



Australian
Competition &
Consumer
Commission

Draft Notice

in respect of notifications lodged by

**Brisbane International Speedway Pty Ltd,
Murray Bridge Sporting Car Club &
Motorcycle Club Incorporated and
Premier Speedway Club Warrnambool**

Date: 28 January 2010

Notification nos. N94032 - N94034

Public Register no. C2009/1324

Commissioners:

**Samuel
Kell
Schaper
Court
Dimasi
Walker
Willett**

Summary

The Australian Competition and Consumer Commission (ACCC) proposes to revoke the notifications lodged by Brisbane International Speedway Pty Ltd (Brisbane Speedway), Murray Bridge Sporting Car Club & Motorcycle Club Incorporated (Murray Bridge Speedway) and Premier Speedway Club Warrnambool (Premier Speedway).

On 7 July 2009, Brisbane International Speedway Pty Ltd (Brisbane Speedway), Murray Bridge Sporting Car Club & Motorcycle Club Incorporated (Murray Bridge Speedway) and Premier Speedway Club Warrnambool (Premier Speedway) (collectively referred to as the notifying tracks) lodged notifications N94032–N94034 to restrict access to their facilities only to drivers and pit crew who hold a licence issued by the National Association of Speedway Racing (NASR).

The Australian Competition and Consumer Commission (ACCC) has decided to issue draft notices proposing to revoke the notifications on the basis that it is not satisfied that the public benefits arising from the conduct outweigh the public detriments.

The ACCC considers that the effect of the notified conduct will prevent speedway racing clubs aligned with organisations in competition with NASR from holding events at the notifying tracks, which are the premier tracks in their respective state. The ACCC considers that the notified conduct will raise barriers to the expansion of competing licensing bodies, and raise barriers to new bodies wishing to establish themselves in the administration and organisation of speedway events on a national level.

While the ACCC accepts that the notified conduct enables tracks to more efficiently implement risk management practices, and provides certainty to the notifying tracks that drivers are complying with a set of safety criteria, limiting the licences the track will accept locks out alternate licensing bodies from accessing the facilities, regardless of whether those licensing bodies also implement an effective set of safety criteria. The notifications do not enable alternate licensing bodies to demonstrate to track operators the safety standards which their licensed drivers meet.

The ACCC considers that preventing alternate licensing bodies from accessing the premium tracks results in a public detriment.

Tracks could set out the safety criteria to which its drivers must adhere without restricting access to a specific licensing body. For example, objective and transparent criteria which outlined minimum health, safety and insurance requirements could be established so that licences offered by all organisations could be assessed and verified as meeting the minimum standards and then tracks could be satisfied which licence holders were appropriately trained and insured.

Immunity for the notified conduct automatically came into effect on 21 July 2009. These draft notices do not remove the protection from legal action that is afforded by the lodged notifications.

The ACCC will undertake public consultation on its assessment of the likely benefits and detriments as set out in these draft notices and will then consider whether to issue final notices. If the ACCC issues final notices, immunity will then cease to be in force on the thirty-first day after final notices are issued.

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List of abbreviations

ACCC	Australian Competition and Consumer Commission
ASAF	Australian Speedway Accident Fund
ASCF	ASCF Speedway Sedans Australia Inc
Avalon Raceway	Corio Park Pty Ltd trading as Avalon International Raceway
Brisbane Speedway	Brisbane International Speedway Pty Ltd
CAMS	Confederation of Australian Motor Sport Limited
FIA	Federation Internationale Automobile
Murray Bridge Speedway	Murray Bridge Sporting Car Club & Motorcycle Club Incorporated
NASR	National Association of Speedway Racing Incorporated and National Association of Speedway Racing Pty Ltd
NDRA	National Dirt Racers Association Inc
Perth Motorplex	Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex
Premier Speedway	Premier Speedway Club Warrnambool
SCCA	Sprintcar Control Council of Australia Incorporated
the Act	<i>Trade Practices Act 1974 (Cth)</i>
VSC	Victorian Speedway Council Incorporated

1. The notified conduct

1.1. On 7 July 2009, Brisbane International Speedway Pty Ltd (Brisbane Speedway), Murray Bridge Sporting Car Club & Motorcycle Club Incorporated (Murray Bridge Speedway) and Premier Speedway Club Warrnambool (Premier Speedway) (collectively referred to as the notifying tracks) lodged notifications N94032–N94034 in relation to conduct that may be in breach of sections 47(6) and 47(7) of the *Trade Practices Act 1974* (the Act).

1.2. Each of the notifying tracks proposes to:

Offer and supply race services from time to time, including access to track facilities and race events, on condition that:

- the offeree has purchased a suitable licence from the National Association of Speedway Racing Pty Ltd (NASR) in order to compete at the track or
- the offeree has purchased a suitable licence from the National Association of Speedway Racing Pty Ltd (NASR) in order to visit the racing pit area.

