

Investigation report no. BI-688

Summary

Provider [service]	Optus Mobile Pty Ltd [Optus Sports]
Type of service	Online content service (audio-visual)
Relevant legislation	<i>Broadcasting Services Act 1992 (BSA)</i> <i>Broadcasting Services (Online Content Service Provider Rules) 2018 (the Online Rules)</i> <i>Interactive Gambling Act 2001 (IGA)</i>
Findings	<p>No contravention of section 12 of the <i>Broadcasting Services (Online Content Service Provider Rules) 2018</i> and consequently no contravention of subclause 25(1) of Schedule 8 to the <i>Broadcasting Services Act 1992</i></p> <p>No contravention of section 15 of the <i>Broadcasting Services (Online Content Service Provider Rules) 2018</i> and consequently no contravention of subclause 25(1) of Schedule 8 to the <i>Broadcasting Services Act 1992</i></p> <p>No contravention of subsection 61EA(1A) of the <i>Interactive Gambling Act 2001</i> — publishing a designated interactive gambling service advertisement in Australia</p>
Date finalised	10 July 2024
Live sporting events	<i>Various football matches on Optus Sport</i>
Date of stream	<i>Various dates between 17 December 2023 and 4 January 2024</i>
Attachments	A – Relevant legislative provisions

Background

On 2 January 2024, the Australian Communications and Media Authority (the **ACMA**) received a complaint that advertising for gambling services was shown on hoardings around the field during 5 English Premier League football matches (the **EPL matches**) on Optus Sport.

On 7 January 2024, the ACMA received a further complaint that advertising for a gambling service, [wagering company 1], was overlaid on hoarding around the field using virtual advertising technology during highlights of a La Liga¹ match between Real Madrid and RCD Mallorca (the **La Liga match**) on Optus Sport.

Optus Mobile Pty Ltd (Optus) is the owner and operator of Optus Sport.

In March 2024, the ACMA commenced an investigation into Optus' compliance with the Online Rules and the IGA.

Assessment

Under clause 25 of Schedule 8 to the BSA, an online content service provider must comply with the Online Rules. An 'online content service provider' means a provider of an 'online content service' (clause 2 of Schedule 8 to the BSA).

An 'online content service' includes a service that allows end users to access content using the internet, where the service is provided to the public, has a geographical link to Australia and is not an excluded service listed in paragraphs 3(1)(e) to (r) of Schedule 8 to the BSA (see subclause 3(1) of Schedule 8).

Optus Sport allows end-users who are members of the public to access content using the internet. The service is targeted at individuals who are physically present in Australia, and therefore the service has a geographical link to Australia as defined in clause 5 of Schedule 8 to the BSA. The service is not an excluded service under paragraphs 3(1)(e) to (r) of Schedule 8 to the BSA.

Therefore, Optus, as an online content service provider, is subject to the Online Rules.

The ACMA has investigated whether the advertising that was the subject of the complaints fell within the definition of 'gambling promotional content' in clause 2 of Schedule 8 to the BSA and if so, whether the advertisements were provided at a prohibited time, in contravention of sections 12 and 15 of the Online Rules (**Issue 1**).

The ACMA also investigated whether the advertisements were designated interactive gambling service advertisements published in Australia, in contravention of subsection 61EA(1A) of the IGA (**Issue 2**).

Relevant provisions of the BSA, the Online Rules and the IGA can be found at **Attachment A**.

¹ *La Liga is the highest division of professional football of the Spanish football league system.*

Issue 1: Was gambling promotional content provided in conjunction with live coverage of a sporting event in contravention of sections 12 and 15 of the Online Rules?

Finding

The ACMA finds that Optus Sport did not contravene sections 12 and 15 of the Online Rules, and therefore did not contravene subclause 25(1) of Schedule 8 to the BSA.

Reasons

To assess compliance with the prohibition on gambling promotional content during live coverage of sporting events in sections 12 and 15 of the Online Rules, the ACMA has addressed the following questions:

1. Did the content fall within the definition of 'gambling promotional content'?
If yes, then,
2. What were the relevant restrictions that applied to the live coverage of the sporting event?
3. Was gambling promotional content provided at prohibited times during live coverage of the sporting events?
4. Do the exceptions in section 18 of the Online Rules apply?

EPL Matches

Did the content fall within the definition of 'gambling promotional content'?

'Gambling promotional content' means advertising, sponsorship or promotional content that relates to a gambling service (clause 2 of Schedule 8). For the purposes of Schedule 8, 'gambling service' is defined in clause 18 of Schedule 8 to mean (relevantly) a service for the placing, making, receiving or acceptance of bets (see paragraph 18(a) of Schedule 8 to the BSA).

It is not disputed that the services advertised on the hoardings ([wagering company 1], [wagering company 2], [wagering company 3], [wagering company 4] and [wagering company 5]) are services for the placing, making, receiving or acceptance of bets, and hence the advertisements are gambling promotional content for the purposes of the Online Rules.

