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15 February 2010

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

Attention: Dr Richard Chadwick, General Manager /Ms Monica Bourke, Senior Project Officer

Dear Dr Chadwick and Ms Bourke

Exclusive Dealing Notifications N93304 - N93305 filed by Perth Motorplex and Avalon Raceway

We refer to previous communications regarding the Form G notifications of exclusive dealing (third line forcing) conduct filed by the operators of Perth Motorplex and Avalon Raceway (the **Tracks**) (N93304 – N93305) (together, the **Notifications**).

In particular, we refer to the ACCC's correspondence of 28 January 2010, advising that as a result of its assessment of 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 which described conduct identical to that covered by the Notifications (N94032 – N94034 - collectively, the **Latest Notifications**), and information received as part of the assessment process, it is concerned that the public benefits associated with the conduct described in the Notifications no longer outweighs the resultant detriments. The ACCC has advised that if it is satisfied of this, it may proceed with issuing draft objection notices, proposing to revoke the immunity afforded to the Tracks by the Notifications.

It is NASR's view that the public benefits associated with the conduct described in the Notifications continues to outweigh any resultant public detriments.

Accordingly, NASR wishes to take this opportunity to comment, and to provide the ACCC with pertinent information regarding its assessment of the public benefits and detriments associated with the notified conduct.

In particular, NASR wishes to comment upon the various matters highlighted in the ACCC's correspondence as being its particular areas of concern and therefore relevant to its consideration of the continued existence of the immunity provided to the Tracks via the Notifications.

NASR Day Licences

In its correspondence, the ACCC has indicated that a factor in its decision in June 2008 to allow the Notifications to stand was the availability for competitors to obtain a day licence from NASR. The ACCC considered this to be a mitigating factor, reducing the level of public detriment associated with the notified conduct.

As a part of its assessment of the Latest Notifications, the ACCC has become aware that the terms of the day licence offered by NASR have been restricted, and is concerned that this change may impact the level of public detriment caused by the conduct described in the Notifications.

NASR confirms that while non-NASR licensed drivers are still able to obtain a day licence to practice in the high-powered categories of Speedway racing, it no longer offers the one-day licence for participants to compete in the AA and A licence categories (i.e. the high-powered categories of racing such as Sprintcar and Super Sedan racing).

This position has been adopted for safety reasons. Applicants for day licences are not required to undergo medical assessments as a condition of obtaining a licence, and NASR considers that this is not appropriate in the context of race events for high-powered vehicles. It was therefore decided to no longer allow drivers to obtain day licences to participate in race events involving the high-powered categories of vehicles. 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.

NASR confirms that day licences for the lower-powered vehicles (i.e. B licence categories, and ASCF categories) are still available to participants, and are available for all tracks. These licences will enable participants to both practice and compete in these license categories of racing.

NASR also confirms that one day licences to access pit facilities are still issued by NASR, for all categories of racing – whether or not these licences are accepted is at the discretion of individual tracks.

It is noted that the ACCC previously considered that the availability of the day licence reduced the public detriment associated with the notified conduct. NASR asks that the ACCC take note of the fact that the decision to limit its availability in the case of high-powered race events was a decision adopted for reasons of public safety (rather than for commercial reasons, or similar) and is therefore actually in the interests of the public. It is NASR's submission that the public benefits associated with this safety consideration balance out any detriment caused to the public as a result of the reduced availability of the NASR day licence for certain dangerous categories of racing.

Alternative Licensing Bodies

NASR notes that in its correspondence, the ACCC has raised concerns about the effect of the notified conduct on alternative licensing organisations.

The Draft Notice issued in respect of the Latest Notifications indicates that the ACCC's view is that the effect of the notified conduct is to prevent organisations in competition with NASR (i.e. alternative licensing bodies) from holding events at the notifying tracks, and that this results in a public detriment which is not outweighed by the public benefits associated with the notified conduct. NASR presumes that the ACCC holds similar concerns in respect of the Tracks afforded immunity by the Notifications.

NASR is concerned that the ACCC may have misconceived the nature and effect of the conduct described in the Latest Notifications, as well as the Notifications.