1.3. The effect of the notified conduct prevents speedway racing clubs aligned with organisations in competition with NASR from holding events at these venues. The notified conduct also will only allow persons who hold a NASR licence to access the track and pit facilities at their venues.

Previous notifications

1.4. The ACCC has previously considered similar conduct lodged by 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) (notifications A93304–N93305). On 11 June 2008 the ACCC decided not to take any further action with respect to these notifications.

1.5. In its published assessment of the notifications, the ACCC noted that should a significant number of tracks begin to only accept NASR licences as a condition of accessing the track and pit facilities, the public detriments arising from the notified conduct may change and the ACCC may review these notifications.

1.6. At that time, the ACCC also made the following decisions:

- On 27 August 2008 the ACCC revoked notifications N93297–N93298 lodged by NASR requiring NASR licence holders to only race at tracks and venues which had been approved by NASR, and that NASR licence holders must obtain membership in a relevant club or association related to the driver's speedway racing category.
- On 27 August 2008 the ACCC revoked notifications N93301–N93303 lodged by the Sprintcar Control Council of Australia Incorporated (SCCA), the Australian Saloon Car Federation Incorporated (ASCF) and Dirt Modifieds Australia

(DMA) which made membership to the relevant association conditional upon the driver obtaining a NASR licence and only racing at tracks and venues approved by NASR.

- On 11 June 2008 the ACCC decided not to take any further action with respect to notifications N93299–N93300 lodged by NASR which involved the offer and supply by NASR of speedway racing licences on condition that the offeree only participates or competes in speedway racing categories approved by NASR.

2. The notifying tracks

Brisbane International Speedway Pty Ltd

- 2.1 Brisbane International Speedway Pty Ltd is the operator of the Brisbane Speedway, formerly known as Archerfield Speedway, located in Archerfield Queensland.
- 2.2 Brisbane Speedway provides racing services and holds speedway race events including events in the categories of sprintcars, super sedans, speedcars and various other motorsport racing categories. The ACCC notes that Brisbane Speedway has an extensive calendar including running a regular sprintcar competition.¹

Murray Bridge Sporting Car Club & Motorcycle Club Incorporated

- 2.3 Murray Bridge Sporting Car Club & Motorcycle Club Incorporated is the operator of the Murray Bridge Speedway, located at Murray Bridge South Australia.
- 2.4 Murray Bridge Speedway provides racing services and holds speedway race events including events in the categories of sprintcars, super sedans, speedcars and various other motorsport racing categories. The ACCC notes that Murray Bridge Speedway has an extensive racing calendar and offers many races to a wide range of racing categories including sprintcars, super sedans, junior sedans, street stock, wingless sprint, caravan races, demo derby, Formula 500s, super rods, V8 dirt modified and vintage.²

Premier Speedway Club Warrnambool

- 2.5 Premier Speedway Club Warrnambool is the operator of the Sungold Stadium Premier Speedway, located at Allansford, Victoria.
- 2.6 Premier Speedway provides racing services and holds speedway race events including events in the categories of sprintcars, super sedans, speedcars and various other motorsport racing categories. The ACCC notes that Premier Speedway also has an extensive calendar of speedway racing, extending to such racing categories as Formula 500, sprintcars, super rods, NOS Sprints and speedcars.³

¹ <http://www.brisbanespeedway.com.au/calendar.asp>. Accessed 22 October 2009.

² <http://www.murraybridgespeedway.com/calendar.asp>. Accessed 22 October 2009.

³ <http://www.premierspeedway.com.au/schedule.asp>. Accessed 22 October 2009.

3. Background

- 3.1 NASR was established in 1997 and advises that it is the 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)⁴, to become the first Australian speedway body to achieve delegation of authority by the FIA. The FIA is the peak world motorsport body.
- 3.2 The NASR corporate structure is comprised of a company and an incorporated association, both operating under the direction of a common board. NASR advises that the function of NASR Pty Ltd is to employ management staff and provide professional administration for the conduct of the sport. NASR Pty Ltd provides a service to NASR Inc on a fee for service basis and acts on behalf of NASR Inc in carrying out certain activities, such as the administration services associated with the provision of NASR licences.
- 3.3 Each state has NASR affiliated clubs/associations to which tracks and competitor clubs and associations belong. The relationship between NASR and the affiliated state clubs and associations is 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.
 - 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. NASR advises that regardless of whether or not the driver holds a NASR licence, it is necessary for drivers to meet the requirements imposed by the relevant administering club or association, which may include obtaining a licence issued by that organisation.

Competing licensing bodies

- 3.4 There are a number of alternative bodies which also provide licences for speedway racing in Australia including the National Dirt Racers Association Inc (NDRA) and the Victorian Speedway Council Incorporated (VSC). These bodies license drivers to race in particular speedway racing categories (see paragraph 3.8 to 3.9).
- 3.5 In order to participate in an event organised or sponsored by a particular racing body (such as NASR, NDRA, VSC) drivers must obtain a licence from that body. Drivers may hold licences from multiple bodies.
- 3.6 As a result of the notified conduct, the licensing bodies in competition with NASR will no longer be able to access the notifying tracks to host their events.

