



Australian  
Competition &  
Consumer  
Commission

# Notice

Exclusive dealing notifications

lodged by

**National Association of Speedway  
Racing Incorporated, National  
Association of Speedway Racing Pty Ltd  
and Competitor Groups**

Date: 27 August 2008

Notification no.  
N93297 – N93298  
N93301 – N93303

Public Register no.  
C2008/284 and  
C2008/290

Commissioners:

Samuel  
Kell  
Schaper  
Court  
King  
Martin  
Willett  
Walker

## Summary

The ACCC has decided to revoke the immunity provided by third line forcing notifications lodged by NASR (N93297-N93298) and the Competitor Groups (N93301-N93303) that enables NASR to restrict its licensees to race only at NASR approved tracks and venues. The immunity afforded to NASR and Competitor Groups for this conduct will cease on 29 September 2008.

The ACCC has decided not to take any action with respect to the notifications lodged by Perth Motorplex and Avalon Raceway (N93304-N93305), which means these tracks have legal protection to require drivers to hold a NASR licence in order to access their race and pit facilities.

The ACCC has decided not to take any action with respect to the exclusive dealing notifications lodged by NASR (N93299-N93300), so that NASR may require its licence holders to only race in speedway racing categories approved by NASR.

### The notification process

The Australian Competition and Consumer Commission (ACCC) is the Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act).

Section 47 of the Act prohibits conduct known as exclusive dealing. Broadly, exclusive dealing involves one trader imposing restrictions on another person's freedom to choose with whom, in what or where they deal.

A common form of exclusive dealing is third line forcing. Third line forcing involves the supply of goods or services on condition that the purchaser also acquires goods or services from a third party. Another form of exclusive dealing is the supply of goods or services on condition that the buyer will not acquire, or will limit the acquisition of, goods or services from a competitor of the supplier.

Businesses may obtain protection for conduct that might risk breaching the exclusive dealing provisions of the Act by lodging a notification with the ACCC.

The ACCC may revoke a third line forcing notification if it is satisfied that the likely benefit to the public from the proposed conduct will not outweigh the likely detriment to the public from the conduct.

The ACCC may revoke a notification for exclusive dealing, other than third line forcing, if it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition in a relevant market and the likely benefit to the public will not outweigh the detriment to the public from the lessening of competition.

### The notifications

The National Association of Speedway Racing Incorporated and the National Association of Speedway Racing Pty Ltd (NASR), the Sprintcar Control Council of Australia Incorporated (SCCA), the Australian Saloon Car Federation Incorporated (ASCF), Dirt Modifieds

Australia (DMA), Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex (Perth Motorplex) and Corio Park Pty Ltd trading as Avalon International Raceway (Avalon Raceway) lodged seven notifications which may be third line forcing. Additionally, NASR lodged two notifications for conduct which may be exclusive dealing other than third line forcing.

Broadly, the notifications relate to the offer and supply of NASR licences to speedway racing drivers and NASR approval of race tracks and venues. The conduct restricts NASR drivers from racing under their NASR licence in categories of speedway racing which are not recognised by NASR, and from racing at tracks and venues not approved by NASR.

### **Draft notices with respect to notifications N93297 – N93298 and N93301 – N93303**

On 11 June 2008, the ACCC issued draft notices under section 93A(3) of the Act proposing to revoke the immunity afforded by third line forcing notifications N93297, N93298, N93301, N93302 and N93303. The ACCC considered that for each of the third line forcing notifications lodged, the likely benefits to the public would not outweigh the likely detriment.

The ACCC did not propose to revoke notifications N93299 and N93300 lodged by NASR and notifications N93304 and N93305 lodged by the Perth Motorplex and Avalon Raceway.

### **ACCC assessment**

#### *Notifications N93297 – N93298 lodged by NASR*

The effect of these notifications will be that NASR licence holders may only race at those tracks and venues which are approved by NASR, and NASR licence holders must obtain membership in a relevant club or association related to the driver's speedway racing category.

The ACCC accepts there is significant public benefit in having adequate safety standards for tracks and venues which are effectively monitored and enforced, and ensuring that tracks and venues hold adequate public liability insurance, provided tracks and venues remain free to choose the insurance provider. The ACCC notes that NASR and other bodies (including government) have a role in ensuring the safety of tracks and venues.

The ACCC also accepts that the requirement that licence holders also be members of a relevant club is a means of enforcing and monitoring car and safety specifications and notes that the majority of licence holders are already members of a relevant club.

However, the ACCC considers that the notified conduct is likely to have a significant effect on tracks and venues which are not approved by NASR but which meet appropriate safety standards and hold public liability insurance. These tracks will not be able to attract NASR licensees (which are the majority of licensed drivers) to their events, even if those drivers hold an alternate licence. Similarly, NASR licensees who also hold alternate licences will be restricted from attending the events at tracks and venues that are not NASR approved.

Overall, the ACCC is not satisfied that the likely benefits to the public will outweigh the likely detriment. Therefore, the ACCC issues notices revoking notifications N93297 and N93298.

*Notifications N93301 – N93303 lodged by the Competitor Groups*

The conduct which has been notified by the Competitor Groups is that the Competitor Groups will only provide membership to their respective association on condition the driver obtains a NASR licence and only races at tracks and venues sanctioned or approved by NASR.

The ACCC accepts there is benefit in ensuring that car safety specifications are met and the requirement that drivers obtain membership in a relevant organisation is a means of achieving this.

However, the ACCC considers that restrictions on NASR licensees to race only at approved tracks and venues has a detrimental impact on drivers and non-approved tracks and venues.

Overall, the ACCC is not satisfied that the likely benefits to the public will outweigh the likely detriment. Therefore, the ACCC issues notices revoking notifications N93301 - N93303.

*Notifications N93304 – N93305 lodged by Perth Motorplex and Avalon Raceway*

Under the notified conduct Perth Motorplex and Avalon Raceway propose to allow only NASR licence holders to access track and pit facilities at their venues.

While Perth Motorplex and Avalon Raceway promote some of the major racing events in Australia, the ACCC notes that a significant number of tracks currently do not limit access to only NASR licensees.

Overall, the ACCC considers that at this time the public benefits arising from the notifications outweighs the public detriments and as such does not intend to take any further action in relation to notifications N93304 and N93305.

The ACCC may review a notification and act to remove the protection afforded by the notifications at a later stage. The ACCC notes that if a significant number of tracks began to only accept NASR licences as a condition of accessing the track and pit facilities, the public detriments arising from the requirement may change and the ACCC may reconsider the protection afforded to such notifications.

*Notifications N93299 – N93300 lodged by NASR*

These exclusive dealing notifications involve the offer and supply by NASR of speedway racing licences, subject to a condition that the offeree only participate or compete in speedway racing categories approved by NASR.

The ACCC notes that NASR currently recognises the majority of speedway racing, and provides for new categories to become recognised.

The ACCC would be concerned if NASR's requirement that licensees only race in recognised categories had the purpose or effect of preventing another organisation from establishing its own racing categories in competition with NASR.

However, the ACCC does not have before it any evidence to suggest that the purpose or effect of the conduct is to substantially lessen competition in any relevant market.

Therefore, the ACCC does not consider the requirement for NASR licence holders to only race in recognised categories has the purpose, effect or likely effect of substantially lessening competition and does not intend to take any further action at this time with respect to notifications N93299 and N93300 at this time.

## **Notices**

On the basis of the information currently before it, for the reasons outlined in this notice the ACCC is satisfied that the likely benefit to the public from notifications N93297, N93298, N93301, N93302 and N93303 will not outweigh the likely detriment to the public.

Accordingly, the ACCC gives notice under section 93(3A) of the Act revoking the immunity afforded by notifications N93297, N93298, N93301, N93302 and N93303. The immunity provided by these notifications cease to be in force on xx xxxx 2008.

The ACCC does not intend to take any further action with respect to notifications N93304 and N93305 for third line forcing conduct lodged by Perth Motorplex and Avalon Raceway. Legal protection conferred by these notifications commenced on 26 February 2008.

The ACCC does not intend to take any further action with respect to notifications N93299, N93300 for exclusive dealing other than third line forcing conduct. Legal protection conferred by these notifications commenced on 12 February 2008.

As with any notification, the ACCC may act to remove the protection afforded by these notifications (N93299, N93300, N93304 and N93305) at a later stage.

## **Table of contents**

<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. BACKGROUND .....</b>	<b>3</b>
<b>3. STATUTORY TEST.....</b>	<b>8</b>
<b>4. SUBMISSIONS .....</b>	<b>8</b>
<b>5. OVERVIEW OF THE NOTIFIED CONDUCT .....</b>	<b>23</b>
<b>6. THE RELEVANT MARKETS.....</b>	<b>24</b>
<b>7. ASSESSMENT OF NOTIFICATIONS N93297 AND N93298 .....</b>	<b>25</b>
<b>8. ASSESSMENT OF NOTIFICATIONS N93301, N93302 AND N93303.....</b>	<b>31</b>
<b>9. ASSESSMENT OF NOTIFICATIONS N93304 AND N93305 .....</b>	<b>34</b>
<b>10. ASSESSMENT OF NOTIFICATIONS N93299 AND N93300 .....</b>	<b>37</b>
<b>11. NOTICES .....</b>	<b>40</b>

## List of abbreviations

ACCC	Australian Competition and Consumer Commission
ADDA	Australian Dirt Driver's Association Inc
AIMSS	Australian Institute for Motor Sport Safety
Alexandra Speedway	Alexandra District Speedway Incorporated
ANDRA	Australian National Drag Racing Association
APRA	Australian Prudential Regulation Authority
ASAF	Australian Speedway Accident Fund
ASCF	Australian Saloon Car Federation Incorporated
Avalon Raceway	Corio Park Pty Ltd trading as Avalon International Raceway
Bairnsdale Speedway	Bairnsdale Speedway Association Inc
CAMS	Confederation of Australian Motor Sport Limited
Collie Racing Drivers Association	Collie Speedway
Competitor Groups	Sprintcar Control Council of Australia Incorporated, Australian Saloon Car Federation Incorporated and Dirt Modifieds Australia Incorporated
DMA	Dirt Modifieds Australia Incorporated
DSRDA	Darwin Speedway Rider & Drivers Association Inc
FIA	Federation Internationale Automobile
Formula Motorsports Group	Formula Motorsports Group Pty Ltd
JQMA	Junior Quarter Midgets Australia Ltd
NASR	National Association of Speedway Racing Incorporated and National Association of Speedway Racing Pty Ltd
NDRA	National Dirt Racers Association Inc
NOS Sprints	NOS Sprints Inc

NSW Formula 500 Association	NSW Formula 500 Association Inc
Perth Motorplex	Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex
QSCA	Queensland Saloon Car Association Inc
SCCA	Sprintcar Control Council of Australia Incorporated
SMSC	Stawell Motor Sports Club Inc
SSA	Speedway Sedans Australia Inc
the Act	<i>Trade Practices Act 1974 (Cth)</i>
VSC	Victorian Speedway Council Incorporated
WASC	Western Australian Speedway Commission
WASCF	Speedway Sedans Australia affiliated Western Australia body



