

# Form GA

Commonwealth of Australia

*Competition and Consumer Act 2010 — section 93AB*

## NOTIFICATION OF COLLECTIVE BARGAINING

This form is to be completed by applicants proposing to engage in collective bargaining arrangements.

In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

Protection provided by the notification extends only to the collective bargaining arrangements described in the form.

To the Australian Competition and Consumer Commission:

Notice is hereby given under section 93AB of the *Competition and Consumer Act 2010* of intention:

- to make, or to propose to make, a contract containing a provision of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in subsection 44ZZRD (2) or paragraph 44ZZRD (3) (a) or (b) of that Act.
- to make, or to propose to make, a contract containing a provision of the kind referred to in paragraph 45 (2) (a) of that Act.
- to give effect to a provision of a contract where the provision is of the kind referred to in paragraph 45 (2) (b) of that Act.  
(*Strike out if not applicable*)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

### Section A – general information

#### 1. Applicant

- (a) Name of the applicant:

CB00324      *Kwinana Motorplex Pty Ltd on behalf of three incorporated entities that operate*  
CB00325      *drag racing facilities known as the Perth Motorplex in WA, Willowbank Raceway*  
*in Qld and Sydney Dragway in NSW (collectively known as The Tracks).*

- (b) Description of business carried on by the applicant:

*The Tracks promote and stage motor racing events and championship racing series that require sanctioning by a motorsport authority to satisfy their insurance and government lease obligations. The company's websites are:*

<http://www.motorplex.com.au>

<http://www.willowbankraceway.com.au>

<http://www.sydneydragway.com.au>

- (c) Is the representative of the applicant lodging the notice a trade union, an officer of a trade union or a person acting on the direction of a trade union?

*No*

- (d) Address in Australia for service of documents on the applicant:

*Kwinana Motorplex Pty Ltd*

*Anketell Rd*

*Kwinana Beach, WA 6167*

*PO Box 241*

*Kwinana Beach, WA 6966*

## **2. Lodged on behalf of**

- (a) Provide names and addresses of all persons on whose behalf the notification is lodged and who propose to participate in the collective bargaining arrangements:

- *Kwinana Motorplex Pty Ltd Trading as Perth Motorplex (KM)*

*Anketell Rd Kwinana Beach, WA 6167*

*PO Box 241 Kwinana Beach, WA 6966*

- *Willowbank Raceway Inc (WR)*

*38 Champions Way*

*Willowbank Qld 4307*

- *Sydney Dragway Ltd (SD)*

*Ferrers Road, Eastern Creek, NSW 2766*

*PO Box 6306, Wetherill Park DC, NSW, 1851*

- (b) Provide proof of the consent of each of the persons listed at 2 (a) above agreeing to the lodgement of the notification on their behalf:

*The Tracks held a meeting in Sydney on Nov 18, 2015. The purpose of the meeting was to discuss the proposed collective bargaining arrangement and to seek consent to lodge a collective bargaining notification from and on behalf of each of the companies. Please find attached minutes of this meeting, identifying the companies' consent (Attachment A).*

- (c) Provide the following information relating to a notification:

- (i) Does this notification relate to a notification previously lodged with the Australian Competition and Consumer Commission and for which a concessional fee is claimed?

*This form relates to two targets, and the applicant submits that each is related.*

- (ii) details of the first-mentioned notification, including but not limited to:

(A) the name of the applicant; and

(B) the date the notification was said to be lodged; and

(C) if known or applicable — the registration number allocated to that collective bargaining notification.

*As above.*

## **Section B – collective bargaining arrangements**

### **3. Proposed collective bargaining arrangements**

- (a) Provide: the name and address of the target; the name, position and telephone contact details of an appropriate contact at the target; and a description of the business carried on by the target:

*The first company is Australian National Drag Racing Association Ltd (ANDRA). An appropriate person to contact is Mr Rob Curkpatrick, Interim CEO, (08) 8271 5355. ANDRA is currently the sole sanctioning service provider operating in the Australian market. ANDRA also promotes its own championship drag racing series in competition to The Tracks.*

*The second company is based in Norwalk, Ohio USA. An appropriate person to contact is Skooter Peaco, Vice President IHRA Motorsports, +1 419 663 6666. IHRA is based in the USA and provides sanctioning services internationally and wants to enter the Australian market.*

- (b) Provide a description of the goods or services which the participants of the collective bargaining arrangements (listed at 2 (a) above) propose to supply to or acquire from the target:

*Sanctioning permits to stage drag racing events currently need to be purchased from ANDRA. IHRA supplies the same sanctioning permits however are yet to enter the Australian market. The permits are purchased either individually per event or can be purchased on an annual basis to cover all events run at a drag racing facility.*

- (c) Do the participants of the proposed collective bargaining arrangements (see 2 (a) above) reasonably expect to make one or more contracts with the target about the supply to or acquisition from the target of one or more of the goods or services (listed at 3 (b) above)?