⁴ 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.

- 3.7 The VSC licensed approximately 521 drivers in the 2008–09 race season. The ACCC understands that drivers are only licensed once it has been demonstrated that the candidate holds personal accident insurance.

Racing categories

- 3.8 There are numerous categories/divisions of speedway racing. Categories are generally set by reference to the type of vehicle, for example 360 sprintcars, compact speedcars, Formula 500s. Categories range from high-powered vehicles, such as sprintcars, to lower-powered vehicles such as street stockers and karts.
- 3.9 NASR currently recognises approximately 110 speedway categories under its licence. The VSC currently recognises 13 categories. The standard saloon category is the most popular VSC recognised category.

Tracks

- 3.10 The notifying tracks advise that there are over 100 speedway tracks in Australia. These tracks range in size, and the events held at a track depend upon its facilities. Generally, tracks operate as individual businesses and are not owned by NASR. Some speedway tracks are run by or affiliated with a speedway club.
- 3.11 The notifying tracks appear to primarily hold national/touring events for the high-powered categories of racing. Smaller, regional tracks appear to hold the lesser-powered categories of racing.
- 3.12 NASR has developed a track rating system whereby NASR can formally assess the safety of tracks and approve tracks which satisfy certain criteria, that is NASR grades tracks according to its national track rating system and approves the track to hold events for certain categories of racing, and that the track holds appropriate public liability insurance.
- 3.13 NASR offers a group public liability insurance policy to tracks. Approximately 83 tracks throughout Australia hold NASR's public liability insurance. NASR advises that holding NASR's public liability insurance is not a condition of track approval. Whether a track chooses to adopt the NASR public liability insurance is a business decision for the individual track. Further, a track holding NASR's public liability insurance will not have its insurance voided if a non-NASR licensed driver races at the track.
- 3.14 NASR advises that it does not require its licensees to only participate in race events which are held at tracks and venues that are formally approved by NASR, or which hold NASR public liability insurance.

NASR licences

- 3.15 NASR licenses speedway racing drivers for all NASR recognised categories of speedway racing.

- 3.16 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.
- 3.17 NASR offers licences based on race category and membership type (ie driver, official, mechanic), with the fee varying accordingly. The 2009–10 fee ranges between \$160 and \$250 for drivers, and from \$70 to \$90 for juniors, mechanics and pit entry. The cost of the licence is calculated to cover the range of benefits from holding a NASR licence, which include:
- a licence to compete in NASR events
 - Choice Hotels Association Card
 - 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.
- 3.18 NASR advises that recent increases in NASR’s licence fee are a result of operational running costs, expenses incurred through promotion of speedway racing, and an increase in the personal accident insurance premium.

NASR personal accident insurance

- 3.19 NASR has negotiated a group personal accident insurance policy on behalf of its members. Access to its group personal accident insurance is provided as a member benefit of its licences.
- 3.20 The personal accident insurance covers attendance at an authorised event or meeting organised by, recognised by, or under the direct control of NASR and/or any affiliates. It includes necessary and direct travel to and from such authorised events or meetings.
- 3.21 NASR advises that an authorised event or meeting refers to any race or event in a NASR approved speedway racing category, regardless of whether the race or event occurs at a track or venue which is approved by NASR as long as it meets the objective safety criteria set by NASR.

- 3.22 NASR advises that the licence and insurance are not severable. NASR advises that there is no direct relationship between the licensee and the insurance provider. The licensee does not enter into a separate agreement with the insurance provider and is not required to pay a separate fee to the insurance provider. If a licensee wishes to make a claim, they contact NASR who lodges the claim on their behalf.
- 3.23 While a licence holder cannot opt out of the insurance provided by NASR as a benefit of the licence, they are not restricted from obtaining additional personal accident insurance from an alternative insurance provider.
- 3.24 In this decision, the ACCC is not assessing whether personal accident insurance should be provided as a member benefit with the NASR licence as it does not form part of the notified conduct.

4. Statutory test

- 4.1 Section 93 of the Act provides that a corporation that engages or proposes to engage in conduct of a kind referred to in sections 47(6) and (7) may give to the ACCC notice, as prescribed, setting out particulars of the conduct or proposed conduct.
- 4.2 Under section 93(3A), if a corporation has notified the ACCC of conduct or proposed conduct of the type described in subsection 47(6) or 47(7) 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 Attachment A, give the corporation a written notice stating that the ACCC is so satisfied. The effect of giving such a notice is to revoke the immunity from the Act afforded by the lodging of the notification.

