



Australian
Competition &
Consumer
Commission

Draft Notice

in respect of notifications lodged by

**Placide Pty Ltd as trustee for the Metro
Speedway Unit Trust trading as
Speedway Perth Motorplex and
Corio Park Pty Ltd trading as
Avalon International Raceway**

Date: 13 May 2010

Notification nos. N93304-N93305

Public Register no. C2008/288

Commissioners:

Samuel
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Dimasi
Walker
Willett

Summary

The Australian Competition and Consumer Commission (ACCC) has issued draft notices proposing to revoke the notifications lodged by Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex and Corio Park Pty Ltd trading as Avalon International Raceway.

On 12 February 2008, 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) (together referred to as the notifying tracks) lodged notifications N93304–N93305 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).

On 11 June 2008, the ACCC decided not to take any further action with respect to the notifications. Following similar notifications being 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), the ACCC has decided to review the immunity provided by notifications N93304–N93305. The ACCC provided the notifying parties with an opportunity to provide further information with respect to the notifications.

The effect of the notified conduct is that all drivers and pit crew wishing to access the notifying tracks' facilities will be required to hold a NASR licence. Even where a race event is hosted by a licensing body other than NASR, drivers and pit crew will be required to obtain a NASR licence in order to participate in the event at the notifying tracks.

Following its review, the ACCC considers that the balance of public benefits and public detriments has changed. In particular, the ACCC is concerned by the effect the notified conduct may have on alternate licensing bodies. The ACCC previously considered the NASR day licence provided an option to drivers who did not want a full NASR licence, or who held a licence from an alternate racing body, with the ability to access the track up to two times in the racing season. Drivers are now no longer able to compete in high-powered race categories under the NASR day licence. As a result, participants wishing to access the tracks will have no alternative but to purchase a full NASR licence.

The ACCC accepts that the notified conduct enables tracks to more efficiently implement risk management practices.

The ACCC does not, however, accept that the notifications create national safety and related racing standards. Rather, the notified conduct requires that a certain licence, that is a NASR licence, be held in order to participate at particular tracks. This may reduce the attractiveness of competing licensing bodies and reduce their ability to expand their membership.

On 13 May 2010 the ACCC issued notices revoking notifications N94032–N94034 lodged by Brisbane Speedway and others for similar conduct.

The ACCC considers that a body could develop minimum safety and related racing standards to be met by licensing bodies. For example, a voluntary industry Code of Conduct could be

developed establishing minimum objective standards relating to health, safety and competitor conduct.

Immunity for the notified conduct came into effect on 26 February 2008. 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
ASC	Australian Sports Commission
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 12 February 2008 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) (together referred to as the notifying tracks) lodged notifications N93304–N93305 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. On 11 June 2008, the ACCC decided not to take any further action at that time with respect to the notifications.
- 1.3. The notifying tracks describe the conduct as the offer and supply of race services from time to time, including access to track facilities and race events, subject to a 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.
- 1.4. The effect of the notified conduct is that all drivers and pit crew wishing to access the notifying tracks' facilities will be required to hold a NASR licence. Alternate licensing bodies, and clubs aligned with these organisations, may therefore only host race events at the notifying tracks provided that participants also hold a NASR licence.

Previous consideration of the notifications

- 1.5. At the time the ACCC initially considered the notifications, the ACCC accepted that by requiring drivers and pit crew who wished to access their venues to hold a NASR licence, the notifying tracks can ensure that all participants are complying with a set of standards imposed by the NASR licence.
- 1.6. While the ACCC noted that the notifying tracks may promote some of the major racing events in Australia, a significant choice of tracks remained. The ACCC also considered that any public detriment resulting from the notified conduct would be mitigated by the fact that drivers who wished to participate at events held at the notifying tracks could access a day licence from NASR or obtain a full NASR licence in addition to any other licence they may already hold albeit at an additional cost.
- 1.7. However the ACCC was concerned that if a significant number of tracks began to only accept NASR licences as a condition of accessing the track and pit facilities, the public detriments arising from the requirement may change and the ACCC may reconsider the protection afforded to such notifications.