## 1. Introduction

- 1.1 The Australian Competition and Consumer Commission (the ACCC) is the Commonwealth agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.
- 1.2 Section 47 of the Act prohibits conduct known as exclusive dealing where it has the purpose or effect of substantially lessening competition. Generally speaking, exclusive dealing involves one business trading with another, imposing restrictions on the other's freedom to choose with whom, or in what, it deals.
- 1.3 Sub-sections 47(6) and 47(7) of the Act specifically prohibit conduct known as 'third line forcing' which involves the supply of goods or services on condition that the customer also acquire goods or services from a third party. Third line forcing conduct is currently a per se provision, meaning that it amounts to a contravention of the Act regardless of its effect on competition.
- 1.4 Another form of exclusive dealing is the supply of goods or services on condition that the buyer will not acquire, or will limit the acquisition of goods or services from a competitor of the supplier (s47(2) and 47(3)). This form of exclusive dealing conduct will only raise concerns under the Act if it has the purpose, effect or likely effect of substantially lessening competition in a market.
- 1.5 Businesses may obtain protection in relation to conduct that might be at risk of breaching the exclusive dealing provisions of the Act by lodging a 'notification' with the ACCC. Once lodged, protection for the notified conduct commences immediately, or in the case of third-line forcing, after 14 days.
- 1.6 The ACCC may revoke a third-line forcing notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the proposed conduct. Revoking a notification prevents or removes the protection conferred by the lodging of the notification.
- 1.7 The ACCC may only revoke a notification for exclusive dealing other than third line forcing if it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition, and in all the circumstances:
  - the conduct has not resulted or is not likely to result in a benefit to the public or
  - any benefit to the public would not outweigh the detriment to the public constituted by any lessening of competition resulting from the conduct.
- 1.8 Prior to issuing a notice to revoke a notification, the ACCC must issue a draft notice setting out its reasons for proposing to revoke the notification.
- 1.9 Once a draft notice is released, the applicant or any interested party may request that the ACCC hold a conference. A conference provides all parties with the opportunity

to put oral submissions to the ACCC in response to the draft notice. The ACCC will also invite the applicant and interested parties to lodge written submissions commenting on the draft notice.

- 1.10 The ACCC then reconsiders the notification, taking into account the comments made at the conference (if one is requested) and any further submissions received and if it is satisfied that the relevant public interest test is still not met it will issue a final notice.

### Chronology

- 1.11 Table 1.1 provides a chronology of significant dates in the consideration of this matter.

<b>DATE</b>	<b>ACTION</b>
12 February 2008	Lodgement of notifications N93297 – N93305
4 March 2008	ACCC requests information from the notifying parties
12 March 2008	The notifying parties respond to information request
14 March 2008	Submissions requested from interested parties
17 March 2008	ACCC requests information from NASR
27 March 2008	NASR responds to information request
27 March 2008	Closing date for submissions by interested parties. Submissions received by the ACCC until 29 April 2008
7 May 2008	Submission received from notifying parties in response to interested parties
11 June 2008	Draft notices issued for notifications N93297 – N93298 and N93301 – N93303 Notifications N93299 – N93300 and N93304 – N93305 allowed to stand
15 July 2008	Conference in relation to the draft notices
1 August 2008	Closing date for submissions by interested parties
27 August 2008	Notices issued in respect of notifications N93297 – N93298 and N93301 – N93303
29 September 2008	Immunity provided by notifications N93297 – N93298 and N93301 – N93303 ceases to be in force

## **The notifications**

- 1.12 The National Association of Speedway Racing Incorporated and the National Association of Speedway Racing Pty Ltd, the Sprintcar Control Council of Australia Incorporated, the Australian Saloon Car Federation Incorporated, Dirt Modifieds Australia, Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex and Corio Park Pty Ltd trading as Avalon International Raceway (together referred to as the notifying parties) lodged nine notifications in relation to the offer and supply of NASR licences to drivers and NASR approval of race tracks and venues.

## **Draft Notices**

- 1.13 On 11 June 2008, the ACCC issued draft notices proposing to revoke third line forcing notifications N93297 – N93298 lodged by NASR and notifications N93301 – N93303 lodged by the SCCA, ASCF and DMA.
- 1.14 At this time the ACCC also issued an assessment outlining its reasons for not taking any further action with respect to notifications N93299 – N93300 lodged by NASR for exclusive dealing conduct other than third line forcing, and third line forcing notifications N93304 – N93305 lodged by Perth Motorplex and Avalon Raceway.

## **Pre-decision conference**

- 1.15 On 15 July 2008, the ACCC convened a conference at the request of Mr Ian Vale to discuss the ACCC's draft notices. See paragraphs 4.108 to 4.122 for an overview of submissions made during and following the conference.

## **2. Background**

### **NASR**

- 2.1. NASR was established in 1997 and is the internationally recognised controlling body of speedway racing in Australia. NASR was ratified by the Federation Internationale Automobile (FIA), through the Confederation of Australian Motor Sport Limited (CAMS)<sup>1</sup>, to become the first Australian speedway body to achieve FIA delegation of authority. The FIA is the peak world motorsport body.
- 2.2. The NASR corporate structure is comprised of a company and an incorporated association, both operating under the direction of a common board (NASR Board). Each state has an incorporated state branch to which tracks and competitor clubs and associations belong.
- 2.3. Traditionally, speedway racing administration was fragmented across various sanctioning and category groups and was regionally based. NASR advises that it has been working to develop unified standards in safety, training, presentation and

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<sup>1</sup> CAMS, the Confederation of Australian Motor Sport Limited, is the custodian of motor sport in Australia since 1953 and is the National Sporting authority for motor sport in Australia.

performance, improving the profile of speedway racing and standardising and developing management skills at all levels.

#### *NASR licences*

- 2.4. NASR submits it offers a national licensing system which is transferable between all recognised categories of speedway racing.
- 2.5. In order to be eligible for a NASR licence, drivers must pass a suitable medical examination and they may not have any outstanding judicial sanctions by any speedway division.
- 2.6. NASR requires licence holders to comply with its systems and procedures, which incorporate:
  - compliance with a risk management program
  - undertaking track inspections and track risk audits, including compliance with direction from NASR regarding track maintenance and improvements
  - satisfaction of a Five-star National Track Standard Rating system, ensuring that tracks and venues meet recognised industry standards
  - compliance with occupational health and safety requirements, including reading a duty of care statement at every race meeting, compliance with a drug and alcohol policy and provision of medical clearance by drivers
  - compliance with NASR policies including protection of the environment, noise minimisation and protection of children
  - optional attendance at NASR's National Safety Training Seminars, for training and informing track safety workers
  - appropriate public liability insurance and
  - incentives to increase safety at racing facilities.<sup>2</sup>
- 2.7. NASR offers licences based on race category and membership type (ie driver, official, mechanic), with the fee varying accordingly. The licence fee ranges between \$85 to \$175 for drivers, and \$55 to \$85 for juniors, mechanics and pit entry.
- 2.8. NASR submits the licence fee for all licences, including a pit entry licence, is calculated on the basis of all membership benefits which include:
  - a licence to compete in NASR events
  - Choice Hotels Association Card

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<sup>2</sup> NASR, *Exclusive Dealing Notifications lodged by the National Association of Speedway Racing (NASR)*, Letter dated 27 March 2008, pp. 1-2.

- Entertainment book available at a discount rate
- Leaded Fuel Passbook, which permits purchase of leaded fuels under the exemption granted to NASR under the *Fuel Quality Standards Act 2000 (Cth)*
- NASR News, a full colour magazine style newsletter produced three times a year
- discounted membership of the Paraplegic Benefit Fund Australia
- personal accident insurance
- guarantee of appropriate public liability insurance at NASR approved venues and events and
- administration and management of the sport of speedway racing.<sup>3</sup>

#### *NASR Insurance*

- 2.9. NASR advises that it has appointed Marsh Insurance Brokers (Marsh) as its insurance broker for personal accident and public liability insurance. The insurance policies are negotiated on an annual basis through a tender process which is carried out biennially.<sup>4</sup>
- 2.10. NASR advises that in March 2006, NASR and Marsh prepared and circulated a tender document for consideration by approximately eight insurance providers. NASR advises that four of these companies provided a quotation.
- 2.11. QBE Insurance (Australia) Limited (QBE) currently provides NASR with the insurance cover it requires. NASR advises that it is currently undertaking a similar tender process for the 2008/09 financial year.<sup>5</sup>

#### NASR personal accident insurance

- 2.12. NASR has negotiated a group personal accident insurance policy on behalf of its members which covers all national and state executives of NASR, all committee members, employees and drivers, mechanics, officials, visitors and others who are licence holders of NASR.
- 2.13. NASR provides access to its group personal accident insurance as a member benefit of its licences and cover is provided automatically as a result of purchasing a NASR licence. NASR advises that the insurance and the licence are not severable.
- 2.14. NASR advises the insurance covers attendance at an authorised event or meeting organised by, recognised by or under the direct control of NASR and/or any

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<sup>3</sup> NASR, *Exclusive Dealing Notifications lodged by the National Association of Speedway Racing (NASR)*, Letter dated 12 March 2008, p. 1.

<sup>4</sup> *ibid.*, p. 4.

<sup>5</sup> *ibid.*

affiliates including necessary and direct travel to and from such authorised events or meetings.<sup>6</sup> The insurance cover does not extend to overnight stays.

- 2.15. NASR advises that no additional cost is incurred by licence holders for the insurance cover, and licence holders are not required to sign or enter into a commercial relationship with the insurer. NASR notes that licence holders do not have the details of the relevant insurer and if they wish to make a claim, they contact NASR who provides the claim form from the relevant insurer for the licensee to complete. NASR advises that it liaises with the relevant insurer at all times.
- 2.16. NASR advises that while a licence holder cannot opt out of the insurance provided by NASR as a member benefit, they are not restricted from obtaining additional personal accident insurance from an alternative insurance provider.
- 2.17. The relevant NASR licence for racing pit area access also includes personal accident insurance as a benefit.
- 2.18. The ACCC notes that the provision of personal accident insurance cover as a member benefit to NASR licence holders falls outside the scope of the notifications currently being considered. As such, the ACCC has not made an assessment of whether the provision of personal accident insurance comprises a breach of the Act, nor has it assessed the merits of bundling insurance with the licence (see paragraphs 7.14 to 7.23 for a brief discussion on the personal accident insurance).

#### NASR public liability insurance

- 2.19. NASR submits that it is necessary to ensure that all tracks and venues hold adequate public liability insurance before conducting race competitions. All tracks and venues sanctioned or approved by NASR must maintain an adequate level of public liability insurance, which is underwritten by an Australian Prudential Regulation Authority (APRA) approved insurer to a limit of \$50 000 000 for each and every claim.<sup>7</sup>
- 2.20. NASR submits that all tracks and venues sanctioned or approved by NASR must have cover under the NASR public liability insurance scheme or public liability insurance cover equivalent to that offered by NASR.<sup>8</sup>
- 2.21. Tracks and venues which are NASR sanctioned or approved must also comply with NASR's Australian Speedway Racing Rules and Regulations and the Track Operators Manual.
- 2.22. NASR submits there are approximately 110 speedway tracks currently operating in Australia. NASR advise that over 70% of operational tracks and venues around Australia have already been approved by NASR, and that over 80% of tracks outside

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<sup>6</sup> NASR, *Exclusive Dealing Notifications lodged by the National Association of Speedway Racing (NASR)*, Letter dated 12 March 2008, p. 2.

<sup>7</sup> The Competitor Groups, Form G: Notification of Exclusive Dealing, p. 4.