5. Submissions – notifying tracks

Public benefits

- 5.1. The notifying tracks submit that the notified conduct would result in a number of public benefits including:
- Ensuring that all drivers and persons visiting the pit facilities are covered by adequate personal accident insurance. As personal accident insurance is automatically provided through the NASR licence, the notifying tracks can be assured of appropriate coverage which assists them in their risk management process.
 - Development of the sport by creating consistent expectations regarding the standard of driver participation and safety at a national level. NASR provides standardised rules for the entire sport and NASR licence holders are required to comply with NASR’s Speedway Rules and Regulations and a drug and alcohol policy.

Public detriments

- 5.2. The notifying tracks submit that the notified conduct would not lessen competition in any relevant market, and would not cause any public detriment because:⁵
- While the choice of speedway racing drivers will be marginally affected through the requirement to purchase a NASR licence in order to compete or enter the pit facilities at the particular track, there are a number of alternate tracks which do not have this requirement.
 - There are over 100 alternative speedway tracks currently operating in Australia. In Queensland there are 12 alternative speedway racing venues in operation, in South Australia there are 8 alternative speedway racing venues in operation and in Victoria there are 23 alternative speedway racing venues in operation.
 - Similarly, potential visitors to pit racing areas are free to visit these areas at alternative tracks.
 - Speedway drivers are free to race at events held at other tracks and to obtain licences and personal accident insurance from other organisations.
 - The financial commitment for purchasing a NASR licence is small.
 - The majority of speedway racing drivers competing at the particular tracks already hold a NASR licence.
 - Spectators are able to attend speedway racing events without accessing the pit racing areas and therefore do not need a licence.

6. Submissions – interested parties

- 6.1. The ACCC sought comments from 52 interested parties potentially affected by the notifications, including various speedway racing clubs and associations and speedway tracks. A summary of the public submissions received from interested parties follows:

Racing Organisations

- The **ASCF Speedway Sedans Australia Inc**, which is a NASR affiliated association, submits that a national licensing system should be in place and that the NASR licence is critical to the judicial control of all participants. The ASCF submits that the majority of drivers are more than satisfied with the insurance included with the NASR licence, and competitors are free to source additional insurance without restriction.

⁵ The notifying parties submit that the notified conduct would not result in a lessening of competition; however, the ACCC notes that the test prescribed in the Act under s 93(3A), which the ACCC must apply with respect to conduct which may be in breach of ss 47(6) and 47(7), is to consider the likely detriment to the public resulting from the notified conduct.

- The **National Dirt Racers Association Inc (NDRA)**, a competing licensing body, submits that the non-profit organisations in the sport, such as the NDRA, rely on income from members to keep their tracks and divisions operating and viable. The NDRA submits that all income other than operating costs is returned to the sport. The NDRA submits that the notified conduct gives NASR a monopoly which is detrimental to the sport.
- The **Sprintcar Control Council of Australia (SCCA)** is recognised by NASR as the controlling body for sprintcars. The SCCA submits that the sole reason for NASR creating a NASR licence is to sell personal accident insurance.

The SCCA are also concerned that forcing drivers to have a NASR licence has safety implications as NASR licences do not require an assessment of the applicant's knowledge or competency to participate in the sport.

Further, the SCCA submits that Brisbane Speedway and Premier Speedway hold many sprintcar events. For example, at Brisbane Speedway 39 race meetings are scheduled, 21 of which are sprintcar meetings and drivers will require a NASR licence to compete. The SCCA submits that 100% of the major sprintcar events in Victoria are conducted at Avalon Raceway and Premier Speedway and that if the additional notifications are not revoked SCCA members will be forced to purchase a NASR licence.

The SCCA submits that NASR has abandoned its one day racing licence for AA licence categories (ie sprintcars).

The SCCA submits that if these additional tracks are permitted to require that drivers must hold a NASR licence, further tracks will follow.

- **The Victorian Speedway Council Incorporated (VSC)**, a competing licensing body predominately operating in Victoria, submits that currently, with the exception of Avalon Raceway, drivers are able to race at tracks in Victoria under either a NASR or VSC licence. If the notification lodged by Premier Speedway is allowed to stand, VSC drivers and pit crew will be required to also purchase a NASR licence in order to continue to compete at Premier Speedway. The VSC submits this is discriminatory and adds a burden of cost to current VSC members who are appropriately licensed and insured.

The VSC notes that it licenses speedway drivers with an option to include the personal accident insurance organised by the VSC through the ASAF.

- The **West Coast Speedcars** submit that NASR is attempting to create a monopoly aimed at gaining control over every speedway track in Australia, noting that licence fees increased substantially this year. West Coast Speedcars submit that its drivers have been banned from using NASR insured tracks because they do not hold a NASR licence.

West Coast Speedcars submit there has been a flow on effect from the notification lodged by Perth Motorplex such that NASR's public liability

insurance requires that all cars must be registered with NASR and race in a category recognised by NASR, and that drivers holding a NASR licence now wish their club at a country track to take out NASR public liability insurance.