As described in the various Notifications, the notified conduct requires drivers and visitors to the pit area to purchase a licence from NASR, in order to access the notifying tracks. The tracks, including Perth Motorplex and Avalon Raceway, do not/are not seeking to impose a restriction as to the licensing organisations whose licensees will be entitled to access their facilities, and do not propose to restrict the range of alternative licences which these drivers and visitors may wish to acquire. Neither do the various tracks restrict alternative licensing bodies which compete with NASR from hosting race events at their facilities.

Rather, the notified conduct requires drivers and pit visitors to hold a NASR licence in order to access the tracks. Alternative licensing bodies, and clubs aligned with these organisations, are free to host race events at the various tracks, including the Tracks, provided that participants hold a NASR licence, in addition to any other licence or accreditation required by the club/alternative licensing body. By way of example, Avalon Raceway allows VSC categories, such as SDAV Hot Rods, to race at its track provided that participants hold a NASR licence.

NASR also asks that in its review of the Notifications, the ACCC give due weight and consideration to the fact that the majority of Speedway drivers in Australia are already licensed by NASR, with the impact on non-NASR licensees not being substantial and any public detriment being relatively small.

Further, NASR submits that the notified conduct does not affect NASR's competitors from expanding their membership bases. As previously advised, there are over 100 alternative racing venues in Australia (excluding the Tracks and the operators of the tracks the subject of the Latest Notifications). NASR's competitors are free to hold events at these alternative venues which do not include as a condition of participation the holding of a NASR licence. Given the significant number of alternative venues in existence, many of which have race event calendars similar or identical to those of the Tracks (as outlined below) it is NASR's submission that the notified conduct in no way affects the ability of its competitors (if any) to expand their membership groups.

For these reasons, with respect NASR considers that the ACCC's concerns that the continued immunity for conduct described in the Notifications may restrict NASR's competitors from expanding their licence base, and may raise barriers to entry, are unfounded and result from a misunderstanding of the factual and practical effect of the relevant conduct which is covered by the Notifications.

Structure of Speedway Racing in Australia

NASR wishes to take this opportunity to confirm the structure of the sport of Speedway racing in Australia, as it is concerned that this may not be fully understood and appreciated by the ACCC. In particular, NASR is concerned by the ACCC's statements that the Notifications may result in the raising of barriers to the entry of new licensing bodies wishing to establish themselves in administering and organising Speedway racing on a national basis, and that the ACCC would consider this to result in a public detriment.

As previously advised, NASR is the governing body for the sport of Speedway racing in Australia, and has been internationally recognised as such (via its ratification by the Federation Internationale de l'Automobile, acting through the Confederation of Australian Motor Sport Limited (CAMS)). CAMS is the national sporting authority responsible for overseeing motor sport in Australia.

NASR confirms that CAMS has delegated its authority to oversee Speedway racing in Australia to NASR - similarly, CAMS has delegated its authority to oversee Drag racing and Sprintkart racing to the Australian Karting Association and Australian National Drag Racing Association respectively.¹

The role of NASR as it relates to the sport of Speedway racing is therefore the equivalent to that of the AFL Commission (in the context of the sport of Australian rules football), Football Federation Australia (in the context of soccer in Australia) and Cricket Australia (which is the responsible body overseeing cricket in Australia at the national level).

As with these mainstream sports, in order to ensure the maintenance of a cohesive, organised and safe environment for the sport of Speedway racing on a national level there should (and can) only be a single body responsible for overseeing the sport on a national level – otherwise, there would be disorganisation (which would be detrimental to the public). This is of particular importance in the context of motor sport and Speedway racing, which is inherently dangerous and in which safety considerations are of paramount importance. NASR's role as the governing body for the sport of Speedway racing in Australia has resulted in a single set of safety standards and rules for the sport, which is clearly in the public interest.

NASR wishes to ensure that the ACCC gives sufficient consideration to the precise role of NASR in the sport of Speedway racing at the national level, and the importance and public benefits associated with its position, in its decision as to whether to object to the continued existence of the immunity afforded by the Notifications.

In any event, as stated above, the effect of the notified conduct is not to prevent any alternative organisations and their affiliates which may now or in the future exist from holding race events at the Tracks.

Substitute Tracks

NASR notes that the ACCC is concerned about the existence and substitutability of alternative venues to the Tracks.

NASR confirms that in Western Australia, alternatives to Perth Motorplex include:

- Northam Speedway (96 km from Perth);
- Moora Speedway (171 km from Perth);

¹ <http://www.cams.com.au/Sport/ Disciplines/Other%20Motor%20Sport%20bodies.aspx>. Accessed 4 February 2010.

