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Our Ref: 241933

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**BY REGISTERED POST AND EMAIL: [monica.bourke@accc.gov.au](mailto:monica.bourke@accc.gov.au)**

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

**Attention: Ms Monica Bourke, Senior Project Officer**

Dear Ms Bourke

**Exclusive Dealing Notifications N94032 - N94034 filed by Speedway Track Operators**

We refer to our recent communications regarding the Form G notifications of exclusive dealing (third line forcing) conduct filed by the operators of Brisbane International Speedway, Premier Speedway Club Warrnambool and Murray Bridge Speedway (N94032 – N94034) (collectively, the Notifications).

In particular, we refer to your email of 13 August 2009, inviting NASR to respond to the various issues raised by the interested parties who have filed submissions with the ACCC regarding the above notifications.

NASR is pleased to take this opportunity to respond to the issues raised during the public consultation process, as well as the specific inquiries raised by the ACCC and set out in your email of 13 August.

NASR provides the following responses to your specific queries

- 1. What will be the impact on speedway racing drivers if these additional 3 tracks only permit NASR licence holders to race at their tracks? Would the majority of speedway racing drivers who race in Australia require access to these tracks during a season? Can you advise whether the majority of drivers who would wish to access these track facilities would already hold a NASR licence? If possible, could you please respond with reference to Perth Motorplex and Avalon International Raceway who already have immunity for similar conduct (under notifications N93304-N93305).*

Each of the 3 notifying tracks are located in States which are also the home of additional tracks which do not require drivers to hold NASR licences. These alternative tracks are easily accessible to speedway racing competitors. Accordingly, the notified conduct will not impact upon the ability of drivers to participate in speedway racing in any of these jurisdictions, as drivers who do not hold NASR licences are free to compete at the alternative tracks. Further, the vast majority of drivers racing at the notifying tracks

would already hold NASR licences. Accordingly, NASR considers that the notified conduct would have a limited impact on speedway competitors, at best.

In this regard, NASR notes that the immunity which has granted to the operators of the Perth Motorplex and Avalon International Raceway in respect of similar conduct has had no appreciable impact on the sport of speedway racing. This is because these tracks, like the presently notifying tracks, are located in States which have alternative venues which drivers can access and which do not require a NASR licence as a condition of access. Further, the practical reality is that the majority of drivers who raced at Perth Motorplex and Avalon International Raceway prior to the grant of immunity by the ACCC already held NASR licences. Therefore, the impact of the imposition of a condition by the operators of these tracks that drivers must be licensed by NASR in order to compete has been minimal.

In response to the ACCC's query as to whether the majority of Australian speedway racing drivers would require access to the notifying tracks during a race season, this is wholly dependent upon the category of racing and the series/competition(s) in which drivers choose to compete. As we have previously advised the ACCC, the sport of speedway racing consists of a range of different racing categories. Each of these recognised categories have associated within them an array of events and competitions in which drivers can participate. For example, a category of racing may have club and State titles associated with it, as well as one or more national competitions. Each of these competition series may involve races held at various tracks.

Competitors are free to decide which race events they would like to participate in, within their particular category of racing. It may be that some of the events which a driver wishes to race in are held at a track which requires competitors to hold a NASR licence.

- 2. Please describe the types of events held at the notifying tracks. Which classes of speedway events are primarily held at each venue during a season? What types of licences do these classes generally hold?*

The notifying tracks each hold a range of events relating to almost all recognised categories of speedway racing during the racing season. These include State meetings, club meetings, national titles and national series.

The type of licence held by competitors at the events carried out at the notifying tracks depends on the class of racing in which they are participating. For example, NASR issues a range of speedway licences, including AA Driver licences (for Sprintcar and Speedcar racing, amongst other categories), A Driver licences, B Driver licences, Vintage licences and Junior Driver licences.

- 3. Are drivers who hold a NASR licence also required to purchase other licences specific to their class of car? Please describe this relationship – i.e. can you explain why a driver would hold a NASR licence as well as an SCCA licence if this is the case?*

The structure of the sport of speedway racing in Australia is such that NASR is widely acknowledged as the national governing body across the whole of speedway racing (as indicated by its delegation of authority from the Federation Internationale Automobile). NASR's role is to administer and manage the sport of speedway racing nationally, across all speedway racing categories. A National, State and/or Regional governing body exists in respect of each specific speedway racing category, to administer and manage the category.

