

**Australian Competition  
&  
Consumer Commission**

**PRE-DECISION CONFERENCE**

**Minutes**

**Exclusive dealing notification N94049  
lodged by Ice Hockey Australia**

**21 January 2010**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Pre-Decision Conference:  
Exclusive dealing notification N94049  
lodged by Ice Hockey Australia**

21 January 2010

Australian Competition and Consumer  
Commission, Sydney Office  
123 Pitt Street  
Sydney

**Attendees:**

*Australian Competition and Consumer Commission*

Peter Kell, Deputy Chair  
Richard Chadwick, General Manager, Adjudication Branch  
Teresa Nowak, Acting Director, Adjudication Branch  
Lauren Roy, Senior Project Officer, Adjudication Branch

*Ice Hockey Australia*

Mr Don Rurak, President  
Mr Kevin Brown, Treasurer  
Mr Tim McMahon, Ice Hockey NSW President and IHA Board Delegate

*Sydney Ice Hockey League*

Mr Mike Costin

*Sydney Ice Arena*

Mr Ellis Southee

Conference commenced: 10am

**Deputy Chair Peter Kell** welcomed attendees, made some introductory remarks outlining the purpose of the conference, declared the pre-decision conference open and invited Don Rurak, on behalf of Ice Hockey Australia, to make an opening statement.

**Mr Don Rurak** opened by explaining that IHA has a national mandate to look after its membership. This means ensuring the health and safety of members, having the ability to effectively discipline members who bring the sport into disrepute and complying with its obligations to the International Olympic Committee (IOC), Australian Olympic Committee (AOC), International Ice Hockey Federation (IIHF) and Australian Sports Commission (ASC).

**Mr Rurak** made the following comments throughout the conference:

- It is not IHA's intention to prevent people from playing ice hockey. It is of no consequence to IHA if people choose to establish their own leagues.

### *IHA's obligations as an IIHF member*

- IHA is a member of the IIHF and must comply with IIHF statutes and bylaws. IHA brought this issue to the ACCC's attention in July 2009 when the exclusive dealing notification was lodged.
- The ACCC's draft notice notes that there are possible implications for IHA's membership of the IIHF if the notified conduct does not proceed. The IIHF will be meeting to discuss this issue prior to the Olympics. This is a serious issue and IHA would not like Australia to lose its representation on the international stage.
- IIHF has discovered that a player who was suspended in Canada for allegedly hitting an official with a hockey stick is participating in a non-sanctioned competition in Australia. IHA is concerned that there is no formal coordination between ice hockey organisations in Australia that would prevent a player suspended in one league for dangerous conduct from competing in another league.

### *IHA organisational structure*

- IHA is a national governing body, elected by its members.
- IHA has no jurisdiction over its state associations or over state-based leagues.

### *IHA fees*

- IHA's membership fee is \$80 per player, plus insurance costs. Any additional costs incurred by players participating in sanctioned competitions are imposed by the state associations and the clubs themselves.
- IHA does not receive any of the fees for International Transfer Cards (ITCs); these fees are sent to the IIHF. As soon as a player chooses to compete in a different country, the IIHF by-laws govern the arrangement and the IHA has no alternative but to comply.

### *Sanctioning*

- Ice hockey competitions within Australian states are controlled by the relevant state association. If an ice hockey competition wants sanctioning in, for example, NSW, they need to seek sanctioning from Ice Hockey NSW.
- Sanctioning for Ellis Southee's league, the Australian International Cup, was a matter for consideration by the IHA as it related to a national tournament. IHA denied sanctioning as it can only recognise one national league.
- The notified conduct applies to all IHA members, regardless of whether they are a player or official.
- Every season is a clean slate, so there is no penalty imposed on a registered IHA member who chooses to play in an unsanctioned league one season and then returns to IHA the following season.

### *Hockey Canada policy*

- Ice hockey tournaments in Canada are run specifically for winter, Hockey Canada does not recognise summer leagues. As soon as a player is playing in a Hockey Canada competition, they cannot participate in a summer competition.

**Deputy Chair Peter Kell** invited Mike Costin, on behalf of the Sydney Ice Hockey League, to address the conference.

**Mr Mike Costin** made the following introductory and general comments throughout the conference:

- The most recent IHA submission has a letter attached from the IIHF, outlining IHA's obligations as an IIHF member. This issue has taken a long time to come before the ACCC. If it was a pre-eminent issue, IHA would have discussed it with the IIHF prior to making a submission and sought representations/advice from the IIHF at that time.
- In dealing with the IIHF, IHA should argue that Australia is a very small and unique market which should have its own system of governing ice hockey.
- Australia is a different market when it comes to ice hockey – there are hundreds rather than thousands of players. This reduces the level of participation to a level that is barely sustainable. The United States, for example, has 7000 ice rinks.
- It costs players \$420 each for a season in the Sydney Ice Hockey League. If those players are subject to a \$200 price increase, they have the option of switching leagues and playing in, for example, a Sydney Ice Arena competition. Players should have the same flexibility to switch between sanctioned and unsanctioned ice hockey organisations.
- IHA offers players the opportunity to compete in state and national competitions, but this is of no consequence to players who do not wish to play representative ice hockey.
- From a personal perspective and also from the perspective of running a business, competition is the key to success. By lodging the exclusive dealing notification, IHA is asking for the ability to run their business without being subject to competition.

