

Investigation report no. BI-684 and BI-685

Summary

Provider [service]	Network Ten Pty Limited [10 Play]
Type of service	Online content service (audio-visual)
Relevant legislation	<i>Broadcasting Services Act 1992 (the BSA)</i> <i>Broadcasting Services (Online Content Service Provider Rules) 2018 (the Online Rules)</i>
Finding	Contravention of sections 12 and 15 of the Online Rules and consequently a contravention of subclause 25(1) of Schedule 8 to the BSA No contravention of subsection 21(1) of the Online Rules.
Date finalised	3 July 2024
Live sporting events	England v Australia Football Friendly A-League Women's Central Coast Mariners v Newcastle Jets
Date of streams	14 October 2023
Attachments	A – Breakdown of contraventions B – Relevant legislative provisions

Background

On 16 October 2023, the Australian Communications and Media Authority (the **ACMA**) received two complaints alleging that gambling advertisements had been viewed during the live stream of two separate sporting events (the **Matches**) on 10 Play in October 2023.

The first complaint alleged that a gambling advertisement [for wagering company 1] was viewed during the live stream of the England v Australia Football Friendly match (**Match 1**) on 14 October 2023 prior to 8:30 pm.

The second complaint, made by the same complainant, alleged that a gambling advertisement for [wagering company 2] was viewed during the live stream of the A-League Women's Central Coast Mariners v Newcastle Jets match (**Match 2**) in the half-time break on 14 October 2023 prior to 8:30 pm.

In response to the ACMA's initial correspondence regarding the alleged non-compliance with the Online Rules, the online content service provider of 10 Play, Network Ten Pty Ltd (the **Provider**), confirmed that there were gambling advertisements provided during the live streams of the Matches.

In January 2024, the ACMA commenced investigations under the *Broadcasting Services Act 1992* (the **BSA**) into the matters complained about.

Assessment

An online content service provider must comply with the Online Rules (clause 25 of Schedule 8 to the BSA).

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)-(r) of Schedule 8 to the BSA (see subclause 3(1) of Schedule 8).

The 10 Play service allows end-users who are members of the public to access content using the internet. The service is clearly 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)(f) to (r) of Schedule 8 to the BSA.

Paragraph 3(1)(e) of Schedule 8 to the BSA provides that an 'exempt online simulcast service' defined in clause 4 of Schedule 8 to the BSA, is not an online content service. While some of the Provider's services may fall within the definition of an 'exempt online simulcast service', the Provider has confirmed that the streams the subject of this investigation are not exempt online simulcast services under clause 4 of Schedule 8 to the BSA. The ACMA is satisfied that this was the case. In each case, therefore, the relevant content was subject to the Online Rules.

The ACMA investigated whether:

- > the gambling advertisements, the subject of the complaints, were 'gambling promotional content,' as defined 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**); and
- > the Provider made records sufficient to enable the Provider's compliance with section 21 of the Online Rules to be readily ascertained (**Issue 2**).

Relevant provisions of the BSA and the Online Rules can be found at **Attachment B**.

Issue 1: Was gambling promotional content provided in contravention of section 12 or section 15 of the Online Rules?

Finding

The ACMA makes the finding that the Provider contravened sections 12 and 15 of the Online Rules and, therefore, contravened 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 asks 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 event?

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 as including a service for the placing, making, receiving or acceptance of bets (see paragraph 18(a) in Schedule 8 to the BSA).

Having reviewed the advertisements, the ACMA is satisfied that these advertisements, which related to a service for the placing, making, receiving or acceptance of bets, were 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?

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.

In addition, section 15 of the Online Rules provides (subject to the exceptions in subsections 15(2)-(3)) that:

[...] 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.

Subclause 21(1) of Schedule 8 to the BSA relevantly provides that gambling promotional content is provided in conjunction with a live sporting event if it is provided in the period beginning 5 minutes before the scheduled start of the sporting event and ending 5 minutes after the conclusion of the sporting event.

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

The Provider advised, and the ACMA accepts, that there were gambling advertisements provided during the Matches in contravention of the Online Rules. The Provider stated that:

Due to human error, regrettably, there were gambling advertisements shown during live coverage of the match after the scheduled start of play to a number of end users.

As ads are triggered by individual end users, these gambling ads were delivered at various times, depending on when end users commenced the live stream.

The Provider submitted the following details (in AEDT) for the Matches.

Match	Stream start	Published Scheduled start of play	Actual kick-off	Match finish	Stream finish
England v Australia	0530	0545	0547	0739	0807
A-League Women's Central Coast Mariners v Newcastle Jets	1655	1700	1702	1855	1900

The Provider advised, and the ACMA accepts, that multiple gambling advertisements from 3 different wagering companies were provided.

This is consistent with the complaints alleging that gambling advertisements were viewed during the live streams of the England v Australia Football Friendly and the A-Leagues Women's Central Coast Mariners v Newcastle Jets prior to 8:30 pm.

