

26 August 2015

Dr Richard Chadwick
General Manager - Adjudication
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Our ref: CAL:2045942
Office: Melbourne

By hand
Copy to: adjudication@acc.gov.au

Dear Dr Chadwick

Equestrian Australia Limited: Exclusive Dealing Notification (N98410)

We refer to the above Notification lodged on 30 July 2015 by Equestrian Australia Limited (EA). We note that for the purposes of section 93(7) of the *Competition and Consumer Act 2010*, the Notification took effect from 13 August 2015.

In this letter, capitalised terms not otherwise defined have the meaning attributed to them in Notification.

Validity of Notice

We understand that an interested party has questioned whether EA is the party that would be engaging in the notified conduct, given the role of Organising Committees. The purpose of this letter is to address that question.

In short, a proper understanding EA's Constitutional framework and the role and function of Organising Committees make it clear that Organising Committees are agents of EA in all relevant respects when conducting EA Events, including if they choose to impose a Vaccination Requirement in the circumstances described in the Notification.¹

Constitutional Framework

EA's Authority over individuals

As the governing body for equestrian sport in Australian, EA is governed by its Constitution (provided at Annexure B to the Notification). Amongst other things, the Constitution provides that EA is to:

- (a) control, manage and conduct equestrian Events (cl. 2(e));
- (b) promote the health and safety of riders, horses, officials and other individuals participating in equestrian Events (cl. 2(t)); and, importantly,

¹ As Organising Committees are not incorporated, it is more legally accurate to describe each individual member of an Organising Committee as an agent of EA jointly. The collective term is used here for convenience.

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- (c) act as final arbiter on all matters pertaining to the conduct of equestrian sport in Australia, including disciplinary matters (cl. 2(u)).

In accordance with cl. 5.2(f)(i) of EA's Constitution and the reciprocal provisions of each Branch's constitution, each person who is a member of a Branch is automatically a Participating Member of EA and:

"shall be bound by the provisions of [EA's] Constitution and the by-laws as they apply to Participating Members, including unreservedly submitting to the jurisdiction, procedure, penalties and appeal mechanisms of [EA] . . ."

Each individual Participating Member is required to acknowledge and agree unreservedly that they will be bound that provision each time their membership of a Branch is renewed (cl. 5.2(f)(ii)).

It follows that:

- (a) as an incorporated body, EA is constitutionally required to pursue the above objects by its members, the respective State Branches, and Participating Member individuals; and
- (b) in recognition of and to facilitate the attainment of those objects, individual Participating Members have expressly agreed to the ultimate control and authority of EA in respect of equestrian sports activities in Australia.

In the practical terms, this means that any conduct engaged in by an individual Participating Member in relation to an Event is at all times contractually subject to the authority, control and disciplinary mechanisms of EA.

Organising Committees and Events

A group of individuals seeking to establish an EA Event (or re-establish an independent event as an EA Event) must apply to the appropriate EA committee established for that relevant equestrian discipline. These EA committees are comprised of Participating Members and are, therefore, subject to EA's authority. (See also cl. 30.1 of EA's Constitution (delegation of board powers) and Equestrian Australia Committee Bylaws, copy **enclosed**.)

The relevant committee will either accept or reject the proposed new Event. Upon its acceptance, the group promoting the new Event is recognised by EA as the relevant Organising Committee and the Event is included in the official EA calendar. Acceptance of an Event is necessarily conditional upon the members of the Organising Committee ensuring that the Event is conducted in accordance with EA's rules and regulations.

Agency

It is clear from the above that, by permitting riders and owners to enter and participate in an Event, the Organising Committee affects the legal relationship between those participants and EA:

- (a) The participants agree with the Organising Committee to be bound by the Entry Conditions for the Event, the crux of which are compliance with EA's rules, authority and disciplinary regime;
- (b) Through the officials it engages, the Organising Committee monitors compliance with EA's rules and commences action against any alleged contraventions, necessarily on behalf of EA; and

- (c) EA, in return, recognises the participants' performance and achievement in that Event for the purpose of the participants' national and international standings in the relevant discipline.

Such authority or capacity to create or affect legal relations between a principal and third parties is the very hallmark of an agency relationship: *International Harvester Company of Australia Pty Ltd v Carrigan's Hazeldene Pastoral Co* (1958) 100 CLR 644.

Conclusion

It is clear from the above that Organising Committees act as agents for EA in undertaking EA's objects of, amongst other things, controlling, managing and conducting equestrian Events. Organising Committees are clearly subject to the authority of EA and it is central to their very function that they affect the legal relationship between Event participants and EA.

It follows that the notified conduct would necessarily be engaged in by EA, through the agency of the relevant Organising Committee.

We trust the above is of assistance to the Commission.

