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21 August 2006

RE: Complaint in relation to the Speedway Industry in Australia.

Thank you for your recent correspondence to the Australian Competition and Consumer Commission (the ACCC) in relation to our enquiries made regarding the speedway industry in Australia.

The ACCC has received a number of complaints, relating to the conduct of certain key players in this industry. Four main complaints were raised with the ACCC and it is the purpose of this letter to advise you of our views in relation to each area. Although your concerns are not necessarily related to the subject of each complaint, this letter advises all relevant parties of our views in relation to each issue, in an endeavour to ensure that all concerned are aware of the issues and their obligations under the *Trade Practices Act 1974* (the Act).

Before going any further, it may be beneficial to explain the role of the ACCC and the objectives of the Act. The ACCC is the Commonwealth authority responsible for ensuring compliance with the Act. The objective of the Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. The Act prohibits certain anti-competitive conduct and unconscionable, misleading or deceptive conduct.

Generally the Act allows for traders to decide for themselves with whom they wish to deal with, and on what trading terms. However, the Act does prohibit corporations from engaging in the practice of exclusive dealing. Exclusive dealing involves one person who trades with another, imposing restrictions on the other's freedom to choose with whom, or in what, they deal. Exclusive dealing is prohibited by section 47(6) and 47(7) of the Act, and occurs when one party supplies goods or services on the condition that the purchaser will acquire goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition (commonly known as a third line force).



Further, section 45 of the Act prohibits contracts or arrangements that contain exclusionary provisions, or where the contract or arrangement has the purpose, effect or likely effect of substantially lessening competition.

The recent complaints made to the ACCC have centred on concerns regarding the National Association of Speedway Racing Pty Ltd's (NASR's) licence and insurance for speedway drivers in Australia. It has been alleged that drivers are required to become a NASR member in order to race at certain tracks, and cannot simply purchase a NASR licence without purchasing a NASR insurance policy. Consequently, complainants indicated that NASR is 'forcing' drivers to buy NASR insurance in order to be able to race at NASR affiliated race tracks. Some drivers have claimed that they would prefer to obtain alternative insurance cover, but unless they become NASR members (and in effect purchase NASR insurance) they are prevented from racing at certain tracks.

It has been alleged that this requirement (NASR licence and NASR insurance) may have been enforced by NASR and/or various promoters of speedway racing tracks. If such allegations are correct then those responsible could be in breach of section 45 (arrangements that substantially lessen competition) or section 47 (third line forcing) of the Act.

Further, there have been allegations that bodies such as the Sprintcar Control Council of Australia Incorporated (the SCCA), and membership clubs such as the Modified Sprint Car Association of Queensland (MSAQ), were stipulating that their members must have NASR licence and insurance.

Additionally, various complaints were made alleging that NASR had threatened to revoke membership from certain drivers if those drivers failed to meet specific 'member requirements' and these included agreeing not to race in non NASR sanctioned events.

The following is a summary of the complaints as understood by this office, and our views as to whether it is likely that a breach of the Act is apparent.

Issue of NASR Licence and Insurance

Complaints have been raised that NASR 'sells' its personal accident insurance cover and membership as a package, and that NASR and/or various promoters of speedway racing tracks are requiring that drivers obtain the licence and insurance before being allowed to race.

NASR has confirmed to the ACCC that it does not offer stand-alone personal accident insurance or licences. NASR has advised that the personal accident insurance cover it has negotiated provides NASR and its members with no fault cover and that this insurance cover cannot be purchased separately, as it forms part of the NASR membership package.

Further, NASR has stated to the ACCC that it does not force anyone to become a NASR licence holder, and that it is a choice that each participant in the sport is free to make.

