



Our Ref: 241933

7 May 2008

BY REGISTERED POST AND EMAIL

Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

ATTENTION: Ms Monica Bourke

Dear Monica

NASR Exclusive Dealing Notifications

We refer to your emails dated between 31 March 2008 and 23 April 2008, which enclosed public submissions from various interested parties. We also refer to our telephone conference with you on 17 April 2008 regarding the public consultation process.

We are pleased to take this opportunity to respond to the issues raised during the public consultation process, as well as the specific inquiries raised by the ACCC and set out in your email dated 23 April 2008.

1. Effect of Proposed Conduct on Competitors

Clarification of Proposed Conduct

As specified in the submissions, it is proposed that competitors that apply for NASR licenses would be required to agree to the following conditions:

- to participate or compete in speedway racing categories approved by NASR;
- to only race at tracks and venues which are sanctioned or approved by NASR; and
- to obtain membership of the relevant National and/or State and/or Regional club or association for the offeree's relevant speedway racing category.

We confirm that at present there are over 100 speedway racing categories, and almost all of these categories are approved by NASR. The approved categories are listed on NASR's website. It is NASR's intention that new speedway racing categories would be required to meet certain objective criteria, including safety requirements, before they would receive NASR approval. At this stage, competitors would not be affected in any way by this condition of NASR membership. In future, competitors who hold NASR licences and wish to form a new category of speedway racing would be prevented from participating in that new category until it was approved by NASR. This is intended to support the overall safety and risk management profile that has been implemented by NASR, for the overall benefit of the sport.

The requirement to race at tracks and venues which are sanctioned or approved by NASR may affect some competitors. NASR acknowledges that there are currently some NASR approved events which are conducted at tracks and venues which are not sanctioned or approved by NASR. The purpose of sanctioning and approving tracks is to ensure that certain objective standards are satisfied by such tracks, including the appropriate public liability insurance cover. These objective standards are discussed further in item 2 below. As specified in NASR's original notifications, NASR believes that competitors and spectators alike will benefit greatly from compliance with the minimum safety requirements imposed by NASR, and the uniformity of safety and track standards required of tracks and venues sanctioned or approved by NASR.

Over 70% of operational tracks and venues around Australia are already sanctioned or approved by NASR. It is pertinent to note that over 80% of tracks and venues outside of Western Australia are already NASR sanctioned. Additionally, NASR believes that many of these non-NASR sanctioned or approved tracks and venues may be eligible for sanctioning or approval, provided that they can demonstrate that they meet the necessary criteria. On this basis, it is submitted that the effect on competitors of this licence condition is likely to be insignificant in most cases.

Clarification regarding Licence Fees

There appears to be a misconception that the licence fees for competitors will increase if the notifications are approved by the ACCC. This is not the case. One of NASR's key objectives is to increase the profile and reputation of speedway racing in Australia. In order to achieve this, licence fees must be kept competitive and affordable. Any previous increases in licence fees have merely reflected increased costs of the organisation.

Some interested party submissions suggest that NASR is seeking to increase its "profit-margins" for the benefit of its shareholders. On the contrary, we note that NASR reinvests the majority of its revenue from licence fees into the development of speedway racing. Further detail regarding NASR's structure is provided under item 6 below. NASR may raise its licence fees from time to time, to reflect increases in costs and expenses incurred by the organisation. However, NASR does not currently intend to abnormally increase licence fees in a way that would affect competitors.

Clarification regarding Licensing Requirements

Under the proposed conduct, competitors would be required to obtain membership of the relevant National and/or State and/or Regional club or association for the offeree's relevant speedway racing category. This reflects the structure of speedway racing, whereby NASR is the national governing body across the whole of speedway racing, and a National, State and/or Regional governing body exists in respect of each specific speedway racing category. The roles of NASR and such clubs and associations are mutually exclusive, as further described below:

- NASR develops unified standards in safety, training, presentation and performance for speedway racing, as well as providing membership and racing licences to speedway racing competitors.
- Each club or association conducts the administration of the relevant speedway category nationally and/or on a State and/or regional level, including overseeing the registration, inspection and licensing of the cars required for that category, stipulating the applicable technical specifications, and conducting the category's racing and competitions.

