



Australian
Competition &
Consumer
Commission

Notice

in respect of notifications lodged by

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

Date: 13 May 2010

Notification nos. N94032 - N94034

Public Register no. C2009/1324

Commissioners:

**Samuel
Kell
Schaper
Court
Dimasi
Walker
Willett**

Summary

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

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

On 28 January 2010 the Australian Competition and Consumer Commission (ACCC) issued draft notices proposing to revoke the notifications. A pre-decision conference was held on 22 February 2010 with a number of interested parties participating in the conference. The ACCC received further submissions on the issues arising from the draft notices and pre-decision conference. The ACCC remains of the view that the likely public benefits arising from the notified conduct do not outweigh the likely public detriments.

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.

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

The ACCC also accepts that there may be some benefit in having a national set of safety and related racing standards which encompass important features such as safety and training.

The ACCC does not, however, accept that the notifications create national safety and related racing standards. Rather, the notified conduct requires that 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.

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 automatically came into effect on 22 July 2009. This notice removes the protection from legal action that is afforded by the notifications. If no application for review of this notice is made to the Australian Competition Tribunal, the immunity provided by the notifications ceases to be in force on 13 June 2010.

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

1.2. Each of the notifying tracks proposes to:

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

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

1.3. The effect of the notified conduct 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 notifications

1.4. The ACCC has previously considered similar conduct lodged by Placide Pty Ltd as trustee for the Metro Speedway Unit Trust trading as Speedway Perth Motorplex (Perth Motorplex) and Corio Park Pty Ltd trading as Avalon International Raceway (Avalon Raceway) (notifications A93304–N93305). On 11 June 2008 the ACCC decided not to take any further action with respect to these notifications. On 13 May 2010 the ACCC issued draft notices proposing to revoke the notifications.

1.5. In its assessment of the notifications in June 2008, the ACCC noted that should a significant number of tracks begin to only accept NASR licences as a condition of accessing the track and pit facilities, the public detriments arising from the notified conduct may change and the ACCC may review these notifications.

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

- On 27 August 2008 the ACCC revoked notifications N93297–N93298 lodged by NASR 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

Brisbane International Speedway Pty Ltd

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

Murray Bridge Sporting Car Club & Motorcycle Club Incorporated

- 2.3 Murray Bridge Sporting Car Club & Motorcycle Club Incorporated is the operator of the Murray Bridge Speedway, located in Murray Bridge South Australia.
- 2.4 Murray Bridge Speedway has an extensive racing calendar and offers many races to a wide range of racing categories including sprintcars, super sedans, junior sedans, street stock, wingless sprint, caravan races, demo derby, Formula 500s, super rods, V8 dirt modified and vintage.²

Premier Speedway Club Warrnambool

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

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

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

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

3. Background

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.⁴ The 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 has received many submissions from interested parties concerned about the corporate structure of NASR. This 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.

⁴ CAMS is recognised by the Australian Government, via the Australian Sports Commission, as the national sporting organisation for motor sport.

NASR licences

- 3.6 NASR licenses speedway racing drivers for all NASR recognised categories of speedway racing. NASR has over 10 000 members.⁵
- 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, 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. Drivers are not 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.

⁵ NASR website, *Achievements*, <http://www.nasr.com.au/Achievements.html>. Accessed 13 April 2010.

- 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 paragraphs 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 – notifying tracks

Public benefits

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

Public detriments

- 5.2. The notifying tracks submit that the notified conduct would not lessen competition in any relevant market, and would not cause any public detriment because:⁶
- While the choice of speedway racing drivers will be marginally affected through the requirement to purchase a NASR licence in order to compete or enter the pit facilities at the particular track, there are a number of alternate tracks which do not have this requirement.
 - There are over 100 alternative speedway tracks currently operating in Australia. In Queensland there are 12 alternative speedway racing venues in operation, in South Australia there are 8 alternative speedway racing venues in operation and in Victoria there are 23 alternative speedway racing venues in operation.
 - Similarly, potential visitors to pit racing areas are free to visit these areas at alternative tracks.
 - Speedway drivers are free to race at events held at other tracks and to obtain licences and personal accident insurance from other organisations.
 - The financial commitment for purchasing a NASR licence is small.
 - The majority of speedway racing drivers competing at the particular tracks already hold a NASR licence.
 - Spectators are able to attend speedway racing events without accessing the pit racing areas and therefore do not need a licence.