What were the relevant restrictions that applied to the live coverage of the sporting event?

Figure 1 shows the start time and date that each advertisement was shown.

Figure 1

Live sports event [advertisement]	Local start time and date	AEST start time and date
Manchester City vs Crystal Palace [wagering company 2]	15:00, 16 December 2023	02:00, 17 December 2023
Aston Villa vs Sheffield United [wagering company 3]	20:00, 22 December 2023	07:00, 23 December 2023

Wolverhampton vs Chelsea [wagering company 2]	13:00, 24 December 2023	00:00, 25 December 2023
Burnley vs Liverpool [wagering company 4]	17:30, 26 December 2023	04:30, 27 December 2023
Chelsea vs Crystal Palace [wagering company 5], [wagering company 1]	19:30, 27 December 2023	06:30, 28 December 2023

Section 12 of the Online Rules provides that:

An online content service provider must not provide gambling promotional content on an online content service in conjunction with live coverage of a sporting event in the period beginning at 5:00 am and ending at 8:30 pm.

Accordingly, the following content was subject to section 12:

- Advertisements for [wagering company 3] during Aston Villa vs Sheffield United, English Premier League, 23 December 2023.
- Advertisements for [wagering company 5] and [wagering company 1] during Chelsea vs Crystal Palace, English Premier League, 28 December 2023.

Section 15 of the Online Rules provides that:

Subject to subsections (2) and (3), an online content service provider must not provide gambling promotional content (other than promotion of odds, a commentator betting odds promotion or a representative venue-based promotion) on an online content service in conjunction with live coverage of a sporting event in the period beginning at 8:30 pm and ending at 5:00 am.

Accordingly, the following content was subject to section 15:

- Advertisements for [wagering company 2] during Manchester City vs Crystal Palace, English Premier League, 17 December 2023.
- Advertisements for [wagering company 2] during Wolverhampton Wolves vs Chelsea, English Premier League, 25 December 2023.

The following match spanned both time periods and therefore part of the content was subject to section 12 and the balance was subject to section 15:

- Advertisements for [wagering company 4] during Burnley vs Liverpool, English Premier League, 27 December 2023.

Was gambling promotional content provided at prohibited times during live coverage of the sporting events?

Optus submitted that the gambling promotional content for [wagering company 2], [wagering company 3], [wagering company 4], [wagering company 1] and [wagering company 5] shown during the live streams of the EPL matches existed as physical advertisements at the venues such as a field barrier, scoreboard or signage at the venue.

As a result, the gambling advertisements were shown at various times throughout the relevant EPL matches, depending on the camera direction and angle shown in the coverage.

Accordingly, the ACMA is satisfied that that gambling promotional content was provided at prohibited times during live coverage of the EPL matches.

Do the exceptions in section 18 of the Online Rules apply?

While Optus did not dispute that gambling promotional content was shown during the EPL matches, it submitted that the exception under subsection 18(3) of the Online Rules applies.

Subsection 18(3) provides that:

- (3) An online content service provider that provides gambling promotional content on an online content service in conjunction with live coverage of a sporting event will not contravene Parts 3, 4, or this Part, where the reference to gambling promotional content occurs as part of live coverage of the sporting event, and consists of the name of the sporting venue, or of a player's or official's uniform, or of advertising signage, such as a field barrier, big screen or scoreboard, at the venue of the sporting event, and the provider does not receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content, in addition to any direct or indirect benefit that the provider receives for providing the live coverage of the sporting event.

Did the gambling promotional content consist of the name of the sporting venue, or of a player's or official's uniform, or of advertising signage, such as a field barrier, big screen or scoreboard?

As noted above, the gambling advertising in the EPL matches existed as physical advertisements such as a field barrier, scoreboard or signage at the venue where each match was being played.

Did the provider receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content, in addition to any direct or indirect benefit that the provider receives for providing the live coverage of the sporting event.

The ACMA accepts Optus's submission it did not receive any direct or indirect benefit in relation to the gambling promotional content.

The ACMA has also not been provided with evidence that Optus had received an indirect financial benefit (for example, a lower contract price) in contractual negotiations with the English Premier League for taking programming in respect of which the English Premier League was receiving payments for advertising gambling companies.

The ACMA considered the complainant's argument that gambling advertising helps to subsidise the broadcast rights purchased by Optus, as the revenue provided by advertisers may contribute indirectly to lowering the cost of purchasing the rights. The ACMA is not convinced by this argument due to the likelihood that the English Premier League, as a monopoly supplier of streaming rights to the matches in that particular football league, is able to exert control over the product supplied for streaming, and because any benefit to Optus appears too remote.

Therefore, the ACMA finds that the exception in subsection 18(3) applies to the gambling promotional content that appeared in the live coverage of the EPL matches.

La Liga match

Did the content fall within the definition of 'gambling promotional content'?

