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13 November 2015

Reference 082/15

Dear Members

### **Complaint to the Australian Competition and Consumer Commission (ACCC)**

The MAAA Executive recently became aware of a complaint lodged by the Australian Miniature Aerospots Society Inc. (**AMAS**) to the ACCC alleging certain conduct of the MAAA to be in breach of Commonwealth competition legislation. The ACCC is the national competition regulator and is responsible for ensuring that individuals and businesses comply with Australia competition, fair trading and consumer protection laws.

On becoming aware of this complaint, the MAAA Executive immediately sought legal advice to clarify whether the MAAA, its Clubs or any of the Manual of Procedures (**MOPs**) documents are in breach of relevant competition legislation.

In the interests of providing full disclosure and communication to MAAA Members, the MAAA Executive confirms that the legal advice provided to the MAAA states that, subject to Clubs and Affiliate Members complying with the MOPs, no infringement of relevant competition law provisions has taken place.

### **Complaint**

**The complaint against the MAAA alleges that it has breached the 'exclusive dealing' provisions of the *Competition and Consumer Act 2010* (Cth).**

Evidence cited by the complaint in support of this allegation includes that MAAA policies expressly state that Clubs must not accept members who are also members of a competitive association such as the AMAS. The complaint also alleges that the MAAA has dictated to Clubs to refuse the membership applications of individuals who may be members of other associations.

The remedy sought in the complaint is the prevention of the MAAA and its affiliates from requiring that individuals and Clubs not associate with competitors such as the AMAS.

### **Current MAAA policies**

The MAAA 'Policy on Non-Members' dated 17 May 2015 sets out at paragraphs 4(b) and (c):

*"4(b) All Clubs that affiliate with the MAAA must ensure that all flying members of the Club are Affiliate members of the MAAA"*

*"4(c) Clubs who consider having a mixture of MAAA members, and members of another like association who are not also members of the MAAA, will not be affiliated"*

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The above clauses are also mirrored at paragraphs 3.5(b) and (c) of MOP 057 'Insurance Conditions Policy'.

Whilst the two policies set out above require Clubs to ensure all flying members are Affiliate Members of the MAAA, the MAAA Executive confirms that nothing within those or any MAAA policy prevents:

1. Clubs affiliated with the MAAA from also affiliating with other like associations; and
2. individual Affiliate Members of the MAAA from also affiliating with other like associations.

**The only relevant requirement imposed by the MOPs is that Clubs must ensure all flying members (whether or not members of like associations) are also members of the MAAA.**

Evidence of this position is provided by the fact that the MAAA Executive is aware of numerous Affiliate Members who are also members of the AMAS, directly contradicting one of the allegations set out in the complaint.

#### **Legal advice**

The legal advice provided to the MAAA after receiving instructions from the MAAA Executive is summarised as follows:

1. the complaint is factually incorrect in that neither the MAAA or its policies prevent Clubs or Affiliate Members from also affiliating with the AMAS;
2. subject to paragraph 3 below, the MAAA and its Ordinary Members and Clubs are not infringing the relevant competition law provisions outlined in the complaint;
3. Ordinary Members must not refuse to affiliate a Club for the reason that it is also affiliated with another association, and Clubs must not refuse the membership application of an individual for the reason that he or she is also affiliated with another association; and
4. Ordinary Members and Clubs imposing the requirement that all members become Affiliate Members of the MAAA (in addition to any other memberships they may hold) are not breaching the Australian competition law.

The MAAA remains committed to attracting and welcoming new Members to the sport and growing the number of people enjoying fun flight. With over 300 Clubs, the MAAA values the contribution of Members as a powerful voice governing the direction of our sport.

If Members have any questions regarding the contents of this letter or would like further clarification, please direct all enquiries to MAAA Secretary at the following email address [secretary@maaa.asn.au](mailto:secretary@maaa.asn.au)

Happy flying!

Yours sincerely

J. Neil Tank  
President  
Model Aeronautical Association of Australia