

Australian Competition & Consumer
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28 March 2008

Dear Ms Randall

Submission in relation to Exclusive Dealing Notifications by Techtronic Industries Australia Pty Ltd (“Techtronic”) and Bunnings Group Limited (“Bunnings”)

I refer to the letter of 7 March 2008 from your office in relation to the above matter and to our subsequent telephone conversation on Thursday 20 March. In that conversation you agreed to an extension in time for our submission until Friday 28 March.

Robert Bosch (Australia) Pty Ltd (“RBAU”) now submits that the proposed public benefit from the understanding between Bunnings and Techtronics in relation to the Ryobi (and other) product range does not outweigh the potentially substantial impact on competition in the relevant markets.

To substantiate our view, we will proceed to address each of your questions in turn.

1. Which retailers do you currently supply your power tool and power garden equipment to?

RBAU supplies power tools to Bunnings and Mitre 10 as well as several

hundred other small retailers. The channel for supply of power tools is quite consolidated within the Australian market, with Bunnings being the most significant retail player.

18 March 2008
Page 2 of 4

RBAU does not supply power garden equipment within Australia.

2. Which power tool and power garden equipment suppliers do you compete with?

RBAU confirms the suppliers mentioned in section 2.2 of Attachment A to Notice of Exclusive Dealing are competitors with RBAU in the wholesale power tool market.

In so far as our supply of DIY power tools, RBAU competes with branded products from suppliers such as Ryobi and Black and Decker. Ozito, GMC, Worx, Icon and XU1 also compete for the DIY consumer in power tools – however, they are positioned somewhat differently than the Bosch brand.

In relation to our supply of professional power tools, RBAU competes with many branded products from suppliers such as Makita, DeWalt, Hitachi, Milwaukee, AEG, Metabo and Panasonic.

3. What other power tool and power garden equipment brands compete with Ryobi? What factors contribute to these brands being in competition with Ryobi (for example, price, features of the product, quality).

Ryobi competes at the current time most closely with the Black & Decker and GMC product ranges in terms of price, quality and features/specifications. However, specific Ryobi products also compete with the Bosch brand in terms of positioning and the consumers we target.

4. If your ability to supply power tools and power garden equipment to Bunnings were to be significantly reduced, what impact would this have on your ability to compete in the wholesale market for the supply of power tools? What flow on effects might this have at the retail level?

It would have a significant impact by virtue of the fact that Bunnings represents over half of the supply channel to the DIY power tools consumer in the Australian market. It would be difficult to replace this distribution and hence the ability to access the DIY consumer adequately would be considerably reduced.

The true extent of the impact on our ability to compete in the wholesale market for the supply of power tools and at the retail level is not however clear as it depends upon the following points:

18 March 2008
Page 3 of 4

- first, how Bunnings interprets, and will apply its discretion in reducing, “duplicate or similar product range”. This is a matter which requires further clarification. (No competitor product will ever be, strictly speaking, duplicate, and the word “similar” leaves significant scope for varying interpretation);
- second, the extent to which Techtronic develops its current range of Ryobi products and how such products are positioned in terms of price and quality;
- third, the extent to which other Techtronic power tool ranges are brought within the scope of the existing understanding in addition to the Ryobi tool range (such as the AEG tool range which is referred to in the Strategic Plan attached to each Notification).

5. What effect might these arrangements have on future entrants to the market?

The understanding creates demand by other retailers like Mitre 10 for alternative products comparable to the Ryobi range in terms of price, quality and features/specifications.

However, without sales through the major Australian retailer of power tools and power garden equipment, future entrants may not be able to reduce their product costs sufficiently to make a product range price-competitive. Similarly, existing wholesale suppliers of power tools may face difficulty in introducing any product which is positioned in the market similarly to Ryobi products.

Certainly, the notified conduct will prove a disincentive in launching any product intended for the Australian market which could be considered “similar” to a Ryobi tool (or potentially, other Techtronic tool).

6. Can you provide any further information relevant to the ACCC’s assessment?

Our primary concerns with respect to the proposal are:

(a) We believe that the Bunnings/Techtronic description of the markets as being the “hardware market in Australia” or the “power equipment and outdoor power equipment markets” are far too broad. In addition, market share estimates have focussed on Techtronic’s Ryobi share of the wholesale market (not including other Techtronic product ranges such as AEG tools which appear to be brought into this understanding at least to some extent

by the Strategic Plan) and do not take into account the impact of Bunnings' significant share of the retail market.

18 March 2008

Page 4 of 4

(b) As flagged above in our response to Q.4, the range of power tools stocked by Bunnings is to be decreased as a result of the notified conduct according to a determination made in its discretion applying considerations that the tools "duplicate or are similar to" Ryobi power tools and power garden equipment. How broadly will this be interpreted? In addition, if the Ryobi range of tools is increased and crosses other market segments, or other Techtronic tools are taken into account (such as the AEG tools) this understanding has a potentially broader impact across the relevant markets.

(c) It is unclear how the decision of Bunnings to decrease its product range of "similar products" will affect advertising space, floor space for promotional merchandise and other support made available for other competitors products, even those which are not considered "similar".

(d) Page 5 of Strategic Plan Item 1 (a): the proposed implementation of the One Plus merchandising system nationally would involve the presentation of the full range of Ryobi product in one area of the floor. Previously the Bunnings Merchandising Standards have required the presentation of merchandise according to product/segment/price and not by grouping of each supplier's brand of product ranges. If these existing merchandise rules remain in place for all other competitors whose product ranges remain stocked by Bunnings, this will provide Techtronic with a potentially unfair advantage in exposing their brand to the consumer. A merchandising style in preference of one brand leads the retailer to pre-determine brand selection on behalf of the consumer, which is detrimental to the public benefit inherent in a consumer having real product choice.

(e) Page 5 of Strategic Plan Item 3: we are concerned as to the implication that the understanding may extend beyond the power tools and power garden tools to the market for accessories of power tools (eg drill bits, saw blades etc).

(f) How will the provision of the Product Support Services, which are relied on to support the public interest argument behind the notified conduct, be monitored and measured?

Please advise if you require clarification on any of the above points.

Yours sincerely

Robert Bosch (Australia) Pty. Ltd
Karen Skafte