



National Association of Speedway Racing  
184 Magill Road Norwood SA 5067  
PO Box 269 Stepney SA 5069  
PH 08 8139 0777 FAX 08 83613522  
ABN 27 080 193 942

Our Ref: 241933

30 March 2010

**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 the pre-decision conference held on 22 February 2010 regarding the Draft Notice (the **Conference**).

Further to its earlier submission of 15 February 2010 regarding the Draft Notice, NASR wishes to accept the invitation extended by Commissioner Ed Willett at the Conference for parties in attendance to file final submissions regarding the Draft Notice, as noted in the Conference minutes (the **Minutes**). In particular, NASR takes this opportunity to:

- bring to the ACCC's attention various statements made either at the Conference by attendees, or in submissions filed by interested parties in respect of 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; and

- clarify and confirm for the ACCC's convenience the issues and factors which are to be taken into consideration when assessing the Notifications, and in particular, the public benefits associated with the described conduct.

## **Insurance**

NASR notes that as documented in the Minutes, a significant portion of the Conference was devoted to attendees making submissions regarding the provision of insurance by NASR (for example, the Victorian Speedway Council (**VSC**), the Sprintcar Control Council of Australia (**SCCA**) and the Australian Speedway Accident Fund). Similar submissions form a significant component of the written submissions filed by the VSC and SCCA, as well as that filed by Mr Glenn Lawless.

As recognised by the ACCC in its Draft Notice,<sup>1</sup> the provision of personal accident insurance by NASR as a member benefit is not the issue which is under present consideration. Neither is NASR's public liability insurance program. For this reason, the ACCC must disregard those submissions which relate to this topic.

## **NASR Structure and Standing**

Various submissions made at the Conference and filed by third parties in connection with the Draft Notice make assertions regarding the organisational structure, shareholding and financial position of NASR. These include the submissions of the SCCA, Formula Motorsports Group, the Sprintcar Association of NSW, Mr Glenn Lawless, Mr Rob Harris and Mr Andy Ticehurst made at the Conference (including in the form of written submissions), as well as written submissions filed by the United Speedway Association Inc.

As previously advised, the NASR organisation is made up of an incorporated entity (National Association of Speedway Racing Inc A.B.N. 11 373 518 738) and a proprietary limited company, National Association of Speedway Racing Pty Ltd A.C.N. 080 193 942. The function of National Association of Speedway Racing Pty Ltd is to employ management staff and provide a professional administration for the conduct of the sport. It therefore provides a service to National Association of Speedway Racing Inc on a fee for service basis, and effectively acts on behalf of National Association of Speedway Racing Inc in carrying out certain activities.

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

NASR licences are implemented and enforced by both National Association of Speedway Racing Pty Ltd and National Association of Speedway Racing Inc.

NASR has confirmed the above structure to the ACCC on previous occasions, and would be pleased to confirm the above to any industry participants should appropriate inquiries be made. The explanations which NASR has provided to the ACCC are a matter of public record, and NASR therefore challenges any suggestion by third parties that there is a "veil of secrecy" or similar regarding NASR's operational structure.

---

<sup>1</sup> Paragraph [3.24] of the Draft Notice.

NASR also takes this opportunity to reiterate and confirm its previous advice to the ACCC that while using some of the amounts it collects to meet its operational costs, NASR reinvests the majority of revenue derived from its collection of membership fees into the development and enhancement of the sport of speedway racing in Australia.

In any event, NASR notes that the finer details of its organisational structure and operations are not relevant to the ACCC's assessment of the Notifications, and therefore trusts that the ACCC will disregard the aspects of the interested party submissions which focus on such matters.

### **ACCC Considerations and Draft Notice**

NASR reiterates its earlier concerns (described in detail in its earlier submission regarding the Draft Notice, dated 15 February 2010) regarding certain factors and issues considered by the ACCC in its assessment of the Notifications, as explained in the Draft Notice. These are summarised below.

#### *Categorisation of Tracks and Events*

NASR disagrees with the ACCC's categorisation of the Tracks as the premier venues in their respective States.