Drivers

- **Mr Andy Ticehurst** submits that the information in the notifications is incorrect, as the NASR licence application form states that licences are issued by NASR Inc, whereby the notified conduct states that licences should be purchased from NASR Pty Ltd.
- **Mr Glenn Lawless** submits that NASR's actions are not in the spirit of the delegation of authority from CAMS as, among other things, the CAMS constitution forbids directors from holding office if they are likely to receive a financial gain. Mr Lawless submits that competition within the governance structure of a sport is healthy.
- **Mr Trevor Reakes** opposes the notifications and submits that the track owners have a conflict of interest as they are all shareholders of NASR.

Insurance providers

- The **Australian Speedway Accident Fund (ASAF)** submits that the notified conduct has the potential to substantially lessen competition in the market for the provision of accident insurance benefits to the speedway industry. This is due to the bundling of the NASR licence with personal accident insurance. The ASAF submits that the NASR licence creates a barrier to alternative providers of accident benefits/insurance entering or remaining in the market.

The ASAF submits that while it is desirable to ensure that individuals hold adequate personal accident insurance 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 choose to join the ASAF). The bundled licence means that drivers will understandably not join or renew their membership in the ASAF. This will affect the future viability of the ASAF.

The ASAF submits that the real purpose of the notified conduct is for NASR to obtain a large pool of insurance customers for the commercial benefit of NASR and its shareholders.

Regarding the availability of alternative tracks, not all tracks offer the same categories of competition. In relation to the conduct notified by Brisbane Speedway, drivers without a NASR licence would be limited to three alternative tracks in Queensland.

- 6.2. The ACCC notes that a number of issues raised by interested parties are not directly relevant to the assessment of the notified conduct, in particular regarding a perceived

conflict of interest of the notifying tracks and the shareholders of NASR, and the corporate structure of NASR.

- 6.3. While these issues may not be 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. In particular, the ACCC notes that it has no role in determining or regulating the corporate structure of NASR or the delegation to NASR by CAMS.
- 6.4. The views of the notifying tracks and interested parties are outlined in the assessment of the notifications in chapter 7 of this draft notice. Copies of all public submissions may be obtained from the ACCC's website's notifications register (www.accc.gov.au/ExclusiveDealingRegister) and by following the links to this matter.

7. ACCC Assessment

- 7.1. Under the notified conduct, speedway racing clubs aligned with competing licensing bodies in competition with NASR will be prevented from holding events at the notifying tracks. Also, only persons who hold a NASR licence will be permitted to access the pit and track facilities at the notifying tracks. In examining the benefits and detriments flowing from the notified conduct, the ACCC has considered all of the information provided by both the notifying tracks and interested parties.

The relevant market

- 7.2. Defining the markets affected by the notified conduct assists 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.
- 7.3. The notifying tracks submit that the relevant market is the market for speedway drivers and, in the case of racing pit area access, may include spectators, within Australia.
- 7.4. The ACCC notes that the notifying tracks provide speedway racing facilities to clubs and bodies who organise events, and host speedway events (as opposed to other forms of motor racing) to drivers.

The market for the provision of track facilities for speedway racing bodies to host speedway racing events

- 7.5. There are approximately 110 tracks which hold speedway events throughout Australia. The tracks vary in the size and quality of the facilities for spectators and drivers, the location (close to the city or regional) and the type and size of the events they host.

7.6. NASR submits that the notifying tracks hold a range of events relating to almost all recognised categories of speedway racing during the race season. NASR advises that ultimately, the types of events a track hosts depends upon the track itself, that is, its facilities may be suited to some categories of racing and not others.

7.7. The ACCC understands that speedway events are generally organised to be either:

- national or touring events, where a series of separate races are held at different tracks around Australia. National events are generally held at the larger tracks and attract drivers from all over Australia and even internationally. The prize money and spectators at national events are generally larger than that generated at the smaller regional events.
- regional or club events, where local clubs organise events which generally attract drivers from the local area.

National events

7.8. National events, such as the National Super Sedans and the Sprintcar World Series are generally held at the larger tracks with premium facilities such as Avalon Raceway, Premier Speedway, Adelaide City, Murray Bridge and Brisbane Speedway and usually draw larger crowds.

7.9. Generally, tracks tender to host a round of the event. NASR advises that it owns and controls a number of national/touring events, for which a NASR licence is required to participate. The ACCC understands that often where the event has been held historically will play a part in determining which track the event will run at.

7.10. Not all of the 110 tracks currently operating in Australia are suitable venues for national touring events.

Club events

7.11. All tracks are able to hold club events. Many regional tracks are owned and operated by the local racing club, and that club will predominately host the races held at the track.

7.12. Club events are more likely to attract drivers who live in proximity to the track. Club events tend not to have as large prize monies or attract as large crowds to the event as national events.