6. Submissions – interested parties

- 6.1. The ACCC sought comments from 52 interested parties potentially affected by the notifications, including various speedway racing clubs and associations and speedway tracks.
- 6.2. Following the draft notices, a conference was requested to discuss the draft notices. The pre-decision conference was held on 22 February 2010 with participants attending via video link from ACCC offices in Melbourne, Brisbane, Sydney and Perth.
- 6.3. Public submissions were received from interested parties through written submissions both prior to the draft notices and following the draft notices, and through oral submissions made at the conference.

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

Support for the notified conduct

6.4. The following parties made submissions in support of the notified conduct:

Tracks/track promoters

- **Avalon Raceway** currently has immunity to require all drivers and pit crew wishing to access its facilities to hold a NASR licence and notes this has been operating well.
- **Borderline Speedway** considers there are benefits to having only one controlling body for the supply of licences and vehicle registrations to ensure consistency across the sport and considers that the NASR licence provides this.
- **Brisbane Speedway** submits that it does not have the staff or expertise to check medicals and insurance policies of individual drivers, and relies on NASR to do this for it. Brisbane Speedway submits that NASR's rule book provides clear guidance on racing rules and safety. Further, NASR provides tracks with risk assessments and safety updates.
- **Murray Bridge Speedway** notes that it would be an individual track operator's decision whether to adopt similar arrangements to the notified conduct and only accept a NASR licence. It would be administratively expensive to separate the licence component and insurance component under the NASR licence.
- **Perth Motorplex** submits it is the most modern venue in Australia and hosts a range of events. For each event type, it has an event permit from the relevant peak organisation and competitors entering the event are licensed by that organisation. For speedway racing, Perth Motorplex recognises NASR as the peak organisation.

Perth Motorplex currently has immunity to require participants to hold a NASR licence in order to access its facilities, and submits that if licences are accepted from various licensing bodies, there is confusion about what rules would then be applied to the event. One consistent set of rules is required for race events.

- **Premier Speedway** submits that venue promoters must exercise due diligence in its operations and a consistent set of rules assists venue operators achieve this. Premier Speedway considers NASR's standards are appropriate.

Racing Organisations

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

- The **National Association of Speedway Racing (NASR)** submits that the notified conduct will not impact upon the ability of drivers to participate in speedway racing as drivers who do not hold a NASR licence are free to compete at alternate tracks. NASR advises there are alternate tracks in each of the states in which the notifying tracks are located. NASR advises that many alternate tracks are able to hold a range of racing events relating to almost all recognised categories of racing. NASR also submits that the notifying tracks hold a range of events relating to almost all recognised categories of racing. In any event, NASR submits that the vast majority of drivers who access the notifying tracks already hold a NASR licence.

NASR submits that if it 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. NASR considers that in order to maintain a cohesive, organised and safe environment for speedway racing on a national level there should (and can) only be a single body responsible for overseeing speedway racing at this level.

NASR considers that the notified conduct represents the most effective means for achieving acceptable safety standards and risk management procedures at the relevant tracks. NASR submits that while there may be other means by which track operators could attempt to ensure the safety of drivers and pit crews accessing the notifying tracks, the track operators do not have the necessary expertise or facilities 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.

- **Sprintcars Queensland** submits that it is in their members best interests to have a recognised licensing and insuring body that looks after all its drivers, crews and officials, as NASR does.

Drivers

- A submission was received from an anonymous interested party, submitting that NASR ensures that all licensed drivers have passed a medical examination prior to the licence being issued. The anonymous submission argues that drivers licensed through some national or state bodies have found ways to avoid this, which is dangerous to all involved at the race meeting.

Other

- The **Confederation of Australian Motor Sport Limited (CAMS)** submits that it supports the notifications to the extent that the primary purposes for NASR licences are to promote safety, fairness and social responsibility and that the cost of such licences broadly reflect the costs of developing, implementing and administering frameworks to achieve these purposes.

CAMS also notes that there is a public benefit to having a single, not-for-profit, coordinated and structured hierarchy to promote safety, fairness and social responsibility in motor sport in Australia.

Concerns about the notified conduct

6.5. The following parties made submissions outlining concerns with the notified conduct:

Tracks/track promoters

- **Mr Ray Solomon, promoter of Rolling Thunder Raceway**, submits that the fact that a competitor has either a VSC, SCCA, NASR or NDRA licence indicates that the competitor has a basic level of personal accident insurance as licences are not issued by these organisations unless the participant demonstrates that they have a satisfactory level of personal accident insurance.