The roles of NASR and such clubs and associations are mutually exclusive, and can be described as follows:

- NASR develops unified standards in safety, training, presentation and performance for speedway racing, as well as providing membership and racing licences to speedway racing competitors. As a condition of the licences issued by NASR to racing competitors, NASR requires that licensees only participate or complete in speedway racing categories approved by NASR. This conduct has been notified to the ACCC (notifications N93299 and N93300), and the ACCC has allowed these notifications to stand.
- Each club or association conducts the administration of the relevant speedway category nationally and/or on a State and/or regional level, including overseeing the registration, inspection and licensing of the cars required for that category, stipulating the applicable technical specifications, and conducting the category's racing and competitions.

Regardless of whether or not they hold NASR licences, it is necessary for drivers who wish to participate in a particular category of speedway racing (e.g. in a particular class of car) to meet the requirements imposed by the relevant administering club/association. These could include obtaining a licence issued by that organisation.

The entirely separate requirements imposed by NASR (as a part of the terms and conditions of its licence) and those imposed by the relevant club or association responsible for the administration of a particular category of speedway racing may result in drivers holding both a licence issued by NASR as well as a licence issued by the applicable administering organisation. However, NASR confirms that it is not a requirement of the NASR licence that drivers obtain membership of a club or association relevant to the racing category in which drivers participate.

4. *Interested parties submit that 100% of the major sprintcar events in Victoria are conducted at Avalon Raceway and Premier Speedway Club Warrnambool. What impact would the notified conduct have on drivers who do not hold a NASR licence?*

NASR takes this opportunity to advise that those interested parties who have submitted that all major sprintcar events in Victoria are conducted at Avalon Raceway and Premier Speedway Club Warrnambool have provided the ACCC with incorrect information. Contrary to those submissions, there are numerous alternative tracks in Victoria which hold major sprintcar racing events.

For example, the track located in Bacchus Marsh holds major sprintcar events, as does the Timmis Speedway in Mildura (which hosts Allstars Sprintcars racing events, amongst others). The SRA Sprintcar Series is a major sprintcar racing competition in Victoria, which is held at venues such as the Blue Ribbon Raceway in Horsham. The Nyora Speedbowl holds sprintcar events such as VSC Sprintcars Series races and Allstars Sprintcars events, both of which are major racing competitions in Victoria.

5. *How many tracks hold NASR's public liability insurance? Is it a condition that all cars racing at a track covered by the NASR public liability insurance must be licensed by NASR? Will a track's public liability insurance be affected if a non-NASR licensed driver races at the track?*

Approximately 83 tracks throughout Australia presently hold NASR public liability insurance.

It is not a requirement of NASR's public liability insurance that only cars driven by NASR licensees must be raced at a track insured by NASR. Consequently, the NASR public liability insurance held by a track will not be affected if drivers who are not licensed by NASR race at that track.

6. *Is a driver's NASR licence affected if the driver races at a non-NASR insured track? Will the driver still be covered by the NASR personal accident insurance if they race at a non-NASR insured track?*

As stated above, it is a condition of the NASR licence that drivers participate only in racing categories approved by NASR. It is also a condition of the NASR licence that drivers only race at tracks and venues which meet certain objective safety criteria, which include the holding of a minimum level of insurance.

Accordingly, the NASR licence of a competitor will not be affected if the driver races at a track which is not insured by NASR, provided that the event in which that person is racing is related to an approved category of racing and provided that the track meets the objective safety requirements set by NASR. It is only if a driver were to race in a non-approved category, or at a track which does not meet NASR's objective safety requirements, that the validity of his/her NASR licence would be affected. For the avoidance of doubt, racing at a venue which is not formally sanctioned or approved by NASR, or which does not hold NASR's public liability insurance, will not affect the validity of a NASR licence (provided of course that the track meets the minimum objective standards set by NASR).

The personal accident insurance provided to NASR licensees as a member benefit covers attendance at an authorised event or meeting organised by, recognised by or under the direct control of NASR and/or any of its affiliates including necessary and direct travel to and from such authorised event or meeting. An "authorised event or meeting" means any race or event in a NASR approved speedway racing category, *regardless* of whether the race or event occurs at track or venue which is sanctioned or approved by NASR, or which meets the objective safety criteria set by NASR. NASR is unable to provide personal accident insurance to competitors who participate in a non-approved speedway racing category.