- 1.8. A further three notifications for similar conduct have been lodged since February 2008. In addition, NASR advised that, over time, it would like to see the notified arrangements rolled out across the industry.¹

Related decisions

- 1.9. On 13 May 2010 the ACCC issued notices revoking notifications in respect of similar conduct 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) (notifications N94032-N94034) for similar conduct.
- 1.10. The ACCC received a number of submissions in relation to those notifications and the information provided has been taken into account during the assessment of the current notifications.
- 1.11. The ACCC has also previously made the following related decisions:
- On 27 August 2008 the ACCC revoked notifications N93297–N93298 lodged by NASR proposing to require 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) proposing to make 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

Perth Motorplex

- 2.1 Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex is the operator of the Speedway Perth Motorplex, located in Kwinana Beach, Western Australia.

¹ Australian Competition and Consumer Commission, Pre-decision conference minutes, *Notifications N94032-34 Brisbane International Speedway Pty Ltd, Murray Bridge Sporting Car Club & Motorcycle Club Incorporated and Premier Speedway Club Warrnambool*, 22 February 2010, p. 6.

- 2.2 Perth Motorplex provides racing services and hosts speedway race events including events in the categories of sprintcars, super sedans, speedcars and various other motorsport racing categories. Perth Motorplex also hosts events for drag racing, burnout competitions, street machine car shows, monster trucks, stunt shows and super cross events.²
- 2.3 Perth Motorplex advises that it is a modern purpose built venue built by the West Australian government and is recognised world wide as having the highest organisational standards and facilities. Perth Motorplex advises that all motorsport events scheduled at the track are sanctioned by the relevant peak national sporting organisations. In the case of speedway all events must be sanctioned by NASR. The event is then run according to NASR's rules and regulations.
- 2.4 Speedway events are predominantly held between November and April.³ Perth Motorplex has an extensive speedway racing event calendar.⁴

Avalon Raceway

- 2.5 Corio Park Pty Ltd trading as Avalon International Raceway operates Avalon Raceway, located in Lara, Victoria.
- 2.6 Avalon Raceway 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 speedcars, V8 dirt modifieds, street stocks and AMCA's are regular categories featured at Avalon Raceway, with specialty events such as demo derbies, go karts and monster truck events also held at Avalon Raceway.⁵

3. Background

NASR

- 3.1 Motorsport is governed world wide by the Federation Internationale Automobile (FIA). The Confederation of Australian Motor Sport Limited (CAMS) has been formally recognised by the FIA as the national sporting authority for motorsport in Australia. CAMS is also recognised by the Australian Sports Commission (ASC) as the national sporting organisation for motorsport.
- 3.2 NASR was established in 1997 and advises that it is the controlling body of speedway racing in Australia. In 2006, CAMS delegated to NASR the authority to be the governing body of speedway racing in Australia.⁶ The

² <http://www.motorplex.com.au/index.php?id=50>. Accessed 10 February 2010.

³ <http://www.motorplex.com.au/index.php?id=50>. Accessed 10 February 2010

⁴ <http://www.motorplex.com.au/news.php?g=10&view=month&pg=sped>. Accessed 10 February 2010.

⁵ <http://www.avalonraceway.com/> Accessed 10 February 2010.

⁶ CAMS is recognised by the Australian Government, via the Australian Sports Commission, as the national sporting organisation for motor sport.

delegation from CAMS is reviewed annually following a presentation and report to CAMS.

- 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.
- 3.4 The NASR corporate structure is comprised of an incorporated entity and a proprietary limited company, 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. NASR Pty Ltd purchases, on behalf of NASR Inc, the personal accident insurance which is produced to licensees as a member benefit.
- 3.5 The ACCC notes that the corporate structure of NASR is not directly relevant to the ACCC's assessment of the notifications although the ACCC understands it may be a consideration for CAMS as part of the delegation it gives to NASR.

NASR licences

- 3.6 NASR licenses speedway racing drivers for all NASR recognised categories of speedway racing. NASR has over 10 000 members.⁷
- 3.7 In order to be eligible for a NASR licence, drivers must pass a suitable medical examination and not have any outstanding disciplinary sanctions by any speedway division.
- 3.8 NASR offers licences based on race category and membership type (ie driver, official, mechanic), with the fee varying accordingly. The 2009–10 fee ranges from \$160 to \$250 for drivers, and from \$70 to \$90 for juniors,

⁷ NASR website, *Achievements*, <http://www.nasr.com.au/Achievements.html>. Accessed 13 April 2010.

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.

3.9 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 advises that it 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.

3.10 NASR offers a day licence at a reduced cost to people who wish to compete in an event, or access a track, only once or twice during a speedway racing season. At the time of allowing the notifications to stand in 2008, the ACCC placed weight on the ability for drivers to obtain a day licence to access track facilities for up to two events per season. The ability to race under a NASR day licence has changed. Drivers are no longer able to compete under a NASR day licence in high-powered racing categories such as sprintcars or super sedans. A one day licence is available for non-race activities in all categories of racing.