<sup>8</sup> NASR, *Form G: Notification of Exclusive Dealing – Third line forcing notification*, p. 3, NASR, *NASR Exclusive Dealing Notifications*, Letter dated 7 May 2008, p. 3.

of Western Australia are NASR approved.<sup>9</sup> Tracks currently not sanctioned may apply to become approved.<sup>10</sup>

### **The Competitor Groups (SCCA, ASCF and DMA)**

- 2.23. NASR is the internationally recognised controlling body for speedway racing as a whole in Australia. NASR advises that other national governing bodies are established for each recognised category of speedway racing, such as the Competitor Groups, for the purposes of managing technical and safety specifications for vehicles.
- 2.24. The Competitor Groups are non-profit organisations responsible for the administration of their class of vehicle nationally. The Competitor Groups are responsible for the registration, inspection, licensing, conduct and competitions of their category of race vehicle and setting the technical and safety specifications for the vehicles.
- 2.25. The SCCA is responsible for the administration of the sprintcar racing sport nationally and currently has approximately 400 members, the ASCF is responsible for the administration of the saloon car racing sport nationally with approximately 1200 members, and the DMA is responsible for the administration of the V8 dirt modifieds sport nationally and has approximately 100 members. Each club or association conducts the administration of their category nationally and/or on a state and/or regional level.
- 2.26. The Formula Motorsports Group Pty Ltd (Formula Motorsports Group) advises that two of the Competitor Groups attract the largest participation by spectators, pit crew and sponsors.
- 2.27. The ACCC understands that there are many other associations and clubs who undertake these roles for other racing categories.

### **Perth Motorplex and Avalon Raceway**

- 2.28. Perth Motorplex is the operator of the Speedway Perth Motorplex, located at Kwinana Beach, Western Australia. Avalon Raceway is the operator of the Avalon International Raceway, located at Lara, Victoria.
- 2.29. Both raceways provide racing services and host speedway race events including events in the categories of sprintcars, super sedans, speedcars and various other motorsport racing categories.
- 2.30. Perth Motorplex submits that all motorsport events scheduled at the Perth Motorplex are sanctioned by the relevant peak national sporting organisation for various motorsports including drag racing, speedway, motocross, quad bikes and speedway bikes, go-karts, and autocross and rally. Perth Motorplex submits the peak organisations provide the driver licensing, technical, safety and racing regulations

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<sup>9</sup> NASR, *NASR Exclusive Dealing Notifications*, Letter dated 7 May 2008, p. 2.

<sup>10</sup> NASR, *Form G: Notification of Exclusive Dealing – Third line forcing notification*, pp. 5-6.

for a number of types of vehicles and classes of competition for their particular sport.<sup>11</sup>

- 2.31. Perth Motorplex and Avalon Raceway submit that there are over 100 alternative speedway tracks operating in Australia where speedway race events are conducted.
- 2.32. The Formula Motorsports Group submits that Perth Motorplex and Avalon Raceway promote some of the major racing events in the country.

### **3. Statutory test**

- 3.1. The notifying parties have lodged notifications for both third line forcing (subsections 47(6) and 47(7)) and exclusive dealing (subsections 47(2) and 47(3)). As such, the public interest tests the ACCC will apply to assess the notifications differ.
- 3.2. Under subsection 93(3A), if a corporation has notified the ACCC of conduct or proposed conduct of the type described in subsections 47(6) or 47(7), that is third line forcing conduct, and the ACCC is satisfied that the likely benefit to the public from the conduct or proposed conduct will not outweigh the likely detriment to the public from the conduct or proposed conduct, the ACCC may, through the process described in paragraphs 1.6 to 1.10, give the corporation a written notice stating that the ACCC is so satisfied. The effect of giving such a notice is to revoke the protection conferred by the notification.
- 3.3. The ACCC will assess notifications involving exclusive dealing other than third line forcing by applying the test in subsection 93(3) of the Act. This test states that the ACCC may move to revoke a notification if it is satisfied that the conduct has the purpose, effect or likely effect of substantially lessening competition, and in all the circumstances:
  - the conduct would not result or be likely to result in a benefit to the public or
  - any benefit to the public that would result or be likely to result from the conduct would not outweigh the detriment to the public constituted by any lessening of competition from the conduct.
- 3.4. Before revoking the protection obtained by any notification, the ACCC must issue a draft notice of its intention and give the notifying party and interested parties the opportunity to respond and to call a conference in relation to the draft notice.

### **4. Submissions**

#### **Prior to the draft notices**

- 4.1. The ACCC sought submissions from a number of interested parties potentially affected by the notifications. The ACCC received one confidential submission, and

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<sup>11</sup> Perth Motorplex submission dated 26 March 2008.



41 public submissions from various drivers, associations, speedways and an accident fund provider prior to issuing the draft notices.

- 4.2. Copies of public submissions are available on the public register ([www.accc.gov.au](http://www.accc.gov.au)) by following the 'Public Registers' and 'Authorisations and Notifications Registers' links.
- 4.3. The ACCC notes that a number of issues raised by interested parties are not considered directly relevant to the assessment of the notified conduct. Such issues included the corporate structure of NASR, the connections between the notifying parties, a perceived conflict of interest between the notifying parties and the operation of the sport and the lack of industry consultation prior to the parties lodging the notifications. While these issues are not relevant to the ACCC's assessment of the notifications, the ACCC recognises they are important to many industry participants. These issues cannot however be resolved through the notification process.
- 4.4. The ACCC received public submissions from:

*Victorian Speedway Council Incorporated*

- 4.5. The Victorian Speedway Council Incorporated (VSC) offers licences for speedway racing with a separate personal accident insurance option. VSC offer coverage through the Australian Speedway Accident Fund, and submits that it has always given competitors a choice as to which personal accident insurance cover they want.
- 4.6. VSC submits that many VSC licence holders also hold a NASR licence, and only hold the personal accident insurance provided with the NASR licence. VSC is concerned that the personal accident insurance provided by NASR may not cover VSC participants racing at a non-NASR approved tracks.
- 4.7. VSC currently licences 13 classes of racing in Victoria. VSC allows speedways to manage their own tracks and events, with the only requirement that they hold appropriate public liability insurance and do not run non-recognised categories at the same time as recognised categories.
- 4.8. VSC events are held at all tracks in Victoria with the exception of Warrnambool, Avalon, Horsham and Mildura. VSC submits that these tracks only accept the NASR licence.
- 4.9. VSC also submits that the NASR licence discriminates against certain participants as all participants have to pay the same amount for a particular licence and many competitors will not obtain other insurance to the NASR insurance because it is an added cost.

*Australian Dirt Driver's Association Inc*

- 4.10. Australian Dirt Driver's Association Inc (ADDA) has in place processes for developing policy and procedures that complement the work by NASR. ADDA

offers a single licence for senior drivers and a single licence for junior drivers, regardless of their racing category. ADDA has also obtained a group personal accident insurance policy, and offers its licence and insurance as separate components.

4.11. ADDA also submits that:

- NASR's Strategic Planning report states that it aims to rationalise categories of racing yet has not mentioned this in their notifications
- if ADDA licences or personal accident insurance was excluded at a NASR approved track it is likely that ADDA's membership would decrease and
- clubs and venues in country areas may find it difficult to continue to operate. ADDA notes that when a racing category holds a major event in country areas, the local community benefits from the influx of competitors and spectators attending the event.

*National Dirt Racers Association – WA branch*

4.12. The National Dirt Racers Association – WA branch (NDRA – WA) opposes the notifications and submits that many drivers in WA are satisfied with an NDRA licence and are happy to race under this licence.

4.13. NDRA offers licences and insurance, separately, for speedway racing. NDRA advises that it is not difficult to obtain insurance for motorsport.

4.14. NDRA notes that drivers who wish to race at the Perth Motorplex who hold an NDRA licence must also obtain a NASR licence, as the NDRA insurance is not accepted there.

*West Coast Speedcars*

4.15. West Coast Speedcars do not support the notifications and are concerned that the conduct will mean that a NASR licensed driver will not be able to compete at a track which is not a NASR approved track. West Coast Speedcars also submits that:

- it is not important to hold a NASR licence and licences may be obtained from other organisations who offer licences for speedway racing
- the insurance provided by NASR may be irrelevant or inadequate to some competitors including self-employed and unemployed people. Further, the insurance does not allow for overnight stays
- other organisations provide insurance and licences separately
- drivers do race at both NASR and non-NASR tracks. West Coast Speedcars submits that these drivers are required to carry two personal accident insurance policies because under NASR's conditions they would lose their personal accident insurance

- the WA Health Department has the sole authority and responsibility for approving suitability and classification of WA speedway venues. West Coast Speedcars submits that NASR approves tracks on the basis of whether the track or its operators hold NASR public liability insurance.

*National Dirt Racers Association Inc*

- 4.16. National Dirt Racers Association Inc (NDRA) submits that it is not important to hold a NASR licence and notes that NDRA offers licence holders access to a group personal accident insurance policy. NDRA offer its licence and personal accident insurance separately.

*Queensland Saloon Car Association Inc*

- 4.17. Queensland Saloon Car Association Inc (QSCA) notes that it issues licences to drivers to race in a national or state based class only after sighting evidence that they held adequate personal accident insurance covering them for speedway racing.
- 4.18. The QSCA submits that since NASR was established, participants have been required to use NASR personal accident insurance which has resulted in an increased cost to the competitor.
- 4.19. The QSCA is concerned that by restricting competitors holding NASR personal accident insurance to racing only in NASR approved events and at NASR approved venues will be restrictive to those competitors who choose to only race at their local home track. QSCA submits that should a competitor not hold NASR personal injury insurance they could find themselves being unable to race at tracks and venues in reasonable close proximity to home, and in time, these competitors may leave the sport.

*Stawell Motor Sports Club Inc*

- 4.20. Stawell Motor Sports Club Inc (SMSC) notes that in Victoria there are a number of controlling bodies who offer licences and also personal accident insurance coverage. SMSC submits that for competitors in VSC classes, there is no need to purchase a NASR licence as VSC provides licences and personal accident coverage, unless the competitor wishes to race interstate or at some NASR tracks.
- 4.21. SMSC submits that VSC offers its licence and the insurance component separately. SMSC submits that NASR does not give drivers an option as to what policy they purchase and does not advertise the cost of the NASR insurance component in the NASR licence.
- 4.22. SMSC notes there is confusion as to what a NASR approved track is and notes that a major problem in speedway racing is that the various governing bodies do not work together.

*Darwin Speedway Rider & Drivers Association Inc*

- 4.23. Darwin Speedway Rider & Drivers Association Inc (DSRDA) supports NASR and notes that all drivers competing at its speedway (Northline Speedway) are NASR licensed and therefore covered by NASR's personal accident insurance. DSRDA notes that competitors and members are advised that they can obtain additional insurance cover if they wish. DSRDA notes that CAMS and ANDRA (Australian National Drag Racing Association) also provide a licensing system to their members which includes an insurance component and no reduction is made should a competitor choose an alternative insurance scheme.
- 4.24. DSRDA also submits that NASR approved tracks provide minimum safe standards for speedway racing. NASR provides guidelines to ensure unsafe procedures are minimised.
- 4.25. DSRDA submits that it is important for drivers to be members of their respective national body as this body sets the minimum safety standards applicable to vehicle design.