'Gambling promotional content' means advertising, sponsorship or promotional content that relates to a gambling service (clause 2 of Schedule 8). For the purposes of Schedule 8, 'gambling service' is defined in clause 18 of Schedule 8 to mean (relevantly) a service for the placing, making, receiving or acceptance of bets (see paragraph 18(a) of Schedule 8 to the BSA).

It is not disputed that the service advertised on the hoardings ([wagering company 1]) is a service for the placing, making, receiving or acceptance of bets, and hence the advertisements are gambling promotional content for the purposes of the Online Rules.

What were the relevant restrictions that applied to the live coverage of the sporting event?

Figure 2 shows the start time and date that the advertisements were shown.

Figure 2

Live sports event [advertisement]	Local start time and date	AEST start time and date
Real Madrid vs RCD Mallorca [wagering company 1]	19:15, 4 January 2024	05:15, 5 January 2024

Section 12 of the Online Rules provides that:

An online content service provider must not provide gambling promotional content on an online content service in conjunction with live coverage of a sporting event in the period beginning at 5:00 am and ending at 8:30 pm.

Accordingly, the advertisements for [wagering company 1] during Real Madrid vs RCD Mallorca, La Liga, 4 January 2024 were subject to section 12.

Was gambling promotional content provided at prohibited times during live coverage of the sporting events?

Optus submitted that the gambling promotional content for [wagering company 1] shown during the La Liga match was inserted virtually and was visible at various times throughout the live stream when the goal-line was in view of the camera.

Accordingly, the ACMA is satisfied that that gambling promotional content was provided at prohibited times during live coverage of the the La Liga match.

Do the exceptions in section 18 of the Online Rules apply?

While Optus did not dispute that gambling promotional content was shown during the La Liga match, it submitted that the exceptions under subsection 18(2) of the Online Rules apply.

Subsection 18(2) provides that:

- (2) An online content service provider that provides gambling promotional content on an online content service, in conjunction with live coverage of a sporting event, will not contravene Parts 3, 4 or this Part, where all of the following circumstances exist:
 - (a) the sporting event originates from outside Australia;
 - (b) the online content service provider did not add the gambling promotional content;
 - (c) it is not reasonably practicable for the provider to remove the gambling promotional content; and
 - (d) the provider does not receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content in addition to any direct or indirect benefit that the provider receives for providing the live coverage of the sporting event.

Did the sporting event originate from outside Australia?

The La Liga match was played in Spain and accordingly, the ACMA is satisfied that paragraph 18(2)(a) is met.

Did the online content service provider add the gambling promotional content?

Optus submits that it was one of many international rights holders of the content and that it received an international feed of the match from La Liga that included the virtually inserted advertisements. Optus asserts, and the ACMA accepts, that it was not responsible for adding the gambling advertisements to the La Liga match.

Was it reasonably practicable for the provider to remove the gambling promotional content?

Optus submitted that the gambling promotional content in the international live feed of the La Liga match is intermittent and that it has no forewarning of when gambling content will feature in the live stream. Optus has therefore asserted that it is not reasonably practicable to remove the gambling promotional content.

Having considered the submissions, the ACMA accepts that there may have been practical limitations to removing the gambling advertising content in these circumstances, once the live feed had been delivered to Optus. The ACMA also acknowledges that the issue of virtually overlaid gambling advertising has not been the subject of previous ACMA investigation reports.

While the ACMA has some concerns about whether Optus could have done more to ensure that its audiences did not receive gambling promotional content, in these circumstances the ACMA accepts Optus' submissions about the application of the exception.

However, going forward, if virtually overlaid gambling advertising is a feature of international live sport feeds that Optus receives, the ACMA would expect Optus to explore options for receiving a feed that is free of virtually inserted gambling advertisements, or for establishing a technical system for removing inserted virtual advertising from the livestreamed matches that Optus provides to subscribers in Australia.

Did the provider receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content in addition to any direct or indirect benefit that the provider receives for providing the live coverage of the sporting event?

The ACMA accepts Optus' submission that it does not receive any direct or indirect benefit from the virtual advertising inserted into match feeds by La Liga.

The ACMA has not been provided with evidence that Optus had received an indirect financial benefit (for example, a lower contract price) in contractual negotiations with La Liga for taking programming from La Liga in respect of which La Liga was receiving payments for the insertion of virtual advertising for gambling companies.

As noted above, the ACMA considered the complainant's argument that gambling advertising helps to subsidise the broadcast rights purchased by Optus, as the revenue provided by advertisers may contribute indirectly to lowering the cost of purchasing the rights. At present the ACMA is not convinced by this argument due to the likelihood that La Liga, as a monopoly supplier of streaming rights to the matches in that particular football league, is able to exert control over the product supplied for streaming, and because any benefit to Optus appears too remote. However, this issue may be reconsidered if virtual advertising for gambling becomes more prominent and additional information becomes available in future cases.

