

13 May 2019

World Sailing Council
Midyear Meeting
Chelsea Football Club
London, United Kingdom

Dear Council Members

RE: BOARD RECOMMENDATION TO COUNCIL MEN AND WOMEN'S WINDSURFER

Introduction

1. Ensuring that the sport of sailing goes in the right direction is perhaps one of the small ways in which I can give back to a sport that has given me so much. That is why I address you in this letter – to offer my opinion as a seasoned elite sailor and where I believe the sport and in particular the windsurfing discipline should go.
2. It is with great disappointment that I note the recommendation from the Board to Council to retain the RS:X without holding sea-trials. World Sailing has a great opportunity to re-invigorate the sport of sailing and windsurfing and to inspire the next generation. It would be in my opinion a grave mistake for sea-trials not be held.
3. I note that it is actually against Dutch interests to move away from the RS:X. We have the current Men's double Olympic Champion; The current RS:X Men's World and Vice World Champions and the Women's World Champion; the Men's European and Vice European Champions and the Women's European Champion.
4. Despite the dominant position we hold in the RS:X, I believe it is our duty not only to foster talent and bring it to the top – but in fact that the overriding duty is to act in the best interests of the sport and to ensure its future, prosperity and continued success. It follows that the international body, ought have those objectives. Respectfully, if the Council follows the proposed Board recommendation, World Sailing would not be successful at discharging that duty.
5. I set out my concerns for retaining RS:X below.

Expertise of Board's Working Party

6. I am very concerned to note that the Working Party tasked with evaluating the tenders contained no specialist windsurfing experts – no current or former champions or coaches, no elite windsurfers from any discipline, no person intimately familiar with the RS:X at consumer level, no person involved with the production of windsurfing equipment, or any other person who could accurately apprise the Board and subsequently Council on the merits of the proposed bids nor the state of the current Olympic windsurfing events. This is both alarming and disappointing. How could the Board possibly make informed decisions without informed committee members?

Competition Law / Purpose of Regulation 23.6

7. I refer to regulation 23.6 and to the Board's Recommendation to Council made on 1 May 2019, which state:

According to Regulation 23.6, the Board shall carry out re-evaluations of the equipment selected for Olympic Events. The purpose of re-evaluation under this Regulation is to ensure that:

- i. 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;*
 - ii. reduce the risk of monopolies;*
 - iii. manufacturers do not become complacent, remain price-competitive, produce high-quality equipment, and do not abuse their market positions.*
8. The Board has stated in its recommendation that "*it considers that the RS:X, the equipment proposed by Neil Pryde, fits the Equipment Criteria set by Council*". Respectfully, this statement could not be more false. I submit that in making the above recommendation the Board has complete disregard for the purposes of Regulation 23.6.
9. While competing equipment and competing manufacturers have been able to bid to be selected for Olympic Events there has absolutely not been access the market on a fair and objective basis. To end the evaluation process now without going to sea trials is extremely detrimental to that principle. It does not render the process fair and objective, but actually subjective and biased. Or at the very least it appears to be biased. From a legal stand point apparent bias is as detrimental as actual bias.
10. Further, the risk of monopolies has in no way been reduced. A monopoly still exists. It will continue to exist. At least three of the bids (Glide, Starboard and the Windsurfer Class) were multi-manufacturer ie promoting genuine free market conditions. In not having sea-trials not only are you reinforcing an already existing monopoly but you are scuppering any chance of allowing free market conditions to manifest. Granted, you have sought assurance from Neil Pryde that other manufacturers be able to enter the market to produce RS:X equipment, but as we will explain below, according to competition law rules, that does not necessarily diminish the existence of a monopoly nor does it discharge the burden on bodies to ensure that they do not exist. We submit that in making the above recommendation World Sailing actively promoting a monopoly.
11. Competition law is lengthy and complex beast. As such I do not propose to give a comprehensive legal opinion on the matter but rather just highlight some salient points for you to consider. Under general legal principles there is a threefold classification for barriers to entry (these differ slightly from economic barriers to entry). From a legal perspective the most important question is not whether a certain action actually constitutes a barrier, but if they are such as that they can be abused in a prohibited way. The classification is as follows:
- (a) absolute barriers to entry;
 - (b) fighting barriers to entry; and
 - (c) cost-oriented barriers to entry.
12. *Absolute barriers* include barriers such as intellectual property rights or legal and regulatory barriers as well. *Fighting barriers* consist of such barriers that are produced by incumbents in order to keep new entrants off the market (like

say predatory behaviour, refusal to supply, essential facilities and tying). The final category consists of barriers which are restrictive from an economic perspective and include the likes of: sunk costs, economies of scale, capital requirements, product differentiation, goodwill and reputation, strategic first mover advantages to name a few.