Yours sincerely



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Encl 1

Equestrian Australia Limited



EQUESTRIAN
AUSTRALIA

COMMITTEE BYLAWS

Effective 01 January 2014

The Equestrian Australia Committee Bylaws
may also be found on the Equestrian Australia Website:

www.equestrian.org.au

- 1 In accordance with Rule 31.1 of the Constitution, these By-Laws establish the Committees of EA and the rules relating to them. The By-Laws have been adopted by and may only be amended by a two-thirds majority vote of Directors.

The Committees of EA are Sub-Committees of the Board of Directors in all respects and are accountable to the Board and subject to its control. To be eligible to serve on the Board or on a Sub-Committee of EA, a person must be a Member of a category other than Junior Member and must not be an employee of EA or one of its Branches. As the Board is responsible for the actions of its Committees, it may notwithstanding the appointments of the Branches dismiss all or any members of a Committee and will call for replacement members.

2 National Sport Committees

- 2.1 The Board establishes National Sport Committees (NSCs) for each Equestrian Sport. The current sub Committees are the Equestrian Australia Dressage Committee, the Equestrian Australia Eventing Committee, the Equestrian Australia Jumping Committee, the Equestrian Australia Show Horse Committee, the Equestrian Australia Vaulting Committee, the Equestrian Australia Carriage Driving Committee, the Equestrian Australia Endurance Committee and the Equestrian Australia Interschools Committee. Committees will adopt the name "Equestrian Australia [Sport] Committee".
- 2.2 The rules for the composition and appointment of committees are outlined in Section C of these By-Laws. Unless NSCs opt for a non-representative "skills-based" Committee composition approved by the National Board, they will consist of one member nominated by each Branch and each nomination will be submitted to the Board for ratification. Each Branch will also nominate an alternate for its nominated member. Each Committee may include one nationally selected riders' representative who will be entitled to vote. The nationally selected riders' representative will be elected by a method suggested by the National Sport Committee and approved by the National Board.

The National Sport Committees will appoint one of their members or by a two-third majority vote a person who is not a member of a Committee to be Chair, subject to approval by the National Board. In all cases including where there is only one person nominated and standing for election for the position of Chair, the Committee will take a vote. Where only one person was nominated and standing for election and this person does not receive the required majority, the Board will appoint an interim Chair until a Chair is elected with the required majority of votes.

All appointments will be for a term of two years and the Chair will hold office for two years. Committee members may serve a maximum of three terms of two years each before they have to have a break of at least one year. Where in or for their last year of tenure Committee members are newly elected to the position of Committee Chairman, their term may be extended by one year provided the Committee supports the extension by a two-third majority and the extension receives the approval of the EA Board.

- 2.3 The Board delegates to each NSC all or any of the following functions and responsibilities, to be carried out in consultation with the National Office and subject to approval by the Board:
 - (a) Implementation of FEI policy and rules applicable to their sport;
 - (b) Advise and recommend on national rules;
 - (c) In conjunction with the National Education guidelines - maintenance, training and appointment of adequate numbers of national and FEI qualified officials, who must be members of EA;
 - (d) Establishment of Sub-Committees for the Sport subject to approval by National Board;
 - (e) Promotion and conduct of the Sport in Australia within National policy;

- (f) Advise EA on the development of the sport from a junior to international level within the framework of the EA strategic plan.
- (g) Development and endorsement of a National sport calendar
- (h) Provision of copies of minutes of their meetings and an annual report to the Board;
- (i) Conduct of their meetings as directed by the Board; meetings must include the EA CEO or the CEO's representative.

2.4 The NCAS Committee is primarily responsible for contributing to the development of policy and the monitoring of policy implementation for NCAS-related matters and areas. These include:

- (a) Development/review of the Australian Sports Commission NCAS courses
- (b) Development of coaches from junior to international level
- (c) Education, assessment and accreditation of coaches of all disciplines
- (d) Development of Community Education programs
- (e) Recognition of Current Competency (RCC) applications
- (f) Assistance in the development and implementation of EA NCAS operational plan
- (g) Assistance in the conduct of National and International forums/seminars for Coaches, Coach educators, Skill Specific Trainers, Assessors and Community Education

3. Rules Changes

Committees must allow a lead time of at least six months for the implementation of rule changes in their Sport. If a Committee believes that an earlier introduction of a rule change is appropriate for safety reasons, it may apply for this to the Board.

All rules must be vetted by the Board prior to finalisation and implementation. In this context, the Board has delegated its authority to the EA CEO who may refer matters to the Board for its attention.

4. General

- 4.1 The Board may delegate its powers and duties and may form or appoint other Sub-Committees to undertake those duties or exercise such powers. The discretionary delegations to the Sub-Committees may be varied at any time by the Board. Any specific delegation may only be varied by a special resolution of the Board, where two-thirds of the Directors present and voting are in favour of such variation.

5. FUNCTIONS OF EQUESTRIAN AUSTRALIA COMMITTEES

5.1 Equestrian Australia Sport & NCAS Committees operates under the following terms including requirements of Committees laid down in Clause 2.3 of the Committee By-Laws of EA.