**Deputy Chair Peter Kell** invited Ellis Southee, on behalf of the Sydney Ice Arena, to address the conference.

**Mr Ellis Southee** made the following introductory and general comments throughout the conference:

- The Sydney Ice Arena's objective is to increase participation in the sport and provide ice hockey players with a choice between sanctioned and non-

sanctioned competitions. SIA also wants the opportunity to keep ice rinks viable.

- IHA is not interested in local or regional ice hockey, only in the national teams. SIA promotes ice rinks to the public, runs mini hockey on ice, provides early hockey development and encourages players to join an ice hockey club. SIA fills a gap in the market not provided by other organisations.
- In Canada, there are hundreds of non-sanctioned leagues that operate, for example, in Montreal and Toronto, and Canada is the largest ice hockey market in the world.
- In the United States and Canada, players play up to four times a week. In Australia, players are seeking greater opportunities to play ice hockey. The Sydney Ice Arena runs a number of unsanctioned events in summer, and also in winter.
- IHA has tremendous power to limit competition and restrict participation in the sport.

#### *Unsanctioned competitions run by Sydney Ice Arena*

- Sydney Ice Arena should have the right to establish unsanctioned ice hockey events, and players should have the right to participate in sanctioned and unsanctioned games without the threat of being fined or banned from competitions. Officials should also have the freedom to maximise their revenue by participating in sanctioned and unsanctioned competitions.
- SIA is running several unsanctioned events at the moment. This supports ice hockey in Australia by increasing participation in the sport and keeping ice rinks viable.
- Unsanctioned events rely on the participation of IHA members. If players do not have the freedom to participate in sanctioned and unsanctioned games, there is less participation in ice hockey and a reduction in the viability of ice rinks.
- In 2009, Sydney Ice Arena established an unsanctioned league – the Australian International Cup. Over 9000 paying customers attended the event, and the revenue for the rink was considerable. SIA applied to Ice Hockey NSW to have this event sanctioned. The matter was referred to IHA. Ellis Southee was informed, via email, that the event would not be sanctioned. The email noted that if the event had received sanctioning, there would be certain costs involved:
  - \$550 for every American player
  - \$1000 for every European player
  - \$242 registration fee per Australian player

- SIA's team, the Rhinos, have been participating in the National Ice Hockey League (NIHL) for three years. Without the revenue derived from the Rhinos, the SIA rinks would not be viable.
- Ice rinks are a marginal business. If the notified conduct proceeds, SIA will consider closing down its rinks.
- SIA is running a competition called the Wilson Cup. SIA wanted to continue running the competition as a summer league. One of the teams involved has stated that they cannot have their players participate, because they need to comply with IHA's rules which prevent registered players playing against unregistered players.

#### *Player costs*

- The average cost per player to participate in SIA's non-sanctioned competitions is \$395. This fee includes the cost of ice time and insurance. IHA charges over \$800 for a similar competition.

#### *IIHF issue*

- The letter from the IIHF has arrived at a late stage in the process. If the IIHF letter had been the catalyst for lodging the notification, it would have had more credence.
- Unsanctioned events have been occurring for over 100 years. To Ellis Southee's knowledge, the IIHF has never shown any interest in these.

**Deputy Chair Peter Kell** asked whether the sanctioned and non-sanctioned competitions have similar insurance policies.

**Mr Ellis Southee** indicated that all of SIA's non-sanctioned ice hockey events are fully insured, with insurance provided by Sportscover, the same company IHA obtains its insurance from.

**Deputy Chair Peter Kell** asked what costs would be incurred by a non-sanctioned league that sought sanctioning by IHA.

**Mr Kevin Brown** indicated that there is no sanctioning fee for leagues that are not operated by IHA; the only requirement is that players on the ice are registered members of IHA.

**Mr Brown** explained that:

- If there are international players involved in a competition in Australia, IHA must charge a fee and purchase an ITC for that player. The money received from the ITC is sent to the IIHF.
- For domestic players, the fees charged by IHA cover ice time for training and games as well as the payment of officials for those games. IHNSW charges senior players \$225, of which \$115 is used by IHA to cover the costs of running the competition.

**Mr Tim McMahon** explained that for a winter league, IHNSW receives \$225 of the total fee ; \$125 goes to IHA. The residual goes to the overheads, such as salaries. Any remaining cost incurred by a player would be fees imposed by the club.

**Deputy Chair Peter Kell** noted that the frequency of competitions in Australia distinguishes it from larger ice hockey markets. Deputy Chair Peter Kell asked what IHA's policies are in terms of running competitions outside winter.

In response, **Mr Don Rurak** submitted that:

- IHA does not own ice rinks but rather takes the ice time that is allocated to it. Establishing additional ice hockey leagues does not assist IHA if it cannot acquire the ice time to support these leagues. There are 23 ice rinks in Australia.
- IHA's membership would gladly expand the range of competitions available if they could acquire more ice time.

**Deputy Chair Peter Kell** confirmed that no party wished to make any further comments. The Deputy Chair closed the conference by noting that parties could provide further submissions to the ACCC by Friday 29 January 2010 and that the ACCC would provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed: 11.30am