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Kelly & Co.
LAWYERS

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CONFIRMATION
OF E-MAIL

BY EXPRESS POST AND EMAIL

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

FILE No
DCC
MATTERS

Dear Sir or Madam

Exclusive Dealing Notifications lodged by the National Association of Speedway Racing ("NASR")

We refer to your email dated 21 July 2008, which attached a copy of the meeting record from the pre-decision conference held on 15 July 2008 in relation to the above notifications.

We are instructed to take this opportunity to make further submissions on behalf of NASR in respect of the notifications. In particular, we wish to clarify a number of statements made at the pre-decision conference which we consider to be either incorrect or inaccurate, or that relate to matters outside the scope of the notifications and, therefore, the purpose of the pre-decision conference. We also note that the ACCC has already notified participants at the pre-decision conference that certain matters raised were outside the scope of the ACCC's powers in respect of this matter.

NASR Licence and Provision of Insurance

Certain participants in the pre-decision conference alleged that the NASR licence was merely for the provision of personal accident insurance to its members, and in addition that the NASR licence was not a "licence" per se but rather membership of NASR.

As submitted by NASR at the pre-decision conference and in previous correspondence, the NASR licence offers numerous and significant member benefits, of which personal accident insurance cover is but one. In addition, acquisition of NASR licences supports the provision of high level services by NASR to the sport of speedway racing through the development and implementation of objective safety standards, together with risk management procedures and policies.

Without limiting the above comments, we reiterate NASR's earlier submissions that the provision of insurance as a member benefit by NASR is outside the scope of the notifications currently under consideration by the ACCC. We note that the ACCC has acknowledged that "it is not the ACCC's role to determine what should or should not be included in [the NASR] licence".¹

¹ Pre-Decision Conference Minutes (15 July 2008), p7.

NASR Racing Rules & Regulations

We note that certain purported representations from the Sprintcar Control Council of Australia ("SCCA") have supported revocation of the notifications on the basis of concerns regarding the SCCA losing its ability to control how it conducts its races. In particular, these individuals appear concerned that if the notifications are accepted, NASR may forcibly impose the NASR Racing Rules & Regulations on the SCCA.

As mentioned at the pre-decision conference, NASR and SCCA are currently in negotiations regarding the operation and interaction of the SCCA Racing Rules and NASR Racing Rules. This matter is outside the scope of the notifications, and we confirm that the outcome in respect of the notifications will not have any overriding effect on the negotiations.

For the avoidance of doubt, we confirm that it is not NASR's intention to reduce the autonomy of the SCCA, and NASR does not consider that the notifications have any such effect. NASR has consistently acknowledged the differing roles of the SCCA and NASR, and does not intend to take over the role currently provided by SCCA or similar competitor organisations.

Submissions

We refer to the submissions of Mr Ray Solomon at the pre-decision conference. We note that Mr Solomon has made a number of allegations and submissions, including but not limited to:

- questioning the basis upon which NASR claims it is the peak authority for speedway racing in Australia; and
- submitting that participants in speedway racing should be able to make their own assessment of risks, and buy insurance in accordance with their own standards.

In relation to the first point, we confirm that NASR was delegated as the national sporting authority for speedway racing by the Confederation of Australian Motor Sport Limited ("CAMS"), which itself is the national sporting authority for motor sport in Australia. This authority was delegated to CAMS by the Federation Internationale de l'Automobile ("FIA"). Accordingly, NASR is the internationally recognised controlling body of speedway racing in Australia.

NASR has significant concerns regarding the second point specified above, despite it being outside the scope of issues being considered by the ACCC. As submitted previously by NASR, speedway racing is an inherently dangerous sport and there are many insurers who choose not to offer personal accident insurance in respect of speedway racing participants. NASR categorically disagrees with Mr Solomon's submission that participants in speedway should be able to make their own assessment of risk and choose to insure or, presumably, choose not to insure, on the basis of their own standards. NASR considers that to do so would be dangerous and irresponsible, given the inherently dangerous nature of the sport. The future sustainability of the sport of speedway racing is to a large extent founded upon the risk management and safety procedures and policies implemented nationally. A lack of minimum standards of personal accident insurance in speedway racing could lead to increased litigation of tracks and venues, by uninsured or underinsured participants, in turn resulting in increased insurance premiums, a degradation of the reputation of speedway racing and decreased participation in speedway racing by both participants and track and venue operators.

Purpose and Background to the Notifications

In NASR's view, the pre-decision conference highlighted that there is a level of uncertainty and misinterpretation amongst certain interested parties, in respect of the nature and purpose of the notifications.

Accordingly, NASR considers it is necessary to reiterate certain submissions made at the pre-decision conference and in NASR's earlier correspondence. First, we confirm that the purpose of the notifications was to ensure that NASR was fully compliant with trade practices and competition laws prior to implementing any of the notified conduct. This is an important aspect of NASR's corporate governance and regulatory compliance. Without limiting the above, NASR does not make any admission or concession that any aspect of the proposed conduct is anti-competitive per se.

Secondly, we confirm that the notifications were also prepared and lodged with the support of major stakeholders in the sport of speedway racing. In this regard, NASR acknowledges that there has been some recent uncertainty regarding the status of the notification lodged by the SCCA. At the pre-decision conference, Mr Ian Vale and Mr Jim Muir indicated that they supported revocation of the SCCA notification. NASR notes that at the time of lodgement, the SCCA notification had the support of the then-current SCCA Executive. There have since been changes to the personnel comprising the SCCA Executive and this appears to have caused some confusion within the organisation regarding the purpose of the current notification process.

NASR also notes that Mr Vale expressly stated that his participation in the pre-decision conference was not as a representative of the SCCA. Accordingly, NASR is unable to comment on whether the views and submissions made by Mr Vale and Mr Jim Muir were representative of the views of the entire SCCA organisation. To NASR's knowledge, the SCCA notification has not been withdrawn at this time. For the avoidance of doubt, NASR rejects any allegation that the SCCA notification was lodged without the support or knowledge of the SCCA.

Thirdly, we confirm that the notifications lodged by the tracks and competitor groups will not force those parties to implement or impose any of the proposed conduct specified in those notifications. The purpose of the notifications was to ensure that such conduct, if implemented, would be immune from prosecution. NASR confirms that it claims no authority to require tracks and/or competitor groups to implement any aspect of the proposed conduct.

Summary

We look forward to receiving the ACCC's final determination in relation to the notifications. Please contact the writer if you require any further clarification or information from NASR.

Yours faithfully
KELLY & CO

per:



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