



Australian  
Competition &  
Consumer  
Commission

# **Statement of Reasons**

**in respect of the notification lodged by**

**New South Wales Rugby League Limited**

in relation to a sports apparel licensing scheme  
for NSW Rugby League competitions

**3 December 2015**

**Notification no. N98569**

**Public Register no. C2015/1756**

## Summary

New South Wales Rugby League Ltd proposes to require that all teams participating in its competitions wear playing jerseys, shorts and socks bearing the NSWRL logo, obtained from suppliers licensed by NSWRL. The Australian Competition and Consumer Commission is satisfied that the likely benefit to the public from the conduct will outweigh the likely public detriment and does not intend to take any further action in relation to this notification at this time.

## Introduction

- 1.1. The Australian Competition and Consumer Commission is the Commonwealth agency responsible for enforcing the *Competition and Consumer Act 2010* (the Act).
- 1.2. Sub-sections 47(6) and 47(7) of the Act prohibit conduct known as ‘third line forcing’ which involves the supply of goods or services on condition that the customer also acquires goods or services from a third party. Third line forcing conduct is a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition.
- 1.3. Businesses may obtain protection from legal action for conduct that might be at risk of breaching the third line forcing provisions of the Act by lodging a ‘notification’ with the ACCC. Once lodged, statutory protection for third line forcing conduct commences automatically 14 days after a notification is lodged.
- 1.4. The ACCC may revoke a third line forcing notification only when it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the proposed conduct.

## Notified Conduct

- 1.5. Notification N98569 was lodged by New South Wales Rugby League Limited on 8 September 2015 in relation to conduct that may be in breach of sections 47(6) and 47(7) of the Act.
- 1.6. The notified conduct is as follows:  
  
NSWRL will offer the right to participate in rugby league matches and competitions conducted by it on condition that clubs/players wear playing jerseys, shorts and socks displaying the NSWRL logo. Playing jerseys, shorts and socks displaying the NSWRL logo will be available from a limited range of suppliers licensed by the NSWRL.
- 1.7. Statutory protection for the notified conduct commenced automatically on 22 September 2015.

## Operation of the scheme

- 1.8. In early 2015, NSWRL sought expressions of interest from companies wishing to obtain a license to supply NSWRL playing jerseys, shorts and socks to junior and senior competitions conducted by NSWRL, as well as representative competitions of the NSW Cup, Ron Massey Cup, Sydney Shield, Harold Matthews and SG Ball competitions.

- 1.9. Prior to the notified conduct, NSWRL only required senior teams competing in NSWRL competitions to wear playing attire bearing the NSWRL logo.
- 1.10. Eighteen suppliers responded to NSWRL's tender process. Of these, ten suppliers were selected by NSWRL, based on criteria including price, quality and capacity to supply.
- 1.11. The licensing arrangements will commence in 2016 and will be rolled out over two years to enable clubs currently using other suppliers to fulfil any of their existing obligations. Clubs will then be able to purchase the licensed apparel from any of the licensed suppliers, as there is no requirement imposed by NSWRL that clubs use specific licensed suppliers.
- 1.12. Licensed suppliers are required to pay NSWRL a 15% royalty fee on the sale of licensed products, with a minimum guarantee of \$3,000 in 2016, \$6,000 in 2017 and \$12,000 in 2018.
- 1.13. 80% of the royalty fees will be returned to clubs on a pro-rata basis, based on the clubs' purchases of licensed apparel. The remaining 20% of the royalty fees will be provided to the licensing program manager Velocity Brand Management, to fund the program and cover minor administrative costs.

## Consultation

- 1.14. In September 2015, the ACCC sought comments from interested parties including various NSW rugby league clubs, suppliers of sports apparel, Local Government NSW and the NSW Department of Sport and Recreation.
- 1.15. The ACCC received two public submissions, both of which were provided by suppliers of sports apparel.
- 1.16. **Gearonline Sports Group** is a supplier of sports apparel, and is not licensed by NSWRL under the scheme. Gearonline noted that non-licensees will find it hard to compete, and will suffer financially. Gearonline submitted that the scheme will lead to reduced competition, increased prices and will harm local businesses, local production, families and the wider community. The scheme may also affect the ability of non-licensees to compete for customers for off-field and training apparel. Additionally, increased costs may be passed on to consumers, which may affect the level of participation in rugby league competitions. Gearonline expressed a preference for suppliers to adhere to brand, product and service requirements, rather than restricting the number of licensees.
- 1.17. **Classic Sportswear** supports NSWRL's licensing arrangements. Classic Sportswear has been appointed as a licensed supplier by NSWRL and is also a supplier in similar schemes run by Country Rugby League and Queensland Rugby League. Classic Sportswear noted that clubs will have confidence that the suppliers have been selected following a thorough tender process to ensure they are capable of delivering quality apparel at an affordable price. Classic Sportswear also noted its involvement in the Country Rugby League and Queensland Rugby League schemes, and noted that in its experience, royalty fees have not been passed on to clubs. In those schemes, competition between licensees has led to clubs paying reduced prices and access to a wider product range for products such as off-field apparel.