13. My view is that the current situation (whether or not other competitor do enter the market) in the Men and Women's windsurfer would be in breach of basic competition law principles in each of these categories.
14. Further, I would also like to bring your attention to the European Commission's Competition Policy. The relevant sections are Articles 81 and 82. I will not quote them as they are lengthy but in essence Article 81 applies to *all agreements, decisions and concerted practices between undertakings which may affect trade*. The term undertaking refers to any entity that is engaged in commercial activity. This of course would include the operations of World Sailing's and its affiliated entities. This is a heavily oversimplified summary, but in essence, practices, organisations or structures must not (among other things), prevent, distort or restrict competition.
15. Meanwhile, Article 82 prohibits abuse by a commercial entity/activity in a dominant position (here Neilpryde). The essence of Article 82 is the control of market power. The article does not prohibit market power or monopoly per se, but rather the abuse of it. It aims at the behaviour of undertaking in dominant positions rather than the power itself. Given the market dynamics and given that Neilpryde is undeniably in the "dominant" position in that market, and considering the wider circumstances, we believe that the contract between World Sailing and Neilpryde is in breach of both Articles 81 and 82, in particular by not opening up the review process to the sea-trials as originally set out.

RS:X Performance

16. No previous Olympic windsurfing class has remained so for more than three Olympic cycles. That is because, since its inception into the Olympic Games, windsurfing has been and still is a young sport in constant development. As the technology and the equipment progressed so too did the Olympic class. At the time the RS:X was selected it bridged a gap – that being the transition between displacement longboards and planing shortboards.
17. Arguably even at the time of selection, the transition had already occurred. In any case, the RS:X, a hybrid between longboards and shortboards was selected. Hybrids obviously come at a compromise. They do not do anything particularly well. Rather they do everything badly. So it is no surprise that at the time of selection, the RS:X's performance was worse than the class that came before it. In fact, in up to 12 /13 knots, the RS:X remains the worst performing Olympic windsurfing class of all time. The Windglider (up to 10 knots), the Lechner, and the Mistral One Design would all still outperform an RS:X today in said conditions.
18. If a class in 2004 was already dated relative to other equipment available on the market at the time, imagine where that margin will lie 20 years later. By 2024, the Olympic windsurfing discipline which will be showcased to the world, the so-called cutting edge helmed by the world's best, will be a gap-filling hybrid incapable of outperforming a dinosaur from 1984. Is this how you wish for the world to see our wonderful sport?

Neilpryde Reliability Issues

19. Neilpryde has some serious reliability issues in relation to its production of RS:X equipment. These issues have persisted and intensified. Their position as

the dominant player in what is undeniably a World Sailing sanctioned monopoly means that their price and quality goes unchecked and without repercussion.

20. The sailors and their federations are paying the price of premium product but Neilpryde is still struggling to deliver at that level. We are experiencing more warranty issues on boards and fins than we ever had despite constant promises, plans and working parties to fix the issues. Fifteen years after its inception, we are still plagued with the problems.
21. The boards are delaminating, the anti-slip wears out prematurely, the cross-ply in the sails is delaminating, the battens and widgets last 8 days and keep breaking, and there is a constant struggle to get hold of equipment. We ordered fins in March, they will not be available until September. This is true of many of the components.
22. In 2017, Neilpryde changed the production method of the masts, without consulting the class. The masts were intended to be the same, but the production method was entirely different and as a result so too was the end result. The characteristics were vastly changed which immediately rendered all other masts obsolete. Rules changes has to be made to ensure fairness across the class and large investment into new pools of masts had to be made and tested, at great cost to coaches, sailors and federations.
23. But perhaps the most egregious issue began in 2015 in relation to the fins. This issue related to both the consistency and durability of the fin. As it turns out a polymer used in the epoxy was changed which caused the fins to break after only a few hours. Neilpryde was never really able to properly fix the problem. Over the next few years this remained an urgent agenda item at RS:X AGMs. Finally Neilpryde offered a solution. A new production method. RTM they called it. It would be our saviour. The promise was higher performing fins made entirely from carbon, which would be frighteningly consistent in performance between one another, and durability which meant that the fins would no longer break. The catch of course was that the fins would be more expensive. However, the MNAs agreed that the cost was worth the benefit.
24. In 2019, a men's 66cm fin costs nearly 500 Euro, and yet the issues remain unresolved. We have lodged claims for 10 warranty fins so far for 2019 alone (and that is for just two sailors).