- Bunbury Speedway (180 km from Perth);
- Narrogin Speedway (199 km from Perth)
- Collie Speedway (211 km from Perth);
- Manjimup Speedway (303 km from Perth);
- Ellenbrook (40 km from Perth);
- Geraldton (380 km from Perth);
- Kalgoorlie (600 km from Perth);
- Margaret River (281 km from Perth);
- Esperance (741 km from Perth);
- Pithara (237 km from Perth);
- Kellerberrin (213 km from Perth);
- Mt Barker Speedway (367 km from Perth); and
- Albany Speedway (417 km from Perth).

NASR advises that the alternative tracks listed above all host events for high powered categories of Speedway racing, including sprintcars and super sedans, as well as all other categories of Speedway racing.

In Victoria, NASR advises that drivers are able to access the following tracks as alternatives to Avalon Raceway:

- Alexandra;
- Bacchus Marsh;
- Ballarat;
- Tolmer Speedway;
- Daylesford;
- Hamilton Speedway;
- Heartland (Moama);
- Horsham;
- Mildura Speedway;

- Borderline Speedway;
- Nyora Speedway;
- Rushworth Speedway;
- Simpson Speedway; and
- Wangaratta.

As the ACCC is no doubt aware, Victoria is geographically much smaller than Western Australia, and therefore the distances between alternative tracks in this State that host events for high powered categories of Speedway are much less. NASR confirms that the Tracks and those alternatives listed above hold a range of events relating to almost all recognised categories of speedway racing (which amount to over 100 different categories). NASR also takes this opportunity to advise the ACCC that under the applicable rules and regulations, events for higher-powered categories of racing (such as sprintcars or super sedans) may be held at most Speedway venues in Australia, including but not limited to those alternative venues listed above. Tracks are graded depending on their safety features (such as the quality and standard of fences and safety walls) to determine what events they can run. While events for higher-powered categories of racing (such as sprintcars or super sedans) may be held at most Speedway venues in Australia, only track venues which are rated 3 stars or above may host a full field sprintcar race.

NASR confirms that all tracks listed above as alternatives to the Tracks allow all high powered sedan categories to race at their facilities (including the V8 super sedans). Additionally, and specifically in the context of alternative tracks to Avalon Raceway, all categories of Speedway racing, including the premier category (sprintcars) are allowed to hold events at Mildura Speedway, Simpson Speedway, Hamilton Speedway, Nyora Speedway, Rushworth Speedway, Mortlake Speedway, Heartland Speedway, and Tolmer Speedway and Borderline Speedway (which while technically in SA are both considered by the Victorian Speedway racing community to be close by and accessible, and hold events as part of the Sprintcar All Stars Series).

The majority of tracks in Victoria and Western Australia (including those located in regional areas) are rated 3 stars or above. These tracks are therefore fully entitled to hold a full range of events for high-powered categories of racing. Whether or not these tracks actually hold such events is entirely a matter for the track operators.

For these reasons, it is NASR's submission that a range of equivalent alternatives to the Tracks exist, and are able to be accessed by competitors without NASR licences.

Event Calendar

On the basis of the Draft Notice issued in respect of the Latest Notifications, NASR understands that the ACCC may consider that alternative tracks are not effective substitutes for the Tracks, due to the events which are held at those tracks. In particular, NASR is concerned that the ACCC may be under the misconception that the "major" series in the Speedway racing calendar are held exclusively at the predominantly metropolitan tracks which have filed the Notifications and Latest Notifications.

Having reviewed the Draft Notice, NASR understands the ACCC to consider that only events which are national and touring events are "major" events. NASR disputes this.

NASR confirms that it is the owner and controller of certain national race series, including the National Super Sedan Series (NSSS) and the World Sprintcar Series (WSS), and takes this opportunity to advise the ACCC that these events are held at a range of venues across Australia, in both metropolitan and regional locations. Whether or not rounds of the NSSS and WSS are held at the Tracks, or alternative locations, depends on the track operators submit a tender for the holding of a round, which is accepted by NASR. Submitted tenders are assessed having regard to various criteria.