Specifically, NASR has stated

- *NASR licence holders are free to purchase a licence from any other speedway racing institution that they choose*
- *Some tracks elect to require as a condition of participating at their facility that race competitors hold NASR licences.... However, this stance adopted by some tracks is not a*

condition of any arrangement between NASR and track operators for the provision of public liability insurance

NASR has advised the ACCC in writing that it has not engaged in, and has no intention of engaging in illegal anti-competitive conduct. NASR has stated that it has not supplied goods or services on the condition that the purchaser will not acquire, or will limit the acquisition of, goods or services from a competitor of it.

NASR has said that its licence and insurance cover is all part of the one purchase, and there is no requirement to purchase any additional service or good from any third party. In addition, NASR has said that its members are also free to obtain additional insurance cover from alternative suppliers if they choose to. It is our view that the Act does not preclude NASR from negotiating insurance for its members and providing such cover as a component of membership.

NASR has also stated that it has not reached agreement with any track operators that those operators will only allow drivers with NASR membership (including insurance) to race at their venue.

Based on the information provided to the ACCC by NASR, we have reached the view that it is unlikely that NASR has breached the Act.

Revocation of NASR Licence

Further allegations were received alleging that NASR was seeking to revoke the licence of certain NASR licensees unless they undertook not to race in a specific category of sprint car that was not covered by the NASR insurance policy. Further, concerns were raised that NASR was requesting these members to undertake that they will only race categories approved by the NASR.

NASR has confirmed to the ACCC that it has no concerns with its licensees competing in any other event, as long as that driver is aware that NASR insurance does not cover them in non-NASR approved races or categories. The ACCC understands that drivers are free to choose which races and which categories of races they wish to undertake, but that they need to ensure that they have appropriate insurance and should not rely on NASR insurance in the event that the race meeting is not NASR sanctioned.

While it is apparent that NASR did advise some drivers that their licences would be revoked if they raced in other categories, the ACCC understands that NASR has now advised those drivers that NASR licences will not be revoked due to the fact that the drivers were seeking to race in another racing category.

Conduct of Various Speedway Promoters in Australia.

Allegations have been raised with the ACCC that certain speedway promoters in Australia are in breach of the third line forcing provisions of the Act. As stated above, it has been alleged that speedway promoters will only supply race services to drivers on the condition that the drivers acquire services from NASR (i.e. NASR licence/insurance).

The ACCC understands that some speedway track promoters in Australia do require that a driver obtain a NASR licence before they are able to race at their track. They have stated that

they believe it is necessary that all drivers have a NASR licence for safety reasons. The ACCC is concerned with this stance because it believes that it places those track promoters at risk of breaching the third line forcing provisions of the Act. Whilst it is not known to what extent this may be happening, we do note that there are approximately 40 to 50 tracks in Australia which are not insured by the NASR scheme.

The ACCC is not able to take action in relation to all complaints or allegations that are brought to its attention, and as such we exercise policy discretion in relation to which matters are to be pursued and give priority to those matters where there is:

- a blatant disregard for the law;
- significant public detriment;
- the potential for a deterrent or educative effect; and
- new market issues and the need to test the reach of the law.

Whilst the ACCC will continue to monitor this aspect, it does not intend to take any formal action at this stage in relation to this aspect of the complaint.

Conduct of the SCCA.

The ACCC has also considered allegations that the SCCA had acted in a manner contrary to the provisions of the Act. Specifically, a complaint made to the ACCC alleged that SCCA licence holders must acquire a NASR licence (and insurance), before they are permitted to hold an SCCA licence.

SCCA has advised the ACCC that it makes no requirement that its members must have a NASR licence. The SCCA has said that it is not in breach of the Act as it does not supply goods or services (in this case membership of the SCCA) on the condition that customers also require goods or services from a third party (in this case membership of NASR). It has stated that whilst the SCCA believes it is beneficial for SCCA members to also hold a NASR licence, and thereby obtain the associated personal accident insurance cover, it is not mandatory for all SCCA members to also obtain a NASR licence.