*Yes, The Tracks expect to make more than one contract with ANDRA and IHRA relating to the supply of sanctioning permits.*

- (d) In relation to (c) above, provide details of the basis upon which that expectation is held including details of past contracts with the target:

*The Tracks have each entered into contracts with ANDRA at least once in the last 2 years. KM and WR have both been dealing with ANDRA for more than 30 years and SD for more than 10 years.*

*IHRA has indicated that they are prepared to negotiate with The Tracks to supply sanctioning permits for events commencing from December, 2015.*

- (e) Do the participants of the collective bargaining arrangements (listed at 2 (a) above) reasonably expect that contractual payments between the target and each participant will not exceed \$3 million (or any other amount prescribed by regulation) in any 12 month period, and on what basis?

*The Tracks each expects that the contractual payments between The Tracks and ANDRA, and between The Tracks and IHRA, will not exceed \$3 million per annum. The Tracks each currently spends between \$25,000 and \$50,000 in purchasing*

*sanctioning permits from ANDRA each year. Additional purchases from IHRA are not expected to exceed \$2,000 for each of tracks as IHRA issues permits for the entire racing season and at a much lower cost.*

- (f) In relation to (e) above provide an estimation of the contractual payments expected between the target and each participant in relation to the goods and services (listed at 2 (a) above):

*As above, The Tracks each currently purchases sanctioning permits that cost between \$25,000 and \$50,000 each year. It is not expected that the cost to purchase additional sanctioning permits from IHRA will cost The Tracks each in excess of \$2,000 per annum.*

- (g) Provide a description of the collective bargaining arrangements proposed including, but not limited to:
- (i) the process by which participants propose to undertake collective bargaining with the target; and
  - (ii) the type of terms and conditions expected to be negotiated in collective bargaining arrangements (for example: price; non-price conditions of supply such as contract periods etc); and
  - (iii) details of any dispute resolution procedure (if any) proposed between participants throughout the collective bargaining process; and
  - (iv) details of any dispute resolution procedure (if any) proposed between participants and the target throughout the collective bargaining process; and
  - (v) details of any dispute resolution procedure (if any) proposed to deal with disputes throughout the term of contracts entered into with the target; and
  - (vi) details of proposed commencement and duration of contracts to be negotiated with the target:

*Under the proposed collective bargaining arrangement, KM proposes to collectively negotiate on behalf of The Tracks with ANDRA and IHRA. KM proposes to negotiate the price at which The Tracks purchases sanctioning permits from ANDRA and IHRA. KM would also like to collectively negotiate with ANDRA and IHRA other terms and conditions such as the cost, the ability to stage competing championship racing events and other conditions and dispute resolution procedures.*

*Under the proposed arrangement the:*

- *KM proposes to represent The Tracks in negotiations with ANDRA in relation to the purchase of sanctioning permits with the ability to stage competing championship racing events. KM proposes to form a single collective bargaining group between the three consenting tracks and ANDRA, and a separate single collective bargaining group between the three consenting tracks and IHRA;*
- *Each of the tracks would not be compelled to have KM negotiate on their behalf and would remain free to opt out of the proposed arrangement and negotiate individually with ANDRA and IHRA;*

- *KM will not negotiate actual contracts, only agreed terms and conditions; and the proposed collective bargaining arrangement will not involve a collective boycott.*

- (h) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to possible price agreements:

*KM proposes to negotiate on behalf of The Tracks with ANDRA and IHRA in relation to the price that the tracks pay for the purchase of sanction permits.*

- (i) Identify any parts of the proposed collective arrangements described in 3 (g) which relate to a possible or proposed exclusionary provision(s), including but not limited to:

- (i) the nature of the proposed or possible exclusionary provision(s) (for example an agreement to withhold supply of the relevant goods or services to the target); and
- (ii) the circumstances in which the collective bargaining participants would engage in the exclusionary provision(s), including but not limited to:
- (A) details of the events that would trigger any such activity; and
  - (B) details of the process that would be followed in undertaking any such activity; and
  - (C) details of any proposed period of notice to be given to the target prior to the commencement of such activity; and
  - (D) details of any dispute resolution procedure to be applied or offered to the target prior to the commencement of such activity:

*KM does not propose to engage in conduct which relates to an exclusionary provision. In the event that agreement cannot be reached through collective bargaining with ANDRA or IHRA, individual agreement will be pursued by the participants of the group. To date, due to transaction costs of dealing with a US based supplier, it has not been profitable for members to deal individually with IHRA.*

## **Section C – public detriments**

### **4. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

*KM considers the market affected by the proposed collective bargaining arrangement include the national market for the supply of sanction permits and the market of promoting drag racing championship events to racers and spectators of the sport. The following details are provided about the industry:*

- *There are approximately 21 drag racing facilities throughout Australia;*
- *KM represents 3 drag racing facilities in 3 different states;*
- *ANDRA is currently the sole supplier of sanction permits in the Australian market;*

- *IHRA supplies sanctioning services to approximately 86 drag racing facilities internationally including the USA, Canada, the Bahamas and New Zealand;*
- *ANDRA also competes with drag racing facilities by promoting their own racing series in competition to those staged by The Tracks;*
- *ANDRA to date has refused to issue sanctioning permits for competing championship racing events.*
- *ANDRA also competes with drag racing facilities by selling sponsorship, TV rights and merchandise in competition to other drag racing facilities;*

