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Our Ref: 241933

7 July 2010

**BY REGISTERED POST AND EMAIL: adjudication@accc.gov.au**

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

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

Dear Dr Chadwick and Ms Bourke

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

We refer to previous communications regarding the Form G notifications of exclusive dealing (third line forcing) conduct filed by Placide Pty Ltd (the operator of Perth Motorplex) and Corio Park Pty Ltd (the operator of Avalon Raceway) (the **Tracks**) (N93304-N3305) (together, the **Notifications**).

In particular, we refer to the Draft Notice issued by the ACCC in respect of the Notifications on 13 May 2010 (the **Draft Notice**), and to the pre-decision conference held on 17 June 2010 regarding the Draft Notice (the **Conference**).

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

- bring to the ACCC's attention various statements made at the Conference by attendees or in submissions filed by interested parties in respect of the Draft Notice, which it considers to be either inaccurate or incorrect, or relate to matters which are irrelevant to the ACCC's assessment of the Notifications; and
- clarify and confirm for the ACCC's convenience the issues and factors which are to be taken into consideration when assessing the Notifications, and in particular, the public benefits associated with the described conduct which continue to exist.

## Insurance

NASR notes that part of the Conference was devoted to the provision of insurance by NASR, and that this issue is reflected in some of the submissions received since the Conference (including that from West Coast Speedcars (WSC) dated 22 June 2010).

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

## Structure, Standing and Functioning of NASR

Various submissions made at the Conference and filed by third parties in connection with the Draft Notice and the previous related notifications make assertions regarding the organisational structure, shareholding and financial position of NASR. These include the submissions made by Mr Allan Meakins of WSC at the Conference.

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

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

NASR licences are implemented and enforced by both National Association of Speedway Racing Pty Ltd and National Association of Speedway Racing Inc. As advised at the Conference and on numerous previous occasions, while some of the amounts it collects are used to meet its operational costs (as with most businesses), NASR reinvests the majority of revenue derived from its collection of membership fees into the development and enhancement of the sport of speedway racing in Australia.

To address WSC's comments that the governing body of Speedway racing should be decided upon by a vote so that clubs can have greater input as to the officeholders, NASR confirms its advice to the ACCC at the Conference that the governing Board of Directors for National Association of Speedway Racing Pty Ltd is made up of individuals representing the following interests:

- 4 Directors representing the interests of competitors (i.e. clubs);
- 4 Directors representing the interests of promoters (i.e. tracks); and
- 1 independent Director.

The competitor representatives/Directors are nominated by National Association of Speedway Racing Pty Ltd's competitor class shareholders, while the promoter representatives/Directors are nominated by National Association of Speedway Racing Pty Ltd's promoter class shareholders. Nominations become effective once a majority of the shareholders in National Association of Speedway Racing Pty Ltd vote in favour of the appointments. Each Director must be a member of National Association of Speedway Racing Pty Ltd, or the

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<sup>1</sup> Paragraph [3.17] of the Draft Notice.

nominee of a member. The independent Director is appointed by the majority of the Directors appointed to represent the interests of competitors and promoters.

The shareholders of National Association of Speedway Racing Pty Ltd are listed with ASIC in accordance with its requirements.

In light of the above, and consistent with the appointment process adopted by most (if not all) public and private companies and organisations across Australia, NASR confirms that clubs and promoters are entitled to participate in the process of appointing NASR's Board, provided that they elect to become members of National Association of Speedway Racing Pty Ltd.

NASR notes that at the Conference, Mr Ron Bergmeier (while complimenting NASR's activities and role to date) opined that in his view, NASR should consult with interested parties to develop the sport of Speedway racing, rather than attempting to develop the sport by means such as the Notifications. NASR takes this opportunity to advise that it regularly consults with industry participants and stakeholders to assist with its development activities. For example, NASR regularly attends and/or consults with its State branches, competitor and promoter groups, relevant National Councils, at third party club and association meetings, at meetings held at NASR's offices, phone inquiries and meetings, electronic communications, track visits, and similar activities.

NASR also notes that Mr Bergmeier may have failed to appreciate that the Notifications were filed by the Tracks, to enable them to engage in the notified conduct for reasons of safety and risk management. The Notifications were not filed by NASR; rather NASR's involvement arises from the fact that the conduct notified by Tracks relates to the requirement that participants obtain a NASR licence in order to access the Track.

NASR further notes that at the Conference, Mr Neville Allpike of the Australian Quarter Midget Association made various submissions which expressed his personal views regarding matters which are not only irrelevant to the ACCC's assessment of the Notifications, but also appear to be inconsistent. In the Minutes, it is recorded that Mr Allpike submitted that due to the large number of categories of racing which exist, one overarching governing body for all existing divisions (such as NASR) is simply not effective. We also note Mr Allpike's further submission as to an alternative governance structure – namely, that there should be a peak body governing each division of racing, with an overarching body overseeing those peak bodies – is somewhat inconsistent with his earlier view.