*NOS Sprints Inc*

- 4.26. NOS Sprints Inc (NOS Sprints) supports the national structure provided under NASR for drivers and mechanics, and race track safety.
- 4.27. NOS Sprints considers that the NASR insurance is reasonably priced with large coverage, and that drivers rarely want to organise their own insurance given that speedway racing is usually enjoyed as a part time activity and people have no interest in obtaining insurance separate to the NASR system.
- 4.28. NOS Sprints submits its division only accepts the NASR licence for its drivers. NOS Sprints notes they do race at non-NASR approved racing facilities but only after the facility has demonstrated its insurance coverage and safety standards are acceptable and similar to the NASR standards.
- 4.29. NOS Sprints submits that the only way the NOS Sprint division can be operated as a national professional structure is to be under the NASR banner and supports the working of NASR.

*Speedway Sedans Australia affiliated Western Australia body*

- 4.30. The Speedway Sedans Australia affiliated Western Australia body (WASCF) supports the notifications, and submits that not many drivers obtain their own personal accident insurance, and that it would be difficult to obtain equal or better cover individually.
- 4.31. The WASCF submits that the NASR personal accident insurance covers members for their participation in events that are NASR approved, and it can also apply to events that are held at non-NASR approved tracks but are in recognised categories.

- 4.32. The WASCf submits that it is important to be a member of the relevant competitor group because these organisations are responsible for controlling the specifications and safety standards for their respective divisions.

*Crash N Bash Drivers Association*

- 4.33. The Crash N Bash Drivers Association submits that its members must hold a NASR licence and it requires its members to race at NASR approved tracks because it can be assured that these tracks have appropriate public liability insurance.
- 4.34. Further, the Crash N Bash Drivers Association submits that the personal accident insurance provided by NASR has been specifically designed to cater for speedway drivers, and submits that other policies may fall short of this.
- 4.35. The Crash N Bash Drivers Association submits that some of its members do race at non-NASR approved tracks, however would prefer it if this did not occur.

*ASCF Speedway Sedans Australia Inc*

- 4.36. ASCF Speedway Sedans Australia Inc (ASCF/SSA) submits that it has adopted the NASR licence in favour of its own administered licence to move towards a national licensing system enabling competitors to move to different racing divisions within speedway using the same licence. The ASCF/SSA also submits that:
- the majority of drivers are more than satisfied with the insurance provided under the NASR licence
  - it is important for all saloon car members to be members of the ASCF/SSA to better control general car specifications and car safety specifications to all vehicles under their banner.

*Dirt Modifieds Australia*

- 4.37. Dirt Modifieds Australia (DMA) submits that it is important to hold a NASR licence and have the benefit of NASR's professional management of the sport. DMA notes that none of its members have their own insurance in addition to that provided as part of the NASR licence.
- 4.38. DMA submits that it is important to be a member of DMA as this is the only way it can organise and control car specifications, racing rules and discipline rules for dirt modifieds racing.

*NSW Formula 500 Association Inc*

- 4.39. NSW Formula 500 Association Inc submits that it would be of benefit to the sport if there was one governing body for speedway in Australia and NASR has been doing a good job so far. However, the NSW Formula 500 Association Inc submits that NASR should not be involved in setting car specifications for any existing division.

#### *Australian Speedway Accident Fund*

- 4.40. Australian Speedway Accident Fund (ASAF) submits that the bundling of personal injury insurance with NASR's licence is anti-competitive, and by forcing consumers to pay an additional fee to use an alternative insurance policy or accident benefit provider puts a levy on drivers' freedom of choice.
- 4.41. The ASAF also submits that it creates a barrier to alternative providers entering the market or remaining in the market for accident benefits or insurance products in the speedway industry.
- 4.42. The ASAF submits that it would not be difficult for promoters of speedway events to require proof that participants have appropriate insurance, or are members of an appropriate accident benefit scheme such as that conducted by ASAF.

#### *Southern 500 Speedway*

- 4.43. Southern 500 Speedway submits that one national licensing system would benefit the industry. Southern 500 Speedway submits that being a member of the Competitor Groups gives the driver the opportunity to be involved with the specifications of their racing class.

#### *Bairnsdale Speedway Association Inc*

- 4.44. Bairnsdale Speedway Association Inc (Bairnsdale Speedway) notes that it is affiliated with the VSC and that most of its drivers hold a VSC licence and pit crew members hold a VSC Pit Crew licence. Bairnsdale Speedway notes that the majority of these licence holders have purchased the ASAF insurance and therefore do not need to purchase a NASR licence.
- 4.45. Bairnsdale Speedway is concerned about the viability of itself as a smaller track if NASR drivers are restricted from competing at tracks which are not NASR approved tracks. Bairnsdale Speedway submits that in the past it has programmed various national and state classes of cars whose drivers are NASR licence holders and it may not be able to continue to do so under the notified conduct.

#### *Latrobe Speedway*

- 4.46. Latrobe Speedway submits that the Tasmanian Police considers the NASR licence as paramount for ensuring safety and efficient operation of speedway tracks.
- 4.47. Latrobe Speedway submits that it would be concerned if it could not access the NASR insurance scheme and considers it to be functional and value for money. Further, Latrobe Speedway submits that most drivers in Tasmania do not obtain additional personal accident insurance and that it is not a disadvantage for the licence fee to remain the same whether or not the driver already has personal accident cover.
- 4.48. Latrobe Speedway considers it imperative for drivers to be members of their respective competitor organisation as they provide a vital day to day service to

competitors and offers services relating to safety issues, race car constructions and examining race vehicles.

#### *Borderline Speedway*

- 4.49. Borderline Speedway submits that NASR provides a national licensing system which offers consistent racing rules, standards and training for all speedway sections. Borderline Speedway considers that purchasing insurance in bulk with a reputable broker ensures a better policy for drivers for a cheap price.
- 4.50. Borderline Speedway submits that its members are aware that if a driver chooses to participate at a non-NASR track, they are not covered by the NASR personal accident insurance policy and therefore it is their responsibility to obtain additional insurance.
- 4.51. Borderline Speedway also submits that it is important for drivers to be members of their respective competitor group as this provides them with an opportunity to be involved in setting the specifications and safety standards for their relevant divisions.

#### *Premier Speedway*

- 4.52. Premier Speedway submits that the NASR licence provides drivers with a number of benefits regarding risk management and safety. Premier Speedway submits that most drivers do not obtain their own insurance and are satisfied with the insurance provided by NASR. Premier Speedway notes there is some misconception by drivers that the insurance that they have for their employment will also cover their participation in speedway racing. Premier Speedway understands that it would be difficult for speedway drivers to obtain personal accident insurance on equal or better terms than that provided as a member benefit by NASR.
- 4.53. Premier Speedway also notes that CAMS and ANDRA both provide personal accident insurance as a member benefit.
- 4.54. Premier Speedway submits that NASR licence holders can participate at non-NASR approved venues provided the particular event has been sanctioned by NASR.
- 4.55. Premier Speedway submits that it is advantageous for a driver to be a member of a relevant club or association that sets the relevant specifications and safety standards for the division.

#### *Lismore Speedway*

- 4.56. Lismore Speedway submits that it is important to hold a NASR licence as it provides insurance and rulebook advantages for a track, and it ensures that all drivers are properly insured.
- 4.57. Lismore Speedway submits that the personal accident insurance policy provided by NASR is a tailor-made policy to speedway drivers, is well priced and provides excellent cover.

- 4.58. Lismore Speedway submits that the NASR personal accident insurance will respond at any track.
- 4.59. Lismore Speedway submits that it is important for a driver to be a member of a club or association relevant to their respective racing division in order to meet the technical and safety specification for vehicles.

*Perth Motorplex*

- 4.60. Perth Motorplex submits that NASR provides the best public liability insurance, personal accident insurance, technical and racing regulations, track, vehicle and driver safety regulations, risk management and judicial process for speedway racing in Australia.
- 4.61. Perth Motorplex also submits that:
- most drivers do not have their own insurance
  - there are a limited number of insurance companies in the Australian market who have products that may be suitable for speedway racing venues and competitors
  - CAMS and ANDRA both provide personal accident insurance as a member benefit
  - NASR personal accident insurance may apply at non-NASR approved tracks if the event is approved by NASR and
  - tracks that choose to be NASR approved have access to a discount from NASR on their public liability insurance premium.

*Geraldton Speedway WA*

- 4.62. Geraldton Speedway WA submits that NASR are 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.
- 4.63. Geraldton Speedway WA submits that any NASR insured driver competing in a non-NASR approved event or against cars not licensed by NASR cannot claim in the event of an accident.
- 4.64. Geraldton Speedway WA also submits that NASR intends to reduce the number of tracks operating in Western Australia.

*Collie Racing Drivers Association Inc*

- 4.65. Collie Racing Drivers Association Inc (Collie Speedway) submits that NASR does not control the safety of venues in Western Australia, rather it has responsibility to its insurer to monitor the safety of the speedways insured through them in Western Australia. Collie Speedway notes that it does not hold the public liability insurance offered by NASR.



- 4.66. Collie Speedway submits that the NASR personal accident insurance is not necessarily the best policy for all people, especially those who do not have a regular income or have leave of some sort available to them from their workplace.
- 4.67. Collie Speedway submits that a competitor has no choice with NASR but to have the NASR personal accident insurance, and while a driver may obtain additional insurance, they are paying for a policy they do not want or need.

*Alexandra District Speedway Incorporated*

- 4.68. Alexandra District Speedway Incorporated (Alexandra Speedway) submits that state and national clubs have worked hard to implement and manage racing rules, policy and procedure, track inspections and insurance so that small clubs are adequately able to conduct their own meetings safely.
- 4.69. Alexandra Speedway submits that the conduct may restrict drivers from racing at their home tracks if it is not an approved track.

*Formula Motorsports Group Pty Ltd*

- 4.70. Mr Ray Solomon, for the Formula Motorsports Group, does not support the notifications and submits that NASR does not provide a satisfactory level of transparency regarding its licensing and insurance schemes.
- 4.71. Formula Motorsports Group submits that two of the three Competitor Groups who have lodged notifications with the ACCC are the highest profile competitor groups in Australia and attract the largest participation in terms of spectators, competitors pit crew and sponsors.
- 4.72. Formula Motorsports Group also submits that the Perth Motorplex and Avalon Raceway promote some of the major events in the country and have a major impact on the industry.
- 4.73. Formula Motorsports Group further submits that a main stream commercial speedway could not survive if they were unable to promote ASCF and SCCA classes and attract the top drivers to each event.

*Mr Rob MacGregor*

- 4.74. Mr MacGregor submits that the NASR licence does not impose any requirement to comply with vehicle safety standards and that these regulations are set by the relevant racing division.
- 4.75. Mr MacGregor submits that the NASR licence has always been a precursor to obtaining NASR personal accident insurance and has never been perceived by the competitors as anything else. Mr MacGregor submits that is it not the NASR licence which concerns the competitors, it is the personal accident insurance that has become mandatory as part of the licence. Mr MacGregor notes, however, that the NASR personal accident insurance is exceptionally good value.

- 4.76. Mr MacGregor also submits that to become a NASR approved track, tracks are rated according to what category of cars may compete based on the speed and power of those vehicles and is not reliant on who supplies the public liability insurance.
- 4.77. Mr MacGregor submits that NASR approved tracks tend to host the premier divisions of speedway.
- 4.78. Mr MacGregor submits that the idea of the NASR personal accident insurance not being applicable for non-NASR tracks is a new development for competitors and considers it will have a major impact on country tracks.