Therefore, the ACMA finds on the information available and in these particular circumstances, that the exception in subsection 18(2) applies to the gambling promotional content in the La Liga match.

Issue 2: Were the advertisements designated interactive gambling service advertisements published in Australia, in contravention of subsection 61EA(1A) of the IGA?

Finding

Advertisements on Optus Sport during the EPL matches and the La Liga match are not designated interactive gambling advertisements published in Australia in contravention of subsection 61EA(1A) of the IGA.

Reasons

EPL matches

Is the content a designated interactive gambling advertisement?

Subsection 61BA of the IGA defines designated interactive gambling service advertisement broadly to include any writing, still picture, sign, symbol or other visual image, or any audible message, or any combination of two or more of those things, that gives publicity to, or otherwise promotes or intends to promote:

- > a designated interactive gambling service
- > designated interactive gambling services in general
- > a domain name or URL that relates to a designated interactive gambling service
- > any words that are closely associated with a designated interactive gambling service.

In this instance, the content is brand names or logos for gambling services streamed as part of the live coverage of the relevant matches because they appeared on field barriers, scoreboards or signage at the relevant match venues.

The ACMA is satisfied that the content in the EPL matches is advertising.

The next question is whether the advertising is for 'designated interactive gambling services'. Section 4 of the IGA provides that, a designated interactive gambling service means a prohibited interactive gambling service or an unlicensed regulated interactive gambling service.

The ACMA has previously investigated [wagering company 2] (GINV-2022-00051) and [wagering company 5] (GINV-2022-00019) and found them to be providing designated interactive gambling services. While [wagering company 3], [wagering company 4] and [wagering company 1] have not previously been investigated, they appear to offer casino style games and/or wagering for money and these services do not appear on the ACMA's register of licensed wagering services. Consequently, these entities are likely to be providing designated interactive gambling services.

The definition of designated interactive gambling service advertisement in subsection 61BA(1) is subject to a number of exceptions (see subsection 61BA(2) and sections 61BB – 61BGA). The ACMA is satisfied that none of these exceptions apply to the advertisements in this case.

For the purposes of this investigation, the ACMA is satisfied that the content of the EPL matches included designated interactive gambling service advertisements.

Were the designated interactive gambling services advertisements published in Australia?

Subsection 61CA(1) provides that a person publishes a designated interactive gambling service advertisement if the person does any of the things listed in paragraphs 61CA(1)(a) – (f).

Relevantly, paragraph 61CA(1)(a) of the IGA provides that a person publishes a designated interactive gambling service advertisement if the person includes the advertisement or something that contains the advertisement on a website.

Subsection 61EA(3) provides that a designated interactive gambling service advertisement that is included on a website is taken to be published in Australia if and only if the website is accessed, or is available for access, by end users in Australia; and having regard to the content of the website and the way the website is advertised or promoted, it would be concluded that it is likely that the majority of persons who access the website are physically present in Australia.

The advertisements were viewed by the complainant on Optus Sport. While the IGA does not define 'website', based on the ordinary meaning of the word, the ACMA is satisfied that as an online content service, Optus Sport is a website for the purposes of subsection 61EA(3) and that the advertisements were included on the website. Optus Sport content is only available to view within Australia due to licensing restrictions from rights holders.

Subsection 61CA(1) has effect subject to the exceptions in sections 61CB-61CF. The ACMA is satisfied that these exceptions do not apply to the publication of the designated interactive gambling service advertisements in this case.

Therefore, the ACMA is satisfied that the designated interactive gambling service advertisements were published in Australia.

Was the publication permitted by the IGA?

Subsection 61EA(1A) of the IGA provides that a person must not publish a designated interactive gambling service advertisement in Australia if the publication is not permitted by sections 61EB, 61ED, 61EE or 61EF.

Subsection 61ED(1) of the IGA provides:

- (1) A person may publish a designated interactive gambling service advertisement if:
 - (a) the person publishes the advertisement as an accidental or incidental accompaniment to the publication of other matter; and
 - (b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter).

Was the advertisement published as an accidental or incidental accompaniment to the publication of another matter?

As 'incidental accompaniment' is not defined in the IGA, the ACMA has given the term its ordinary meaning and on that basis, the advertisement must be something that is happening in subordinate conjunction with the display of the sporting event for this exception to apply.

The ACMA has previously considered whether an advertisement is an incidental accompaniment in the context of investigations into tobacco advertisements (BI-262, BI-458). In considering whether an advertisement was an incidental accompaniment to the broadcast of other matter, it was only regarded as an 'incidental accompaniment' if it was subordinate to the other matter being broadcast. If an advertisement dominates or forms a substantial feature of a program, scene or segment, it will not be regarded by the ACMA as an 'incidental accompaniment'.