3.11 NASR licences are implemented and enforced by both NASR Pty Ltd and NASR Inc.

NASR personal accident insurance

- 3.12 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.
- 3.13 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.
- 3.14 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.
- 3.15 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.
- 3.16 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.
- 3.17 Many concerns have been raised with the ACCC about NASR's decision to provide personal accident insurance as a member benefit with the NASR licence. The linking of the NASR licence with insurance is not part of the notified conduct. However, it seems to the ACCC that a more competitive approach would be for NASR to require its licence holders to obtain minimum levels of insurance while allowing members to shop around and choose their insurance provider.

Alternate licensing bodies

- 3.18 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 3.23 to 3.25).
- 3.19 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.
- 3.20 Where an alternate licensing body hosts an event at the notifying tracks, as a result of the notified conduct, members of such bodies will be required to obtain a NASR licence in addition to any licence they may hold with an

alternate licensing body, in order to participate in any race event held at the notifying tracks.

- 3.21 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.
- 3.22 The VSC advises that it recognises fines and suspensions of alternate licensing bodies if informed. However NASR submits that the operations of the VSC and the NDRA are not equivalent or substitutable for those of NASR.

Racing categories

- 3.23 There are numerous categories/divisions of speedway racing. Categories are 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.
- 3.24 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.
- 3.25 Races are generally held according to the race category. Vehicles race against other vehicles of the same class.

Tracks

- 3.26 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.
- 3.27 NASR advises that the notifying tracks hold a range of events relating to almost all recognised categories of speedway racing, including national/touring events for the high-powered categories of racing as well as events for lesser-powered categories. Smaller, regional tracks appear to hold the lesser-powered categories of racing.
- 3.28 The type of events a track hosts is an individual business decision of the track. A track may decide to host events associated with a particular licensing organisation, in which case it is reasonable that a licence from that organisation is required to compete in the event.
- 3.29 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 certifies that the track holds appropriate public liability insurance. Only tracks rated 3 stars or above can host a full field sprintcar race.

- 3.30 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.
- 3.31 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.

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 subsections 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 subsections 47(6) and 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

- 5.1. Following the issue of the draft notices with respect to notifications N94032-N94034 lodged by Brisbane Speedway and others (see paragraph 1.9), the ACCC wrote to Perth Motorplex, Avalon Raceway and NASR foreshadowing that the ACCC may take similar action with respect to the notifications. The notifying parties were given an opportunity to respond to the issues raised in the draft notices in the context of their own notifications. A summary of their response follows.

Perth Motorplex

- 5.2. Perth Motorplex submits that the notifications should not be revoked. Perth Motorplex also submits that:
- participants are not able to race under the NASR day licences for high-powered rated categories of racing. Under a day licence the participant is not required to undergo a medical examination. Perth Motorplex notes the change is a result of safety and risk management policy to ensure that all drivers participating in high-powered race events hold a full licence and have had the requisite medical examination.

- there are approximately 15 alternate speedway venues located within 400km of Perth and competitors are free to race when and where they choose. Many of these tracks are capable of holding a full range of racing categories.
- NASR provides the highest level of racing regulations, risk assessment procedures and public risk insurance and judicial systems. NASR also provides a venue and event risk assessment and inspection as part of the sanctioning program.
- it is not viable to have competitors race under various licenses in an event. If various licensed drivers were racing in the same event it would create confusion about what rules and regulations would be followed.

NASR

5.3. NASR submits that it is the governing body of speedway racing in Australia. NASR considers that the public benefits associated with the notified conduct continue to outweigh the public detriments. NASR further submits that:

- a NASR day licence is now only available to race for the lower powered vehicles. A NASR day licence is also still available for access to pit facilities for all categories of racing. In the interest of public safety, a day licence is not available to race in high powered vehicles.
- the notified conduct requires drivers and pit visitors to hold a NASR licence in order to access the tracks. Alternate licensing bodies and clubs aligned with these organisations are free to host race events at the notifying tracks provided that participants hold a NASR licence in addition to any other licence or accreditation required by the club/alternative licensing body. Avalon Raceway allows VSC categories, such as SDAV Hot Rods, to race at its track provided that participants hold a NASR licence.
- in order to maintain 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.
- the notified conduct represents the most effective means for achieving acceptable safety standards and risk management procedures at the relevant tracks.