We therefore confirm that the personal accident insurance covers racing at non-approved tracks, and those which do not comply with NASR's objective safety criteria, so long as drivers participate in NASR-approved category of racing. As almost all existing speedway racing categories are currently approved by NASR (there are over 100 racing categories, and those which are NASR approved are listed on the NASR website), the likelihood that a NASR licensee will not be covered by the personal accident insurance provided as part of the NASR licence is negligible.

7. *How will the notified conduct impact tracks that do not require drivers to hold a NASR licence and/or do not hold NASR public liability insurance? Will there be impacts on smaller more regional tracks?*

NASR submits that the notified conduct will have minimal impact on alternative venues which do not require the holding of a NASR licence as a condition of access and/or do not hold NASR's public liability insurance.

NASR does not impose a condition that its licensees must only participate in race events which are held at tracks and venues that are formally approved or sanctioned by NASR, or which hold NASR public liability insurance. However, NASR does require that its licensees only race at tracks and venues which meet certain objective safety criteria. These criteria include a requirement that the track hold a policy with any reputable insurance company providing for a minimum level of public liability insurance. Further, NASR has developed and implemented a national track rating system, and grades tracks and venues accordingly. It is noted that many tracks outside the NASR public liability insurance scheme also recognise the national track standards developed by NASR.

We confirm that NASR neither imposes a requirement that tracks and venues seek formal approval from NASR in order to meet the safety requirements set by NASR, nor requires that licence holders race only at tracks and venues which have been formally approved by NASR.

Accordingly, the notified conduct will not have any impact upon tracks and venues which hold race events in NASR-approved categories and which meet the objective safety criteria (including minimum insurance levels) specified by NASR. Drivers licensed by NASR are fully entitled to race at such venues under their NASR licences, and therefore such tracks are free to continue to compete with the Notifying Parties for the custom of speedway racing drivers.

In this regard, NASR again notes that almost all existing speedway racing categories are currently approved by NASR. NASR further submits that given the inherently dangerous nature of speedway racing, it is of vital importance that tracks and venues which do not meet minimum safety criteria are required to improve. Competitors, officials and spectators face unacceptable levels of personal risk if tracks and venues are not kept properly maintained, or if appropriate public liability insurance is not in place. Incidents occurring at such tracks and venues could bring speedway racing as a whole into disrepute. This can have subsequent effects including dissuading participation in speedway racing, as well as increased insurance prices for both tracks and venues, and competitors.

NASR therefore submits that there is significant public benefit (to both competitors and spectators) in venues which hold speedway racing events maintaining appropriate safety standards, regardless of their size and location. Accordingly, to the extent that the conduct described in the Notifications adversely impacts venues which do not meet the minimum objective safety criteria specified by NASR (for example, smaller or regional tracks), it is NASR's submission that this detriment is outweighed by the resultant public benefits.

8. *The notifying parties advise that a NASR day licence is available for one-off visits. Has the day licence for sprintcars been abolished? If so, what options are there for non-NASR licensed sprintcar drivers to have a 'one-off' race at one of the notifying tracks which requires a NASR licence?*

NASR issues single-use, day licences to allow drivers to participate in lesser categories of racing, and to allow drivers to practice (but not compete) in the high-powered categories of speedway racing, such as Sprintcars.

As a consequence of the safety issues arising from the inherent danger associated with high-powered racing, NASR does not provide a day licence to allow competitors to participate in race events of this nature (such as Sprintcar and Super Sedan racing) on a one-off basis. At those competitive events involving high-powered race cars which require a NASR licence, drivers will need to obtain a full NASR licence if they wish to participate. Such a licence will only be issued if the driver passes a medical examination, and once issued, the driver will be covered by NASR's insurance policy, as a member benefit. This accords with NASR's risk management policy and the parameters of its insurance cover.

Non-NASR licensed drivers can obtain a day licence for any "B" category of speedway racing, which covers the restricted or low-powered speedway racing divisions. NASR confirms that that this day licence is available for all tracks.

9. *Please explain the basis for the increase in NASR's licence for the current financial year. How does NASR use the monies it collects from membership fees?*

The recent increase in the NASR licence fee reflects the increase in the operational running costs of the organisation, the increased costs and expenses associated with obtaining the various component items provided to licensees as member benefits under the NASR licences, and the costs and expenses incurred by the organisation in developing, marketing and promoting speedway racing in Australia.