In the case of the EPL matches, the gambling advertisements for [wagering company 2], [wagering company 3], [wagering company 4], [wagering company 1] and [wagering company 5] existed as physical advertisements at the venues such as a field barrier, scoreboard or signage at the venue. As a result, the gambling advertisements were shown at various times throughout the live streams of the relevant EPL matches, depending on the camera direction and angle shown in the coverage.

While these physical ads were visible at times throughout the live stream, it is the ACMA's view that they were peripheral to the main focus of the program, which was the relevant football match, and did not dominate the coverage.

Accordingly, the ACMA is of the view that, in the circumstances outlined above, the publication of the designated interactive gambling service advertisements in the EPL matches was incidental to the publication of other matter (being the relevant football matches).

Did Optus receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter)?

As noted above, Optus submitted that it did not receive any direct or indirect benefit for publishing the advertisements in the EPL matches, and the ACMA has accepted these submissions.

La Liga match

Is the content a designated interactive gambling advertisement?

Subsection 61BA of the IGA defines designated interactive gambling service advertisement broadly to include any writing, still picture, sign, symbol or other visual image, or any audible message, or any combination of two or more of those things, that gives publicity to, or otherwise promotes or intends to promote:

- > a designated interactive gambling service
- > designated interactive gambling services in general
- > a domain name or URL that relates to a designated interactive gambling service
- > any words that are closely associated with a designated interactive gambling service.

In this instance, the content is brand names or logos for gambling services inserted virtually into the live coverage of the La Liga match.

Accordingly, the ACMA is satisfied that this content in the La Liga match is advertising.

The next question is whether the advertising is for 'designated interactive gambling services'. Section 4 of the IGA provides that, a designated interactive gambling service means a prohibited interactive gambling service or an unlicensed regulated interactive gambling service.

As noted above, [wagering company 1] has not previously been investigated by the ACMA but it appears to offer casino style games and/or wagering for money and the service does not appear on the ACMA's register of licensed wagering services. Consequently, the service is likely to be providing designated interactive gambling services.

The definition of designated interactive gambling service advertisement in subsection 61BA(1) is subject to a number of exceptions (see subsection 61BA(2) and sections 61BB – 61BGA). The ACMA is satisfied that none of these exceptions apply to the advertisements in this case.

For the purposes of this investigation, the ACMA is satisfied that the content of the La Liga match included designated interactive gambling service advertisements.

Were the designated interactive gambling services advertisements published in Australia?

Subsection 61CA(1) provides that a person publishes a designated interactive gambling service advertisement if the person does any of the things listed in paragraphs 61CA(1)(a) – (f).

Relevantly, paragraph 61CA(1)(a) of the IGA provides that a person publishes a designated interactive gambling service advertisement if the person includes the advertisement or something that contains the advertisement on a website.

Subsection 61EA(3) provides that a designated interactive gambling service advertisement that is included on a website is taken to be published in Australia if and only if the website is accessed, or is available for access, by end users in Australia; and having regard to the content of the website and the way the website is advertised or promoted, it would be concluded that it is likely that the majority of persons who access the website are physically present in Australia.

The advertisements were viewed by the complainant on Optus Sport. While the IGA does not define 'website', based on the ordinary meaning of the word, the ACMA is satisfied that as an online content service Optus Sport is a website for the purposes of subsection 61EA(3) and that the advertisements were included on the website. Optus Sport content is only available to view within Australia due to licensing restrictions from rights holders.

Subsection 61CA(1) has effect subject to the exceptions in sections 61CB-61CF. The ACMA is satisfied that these exceptions do not apply to the publication of the designated interactive gambling service advertisements in this case.

Therefore, the ACMA is satisfied that the designated interactive gambling service advertisements were published in Australia.

Was the publication permitted by the IGA?

Subsection 61EA(1A) of the IGA provides that a person must not publish a designated interactive gambling service advertisement in Australia if the publication is not permitted by section 61EB, 61ED, 61EE or 61EF.

Subsection 61ED(1) of the IGA provides:

- (1) A person may publish a designated interactive gambling service advertisement if:
 - (a) the person publishes the advertisement as an accidental or incidental accompaniment to the publication of other matter; and
 - (b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter).

Was the advertisement published as an accidental or incidental accompaniment to the publication of another matter?

As 'incidental accompaniment' is not defined in the IGA, the ACMA has given the term its ordinary meaning and on that basis, the advertisement must be something that is happening in subordinate conjunction with the display of the sporting event for this exception to apply.

The ACMA has previously considered whether an advertisement is an incidental accompaniment in the context of investigations into tobacco advertisements (BI-262, BI-458). In considering whether an advertisement was an incidental accompaniment to the broadcast of other matter, it was only regarded as an 'incidental accompaniment' if it was subordinate to the other matter being broadcast. If an advertisement dominates or forms a substantial feature of a program, scene or segment, it will not be regarded by the ACMA as an 'incidental accompaniment'.