Track substitutability

7.13. The notifying tracks submit there are a number of alternative tracks in each state which are available for club events (not all of which are NASR approved tracks):

- In Queensland there are 12 tracks. Brisbane Speedway is the sole track located in the metropolitan area, with four alternate tracks located within 200 km of

Brisbane including at Gatton, Toowoombah, Gympie and Roma.⁶ The remaining tracks are located at least 500 km from Brisbane.⁷

- In South Australia there are 8 tracks. Murray Bridge Speedway is the only speedway located in Murray Bridge, however there are alternate tracks within 250 km located at Adelaide (Speedway City and Gillman Speedway), Waikerie, Renmark and Bordertown. In South Australia all alternate tracks are NASR approved.
- In Victoria there are 23 tracks. Alternative tracks located within 215 km of Warrnambool include those located at Laang, Simpson, Mortlake, Hamilton, Portland, Ballarat, Baccus Marsh and Geelong. The Avalon Raceway (located in Geelong) requires drivers to hold a NASR licence (under notification N93305).

7.14. The ACCC recognises that not all tracks are perfect substitutes for one another. The notifying tracks are the larger tracks in each state which have the capacity to hold large crowds and offer premium race events. Smaller regional tracks may have limited crowd capacity and offer limited racing categories.

The market for the provision of speedway administration and organisation services by speedway racing bodies to drivers

7.15. As noted above, there are a number of organisations which provide speedway racing services such as organising speedway competitions, licensing of drivers and other participants and administering rules of racing for speedway in Australia. Such bodies include NASR, the VSC and the NDRA.

7.16. Each body recognises certain racing categories to which its licence may apply. NASR recognises the largest number of categories of racing, recognising approximately 110 racing categories. The VSC recognises 13 categories of speedway racing.

7.17. In order to participate in an event organised or sponsored by a particular racing body, drivers must obtain a licence from that body. In general, events sponsored/hosted by competing licensing bodies may not be substitutable. While drivers may hold multiple licences, the level of substitutability between licences is limited given that a particular licence is required in order to compete in that body's event. The ACCC considers that the notified conduct further limits the substitutability between licences by restricting the type of licence accepted at the track.

⁶ The notifying parties list five tracks that are located within 200 kilometres of Brisbane, however, one of the tracks cited by Brisbane Speedway (South Burnett Speedway Club, Kingaroy) is not operating due to safety concerns. The track is currently raising funds for track improvements. As at September 2009, there were no upcoming events scheduled for this track. The ACCC notes that Roma and Gympie do not appear to be NASR approved tracks.

⁷ These include the tracks at located at Cairns, Mackay and Rockhampton.

Conclusion

- 7.18. On the basis of the factors outlined above, the ACCC considers the following markets are relevant to its assessment of the notified conduct:
- The market for the provision of track facilities for speedway racing organisations to host speedway events
 - The market for the provision of speedway administration and organisation services by speedway racing bodies to drivers

Public benefit

- 7.19. The ACCC's assessment of the likely public benefits from the notified conduct follows.

Appropriate personal accident insurance

- 7.20. NASR licence holders are provided with personal accident insurance cover as a member benefit of the NASR licence. As a result, the notifying tracks submit that NASR licence holders are guaranteed to have appropriate personal accident insurance cover and this is important for their risk management processes.
- 7.21. The ASAF submits that while 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.
- 7.22. The ACCC accepts that speedway racing is an inherently dangerous activity and considers it is important for drivers to be covered by adequate personal accident insurance. The ACCC recognises the importance for the notifying tracks, and indeed all tracks to have adequate risk management practices in place. Among this would be ensuring that drivers and pit crew accessing their venues hold appropriate personal accident insurance.
- 7.23. The ACCC notes that holding appropriate personal accident insurance is a requirement of other licensing bodies such as the VSC. The VSC advise that it will not issue a licence unless the competitor has demonstrated that they hold personal accident insurance. VSC drivers are able to choose where they obtain insurance as it provides its licence separately to insurance. The ACCC notes, however, that this does not remove the burden on the tracks of checking the insurance policy which the driver holds.
- 7.24. The ACCC recognises there are efficiencies for tracks if all competitors hold a NASR licence, in that they will not have the burden of auditing alternate licences and the standards/insurance required of these alternate licences. The ACCC understands that it can be difficult for a track to determine whether a driver's personal accident cover is appropriate and that the competitor complies with

particular standards relating to health and safety, and accepts that a track can be assured of this if the driver holds a NASR licence.

- 7.25. The ACCC accepts that by restricting access to only NASR licence holders, the notifying tracks can very easily be assured that all drivers and pit crew have adequate insurance.
- 7.26. However, the ACCC notes that this certainty to the notifying tracks needs to be balanced with the impact on competing licensing bodies who will not be able to hold events at the notifying tracks.

