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Our Ref: 241933

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BY REGISTERED POST AND EMAIL: adjudication@acc.gov.au

The General Manager
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 N94032 - N94034 filed by Speedway Track Operators

We refer to previous 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 (the **Tracks**) (N94032 – N94034) (collectively, the **Notifications**).

In particular, we refer to the Draft Notice issued by the ACCC in respect of the Notifications on 28 January 2010 (the **Draft Notice**), and to your correspondence of the same date, inviting NASR to make a written submission in response to the Draft Notice.

NASR wishes to take this opportunity to make a submission regarding the Draft Notice. In particular, NASR wishes to address a number of statements contained in the Draft Notice which it considers to be either inaccurate or incorrect, or relate to matters which are irrelevant to the ACCC's assessment of the Notifications. It also takes this opportunity to provide the ACCC with further information, with a view to clarifying various statements made in the Draft Notice.

Status of Tracks

NASR notes that it is stated in the Draft Notice that the ACCC considers the Tracks to be the premium or premier venues in their respective States, such that they are the venues which predominantly hold national and touring events for the high powered categories of racing.¹ It is apparent that this consideration was an important factor in the ACCC's decision to issue the Draft Notice, proposing to remove the immunity afforded by the Notifications.

NASR considers that the ACCC's categorisation of the Tracks, as explained in the Draft Notice, is incorrect for various reasons.

Firstly, the ACCC has stated that the Tracks are the larger venues which host national/touring events for high-powered categories of racing, with smaller regional tracks holding only events for the lesser-powered racing categories.² This is not correct. Rather, as previously advised,³ the notifying Tracks hold a range of events relating to almost all recognised categories of Speedway racing. NASR confirms that these include events for lesser-powered categories of racing, as well as those held in respect of high-powered 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. However, only track venues which are rated 3 stars or above may host a full field sprintcar race.

The majority of tracks in Victoria and Queensland (including those located in regional areas) are rated 3 stars or above, and are therefore fully entitled to hold full field events for high-powered categories of racing. Whether or not these tracks actually hold such events is entirely a matter for the track operators. Additionally, most other tracks can hold high powered categories of racing, including for V8 powered super sedans.

For example, in Victoria (and nearby), alternative tracks which can be accessed by competitors include those listed below. NASR confirms that the following tracks hold a range of events relating to almost all recognised categories of speedway racing (which amount to over 100 different categories):

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

¹ See paragraphs [3.11], [7.38] and [7.40] of the Draft Notice.

² Paragraph [3.11].

³ See page 2 of the correspondence from NASR to the ACCC dated 4 September 2009.

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

NASR confirms that all of the above listed alternative tracks allow all high powered sedan categories to race at their facilities (including the V8 super sedans). Additionally, participants in all categories of Speedway racing, including the premier category (sprintcars) are allowed to race 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).

In Queensland, alternative tracks which can be accessed by competitors include those listed below. NASR confirms that the following tracks hold a range of events relating to almost all recognised categories of speedway racing:

- Charlton Raceway;
- Merryborough Speedway;
- North Queensland Speedway;
- Rockhampton Speedway;
- Gatton Speedway;
- Gympie Speedway;
- Coal Capital Speedway;
- Mac's Speedway; and
- Moranbah Speedway.

In South Australia, alternative tracks which can be accessed by competitors include those listed below. NASR confirms that the following tracks hold a range of events relating to almost all recognised categories of speedway racing:

- Speedway City;
- Borderline Speedway;
- Tolmer Speedway;

- Westline Speedway;
- Riverland Speedway; and
- Sunline Speedway.

Secondly, NASR disagrees with the ACCC's classification of the Tracks as the "premier" or "premium" tracks in their respective States. While NASR is unaware as to how the ACCC arrived at this classification of the Tracks (e.g. the criteria that the ACCC considers should be satisfied in order for a venue to be considered "premier" or "premium"), in its view there is no reasonable basis upon which Murray Bridge Speedway can be regarded as the "premium" speedway racing venue in South Australia – particularly given the status of Speedway City at Virginia. In Victoria, both Avalon Raceway and the Bacchus Marsh track have event calendars extremely similar to that of Premier Speedway Warrnambool, and hold events for a wide range of racing categories and classes. In Queensland, alternative venues of a similar calibre to Brisbane International Speedway include Toowoomba, Maryborough and Rockhampton.

As many equivalent venues exist, it is NASR's submission that the Tracks cannot be classed as the "premier"/"premium" venues in their respective States.