In the La Liga match, the virtual advertising of [wagering company 1], as submitted by Optus and reviewed by ACMA staff, was only visible to the viewer when the goal line was in view of the camera. This angle was not shown often and the majority of the game was streamed using various camera angles, primarily using the standard high angle sports broadcast view from the halfway line (without the goal line in view). A game of football generally involves movement from end to end, and, except for set plays such as free or corner kicks, there is not a focus on a particular part of the field or its surrounds. There is nothing in the stream of the La Liga match to suggest there was any form of focus on the advertising, outside of it appearing occasionally depending on the flow of the game and the positioning of the ball in play.

In this context, the ACMA is satisfied that the vision of the virtually inserted [wagering company 1] advertising happened in subordinate conjunction with the match and hence was an incidental accompaniment to the publication of the football match.

Accordingly, the ACMA is of the view that, in the circumstances outlined above, the publication of the designated interactive gambling service advertisements in the La Liga match was incidental to the publication of other matter (being the relevant football match).

Did Optus receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter)?

As noted above, Optus submitted that it did not receive any direct or indirect benefit for publishing the advertisements in the La Liga match, and the ACMA has accepted these submissions.

Accordingly, the ACMA is satisfied that Optus did not publish designated interactive gambling service advertisements in Australia in contravention of subsection 61EA(1A) of the IGA.

Attachment A

Relevant provisions

Schedule 8 to the *Broadcasting Services Act 1992*

2 Definitions

gambling promotional content means:

- (a) advertising content; or
- (b) sponsorship content; or
- (c) promotional content;

that relates to a gambling service. [...]

online content service has the meaning given by clause 3.

online content service provider means a person who provides an online content service.

Note: See clause 6.

3 Online content service

(1) For the purposes of this Schedule, online content service means:

- (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or
- (b) a service that allows end-users to access content using an internet carriage service;

where the service:

- (c) is provided to the public (whether on payment of a fee or otherwise); and
- (d) has a geographical link to Australia;

but does not include a service to the extent to which it is:

- (e) an exempt online simulcast service; or

[...]

4 Exempt online simulcast service

(1) For the purposes of this Schedule, exempt online simulcast service means a service, or a part of a service, that is provided to end-users using an internet carriage service, and that:

(a) does no more than provide a stream of content that is identical to the stream of programs transmitted on:

- (i) a commercial television broadcasting service provided under a commercial television broadcasting licence; or
- (ii) a commercial radio broadcasting service provided under a commercial radio broadcasting licence; or
- (iii) a subscription television broadcasting service provided under a subscription television broadcasting licence; or
- (iv) a subscription radio narrowcasting service; or
- (v) a subscription television narrowcasting service; or
- (vi) a broadcasting service provided by the Special Broadcasting Service Corporation; and

- (b) provides that stream of content simultaneously, or almost simultaneously, with the transmission of that stream of programs.
- (2) For the purposes of subclause (1), in determining whether a stream of content is identical to a stream of programs, disregard any differences that are attributable to the technical characteristics of the provision or transmission (for example, video resolution or sound quality).
- (3) For the purposes of subclause (1), in determining whether a stream of content is identical to a stream of programs, disregard the presence or absence of:
- (a) a watermark-type logo; or
 - (b) a watermark-type insignia;

that is not gambling promotional content. [...]

6 Online content service provider

- (1) For the purposes of this Schedule, a person does not provide an online content service merely because the person supplies an internet carriage service that enables content to be delivered or accessed.
- (2) For the purposes of this Schedule, a person does not provide an online content service merely because the person provides a billing service, or a fee collection service, in relation to an online content service.

[...]

25 Compliance with the online content service provider rules

- (1) An online content service provider must not contravene the online content service provider rules.

Civil penalty provision

- (2) Subclause (1) is a civil penalty provision.

[...]

Broadcasting Services (Online Content Service Provider Rules) 2018

10 Scheduled start of a sporting event

For the purposes of these rules, the scheduled start of a sporting event to be provided on an online content service is:

- (a) the specified time of commencement of the live coverage of play of the sporting event, which must be earlier than or at the commencement of actual play, as published or notified in a manner that is clear and prominent to potential end-users of the online content service at least 24 hours before the commencement of the coverage; or
- (b) otherwise, the time the live coverage of the sporting event commences.

Note 1: Paragraph (a) may be satisfied, for example, by including the specified time on the webpage where end-users are likely to access the online content service, by including it in an electronic program guide (if one is available to end-users), or by sending an email or push notification to end-users.

Note 2: For the avoidance of doubt, for the purposes of paragraph (b), any content that is part of the coverage of the sporting event, including, without limitation, content that:

- is hosted at, or takes place at the venue of the live sporting event;
- contains commentary or analysis on the live sporting event;
- contains highlights or replay coverage of the live sporting event; or
- involves or profiles participants in the live sporting event;

which is provided on the service before play has commenced, or during play, is content that consists of live coverage of the sporting event.

