

Australian Competition & Consumer Commission

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Ms Monica Bourke

Dear Monica

Re the : **Exclusive Dealing Notification lodged by NASR and others**

First of all I would like to explain my involvement with both NASR and speedway in general.

I have been a competitor in speedway for approximately 25 years. In that time I have been a member of the Sprintcar Association of WA (SAWA) which in turn is a member of the SCCA, a member of the WA Sedan Car Federation which is a member of the ASCF and a member of Late Model Racing Australia. I have raced at a great number of speedway tracks in Western Australia and I am a current regular competitor at Kwinana Motorplex (run by Placide Pty Ltd)

During my years of involvement with speedway I have held a number of positions on various regulatory bodies including being the Chairman of the Board of NASR WA Inc for approximately 8 yrs. I was also on the National Council of NASR Inc and held the position of Chairman of the National Council. I am quite familiar with the running of NASR and the misconceptions that abound regarding what NASR does for the competitors.

I am currently the Chief Executive Officer of Late Model Racing Australia and on the Board of Management of Late Models Australia, the National Body of dirt late models in Australia. This organization represents probably the fastest growing speedway division in Australia at the present time. Whilst these organizations are affiliated with NASR, they have nothing to do with the ASCF and do not recognize this body as being representative of sedan racing in Australia.

I would like to add that all of the comments I make are of a personal nature are not made on behalf of any organization including Late Model Racing Australia the and not in any way associated with the organizations mentioned above.

One of the important things to clarify is which part of NASR is making the application and what are the services supplied by that part of NASR. The NASR organization is split into two distinct corporate entities. One is NASR Pty Ltd, a “for profit organization” owned substantially by the major speedway competitor groups and the major promoter groups. This is also the entity that benefits financially from the activities of NASR, achieved by the imposition of management fees and the like on the other part of NASR , which is NASR Inc, supposedly a “not for profit” organisation.

Responses to ACCC Public Consultation Questions

- 1. How important is it to hold a NASR licence if you are a speedway driver? What other race controlling bodies provide licences and/or manage speedway events that drivers can attend instead of NASR approved events?*

I believe that NASR Inc is the entity that provides licences to the competitors (it was in the past). However, it is NASR Pty Ltd making the application for third line enforcing.

The licence had little benefit attached to it until recently, and most organizations such as the ASCF did not recognize the NASR Licence and insisted on drivers having an ASCF licence to compete in their events. However, they did recognize the NASR Personal accident Insurance.

The NASR Licence does not impose any requirement to comply with vehicle safety standards at all. Such vehicle regulations are set by the individual racing divisions such as the SCCA, ASCF, LMRA etc etc. NASR has never set vehicle specifications nor safety standards associated with vehicles.

The NASR Licence has always been a precursor to obtaining NASR Personal Accident Insurance. It has never been perceived by the competitors as anything else.

Recent changes to the status of the NASR Licence were brought about by the insurance law changes, they have made the NASR Licence the membership to NASR Inc with the insurance as an added member benefit to the licence. They do not become members of NASR Pty Ltd.

Competitors currently compete at many tracks that do not have NASR Public Liability Insurance and that do not insist on competitors holding NASR licences. These tracks accept most of the various brands of Personal Accident Insurance policies, including NASR. A huge number of speedway events in Australia are not NASR approved. NASR approval hinges on the tracks having NASR Public Liability Insurance.

It is important to note that the Licence is not what concerns most speedway tracks, the promoters, the competitors nor the major divisions, it is the Personal Accident Insurance that has become mandatory. Most major divisions of Speedway issue their own licences but rely on NASR to provide the PA Insurance, the only reason they have a NASR Licence is because it is the way to get the PA Insurance. There are several alternative PA insurances available, NDRA (National Dirt Racers Association) provide insurance as do many others. At many tracks this is quite acceptable. In fact this NDRA insurance was promoted as perfectly acceptable by the WA Speedway Commission, which is one of the State Government backed controlling bodies in WA.

- 2. NASR advise that it has negotiated a group personal injury insurance policy which provides coverage to licensees as a member benefit at no additional cost. NASR advise that licensees/ members remain free to obtain appropriate personal injury insurance from other providers. Do drivers obtain their own insurance? Why or why not? How difficult is it to obtain personal injury insurance as a speedway driver or track/venue operator? Who are the main providers of insurance? What is the approximate cost for obtaining insurance for speedway racing?*

Speedway drivers have been obtaining PA insurance for many years, long before NASR was established. One of the most successful providers of PA Insurance was the Federation of Speedway (FAS), however, there were numerous other providers. Just over ten years ago NASR Pty Ltd was established and purchased or at the least took over the FAS. They continued to supply the Insurance separate of the licences until recently.

As noted above, NDRA provide an alternative to NASR insurance at a comparable cost. At present most race tracks/promoters recognize the NDRA Insurance, although not all.

Track operators do not obtain nor supply Personal Accident Insurance, they are covered under Public Liability Insurance.

The NASR Personal Accident Insurance is considered by competitors to be one of the best insurances in Motor Racing anywhere in Australia. It is exceptionally good value.

- 3. NASR advise that should a licensee/member obtain their own insurance instead of/in addition to the insurance provided as a member benefit of the NASR licence, the licence fee paid by that member is not adjusted. Does this prevent licensees/members from taking out their own insurance? Why or why not?*

I agree that purchasing NASR Licence/Insurance does not preclude NASR members from obtaining their own personal accident insurance and that many NASR members choose not to purchase separate personal accident insurance as they are satisfied with the cover provided as part of NASR membership.