Mr Solomon submits that even if the notifications are revoked, the notifying tracks will still be able to adopt NASR's Rules and Regulations, build upon NASR's safety criteria, deny access to individuals that have displayed inappropriate behaviour, directly organise events with the representatives of the competitor organisations and develop and promote independent events by direct contact with industry participants.

Racing organisations

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

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

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

The SCCA submits that NASR has abandoned its one day racing licence for high-powered categories of racing (ie sprintcars).

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

The SCCA considers that minimum health, safety and personal accident insurance requirements could be established by a panel of qualified personnel to maintain high standards of safety.

- The **Sprintcar Association of NSW** is concerned that the price of the NASR licence may increase if the notifications are allowed to stand.
- The **United Speedway Association Inc** is concerned that if NASR is given a monopoly in issuing speedway racing licences, it is likely that fees will increase across the sport. The United Speedway Association submits that it would be able to issue its own licences and insurance at a smaller cost to drivers.
- The **Victorian Speedway Council Incorporated (VSC)**, a competing licensing body predominately operating in Victoria, submits that currently, with the exception of Avalon Raceway, drivers are able to race at tracks in Victoria under either a NASR or VSC licence. If the notification lodged by Premier Speedway is allowed to stand, VSC drivers and pit crew will be required to also purchase a NASR licence in order to continue to compete at Premier Speedway. The VSC submits this is discriminatory and adds a burden of cost to current VSC members who are appropriately licensed and insured.

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

In response to NASR's argument that a single licensing body is required in the sport to ensure that disciplinary action and suspensions are adhered to and enforced, the VSC advise that it informs NASR when one of its drivers/pit crew members has had their licence suspended under the VSC rules. The VSC submits it has never received such information from NASR. The VSC recognises fines and suspensions of alternate licensing bodies if informed.

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

West Coast Speedcars submit there has been a flow on effect from the notification lodged by Perth Motorplex such that NASR's public liability insurance requires that all cars must be registered with NASR and race in a category recognised by NASR, and that drivers holding a NASR licence now wish their club at a country track to take out NASR public liability insurance.

Drivers

- **Mr Andy Ticehurst** submits that the information in the notifications is incorrect, as the NASR licence application form states that licences are issued by NASR Inc, whereby the notified conduct states that licences should be purchased from NASR Pty Ltd. Mr Ticehurst considers that minimum industry standards could be set and accepted by tracks where the licence provider has demonstrated that these standards have been met.
- **Mr Glenn Lawless** submits that NASR's actions are not in the spirit of the delegation of authority from CAMS as, among other things, the CAMS constitution forbids directors from holding office if they are likely to receive a financial gain. Mr Lawless submits that competition within the governance structure of a sport is healthy. Mr Lawless further submits that track/venue promoters should accept a range of licences/insurance policies that meet a certain minimum industry standard.
- **Mr Ian Boettcher** submits that NASR's operations lack transparency and accountability and its structure benefits promoters rather than competitors.
- **Mr Rob Harris** submits there is great confusion among industry participants regarding the different roles of NASR Inc and NASR Pty Ltd.
- **Mr Ron Bergmeier** submits that the sport of speedway needs a transparent and democratic national peak body to govern the sport, develop safety, sanctioning procedures and national rules and regulations. Mr Bergmeier submits that the promoters of events have more say in how NASR is run than competitors. Mr Bergmeier also submits that not all tracks offer all types of speedway racing.
- **Mr Trevor Reakes** opposes the notifications and submits that the track owners have a conflict of interest as they are all shareholders of NASR.

Insurance providers

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

The ASAF submits that while it is desirable to ensure that individuals hold adequate personal accident insurance prior to competing or accessing the pit area, it is not a public safety issue to only allow those who have NASR insurance to compete or enter the pit area without the imposition of additional fees (as is the case for those who choose to join the ASAF). The bundled licence means that drivers will understandably not join or renew their membership in the ASAF. This will affect the future viability of the ASAF.

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

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

Submissions that neither support nor oppose the notified conduct

6.6. The following party also provided a submission in response to the notified conduct:

- The **Australian Sports Commission (ASC)** notes that it is not a regulatory body of the sport of speedway. The ASC submits that sporting organisations should focus on developing the sport by implementing initiatives such as education programs and accreditation schemes to promote risk management and quality assurance.

