

ANTI-TRUST POLICY FOR OLYMPIC EQUIPMENT

1 The scope of competition (antitrust) law

- 1.1 Sports federations, including World Sailing, are subject to competition laws. The practice of sport is subject to competition laws as far as it constitutes an economic activity.
- 1.2 Competition law, in general, governs two main areas of World Sailing's work:
 - 1.2.1 The law prohibits agreements which may affect trade between countries and which prevent, restrict or distort competition; and
 - 1.2.2 The law prohibits bodies in a dominant position in a market from abusing that position in a way which may affect trade adversely.
- 1.3 These prohibitions are enforced by national and international governmental bodies. Breaches can lead to substantial sanctions (including fines of up to 10% of worldwide turnover), damages and court orders prohibiting the conduct in question.
- 1.4 Sailing authorities, such as World Sailing and its MNAs, are covered by these laws and our rules amount to decisions which are subject to review under the laws. In particular, because World Sailing makes the rules governing Olympic and World Sailing events – including what equipment and suppliers can be used by competitors – it could be viewed as having a dominant market position in the organisation of sailing events, in which case the abuse of dominance prohibition is potentially applicable.
- 1.5 The legal prohibitions apply to the rules and standards established by World Sailing when setting the conditions for equipment to be used in competition. There are recognised restrictions that are permitted for a variety of sporting reasons, such as:
 - 1.5.1 safety reasons;
 - 1.5.2 providing sporting performance or spectator appeal; or
 - 1.5.3 ensuring that similar equipment is used by all competitors in the interests of fairness.
- 1.6 However, even these rules may breach the prohibitions where they impose disproportionate or arbitrary restrictions on equipment manufacturers/suppliers. In particular, it is important that any rules are objective and only exclude manufacturers from the market where there are legally justifiable reasons to do so.

2 How World Sailing complies with competition law

- 2.1 World Sailing is committed to complying with its obligations under all applicable antitrust and competition laws.
- 2.2 There are two areas of World Sailing that require particular attention.

- 2.3 First, the governance, administration and management of Olympic Events and World Sailing Events. As the world governing body for the sport of sailing, World Sailing controls a number of areas such as the rules and technical, sporting and some economic aspects of competitions. The economic aspects include commercial payments being made by participants in sports competitions in order to access the competition (including the use of equipment). Therefore, World Sailing must ensure where its rules impose restrictions on the commercial enterprises' (such as equipment suppliers) commercial conduct, such restrictions are objectively justified and proportionate.
- 2.4 Second, there is the market for the production and supply of boats to teams participating in Olympic, World Sailing and Class Events. The supply of boats for each Olympic Class can be a separate market. This means where a Class has restricted or sole manufacturers/suppliers, there is a exclusivity (as there is no other competition for the supply of boats). As World Sailing rules to a certain extent sets the conditions for this market, its rules, decisions and agreements as regards boats and related equipment need careful assessment under competition law.
- 2.5 In order to ensure compliance in these areas, World Sailing uses a number of policies and agreements, the main policy is Olympic Equipment Policy which is included in Olympic Class Agreements:
- 2.5.1 Once equipment is selected for an Olympic Event, there is a mandatory regular review of its selection. This ensures that, even though the original selection decision was based on an open and fair evaluation, a subsequent exclusivity situation if only one supplier is selected is not permitted to continue without review. These reviews permit competing equipment and competing manufacturers of existing equipment to bid to access the market on a fair and objective basis. This reduces risk of monopolies and ensures existing manufacturers do not become complacent or abuse their position.
- Note: the fact that an evaluation results in the grant of the exclusive right to supply equipment for a given event organised by World Sailing to one supplier (e.g. where the selected equipment may only lawfully be manufactured by one supplier) is not, in itself, incompatible with the competition rules.*
- 2.5.2 Via its contracts with Olympic Classes and their manufacturers, World Sailing monitors production quality and prices of manufacturers, in particular sole manufacturers, to ensure that the supplier(s) is satisfying demand at acceptable quality and service levels. In the event of a breach of the contracts (e.g. consistent failure by the supplier to maintain acceptable quality and service levels), World Sailing has the right to require re-tendering for the production of equipment of the Class.
- 2.5.3 When selecting equipment for a new Olympic Event (or when reviewing the equipment in an existing Olympic Event), evaluations are held. These are based on open tender processes with assessment against objective criteria. These ensure that a fair and competitive process is followed in awarding the economic rights that are associated with producing and selling the equipment.