As specified in NASR's notification, requiring licence holders to take out the relevant membership develops stronger ties between NASR and the various speedway categories recognised by NASR and helps to improve and strengthen those categories, which in turn leads to a higher quality of competition overall, along with better organisation at both a national level and within each category. Membership also ensures that participants are properly represented within the sport of speedway racing and within their category, through participation in their category's representative body.

Clarification regarding education

The ACCC has raised the issue of how competitors will be educated as to whether tracks and venues are sanctioned or approved by NASR, for the purpose of complying with the proposed conduct (if approved).

Provided that the competitor group notifications are approved, NASR envisages that the clubs and associations responsible for each speedway racing category will take responsibility for ensuring that the NASR approved speedway racing categories race only at tracks and venues sanctioned or approved by NASR. This will mean that competitors in an approved category can be confident that all venues for that category are sanctioned or approved by NASR.

In conjunction with this, NASR has on its website an up-to-date listing of tracks and venues that are sanctioned or approved. NASR will also circulate at appropriate times listings or newsletters regarding which tracks and venues are sanctioned or approved by NASR, to ensure that competitors have all the information they require.

2. Effect of Proposed Conduct on Track Operators

The ACCC has requested clarification regarding the races and events which tracks and venues may or may not be able to hold as a result of the notified conduct.

As mentioned above, it is proposed that NASR licensees will be permitted to race only at tracks and venues which are sanctioned or approved by NASR. In addition, it is proposed that NASR licensees only participate or compete in speedway racing categories approved by NASR.

There appears to be concern amongst the interested party submissions that these requirements will operate to the detriment of tracks and venues that are not sanctioned or approved by NASR, in particular smaller club-run and country tracks. NASR considers that this concern has arisen from a misunderstanding regarding the process of sanctioning or approval of tracks and venues by NASR.

NASR intends that tracks and venues will be sanctioned or approved on the basis of safety and other objective criteria including public liability insurance cover that is appropriate for the relevant track or venue. NASR has already developed and implemented a national track rating system, and grades tracks and venues accordingly. The criteria upon which tracks and venues would be sanctioned or approved are objective, and will be negotiated with stakeholders within speedway racing. The criteria would also be dynamic, having regard to change within speedway racing over time, including new developments within the field.

NASR confirms that the notified conduct does not include requiring tracks and venues to obtain NASR's public liability insurance cover. NASR would be prepared to accept public liability insurance equivalent to or better than the minimum public liability insurance specified in the applicable objective standards. It is noted that many tracks outside the NASR public liability scheme also recognise the national track standards developed by NASR.

NASR confirms that it does not intend for the process of sanctioning or approving tracks and venues to be exclusive or misused. NASR entirely rejects the allegation made by certain interested parties that NASR's objective is to force certain tracks to close, or otherwise limit the number of operational tracks in any given state or territory. As stated above, NASR's key objectives include to grow the sport of speedway racing and this cannot be achieved if the number of tracks is limited or decreases over time.

It is anticipated that the threshold for NASR sanctioning or approval will be readily attainable by the majority of tracks and venues, provided that they can meet the necessary criteria. Tracks and venues who already meet the objective criteria could be sanctioned or approved almost immediately. Further, NASR does not charge a specific fee for the process of sanctioning or approving tracks and venues.

NASR submits that smaller country tracks and club-run tracks and venues would not be disadvantaged by the process of sanctioning or approval by NASR. It appears that the opposition to the notified conduct expressed by some of the interested parties is largely based on the assumption that there would be large compliance costs involved with becoming a NASR sanctioned or approved track or venue. NASR considers that this assumption is incorrect. First, those tracks and venues which already meet minimum safety requirements and have appropriate public liability insurance (whether through NASR or an alternative provider) would be largely unaffected by the sanctioning and approval process. In fact, the sanctioning or approval of such tracks by NASR is likely to raise the profile of such tracks and venues and potentially make them more attractive to competitors and promoters in the future. Additionally, NASR provides ongoing support to sanctioned and approved tracks and venues, including education and training for track safety workers, opportunities for discounts on insurance premiums and the benefit of risk management policies and procedures already developed by NASR.

