Investigation report no. BI-626

| Summary |  |
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| **Licensee** | Golden West Network Pty Ltd [GWN7] |
| **Finding** | No breach of Clause 3.1 of Appendix 3 [gambling advertisements not permitted before 8:30 pm] |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised 2018) (the **Code**) |
| **Program [type]** | *2021 AFL Grand Final* [live sport] |
| **Date of broadcast** | 25 September 2021 |
| **Date finalised** | 29 April 2022 |
| **Type of service** | Commercial—television |
| **Attachments** | **A** – extracts from the complaint to the ACMA  **B** – extracts from the Licensee’s submissions to the ACMA  **C –** relevant provisions |

Background

In December 2021, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into the broadcast of the *2021 AFL Grand Final* (the **Game),** after it received a complaint alleging that gambling advertisements were broadcast during the Game and before 8.30 pm[[1]](#footnote-1).

The Game, played in Perth between the Melbourne Demons and the Western Bulldogs, was the final game of the 2021 Australian Football League (**AFL**) competition. The Game was broadcast live on GWN7 by Golden West Network Pty Ltd (the **Licensee)** on 25 September 2021 and was scheduled to commence at 5.15 pm local time in Western Australia (AWST). On 25 September 2021, AWST was two hours behind local time on the east coast (AEST).

The ACMA has investigated the Licensee’s compliance with clause 3.1 of Appendix 3 to the Code. Relevant extracts from Appendix 3 are at **Attachment C.**

Issue: Betting advertisements during a Live Sporting Event

Finding

The ACMA finds that the Licensee did not breach clause 3.1 of Appendix 3 to the Code.

Reasons

The ACMA reviewed submissions from the Licensee (at **Attachment B)** and a copy of the broadcast provided by the Licensee, that included the Game, pre-game coverage, half-time discussion, post-game coverage and commercial breaks (the **broadcast).**

To assess compliance, the ACMA has addressed the following questions:

* Was the Game a Live Sporting Event for the purposes of the Code?
* Did advertisements shown during the broadcast fall within the definition of Commercials relating to Betting or Gambling?
* If so, were the Commercials relating to Betting or Gambling broadcast at prohibited times during the Live Sporting event?

***Was the Game a Live Sporting Event for the purposes of the Code?***

A Live Sporting Event is defined in Appendix 3 to the Code as ‘live-to-air coverage of a sporting event that includes Play’. The ACMA considers that the Game was a Live Sporting Event for the purposes of the Code.

***Did advertisements shown during the broadcast fall within the definition of Betting Advertising?***

Advertisements for one gambling company (the **Gambling Company**) were shown during the broadcast**.** The Gambling Company is an online gambling service for the placing, making, receiving or acceptance of bets and is licensed by the Northern Territory Racing Commission. The Gambling Company is currently listed on the ACMA’s Register of Licensed Interactive Wagering Providers.

The advertisements contained clearly distinct promotional references for the Gambling Company. Consequently, the ACMA is of the view that advertisements shown for the Gambling Company would be considered Commercials relating to Betting or Gambling for the purposes of Appendix 3 of the Code.

***If so, were the Commercials relating to Betting or Gambling broadcast at prohibited times during the Live Sporting Event?***

*Prior to the start of play*

Clause 3.1 of Appendix 3 of the Code prohibits the broadcast of gambling advertisements during coverage of a live sporting event between 5:00 am and 8:30 pm, from five minutes before the ‘scheduled start of play’ (or five minutes before the commencement of the broadcast coverage, if no scheduled start of play time has been advertised by the broadcaster).

The Licensee submitted that it advertised the scheduled start of play in accordance with the requirements of the Code.

The Licensee submitted to the ACMA that the scheduled start of play for the Live Sporting Event was published in the electronic programming guide (**EPG**)as 7.15 pm AEST. The Licensee also provided the electronic information that appeared in the EPG, which stated:

Melbourne face off against the Western Bulldogs live from Optus Stadium in the AFL Grand Final. Bounce time: 7:15pm AEST.

The Licensee further noted that GWN derives its EPG from the Seven Network and all information contained in the EPG is the same for the East Coast and West Coast.

Based on this information, the ACMA accepts the Licensee’s submission that the ‘scheduled start of Play’, as defined in the Code, was 7.15 pm (5.15 pm AWST).

The ACMA has reviewed the Licensee’s submissions and the broadcast and accepts that the last Commercial relating to Betting or Gambling before the scheduled start of play was broadcast at 7:05 pm (5.05 pm AWST).

As no Commercial relating to Betting or Gambling was broadcast within five minutes before the Scheduled Start of Play of the Live Sporting Event the ACMA finds that the Licensee did not breach clause 3.1 of Appendix 3 prior to the start of play.

*During play and during Quarter Time, Half Time and Three-Quarter time*

Appendix 3 of the Code notes that a ‘scheduled break’ in AFL would include ‘quarter time, half time and three-quarter time’ and ‘between full time and extra time’.