3 Reviews of Olympic Events

- 3.1 Under World Sailing Regulation 23.5, World Sailing carries out regular reviews of the equipment used to compete in Olympic Events. This review process is in addition to the sporting reviews of the Olympic Events. These reviews ensure that:
- 3.1.1 competing equipment and competing manufacturers of existing equipment can bid to be selected for Olympic Events and therefore access the market on a fair and objective basis;
- 3.1.2 the risk of monopolies is reduced; and

- 3.1.3 manufacturers do not become complacent, remain price-competitive, produce high-quality equipment, and do not abuse their market positions.
- 3.2 Under the review procedure, the equipment selected for each Olympic Event is subject to re-evaluation every eight years (i.e. two Olympic cycles). This timeframe has been selected in order to balance the need for regular reviews and the need for manufacturers and commercial bodies to have a sufficient period of time to justify the financial investment needed to supply Olympic equipment. It also provides certainty to competitors, MNAs and teams as they invest and plan for the Olympic cycles.
- 3.3 When a review is carried out, the Board is required to ensure that the review procedures meet the following requirements:
 - 3.3.1 classes and manufacturers of other equipment suitable for the Event in question are allowed to tender for its use in the Event;
 - 3.3.2 the criteria to be used are open, fair and non-discriminatory;
 - 3.3.3 the criteria to be used are approved by the specialist policy committee for equipment matters (the Equipment Committee) and are published publicly as part of the 'invitation to tender'; and
 - 3.3.4 the procedures must be approved by World Sailing's Council prior to publication.
- 3.4 Once a review is complete, the World Sailing Board makes a recommendation to the World Sailing Council to either retain the current Equipment, evolve the current Equipment, or to select new Equipment. At this time, the Board can also make other recommendations to Council which it considers necessary to secure compliance with legal requirements.

4 Olympic Class Contracts

- 4.1 Once equipment has been selected for an Olympic Event, World Sailing enters into a contract with both the relevant Class Association and each of the commercial parties involved in the selected equipment. One of the central purposes of this contract is to protect the integrity of the equipment and to ensure fairness (in both sporting and economic terms) for competitors. This contract governs a number of areas including:
 - 4.1.1 evolution of the equipment;
 - 4.1.2 price stability (including the factors which may justify an increase in price);
 - 4.1.3 the minimum number of manufacturers and their locations;
 - 4.1.4 quality assurance (including consistency of production, production tolerances, prohibitions on customer-requested changes, compliance with equipment certification programmes and the reporting of material deviations or problems);
 - 4.1.5 rights for World Sailing to input into equipment building specifications to ensure that equipment is robust and will have longevity of use (a review of the design of all elements of the 'as sailed' boat);
 - 4.1.6 requirements that any new Olympic equipment has a prototype period to ensure robust equipment has been defined, in the 'as sailed' condition (extending trials after selection to validate the building specifications prior to high rates of production);

- 4.1.7 inspections of shipments prior to delivery to ensure that the quality system is having the desired effect on the finished products delivered to the sailors;
 - 4.1.8 standardisation of warranties to customers and the reporting of warranty claims; and
 - 4.1.9 compliance with antitrust and competition laws.
- 4.2 Through the contract, World Sailing is committed to complying with its obligations under all applicable antitrust and competition laws. Manufacturers and suppliers agree that if World Sailing considers that they have consistently breached contractual quality and service levels (or a breach is not remedied within 30 days of direction to do so) then they can be required to license all necessary rights to a third party selected by World Sailing through objective criteria. This licence will be on fair, reasonable and non-discriminatory terms to enable the new third party to manufacture and supply the Class equipment to customers as an alternative source of supply to the Class supplier. Any dispute over this licensing is referred to an independently appointed expert for determination.
- 4.3 Through this approach, World Sailing ensures that there is sufficient economic incentive and reward for commercial parties who participate in the Olympic equipment market. However, the contract also provides that any sole or restricted supplier exclusivity cannot be abused and there are effective sanctions in place to ensure compliance with the legal and contractual requirements.
- 4.4 World Sailing has also considered the possibility that all commercial parties involved in the production and supply of Olympic equipment could be required, as a blanket condition of participating in this market, to surrender their commercial and intellectual property rights to World Sailing (which could then allow any other parties to access the market). This policy carries substantial risk that it could be challenged under the competition rules as an anticompetitive decision and/or an abuse by World Sailing of its position as the sport's governing body.

5 Equipment evaluations

- 5.1 As part of its processes for selecting new Olympic equipment, and for reviewing existing equipment, World Sailing undertakes equipment evaluations. World Sailing Regulation 23.1.3(e) states that new equipment shall only be selected following Equipment trials or other evaluation against the specified criteria.
- 5.2 Evaluations are held following a tender process which is open to all interested manufacturers to participate in. Tenders are assessed against specified criteria and then selected bidders are invited to participate in the evaluation. The criteria are defined in advance and published as part of the request for proposals.
- 5.3 Following the evaluation process, a report is presented to the Equipment Committee which then makes a formal recommendation to the World Sailing Council.

6 Monitoring of antitrust and competition law compliance

- 6.1 Under the World Sailing Constitution, the World Sailing Board is responsible for the corporate and financial affairs of World Sailing. It is also responsible for implementing the policy decisions of Council.
- 6.2 The World Sailing Council considers and determines the policy and strategic priorities of World Sailing. It is advised in this task by the Equipment Committee (the specialist policy committee for equipment matters).
- 6.3 Under these responsibilities, the Board and the World Sailing staff monitor compliance with competition and antitrust law, taking expert external advice and putting in place the relevant

contractual requirements. The Equipment Committee is consulted on competition matters, and any recommendations for policy changes are made to Council.

- 6.4 Any requests, complaints or concerns about antitrust or competition law matters should be sent to the Chief Executive Officer at office@sailing.org