

Proposals for the Supply of Olympic Equipment

1. Introduction

- 1.1 Following concerns raised with World Sailing in late 2016, the Board and Executive Office have undertaken a review of the arrangements for the supply of Olympic Equipment. This review has been undertaken in consultation with the Olympic Classes, the Equipment Committee's Working Party and external legal advisors.
- 1.2 The review has looked at three main areas:
 - (a) The criteria and processes used to select new Olympic equipment.
 - (b) The process for reviewing the currently selected Olympic equipment.
 - (c) The processes for monitoring the production quality of Olympic equipment.
- 1.3 In particular, the review has examined the impact of the competition law of the European Union (sometimes known as "anti-trust" or "anti-monopoly" legislation) on these areas.
- 1.4 The Board is recommending these proposals to Council for approval in principle. If approved, further details and Regulation amendments will be brought forward to Council in November 2017.

2. European Union legal framework

- 2.1 Rules of sport governing bodies which impose conditions or restriction on the supply or use of equipment to be used in events must comply with the competition provisions of EU law (principally Articles 101 and 102 of the EU Treaty).
- 2.2 These restrictive rules can be legally justified by a variety of sporting reasons such as:
 - (a) providing sporting performance or spectator appeal;
 - (b) ensuring that similar equipment is used by all competitors in the interests of fairness; or
 - (c) safety reasons.However, the rules cannot be disproportionate or arbitrary.
- 2.3 World Sailing has a number of rules concerning the equipment that can be used in Olympic events. World Sailing selects what equipment can be used, enters into contracts for designating equipment as a World Sailing Class and Olympic Class, and has close scrutiny of the Olympic Classes (including their builders and manufacturers).
- 2.4 Olympic events have two economic markets to consider:
 - (a) The market for the governance, administration and management of Olympic events
 - (b) The market for the production/supply of permitted boats to teams participating in Olympic or World Sailing events or in Class events

- 2.5 World Sailing is the dominant party in the first market (event governance) but is not present on the second market (production). However, because of its position on the first market, World Sailing can influence commercial competition in the second market. The rules governing which equipment can be used in Olympic events, and which suppliers are entitled to supply boats for Olympic events, have the potential to prevent/distort/restrict competition in this second market.
- 2.6 Therefore, a central issue is the effect that World Sailing's rules have on the market for the manufacture and supply of Olympic Class equipment (including all parts of the equipment).
- 2.7 The current model of equipment supply is that Council selects an event for inclusion in the Olympic programme and selects the equipment to be used. Depending on the specific equipment, different supply arrangements exist (ranging from multiple builders through to single manufacturers).
- 2.8 In making these decisions, World Sailing must carefully monitor the market at two levels:
- (a) First, by selecting one particular piece of equipment for the event (a Class), a monopoly is created (the exclusion of all other classes who might be eligible for the event).
 - (b) Second, if the selected equipment (Class) has restricted or sole manufacturer, then a monopoly can exist (the exclusion of other manufacturers).
- 2.9 In addition, World Sailing can be said to have a "dominant position" in the market under EU law. This arises because of World Sailing's position as an international federation and its role and responsibilities towards sailing in the Olympic Games and more generally. This places a legal obligation on World Sailing not to abuse this position.
- 2.10 Assessing these principles against the current situation, a number of areas require review:
- (a) Once equipment is selected for an event, there is no mandatory regular review of its selection. Even if the original decision was based on an open and fair evaluation, the longer the equipment is in place without review, the greater the risk of legal challenge as any monopoly continues.

Therefore, there must be a mechanism which allows competing equipment and competing manufacturers of existing equipment to bid to access the market on a fair and objective basis. This will reduce the risk of continued monopolies and ensures existing manufacturers do not become complacent or abuse their position.
 - (b) Production quality and prices of manufacturers, in particular sole manufacturers, must be monitored to ensure that there is no abuse of a dominant market position.
 - (c) When granting Olympic status to new equipment, evaluations must continue to be held. Evaluation allows for an open tender process with assessment against objective criteria. This ensures that a fair and competitive process is followed in awarding the economic rights that are associated with producing and selling the equipment.
- 2.11 The proposals below address each of these areas.