As outlined in detail in its earlier submission NASR considers that the ACCC's categorisation of the Tracks as such is incorrect for various reasons. These include the fact that the notifying Tracks hold a range of events relating to almost all recognised categories of Speedway racing – not just national/touring events for high-powered categories of racing. Further, as the majority of tracks in Victoria and Queensland (including those located in regional areas) are rated 3 stars or above, they are therefore fully entitled to hold full field events for high-powered categories of racing pursuant to applicable rules and regulations. Whether or not such events are actually held is a matter at the discretion of the track operators.

Further, in addition to those touring events which are owned and operated by NASR, which have been specifically noted by the ACCC, there are numerous other events which NASR considers to be "major" and which are held at venues other than the Tracks. The reasons for this opinion are set out in detail in NASR's earlier submission.

#### *Ability of Alternative Licensing Bodies to Access Tracks*

NASR disagrees with the ACCC's view 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.

As explained in detail in NASR's earlier submissions regarding the Draft Notice, NASR is extremely concerned that the ACCC may have misconceived the nature and effect of the notified conduct.

The notified conduct simply 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. 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 these reasons, NASR considers that the statement made by the ACCC throughout the Draft Notice that alternative licensing bodies which compete with NASR will be unable to access the Tracks is factually (and practically) incorrect.

NASR is concerned that by focusing on this point, the ACCC has considered the impact of the notified conduct in an irrelevant market in its assessment of the Notifications. In this regard, NASR draws the ACCC's attention to the written submission filed by the Confederation of Australian Motor Sport Limited (**CAMS**), in which it is suggested that the relevant market is that for all types of motor sport in Australia, and not just Speedway racing as described in the Notifications, or perhaps even the market for all sporting and entertainment activities in Australia. Upon reflection, NASR considers that the submission of CAMS regarding this issue may well be correct.

### **Activities and Role of NASR in the Sport of Speedway Racing in Australia**

Various submissions made at the Conference, and filed with the ACCC in response to the Draft Notice describe views of interested parties which challenge or otherwise take issue with NASR's role and activities in the sport of Speedway racing in Australia.

As confirmed by the written and Conference submission of CAMS, NASR is the officially recognised governing body for the sport of Speedway racing in Australia.

Having a single coordinated and structured hierarchy to promote safety, fairness and social responsibility in the sport is of clear public benefit (as noted by CAMS in its written submission, and also in NASR's previous submissions to the ACCC and the Notifications).

NASR's activities and operations are targeted towards achieving these aims, and NASR is particularly proud of its achievements relating to the promotion and enhancement of safety in the sport of Speedway racing, including its setting of safety standards and rules and track rating system.

If NASR did not carry out its safety activities and programs, no insurer would be willing to offer insurance cover in respect of the sport of Speedway racing in Australia, and the various alternative insurance policies described in the submissions of certain interested parties would most likely not be available.

If NASR did not exist, and did not perform its present role, the sport of Speedway racing would not have developed into the cohesive national pastime which it is today. This would be to the public's detriment.

As previously submitted, 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 at this level. 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.

As noted by the Australian Sports Commission in its submission to the ACCC regarding the Draft Notice, it is of fundamental importance (and therefore, public benefit) that safety not be compromised, and both NASR's activities, and the conduct described in the Notifications, are directed towards ensuring that the sport of Speedway racing in Australia is as safe as possible.

NASR acknowledges that there may be other means by which the operators of the Tracks could attempt to ensure the safety of drivers and pit crews accessing the Tracks, as discussed by the ACCC in the Draft Notice. However, while a theoretical possibility, the Track operators simply do not

have the necessary expertise (or facilities in certain cases) to ensure that these alternatives will ensure that the events held at the Tracks meet internal risk management policies and are as safe as possible – as explained by the Track operators at the Conference, and in their subsequent written submissions. Accordingly, any implementation of these alternative options may not result in the high safety and risk management standards which are necessary to address the inherent dangers in the sport of Speedway racing being implemented.

The conduct described in the Notifications is the most cost efficient, streamlined and practical manner for the Track operators to ensure that their risk management procedures are met, and to ensure that the Speedway racing events held at the Tracks are conducted in the safest of circumstances. This is because, by implementing a requirement that competitors hold a NASR licence, track operators can be assured that participants in events held at their facilities are required to comply with an established set of rules and regulations, have passed a medical clearance and have access to insurance coverage of an appropriate level.

