alternative methods of fundraising, such as increasing player levies, as it is likely to result in higher prices for apparel and equipment and consumers making less informed choices between sporting competitions.

Balance of public benefit and public detriment

- 5.99. Subsection 93(3A) of the Act provides that the ACCC may give notice removing statutory protection for conduct that is 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.
- 5.100. Based on the information available, the ACCC is not satisfied that the public benefits resulting from the notified conduct outweigh the public detriments.
- 5.101. The ACCC considers that the primary public benefit arising from the Teamwear Program is the funding of initiatives for the promotion and development of the sport. However, the ACCC notes that FQ may obtain similar revenue to the Teamwear Program through alternative fundraising methods which do not restrict competition and are more transparent.
- 5.102. The ACCC notes that the Teamwear Program may be delivering some public benefits by ensuring a minimum quality standard for Teamwear Products and facilitating more timely resolution of some quality disputes between clubs and suppliers. However, the ACCC considers that these benefits are likely to be marginal when compared to the likely future without the conduct. The ACCC is also not satisfied that the Teamwear Program is providing lower prices or increased quality and service levels for apparel/equipment.
- 5.103. The ACCC considers that the Teamwear Program is resulting in significant public detriment through reduced competition in the supply of football apparel in Queensland; and may result in likely higher prices for Teamwear Products; increased administrative and compliance costs and inefficiencies from the way funds are raised.
- 5.104. On balance, the ACCC is satisfied that the likely public benefits from the conduct will not outweigh the likely public detriments resulting from the conduct.

6. Notice

- 6.1. On 28 April 2008, Football Queensland Ltd lodged notification N93402 with the Australian Competition and Consumer Commission (ACCC) for conduct that may be third line forcing. Third line forcing is a per se breach of the *Competition and Consumer Act 2010* (the Act).
- 6.2. The ACCC allowed the notification to stand on 4 July 2008. Statutory protection conferred by the Notification came into force on 12 May 2008 in accordance with section 93(7A)(a) of the Act.
- 6.3. For reasons set out in this Notice, the ACCC is satisfied that the likely public benefits resulting from the conduct will not outweigh the likely public detriments resulting from the conduct.
- 6.4. Accordingly, the ACCC issues this notice to revoke notification N93402.
- 6.5. This notice is made on 15 December 2011.
- 6.6. The statutory protection afforded by the Notification will cease on the 31st day after the date of issuing a final notice. That is, 16 January 2012.

Attachment A – Chronology of ACCC assessment of notification N93402

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
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 Draft Notice proposing to revoke the Notification
30 September 2011	Deadline for comments on Draft Notice
15 December 2011	ACCC issues final notice revoking the Notification