## **5. Public detriments**

- (a) What will be the likely effect of the notified conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets? In answering this question please provide facts and information to support the claims made:

*KM submits that any anticompetitive detriments resulting from these arrangements will be minimal as ANDRA already enjoys a monopoly position for the sale of its sanctioning permits which are sold on a take it or leave it basis, with no room for bargaining. The Tracks are also constrained by having to compete in the very competitive entertainment sector. Each of the tracks involved in this group continued to be constrained as they compete in the Australian market of supplying drag racing facilities for racers and race fans. The voluntary nature of the arrangement will also reduce any possible public detriment.*

- (b) What other detriments may result from the notified conduct? In answering this question please provide facts and information to support the claims made:

*N/A*

## **Section D – public benefits**

### **6. Public benefit claims**

- (a) Provide details of the public benefits resulting or likely to result from the proposed arrangement. In answering this question please provide facts and information to support the claims made:

#### *Increased input into contracts*

*Currently The Tracks as individuals are in a weak bargaining position when negotiating with ANDRA due to the monopoly in the supply of sanctioning permits enjoyed by ANDRA. The proposed collective bargaining arrangement will improve members' bargaining power and will allow them to move away from prices, terms and conditions into which they have little input and to provide for improved contractual communication between The Tracks and ANDRA on factors such as the staging of competing championship racing events. The dispute resolution process will also ensure members have an agreed process to follow in circumstances where disputes arise. There is currently no such process in place.*

### Promote industry cost savings

*KM encourages the tracks in this group to obtain independent legal and financial advice prior to entering into a contract with ANDRA or IHRA. If the collective bargaining arrangements are authorised, The Tracks will benefit from significant transaction cost savings in relation to the supply of sanction permits by encouraging more competition in the market place. IHRA may also achieve savings due to securing a critical mass in the Australian market place which would justify them entering the Australian market place. This collective bargaining, if authorised, has the potential, through increased competition in the supply of sanction permits, to substantially reduce the cost of staging drag racing events. These savings would flow through reduced costs to the racing competitors and to the race fans. The competitive pressure under which The Tracks operate in the supply of entertainment events will ensure that the cost savings are likely to be passed on. The cost of sanction permits in Australia is in the order of thirty times higher than in other international markets due mainly to the substantial market power held and exercised by ANDRA. By allowing KM to negotiate with both ANDRA and IHRA a lower price for sanction permits is likely to occur.*

### New market opportunities

*As a collective bargaining group, The Tracks will also be able to promote competing championship series creating more racing opportunities for racers and the race fans. Through the proposed collective bargaining arrangement, reduced sanctioning fees, will also allow The Tracks to be more competitive in the entertainment sector further encouraging growth in the sport.*

*By working together, The Tracks can supply IHRA with a critical mass in terms of market share which has not been available to them previously. Due to the high cost of entering a new market, such as Australia, IHRA is unlikely to enter the market without being assured it can achieve this critical mass. The Tracks will also be able to compete internationally as many USA based teams are already familiar with IHRA and are more likely to consider Australia as a destination to compete. As a result there is a new market opportunity for drag racing, and increased competition, as a result of the proposal.*

**Section E - authority**

**7. Contact details**

- (a) Name, contact telephone number and address of person authorised by the notifying parties to provide additional information in relation to this application:

*Brad Miocevich*

*Chairman Kwinana Motorplex Pty Ltd*

*4 Mill Point Close*

*South Perth, WA 6151*


*Phone: 0411 887 311*

*bradm@veem.com.au*

*(refer to direction 12)*

Dated... *15/11/2015* .....

Signed by/on behalf of the applicant

 .....

(Signature)

*John Bradley Miocevich*

(Full Name)

*Kwinana Motorplex Pty Ltd*

(Organisation)

*Chairman*

(Position in Organisation)



Attachment A

Record of Meeting

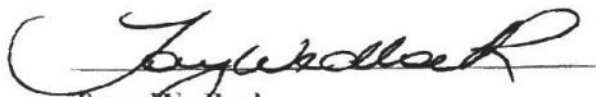
Kwinana Motorplex Pty Ltd, Willowbank Raceway Inc and Sydney Dragway Ltd were present at the meeting held at the Stamford Plaza Hotel at Sydney Airport on at 10:00am 18 November, 2015.

Each of the companies present decided unanimously to lodge a collective bargaining notification with the ACCC, in relation to proposed collective bargaining with Australian National Drag Racing Association Ltd (ANDRA) and International Hot Rod Association (IHRA).

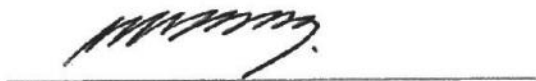
Signed



John Bradley Miocevich  
Chairman - Kwinana Motorplex Pty  
(Applicant)



Tony Wedlock  
Chairman - Willowbank Raceway Inc



Joseph Rodriguez  
Chairman - Sydney Dragway