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20 August 2009

Ms M Bourke
 Australian Competition and Consumer Commission
 GPO Box 3131
 CANBERRA ACT 2601

BY FACSIMILE -- (02) 6243 1199

Dear Ms Bourke

**Exclusive Dealing Notifications – Brisbane International Speedway Pty Ltd
 Murray Bridge Sporting Car Club and Motorcycle Club Inc
 Premier Speedway Club Warrnambool Pty Ltd**

We act for the Australian Speedway Accident Fund. Our client believes the notifications should be set aside.

We enclose:

- 1. Submissions.

Yours faithfully

Nevett ford



Paul Stephens
 Direct Dial: 03 5337 0262

Encl

**AUST. COMPETITION &
 CONSUMER COMMISSION
 CANBERRA**
 20 AUG 2009

Our Ref: APS 5/51998

EXCLUSIVE DEALING NOTIFICATIONS LODGED BY THE BRISBANE INTERNATIONAL SPEEDWAY PTY LTD, MURRAY BRIDGE SPORTING CAR CLUB & MOTORCYCLE INCORPORATED AND PREMIER SPEEDWAY CLUB WARRNAMBOOL PTY LTD.

SUBMISSION OF THE AUSTRALIAN SPEEDWAY ACCIDENT FUND ("ASAF")

We refer to the exclusive dealing notification lodged by Brisbane International Speedway Pty Ltd, Murray Bridge Sporting Car Club & Motorcycle Incorporated and Premier Speedway Club Warrnambool Pty Ltd (collectively referred to as the 'Track Operators') and the ACCC's invitation for interested parties to make submissions.

The Australian Speedway Accident Fund (also known as the VSC Accident Fund) is a mutual aid scheme established in 1978 to provide accident benefits to members injured in the course of a speedway event. The ASAF opposes the Track Operators application on the basis that granting the application would substantially lessen competition in the marketplace. The anti-competitive nature of the proposal has the potential of lessening competition through creating a functional monopoly for the National Association of Speedway Racing Pty Ltd (NASR) in relation to accident insurance and accident benefits. The notifications should be set aside.

Submissions

1. Whilst the notified conduct concerns the NASR licence for speedway drivers, the capacity to substantially lessen competition in the market is due to the bundling of the licence with the accident insurance. The purchase of a NASR licence is not severable from the purchase of NASR insurance, therefore the bundling of the licence and insurance is an inherent element of the notified conduct. This anti-competitive conduct has created a barrier to alternative providers of accident benefits/insurance entering or remaining in the market. The notified conduct is forcing consumers to pay additional fees if they chose to use an alternative benefits provider. It is anti-competitive that the NASR insurance is bundled with the NASR licence.
2. Although safety is relied upon in the notifications as the public benefit justification for compelling the purchase of a NASR licence, it is of note that the main benefits identified in the notifications refer to the desirability of ensuring all competitors have appropriate accident benefit cover/ insurance. ASAF accepts that requiring a driver to hold a suitable licence issued by an appropriate authority is clearly an important safety issue, as the grant of licences is used to regulate who may compete, and is used as a means to ensure competitors have the requisite skills. The question of who provides the accident

benefits for these individuals is not a safety issue. Whilst it may be desirable to ensure that individuals hold adequate personal accident insurance or accident benefit coverage prior to competing or accessing the pit area, it is not a public safety issue to only allow those who have NASR insurance to compete or enter the pit area without the imposition of additional fees (as is the case for those who chose to join ASAF). The ASAF believes the real purpose of the notified conduct is to obtain a large pool of insurance customers for the commercial benefit of NASR and its shareholders.

3. NASR is putting a levy on freedom of choice and creating barriers to other providers. The notified conduct does not solely concern the choice of a NASR licence to compete, it also concerns the choice of insurance/benefit provider. If the notification is approved it will cause public detriment to the speedway industry, as drivers and individuals wishing to compete or access the pit area without a NASR licence will have their choices severely affected. The ASAF is aware of many instances where individuals who are members on the ASAF have been refused the right to compete or access to pit areas has been denied, even though ASAF accident benefits meets all necessary criteria for personal accident benefits in speedway racing. The bundling of the NASR insurance within the NASR licence means individuals are understandably not renewing their membership in, or not joining ASAF. Unless this is stopped, the membership of the ASAF will dwindle to a point where it ceases to be viable, and will cease to operate. The creeping extension of NASR's exclusive dealings that started last year with notifications that were not set aside makes it much more likely that NASR will eventually become a monopoly provider of accident insurance/benefits to the speedway industry.
4. Requiring those who wish to compete at a further three tracks to hold a NASR licence will create further harm to the industry. The reasoning for allowing past notified conduct in relation to Perth Motorplex and Avalon Raceway, was due to drivers being able to compete at alternative speedways. This reasoning was flawed because not all tracks offer every class of competition. In relation to the Brisbane International Speedway Pty Ltd, drivers without a NASR licence are limited to three alternative tracks in the entire state of Queensland. Furthermore, as all speedway tracks do not offer the same categories of competition, even if there is an alternative track within a reasonable distance of one operated by the Track Operators, the category of competition for the driver may not be offered.
5. The dominance of the NASR in the provision of accident insurance/benefits has come about due to the bundling of the NASR licence and insurance. The real issue concerning ASAF surrounding the notified conduct is the dominance in the insurance/benefit market

obtained through the notified conduct. This anti-competitive behaviour is establishing a substantial insurance pool for NASR and will lessen and over time if not stopped is likely to wholly remove the competition for accident benefit/insurance.

6. The ASAF believes that the Track Operators, as promoters were all offered significant incentives by NASR to agree to the exclusive conduct the subject of the notifications. ASAF understands that these incentives include the provision of public liability insurance either at no cost, or heavily discounted to its true cost. Any incentive given by NASR to the Track Operators should be disclosed and examined.

Outcomes

ASFA submits that the ACCC should revoke the notifications made by the Track Operators on the basis that the anti-competitive conduct proposed would be detrimental to the speedway industry, particularly in respect of accident benefit or insurance products. The likely detriment to the public, that is NASR is likely to become a monopoly provider of accident benefits/insurance far outweighs the likely benefit to the public, indeed any public benefit is hard to detect. The rejecting of the notified conduct by the Track Operators is a step further in breaking the exclusive dealings stronghold that NASR is attempting to exert over the speedway industry, through hindering competition. It should be noted that NASR, and in particular its insurance arm, is a commercial organisation and has adopted strategies designed to create a monopoly over speedway accident insurance. The immediate issue of notified conduct is the NASR licence, however the long terms effects of requiring the NASR licence will be devastating to ASAF, one of the few alternative providers of accident benefit products. The bundling has had the effect of substantially lessening competition in the market. NASR is likely to become a monopoly insurer to the speedway industry if the notified conduct is not revoked.

If the ACCC approves the applications, ASAF submits that the following conditions should be imposed on the Track Operators:

- (a) the accident insurance offered by NASA should be unbundled from the NASR licence to enable consumers to have freedom to chose their provider of accident benefits/insurance thereby maintaining a competitive market; and
- (b) if the NASR insurance and licence are unbundled it must be ensured that the insurance offered by NASR be on a proper commercial basis and not cross subsidised by the fee for the NASR licence; and

- (c) alternative accident benefit or insurance coverage be accepted as adequate for the purposes of participating in the Track Operators speedway events and accessing their pit areas.