NASR also notes that in addition to these events associated with NASR, the Tracks hold events from other significant Speedway racing competitions, which are not affiliated with NASR. By way of example, the 2009/10 season of the Victorian-based Eureka SRA Sprintcar series (which NASR considers is a major event in the Speedway and sprintcar racing calendar, and which is not associated with NASR) is being conducted at various tracks throughout Victoria, including Avalon Raceway, and has 50 drivers participating. Another major Speedway event which is not affiliated with NASR is the Sprintcar All Stars Series, which is held at various locations throughout South Australia and Victoria.

NASR therefore considers that there are a number of major Speedway racing events and competitions in Australia which are held at a range of venues.

Safety standards and risk management procedures

NASR reiterates that the conduct set out in the Notifications and the Latest Notifications represents the most effective means for achieving acceptable safety standards and risk management procedures at the relevant tracks.

As noted above NASR is the internationally-recognised controlling industry body of Speedway racing in Australia, and the first speedway body anywhere to achieve delegation of authority from the Federation Internationale de l'Automobile, the peak world motorsport body. NASR considers that the public will benefit from the requirement to hold licences provided by the industry body, as licence holders are required to comply with NASR's Speedway Rules and Regulations which deal with mandatory competitor conduct, technical requirements and race procedures. This also includes compliance with a drug and alcohol policy. NASR considers that Speedway racing drivers, officials, crews, mechanics, sponsors, family members and spectators benefit greatly from compliance with the minimum safety requirements imposed by the recognized governing body for speedway racing. NASR provides standardised rules for the entire sport of Speedway racing throughout Australia. As part of this, NASR has implemented a tribunal system and suitable penalties for offences within the sport. This has had a significant impact in improving the operation and safety of Speedway racing in Australia. All of these factors provide considerable public benefits.

Speedway racing is an inherently dangerous activity; therefore the imposition of minimum safety standards is crucial. NASR also provides licence holders with access to International Safety Apparel Standards and Training Programs, Safety Training Seminars and Conferences, and Risk Management Programs, all of which support the overall safety framework for speedway racing. For this reason, NASR submits that the sport of Speedway racing as a whole, and thereby the general public, benefits from uniform safety requirements imposed on drivers by its governing body.

In addition, it is necessary to ensure that all drivers hold adequate personal accident insurance before they can compete. NASR personal accident insurance is available to all NASR licence holders as a member benefit. Accordingly, Speedway racing drivers with NASR licences are guaranteed to have adequate personal accident insurance cover. NASR licences also require drivers to pass a suitable medical examination before the licence is granted, with insurance provided as a subsequent

membership benefit. NASR considers that these requirements support the overall safety framework for Speedway racing and assist with tracks' risk management processes. The increased level in safety in turn provides a significant public benefit.

One of NASR's main objectives is to develop Speedway racing as a high quality, well organised national sport and to promote it as such. It is in the very nature of a sporting organisation that participation and policies be controlled in such a way as to maintain uniformity and quality. This not only improves the experience of spectators and participants, but makes the sport more viable in the long term, which is of benefit to the public generally. The requirement that drivers and those who wish to access pit facilities hold relevant NASR licences assists in the development of the sport by creating consistent expectations regarding both the standard of driver participation and safety in the sport at a national level. There is a clear benefit to the public in the advancement of a participatory recreational pastime which is cohesive, features a high standard of competition and is conducted in accordance with consistent, well-understood rules and safety procedures.

If participants at the Tracks are not required to comply with NASR's Speedway Rules and Regulations, and instead agree to follow different rules, judicial procedures and safety standards stipulated by alternate licensing bodies, this will make the management of the sport inherently more difficult and dangerous.

The stipulated public benefits regarding safety and the management of Speedway racing (as described above and in detail in the Notifications and the Latest Notifications) would not be able to be achieved if the immunity granted by the Notifications and the Latest Notifications was removed.

Summary

For the reasons set out above, it is the view of NASR that the public benefits associated with the Notifications (as described in detail in the Notifications themselves) continue to outweigh any detriment to the public which results from the notified conduct.

Accordingly, NASR trusts that the ACCC's consideration of the continued existence of the Notifications will result in the ACCC deciding not to issue a draft objection notice, with the immunity afforded to the Tracks continuing to stand.

Please do not hesitate to contact the writer should you require any further information or clarification to assist the ACCC with its consideration of the Notifications.

Yours faithfully

NATIONAL ASSOCIATION OF SPEEDWAY RACING

per:



PAUL TRENGOVE
Competition Manager