*Anonymous submission 25 March 2008*

- 4.79. Anonymous supports the notification lodged by the ASCF however notes that it does not agree with the definition of saloon car. Anonymous submits that the ASCF does not control all Saloon/Sedan divisions, rather they only control the registered divisions within their organisation which consist of ASCF Super Sedans, ASCF Modified Production Sedans, ASCF Street Stock, ASCF Production Sedans and ASCF Junior Sedans.

*Steve and Linda Coyle*

- 4.80. Steve and Linda Coyle oppose the notifications and note that in order to race at Perth Motorplex, they were required to obtain a NASR licence as the venue did not recognise their current NDRA licence.
- 4.81. Steve and Linda Coyle submit that through the notifications, NASR is attempting to dominate the sport of speedway racing and to reduce the number of tracks in Western Australia.

*Anthony Taylor*

- 4.82. Mr Taylor submits that for him, there is no need to obtain a NASR licence as he is able to race under the VSC licence – whether the races are at NASR tracks or not.
- 4.83. Mr Taylor submits that he is not concerned about insurance, and advises that he has not attempted to purchase his own policy.
- 4.84. Mr Taylor submits that track approval does not affect his decision to race at a particular venue, rather if the track is in good condition he will race there.

*Bill Atkins*

- 4.85. Mr Atkins submits that licences should be issued by the division in which the driver races. Mr Atkins submits that he currently holds an NDRA licence and is happy with the insurance cover offered by NDRA and disagrees with the fact that in order to race at the Perth Motorplex he will be required to obtain a NASR licence.
- 4.86. Mr Atkins submits that a driver should be able to choose who to insure with and wishes to retain his right to purchase a product he is happy with.

*Neville Allpike*

- 4.87. Mr Allpike submits that it is not important to hold a NASR licence. Mr Allpike notes that in 2004 NASR provided their licence and their insurance cover as separate components.
- 4.88. Mr Allpike notes that many drivers obtain their own insurance, in particular those who are self employed, professionals, farmers and company directors. Mr Allpike submits that drivers want to retain their freedom of choice and not pay for insurance twice.
- 4.89. Mr Allpike also submits that it is not difficult to obtain insurance for speedway racing.

*Trevor Cruickshank*

- 4.90. Mr Cruickshank submits that the notifications may have a detrimental impact on smaller country tracks. Mr Cruickshank submits that these country tracks will be required to become NASR approved in order to attract NASR drivers.
- 4.91. Mr Cruickshank submits that drivers and participants should be insured against injury to themselves and others, as with normal driving, and should be permitted to have options to choose which insurer to use.

*Anonymous submission dated 27 March 2008*

- 4.92. Anonymous submits that holding a NASR licence ensures that your insurance is always in place and that you meet NASR's minimum standards in safety attire.
- 4.93. Anonymous notes that an authorised NASR event means that the category of car you are competing with is recognised by NASR and it meets the safety build standards. Other licence holders are able to race at NASR insured tracks.
- 4.94. Anonymous also notes that a track promoter will always be able to run and accept whatever licence they choose.
- 4.95. Anonymous submits that it is important for drivers to be a member of their relevant club as these clubs control car specifications, driver standards, safety attire and the right to exclude members from racing if it is deemed that they are a danger to themselves and the rest of the competitors.

*Michael Cox*

- 4.96. Mr Cox submits that the NASR personal accident insurance is not the best available policy as it does not offer any cover for attendance at a speedway race meeting that is not recognised by NASR.
- 4.97. Mr Cox also submits that NASR are not the only organisation that promotes speedway racing in Australia, as such there are many events that the NASR personal accident insurance will not offer any cover. This means that many members take out

a second insurance policy which offers equivalent cover however NASR refuses to offer any reduction in membership fees.

*Anthony Vanderreyden*

- 4.98. Mr Vanderreyden questions why he is required to pay for two licences – a NASR licence and an SCCA licence – in order to race the one car. Mr Vanderreyden submits this increases his costs.

*Ian Vale*

- 4.99. Mr Vale submits that the NASR licence is essentially an insurance policy, and therefore important to have unless the driver has their own insurance. Mr Vale notes that some venues that hold NASR public liability insurance require that the drivers and persons entering the pit area have a NASR licence.
- 4.100. Mr Vale submits that the licence fees from NASR are preset each season without a discount if a driver has a different insurance provider, however, this does not prevent a driver from taking a policy of their choice unless they want to compete at a NASR affiliated venue.
- 4.101. Mr Vale notes that drivers do race at non-NASR approved tracks and is aware of drivers who have made claims and been paid by NASR from injuries received while competing at non NASR venues but with a NASR licence.
- 4.102. Mr Vale submits that it is very important for sprintcar drivers to be a member of the SCCA as it sets the Racing Rules, Regulations and Specifications by majority vote for sprintcar vehicles. Mr Vale submits that the SCCA should maintain full and complete control of their sprintcar class.

*Confederation of Australian Motor Sport Ltd*

- 4.103. CAMS notes that it has appointed NASR as the organisation responsible for speedway racing in Australia under the auspices of CAMS and the FIA.
- 4.104. It is CAMS view that it is beneficial to have appropriate specifications and standards in motorsport and importantly uniformity of such standards to ensure that the best interests of all stakeholders are protected. CAMS notes that it would be of benefit to the public to have a single sanctioning body administering the sport.
- 4.105. The Australian Institute for Motor Sport Safety Ltd (AIMSS) endorsed CAMS response.

*JQMA and Western Australian Speedway Commission*

- 4.106. The JQMA and Western Australian Speedway Commission (WASC) support the notifications lodged by NASR and others.

## Following the draft notices

- 4.107. Following the release of the draft notices proposing to revoke notifications N93297, N93298, N93301, N93302 and N93303, Mr Ian Vale asked that the ACCC convene a pre-decision conference. The conference was held on 15 July 2008.
- 4.108. Generally, the pre-decision conference highlighted the confusion among speedway industry participants regarding the purpose behind lodging the notifications, and confusion about the practical effects the notifications will have on the industry. The majority of interested parties in attendance supported the draft notices issued by the ACCC. A copy of the conference record is available from the ACCC's website by following the 'Public Registers' and 'Authorisations and Notifications Registers' links.
- 4.109. NASR provided a submission in response to the draft notices and issues raised at the pre-decision conference. In particular, NASR notes that:
- the NASR licence provides a number of benefits to members, personal accident insurance being only one of the benefits. NASR notes that the provision of personal accident insurance as a member benefit of the NASR licence falls beyond the scope of the ACCC's consideration of the notifications.
  - the notifications are not intended to reduce the autonomy of the SCCA and notes that NASR and the SCCA are currently in negotiations regarding the operation and interaction of the SCCA Racing Rules and NASR's Racing Rules and
  - the purpose of the notifications was to ensure that NASR was fully compliant with trade practices and competition laws prior to implementing the notified conduct. NASR also notes that the notifications were prepared and lodged with the support of major stakeholders in the sport of speedway racing.
- 4.110. Following the draft notices, the ACCC also received public submissions from:
- Australian Dirt Drivers Ltd*
- 4.111. Australian Dirt Drivers (previously ADDA) is of the view that an industry standard should be established Australia wide for the sport of speedway in order to provide uniformity to the sport, in particular regarding the minimum standards which should be met. Australian Dirt Drivers is of the view that NASR has attempted to implement an industry standard, however did not communicate the reason for the changes it was making which effectively has led to distrust amongst the speedway community.
- 4.112. Australian Dirt Drivers notes that the difference between approved tracks and NASR insured tracks remains unclear.
- 4.113. Further, Australian Dirt Drivers notes the benefits of combining a licence and personal accident insurance in order to streamline procedures and submits that it

understands why some track operators would prefer to deal with only one licence type, especially to make access to the track simpler.

- 4.114. Australian Dirt Drivers remains concerned by the fact that NASR may rationalise the classes of speedway and the possible financial effect this might have on competitors, particularly from the sedan divisions.

*Formula Motorsports Groups Pty Ltd*

- 4.115. The Formula Motorsports Group notes that it continues to be concerned by the bundling of the NASR licence and personal accident insurance and questions whether there is a sufficient level of transparency surrounding the provision of the insurance product by NASR.
- 4.116. The Formula Motorsports Group notes its concern regarding NASR's monopoly position in the market. The Formula Motorsports Group submits that this position is enhanced by certain competitor associations providing only NASR membership forms to drivers. The Formula Motorsports Group submits that affiliation with NASR is promoted by some competitor associations which makes it difficult to promote speedway events at the Rolling Thunder Raceway (because it is not a NASR approved track).
- 4.117. The Formula Motorsports Group also notes concern with the ACCC's decision not to take any further action with respect to notifications N93304 and N93305, and questions whether tracks other than Perth Motorplex and Avalon Raceway may engage in similar conduct.

*Australian Speedway Accident Fund*

- 4.118. The ASAF submits its support for the draft notices.
- 4.119. The ASAF reiterates its previous submission that the bundling of personal accident insurance with the NASR licence is anti-competitive and submits such conduct should be further investigated.

*Anonymous submission dated 31 July 2008*

- 4.120. Anonymous submits that the notification lodged by Perth Motorplex should not be allowed to stand because it provides the raceway with the opportunity to operate as a dictatorship of speedway racing in Western Australia.
- 4.121. Anonymous submits that the ACCC should make a decision not allowing any tracks and venues to require only NASR licence holders to access their tracks.
- 4.122. The views of NASR and interested parties are further discussed in the ACCC's evaluation of the notifications. Copies of all public submissions provided by NASR and interested parties are available from the ACCC's website ([www.accc.gov.au](http://www.accc.gov.au)) by following the 'Public Registers' and 'Authorisations and Notifications Registers' links.

## 5. Overview of the notified conduct

5.1. An overview of the ACCC's understanding of how the notified conduct will work in practice follows:

- NASR is the internationally recognised body for speedway racing as a whole in Australia. It is the only speedway racing body in Australia to have been granted delegation of authority from FIA which is the peak world motorsport body. NASR provides standardised rules for the entire sport of speedway racing throughout Australia.
- A national governing body exists for each recognised category of speedway racing (such as Sprintcar, Saloon Car, V8 Dirt Modified). Each national governing body manages technical and safety specifications for vehicles that race in the particular category.
- There are also many clubs or associations which operate at the national, state or regional level and conduct the administration of the racing category, for example overseeing registration, inspection and licensing of cars in a category. NASR submits there are more than 100 recognised clubs and associations which cover different speedway racing categories. These clubs or associations also conduct competitions relating to the racing category.
- NASR provides licences to drivers and pit crew members to compete in speedway racing events throughout Australia. Other organisations also provide licences for speedway racing in Australia including the National Dirt Racers Association Inc (NDRA) and Victorian Speedway Council Incorporated (VSC). The ACCC understands that these licences are not simple substitutes for a NASR licence (or for each other) as each licence offers different speedway coverage. For example, a VSC licence covers events in VSC recognised classes held within Victoria.
- The notified conduct requires NASR licence holders to only race in recognised categories. NASR submits that almost all current speedway categories are recognised by NASR and new categories can be approved provided certain requirements are met.
- NASR advises that there are approximately 110 speedway tracks in Australia, 70% of which are approved by NASR. Other tracks and venues are able to apply to become approved by NASR. NASR will approve a track or venue if it meets certain objective criteria including NASR's national track rating system and that it holds public liability insurance. Holding NASR's public liability insurance is not a condition of track or venue approval. NASR advises that it will accept public liability insurance from an alternate insurance provider, on condition that it is equivalent to or better than the public liability insurance it provides.
- The notified conduct requires NASR licence holders to only race at approved tracks and venues. The largest competitions and racing events (for example in terms of prize money, drivers and spectators) appear to be held at NASR

approved tracks. NASR advises that its licence is not an exclusive licence, and drivers may hold multiple licences. However, if the driver holds a NASR licence, the driver will still be required to only participate at NASR approved tracks and venues even if they race under an alternate licence.