The Provider also submitted spreadsheets, responding to a request from the ACMA for additional information, that included the User-ID¹, length and description of the gambling advertisements, the date and time the gambling advertisements were provided to end-users in the relevant time zone, and the maximum number of times each advertisement was provided to each particular end-user.

The ACMA has reviewed this information and is satisfied that it demonstrates that there were 17 unique gambling advertisements² provided across both matches at a prohibited time. The ACMA notes that this resulted in a total of 60,110 impressions³.

¹ A User-ID is an identification number generated by the Provider to identify individual end-users.

² A 'unique gambling advertisement' refers to each advertisement of identical length and content.

³ This refers to total impressions and not unique (for example, if one person viewed an advertisement twice, this is two impressions). Impressions is the number of times an advertisement is made available. It represents the number of times the advertisement could have been reviewed, regardless of whether an end-user actually views or engages with the advertisement.

The 17 unique advertisements were provided by different wagering companies, as follows:

- 3 x [wagering company 1] advertisements
- 6 x [wagering company 2] advertisements
- 8 x [wagering company 3] advertisements

(together, the **Prohibited Advertisements**).

Number of contraventions

The total number of contraventions of sections 12 and 15 of the Online Rules depends upon the number of times that each Prohibited Advertisement was provided. The ACMA is of the view that a single Prohibited Advertisement being provided a single time to any number of end-users constitutes a single contravention. The ACMA is also of the view that the same individual Prohibited Advertisement being provided to the same individual end-users multiple times constitutes multiple contraventions.

Attachment A sets out the maximum number of times each Prohibited Advertisement was provided to an individual end-user during the Matches, taking into consideration the location of the end-user and the time the gambling advertisement was provided in the relevant time zone.

As noted above, the ACMA is satisfied that each Prohibited Advertisement was gambling promotional content for the purposes of the Online Rules and was provided at a prohibited time in conjunction with a live coverage of a sporting event.

Therefore, the ACMA has reached the view that there were 133 contraventions of the Online Rules, comprising:

- 101 contraventions of section 12; and
- 32 contraventions of section 15 of the Online Rules.

Contravention of subclause 25(1) of Schedule 8

Subclause 25(1) of Schedule 8 to the BSA provides that an online content service provider must not contravene the Online Rules. As the ACMA has reached the view that the Provider has contravened section 12 of the Online Rules 101 times, and section 15 of the Online Rules 32 times, it makes the finding that the Provider has contravened subclause 25(1) of Schedule 8 to the BSA 133 times.

Issue 2: Did the online content service provider make records sufficient to enable the provider's compliance with the Online Rules to be readily ascertained?

Finding

The ACMA finds that the Provider did not contravene subsection 21(1) of the Online Rules.

Reasons

Under subsection 21(1) of the Online Rules, the provider is required to make records sufficient to enable its compliance with the Online Rules to be readily ascertained, including 'without limitation:'

- a) written records of the date and duration of the content stream of the live coverage of the sporting event and the location of the relevant end-users where known; and
- b) audio or audio-visual records, as the case may be, of the stream of the live coverage of the sporting event.

The Provider submitted the following records that are relevant to compliance with subsection 21(1)(a) of the Online Rules:

- > documents with the date and time the gambling advertisements were shown in the relevant time zone, the duration of the advertisement, the title and a description of the advertisements, and a summary with the maximum number of times a unique gambling advertisement was provided to an end-user.

The ACMA's analysis of the Provider's additional information revealed a substantial number of missing rows that represented nearly 50% of the data set. The missing rows were the instances where there was no User-ID number. The Provider advised that the 'UserID column contains empty values where users elected not to share tracking on Apple devices'. The ACMA sought additional information to ensure the calculations it made would not be done with incomplete data. The Provider then submitted records with Session-ID numbers advising they are the:

unique anonymous id created for every viewing session, including users who have not been identified (ie no User ID). It's used by [service provider] to provide accurate reports in viewing durations and for audience measurement.

The Provider further advised that the:

session ID is unique per view, so this represents how many times in a viewing session wagering ads appeared. We are extracting the values where there are blanks and session identifiers are present and compiling a list to show the maximum number of wagering ads appearing in a viewing session. If the user restarts the stream, a new [service provider] is generated so it isn't a 100% accurate reflection of how many times an unidentified user saw an ad during the matches but our team considers this will be a useful approximation.

The ACMA accepted the Session ID information and combined the two data sets, the Session ID with the User ID, to produce a complete data set to achieve a more accurate record of the number of times a gambling advertisement was provided to an end-user. In combining the data sets, the ACMA was able to use the correct date and time column from the User ID spreadsheets and then take the maximum number of times from the User ID information and where that was not available, insert the maximum number of times from the Session ID information.

The ACMA notes the deficit in the detail in the initial data provided but acknowledges that the Provider was able to work with the ACMA to submit records sufficient to enable its compliance with the Online Rules to be readily ascertained. In this investigation, audio visual records were not provided.

Based on the information available, the ACMA is not satisfied the Provider has contravened subsection 21(1) of the Online Rules.