12 Prohibition of gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion)

An online content service provider must not provide gambling promotional content on an online content service in conjunction with live coverage of a sporting event in the period beginning at 5:00 am and ending at 8:30 pm.

Note 1: Gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion) is provided on an online content service in conjunction with live coverage of a sporting event if, and only if, the content is provided on the service during the period:

- (a) beginning 5 minutes before the scheduled start of the sporting event; and
- (b) ending 5 minutes after the conclusion of the sporting event. (See subclause 21(1) of Schedule 8 to the BSA.)

Note 2: For the avoidance of doubt, promotion of odds is a kind of gambling promotional content to which this section applies. Section 11 deals with commentator betting odds promotions and representative venue-based promotions.

[...]

15 Restrictions on other gambling promotional content

- (1) Subject to subsections (2) and (3), an online content service provider must not provide gambling promotional content (other than promotion of odds, a commentator betting odds promotion or a representative venue-based promotion) on an online content service in conjunction with a live coverage of a sporting event in the period beginning at 8:30 pm and ending at 5:00 am.
- (2) An online content service provider is permitted to provide gambling promotional content (other than promotion of odds, a commentator betting odds promotion or a representative venue-based promotion) on an online content service in conjunction with live coverage of

a sporting event in the period beginning at 8:30 pm and ending at 5:00 am provided that it is:

- (a) during an unscheduled break in play;
 - (b) in the five minutes before the scheduled start of the sporting event; or
 - (c) in the five minutes after the conclusion of the sporting event.
- (3) An online content service provider is permitted to provide gambling promotional content (other than promotion of odds, a commentator betting odds promotion or a representative venue-based promotion) on an online content service, in conjunction with live coverage of a sporting event, during a scheduled break (within the meaning of subsection (4)) in a sporting event in the period beginning at 8:30 pm and ending at 5:00 am.

[...]18 Exceptions for certain circumstances beyond the control of the service provider

- (2) An online content service provider that provides gambling promotional content on an online content service, in conjunction with live coverage of a sporting event, will not contravene Parts 3, 4 or this Part, where all of the following circumstances exist:
- (a) the sporting event originates from outside Australia;
 - (b) the online content service provider did not add the gambling promotional content;
 - (c) it is not reasonably practicable for the provider to remove the gambling promotional content; and
 - (d) the provider does not receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content in addition to any direct or indirect benefit that the provider receives for providing the live coverage of the sporting event.
- (3) An online content service provider that provides gambling promotional content on an online content service in conjunction with live coverage of a sporting event will not contravene Parts 3, 4, or this Part, where the reference to gambling promotional content occurs as part of live coverage of the sporting event, and consists of the name of the sporting venue, or of a player's or official's uniform, or of advertising signage, such as a field barrier, big screen or scoreboard, at the venue of the sporting event, and the provider does not receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content, in addition to any direct or indirect benefit that the provider receives for providing the live coverage of the sporting event.

Interactive Gambling Act 2001

4 Definitions

designated interactive gambling service means:

- (a) a prohibited interactive gambling service; or
- (b) an unlicensed regulated interactive gambling service.

gambling service means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
 - (i) the game is played for money or anything or else of value; and
 - (ii) the game is a game of chance or of mixed chance and skill; and
 - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

Unlicensed regulated interactive gambling service means a regulated interactive gambling service that is provided in contravention of subsection 15AA(3).

5 Prohibited interactive gambling services

(1) For the purposes of this Act, a **prohibited interactive gambling service** is a gambling service, where:

- (a) the service is provided in the course of carrying on a business; and
- (b) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service

Note: This definition relates to the offence provisions and civil penalty provisions set out in section 15 and Part 7A.

(2) Subsection (1) has effect subject to subsection (3).

Excluded services

(3) For the purposes of this Act, none of the following services is a **prohibited interactive gambling service**:

- (a) a telephone betting service;
- (aa) an excluded wagering service (see section 8A);
- (ab) an excluded gaming service (see section 8B);
- (aba) a place-based betting service (see section 8BA);
- (ac) a service that has a designated broadcasting link (see section 8C);
- (ad) a service that has a designated datacasting link (see section 8C);
- (ae) an excluded lottery service (see section 8D);
- (b) a service to the extent to which it relates to the entering into of contracts that are financial products within the meaning of Chapter 7 of the *Corporations Act 2001*;
- (ba) a wholesale gambling service;
- (bb) a trade promotion gambling service (see section 8BB);
- (c) an exempt service (see section 10).

8 Australian-customer link

For the purposes of this Act, a gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia.