- Individual speedway racing tracks determine the criteria upon which drivers are able to race at their venues. Perth Motorplex and Avalon Raceway have notified that only NASR licence holders may race and enter the pit area at their tracks. The ACCC has not received notice from other tracks which have this requirement.
- NASR provides personal accident insurance as a member benefit of its licence. NASR advises that its insurance applies at all authorised events. NASR defines an authorised event as any race or event in a speedway racing category recognised by NASR. NASR advises that the insurance cover provided as a member benefit applies to any such event, regardless of whether the race or event occurs at a track or venue which is approved by NASR. Therefore, the insurance component of the NASR licence will still apply for races at non-NASR approved tracks, provided the event is an authorised event.

## **6. The relevant markets**

- 6.1. Defining the markets affected by the notified conduct may assist in assessing the public benefits and detriments flowing from the arrangements. However, depending on the circumstances, the ACCC may not need to comprehensively define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of this definition.
- 6.2. The notifying parties submit that the relevant market is the national market for speedway racing. The notifying parties identify a number of groups within this market who may be affected by the notified conduct, including:
  - speedway racing drivers
  - owners and operators of race tracks
  - racing associations that represent various categories of speedway racing and
  - spectators who may wish to access racing pit areas of tracks and venues.
- 6.3. The ACCC notes that there are approximately 110 tracks and venues which hold speedway events throughout Australia, and the nature of the sport is to travel to various tracks and venues and compete in regional, state and national competitions. As such, the ACCC considers there is a national market for speedway racing, incorporating the various groups identified above.
- 6.4. The ACCC also notes that public liability and personal accident insurance are key features of gaining NASR approval as a track and holding a NASR licence as a driver or a support team member wishing to access the pit racing area. The ACCC



therefore considers that the notified conduct may also have some effect on the national markets for personal accident insurance and public liability insurance. The ACCC notes that there appear to be other providers of personal accident and public liability insurance for speedway racing. The ACCC notes that insurance providers must be APRA approved.

- 6.5. While the ACCC recognises these characteristics of the relevant markets, it is the ACCC's view that its assessment will not be overly affected by the possible variations in precise market definition.

## **7. Assessment of notifications N93297 and N93298**

- 7.1. Notifications N93297 and N93298 were lodged by the National Association of Speedway Racing Incorporated and the National Association of Speedway Racing Pty Ltd (together referred to as NASR) on 12 February 2008 in relation to conduct that may be in breach of sections 47(6) and 47(7) of the Act.
- 7.2. The conduct has been described by NASR as the offer and supply by NASR, of NASR licences, on condition that:
- the offeree only races at tracks and venues which are sanctioned or approved by NASR and
  - the offeree obtain membership of the relevant national and/or state and/or regional club or association for the offeree's relevant speedway racing category.
- 7.3. The effect of these notifications will be that NASR licence holders may only race at those tracks and venues which are approved by NASR, and NASR licence holders must obtain membership in a relevant club or association related to the driver's speedway racing category (see paragraph 5.1).
- 7.4. NASR has confirmed that NASR licence holders are able to obtain licences from other organisations but can only race under these alternate licences provided the event is in a recognised category and held at approved tracks and venues.
- 7.5. When obtaining a NASR licence, NASR provides personal accident insurance cover as part of that licence. NASR advises that the insurance component is not severable from the licence component.

### **NASR's submissions on public benefits**

- 7.6. NASR submits that the conduct will result in the following public benefits:
- approved tracks and venues must comply with NASR's systems and procedures. This includes complying with NASR's Australian Speedway Racing Rules and Regulations and the Track Operators Manual, both of which set out strict requirements relating to:
    - compliance with safety standards and directions from NASR regarding track maintenance and improvements, and occupational health and safety issues.

This includes a requirement that a duty of care statement be read out to competitors at race meetings, and requirements regarding alcohol and drug use, and the provision of medical clearances by drivers

- protection of the environment including correct disposal of fuel and standards for noise minimisation and
- protection of children, including a requirement that all persons working with children obtain formal police background checks.
- all approved tracks and venues must maintain an adequate level of public liability insurance and
- membership in a relevant club or association provides drivers with access to minimum safety requirements imposed by the recognised governing body for each category of speedway racing.

### **NASR's submissions on public detriments**

7.7. NASR submits that the notified conduct will marginally affect the choice of speedway racing drivers as they will be required to:

- purchase membership of a specific club or association relating to their specific category of racing and
- compete in speedway racing events only at tracks and venues approved by NASR.

7.8. However, NASR submits that any anti-competitive effect of the conduct will be limited by the following:

- 70% of tracks and venues in Australia are currently approved by NASR which NASR licence holders are able to race at. Other tracks are able to apply to be approved.
- instead of obtaining a NASR licence, speedway drivers may obtain licences from other providers and compete at tracks and venues not approved by NASR under the alternate licence
- the financial commitment incurred by becoming a NASR licence holder is not substantial, therefore licensees will not, as a practical consequence of the licensing requirement, be forced to use only facilities affiliated with NASR, as financial considerations will not prohibit them from obtaining a licence from any other third party provider and
- the conduct will not have a significant impact on the public given that spectators are free to attend race events at any venue that they choose.

## **ACCC assessment**

- 7.9. Drivers who wish to race in NASR speedway events must obtain a NASR licence. The licensing requirements are set out at paragraphs 2.4 to 2.8.
- 7.10. The ACCC notes that while NASR advises that its licence is not exclusive in the sense that NASR licensees are able to hold and race under licences from bodies other than NASR, under the notified conduct NASR licensees holding additional licences must still comply with the requirement to race only at approved tracks and venues. Therefore the ability for NASR licensees, who also hold a licence from another licensing body, to race under those alternate licences, is restricted by the notified conduct.
- 7.11. Many interested party submissions support the benefits of a NASR licence as it enables them to race at major events and venues with a single national licence.
- 7.12. Other interested party submissions claim that it is not necessary for them to have a NASR licence as they can race at events and venues not aligned with or approved by NASR.
- 7.13. The ACCC has received submissions from a number of interested parties suggesting that it is not uncommon for drivers to obtain the NASR licence as well as alternate licences such as those provided by VSC and NDRA.
- 7.14. NASR has negotiated a group personal accident insurance policy and provides this as a member benefit as part of the NASR licence. NASR submits that, given the dangerous nature of the sport, it is necessary to ensure that all drivers and visitors to the pit area hold adequate personal accident insurance. This is achieved through providing insurance cover automatically as a member benefit.
- 7.15. Some interested parties indicated that the insurance provided under the NASR licence represents value for money and is tailored to speedway racing, and they would have concerns if they were unable to access NASR's group policy.
- 7.16. Both prior and following the draft notices, the ACCC received many submissions from interested parties who wish to obtain their own insurance instead of the insurance provided by NASR as a member benefit. These parties submit they want the ability to choose the insurance provider and policy which best suits their needs.
- 7.17. NASR advises that while a licence holder cannot opt out of NASR's group insurance, the licence holder remains free to purchase additional personal accident insurance from any provider. NASR advises that this will be at that persons additional expense and the NASR licence fee will not be reduced. In the event of an accident, a claim can only be made under one policy.
- 7.18. NASR submits that the value of each membership benefit can not be easily quantified within the licence fee structure (the member benefits are outlined in paragraph 2.8). NASR submits that while it provides personal accident insurance by paying a premium for each NASR member, these premiums are not merely passed

through to each NASR member. NASR therefore submits that it does not follow that if a member obtains their own personal accident insurance, that the premium paid by NASR for that specific member should be deducted from their licence fee.

- 7.19. The ACCC recognises that speedway racing is an inherently dangerous activity and considers it is important for drivers to be covered by adequate personal accident insurance. However, the ACCC notes there are ways for NASR to ensure that licensees have adequate insurance while maintaining a greater degree of choice.
- 7.20. For example, if NASR were to offer the licence and insurance separately it would increase transparency around the provision of NASR's group negotiated policy and would enable licensees to better assess their own insurance needs and evaluate the benefits of NASR's group policy.
- 7.21. That being said, the issues surrounding the provision of personal accident insurance by NASR is not a question for the ACCC to consider as part of the notified conduct because the issue of the provision of insurance has not been notified by NASR. While the ACCC understands that 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 the licence as part of its assessment of the current notifications. However, NASR may wish to consider the way in which it offers insurance as part of its licence given some of the concerns raised by industry participants.
- 7.22. The ACCC further notes that there is some confusion around whether NASR's group personal accident insurance will apply in the event of an accident at non-approved tracks and venues or in non-NASR affiliated events.
- 7.23. NASR confirms that provided the race is in a recognised category the personal accident insurance provided as part of the NASR licence will continue to be valid even at non-approved tracks and venues. Currently NASR recognises essentially all speedway racing categories, therefore the insurance will be valid for essentially all races regardless of the venue it is held at. That being said, the ACCC notes that drivers who race at non-approved tracks even under an alternate licence risk the validity of their NASR licence.

#### *Approved tracks and venues*

- 7.24. The ACCC accepts that there is significant public benefit in having adequate safety standards for tracks and venues which are effectively monitored and enforced. The ACCC notes that various state and territory government departments have a role in ensuring the safety of spectators, competitors and officials which is not replaced by the role of NASR in this area. However the ACCC accepts that NASR and other bodies at the industry level, have a role in ensuring compliance with minimum safety standards.
- 7.25. NASR advises that tracks and venues will be approved on the basis of safety and other objective criteria, including its national track rating system and that it holds public liability insurance cover that is appropriate for the relevant track or venue. NASR does not charge a fee for the process of obtaining approval and NASR

anticipates that the majority of tracks not currently approved would be approved without significant compliance costs.

