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Our ref: MPJ:dml:80853

11 September 2009

Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

**Attention: Ms Lauren Roy**  
**By Email: Lauren.Roy@accc.gov.au**

Dear Ms Roy,

Re: **IHA Notification**

We refer to your email of 2 September 2009 enclosing a number of submissions.

We make the following responses in relation to two of those submissions.

**The Australian Sports Commission Submission**

*“Following your letter, staff from the Australian Sports Commission (the Commission) have contacted Ice Hockey Australia (IHA) seeking further information about the circumstances that have prompted the exclusive dealing notification. From those discussions with IHA, it appears the notification has arisen primarily as a result of the conduct of an ice hockey competition in Sydney that is not sanctioned by IHA.”*

IHA does not consider that this paragraph accurately reflects the information provided by it to the Commission. We are instructed that IHA's concerns extend to all States where IHA members reside and participate and that the breadth of this concern was communicated to the Commission. We are instructed that the discussions between IHA and the Commission focussed largely on risk management and insurance issues as outlined in the original application.

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*“The Commission is also aware of other circumstances in which participants move between sanctioned and non-sanctioned competitions eg. from a school-based competition to a local club competition. Generally these matters are resolved by the parties concerned (and their insurers where necessary) with the ultimate view that greater participation in sport is to be encouraged.*

*Notwithstanding the sport specific issues that IHA is facing, as a general principle, the ASC would have some difficulty with a proposition of exclusive dealing notification on the basis that it potentially stifles participation, particularly when the notification appears to primarily arise from an insurance process issue. The focus for national sporting organisations should generally be on finding and developing every opportunity to support increased ways of participating.”*

We are instructed that IHA and its State associations have never prevented school aged members from participating in school-based ice activities/programs or any IHA sanctioned competitions. Indeed IHA actively supports school programs and its State Association members, players and coaches regularly assist ice venues and school ice skating and hockey programs.

In Adelaide IHA supports the Ice Factor Program by supplying coaches and players to assist with the running of the program which involves 12 high schools in Adelaide.

In addition a number of Ice Factor Program players have registered with and paid all nominated IHA member and insurance fees to participate in IHSA’s local leagues, including IHSA’s State teams participating in IHA national championships and IHA player development programs.

These players remain free to participate in both the Ice Factor Program and IHA sanctioned events without restriction. On completion of the Ice Factor Program, a number of program graduates have remained members of both IHA and IHSA and continue to participate in the sport.

Further, IHA is an active partner with a number of ice venues across Australia through venue “Ice Hockey” and “Come and Try” programs for players 18 and under. The majority of these players are aged 12 years and younger.

IHA, through its member State associations, supplies these programs with coaches, promotional material and instruction free of charge. IHA has in place with its insurer an agreement to provide coverage free of charge for up to 12 weeks for all “Come and Try” players that are registered with IHA through their venue academy. Participants who complete the program and enter an IHA State Association structured ice hockey competition are allowed to register as a “development player” for 50% of the nominated IHA registration and insurance fee for the remainder of the season.

In addition, there are in excess of 20 IHA member players who presently participate in overseas education systems.

IHA regularly assists its members who wish to pursue an education in a foreign country while playing sport. This is demonstrated by IHA’s alliances with:

- The United States Embassy – the IHA assists members to be placed in American education institutions;
- The Banff Hockey Academy;
- Notre Dame College in Canada;
- Harrington College in Canada; and
- A number of privately owned academies across Canada, Finland and the Czech Republic.

IHA does not consider that its application if successful would stifle competition. It considers that the increased insurance costs which are likely to arise should approval not be granted will have a far greater negative impact upon participation than the authorisation of IHA banning its members from participating in unsanctioned leagues.

IHA's application is not intended to deny anyone an opportunity to participate in the sport, but merely to require members to make a choice as to whether to play in sanctioned or unsanctioned competitions in any particular season.

### **The Walsh Submission**

*"Since booking his air fare we have now found out that if he plays in this coming 2009/2010 season in the GMHL that Ice Hockey Australia will ban him from all ice hockey in Australia and in National teams for three years."*

We are instructed that no representation to this effect has been made by IHA. Should IHA be forced by its obligations to the IIHF to suspend players such as Cameron Walsh, then such suspension would only be for the current IHA season which operates from 1 March through to 28 February. This is in keeping with Hockey Canada Suspension Guidelines referred to in the newspaper article attached to the Walsh submission which states that this suspension period has been reduced from 3 years to the remainder of the season in which the participation takes place.

If an IHA member plays in an unsanctioned league and it is reported to the IIHF, IHA would be in breach of IIHF's statutes and by-laws for membership compliance as per section 2 clause 17 which states:

*"The member national associations of the IIHF shall recognise each other as being solely empowered to control ice hockey and/or in-line hockey in their respective country; therefore, they undertake that neither they nor any of their members will in any way have relations with non-associated bodies or one of their members, except*

*as may be permitted by these statutes and by-laws, or with special permission of the IIHF President for a limited time period.”*

Accordingly, while IHA may not wish to penalise players such as Cameron Walsh for playing in unsanctioned leagues in Canada, it is imperative that IHA have the power to suspend players such as Cameron Walsh who participate in unsanctioned leagues either in Australia or overseas, as the penalty for IHA acting in contravention of the statutes, by-laws or regulations of the IIHF include suspension from the IIHF and associated bans from international competition.

### **International Players participating in Australian Leagues**

In order for an international player to validly compete in an Australian league sanctioned by the IHA a valid international transfer card (ITC) must be completed and signed by the player and ratified by IIHF.

It is the experience of IHA that there are a significant number of foreign players playing in unsanctioned leagues in Australia without having completed an ITC.

As IHA has no power to control or penalise unsanctioned leagues in Australia, the mere participation of foreign players in unsanctioned leagues without ITCs will not result in penalties being levied on IHA by the IIHF.

However, IHA is concerned that should it allow its members to also participate in the same unsanctioned leagues it will be seen to be supporting unsanctioned competitions with foreign players who do not have ITCs and be liable for sanction by the IIHF. In effect it would be open for the IIHF to argue that IHA is aiding and abetting the participation of unsanctioned overseas players in Australian leagues by allowing its members to compete with and against these unsanctioned overseas players.

It is submitted that the submissions by Cameron Walsh only serve to highlight and support IHA's submission that the ability to sanction its players for participating in unsanctioned

leagues is crucial to enable it to comply with its obligations to the IIHF and is not merely an insurance issue or an attempt to fetter competition in Australia.

Yours faithfully  
JOHNSTON WITHERS



Per Mark Jappe  
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