8E Regulated interactive gambling service

(1) For the purposes of this Act, a **regulated interactive gambling service** is:

- (a) a telephone betting service (see section 8AA); or
- (b) an excluded wagering service (see section 8A); or
- (c) an excluded gaming service (see section 8B); or
- (d) a place-based betting service (see section 8BA); or
- (e) a service that has a designated broadcasting link (see section 8C); or
- (f) a service that has a designated datacasting link (see section 8C); or
- (g) an excluded lottery service (see section 8D); or
- (h) an exempt service (see section 10);

where:

- (i) the service is provided in the course of carrying on a business; and
 - (j) the service is provided to customers using any of the following:
 - (i) an internet carriage service;
 - (ii) any other listed carriage service;
 - (iii) a broadcasting service;
 - (iv) any other content service;
 - (v) a datacasting service; and
 - (k) in the case of an exempt service—a determination under subsection (2) is in force in relation to the service.
- (2) The Minister may, by legislative instrument, determine that each exempt service included in a specified class of exempt services is covered by paragraph (1)(k).
- (3) Subsection (1) has effect subject to subsection (4).
- (4) For the purposes of this Act, neither of the following services is a **regulated interactive gambling service**:
- (a) a wholesale gambling service;
 - (b) a trade promotion gambling service (see section 8BB).

15 Prohibited interactive gambling services not to be provided to customers in Australia

[...]

(2A) A person must not provide a prohibited interactive gambling service that has an Australian-customer link (see section 8).

Civil penalty: 7,500 penalty units.

(3) Subsections (1) and (2A) do not apply if the person:

- (a) did not know; and
- (b) could not, with reasonable diligence, have ascertained;

that the service had an Australian-customer link.

Note: In the case of proceedings for an offence against subsection (1), the defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

{...}

15AA Unlicensed regulated interactive gambling services not to be provided to customers in Australia

[...]

(3) A person must not provide a particular kind of regulated interactive gambling service if:

- (a) the service has an Australian-customer link (see section 8); and

- (b) the person does not hold a licence (however described) under a law of a State or Territory that authorises the provision of that kind of service in the State or Territory.

Civil penalty: 7,500 penalty units.

[...]

61BA Basic meaning of designated interactive gambling service advertisement

- (1) For the purposes of this Part, a designated interactive gambling service advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:
 - (a) a designated interactive gambling service; or
 - (b) designated interactive gambling services in general; or
 - (c) the whole or part of a trade mark in respect of a designated interactive gambling service; or
 - (d) a domain name or URL that relates to a designated interactive gambling service; or
 - (e) any words that are closely associated with a designated interactive gambling service (whether also closely associated with other kinds of services or products).
- (2) This section has effect subject to sections 61BB, 61BC, 61BD, 61BE, 61BF, 61BG and 61BGA.

61CA Basic meaning of publish a designated interactive gambling service advertisement

- (1) For the purposes of this Part, a person ***publishes*** a designated interactive gambling service advertisement if the person does any of the following things:
 - (a) the person includes the advertisement, or something that contains the advertisement, on a website;
 - (b) the person includes the advertisement in a document (including, for example, a newspaper, magazine, program, leaflet or ticket) that is available, or distributed, to the public or a section of the public;
 - (c) the person includes the advertisement in a film, video, television program or radio program that is, or is intended to be, seen or heard by the public or a section of the public;
 - (d) the person:
 - (i) sells, hires or supplies the advertisement, or something containing the advertisement, to the public or a section of the public; or
 - (ii) offers the advertisement, or something containing the advertisement, for sale or supply to, or hire by, the public or a section of the public;
 - (e) the person displays, screens or plays the advertisement, or something that contains the advertisement, so that it can be seen or heard in or from:
 - (i) a public place; or
 - (ii) public transport; or
 - (iii) a workplace;
 - (f) the person otherwise:
 - (i) brings the advertisement, or something that contains the advertisement, to the notice of; or
 - (ii) disseminates the advertisement, or something that contains the advertisement, to; the public, or a section of the public, by any means (including, for example, by means of a film, video, computer disk or electronic medium).
- (2) This section has effect subject to sections 61CB, 61CC, 61CD, 61CE and 61CF.

61EA Designated interactive gambling service advertisements not to be published in Australia

[...]

(1A) A person must not publish a designated interactive gambling service advertisement in Australia if:

- (a) the publication is not permitted by section 61EB; and
- (b) the publication is not permitted by section 61ED; and
- (c) the publication is not permitted by section 61EE; and
- (d) the publication is not permitted by section 61EF.

Civil penalty: 180 penalty units.

[...]

(3) For the purposes of this section, a designated interactive gambling service advertisement that is included on a website is taken to be published in Australia if, and only if:

- (a) the website is accessed, or is available for access, by end-users in Australia; and
- (b) having regard to:
 - (i) the content of the website; and
 - (ii) the way the website is advertised or promoted;

it would be concluded that it is likely that a majority of persons who access the website are physically present in Australia.

61ED Accidental or incidental publication permitted

(1) A person may publish a designated interactive gambling service advertisement if:

- (a) the person publishes the advertisement as an accidental or incidental accompaniment to the publication of other matter; and
- (b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any direct or indirect benefit that the person receives for publishing the other matter).

(2) Subsection (1) only has effect for the purposes of this Part.