- 7.26. The ACCC notes that NASR approval of tracks and venues requires adequate public liability insurance, however it does not force a particular insurance provider, for example NASR's public liability insurance scheme. Track operators are free to obtain public liability insurance of an equivalent standard from any APRA approved insurance provider.
- 7.27. Currently 70% of tracks and venues in Australia are approved by NASR. As a result of the notified conduct, NASR licence holders will no longer be able to participate at events held at the remaining tracks and venues (approximately 33) which are not NASR approved tracks and venues.
- 7.28. Interested parties submit that smaller and country tracks will be particularly disadvantaged by the restrictions on NASR licensees. The ACCC understands that currently the majority of tracks in NSW, Queensland, South Australia, Tasmania and the ACT are NASR approved. Western Australia and Victoria have a number of tracks which remain non-NASR approved.
- 7.29. The ACCC understands that the majority of speedway drivers have a NASR licence and the premier races tend to be affiliated with NASR. As such, there is likely to be an effect on tracks and venues which are not NASR approved but which otherwise meet appropriate safety and public liability insurance standards.
- 7.30. The ACCC notes that while NASR licence holders may hold an alternate licence, NASR licensees risk the validity of their NASR licence if they race at non-approved tracks and venues even with an alternate licence. The ACCC notes that it cannot be assumed that tracks and venues which have not obtained NASR approval are unsafe. The ACCC considers there is detriment associated with restricting the ability of NASR licensees who also hold alternate licences to race under those licences.
- 7.31. The ACCC considers that the notified conduct may also effect the viability of other licence providers and the events which they operate. For example, the VSC hosts various speedway racing events in Victoria. Some of these events are held at NASR approved tracks and some are not. VSC advise that a number of its members have both VSC and NASR licences. Under the notified conduct, those VSC drivers who also hold a NASR licence would not be permitted to compete in VSC's events held at non-NASR approved tracks.
- 7.32. Given the number of drivers who hold a NASR licence, the ACCC is concerned that a significant number of drivers will no longer be able to participate in events at non NASR approved tracks and venues. Likewise, non-NASR approved tracks and venues will not be able to attract NASR licensees to their venues, even where these tracks accept alternate licences to NASR. For example, Mr Solomon for the Formula Motorsports Group notes that the Rolling Thunder Raceway is not a NASR approved track and submits that this has resulted in difficulties attracting NASR licence holders to speedway events at the track.

- 7.33. The ACCC notes that if the NASR licence was truly non-exclusive its concerns would be reduced as NASR licensees would be free to race under alternate licences without also affecting the validity of their NASR licence.

*Membership of a relevant body*

- 7.34. NASR submits that the membership it requires as part of the notified conduct is with any club in either a state or territory relevant to the drivers' racing division. NASR advises there are more than 100 recognised clubs and associations which cover different speedway racing divisions.<sup>12</sup>
- 7.35. NASR advises that the roles of NASR and such clubs are mutually exclusive in that NASR develops unified standards in safety, training, presentation and performance of racing, and the clubs and associations conduct the administration of the relevant speedway category overseeing registration, technical specifications and conducting the category's racing and competitions.<sup>13</sup>
- 7.36. The ACCC notes the different roles of NASR and the various clubs and associations.<sup>14</sup> NASR is not involved in the setting of regulations and safety specifications of vehicles, and the way in which car safety standards are monitored and enforced is through registration with, and membership of, a relevant club or association.
- 7.37. Although this requirement may result in increased costs to drivers (given they will be required to pay fees for the NASR licence, as well as membership for their relevant club or association) the ACCC notes that the cost of a NASR licence and the cost of club membership do not appear to be prohibitive as most, if not all, drivers already belong to a relevant club or association. Interested party submissions generally all recognised the importance for drivers to obtain such membership.

**Conclusion on notifications N93297 and N93298**

- 7.38. The ACCC accepts that there is significant public benefit in having adequate safety standards for tracks and venues which are effectively monitored and enforced.
- 7.39. Track approval does not require tracks and venues to hold NASR's public liability insurance, and the ACCC notes NASR's advice that it will accept public liability insurance from an alternate insurance provider that is equivalent or better than the public liability insurance it provides. The ACCC would be concerned if this was not a real option for track operators.
- 7.40. The ACCC accepts there is public benefit in the requirement that licence holders also be members of a relevant club as a means of enforcing and monitoring car and safety specifications. The ACCC notes that the majority of licence holders are

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<sup>12</sup> NASR, *Exclusive Dealing Notifications lodged by the National Association of Speedway Racing (NASR)*, Letter dated 27 March 2008, p. 4.

<sup>13</sup> NASR, *NASR Exclusive Dealing Notifications*, Letter dated 7 May 2008, p. 2.

<sup>14</sup> See for example, NSW Formula 500 Association submission dated 14 April 2008, Ian Vale submission dated 1 April 2008 and NASR, *NASR Exclusive Dealing Notifications*, Letter dated 7 May 2008, p. 8.

already members of a relevant club and it is unlikely that a driver would obtain a NASR licence without joining a relevant club.

- 7.41. The ACCC considers that the notified conduct is likely to have a significant effect on tracks and venues which are not approved by NASR but which meet appropriate safety standards and hold public liability insurance. Under the notified conduct, non-NASR approved tracks and venues will not be able to attract NASR licensees to their events, even if those drivers hold an alternate licence. The detriment is increased given the large number of drivers who hold at least a NASR licence.
- 7.42. Similarly, the ACCC considers that the notified conduct is likely to result in a public detriment to NASR licence holders who may wish to access the race facilities at non-NASR approved tracks and venues. The ACCC is particularly concerned by the fact that the holding of a NASR licence restricts a driver's ability to race under an alternate licence at non-NASR approved tracks and venues.
- 7.43. On balance, the ACCC is not satisfied that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public. Therefore, the ACCC issues this notice revoking notifications N93297 and N93298.

## **8. Assessment of notifications N93301, N93302 and N93303**

- 8.1. The Sprintcar Control Council of Australia Incorporated (SCCA) lodged notification N93301, the Australian Saloon Car Federation Incorporated (ASCF) lodged notification N93302 and Dirt Modifieds Australia (DMA) lodged notification N93303 (together referred to as the Competitor Groups) on 12 February 2008 in relation to conduct that may be in breach of sections 47(6) and 47(7) of the Act.
- 8.2. The conduct the subject of these notifications is the offer and supply of membership to the particular Competitor Group on condition that:
- the offeree has purchased a suitable licence from National Association of Speedway Racing Pty Ltd and
  - the offeree only races at tracks and venues which are sanctioned or approved by National Association of Speedway Racing Pty Ltd.
- 8.3. The conduct which has been notified by the Competitor Groups is that the Competitor Groups will only provide membership to their respective association on condition the driver obtains a NASR licence and only races at tracks and venues sanctioned or approved by NASR.
- 8.4. The Competitor Groups submit that membership in a relevant club or association is important because these associations carry out the administration of the racing category, provide registration of vehicles and set the relevant car specifications for the type of vehicle.

- 8.5. The Competitor Groups advise that drivers wishing to obtain membership of the SCCA, ASCF or DMA compete in sprintcar, saloon car or V8 dirt modified race events respectively.

#### **Competitor Groups' submissions on public benefits**

- 8.6. The Competitor Groups submit that a number of public benefits for Sprintcar, Saloon Car and V8 Dirt Modified drivers will result from the notified conduct, including:
- NASR licence holders are required to comply with NASR's Australian Speedway Race Rules and Regulations which deal with mandatory competitor conduct, technical requirements and race procedures. This also includes compliance with a drug and alcohol policy. The Competitor Groups submit that NASR provides standardised rules for the entire sport, including a tribunal system and suitable penalties for offences within the sport, to which NASR licence holders must comply.
  - NASR licence holders are provided with personal accident insurance cover as a member benefit of the NASR licence, therefore the Competitor Groups can be assured that all members hold adequate personal accident insurance cover and
  - all NASR approved tracks and venues comply with minimum safety requirements imposed by NASR and hold adequate public liability insurance.

#### **Competitor Groups' submissions on public detriments**

- 8.7. The Competitor Groups submit that the notified conduct will have a marginal affect the choice of Sprintcar, Saloon Car and V8 Dirt Modified car drivers as they will be required to purchase a licence from NASR and compete at tracks and venues approved by NASR.
- 8.8. However, the Competitor Groups submit that the effect of the conduct will be limited by the following:
- members still have significant choice of tracks to race at as 70% of tracks in Australia are approved by NASR. Other tracks may apply to become approved.
  - Sprintcar, Saloon Car and V8 Dirt Modified car drivers are free to choose to obtain memberships in other categories of speedway racing
  - non-members of the Competitor Groups are free to race at tracks and venues that are not approved by NASR.
  - the financial commitment to become a NASR licence is not substantial.
  - membership of the Competitor Groups comprises 1700 out of a total of approximately 6000 speedway racing drivers in Australia and



- a significant majority of the Competitor Groups' members are already NASR licence holders and already race predominantly at tracks and venues which are approved by NASR.

### **ACCC assessment**

- 8.9. Sprintcar, Saloon Car and V8 Dirt Modified car drivers who wish to become members of either the SCCA, ASCF or DMA will be required to obtain a NASR licence and only race at NASR approved tracks and venues as a condition of membership.
- 8.10. The ACCC notes that the SCCA currently has 400 members, the ASCF has 1200 members and the DMA has 100 members.
- 8.11. Interested parties generally submit that membership of a relevant club or association is important because these bodies set the car safety specifications for which members must comply. The ACCC notes the different roles of NASR and the Competitor Groups, and NASR's confirmation that it is not involved in setting vehicle specifications.

### *Obtaining a NASR licence*

- 8.12. The ACCC notes there may be some detriment to Sprintcar, Saloon Car and V8 Dirt Modified car drivers who wish to become a member of the relevant Competitor Group, but do not wish to obtain a NASR licence. For example, the requirement may lead to increased costs to drivers as they will be required to pay for relevant membership as well as a NASR licence. For example, Mr Anthony Vanderreyden questions why he is required to pay two fees – a NASR licence and SCCA membership.
- 8.13. The ACCC understands that the Competitor Groups have a high profile in their respective categories and attract large participation in terms of spectators, competitors, pit crew and sponsors.
- 8.14. However, the ACCC also notes that the costs do not appear prohibitive as the Competitor Groups advise that a significant majority of members are already NASR licence holders.
- 8.15. Further, the ACCC notes the concerns raised by current SCCA members that the effect of the notifications may lead to the SCCA losing control of how it conducts its races. Concerns are based on the fact that if all members of SCCA are NASR licence holders, a term of the NASR licence requires all NASR licence holders to comply with NASR's Rules and Regulations. The ACCC has been advised that the NASR Rules and Regulations differ from the SCCA Racing Rules, and the SCCA is concerned that they will no longer be able to enforce their own racing rules.
- 8.16. The ACCC notes that an affect of the notifications is that NASR licence holders must comply with the terms of a NASR licence including complying with all rules, policies and regulations published by NASR. Whether the SCCA may continue to

enforce their own racing rules is an issue which must be resolved between NASR and the SCCA. The ACCC notes NASR's advice that NASR and SCCA are currently in negotiations regarding the operation and interaction of the SCCA Racing Rules and NASR Racing Rules.<sup>15</sup>

#### *Approved tracks and venues*

- 8.17. The Competitor Groups will provide membership on condition its members only race at NASR approved tracks and venues.
- 8.18. The ACCC notes the Competitor Groups' advice that a significant majority of their members already predominantly race at tracks and venues which are approved by NASR.
- 8.19. As already noted, the ACCC considers there is detriment in the restriction in the NASR licence whereby licensees can only race at approved tracks and venues and in recognised categories, regardless of whether they also hold a licence from an alternate provider.
- 8.20. The ACCC has considered the public benefits and public detriments associated with the requirement to only race at NASR approved tracks and venues in paragraphs 7.24 to 7.33.

#### **Conclusion**

- 8.21. The ACCC accepts there is benefit in ensuring that car safety specifications are met and the requirement that drivers obtain membership in a relevant organisation is a means of achieving this.
- 8.22. However, the ACCC considers that restrictions on NASR licensees to race only at approved tracks and venues has a detrimental impact on drivers and non-approved tracks and venues.
- 8.23. If the NASR licence did not affect the ability for licensees to also race under alternate licences, the detriment associated with requiring members of the Competitor Groups to obtain a NASR licence would be reduced.
- 8.24. On balance, the ACCC considers the conduct results in a public detriment and therefore, issues this notice revoking notifications N93301, N93302 and N93303.