Composition

5.2 The Equestrian Australia Sport Committee consists of five elected Members plus the Riders' Representative for skills based committees and seven selected members plus the Riders' Representative for 'State Based' committees, selected for their experience and skills relevant to the work of the Committee. To be able to hold office they must be a current EA Member of a category other than Junior, must not be employees of EA or one of its Branches and must not hold any National Team Position (e.g. National Coach, Chef, etc) without approval of the National Board, which would consider any conflicts between these roles before it approves this position. For skills based committees members should not be the chair of the National branch committee. In order to minimise conflicts of interest and to assist their focus on National Committee functions, for skills-based committees selected members should not also be members of their respective Branch Discipline Committees. Four members present at a meeting form a quorum.

5.3 Committee members may serve a maximum of three terms of two years each before they have to step down from the Committee for at least one year, except that on initial establishment of the Committee, elected members will draw for the following initial terms: Two members for a term of one year and three members for a term of two years. Each of these initial terms will count as a full term of two years for the purposes of Committee rotation.

5.4 The Committee will elect a Chair from among its members, subject to Board approval. Members should hold the position of Chair not longer than two consecutive two-year terms, after which a break of at least one year's duration should follow.

5.5 Committee members' skills should include the following:

- a) A thorough knowledge of the discipline, including a working knowledge of both EA and FEI rules and procedures
- b) Administrative skills including the use of e-mail, word processing and spreadsheet applications
- c) Analytical skills
- d) The ability to think strategically and in the best interest of Equestrian in Australia

Appointment process

6.6 For appointments to the 'Skills Based' Committee, the following procedure is followed:

- (a) At least two months before the end of the term of sitting Committee members, the National Office will call for nominations from the general EA membership to fill the forthcoming vacancies.
- (b) Any member meeting requirements listed above may nominate or be nominated for appointment to a committee.
- (c) EA will form an Appointment Panel on the following basis:
 - one member appointed by the EA Board;
 - one member for and appointed by each EA Branch Committee or Branch representative.
 - The current chair of the National committee (where appropriate) may sit on the panel in an advisory role only but is not entitled to a vote
- (d) After the closing date for nomination, the Appointment Panel selects the number of nominees required to fill the vacancies. Each Panel member has one vote.
- (e) A resignation of sitting Committee members before the end of their term creates a casual vacancy.
- (f) Where the number of remaining members is not less than three, the Committee may decide not to fill this vacancy until the next scheduled elections. If the casual vacancy is to be filled, the procedure outlined in steps a) to c) above is followed.

For appointment to 'State Based' committees, the State Branch will nominate one member who meets the requirements above to be their State representative.

Meetings

The Equestrian Australia Sport Committees will meet in person in accordance with an EA Board-approved strategic plan at locations and venues that minimise the travel, accommodation, venue and catering costs.

7. EA ATHLETES' COMMISSION

Definitions

"Athlete" means a person who:

- (a) is an active athlete in that he or she (i) is currently competing, or (ii) within the previous 12 years of being elected or appointed to the Commission, has competed, in the Sport at a national or international level;
- (b) is over the age of 18 years; and
- (c) has not been sanctioned for an athlete or horse doping offence during their Sport career.

"Discipline" means any of the "EA sports" of Dressage, Eventing, Jumping, Para-Equestrian, Show Horse, Endurance, Vaulting, Reining and Carriage Driving.

"EA National Sport (Discipline) Committees" means those committees established by EA for the respective EA Sport (Discipline) under its "Membership and Committee By-Laws".

"Sport" means the Sport of Equestrian except where otherwise indicated by the addition of reference to a Discipline.

Composition

- The EA Athletes' Commission (Commission) is established from 01 January 2009.
- The Commission will consist of athlete representatives appointed or elected to EA National Sport (Discipline) Committees. The appointment is for a term parallel with the terms of appointment for members of EA National Sport (Discipline) Committees, which is two years.
- In addition to members appointed under clause 1 above, the EA National Board may appoint up to three Athletes to the Commission.
- The Commission must include representatives from those sports for which there are events in the program of the Olympic Games
- The Commission must include within its membership persons of both genders;
- The Commission must have a majority of its members elected by their peers in their respective Discipline.

Functions

- The Commission will represent the views of athletes in the organisation and will advise the EA National Board on any matters relating to the Sport.
- At all meetings, including general meetings and meetings of the National Board, members of the Athletes' Commission must act solely in the best interests of EA and its members as a whole.

Operation

- The Commission appoints a Chairperson from among its members.
- Commission Members have equal voting rights except that the Chairperson has a casting vote in addition to a deliberative vote.
- The Commission meets at least once a year, either in person or by telephone or other electronic means of communication. The presence of a simple majority of members will constitute a quorum.

National Board

- The EA National Board may appoint one member of the EA Athletes' Commission, whom they consider by virtue of qualifications and background will assist the Company attain its objectives, as a Director (refer EA Constitution: Appointed Directors).
- This Director has the same right and responsibilities as the other Directors of the EA National Board.