Given the inherently dangerous nature of speedway racing, it is of vital importance that tracks and venues which do not meet minimum safety criteria are required to improve. Competitors, officials and spectators face unacceptable levels of personal risk if tracks and venues are not kept properly maintained, or if appropriate public liability insurance is not in place. Incidents occurring at such tracks and venues could bring speedway racing as a whole into disrepute. This can have subsequent effects including dissuading participation in speedway racing, as well as increased insurance prices for both tracks and venues, and competitors. NASR is concerned by some interested party submissions which indicate that competitors are making their own assessment of whether a track is safe ("*if the track facility is in good condition and I feel safe then I will compete*": Anthony Taylor, 1 April 2008). We submit that competitors should not be required to make this assessment, and that it is the role of the governing bodies for speedway racing to ensure that tracks and venues meet agreed minimum standards.

For the above reasons, NASR considers that the requirement for NASR licensees to compete at NASR sanctioned or approved tracks and venues only will have a minimal effect on speedway tracks and venues in Australia. To the extent that tracks and venues do not currently comply with minimum safety requirements, we consider that any compliance costs are necessary and justified by the public benefit in ensuring the safety of all participants in speedway racing.

NASR notes that whilst the Victorian Speedway Council Inc ("VSC") opposes the notified conduct, the VSC itself requires tracks to have appropriate public liability insurance, and requires VSC drivers to compete only at approved tracks and with only recognised classes for "safety reasons" (VSC, 7 April 2008). This supports NASR's submissions that these are necessary and accepted conditions for governing bodies to seek to impose within the speedway racing industry.

The notified conduct is designed to encourage tracks and venues to be sanctioned or approved by NASR, thereby ensuring that minimum safety and risk management requirements are met. As specified in the notifications, NASR considers that there are significant public benefits to ensuring uniformity and consistency of tracks standards nationally.

3. Personal Accident Insurance

The ACCC has requested further information regarding how the NASR personal accident insurance system operates. The insurance covers attendance at an authorised event or meeting organised by, recognised by or under the direct control of NASR and/or any of its affiliates including necessary and direct travel to and from such authorised event or meeting. An "authorised event or meeting" means any race or event in a NASR approved speedway racing category, *regardless* of whether the race or event occurs at track or venue which is sanctioned or approved by NASR. NASR is unable to provide personal accident insurance to competitors who participate in a non-approved speedway racing category. However, as stated above, currently almost all recognised speedway racing categories are approved by NASR.

We note there has been some concern expressed by certain interested parties that competitors would be required to make an assessment of whether or not an event is "approved" in order to ensure that their personal accident insurance is valid. This concern is unfounded and unsubstantiated. All competitors select the speedway racing category in which they participate, and their vehicle must meet strict specification requirements in order to fall within the relevant category. Provided that a competitor is racing in an approved category, then the NASR personal accident insurance cover will be valid for all races and events. For the avoidance of doubt, the proposed conduct regarding requiring NASR licensees to race only at sanctioned or approved tracks and venues may affect the validity of the NASR licence, but not the validity of the NASR personal accident insurance cover. The proposed conduct is discussed above at item 1.

NASR's personal accident insurance cover offers an excellent and cost-effective insurance policy to NASR licensees. The policy has been specifically designed for speedway racing and offers benefits relating to that risk. During the regular competitive tender process conducted by NASR, NASR has compared the available insurance policies and has selected the best policy for its members. To the best of NASR's knowledge, NASR's personal accident insurance policy is the best in the market. As stated in several interested party submissions, the majority of NASR licensees are "more than satisfied" with the insurance provided as a member benefit. Even those interested parties who oppose the notified conduct have not suggested that the NASR personal accident insurance cover is a deficient product *per se*.