The ASC further submits that:

As a general principle, the ASC would have some difficulty with the proposition of an exclusive dealing notification which potentially stifles participation, particularly if the notification appears to primarily arise from a minor operational process issue. However, if it can be demonstrated that there is real potential for increased workload and/or expenses, or that the integrity of the organisations of the activity could be harmed in some way, then the notification may well be justified...The ASC considers it fundamental that occupational health and safety not be compromised for the sake of a potential increase in participation opportunities, and in this instance, the inherent dangerous nature of motor sport suggests that it would most likely be a consideration.

6.7. The ACCC notes that a number of issues raised by interested parties are not directly relevant to the assessment of the notified conduct. While these issues may not be relevant to the ACCC's assessment of the notifications, the ACCC recognises they are important to many industry participants. These issues cannot however be resolved through the notification process. In particular, the ACCC notes that it has no role in determining or regulating the corporate structure of NASR or the delegation to NASR by CAMS.

6.8. The views of the notifying tracks and interested parties are outlined in the assessment of the notifications in chapter 7 of these notices. Copies of all public submissions may be obtained from the ACCC's website's notifications register (www.accc.gov.au/ExclusiveDealingRegister) and by following the links to this matter.

7. ACCC Assessment

7.1. Under the notified conduct, 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

- 7.2. Defining the markets affected by the notified conduct assists in assessing the public benefits and detriments flowing from the arrangements. However, depending on the circumstances, the ACCC may not need to comprehensively define the relevant markets as it may be apparent that a net public benefit will or will not arise regardless of this definition.
- 7.3. The notifying tracks submit that the relevant market is the market for speedway drivers and, in the case of racing pit area access, may include spectators, within Australia. 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.
- 7.4. The ACCC notes that the notifying tracks provide speedway racing facilities to clubs and bodies who organise events, and host speedway events (as opposed to other forms of motor racing) to drivers.

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

- 7.5. There are approximately 110 tracks which hold speedway events throughout Australia. The tracks vary in the size and quality of the facilities for spectators and drivers, the location (close to the city or regional) and the type and size of the events they host.
- 7.6. NASR submits that the notifying tracks hold a range of events relating to almost all recognised categories of speedway racing during the race season. NASR advises that ultimately, the types of events a track hosts depends upon the track itself, that is, its facilities may be suited to some categories of racing and not others.
- 7.7. The 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

- 7.8. 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):
- In Queensland there are 12 tracks. Brisbane Speedway is the sole track located in the metropolitan area, with four alternate tracks located within 200 km of Brisbane including at Gatton, Toowoombah, Gympie and Roma.⁷ The remaining tracks are located at least 500 km from Brisbane.⁸
 - In South Australia there are 8 tracks. Murray Bridge Speedway is the only speedway located in Murray Bridge, however there are alternate tracks within 250 km located at Adelaide (Speedway City and Gillman Speedway), Waikerie, Renmark and Bordertown. In South Australia all alternate tracks are NASR approved.
 - In Victoria there are 23 tracks. Alternative tracks located within 215 km of Warrnambool include those located at Laang, Simpson, Mortlake, Hamilton, Portland, Ballarat, Baccus Marsh and Geelong. The Avalon Raceway (located in Geelong) requires drivers to hold a NASR licence (under notification N93305).⁹
- 7.9. NASR also 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.
- 7.10. 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.

⁷ The notifying parties list five tracks that are located within 200 kilometres of Brisbane, however, one of the tracks cited by Brisbane Speedway (South Burnett Speedway Club, Kingaroy) is not operating due to safety concerns. The track is currently raising funds for track improvements. As at September 2009, there were no upcoming events scheduled for this track. The ACCC notes that Roma and Gympie do not appear to be NASR approved tracks.

⁸ These include the tracks at located at Cairns, Mackay and Rockhampton.

⁹ On 13 May 2010 the ACCC 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 (Perth Motorplex) and Corio Park Pty Ltd trading as Avalon International Raceway (Avalon Raceway) (notifications A93304–N93305). These notifications are still under consideration at the time of issuing this decision.

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

- 7.11. 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.
- 7.12. 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.
- 7.13. 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.
- 7.14. 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.
- 7.15. The ACCC considers that restricting the type of licence accepted at a track further limits the level of substitutability.

Conclusion

- 7.16. 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

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

Efficient risk management processes

- 7.18. 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.

- 7.19. 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.
- 7.20. 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.
- 7.21. 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.
- 7.22. 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.
- 7.23. 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.
- 7.24. 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.
- 7.25. 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.
- 7.26. 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.
- 7.27. 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 assessed at paragraphs 7.35 to 7.51.

Compliance with unified competitor standards

- 7.28. 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.