- 4. NASR advise that licensees/members may obtain licences from other associations and may therefore race at non-NASR approved tracks and events. However, NASR's group personal injury insurance provided as a member benefit does not apply to non-NASR approved races, events or tracks. Do drivers race at both NASR and non-NASR approved events and venues? Does this deter a driver from racing at non-NASR approved events and tracks? Why or why not?*

Speedway competitors race at any number of tracks, it is the nature of speedway that drivers travel to the country/regional tracks to compete and prop up the local competition. The regional tracks are the heart of speedway and the source of many/most of the new competitors joining the sport. In the past, drivers always had their FAS/NASR Insurance recognized at Metropolitan as well as regional tracks regardless of whether the track was NASR approved or not. Safety standards of tracks certainly cannot be used as an excuse as needing to be NASR approved, especially in Western Australia. In Western Australia, the safety standards of tracks are approved by a representative of the State Department of Health, currently a Mr Syd Brodie. Mr Brodie works in conjunction with the WA Speedway Commission not NASR.

Tracks are rated to indicate what category of cars may compete based on the speed and power of those vehicles. The track grading or category has nothing to do with who supplies their public liability insurance. Many Category 1 tracks use non NASR insurance and regularly host classes of cars whose drivers have NASR Personal Accident Insurance.

The idea of NASR Personal Accident insurance not being applicable for non NASR tracks is a new development for competitors and one that I am sure very few of them knows exists. This will have a major effect on all country speedways. It will undoubtedly cause the country tracks to be left with two alternatives... comply with NASR and buy their Public Liability Insurance so they can run the speedway competitors with NASR Personal Accident Insurance or close down. This is the very thing that was fought against for years by the ASCF and the WA Speedway Commission. They argued long and hard over the need for competition in the insurance market. They now want to see that competition eliminated for their own gain in control. The will be no benefactor in speedway.

5. *How important is it for a venue or track to be NASR approved? Can you outline what the effect of not being NASR-approved might have on these tracks?*

As above, the tracks in WA are approved for safety by the State Govt Department of Health. The NASR approval is based on the track having NASR Public Liability Insurance, this is not the only criteria but it is the backbone of the qualifying features. If tracks are not NASR approved, they will not get to host the premier divisions of speedway who will eventually be forced to be NASR Licence holders if they wish to compete at the major speedways, this will lead to the eventual closure of the regional tracks..

6. *How important is it for a sprint car driver, saloon car driver or V8 dirt modified car driver to be a member the SCCA, ASCF or the DMA? Are there alternative racing body organisations that operate events and/or tracks in these categories of racing?*

I agree with the NASR submission that "It is important for sprint car drivers, saloon car drivers and V8 dirt modified drivers to be a member of their respective competitor organisations. The main competitive events are operated by these organisations. The competitor organisations also perform the important role of controlling the specifications and safety standards for the relevant divisions."

However, the important thing is to ensure that competitor organizations other than SCCA, ASCF and DMR are not disadvantaged by refusing them access to NASR Licences and therefore NASR's Personal Accident Insurance unless they join the ASCF or SCCA. This would be most unacceptable to a great majority of speedway competitors. This would in effect prevent them from competing at NASR approved tracks

NASR's comments about "some other minor regional sprintcar and saloon car classes which have smaller engines, lower profiles and less safety compliance" is not entirely correct and in fact many of the divisions that are not members of the ASCF, SCCA and DMR, are well run with very good safety standards and safety records, many of them use the NASR Licenses and Personal Accident Insurance, but compete at tracks that do not have NASR Public Liability Insurance.

Summary

Although I believe that NASR is a necessity as a Peak Body for the Speedway industry, I am concerned that the financial side of NASR Inc which is controlled by NASR Pty Ltd is being run completely for the financial benefit of the shareholders of NASR Pty Ltd. This is the logical motivation for any Pty Ltd company and is understandable, however, that does not mean that it is for the benefit of the stakeholders in Australian speedway.

NASR will argue that the stakeholders have a say in everything that NASR does via the National Council. This is entirely incorrect, and as a past National Council Chairman I can assure you that the Board of NASR Pty Ltd can override and overturn any decision made by NASR Inc.

The submission put forward by NASR and the other bodies is worrying in the least. I believe that the original reason for seeking third line enforcement was for legitimate reasons and was aimed at removing irregularities in the licensing process between NASR and some of the major competitor bodies, however, the actual effect of allowing this to happen, will be to remove competition in the marketplace.

One of the unstated but very real threats of allowing third line enforcement will be the potential abuse of that power. There will be nothing to stop the major groups who are shareholders in NASR Pty Ltd, from using the approval to force other groups to be brought under their umbrella and hence under their control.

No doubt that Palcide Pty Ltd and Avalon Raceway would prefer to see this approved and to be party to it. As shareholders of NASR Pty Ltd they stand to not only profit from this situation, but also to hold a position of power in the decision process of approving tracks, this is surely a conflict of interest. Not only that but by removing that opportunity for divisions to compete elsewhere, they remove competition and exert undue and unfair pressure and conditions on competitor groups.

The use of third line enforcement by NASR and others is not aimed at improving speedway for the competitors who see this as a hobby and sport, it is aimed at wresting control of the industry by the major groups with financial interests at heart.

Regards

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