The ACMA reviewed the broadcast and no Commercials relating to Betting or Gambling were broadcast during play or during scheduled breaks.

*After play*

Clause 3.1 of Appendix 3 of the Code prohibits the broadcast of gambling advertisements during coverage of a live sporting event between 5:00 am and 8:30 pm, until five minutes after the conclusion of live-to-air coverage of Play by the Licensee or 8:30 pm, whichever is sooner.

The ACMA has reviewed the Broadcast provided by the Licensee and accepts that the actual end of play was 8:05 pm.

The ACMA has reviewed the Licensee’s submissions and the broadcast and accepts that a Commercial relating to Betting or Gambling was broadcast at 8:11 pm.

As no Commercial relating to Betting or Gambling was broadcast within five minutes after the conclusion of live-to-air coverage of Play the ACMA considers that, by broadcasting a gambling advertisement at 8:11 pm, the Licensee did not breach subclause 3.1.3 of Appendix 3.

Attachment A

Complaint

***Complaint to the licensee dated 25 September 2021:***

You should not be broadcasting betting ads during a family show before 5.00pm[[2]](#footnote-2). The amount of problem gambling in WA and across Australia is hugely damaging to our society. Please put people before your profits.

***Complaint to the ACMA dated 5 October 2021:***

Gambling adverts shown before during and after AFL Grand Final – [the Gambling Company] which was a live sporting broadcast aired in WA before 8.30pm.[[3]](#footnote-3)

I have complained to GWN 7 about these adverts for [the Gambling Company] before, during and after the game, which were contrary to the Code.

Their response is wholly inadequate as - it was factually inaccurate and it didn't acknowledge they broke the code or give any commitment to observe in future broadcasts.

Attachment B

***Extracts from Licensee submission to the complainant dated 1 October 2021:***

[…]

Provisions of the Code relating to betting or gambling advertising in live sporting events were reviewed and updated in 2018, with changes taking effect on 30 March 2018. The Code provides that during live sporting events that are broadcast between 5.00 am and 8.30 pm, no betting or gambling commercials are permitted from five minutes before the published scheduled start of play, until five minutes after play. For broadcasts between 8.30 pm and 5.00 am, Appendix 3 of the Code provides that commercials relating to betting or gambling are permitted before play has commenced, during scheduled breaks, during unscheduled breaks and after play.

We wish to assure you that GWN adheres strictly to the scheduling requirements and limits of the Code. We have reviewed our broadcast log and confirm that our broadcast of commercials relating to betting or gambling during our coverage of the live *AFL Grand Final* on 25 September 2021 complied with the requirements of the Code. The live game was published in our electronic programming guide (**EPG**) to commence at 7.15 pm (AEST) and the [Gambling Company] commercial (our last betting or gambling advertisements prior to play) was broadcast at 7.05 pm (AEST).

[…]

***Extracts from Licensee submission to the ACMA dated 21 December 2021:***

[…]

GWN received the initial complaint via the Free TV website on 25 September 2021 and responded on 1 October 2021.

The [complainant] complained that GWN broadcast a commercial for [the Gambling Company] at 4.55 pm on 25 September 2021 during the program. We understand his complaint to the ACMA refers to [the Gambling Company] commercials ‘shown before during and after AFL Grand Final … ‘before 8.30 pm’.

GWN’s comments on its compliance with the Code are set out below.

**Clause 3.1 of Appendix 3 (Gambling advertisements not permitted before 8.30 pm)**

This Clause prohibits GWN broadcasting a commercial relating to betting or gambling during a Live Sporting Event from five minutes before the scheduled start of play, until five minutes after play.

The complainant asserts that GWN was not permitted to broadcast any commercials relating to betting or gambling during the Program prior to 8.30 pm.

GWN adheres strictly to the scheduling requirements and limits of the Code.

The scheduled start of play for the Live Sporting Event was published in our electronic programming guide (**EPG**) to commence at 4.15pm (AWST).

GWN broadcast the [Gambling Company] commercial (being the last betting or gambling commercial prior to play) at 4.05pm (AWST).

GWN broadcast a [Gambling Company] commercial (being the first betting or gambling commercial after play) at 8.11pm (AWST).

Based on the above, GWN considers that its broadcast of the [Gambling Company] commercials during the coverage of the Program complied with the requirements of the Code.

[…]

***Extracts from Licensee submission to the ACMA dated 1 April 2022:***

[…]

The ACMA has flagged that there were some inconsistencies in relation to the timing of the Live Sporting Event listed in our electronic programming guide (EPG) and how this was referred to in the [complainant response] and ACMA Response.