In any event, NASR notes that the organisational structure suggested by Mr Allpike is not substantially different from that which already exists, and which has been advised to the ACCC on numerous previous occasions. Specifically, while NASR is widely acknowledged as the peak governing body for Speedway racing in Australia, and in its role as such recognises over 100 different categories of racing, a National, State and/or Regional governing body exists in respect of each specific speedway racing category, to administer and manage the category. NASR's role is to administer and manage the sport of speedway racing nationally, across all speedway racing categories, and interact and liaise with each recognised governing body accordingly.

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

#### **Previous Consideration of Notifications**

NASR notes that in its original assessment of the Notifications in 2008, the ACCC accepted that the notified conduct allowed the Tracks to ensure that drivers and pit personnel complied with a uniform set of standards and that this public benefit outweighed any resultant degree of public detriment, including for the reason that a significant choice of alternative tracks remained for non-NASR licensees to access, and in light of the availability of the NASR day licence.

The ACCC advised that if a "significant number" of tracks began to require the holding of a NASR licence as a condition of access, public detriment levels may change, resulting in the re-assessment of the Notifications.

NASR notes that apart from the separate notifications lodged by the operators of Brisbane International Speedway, Premier Speedway Warrnambool and Murray Bridge Speedway, it appears that the ACCC has not been advised of any other tracks which require the holding of a NASR licence as a condition of access. As advised by NASR at the Conference, at this stage NASR has not become aware of any alternative tracks which propose to engage in similar conduct.

Accordingly, the considerations which were considered by the ACCC as being sufficient to allow the Notifications to originally stand remain substantially unchanged (please see below for NASR's comments regarding the day licence). For this reason, and as submitted at the Conference, NASR considers that the ACCC should maintain the present position, and allow the immunity afforded by the Notifications to these two Tracks to continue in effect.

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

NASR reiterates its earlier concerns regarding certain factors and issues considered by the ACCC in its re-assessment of the Notifications, as explained in the Draft Notice. These concerns were first brought to the ACCC's attention in its assessment of the now-revoked Notifications N94032 – N94034, filed by the operators of Brisbane International Speedway, Premier Speedway Warrnambool and Murray Bridge Speedway (**Revoked Notifications**), and were also described to an extent in NASR's submission to the ACCC made in response to its advice that it proposed to issue the Draft Notice (dated 15 February 2010).

These are summarised below.

#### *Categorisation of Tracks and Events*

NASR respectfully disagrees with any categorisation of the Tracks as the premier venues in their respective States.

As outlined in detail in its earlier submissions, NASR considers that any categorisation of the Tracks as such is incorrect for various reasons. These include the fact that the notifying Tracks hold a range of events relating to almost all recognised categories of Speedway racing – not just high profile events, or national/touring events for high-powered categories of racing. NASR has previously advised the ACCC of the location and classification of the numerous alternative venues in Western Australia and Victoria which can be accessed by competitors. The range of events held at these tracks is a matter at the discretion of the track operators, and the Tracks should not be disadvantaged or penalised because they have elected, as a business decision, to hold events which attract a large number of competitors and/or spectators.

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

NASR respectfully disagrees with the ACCC's view that the effect of the notified conduct is to prevent organisations in competition with NASR (i.e. alternative licensing bodies) from holding events at the Tracks.

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

The notified conduct simply requires drivers and visitors to the pit area to purchase a licence from NASR, in order to access the Tracks. The Tracks are not seeking to impose a restriction as to the licensing organisations whose licensees will be entitled to access their facilities, and do not propose to restrict the range of alternative licences which these drivers and visitors may wish to acquire. Neither do the Tracks restrict alternative licensing bodies which compete with NASR from hosting race events at the Tracks. Alternative licensing bodies, and clubs aligned with these organisations, are free to host race events at the Tracks

provided that participants hold a NASR licence, in addition to any other licence or accreditation required by the club/alternative licensing body.

For these reasons, NASR considers that the statement made by the ACCC throughout the Draft Notice, and in its consideration of the Revoked Notifications, that alternative licensing bodies which compete with NASR will be unable to access the Tracks is factually (and practically) incorrect, and is concerned that by focusing on this point, the ACCC has considered the impact of the notified conduct in an irrelevant market in its re-assessment of the benefits and detriments afforded by the conduct described in the Notifications.

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

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

As confirmed by the submission previously filed by CAMS in respect of the Revoked Notifications, NASR is the officially recognised governing body for the sport of Speedway racing in Australia.

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

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

In response to Mr Trevor Reakes' submissions at the Conference, NASR notes that much of his submission was devoted to his personal opinions and concerns regarding the sport of Speedway racing in a general sense, including his concern that the sport has "lost its grassroots". It is NASR's view that licensee numbers do not support this view, and we note that safety considerations are likely to prevent parents from allowing juniors to participate in the sport. As noted above and previously advised to the ACCC, a fundamental role of NASR is to develop and improve safety in the sport, and accordingly NASR is one of (if not the) leading proponent of maintaining and/or re-kindling the sport of Speedway racing at a grassroots level.