Compliance with unified competitor and safety standards

- 7.27. The notifying tracks submit that 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. NASR's regime also includes a drug and alcohol policy, and implements a judicial system whereby competitors engaging in misconduct can be suspended and are restricted from racing under the NASR licence.
- 7.28. The notifying tracks also submit that NASR licence holders have access to NASR's training programs and safety seminars which support the overall safety framework of speedway racing.
- 7.29. NASR advises that 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 performance with the aim of improving the profile of speedway racing.
- 7.30. Mr Lawless submits that while speedway racing needed to develop under a more cohesive body, the establishment of NASR has not achieved this. Mr Lawless submits that a limited number of competitors who compete in the most expensive classes may have benefited, however the vast majority have been forced to endure increased costs while not being offered a material benefit.
- 7.31. The SCCA submit that there are safety ramifications for a driver purchasing a NASR licence, as NASR does not assess the driver's knowledge or competency prior to the issue of the licence, and there is no follow-up procedure to ensure that the driver is capable of competing safely in race conditions.
- 7.32. The ACCC accepts that the notified conduct allows the notifying tracks to efficiently address their risk management practices. By limiting access to NASR licence holders they can be assured that all competitors and pit crew members comply with NASR's racing standards and hold adequate personal accident insurance.
- 7.33. However, the ACCC does not accept the claim that these notifications achieve unified standards for safety and other requirements for the sport as a whole.

Public detriment

7.34. The ACCC's assessment of the likely public detriments from the notified conduct follows.

Reduced competition among racing organisations

7.35. As a result of the notifications clubs aligned with other licensing bodies, such as the NDRA and the VSC, will be excluded from holding events at Brisbane Speedway, Murray Bridge Speedway (near Adelaide) and Premier Speedway (Warrnambool).

7.36. The notifying tracks submit that there are over 100 alternative tracks available. For example:

- Brisbane Speedway is the sole track located in the metropolitan area, however there are 11 other speedways in Queensland, with four alternatives within 200km from Brisbane Speedway. Brisbane Speedway offers a range of racing events, however the ACCC understands that the clubs which generally run events at Brisbane Speedway are predominantly aligned with NASR.
- Murray Bridge Speedway is the sole track located in Murray Bridge, however there are alternatives in close proximity including two speedway tracks in the surrounding region of Adelaide, between them offering a range of racing categories including sprintcars, super sedans, quarter midgets, classic TQ's and go karts. The ACCC understands that all tracks in South Australia are NASR approved and that NASR is the predominant licence provider in the state.
- Premier Speedway is located near a number of alternate tracks of different sizes, including Avalon Raceway. The ACCC understands that tracks in the surrounding areas to Premier Speedway host the majority of VSC affiliated events, such as Hamilton, Drouin and Mortlake. According to VSC's website, Premier Speedway hosts approximately 11 out of 157 VSC affiliated events.⁸

7.37. The ACCC notes that two other tracks in Perth and Geelong have notified similar arrangements in 2008 that restrict access to their track facilities to NASR licence holders.

7.38. The ACCC notes that the notifying tracks appear to be the larger venues in Australia with premium facilities for drivers and spectators and with the ability to hold both national and club events. The SCCA submits that the notifying tracks are the major tracks which host the major speedway racing events, including a number of national events attracting drivers both nationally and internationally.

7.39. The ACCC is concerned that the notified conduct could have the effect of significantly raising the barriers to the entry and expansion of competing racing bodies. This is because the notified conduct has the effect of preventing clubs

⁸ <http://www.victorianspeedway.org.au/>. Accessed 26 November 2009.

associated with competing licensing bodies from hosting their events at these tracks, which are the major tracks in their respective state.

- 7.40. While the ACCC acknowledges that the events conducted by NDRA and VSC associated clubs may not currently be held at the notifying tracks and there are alternative tracks available for local club events, the ACCC remains concerned that the notified conduct prevents such organisations from ever accessing these bigger tracks with the capacity to hold larger events (for so long as the notifications are in place). This may reduce the attractiveness of smaller bodies providing an alternative to NASR to speedway racing participants. A reduction in membership of these bodies could reduce the attractiveness of the body to remaining members. It may also result in these organisations finding it difficult to expand their licence base. Further, a new organisation would find it difficult to compete on a national scale without access to some of these major tracks.
- 7.41. If more tracks choose to manage their risk by restricting access to their facilities to particular licence holders, it would significantly impact the ability of competing licensing organisations to continue to operate.