Upon review, it appears that in our ACMA Response, we incorrectly stated that the ‘scheduled start of play’ for the Live Sporting Event was published in our EPG at 4.15pm (AWST) and that the [Gambling Company] commercial was broadcast at 4.05pm (AWST). These times did not take into account the time difference between AEST and AWST as it applied on the date of the Live Sporting Event, being 25 September 2021. Accordingly, the times in the ACMA Response should have been stated as follows:

* The scheduled start of play for the Live Sporting Event was published in our EPG to commence at 5.15pm (AWST); and
* GWN broadcast the [Gambling Company] commercial (being the last betting or gambling commercial prior to play) at 5.05 pm (AWST).

In our ACMA Response we stated that GWN broadcast [the Gambling Company] commercial (being the first betting or gambling commercial after play) at 8.11 pm (AWST). This time was listed correctly.

By way of evidence to support the above information, we note:

* The following wording appeared on Prime/GWN’s website and EPG for both the East and West Coast:

*“Melbourne face off against the Western Bulldogs live from Optus Stadium in the AFL Grand Final. Bounce time: 7:15pm AEST”*

We advise that Prime/GWN derives its EPG from the Seven Network and all information contained in the EPG is the same for the East Coast and West Coast.

* We do not send emails to our EPG provider with information to be published, rather, this information is collated electronically. We have extracted the raw data files that are generated daily as evidence of the information that appeared in Prime/GWN’s EPG (not included in this report). This data was extracted from 24 September 2021, prior to the broadcast of the Live Sporting Event.
* We provided […] of the ACMA with a copy of the broadcast of the Live Sporting Event via email on 17 December 2021. The broadcast identifies the commencement of active play. […]

We apologise for the confusion caused by our incorrectly stating the times of the scheduled start of play and the last betting or gambling commercial prior to the commencement of play in the ACMA response, however based on the above, GWN still considers that its broadcast of the [Gambling Company] commercials during the coverage of the Live Sporting Event complied with the requirements of the Code.

[…]

Attachment C

Relevant provisions

**Appendix 3: Commercials relating to Betting or Gambling during a Live Sporting Event**

**5:00am to 8:30pm**

3.1 From 5:00am to 8:30pm a Commercial relating to Betting or Gambling during the broadcast by the Licensee of a Live Sporting Event is not permitted:

from:

3.1.1 five minutes before the Scheduled Start of Play of the Live Sporting Event, where live-to-air coverage of Play commences no earlier than the Scheduled Start of Play;

3.1.2 in all other cases, five minutes before the broadcast of the first Program that includes the Live Sporting Event;

to:

3.1.3 five minutes after the conclusion of live-to-air coverage of Play by the Licensee or 8:30pm, whichever is sooner.

**Time Zones**

3.20 Where a Live Sporting Event is broadcast simultaneously across more than one licence area, the relevant time-zone for the application of this Appendix 3 is the time-zone that applies in the licence area.

**Appendix 3: Definitions**

**Commercial relating to Betting or Gambling** means a distinct promotional reference to:

(a) a gambling or betting service; or

(b) a gambling or betting organisation that provides generic information about the organisation’s brand, business or services.

A Commercial relating to Betting or Gambling does not include:

* a commercial relating to such things as Government sanctioned lotteries, lotto, keno or competitions;
* a commercial relating to entertainment or dining facilities at places where betting or gambling takes place, or a tourism commercial which incidentally refers to betting or gambling, provided in each case that the contents do not draw attention to betting or gambling in a manner calculated to directly promote their use;
* a reference that is Accidental; or
* a reference that is an Incidental Accompaniment.

**Live Sporting Event** means live-to-air coverage of a sporting event that includes Play. A Live Sporting Event includes a Long Form Live Sporting Event.

**Play** means the period of the actual run of play or active progress of the sporting event which is the subject of a Live Sporting Event. It commences at the formal commencement of the relevant match/game, race or similar (for example, first siren, whistle, coin toss or the commencement of active play as applicable), and concludes at the formal conclusion of play (for example, final siren, whistle or the conclusion of active play) for the relevant match, game, race or similar. In respect of Long Form Live Sporting Events over multiple days and/or involving multiple concurrent matches or events, Play commences at the formal commencement of the first match, game or race or each day, and ends at the conclusion of active play of each day.

Play includes ad hoc unscheduled breaks such as:

• stoppages for injuries; and

• stoppages for adjudication by third or TV umpires/referees; and

• time outs and substitutions in games such as basketball.

**Scheduled Start of Play** means the scheduled commencement of live-to-air coverage of Play as:

a) listed in the Licensee’s EPG at least 24 hours prior to the broadcast of the program; or

b) published by the Licensee on its website at least 24 hours prior to broadcast and notified to the Licensee’s EPG provider(s) at least 24 hours prior to broadcast.

1. All times are Australian Eastern Standard Times (AEST) unless otherwise stated [↑](#footnote-ref-1)
2. This is a reference to AWST times [↑](#footnote-ref-2)
3. This is a reference to AWST times [↑](#footnote-ref-3)