Attachment A

Match 1 - England v Australia:

#	Gambling advertisement	Maximum # times the advertisement was provided to a particular user	Section 12 / 15 of the Online Rules
1	[wagering company 1 - #1]	6	s12
		5	s15
2	[wagering company 1 - #2]	11	s12
		6	15
3	[wagering company 1 - #3]	4	s12
		2	s15
4	[wagering company 2 - #1]	2	s12
		1	s15
5	[wagering company 2 - #2]	3	s12
		1	s15
6	[wagering company 2 - #3]	2	s12
7	[wagering company 2 - #4]	3	s12
8	[wagering company 2 - #5]	2	s12
9	[wagering company 2 - #6]	1	s12
10	[wagering company 3 - #1]	8	s12
		1	s15
11	[wagering company 3 - #2]	N/A	N/A
12	[wagering company 3 - #3]	2	s12
		1	s15
13	[wagering company 3 - #4]	1	s12
		1	s15
14	[wagering company 3 - #5]	6	s12
		1	s15

15	[wagering company 3 - #6]	8	s12
		5	s15
16	[wagering company 3 - #7]	4	s12
		6	s15
17	[wagering company 3 - #8]	3	s12
		2	s15
	TOTAL	66	s12
		32	s15

Match 2 - A-League Women's Central Coast Mariners v Newcastle Jets:

#	Gambling advertisement	Maximum # times the advertisement was provided to a particular user	Section 12 / 15 of the Online Rules
1	[wagering company 1 - #1]	5	s12
2	[wagering company 1 - #2]	3	s12
3	[wagering company 1 - #3]	1	s12
4	[wagering company 2 - #1]	2	s12
5	[wagering company 2 - #2]	1	s12
6	[wagering company 2 - #3]	1	s12
7	[wagering company 2 - #4]	1	s12
8	[wagering company 2 - #5]	1	s12
9	[wagering company 2 - #6]	1	s12
10	[wagering company 3 - #1]	6	s12
11	[wagering company 3 - #2]	2	s12
12	[wagering company 3 - #3]	3	s12
13	[wagering company 3 - #4]	1	s12
14	[wagering company 3 - #5]	5	s12
15	[wagering company 3 - #6]	1	s12
16	[wagering company 3 - #7]	1	s12

17	[wagering company 3 - #8]	N/A	N/A
	TOTAL	35	s12

Attachment B

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
- (a) an exempt Parliamentary content service (within the meaning of Schedule 7); or
- (b) an exempt court/tribunal content service (within the meaning of Schedule 7); or
- (c) an exempt official-inquiry content service (within the meaning of Schedule 7); or
- (d) a service that enables end-users to communicate, by means of voice calls, with other end-users; or
- (e) a service that enables end-users to communicate, by means of video calls, with other end-users; or
- (f) a service that enables end-users to communicate, by means of email, with other end-users; or
- (g) an instant messaging service that enables end-users to communicate with other end-users; or
- (h) an SMS service that enables end-users to communicate with other end-users; or
- (i) an MMS service that enables end-users to communicate with other end-users; or
- (j) a service that delivers content by fax; or
- (k) an exempt data storage service (within the meaning of Schedule 7); or

- (l) an exempt back-up service (within the meaning of Schedule 7); or
- (m) a service determined under subclause (2).

Note 1: SMS is short for short message service.

Note 2: MMS is short for multimedia message service.

- (2) The ACMA may, by legislative instrument, determine one or more services for the purposes of paragraph (1)(r).

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. [...]

5 Geographical link to Australia

- (1) *For the purposes of this Schedule, a service has a geographical link to Australia if an ordinary reasonable person would conclude that:*
 - (a) the service is targeted at individuals who are physically present in Australia; or
 - (b) any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia.
- (2) *For the purposes of this clause, content is provided on a service if the content is:*
 - (a) delivered by the service; or
 - (b) accessible to end-users using the service.

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.

[...]

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.

[...]

21 Record of placement of gambling promotional material to be kept

(1) An online content service provider who provides gambling promotional content on an online content service in conjunction with live coverage of a sporting event must make records sufficient to enable the provider's compliance with these rules to be readily ascertained, including without limitation:

- (a) written records of the date and duration of the content stream of the live coverage of the sporting event and the location of the relevant end-users where known; and
- (b) audio or audio-visual records, as the case may be, of the stream of the live coverage of the sporting event.

(2) A written record, made in accordance with paragraph (1)(a), must be retained in the online content service provider's custody for at least 6 months after the day the live coverage of the sporting event to which the record relates was provided on the online content service.

(3) An audio or audio-visual record, made in accordance with paragraph (1)(b), must be retained in the online content service provider's custody:

- (a) for at least 6 weeks after the day the live coverage of the sporting event to which the record relates was provided on the online content service; or
- (b) if, before the end of those 6 weeks, the provider becomes aware that a complaint has been made about compliance with these rules, in respect of that sporting event—for at least 90 days after the day the live coverage of the sporting event was provided.