### **Conduct of Other Sports in Australia**

NASR also asks that the ACCC take note of the conduct and philosophies of other nationally recognised sporting organisations in Australia. NASR's current General Manager has extensive experience in Australia, having been employed by, or involved with netball, table tennis, cricket and four-wheel driving, and dealt with most other sports over time. In his experience, offering insurance as a member benefit (as NASR does) is standard practice in all of these sports.

The reason behind this standard practice is twofold. Firstly, any national body with its extensive membership base has the economies of scale required to negotiate a very competitive rate for insurance cover. This is obviously to the benefit of members. Secondly, it would be remiss of any national body to implement all safety precautions and procedures but fail to source and implement an insurance cover to protect all its members, and instead leave insurance cover as an optional acquisition at the discretion of individual members. The ACCC should recognise that such an action would not constitute best practice on the part of the governing bodies; and it is for this reason the provision of insurance coverage as a member benefit has been implemented by all sports in Australia. It is NASR's understanding that this is a course of action supported by the relevant government sporting agencies.

NASR confirms that in all sports, including Speedway racing, members who are provided a level of insurance coverage as a member benefit are entitled to raise or change their level of cover as they choose. Contrary to what was stated at the Conference by certain parties present, there would be little value in a member approaching an insurer as an individual and requesting a quote on insurance cover, as the cost would be cost prohibitive – resulting in insurance coverage not being purchased by the individual. This must be contrasted against the economies of scale achieved when group coverage is requested for a significant number of members, which result in insurance coverage being available to individuals at a cost which is affordable. It is human nature (and the experience of NASR's General Manager) that individuals (and members) will always choose the best value for money insurance cover and in the context of sporting organisations (and particularly in the case of Speedway racing), such coverage is provided by the national body – in this case, NASR.

In assessing the Notifications, the ACCC will need to take careful note of the role and objectives of NASR, as the governing body for Speedway racing. It is quite clear these are to provide and implement the kind of safety, infrastructure and member experience that the majority of other national bodies governing mainstream sport in Australia already provide. It is NASR's view that if the Draft Notice were to be implemented, and the Notifications revoked, this would indicate the

view of the ACCC that the standard practice of all other national sports bodies is wrong. NASR is simply attempting to adhere to the best practice policies and procedures implemented within other sports long ago, with the full support by both local and national government agencies representing sport in Australia.

### **ACCC Assessment of Notifications**

The single issue which the ACCC is required to consider when assessing the Notifications is whether the public benefits associated with the notified conduct outweigh the detriment to the public which will result, if the operators of each of the Tracks are entitled to impose a condition that drivers and participants hold a licence issued by NASR, as a requirement of access to the Tracks.

NASR reiterates its view 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.

In assessing the Notifications, NASR asks that the ACCC take note of the following benefits to the public, which it submits outweigh any detriment to the public which will be caused by allowing the Notifications to stand.

The public will benefit from the requirement to hold licences provided by the industry body for Speedway racing in Australia, as licence holders are required to comply with NASR's Rules (which deal with mandatory competitor conduct, technical requirements and race procedures, and include 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 safety considerations are paramount. The imposition of minimum safety standards is crucial. NASR 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, benefit from uniform safety requirements imposed on participants by its governing body.

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. As NASR licences are provided only once a suitable medical examination has been passed, track operators, event coordinators, competitors and the public in general can be assured that drivers are medically fit for participation. This peace of mind is of significant benefit to the public, and NASR considers that these requirements support the overall safety framework for Speedway racing, including by assisting with tracks' risk management processes. The increased level in safety in turn provides a significant public benefit.

A key aim of NASR is to develop Speedway racing as a high quality, well organised national sport and to promote it as such. 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. 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 conduct described in the Notifications, requiring participants to 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.

If participants at the Tracks are not required to comply with NASR's Rules, this will make the management of the sport inherently more difficult and dangerous. **This is of detriment to the public.**

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.

NASR considers that to the extent that the notified conduct would result in a detriment to the public, this is substantially mitigated by the fact that there are numerous equivalent, alternative venues which Speedway racing participants can access, in lieu of the Tracks. The availability of the NASR day licence – which entitles drivers to practice in all categories of racing, and compete in races for all categories except the high powered categories (which are excluded solely for reasons of safety) – also lessens the detriment to the public.

### Summary

For the reasons set out above and explained at the Conference and in its previous submission regarding the Draft Notice, 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.

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

Please do not hesitate to contact the writers 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

per:



DALE GILSON  
General Manager