We note that some interested party submissions suggest there are "equally acceptable" or "comparable and cheaper" insurance options available. NASR does not agree with these submissions. In NASR's experience, these alternative insurance policies do not provide the equivalent level of cover to NASR's policy, and often exclude specific high risk activities relating to speedway racing. We also note that several submissions which state that alternatives are available, do not provide any specific examples. NASR is not aware of any equivalent alternatives to its personal accident insurance cover, provided as a member benefit to licensees.

In particular, it has been suggested that the insurance cover offered by the National Dirt Racers Association ("NDRA") offers "the same insurance coverage for less cost" (Trevor Cruikshank, 31 March 2008). NASR has previously reviewed the NDRA policy and is of the view that the NDRA does not provide the equivalent level of cover provided under the NASR personal accident insurance policy. In NASR's view, the NDRA insurance policy is inferior in many ways. By way of

example, the levels of different Benefits and the applicable Benefit period under the NASR personal accident insurance policy far exceed those offered under the NDRA policy.

Some of the interested party submissions suggest that NASR personal accident insurance cover is not relevant for their personal circumstances or, in the case of speedway associations, the circumstances of their members. NASR does not agree with these submissions, and the following statements in particular:

- *"I am not concerned about the insurance and have not tried to obtain my own. If I am seriously injured and someone else has been negligent then I would take the necessary legal action"* (Anthony Taylor, 1 April 2008).

This is a type of situation that NASR is striving to avoid. Indeed, such a claim could impact detrimentally upon the speedway industry's ability to maintain public liability premiums. This in turn could have serious ramifications for the viability of the sport as a whole.

- *"Self-employed people carry their own personal accident insurance cover that provides them with extensive cover for any type of accident at any time, 24 hours a day, 7 days a week. Unemployed people are under adequate protection from government agencies, eg. Medicare, Centrelink, and are not in the position of being at risk of losing their livelihood"* (West Coast Speedcars, 25 March 2008).

We note that the NASR personal accident insurance cover provides for a pensioner/unemployed benefit of \$200 per week for a period of 52 weeks.

- *"NASR is only too happy for you to obtain insurance from another insurer because they do not have to pay out on a claim made by any person who is 'double insured'"* (Geraldton Speedway WA, 1 April 2008).

NASR considers that these, and similar, submissions illustrate that there are several misconceptions existing in relation to personal accident insurance coverage in speedway racing. It appears that several competitors do not consider that personal accident insurance is a necessary requirement for their participation in speedway racing. However, competitors without personal accident insurance expose themselves to significant personal costs and expenses which may not be covered by Medicare or Centrelink, nor private health insurance, which often excludes high risk sporting activities.

Accordingly, whilst some interested parties appear to be concerned about being required to pay for "double" insurance, it is NASR's firm opinion that in the majority of cases the "alternative" insurance policy obtained would not be appropriate for the sport of speedway racing.

NASR would like to take the opportunity to respond to allegations that NASR has not paid claims under its personal accident insurance cover or is otherwise "reluctant to assist when accidents occur" (Trevor Cruikshank, 31 March 2008). Naturally it is difficult to reply to such allegations when no specific details have been provided. However, in NASR's previous experience, claims that have not been successful have been either:

- fraudulent claims;
- claims that are not covered by the policy (such as Medicare expenses);
- claims that are unsubstantiated;

- abandoned claims (for example where claimants have not responded to requests for further information); or
- claims that have not been received by NASR.

NASR uses its best endeavours to administer and manage its personal accident insurance cover, provided as a member benefit, in the best interests of its members. We note that, in general, NASR members are satisfied with the service provided by NASR and the relevant insurance provider at the time.