3. Review of Equipment

- 3.1 In order to ensure a proportionate but regular review of Olympic equipment, the following processes will be applied:
- (a) Every 8 years, the equipment selected for Olympic Events will be formally re-evaluated by World Sailing. There will be no review of the Events selected.
 - (b) The evaluation process will allow classes and manufacturers of other equipment suitable for the event to tender for its inclusion.
 - (c) The evaluations will be conducted against criteria which are open, fair and non-discriminatory. The criteria will be agreed by the Board and the Equipment Committee and published as part of the 'invitation to tender'. There can be two different approaches to the criteria used: either no change in criteria from the original selection or when there is a change in criteria. Original equipment can evolve with changing criteria and still compete for selection, but the equipment is resolicited and evaluated.
 - (d) Evaluations will be staggered so not all are completed at the same time (i.e. all Events will not be reviewed at the same time). Council will approve the process for the selection and evaluation of Equipment.
 - (e) For future World Sailing events where it is contractually possible to do so, the supply of equipment which is supplied or charter equipment to competitors must be subject to open tendering by the event organizers.
- 3.2 This process will be separate from the existing review process in Regulation 23 (where between 1 to 3 Events and Equipment are selected for review from a sport perspective).
- 3.3 If agreed by Council, this would mean the following processes would be in place for 2024:

	Antitrust Review	Existing Sport Review
September 2017	Submission made from the Board to change Regulations to give effect to Council's decision	-
November 2017	Regulation changes made	Council must select between 1 - 3 Events to review for 2024 [Reg. 23.1.3(b)]. All other Events and associated Equipment confirmed.
November 2018	First antitrust reviews completed with recommendation to Council	Council must decide whether to retain, evolve or select new Events/Equipment

November 2019	-	Final equipment decisions if evolution or evaluations decided in Nov 2018
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4. New Equipment - Evaluations

4.1 World Sailing has already undertaken several equipment evaluations in recent years (Mixed Multihulls (Olympic and Youth), Women's Skiff, Kiteboarding). Evaluations are held following a tender process which is open to all interested manufacturers to participate in. Tenders are initially assessed on paper 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.

4.2 Regulation 23.1.3(e) states:

“(e) New Equipment shall only be selected following Equipment trials or other evaluation against the specified criteria, and shall be selected no later than 31 December of the year five years before the Olympic Games”

4.3 World Sailing is already operating the preferred model in this area with evaluations conducted using open tenders and objective criteria. Therefore the proposal is that the Equipment Committee will continue working on the requirements for future evaluation and publish them for comment in advance of approval.

5. Monitoring the Quality and Cost of Existing Equipment

5.1 The Olympic Classes Contract already contains provisions concerning:

- (a) price control within the single manufacturer World Sailing Class Contracts (RS:X and Nacra 17);
- (b) building specification submittal and subsequent approval on any changes;
- (c) inspections during the Olympic cycle by World Sailing and the Class Association;
- (d) regular review by World Sailing and the Class of equipment control at production and events; and
- (e) arbitration by World Sailing for some disputes between builders.

5.2 The Olympic Classes Contracts are currently in place until the end of the 2020 Olympic Sailing Competition. The Board wishes to commence work on the 2021 – 2024 Olympic Classes Agreement now so that Council is assured that those Classes confirmed in November 2017 for the 2024 Games (i.e. those not placed under review) will enter the contract once confirmed post-November.

5.3 Therefore existing Olympic Classes wishing to be part of the selection process for the review of 2024 Olympic Equipment will be required to agree in writing prior to 1 August to the following new principles:

- (a) Ensuring a minimum number of manufacturers with cross-continental locations.

- (b) Ensuring there is regular, open and fair process for reviewing and tendering by manufacturers/builders for the production of boats in that Class.
- (c) A quality system requirement for manufacturers of Olympic equipment and sanctions system for non-compliance.
- (d) Strengthening the supply and quality controls by World Sailing by requiring ISO 9000 or similar quality assurance systems at all manufacturers. All boat parts should have a WS certification program, or ISO 9000.
- (e) Defined and standardized warranties in the Olympic Classes Contract that defines the extent of warranty and how the sailor and manufacturer are required to act. World Sailing should monitor warranty claims so it is aware that a part needs to be re-examined for design limits (quality assurance is not at fault when equipment is misused or abused by sailors learning their limits).
- (f) Stronger rights for World Sailing to have input into equipment building specifications to ensure that equipment is robust and will have longevity of use. This is a review of the design of all elements of the 'as sailed' boat.
- (g) At World Sailing's option, a requirement that any new Olympic equipment has a prototype period to ensure robust equipment has been defined, in the 'as sailed' condition. This extends trials after selection to completely validate the building specifications prior to high rates of production. This should allow any sailor of Olympic level to trial the boat and make constructive suggestions to the final configurations.
- (h) Inspections of first article shipments prior to delivery by World Sailing certified inspection personnel (to ensure that the quality system is having the desired effect on the finished products delivered to the sailors).