If NASR did not carry out its safety activities and programs, no insurer would be willing to offer insurance cover in respect of the sport of Speedway racing in Australia, and the various alternative insurance policies which have been advised to the ACCC by other interested parties would most likely not be available.

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

As previously submitted, in order to ensure the maintenance of a cohesive, organised and safe environment for the sport of Speedway racing on a national level there should (and can) only be a single body responsible for overseeing the sport at this level. This is of particular importance in the context of motor sport and Speedway racing, which is inherently dangerous and in which safety considerations are of paramount importance.

As noted by the Australian Sports Commission in its submission to the ACCC regarding the Revoked Notifications, it is of fundamental importance (and therefore, public benefit) that safety not be compromised, and both NASR's activities, and the conduct described in the Notifications, are directed towards ensuring that the sport of Speedway racing in Australia is as safe as possible. The ACCC previously recognised and accepted that the public benefits associated with the notified conduct outweighed the resultant public detriments, and NASR considers that the ACCC should not change its original assessment. Accordingly, it should not finalise the Draft Notices.

NASR acknowledges that there may be other means by which the operators of the Tracks could attempt to ensure the safety of drivers and pit crews accessing the Tracks, as discussed by the ACCC in the Draft Notice. However, while a theoretical possibility, the Track operators simply do not have the necessary expertise (or facilities in certain cases) to ensure that these alternatives will enable the events held at the Tracks to meet internal risk management policies and be as safe as possible. This was also explained by the Track operators at the Conference. Accordingly, any implementation of these alternative options may not result in the high safety and risk management standards which are necessary at the Tracks to address the inherent dangers in the sport of Speedway racing being implemented.

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

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

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

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

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

In assessing the Notifications, the ACCC will need to take careful note of the role and objectives of NASR, as the governing body for Speedway racing. It is quite clear these are to provide and implement the kind of safety, infrastructure and member experience that the majority of other national bodies governing mainstream sport in Australia already provide. It is NASR's view that if the Draft Notice were to be implemented, and the Notifications revoked, this would indicate the view of the ACCC that the standard practice of all other national sports bodies is wrong. NASR is simply attempting to adhere to the best practice policies and procedures implemented within other sports long ago, with the full support by both local and national government agencies representing sport in Australia.

### **ACCC Assessment of Notifications**

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

The ACCC previously accepted that the public benefits associated with the notified conduct outweighed any public detriments, and NASR considers that no matters have been brought to the ACCC's attention which require any reconsideration of, or change to, this view.

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

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

As has been the case since mid-2008 (when the Notifications were first filed and allowed to stand), the public will continue to benefit from the requirement to hold licences provided by the industry body for Speedway racing in Australia, as licence holders are required to comply with NASR's Rules (which deal with mandatory competitor conduct, technical requirements and race procedures, and include compliance with a drug and alcohol policy). NASR considers that Speedway racing drivers, officials, crews, mechanics, sponsors, family members and spectators benefit greatly from compliance with the minimum safety requirements imposed by the recognized governing body for Speedway racing, and submissions at the Conference made by the Track operators confirm this.

NASR provides standardised rules for the entire sport of Speedway racing throughout Australia. As part of this, NASR has implemented a tribunal system and suitable penalties for offences within the sport. This has had a significant impact in improving the operation and safety of Speedway racing in Australia, as evidenced by the successful and safe operation of the Tracks for the past 2 years, while the Notifications have been in force. All of these factors provide considerable public benefits.

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

It is necessary to ensure that all drivers hold adequate personal accident insurance before they can compete. NASR personal accident insurance is available to all NASR licence holders as a member benefit. Accordingly, Speedway racing drivers with NASR licences are guaranteed to have adequate personal accident insurance cover. As NASR licences are provided only once a suitable medical examination has been passed, track operators, event coordinators, competitors and the public in general can be assured that drivers are medically fit for participation. This peace of mind is of significant benefit to the public, and NASR considers that these requirements support the overall safety framework for Speedway racing, including by assisting with tracks' risk management processes. The increased level in safety in turn provides a significant public benefit.

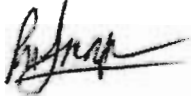
A key aim of NASR is to develop Speedway racing as a high quality, well organised national sport and to promote it as such. There is a clear benefit to the public in the advancement of a participatory recreational pastime which is cohesive, features a high standard of competition and is conducted in accordance with consistent, well-understood rules and safety procedures. It is in the very nature of a sporting organisation that participation and policies be controlled in such a way as to maintain uniformity and quality. This not only improves the experience of spectators and participants, but makes the sport more viable in the long

We look forward to receiving the ACCC's final determination of its re-assessment of the Notifications.

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

Yours faithfully  
NATIONAL ASSOCIATION OF SPEEDWAY RACING

per:



PAUL TRENGOVE  
Competition Manager

per:



DALE GILSON  
General Manager