#### **9. Assessment of notifications N93304 and N93305**

- 9.1. Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex (Perth Motorplex) lodged notification N93304 and Corio Park Pty Ltd trading as Avalon International Raceway (Avalon Raceway) lodged notification N93305 in relation to conduct that may be in breach of sections 47(6) and 47(7) of the Act.

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<sup>15</sup> NASR, *Exclusive Dealing Notifications lodged by the National Association of Speedway Racing (NASR)*, Letter dated 1 August 2008, p. 2.

- 9.2. Perth Motorplex and Avalon Raceway describe the conduct as the offer and supply of race services from time to time, including access to track facilities and race events, by Perth Motorplex and Avalon Raceway, on condition that:
- the offeree has purchased a suitable licence from National Association of Speedway Racing Pty Ltd in order to compete at the track or
  - the offeree has purchased a suitable licence from National Association of Speedway Racing Pty Ltd in order to visit the racing pit area
- 9.3. Under the notified conduct Perth Motorplex and Avalon Raceway propose to allow NASR licence holders to access track and pit facilities at their venues.
- 9.4. Perth Motorplex is located in Kwinana Beach, Western Australia and Avalon Raceway is located in Lara, Victoria.
- 9.5. Perth Motorplex and Avalon Raceway advise that approximately 400 to 500 racing drivers may access the track facilities and compete in a speedway race event, and in excess of 50 persons may access the racing pit area facilities. The number varying depending on the category of racing and the time of year.

#### **Perth Motorplex and Avalon Raceway submission on public benefits**

- 9.6. Briefly, Perth Motorplex and Avalon Raceway submit that the following public benefits will result:
- NASR licence holders are required to comply with NASR's Speedway Racing Rules and Regulations which deal with mandatory competitor conduct, technical requirements and race procedures and other minimum safety standards
  - NASR licence holders have access to NASR's training programs and safety seminars which support the overall safety framework of speedway racing and
  - NASR licence holders are provided with personal accident insurance cover as a member benefit of the NASR licence. Both drivers and persons obtaining the relevant NASR licence to access the racing pit area are provided with personal accident insurance as part of the NASR licence. Perth Motorplex and Avalon Raceway submit that this assists with its risk management processes and ensures that all relevant persons hold adequate personal accident insurance.

#### **Perth Motorplex and Avalon Raceway submissions on public detriments**

- 9.7. Perth Motorplex and Avalon Raceway submit that the notified conduct will marginally affect the choice of speedway racing drivers and pit crew members as they will be required to purchase a licence from NASR in order to compete and/or access the pit areas at either Perth Motorplex and Avalon Raceway.
- 9.8. However, Perth Motorplex and Avalon Raceway submit that any anti-competitive effect of the notified conduct will be insignificant for the following reasons:

- speedway racing drivers are able to compete at alternative speedway tracks or obtain licences and insurance from other relevant providers. There are over 100 speedway tracks currently operating in Australia where speedway race events are conducted.
- persons wishing to access racing pit area facilities are able to access other speedway tracks located throughout Australia
- the financial commitment incurred by becoming a NASR licence holder is not substantial
- NASR licensees are able to purchase additional personal accident insurance cover from relevant providers and
- spectators are able to attend speedway racing events without accessing the pit racing areas and can therefore avoid the need to obtain a suitable licence from NASR.

### **ACCC assessment**

- 9.9. The ACCC notes that a person who does not wish to obtain a NASR licence will be prevented from racing or accessing the pit area at these tracks.
- 9.10. Perth Motorplex and Avalon Raceway consider that a NASR licence provides suitable attributes which assists in their risk management processes.
- 9.11. Perth Motorplex and Avalon Raceway promote some of the major racing events in Australia. However, the ACCC understands that a number of speedway drivers who access these tracks already hold a NASR licence, and therefore will be able to continue to access these tracks.
- 9.12. Further, NASR offers a day licence to drivers wishing to access track facilities for up to two events per season. A similar licence is available for one day pit access.
- 9.13. The ACCC also notes that many other tracks and venues operate events where access is not limited to NASR licensees.

### **Conclusion**

- 9.14. The ACCC accepts that by requiring drivers and pit crew who wish to access their venues to hold a NASR licence, Perth Motorplex and Avalon Raceway can ensure that all participants are complying with a set of standards imposed by the NASR licence.
- 9.15. While the ACCC notes that Perth Motorplex and Avalon Raceway may promote some of the major racing events in Australia, a significant alternative choice of tracks remains. Further, the ACCC notes that drivers who wish to participate at events held at these tracks can access a day licence from NASR or obtain a full NASR licence in addition to any other licence they may already hold.

- 9.16. Overall, the ACCC considers that the public benefits arising from the notifications outweighs the public detriments at this time and as such does not intend to take any further action in relation to notifications N93304 and N93305.
- 9.17. Following the draft notices, concerns were raised by some interested parties that there may be a flow-on effect from these notifications in that other tracks may require drivers to hold a NASR licence in order to access the race facilities at their track. The ACCC notes that the protection for such conduct is only afforded to the notifying parties, that is Perth Motorplex and Avalon Raceway. To the extent that other tracks might be engaging in similar conduct, they will be doing so without legal protection under the Act.
- 9.18. Further, the ACCC may review a notification and act to remove the protection afforded by the notifications at a later stage. The ACCC notes that if a significant number of tracks began to only accept NASR licences as a condition of accessing the track and pit facilities, the public detriments arising from the requirement may change and the ACCC may reconsider the protection afforded to such notifications.

## **10. Assessment of notifications N93299 and N93300**

- 10.1. Notifications N93299 and N93300 were lodged by NASR on 12 February 2008 in relation to conduct that may be in breach of sections 47(2) or 47(3) of the Act.
- 10.2. NASR describes the conduct as the offer and supply by NASR of speedway racing licences, subject to a condition that the offeree only participate or compete in speedway racing categories approved by NASR.
- 10.3. As noted in paragraph 3.3, the ACCC's consideration of notifications for exclusive dealing other than third line forcing involves an assessment of whether the conduct has or would result in a substantial lessening of competition in a relevant market/s. If there is a substantial lessening of competition, the ACCC will assess the public benefits and public detriments arising from the conduct.
- 10.4. There are approximately 110 speedway racing categories currently recognised by NASR. Some of the national categories recognised by NASR include 360 Sprintcars, AMCA Nationals, Compact Speedcars, Formula 500's Junior Sedans, Sprintcars and Street Stocks.
- 10.5. NASR will approve new categories of speedway racing provided that they meet certain specified requirements which are outlined in NASR's New Racing Division Approval Process policy. The requirements include the submission of a business plan outlining such topics as the reasons for the new division, the market for the new division, the expected growth, management structure and plans, specifications and safety standards.

## **NASR submissions**

- 10.6. NASR submits that its main objective is to develop speedway racing as a high quality, well organised national sport, promoting and maintaining uniformity in safety standards and quality.
- 10.7. NASR submits that the intended purpose and effect of ensuring that NASR licence holders only compete in NASR recognised categories is to encourage minimum safety standards and implement safety and risk management policies across the sport of speedway racing<sup>16</sup> and maintain uniformity of safety standards across the sport of speedway racing and assist with NASR's overall risk management procedures.
- 10.8. NASR submits that any potential anti-competitive effect of this conduct will be insignificant given:
- speedway racing drivers are free to choose to obtain licences and/or insurance cover from any other provider and as such may continue to compete in non-approved categories
  - obtaining a NASR licence involves relatively minor financial commitment from speedway racing drivers. Drivers will not be significantly financially disadvantaged by obtaining multiple licence.
  - speedway drivers are not unduly limited in their choice of categories of racing.
- 10.9. NASR submits that at present there are approximately 110 speedway racing categories recognised in Australia and almost all of these categories are approved by NASR. NASR advises that it essentially recognises all current speedway categories therefore competitors would not be affected by this requirement.
- 10.10. NASR submits that ensuring that NASR licence holders only compete in these categories ensures uniformity of safety standards across the sport and assists with NASR's overall risk management procedures.
- 10.11. NASR also notes that it will approve new categories that meet the requirements set out in its New Racing Division Approval Process.

## **Interested party submissions**

- 10.12. A number of interested parties submit that NASR's purpose behind the notified conduct is to dominate speedway racing so they have the power to undertake class rationalisation.<sup>17</sup>

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<sup>16</sup> NASR, *Exclusive Dealing Notifications lodged by the National Association of Speedway Racing (NASR)*, Letter dated 27 March 2008, p. 3.

<sup>17</sup> Australian Dirt Driver's Association Inc submission dated 25 March 2008, Victorian Speedway Council Inc submission dated 7 April 2008, Steve and Linda Coyle submission dated 26 March 2008, Trevor Cruickshank submission dated 29 March 2008 and Geraldton Speedway submission dated 1 April 2008.

- 10.13. For example, ADDA notes that part of NASR's Strategic Plan 2006-2009 is to achieve rationalisation of classes by limiting the number of classes and bringing current similar categories together. Australian Dirt Drivers is particularly concerned by the fact that NASR may rationalise the classes of speedway and the possible financial effect this might have on competitors, particularly from the sedan divisions.

#### **ACCC assessment**

- 10.14. All NASR recognised categories comply with minimum safety requirements outlined in NASR's risk management policies.
- 10.15. The ACCC notes that NASR currently recognises the majority of speedway racing categories and provides for new categories to become recognised once they meet certain requirements.
- 10.16. The ACCC would be concerned if NASR's requirement that licensees only race in recognised categories had the purpose or effect of preventing another organisation from establishing its own racing categories in competition with NASR.
- 10.17. The ACCC therefore does not consider the requirement for NASR licence holders to only race in recognised categories has the purpose, effect or likely effect of substantially lessening competition at this time. Therefore, the ACCC does not propose to take any further action in respect of notifications N93299 and N93300 at this time. Legal protection conferred by the notifications commenced on 12 February 2008.
- 10.18. The ACCC may review a notification and act to remove the protection afforded by the notification at a later stage.

## **11. Notices**

- 11.1. On the basis of the information currently before it, for the reasons outlined in this notice the ACCC is satisfied that the likely benefit to the public from notifications N93297, N93298, N93301, N93302 and N93303 will not outweigh the likely detriment to the public.
- 11.2. Accordingly, the ACCC gives notice under section 93(3A) of the Act revoking the immunity afforded by notifications N93297, N93298, N93301, N93302 and N93303. The immunity provided by these notifications cease to be in force on 29 September 2008.
- 11.3. The ACCC does not intend to take any further action with respect to notifications N93304 and N93305 for third line forcing conduct lodged by Perth Motorplex and Avalon Raceway. Legal protection conferred by these notifications commenced on 26 February 2008.
- 11.4. The ACCC does not intend to take any further action with respect to notifications N93299, N93300 for exclusive dealing other than third line forcing conduct. The ACCC notes that no further action will be taken at this time as the ACCC is not satisfied on the evidence that the conduct results in a substantial lessening of competition. Legal protection conferred by these notifications commenced on 12 February 2008.
- 11.5. As with any notification, the ACCC may act to remove the protection afforded by these notifications (N93299, N93300, N93304 and N93305) at a later stage.