- 7.29. 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.
- 7.30. 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.
- 7.31. 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.
- 7.32. 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.
- 7.33. 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 8.3).
- 7.34. 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

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

Reduced competition among racing organisations

- 7.36. 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 tracks¹⁰ provided their drivers also hold a NASR licence.
- 7.37. 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.
- 7.38. NASR advises 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.
- 7.39. Further, the notifying tracks submit that there are over 100 alternative tracks in Australia which host various speedway racing events (see paragraph 7.8) 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.
- 7.40. 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.
- 7.41. 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 issued by the alternate bodies, and their ability to expand their membership, is reduced.
- 7.42. 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.
- 7.43. 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, the notified conduct requires that a NASR licence be held in order to participate at particular tracks.
- 7.44. 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

¹⁰ Tracks in Perth and Geelong notified similar arrangements in 2008 that also restrict access to their track facilities to NASR licence holders.

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.

- 7.45. If more tracks choose to manage their risk by restricting access to their facilities to particular licence holders, it would significantly impact the ability of competing licensing organisations to continue to operate.

Impact on non-NASR licence holders

- 7.46. The notifying tracks submit that the notified conduct will marginally affect speedway racing drivers and pit crew members as they will be required to purchase a licence from NASR in order to compete and/or access the pit areas at the Brisbane Speedway, Murray Bridge Speedway or Premier Speedway. A person who does not wish to obtain a NASR licence will be prevented from racing or accessing the pit area at these tracks.
- 7.47. The VSC submits that requiring drivers who hold licences other than NASR's licence to acquire a NASR licence to access these tracks will impose a financial burden on these drivers as they will have to acquire another licence and undertake a further medical examination.
- 7.48. 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.
- 7.49. 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.
- 7.50. Concern has been raised by some interested parties that NASR has significantly limited the availability of the day licence which was offered at a reduced cost to people who wished to compete at, or access, a track only once or twice during a speedway racing season. The ACCC previously considered that the day licence would reduce the public detriment associated with the requirement that competitors and pit crew hold a NASR licence. NASR advises the day licence is now not available for high-powered race events, such as sprintcar and super sedan racing.
- 7.51. The ACCC considers while there is some impact on non-NASR licence holders resulting from the notified conduct the detriment is not likely to be substantial.

8. Conclusion on public benefits and detriments

- 8.1. The ACCC accepts that the notified conduct allows the notifying tracks to efficiently address their risk management practices. By limiting access to NASR licence

holders they can be assured that all competitors and pit crew members comply with NASR's racing standards and hold adequate personal accident insurance. The ACCC recognises the public benefits associated with this however need to be balanced with the public detriments arising from the notified conduct.

- 8.2. 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 safety and related racing standards which encompassed important features, such as safety and training, was developed.
- 8.3. 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.
- 8.4. 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 NASR licence be held in order to participate at particular tracks.
- 8.5. This may reduce the attractiveness and long term viability of alternate licensing bodies as drivers question the cost of obtaining multiple licences. 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.
- 8.6. 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.
- 8.7. On balance, the ACCC is not satisfied that the likely benefit to the public from the notified conduct will outweigh the likely detriment to the public.

9. Notices

- 9.1. For the reasons identified, the ACCC is not satisfied that the likely benefits to the public from the conduct or proposed conduct will outweigh the likely detriment to the public from the conduct or proposed conduct.
- 9.2. Accordingly, the ACCC issues notices under section 93A(1) of the Act revoking the immunity afforded by notifications N94032–N93034 lodged by Brisbane International Speedway Pty Ltd (Brisbane Speedway), Murray Bridge Sporting Car Club & Motorcycle Club Incorporated (Murray Bridge Speedway) and Premier Speedway Club Warrnambool (Premier Speedway). If no application for review of

this notice is made to the Australian Competition Tribunal, the immunity provided by the notification ceases to be in force on 13 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
7 July 2009	Lodgement of notifications N94032-N94034.
15 July 2009	The ACCC invites submissions by interested parties.
5 August 2009	Closing date for submissions by interested parties. Submissions received by the ACCC until 20 August 2009.
13 August 2009	ACCC requests information from NASR.
4 September 2009	NASR responds to information request.
28 January 2010	Draft notices issued.
19 February 2010	Closing date for submissions in interested parties.
22 February 2010	Pre decision conference held in relation to the draft notices.
19 March 2010	Closing date for submissions by interested parties.
13 May 2010	Final notices issued.
13 June 2010	Immunity provided by notifications N94032-N94034 ceases to be in force.