5.4. NASR also provided details of alternate tracks in Victoria and Western Australia which are rated 3 star or above and are able to hold a full range of events for high powered categories of racing and which may not require a NASR licence in order to access the tracks facilities.

Interested parties

- 5.5. The ACCC received a number of submissions in relation to related notifications N94032-N94034 lodged by Brisbane Speedway, Murray Bridge Speedway and Premier Speedway. The ACCC has also taken into account information received as part of that process.
- 5.6. The views of the notifying tracks and interested parties are outlined in the assessment of the notifications in chapter 6 of these draft notices. Copies of all public submissions may be obtained from the ACCC's website's notifications register (www.accc.gov.au/ExclusiveDealingRegister).

6. ACCC Assessment

- 6.1. Under the notified conduct, only persons who hold a NASR licence will be able to access the track and pit facilities at the notifying tracks. Alternate licensing bodies, and clubs aligned with these organisations, may therefore only host race events at the notifying tracks provided that participants also hold a NASR licence. 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

- 6.2. 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.
- 6.3. 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. CAMS and NASR submit this market is too narrow, and should be a market for all categories of motorsport in Australia, or possibly all sporting and entertainment activities in Australia.
- 6.4. 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

- 6.5. 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.
- 6.6. 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.

6.7. The types of events a track may host may range from:

- national or touring events, where a series of separate races are held at different tracks around Australia. National or touring events may draw larger crowds and attract drivers from all over Australia and even internationally. The prize money at national events may be larger than that generated at the smaller regional events.

A track may tender to host a round of the event. NASR advises that it owns and controls a number of national/touring events, such as the National Super Sedans and the World Sprintcar Series, for which a NASR licence is required to participate. Not all of the 110 tracks currently operating in Australia are suitable venues for national touring events.

- regional or club events, where local clubs organise events.

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.

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

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

- Perth Motorplex is the sole track located in the Perth metropolitan area, however there are approximately 14 speedways in Western Australia, with three alternatives within 250 km of Kwinana Beach. Each alternate track host different events to that of Perth Motorplex and vary in size and capacity.
- In Victoria there are 23 tracks. Avalon Raceway is the sole track in Lara/Geelong however is located near a number of alternate tracks of different sizes. 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.

6.9. NASR has provided details of alternate tracks which have been rated 3 stars or above meaning they are entitled to hold full field events for high-powered categories of racing. NASR advises that the types of races held at a track is a business decision for the track operator.

- 6.10. The ACCC recognises that not all tracks are perfect substitutes for one another. Some tracks are larger and have the capacity to hold large crowds and offer high-powered race events whereas 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

- 6.11. 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, VSC and NDRA.
- 6.12. NASR submits that this is an irrelevant market given that the operations of NDRA and VSC are not equivalent or substitutable to the operations of NASR as the peak body of speedway racing in Australia.
- 6.13. 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.
- 6.14. 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.
- 6.15. The ACCC considers that restricting the type of licence accepted at a track further limits the level of substitutability.

Conclusion

- 6.16. 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

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

Efficient risk management processes

- 6.18. NASR licence holders are provided with personal accident insurance 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 and this is important for their risk management processes.

- 6.19. NASR licences are provided only once a suitable medical examination has been passed, therefore track operators, event coordinators, competitors and the public in general can be assured that drivers are medically fit for participation in race events.
- 6.20. NASR submits the notified conduct is the most efficient, streamlined and practical manner for the track operators to ensure their risk management procedures are met.
- 6.21. Perth Motorplex considers that NASR, as the governing body of speedway racing, provides the highest level of risk management systems. Brisbane Speedway submits that it does not have the staff or expertise to check medicals and the insurance policies of individual drivers. Premier Speedway submits that venue promoters must exercise due diligence in its operations and NASR's rules and regulations assist venue operators achieve this.
- 6.22. 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.
- 6.23. 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.
- 6.24. The ACCC notes that holding an appropriate licence and 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.
- 6.25. 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.
- 6.26. 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.

- 6.27. However, the ACCC notes that this certainty to the notifying tracks needs to be balanced with the public detriments arising from the notified conduct which are addressed at paragraphs 6.36 to 6.54.

