

Our Ref: PC:324247
Your Ref: CB00324-325

4 December 2015

CONFIDENTIAL

Australian Competition and Consumer Commission
Adjudication Branch
23 Marcus Clarke Street
CANBERRA ACT 2601

Att: Ms Elizabeth Batten

Email: adjudication@acc.gov.au

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Dear Madam

Collective Bargaining Notification CB00324-325

We act for the Australian National Drag Racing Association Limited (**ANDRA**).

We refer to your letter dated 27 November 2015 containing a Collective Bargaining Notification (**Notification**) lodged by Kwinana Motorplex Pty Ltd (**Perth Motorplex**), Willowbank Raceway and Sydney Dragway (collectively, the **Tracks**).

To ensure all of the relevant information is before the Commission, ANDRA has instructed us to lodge a submission in relation to the Notification.

Our client requests that the Commission take into account the matters set out in this letter before deciding whether to grant collective bargaining immunity to the Tracks.

Safety issues

The Tracks have applied for collective bargaining immunity to deal as a collective unit with our client and the International Hot Rod Association (**IHRA**). Both our client and IHRA are in the business of providing sanctioning services to the Tracks. Our client is also in the business of providing sanctioning services to the majority of dragstrips in Australia.

Sanctioning services include, but are not limited to, the provision of sanctioning permits, inspection of and enforcing compliance with safety regulations, the provision of stewards and

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referees to events for individual events, providing of stewardship and referee services for those individual events, resolving disputes between competitors, and the administration of national and regional drag racing competitions (including the administration of prizes, certifications and trophies).

Sanctioning services are provided to individual tracks on an event-by-event basis. Our client therefore considers applications by individual dragstrips (including the Tracks) on an event-by-event basis. Matters regarding safety inspections, stewardship and administration of competitions differ between individual tracks, and between individual events.

On this basis, our client questions whether there will be any substantial benefit to permitting individual tracks to negotiate and deal as a collective. Our client will still be required to deal with drag strips on an individual basis.

Differing legislative frameworks

Differing legislative frameworks governing dragstrips exist around Australia. Each State has its own regime for governing drag racing activities that take place within each individual State. For example, drag racing activities in New South Wales are governed by the *Motor Vehicle Sports (Public Safety) Act 1985* (NSW). Drag racing activities in the Australian Capital Territory are governed by the *Motor Sport (Public Safety) Act 2006* (ACT).

Further, each dragstrip is run under discrete ownership and licensing regimes. In New South Wales, Sydney Dragstrip is subject to a licence by the NSW Office of Sport and Recreation. In Western Australia, Perth Motorplex operates under a licence granted by VenuesWest. Each of these licences creates distinct requirements for the sanctioning and administration of individual drag racing events that take place at those individual dragstrips.

Given the differing legislative and licensing frameworks under which dragstrips throughout Australia operate, there would appear to be no discernible practical benefit to the granting of an immunity to the Tracks from liability for collective bargaining. Again, insofar as individual dragstrips (including each of the Tracks) seek to obtain sanctioning services from our client, our client will be required to deal with each dragstrip individually, on a track-by-track, event-by-event basis.

Our client would naturally support any legitimate cost savings measures. However, for the above reasons, our client questions the existence of the 'industry cost savings' which the Tracks claim will emanate from a collective bargaining immunity (at page 7 of the Notification).

Scope of Notification

The Notification relates to both ANDRA and IHRA. Perth Motorplex has indicated to our client that it has no intention of dealing with ANDRA and will not be approaching ANDRA for sanctioning.

In the circumstances, our client questions the scope and terms of the Notification.

Impact on market

The Tracks are currently the three largest drag racing venues in Australia. If the Tracks are permitted to bargain collectively, our client questions the impact on the bargaining power and operations of the other smaller tracks in Australia.

Our client also questions the ability of smaller tracks to compete if the Tracks use their collective position to seek to negotiate permit conditions (eg, relaxed administrative, technical and safety requirements) which provide them with a cost or operational advantage not available to other tracks.

Misrepresentations

Our client also takes this opportunity to correct some misrepresentations made by the Tracks in their Notification. We identify these representations below by the paragraph numbers given to them in the Notification.

Paragraph 3(b)

Contrary to the Tracks' assertion, IHRA does not provide "the same" sanctioning permits as our client. Our client cannot speak for IHRA but our client does not provide "blanket" permits on an annual basis for all events run at any given dragstrip. As described above, our client considers applications for permits on a case-by-case basis.

Paragraph 4

Contrary to the Tracks' assertion, our client has not refused to issue sanctioning permits for the Tracks' most recent racing series events. Our client offered to issue sanctioning permits on similar conditions to those offered to the Tracks for previous events. The permit conditions now make it clear that our client's intellectual property rights (which are licensed for use under the permit) must be acknowledged and respected. Sydney Dragway proceeded to obtain a permit from ANDRA on that basis. Perth Motorplex refused to take sanctioning permits from our client on that basis.

Paragraph 5(a)

In paragraph 5(a), the Tracks implicitly assert that our client has in some way abused its market position by offering its sanctioning services on a "take it or leave it" basis. This is not the case; our client has always negotiated on good-faith terms with all of the dragstrips around Australia, including the Tracks. Further, given IHRA's willingness to enter the market for sanctioning services, the Tracks' assertion that our client holds some kind of monopolistic market position cannot be sustained.

Paragraph 6(a)

Again, the Tracks' make an implicit assertion that our client has in some way abused its market position and that individual dragstrips are in a 'weak bargaining position' with our client. This is not the case. Our client has enjoyed longstanding commercial relationships with dragstrips throughout Australia since its inception and continues to maintain good relationships with all of those dragstrips (other than the recent issues with the Tracks). Our client's role as the sole CAMS delegate responsible for Australian drag racing means that everything ANDRA does is for the interests of the sport of drag racing.

Conclusion

Thank you for providing our client with an opportunity to make submissions in relation to the Notification. Please inform us when the Commission has made a determination on the matter.

Yours faithfully

Handwritten signatures of Peter Campbell and Sanjay Schrapel in black ink.

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