Olympic Windsurfing in the Netherlands – a Case Study

25. Holland is one of the most successful windsurfing nations in the world, particularly of late. As noted above we have won gold in the Men's event at the last two Olympic Games as well as in 1984, and we are the reigning World and European Champions in both the Men and Women's events. One would think that this would generate a significant amount of excitement and participation in the sport and in the class. But, sadly, this is not the case. The Netherlands currently has 3 Senior Men and 2 Women competing in the RS:X class. There are 5 youth boys, and alarmingly 0 youth girls. When we look at New Zealand, possibly the world's most successful windsurfing nation, their fleet now consists of 1 Senior man, 1 Senior woman and 0 youth. Similarly, we can look to other strong sailing nations: Australia, 0 men and women competing; Canada 0 men and 0 women competing; the United States, 1 man and 2 women; Brazil 0 men, 1 woman; Germany, 0 men and 0 women; Denmark, 0 men, 1 woman; Norway 3 men, 1 woman; Sweden 0 men and 0 women. Coincidence? It is not.
26. It is easy to be fooled by the fact that for example at the recent RS:X European Championships in Spain there were over 300 competitors. The break down of this was 104 Men, 75 Women, and 153 youth (110 youth men, more than the senior men). That is however misleading, and not the full story. The issue both

here and with the fleet sizes mentioned in Holland and New Zealand, is with retention of those youth numbers. People leave the class because it is too expensive for what it is, not durable enough and far too physically demanding – heavy both on and off the water.

27. The reality is that the senior fleet sizes should be much larger than they are, and the only reason that the youth numbers are actually doing as well as they are is thanks to the saving grace of the Bic Techno – a fun, affordable entry into elite racing which attracts more than 450 competitors to its World Championships. The children have no where to go after Techno as to move onto the RS:X Women's package as it is the natural stepping stone. They do that for a few years until they realise that the RS:X is too demanding, too expensive and too difficult. The jump from elite youth level to elite senior level is simply too vast because of the physical demands of the equipment – it takes 6 to 8 years for a top youth sailor to begin to break into the top ten.
28. By stark contrast, if we look at the foiling fleet in New Zealand, it has exploded. There are 75 plus active sailors and a rapidly growing racing scene with 50 attending the inaugural National Championships. This has developed in the short space of a year. It includes 10 youth sailors and a range of other windsurfers including current and former Olympians, weekend warriors, up and comers and long-retired windsurfer with ages ranging between 9 and 65 years old – all racing on very similar equipment to that proposed by either Starboard or Bow. Similarly, back to the Netherlands, of the 10 Senior sailors who quit Olympic sailing in the last 2 years, all of them are now foiling.
29. Put simply, the youth situation in the Olympic windsurfer is not as healthy as it seems.

The Original Deal

30. The manner in which the RS:X was initially selected is not entirely squeaky clean. At the time there was political appetite to change the windsurfing class. Why exactly this was the case is unclear, other than perhaps a clash of personalities between then-ISAF senior personnel and the International Mistral One Design Class Association.
31. In any case, equipment evaluation trials were held. The RS:X was one of the boards invited to the sea-trials. The board as assessed by the sailors invited to those sea-trials was ranked third (and in fact that was a 13kg prototype rather than the near 18kg racing version we have now). At around the same time, meetings were held between Neilpryde and ISAF officials. A deal was struck. The RS:X was selected at the Olympic equipment. Whether or not you accept turn of events, it is what is commonly understood to have been the case.
32. In my opinion, given the perception around the history of this class, it would be unwise to conclude the re-evaluation process in the way that has been recommended by the Board ie not to hold sea-trials and to retain RS:X.

Media Engagement

33. In April 2018, multiple RS:X Olympic medalist Nick Dempsey together with myself and Antonio Cozzolino, produced a video showcasing foil windsurfing. In the first week that video was seen by 20,000 people. Between Facebook and Youtube the video amassed a whopping 80,000 views. That in itself tell the whole story. As a sport we are always asking: how can we can more engagement? Who can we get more interest in our sport? The answers are clear. Selecting the right classes.

Multi Manufacturers

34. I have come to understand that one of the reasons why the review is not progressing past the bid stage is because none of the bids allow for multiple manufacturers to produce the equipment. To clarify as I understand it, at least three of the proposals actually allow for multi-manufacturers: The Glide, the iFoil and the Windsurfer.
35. In fact the windsurfing industry is currently in the process of getting behind a one design/box rule with multiple manufacturers. The class is called Windfoil ONE. In essence the hulls are all identical but branded accordingly, while the rigs must fit into a prescribed box rule. The main concept is one of each component ie one board, mast, sail, boom foil. The intention behind this class is for it to supplement the proposed Olympic foiling classes and show that the concept is possible.
36. In preparation for the tender process multiple brands went to gets length and expense to develop, prepare and produce equipment to better fulfil both the IOC and World Sailing criteria for where the sport should be going. They went to the extent of developing and trialing new formats and race courses, and have carefully thought through junior, youth and senior progression.

Conclusion

37. We as a sport have a unique opportunity to redefine our direction, to unite, to inspire, to engage and excite. These opportunities are rare and need to be seized. For once, perhaps the first time in history, the Olympic windsurfing class can be at the cutting edge of the sport, not 4 years, 8 years or in this case 20 years behind it. Do the right thing.

Think of the future. Think of the children.

Yours faithfully

DORIAN

Dorian van Rijsselberghe
Olympic Gold Medalist
London 2012
Rio 2016

cc: World Sailing Equipment Committee
World Sailing Board