The ACCC has also requested confirmation of NASR's view regarding the option of allowing NASR members to purchase insurance and licences separately. First, NASR considers that there would be significant practical issues involved should NASR individual tracks, venues or promoters be required to verify that each participant in a speedway racing event, including competitors and officials, had the appropriate level of personal accident insurance cover. NASR staff are not appropriately qualified to assess different insurance policies, and may need to engage professional insurance brokers to assess the different policies. This would involve additional administrative resources and expense, which may have to be passed through to members. Additionally, the potential consequences of failure to procure and maintain appropriate personal accident insurance are very high.

Secondly, the maintenance of a group personal accident insurance policy reduces the overall liability profile of participants in speedway racing, including NASR, tracks and venues, competitors and officials. In general, if competitors have appropriate personal accident insurance which covers their medical and rehabilitation costs, they are less likely to be inclined to initiate legal action against tracks and venues.

Lastly, NASR confirms that a group insurance policy has previously been provided in conjunction with the NASR licences. In the past, very few of NASR's thousands of members applied for a NASR licence without the personal accident insurance cover. Therefore, it is likely that most NASR licensees would continue to purchase the personal accident insurance policy, if it was no longer offered as a member benefit.

NASR considers that the notified conduct will have a minimal effect on other providers of personal accident insurance. As above, prior to the offering of personal accident insurance cover as a member benefit with NASR licences, most NASR licensees obtained insurance through the group policy. Further, there are very few insurance providers that are prepared to insure speedway racing participants in respect of personal injury.

We note that there has been some dissatisfaction with increased insurance prices over time, and allegations that insurance was cheaper "prior to NASR". NASR acknowledges that insurance prices have increased significantly in recent years, particularly for public liability insurance, however this has been caused by worldwide changes in the insurance market since the September 11 terrorist attacks. NASR emphasises that the increased insurance prices do not in any way suggest an increased profit margin for NASR.

4. Public Liability Insurance

NASR's public liability insurance cover is currently provided through APRA-approved insurer QBE International to an indemnity limit of \$50 million. All speedway participants are included in the cover, with the exception of participant to participant claims. For example, if a competitor causes

an accident on the track, he or she is not covered for their own potential liability in relation to claims made against them. NASR is aware that QBE offers an alternative, cheaper public liability insurance. However, this insurance specifically excludes any incidents involving any form of motorised activity. Consequently, this alternative insurance is obviously not appropriate for speedway racing tracks and venues.

NASR is also concerned that some public liability insurance cover may be obtained by tracks and venues from foreign unauthorised insurers, which are not APRA-approved. Other policies exclude participants from the insurance cover, which means that potentially only the track or venue is protected against legal action from spectators, competitors and officials who are injured on their premises. NASR does not consider that these types of insurance are appropriate for speedway racing participants.

As with personal accident insurance, NASR is concerned that many people do not understand the differences between insurance policies, and they consequently believe that cheaper policies provide the equivalent coverage, when they clearly do not.

Again, we note that there is a misconception that NASR public liability insurance cover is a mandatory condition for NASR sanctioning or approval. We confirm that NASR will accept alternate public liability insurance cover that is equivalent or better than its own insurance scheme.

5. Speedway Clubs and Associations

The ACCC has requested further information regarding the respective roles of NASR and other speedway racing industry associations.

By way of background, NASR is widely acknowledged as the national governing body for speedway racing as a whole as indicated by its delegation of authority from the Federation Internationale Automobile. NASR's role is to administer and manage the sport of speedway racing nationally, across all speedway racing categories. NASR develops and implements risk management and safety policies, including a drug and alcohol policy and environmental protection guidelines. NASR provides standardised rules for the entire sport of speedway racing throughout Australia, including mandatory competitor conduct, technical requirements and race procedures.

There are also National, State and Regional governing bodies established for each recognised sub-category of speedway racing. The role of these organisations is to manage technical and safety specifications for vehicles, and conduct the administration of the racing category nationally and/or on a State and/or regional level. This includes the registration, inspection and licensing of the cars required for that category, as well as conduct of the category's racing and competitions. We confirm that NASR is not involved with the setting of car specifications for speedway racing categories.