Impact on non-NASR licence holders

- 7.42. The notifying tracks submit that the notified conduct will marginally affect 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 the Brisbane Speedway, Murray Bridge Speedway or Premier Speedway. A person who does not wish to obtain a NASR licence will be prevented from racing or accessing the pit area at these tracks.
- 7.43. The VSC submits that requiring drivers who hold licences other than NASR's licence to acquire a NASR licence to access these tracks will impose a financial burden on these drivers as they will have to acquire another licence and undertake a further medical examination.
- 7.44. The ACCC accepts there is some cost to non-NASR licence holders who will be required to take out a NASR licence if they wish to access the notifying tracks. The cost of a NASR licence ranges from between \$160 and \$250 for drivers, and from \$70 to \$90 for juniors, mechanics and pit entry. The ACCC also understands that NASR has significantly limited the availability of the day licence. Previously, NASR offered a day licence at a reduced cost to people who wished to compete at, or access, a track only once or twice during a speedway racing season. The day licence is now not available for high-powered race events, such as sprintcar and super sedan racing. The ACCC previously considered that the day licence would reduce the public detriment associated with the requirement that competitors and pit crew hold a NASR licence.
- 7.45. The ACCC accepts that the majority of speedway drivers already hold at least a NASR licence. The ACCC considers the impact on non-NASR licence holders is not likely to be substantial and that any detriment is likely to be relatively small.

8. Conclusion on public benefits and detriments

- 8.1. The ACCC accepts that the notified conduct allows the notifying tracks to efficiently address their risk management practices. By limiting access to NASR licence holders they can be assured that all competitors and pit crew members comply with NASR's racing standards and hold adequate personal accident insurance. The ACCC recognises the public benefits associated with this.
- 8.2. Having recognised this as a public benefit and accepting that it is important for all competitors and tracks to hold adequate insurance and operate according to a set of effective safety criteria, it is the ACCC's view that this benefit can be achieved through less restrictive means other than through the requirement to obtain a NASR licence. For example, tracks could set criteria for minimum health, safety and insurance requirements and give alternate licensing bodies the opportunity to demonstrate that they meet the criteria.
- 8.3. The ACCC is concerned that the notified conduct therefore raises barriers to the expansion of racing bodies currently operating in competition with NASR and raises barriers to the entry of new licensing bodies wishing to establish themselves in administering and organising speedway racing on a national basis. The notified conduct will prevent alternate bodies from accessing the notifying tracks.
- 8.4. The ACCC considers that eliminating alternate licensing bodies from accessing the premium tracks results in a public detriment.
- 8.5. Further, the ACCC would be concerned if additional tracks, particularly those which currently host race events sponsored by competing licensing bodies, began to limit access to only NASR licence holders. This would have a further detrimental effect on competing licensing bodies and potential new bodies on a national level to enter the market.
- 8.6. 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.

9. Draft notices

- 9.1. Having regard to the claims by the notifying tracks and interested parties, the ACCC is not satisfied that the likely benefits to the public from the conduct or proposed conduct will outweigh the likely detriment to the public from the conduct or proposed conduct.
- 9.2. Accordingly, the ACCC gives this draft notice under section 93A(1) of the Act that it proposes to issue notices under section 93(3A) in respect of notifications N94032–N93034 lodged by Brisbane International Speedway Pty Ltd (Brisbane Speedway), Murray Bridge Sporting Car Club & Motorcycle Club Incorporated (Murray Bridge Speedway) and Premier Speedway Club Warrnambool (Premier Speedway) (collectively referred to as the notifying parties).

9.3. In accordance with section 93(7A)(a), notifications N94032–N93034 have come into force. However, if the ACCC decides to issue final notices revoking notifications N94032–N93034, pursuant to subsection 93(7C)(b), immunity afforded by the notifications will cease on the thirty-first day after the date of issuing the final notices.

9.4. The draft notices are made on 28 January 2010.

10. Next steps

10.1. The notifying tracks or any interested party may request that the ACCC hold a conference in relation to the draft notices in accordance with section 93A of the Act. Should the notifying tracks or any interested party request a conference they must notify the ACCC in writing by close of business 12 February 2010. If a conference is called, the conference must be held no later than 30 days after this date.

10.2. The ACCC seeks comment from both the notifying tracks and interested parties on the issues raised in the draft notices to assist the ACCC to decide whether or not to issue final notices revoking the notifications lodged by the notifying tracks. Submissions should be lodged with the ACCC by close of business on 19 February 2010.

Attachment A – The notification process

The Australian Competition and Consumer Commission (the ACCC) is the independent Australian Government 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.

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.

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.

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, immunity for the notified conduct commences automatically, or in the case of third-line forcing, after 14 days.

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 proposed conduct. Revoking a notification removes the protection conferred by the lodging of the notification. The ACCC conducts a comprehensive public consultation process before making a decision to revoke a notification.

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.

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.

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. The protection afforded by the notification ceases on the 31st day after the ACCC revokes the notification.

Attachment B – Chronology

DATE	ACTION
7 July 2009	Lodgement of notifications N94032-N94034.
15 July 2009	The ACCC invites submissions by interested parties.
5 August 2009	Closing date for submissions by interested parties. Submissions received by the ACCC until 20 August 2009.
13 August 2009	ACCC requests information from NASR.
4 September 2009	NASR responds to information request.
28 January 2010	Draft notices issued.