## ACCC assessment

- 1.18. The ACCC has developed and articulated a framework for consideration of sports licensing schemes.<sup>1</sup>
- 1.19. The ACCC accepts that in some circumstances sports licensing schemes can result in public benefits by:
- ensuring a minimum standard of quality
  - enabling efficiencies from:
    - realisation of economies of scale by suppliers
    - lowering transaction costs and lowering search costs for clubs/players
    - sporting association's ability to negotiate lower prices for sporting equipment and apparel than individual clubs/players may be able to negotiate individually
  - generating revenue to use for the promotion and development of the sport.
- 1.20. These benefits are more likely to be achieved where an open competitive tender is undertaken to select licensed suppliers on the basis of the price, quality and service (including timeliness of supply) they will offer to clubs/players.
- 1.21. However, a sports licensing program can also, in certain circumstances, result in public detriments, such as:
- reduced competition in the supply of apparel and equipment, resulting in increased prices and/or lower levels of quality and service.
  - increased costs for suppliers, including licensee fees and royalty payments, administrative and compliance costs, which may also result in higher prices for clubs/players
  - increased administrative and compliance costs for sporting associations which may reduce the extent to which funds raised by the licensing arrangements are returned to the sport, and
  - inefficiencies in fund raising. Raising funds through exclusive licensing arrangements may be less transparent and less efficient than alternate methods of fundraising, such as increasing upfront player levies.
- 1.22. The ACCC applies this analytical framework on a case by case basis in assessing sports licensing schemes. The features of the NSWRL licensing scheme have been assessed within this framework to determine whether the likely public benefits outweigh the likely public detriments.

### Public Benefits

- 1.23. The ACCC considers that the NSWRL licensing scheme is likely to result in public benefits by facilitating the supply of high quality apparel to clubs on a timely basis. This is achieved by the NSWRL running an open tender process every three years to select multiple licensed suppliers that are capable of meeting specified requirements.

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<sup>1</sup> The framework was developed in response to Notification N93402 lodged by Football Queensland relating to a requirement that its member clubs only acquire team wear from licensed suppliers.

- 1.24. The NSWRL scheme provides licensees with greater certainty and ability to achieve economies of scale by limiting the number of licensed suppliers. This reduces their overall costs of supply. The ongoing competition between licensed suppliers to win customers is likely to result in the bulk of these cost savings being passed through to clubs in the form of lower prices.
- 1.25. Through its licensing scheme, NSWRL seeks to actively balance maximising the benefits of competition between suppliers with providing greater supply certainty by limiting the number of licensed suppliers.
- 1.26. Clubs will likely benefit from reduced time and costs searching for sporting apparel, as suppliers are licensed by NSWRL following an open, competitive tender process based on a range of criteria including price, quality, ability to supply and reputation.
- 1.27. Revenue raised by the NSWRL licensing scheme is passed back to clubs to use at their discretion. Funds will be isolated from other NSWRL funds and distributed to clubs on a pro-rata basis, after covering administrative costs of the arrangements.

### **Public Detriments**

- 1.28. The NSWRL licensing scheme is likely to result in detriments by reducing competition in the supply of apparel to NSWRL clubs. The extent of this detriment is mitigated by the NSWRL running a tender to select multiple licensed suppliers every three years, where potential suppliers can compete on a range of factors including quality, timeliness of supply and price to be selected as a licensed supplier.
- 1.29. The ACCC considers that the NSWRL scheme also results in detriments due to the imposition of additional costs upon licensed suppliers, by way of the payment of a royalty fee to the NSWRL on the sale of licensed products, including minimum guarantees of \$3,000 in 2016, \$6,000 in 2017 and \$12,000 in 2018.
- 1.30. The ACCC has no evidence that the NSWRL scheme will result in higher priced apparel and notes that having approached a wide selection of NSW rugby league clubs, no clubs raised concerns with the ACCC about the scheme.

### **Conclusion**

- 1.31. Having regard to all of the information before it at this time, including that provided by the NSWRL and issues raised by interested parties, the ACCC is satisfied that the likely benefit to the public from the conduct outweighs the likely detriment to the public.
- 1.32. Accordingly, the ACCC does not intend to take any further action in relation to notification N98569.
- 1.33. As with any notification, the ACCC may act to remove the statutory protection afforded by this notification at a later stage 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.