National Events

A relevant factor in the ACCC's categorisation of the Tracks as the "premier" or "premium" facilities in their respective States appears to be the fact that the Tracks host race events for various series which are national and/or touring events – in this regard, the National Super Sedan Series ("NSSS") and the World Sprintcar Series ("WSS") (incorrectly referred to as the "Sprintcar World Series" in the Draft Notice) have been specifically noted.⁴ Accordingly, though not expressly stated, it appears that the ACCC may have accepted the submissions made by certain interested parties that the national touring events are the "major" events in the Sport.

NASR takes this opportunity to advise that it is the owner and controller of the specific events mentioned in the Draft Notice, and that contrary to the ACCC's understanding,⁵ the historic locations at which previous competition rounds have been held in the past do not automatically determine the locations at which rounds of future series of the NSSS and WSS will be held. Rather, tenders submitted by tracks interested in holding a round of the series are assessed on their own merits, having regard to various considerations.

NASR advises that, contrary to the ACCC's view that the NSSS and WSS racing series are held only at larger venues, rounds of both competitions are held at smaller, regional tracks which cannot be reasonably described as "premium" or "premier". For example, as well as the Tracks, rounds of the WSS competition have been held at regional tracks in Toowoomba, Mildura, Kalgoorlie and Mount Gambier. Similarly, the NSSS series is held at tracks located in both metropolitan and regional locations. In Queensland, these include tracks in Rockhampton, Toowoomba and Gympie. Further, the NSSS competition visits other regional locations across Australia, including Dubbo in NSW and Hamilton in Victoria. In the past both the NSSS and WSS have visited other regional locations such as Echuca/Moama and Mildura.

NASR also seeks clarification as to the criteria which the ACCC considers must be satisfied in order for a racing competition or event to be considered "major". For example, despite the fact that it is

⁴ Paragraph [7.8] of the Draft Notice.

⁵ As described in paragraph [7.9] of the Draft Notice.

not a national event, NASR considers the Victorian-based Eureka SRA Sprintcar series to be a major event in the Speedway and sprintcar racing calendar. This event is conducted at various tracks throughout Victoria, which include in the 2009/10 racing season, the Simpson Speedway, Western Speedway, Heartland Raceway and Redline Speedway as well as Premier Speedway Warrnambool and Avalon Raceway. In addition to this, the Sprintcar All Star Series (the major Sprintcar 360 series in Australia), visits tracks in both South Australia and Victoria, including Nyora Speedway, Mildura Speedway, Simpson Speedway, Ballarat Speedway, Tolmer Speedway, Mt Gambier Speedway and Bacchus Marsh Speedway. Further, the recent 2009/10 NSSS season included a round at Western Speedway, Hamilton.

On this basis, NASR refutes the interested party submission made by the Sprintcar Control Council of Australia ("SCCA") stating that "100% of the major sprintcar events in Victoria are conducted at Avalon Raceway and Premier Speedway".⁶

Ability of Alternative Licensing Bodies to Access Tracks

The Draft Notice 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 Tracks, and that this results in a public detriment which is not outweighed by the public benefits associated with the notified conduct.⁷

NASR is concerned that the ACCC may have misconceived the nature and effect of the notified conduct.

As described in the Notifications, the notified conduct requires drivers and visitors to the pit area to purchase a licence from NASR, in order to access the Tracks. The Tracks 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 Tracks restrict alternative licensing bodies which compete with NASR from hosting race events at the Tracks.

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 Tracks provided that participants hold a NASR licence, in addition to any other licence or accreditation required by the club/alternative licensing body. For this reason, NASR considers that the statement made by the ACCC throughout the Draft Notice⁸ that alternative licensing bodies which compete with NASR will be unable to access the Tracks is factually (and practically) incorrect.

Accordingly, it is NASR's submission that the notified conduct will not create barriers to the entry and expansion of administration bodies which compete with NASR in the sport of Speedway racing, contrary to the view of the ACCC.

As the "locking out" of alternative licensing organisations from the Tracks appears to have been a significant factor in the ACCC's decision to issue the Draft Notice, and given that for the reasons described above this appears to be a misconception on the part of the ACCC, NASR considers that the ACCC should reconsider its assessment of the Notifications, and recognise that the public benefits provided by the Notifications in fact outweigh the public detriments. In this regard, due

⁶ The ACCC is also asked to take note of the previous information provided by NASR in respect of this issue, at page 3 of its correspondence to the ACCC dated 4 September 2009.

⁷ Paragraphs [8.3] - [8.4] of the Draft Notice.

⁸ E.g. in paragraphs [3.6], [7.1], [7.35], [7.40] and [8.4] of the Draft Notice.

weight and consideration should be given by the ACCC to the fact (as accepted by the ACCC in the Draft Notice)⁹ 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.