Compliance with unified competitor standards

- 6.28. 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 disciplinary system whereby competitors engaging in misconduct can be suspended and are restricted from racing under the NASR licence.
- 6.29. 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. Brisbane Speedway submits that NASR provides tracks with risk assessments and safety updates.
- 6.30. Perth Motorplex is concerned that revocation of the notifications may result in confusion as to what rules and regulations of racing should be followed if multiple licences are accepted at the venue.
- 6.31. NASR advises that traditionally speedway racing administration was fragmented across various 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.
- 6.32. NASR submits that the requirement that participants hold a NASR licence 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. NASR advises that, over time, it would like to see the notified arrangements rolled out across the industry. NASR submits that, as in other sports, the more tracks that operate under the auspices of one body the better.
- 6.33. It is not the ACCC's role to determine whether NASR is the most appropriate body to be governing speedway racing in Australia. As noted, CAMS has responsibility for governing motor sport and has delegated this authority to NASR. CAMS considers there is public benefit to having a single, not for profit, coordinated and structured hierarchy to promote safety, fairness and social responsibility in motorsport in Australia.
- 6.34. The ACCC recognises that there may be some benefit from having a national organisation that represents the broad interests of the sport. The ACCC also accepts that the speedway racing industry may benefit if there was a minimum set of national safety and related racing standards which allowed competing licensing bodies to demonstrate that they meet those standards. This could be achieved, for example, through a voluntary industry Code of Conduct which identified minimum objective criteria (see paragraph 7.4).

6.35. However, the ACCC does not consider that the notifications under consideration impose or create national safety and related racing standards for speedway racing. The notified conduct requires that a certain licence, that is a NASR licence, be held in order to participate at particular tracks. The ACCC considers that considerable anti-competitive detriment could result from an attempt to establish and enforce safety and related racing standards by means of a series of exclusive dealing arrangements whereby access to speedway racing tracks by drivers and pit crew is restricted to the holders of a NASR licence, as discussed below

Public detriment

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

Reduced competition among racing organisations

6.37. As a result of the notifications clubs aligned with other licensing bodies, such as the NDRA and the VSC, may only host events at the notifying tracks⁸ provided their drivers also hold a NASR licence.

6.38. Where an alternate licensing body wishes to host a race at the notifying tracks, its participants will be required to obtain a NASR licence in addition to any licence they may hold with the alternate licensing body to compete in the event.

6.39. NASR advise that the notifying tracks are not seeking to impose a restriction on the licensing organisations whose licensees will be entitled to access the facilities, and do not propose to restrict the range of alternative licences which these drivers and visitors may wish to acquire. Neither do the notifying tracks restrict the alternative licensing bodies which compete with NASR from hosting race events at the tracks.

6.40. Further, the notifying tracks submit that there are over 100 alternative tracks in Australia which host various speedway racing events (see paragraph 6.8) with the argument being that most of these tracks do not impose a requirement that participants hold at least a NASR licence and are therefore available to alternative bodies.

6.41. On the other hand, 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.

6.42. The ACCC accepts that the notifying tracks do not propose to prevent NASR licensees who access their tracks from holding alternate licences. However if alternate bodies are not able to host events at the notifying tracks without ensuring participants hold a NASR licence the attractiveness of the licenses

⁸ Tracks in Perth and Geelong notified similar arrangements in 2008 that also restrict access to their track facilities to NASR licence holders.

issued by the alternate bodies, and their ability to expand their membership, is reduced.

- 6.43. The ACCC is concerned that in the longer term the competition provided by alternative licensing bodies such as the VSC and NDRA will be lost. Competition can serve to limit increases in licence fees and provide choice for participants who may not wish to obtain a NASR licence.
- 6.44. The ACCC notes that NASR is the major speedway licensing organisation in Australia and is currently the only body with a truly national representation of licence holders. The ACCC notes that NASR may be in a position to guide the development of the sport nationally. However, as noted above, the notified conduct does not establish national safety and related racing standards. Rather, it requires that a NASR licence be held in order to participate at particular tracks.
- 6.45. There is a detriment to competition resulting from the manner in which NASR has sought to entrench its position which must be taken into account in assessing the notified arrangements. As noted, NASR has indicated that it would like to expand the requirement for participants to hold a NASR licence to more tracks in the future.
- 6.46. At the time of allowing the notifications to stand, the ACCC noted that if a significant number of tracks began to only accept NASR licences as a condition of accessing the track and pit facilities, the public detriments arising from the requirement may change.
- 6.47. If further tracks were to 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

- 6.48. 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.
- 6.49. 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.
- 6.50. The ACCC notes that the cost of a NASR licence ranges from \$160 and \$250 for drivers, and from \$70 to \$90 for juniors, mechanics and pit entry. The ACCC accepts that there is therefore an additional cost to non-NASR licence holders who will be required to take out a NASR licence, including costs from potentially undergoing an additional medical exam, if they wish to

access the notifying tracks, although this cost does not appear to be prohibitive.

