

**Australian Competition
&
Consumer Commission**

PRE-DECISION CONFERENCE

Minutes

**Notifications N93297-N93298 and N93301-N93303
lodged by National Association of Speedway Racing (NASR) and the
Competitor Groups (Sprintcar Control Council of Australia (SCCA),
Australian Saloon Car Federation Incorporated (ASCF)
and Dirt Modifieds Australia (DMA))**

15 July 2008

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.

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1pm, 15 July 2008

ACCC Melbourne Office
Level 35, The Tower
360 Elizabeth Street
Melbourne Central, Melbourne

Sydney ACCC office and Adelaide ACCC office via Video Link

Attendees:

<p>Australian Competition & Consumer Commission</p>	<p>John Martin (Chair) Commissioner</p> <p>Richard Chadwick General Manager - Adjudication</p> <p>Joanne Palisi Director - Adjudication</p> <p>Monica Bourke Senior Project Officer - Adjudication</p>
<p>National Association of Speedway Racing (NASR)</p> <p><i>(attending from Adelaide)</i></p>	<p>Tim McAveney General Manager</p> <p>Paul Trengove Competition Manager</p> <p>Lisa Jarrett Lawyer – Kelly & Co. Lawyers</p>
<p>Sprintcar Racing Association of Victoria (SRA – Victorian member of SCCA)</p>	<p>Ian Vale President</p>

Avalon Raceway	Jeff Drew
Speedway Sedans Australia (ASCF)	Neil Sayer Chief Executive Officer
Inside Speedway magazine NASR member and speedway driver <i>(attending from Sydney)</i>	Rod Britton Production Editor
SCCA	Jim Muir Public Officer Greg Foster Technical Officer
Rolling Thunder Raceway/ Formula Motorsports Group Pty Ltd	Ray Solomon Promotor
Australian Speedway Accident Fund (ASAF)	Graham Anwyl Bruce Cox Norm Fisher ASAF Rebecca Hanley Lawyers – Nevett Ford
Premier Speedway, Warrnambool	David Mills General Manager
Sprintcars Australia (operational arm of SCCA)	Ross Allen Operations Manager

SCCA	Vivienne Lewis Secretary Peter Craft
Sprintcar Association of NSW <i>(attending from Sydney)</i>	Mark Richards Vice President
Motorsport Insurance <i>(attending from Sydney)</i>	Andy Ticehurst

Conference commenced: 1:05pm

Commissioner John Martin welcomed attendees and made some introductory remarks outlining the purpose of the conference. Commissioner Martin noted that throughout the consultation process a number of issues not directly relevant to the notified conduct had been raised and that the ACCC is not in a position to address these issues through the notification process. Commissioner Martin also noted that a representative from Inside Speedway magazine was attending the conference and has been advised not to take quotes from the discussion which takes place during the conference.

Commissioner Martin declared the pre-decision conference open and invited the party that called the conference, Mr Ian Vale to make an opening statement.

President of Sprintcar Racing Association of Victoria (SRA)

Mr Vale opened the conference by highlighting the confusion among industry participants about the meaning of the term third line forcing, and NASR's motivation for lodging the notifications.

Mr Vale made comments specifically in relation to the notification lodged by the SCCA. Mr Vale explained the relationship between the SCCA and NASR, the role of the SCCA, and how its role differs from that of NASR. Mr Vale also submitted that the NASR licence is a front for providing personal accident insurance coverage and affiliation to NASR.

Mr Vale noted his support for the draft notices to revoke the notifications on the basis that a driver should not be restricted to racing only at certain tracks.

Mr Vale raised concerns that if the notifications were allowed to stand it may result in the SCCA losing control of how it conducts its races. **Mr Jim Muir**, public officer of

the SCCA, added that the concern arises because if all SCCA members are NASR licence holders, a term of the NASR licence requires all NASR licence holders to comply with NASR's Rules and Regulations.

Sprintcars Australia

Mr Allen commented that the establishment of NASR had not increased the benefits to drivers, but resulted in confusion amongst drivers regarding their licensing requirements. Mr Allen questioned whether the NASR licence should indeed be referred to as a 'licence' but rather 'registration' or 'membership' of NASR.

Mr Allen commented that should the notifications be allowed to stand it would force drivers to compete at certain tracks only, force a particular insurance policy on drivers and force a division of speedway racing.

Mr Allen questioned the lack of substantive facts and figures supporting the claims made by NASR in the notifications.

Formula Motorsports Group

Mr Solomon expressed support for the draft notices. Mr Solomon referred to his written submission following the draft notices, which is available on the ACCC's public register.

Mr Solomon noted the monopoly position of NASR and considers this enables them to control the major classes of racing and competitions and therefore to obtain significant sponsorship deals.

Mr Solomon raised other issues including:

- uncertainty surrounding membership of NASR following the purchase of a NASR licence ie do you become a member of NASR?

the offer of personal accident insurance with the NASR licence reduces competition in the market for personal accident insurance. NASR previously offered personal accident insurance separately from the licence.
- his previous experiences of trying to have his insurance policy for his track deemed adequate by NASR.

Mr Solomon is a track promoter which is not affiliated with NASR. Mr Solomon noted that not being a member of NASR has made it difficult to attract certain races. Mr Solomon stated that he has not become affiliated with NASR because he does not want to be restricted by their rules and regulations.