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 the ACCC may not have fully appreciated this in its assessment of the Notifications. These concerns arise largely from the ACCC's statements in the Draft Notice that the notified conduct raises barriers to the entry of "new licensing bodies wishing to establish themselves in administering and organising Speedway racing on a national basis", which results in a public detriment.¹⁰

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")). As stated by the ACCC in the Draft Notice,¹¹ 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.¹²

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 acknowledges the existence of unaffiliated, alternative licensing bodies which offer licenses for various categories of Speedway racing, including the Victorian Speedway Council Incorporated ("VSC") and the National Dirt Racers Association Inc ("NDRA"). However, the operations of these bodies are not equivalent or substitutable for those of NASR.

The NDRA is not recognised as a peak body within the Speedway racing community, and does not provide a full range of services equivalent to those provided by NASR (for example, while it offers insurance to drivers, it does not administer a set of racing rules). While it licences drivers only if applicants are able to demonstrate that they hold personal accident insurance, the VSC operates only in Victoria.

⁹ Paragraph [7.45] of the Draft Notice.

¹⁰ Paragraphs [8.3] - [8.4] of the Draft Notice.

¹¹ Footnote 4, page 3 of the Draft Notice.

¹² <http://www.cams.com.au/Sport/Disciplines/Other%20Motor%20Sport%20bodies.aspx>. Accessed 4 February 2010.

In any event, the notified conduct will not (and does not seek to) prevent these alternative organisations and their affiliates from holding race events at the Tracks, as explained above. NASR confirms that the NDRA, VSC and any other alternative licensing organisations which may be established in the future are free to hold events at the Tracks, provided participants wishing to compete in these events hold a NASR licence.

For these reasons, it is NASR's view that the ACCC has considered an irrelevant market in its assessment of the Notifications – namely, the "*market for the provision of [S]peedway administration and organisation services by [S]peedway racing bodies to drivers*".¹³ NASR also believes that the ACCC may have given insufficient consideration to the precise role of NASR in the sport of Speedway racing at the national level, and the importance and public benefit associated with its position, in its assessment of the Notifications.

NASR Licences

Competency of Licensees

NASR wishes to take this opportunity to respond to the allegation made by the SCCA that NASR licences do not require an assessment of the applicant's competency or knowledge.

Rule 2.3 of the current Australian Speedway Rules and Regulations administered by NASR ("**Rules**") states that new licences will only be issued to drivers who pass a medical examination, and pass a theory examination as required. Further, it is a condition of the NASR licence that drivers comply with the Rules, which contain in Part 4 rules regulating driver behaviour in race events. Driver competency is also controlled at a race level by the stewards administering the Rules at race events.

In any event, NASR notes that it is part of the role and obligations of the bodies which are responsible for administering the Speedway racing categories which NASR recognises (including the SCCA, in the case of sprintcars) to assess the competency of participants in that category.

Availability of Day Licences

NASR confirms that it no longer offers the one-day licence for participants in the AA and A licence categories (i.e. the high-powered categories of racing). This position has been adopted for safety reasons.¹⁴ 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. Day licences for the lower-powered vehicles (i.e. B licence and ASCF licence categories) are still available to participants.

NASR confirms that day licences are available to drivers to *practice* in all categories of speedway racing (including the high-powered AA and A licence categories). Further, 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.¹⁵ NASR asks that the ACCC take note of the

¹³ Paragraph [7.18] of the Draft Notice.

¹⁴ As more fully explained at page 5 of NASR's correspondence to the ACCC dated 4 September 2009.

¹⁵ Paragraph [7.44] of the Draft Notice.

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 in the interests of the public.

Safety standards and risk management procedures

NASR reiterates that the conduct set out in the 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 Rules, 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 Rules, 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) would not be able to be achieved if the immunity granted by the Notifications was removed.

Summary

For the reasons set out above, it is the view of NASR that the ACCC may not have correctly assessed or appreciated the scope of the notified conduct, and the resultant public benefits. It is NASR's view that once these are properly considered, the ACCC will recognise that these benefits outweigh any detriment to the public.

In particular, NASR is concerned that the ACCC has considered an incorrect market in its assessment of the Notifications – being the market for the provision of licences on a national level – and has failed to appreciate the fact that the notified conduct will not prevent NASR's competitors, and their affiliates, from accessing the Tracks (contrary to the view adopted by the ACCC). Unfortunately, these considerations appear to have (in substantial part) formed the basis for the ACCC's initial decision to issue the Draft Notice. NASR therefore trusts that as a result of the clarification and submissions set out above, the ACCC will reverse its preliminary assessment of the Notifications, and allow them to stand.

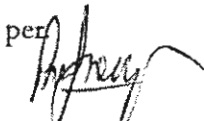
We look forward to receiving the ACCC's final determination of the Notifications.

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

Yours faithfully

NATIONAL ASSOCIATION OF SPEEDWAY RACING

per



PAUL TRENGOVE
Competition Manager