- 6.51. The ACCC also understands that the clubs which generally run events at Brisbane Speedway are predominately aligned with NASR and all tracks in South Australia are NASR approved and that NASR is the predominant licence provider in that state. As such it appears that the majority of drivers who access the notifying tracks already hold at least a NASR licence.
- 6.52. The ACCC previously placed weight on the ability for competitors to obtain a NASR day licence to access track facilities for up to two events per season, as a mitigating factor reducing the impact of any public detriment resulting from the notified conduct. The NASR day licence provided participants who did not want to purchase a NASR licence, or who held a licence from an alternate racing body, with an option to access the tracks for all racing categories at a reduced cost.
- 6.53. NASR advises that participants may not compete under a day licence for high-powered race events, such as sprintcar and super sedan racing. As a result, participants wishing to access the tracks will have no alternative but to purchase a full NASR licence.
- 6.54. The ACCC considers that the notified conduct has some impact on non-NASR licence holders which results in a small detriment.

7. Conclusion on public benefits and detriments

- 7.1. The ACCC considers that the balance of public benefits and public detriments has changed since its consideration of the notified conduct in 2008.
- 7.2. 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 however need to be balanced with the public detriments arising from the notified conduct.
- 7.3. The ACCC accepts there may be some benefit from having a national sporting organisation that represents the broad interests of the sport, particularly if a national set of standards which encompassed important features such as safety, training and other racing related standards, was developed.
- 7.4. The ACCC considers that a body could develop minimum safety and related racing standards to be met by licensing bodies. For example, a voluntary industry Code of Conduct could be developed outlining national minimum objective standards relating to health, safety and competitor conduct. Parties who wished to sign up to the Code, such as tracks and licensing bodies, could do so. Such a Code would allow licensing bodies to demonstrate that they

comply with the minimum standards and could provide tracks with an effective risk management process. The ACCC notes that if such a Code were developed it may require authorisation.

- 7.5. The ACCC does not consider that the notifications create a national set of safety and related racing standards for speedway racing. Rather, the notified conduct requires that a certain licence, that is a NASR licence, be held in order to participate at particular tracks.
- 7.6. This may reduce the attractiveness and long term viability of alternate licensing bodies as drivers question the cost of obtaining multiple licences.
- 7.7. The ACCC also considers that the removal of the ability for participants to race under a NASR day licence for high-powered racing categories at a reduced cost impacts participants who do not wish to hold a NASR licence or who hold a licence from an alternate licensing body. Participants wishing to access the tracks will have no option but to purchase a full NASR licence.
- 7.8. The notified conduct, especially if it becomes more wide spread as indicated by NASR, would significantly entrench the position of NASR in the industry. The ACCC does not consider that sporting bodies should seek to achieve this status through a series of exclusive dealing arrangements.
- 7.9. Further, the ACCC notes that while a track operator can individually decide what events it hosts, there is a public detriment in restricting the type of licence it will accept.
- 7.10. 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.

8. Draft notices

- 8.1. 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.
- 8.2. Accordingly, the ACCC issues these draft notices under section 93A(1) of the Act that proposing to revoke notifications N93304-N93305 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).
- 8.3. In accordance with section 93(7A)(a), notifications N93304-N93305 have come into force. However, if the ACCC decides to issue final notices revoking notifications N93304-N93305, 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.
- 8.4. The draft notices are made on 13 May 2010.

9. Next steps

- 9.1. 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 28 May 2010. If a conference is called, the conference must be held no later than 30 days after this date.
- 9.2. 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 4 June 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
12 February 2008	Lodgement of notifications N93304-N93305.
26 February 2008	Immunity for the notified conduct comes into effect.
11 June 2008	The ACCC decides not to take any further action at that time with respect to notifications N93304-N93305.
28 January 2010	ACCC issues draft notices with respect to notifications N94032-N94034 lodged by Brisbane International Speedway Pty Ltd, Murray Bridge Sporting Car Club & Motorcycle Club Incorporated and Premier Speedway Club Warrnambool. Perth Motorplex and Avalon Raceway are provided with an opportunity to comment on notifications N93304-N93305 in light of the draft notices.
15 February 2010	Closing date for submissions.
13 May 2010	Draft notices issued.