In response to ACCC enquiries, the SCCA has stated:

- *...there is no requirement that SCCA licence holders must acquire a NASR licence before they are permitted to hold an SCCA licence. Whilst the SCCA recommends that its members take up a NASR licence in conjunction with the SCCA licence, SCCA members are not forced to become a NASR licence holder, and in fact there are various SCCA driver members who do not currently hold NASR licences*
- *Sprintcar drivers who participate in SCCA events are entitled to obtain insurance cover from alternate insurance providers*

Based on the information currently before the ACCC, and the assurances from SCCA, we do not intend to pursue this aspect of the complaint further at this stage.

Conduct of MSAQ

Complaints were made to the ACCC that the MSAQ was imposing fines on its members for participating at a particular sprint car meeting without NASR Insurance. After reviewing these complaints, the ACCC was concerned that these fines may be problematic under section 47 of the Act, which prohibits exclusive dealing.

MSAQ has since advised that it did not seek to restrict the trade of its members or other speedway promoters in any way. MSAQ has stated that its primary concern was for the safety of its members and whilst the NASR insurance is MSAQ's preferred insurance policy, MSAQ would be prepared to sanction sprint car meetings with other insurance providers as long as the insurance was of a satisfactory nature so as to ensure the safety of MSAQ's members.

Further, MSAQ has advised it has withdrawn the fines due to the possibility that they may be contrary to the provisions of the Act.

Conclusion

The ACCC primarily uses education, advice and persuasion as its main enforcement tools. It also assists industry to develop industry self-regulation schemes and liaises with the public to promote voluntary compliance with the Act. In more serious cases, or when a business or individual is unwilling to comply, the ACCC seeks enforceable undertakings or in appropriate circumstances it will initiate court action and seek penalties.

In this case, the ACCC is pleased that both the NASR and the SCCA have indicated a willingness to ensure that they do not breach the Act by forcing or requiring participants to acquire a NASR licence or insurance. The ACCC also notes that the NASR has undertaken not to revoke licences of members due to the fact that they are racing in non-NASR sanctioned categories. Additionally, fines previously issued by the MSAQ to its members for racing without a NASR licence have been revoked due to the possibility that they are in breach of the exclusive dealing provisions of the Act.

The ACCC has now provided our current views on this topic to the NASR, the SCCA and the MSAQ. As a result of this investigation and our communications with the various parties, the ACCC expects that all parties are now fully aware of their obligations under the Act. If previously there was any doubt as to whether the Act applies to the various regulatory bodies in this industry, there should now be no such doubt. Further, all bodies have now been informed that the consequences of breaching the Act can be severe, and the ACCC have advised that these bodies seek independent legal advice as to their internal policies and procedures to ensure that breaches of the Act are not occurring.

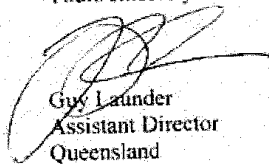
The ACCC believes that the action taken in this matter, to date, will play a role in informing drivers in Australia that there are options available to them in relation to obtaining insurance cover and being members of any particular organisation. Likewise those organisations responsible for running and promoting this type of racing in Australia, need to ensure that they and their members do not act in a manner contrary to the Act.

You should be aware that the issue of whether any particular conduct contravenes the Act is, ultimately, a matter for the courts to determine. You should be aware that the Act confers the right of private action on those who have concerns about particular conduct or who suffer loss or damage as a result of offending conduct, and that remains an option even in circumstances where the ACCC may have decided not to take its own action.

Finally the ACCC is pleased that NASR, SCCA and MSAQ have taken steps to address the ACCC's concerns in relation to this matter and it is hoped that these organisations will take a proactive to ensure that similar complaints about them will not be made in the future. While this office does not intend to take any formal action at this stage, this does not prevent the ACCC from taking a further course of action in the future if evidence comes to light that raises similar concerns.

Thank you for bringing this matter to the attention of the ACCC.

Yours sincerely



Guy Launder
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