As a result of several fatalities in the sport last year, NASR experienced an increase in its personal accident insurance premium. The requirement for ongoing income replacement payments to be made, due to competitor injuries, has also resulted in higher insurance premiums. In an attempt to limit the effect of these increases, and to reduce any cost increase for NASR licences, NASR has changed its provider of insurance in order to gain access to a better premium.

While using some of the amounts it collects to meet its operational costs, NASR reinvests the majority of revenue derived from its collection of membership fees into the development and enhancement of the sport of speedway racing in Australia.

10. *You should be aware that immunity provided by a notification is limited to the conduct which has been notified. Interested party submissions have noted that the notified conduct states that track facility access will only be provided on [the] condition that a NASR licence has been purchased from NASR Pty Ltd. The NASR licence form states that the licence is purchased from NASR Inc. Please provide further information about the differences, if any, between NASR Pty Ltd and NASR Inc.*

NASR confirms that the organisation is made up of an incorporated entity (National Association of Speedway Racing Inc A.B.N. 11 373 518 738) and a proprietary limited company, National Association of Speedway Racing Pty Ltd A.C.N. 080 193 942. We confirm that this is the company described in the Notifications.

The function of National Association of Speedway Racing Pty Ltd is to employ management staff and provide a professional administration for the conduct of the sport. Accordingly, National Association of Speedway Racing Pty Ltd provides a service to National Association of Speedway Racing Inc on a fee for service basis, and effectively acts on behalf of National Association of Speedway Racing Inc in carrying out certain activities. The incorporated association would otherwise have to engage external contractors for these services, for a similar fee.

The services provided by National Association of Speedway Racing Pty Ltd include the administration services associated with the provision of NASR licences. In this regard, please note that the personal accident insurance which is provided to licensees as a member benefit is purchased by National Association of Speedway Racing Pty Ltd, on behalf of the National Association of Speedway Racing Inc.

The consequence of this arrangement is that licences are purchased by drivers from National Association of Speedway Racing Pty Ltd, acting on behalf of National Association of Speedway Racing Inc as part of the provision of its administrative services. It is for this reason that the Notifications describe the notified conduct as involving a condition that licences are purchased from National Association of Speedway Racing Pty Ltd, while the application form for a NASR licence refers to the A.B.N. details of the National Association of Speedway Racing Inc.

Further, please note that licences are implemented and enforced by both National Association of Speedway Racing Pty Ltd and National Association of Speedway Racing Inc. In this regard, we note that Section 6 of the application form for a NASR licence includes a statement by applicants that they agree to be bound by the provisions and rules of both National Association of Speedway Racing Inc and National Association of Speedway Racing Pty Ltd.

### **Additional Comments**

In addition to the above information, NASR would like to take this opportunity to address various allegations and issues raised in the interested party submissions, notwithstanding the fact that these matters are irrelevant to the consideration of the conduct described in the Notifications.

In this regard, NASR notes that various false and misleading statements and assertions have been made in certain filed submissions, including but not limited to those addressed below. NASR trusts that the ACCC is ignoring these false allegations, and will bring any assertions about which it has queries or concerns to the attention of NASR so that we can provide the ACCC with further information and clarification.

Allegations have been made that it is a conflict of interest for organisations to file or endorse the Notifications, where those organisations have members on the NASR Board. NASR confirms that its shareholders and Board members are key stakeholders within speedway racing. However, it is common, if not necessary, for key stakeholders or experienced participants to be directors and Board members of organisations in their relevant industry. NASR entirely rejects any claim that this gives rise to a conflict of interest. In particular, NASR strongly rejects the assertion made by the Australian Speedway Accident Fund in its submission that "significant incentives" were offered by NASR to the notifying parties to agree to the conduct described in the Notifications. All responsible organisations within speedway racing have a common goal to improve the reputation and profile of the sport, as well as increasing participation levels and safety, and the Notifications have been filed with a view towards achieving this goal.

NASR also takes this opportunity to advise the ACCC that the allegation made by Mr Glenn Lawless in his submission to the ACCC that the membership fees collected by NASR are partially used to underwrite the costs of teams within the most high-profile classes of speedway racing is completely false.

### **Summary**

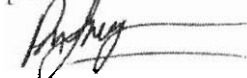
We trust that the above information will assist the ACCC with its consideration of the Notifications.

Please do not hesitate to contact the writer should you require any further information of clarification.

Yours faithfully

NATIONAL ASSOCIATION OF SPEEDWAY RACING

per:



PAUL TRENGOVE

Competition & Operations Manager