We do not consider that the effect of the notified conduct on current industry associations will be significant. Many speedway participants are members of both NASR and the relevant competitor group. Additionally, as specified above, the roles and responsibilities of NASR and the governing bodies for speedway racing categories, and the benefits of membership, are quite different. In NASR's view it is unlikely that members would choose to join the association for their relevant speedway racing category and not join NASR, as the overall national governing body.

Notwithstanding opposition to certain aspects of the notified conduct, in our view it appears that most interested party submissions support or endorse the role of NASR as the national governing body for speedway racing in Australia, for example:

- *"Speedway is not as organised as it could be. ... NASR does have a level of professionalism that the rest of speedway in Australia should aspire to achieve"* (Anthony Taylor, 1 April 2008);
- *"At present the sport is fragmented and operates under a number of different rules. At a recent meeting of race stewards in Victoria it was unanimously recommended that one set of rules be adopted to provide uniformity. NASR's actions may be what the sport needs to bring it up to a more professional standard"* (Stawell Motor Sports Club, Inc, 27 March 2008); and
- *"ADDA recognises that motor sports are an inherently dangerous activity and acknowledges the improvements that have occurred with the sport of speedway for competitors and all other persons that attend an event, through the policies and procedures that NASR has implemented."* (Australian Dirt Driver's Association, 25 March 2008).

These comments are in addition to the many endorsements of NASR provided by high profile speedway organisations, including the Confederation of Motor Sports Australia ("CAMS"), the Australian Institute for Motor Sport Safety ("AIMSS"), the Western Australian Speedway Commission ("WASC"), as well as various other competitor groups, tracks and venues.

6. Concluding Remarks

There have been a number of other allegations raised in the interested party submissions, which are not relevant to the consideration of the notified conduct by the ACCC. However, NASR would like to take this opportunity to address some of these allegations.

NASR Structure

It has been suggested that NASR is seeking to control speedway racing within Australia for the benefit of the shareholders in the company, National Association of Speedway Racing Pty Ltd. NASR confirms that the organisation is made up of an incorporated entity (National Association of Speedway Racing Inc) and a proprietary limited company (National Association of Speedway Racing Pty Ltd). However, the role of the proprietary limited company has been grossly misrepresented. The sole function of National Association of Speedway Racing Pty Ltd is to employ management staff and provide a professional administration for the conduct of the sport. Accordingly, National Association of Speedway Racing Pty Ltd provides a service to National Association of Speedway Racing Inc on a fee for service basis. The incorporated association would otherwise have to engage external contractors for these services, for a similar fee. Therefore this arrangement does not cause additional or unusual costs to NASR. Additionally, the structure of National Association of Speedway Racing Pty Ltd provides further financial security for NASR as a whole.

It is true that profits made by National Association of Speedway Racing Pty Ltd are returned to the shareholders, however this is usually only approximately \$7,000 annually. This is a very low return from an organisation that has an annual turnover of approximately \$1 million. It is also noted that the shareholders are key stakeholders within the speedway racing industry. Therefore any profits are essentially re-invested into speedway racing.

Conflict of interest

Allegations have also been made that it is a conflict of interest for organisations to endorse the notifications, where those organisations have members on the NASR Board. NASR confirms that its shareholders and Board members are key stakeholders within speedway racing. However, it is common, if not necessary, for key stakeholders or experienced participants to be directors and

Board members of organisations in their relevant industry. NASR entirely rejects any claim that this gives rise to a conflict of interest. All organisations within speedway racing have a common goal to improve the reputation and profile of the sport, as well as increasing participation levels and safety.

Summary

We trust that this assists the ACCC with its consideration of the notifications lodged by NASR and other organisations within speedway racing. Please do not hesitate to contact us if you require any further information or clarification.

We look forward to your response.

Yours faithfully
KELLY & CO

per:

A handwritten signature in black ink, appearing to read 'LUKE DALE', written over a light grey rectangular background.

LUKE DALE

Partner

Direct Telephone: 08 8205 0580

Direct Facsimile: 08 8205 0805

Email: ldale@kellyco.com.au