Mr Solomon noted there may be flow-on effects from the decision not to revoke notifications N93304 and N93305 lodged by Avalon Raceway and Perth Motorplex if other tracks followed suit.

Australian Speedway Accident Fund (ASAF)

Mr Graham Anwyl of the ASAF requested that Rebecca Hanley from Nevett Ford be permitted to speak on his behalf. **Ms Hanley** noted the ASAF's support for the draft notices and raised concerns of anti-competitive conduct being carried out in the form of bundling the NASR licence and the provision of personal accident insurance. The ASAF submits that a review of the NASR licence and insurance should be conducted by the ACCC.

Ms Hanley also echoed the comments of Mr Solomon and Mr Allen.

Mr Norm Fisher submitted that drivers are upset about the provision of personal accident insurance as a member benefit of the NASR licence, as it means that drivers acquire the insurance provided by NASR regardless of whether they want it or not. **Ms Hanley** added that purchasing their own additional insurance means the driver is effectively paying twice.

Motorsport Insurance

Motorsport Insurance provides personal accident insurance, public liability insurance and life assurance for motorsport. **Mr Ticehurst** noted that all policy wording is provided to the acquirers of their insurance products.

Mr Ticehurst noted his support for the draft notices. Mr Ticehurst also noted that his preference is for the market for insurance for motorsport to be opened up.

NASR

Mr McAvaney responded to a number of issues which were raised throughout the conference. Mr McAvaney noted that the notifications were lodged with the purpose of moving the sport forward and ensuring that all legal protections were in place. Mr McAvaney noted that NASR's preference is to move the sport forward and to operate under one umbrella.

Benefits of NASR

Mr McAvaney noted that NASR lodged the notifications with the support of its major stakeholders around the country.

Mr McAvaney noted that NASR offers a number of benefits to the industry such as track safety, occupational health and safety, drug and alcohol policy, accreditation schemes, financial contributions etc.

Mr McAvaney also noted that tracks which have not been approved by NASR are able to operate outside of the standards required by NASR. Mr McAvaney submitted that NASR wants to see that certain standards are met and implemented, and ultimately tracks which become approved by NASR want to be affiliated with NASR.

Provision of personal accident insurance as a member benefit of a NASR licence

Mr McAvaney submitted that there have been many misinterpretations surrounding the licence and membership of NASR. Mr McAvaney confirmed that a driver becomes a member of NASR once they obtain a NASR licence.

Mr McAvaney noted that the personal accident insurance coverage is just one facet of the licence. Mr McAvaney explained that NASR used to offer the licence and insurance separately, however legislative changes under the Financial Services Reform Act in 2004 set new guidelines on how insurance products can be sold. Primarily this meant that, as NASR is not an insurance broker, it could not give advice on the policy and therefore could not sell it as a separate product. By providing it as a member benefit, drivers are not precluded from obtaining additional personal accident insurance from an alternate provider if they wish to.

Operation of the SCCA and other national bodies

Mr McAvaney noted that the notification lodged by the SCCA ensures that the SCCA has legal protection in the instance where they say that a driver must have a NASR licence in order to be a member of the SCCA. Mr McAvaney considers that this does not change what occurs currently, and NASR is just ensuring that all legal protections are in place.

Mr McAvaney also noted that the purpose of the notifications is not to take control of the roles carried out by bodies such as the SCCA or ASCF. Mr McAvaney noted that there are issues outside the racing rules compiled by the SCCA, which the NASR rules cover, for example the NASR rules contain a drug and alcohol policy. Mr McAvaney added that the issue raised by the SCCA goes beyond the scope of the notifications and is a matter for negotiation between NASR and the SCCA.

Sprintcar Association of NSW

Mr Richards sought guidance on how to conduct business going forward following the notifications. In particular, Mr Richards questioned whether he is required to have a NASR licence and NASR insurance.

Avalon Raceway, ASCF and Premier Speedway were observers throughout the conference.

ACCC clarifications

Third line forcing conduct

Ms Palisi explained that generally, third line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition.

For example, the third line forcing conduct which NASR notified is to offer NASR licences on condition that the licence holder races only at NASR approved tracks and becomes a member of a relevant racing association.

The third line forcing conduct notified by the SCCA, ASCF and DMA is the offer of membership on condition the driver obtains a NASR licence and only races at NASR approved tracks and venues

Dr Chadwick explained that the purpose of the notification process is to gain immunity from legal action in the instance where someone may consider that the conduct they are engaging in may breach the Trade Practices Act.

Personal accident insurance

Commissioner Martin and Ms Palisi explained that the issue of personal accident insurance is not covered by the notifications which the ACCC is considering. Ms Palisi noted that while the ACCC understands it is part of the offer of a NASR licence, it is not the role of the ACCC to determine what should or should not be included in their licence.

Notifications lodged by Avalon Raceway and Perth Motorplex

Dr Chadwick noted that only these two tracks had legal protection to require that drivers wishing to access the race facilities of these tracks to hold a NASR licence. Dr Chadwick noted that if other tracks were carrying out similar conduct, they would be doing so without legal protection. Dr Chadwick noted that if a large number of tracks notified the same conduct, the ACCC may review its decision with respect to these notifications.

Commissioner Martin called for any further comments. No further comments were made. The Chair closed the conference by noting that the ACCC would be providing a written record of the conference to attendees and provide a further opportunity for parties to make written submissions in respect of its draft notices.

Conference closed: 2:25pm