



Victa Lawncare Pty Ltd

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Member of the GUD Holdings Ltd group

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David Hatfield
A/g General Manager
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28 March 2008

Re: Exclusive dealing notification lodged by Techtronic and Bunnings

Thank you for the invitation to comment on the Exclusive dealing notifications lodged by Bunnings and Techtronics. The attached submission is based on the content there-in.

The submission details general concerns on the proposal and some specific concerns to Victa.

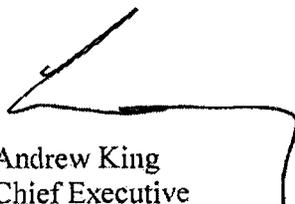
However as there is a lack of specificity in the proposed arrangements, Victa's concerns are limited to our continued access to Bunnings distribution, based solely on our ability to provide competitive products and services across the power garden segment.

Provided Victa is not restricted from competing on these terms, our concerns as outlined in the attachment should be seen as generic in nature.

As the submission contains commercially sensitive information which has been included to give the Commission a fuller understanding of Victa's business, we have also included a version that can be publicly posted.

Please include this covering letter with the Public notice version.

Yours sincerely,



Andrew King
Chief Executive



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ATTACHMENT TO LETTER DATED 28 MARCH 2008 TO MR. DAVID HATFIELD OF THE ACCC.

VERSION 2 SUBMISSION FOR PUBLIC POSTING

1. Executive summary

- 1.1 Bunnings is far and away the largest reseller of power tool and power garden equipment products in Australia. An exclusivity arrangement without express limitation as to time potentially forecloses that very significant part of the market to competing suppliers of power tool and power garden equipment products indefinitely.
- 1.2 There is considerable uncertainty in the material provided. However, it is apparent that the conditions proposed in the Bunnings notification will impact upon competition in the market for power tools and power garden equipment in terms of 'intra' brand competition, by virtue of the removal of competitive constraints on pricing of the Ryobi brand itself due to the removal of other distributors. It does not appear that this potential for public detriment is offset by a corresponding increase in 'inter' brand competition – indeed it appears likely that inter-brand competition will also be reduced by virtue of the reduction in the ability of customers to access and view other brands at Bunnings and the importance of Bunnings as a channel to market and the potential impact upon competitor offerings.

2. Background

- 2.1 In its notification Bunnings has stated that it will acquire, and Techtronic will supply, Ryobi power tools and power garden equipment subject to four conditions:
 - (1) Techtronic will not supply Ryobi power tools and power garden equipment to competitors of Bunnings; or
 - (2) Techtronic will not supply Ryobi power tools and power garden equipment supplied to Bunnings to competitors of Bunnings; or
 - (3) Techtronic will not supply Ryobi power tools and power garden equipment, comparable to Ryobi power tools and power garden equipment supplied to Bunnings, to competitors of Bunnings; and
 - (4) Bunnings will not acquire some power tools or power garden tools which were previously acquired from Techtronic's competitors and which Bunnings determines duplicate or are similar to the Ryobi power tools and power garden equipment, and Bunnings will be involved in that conduct.



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- 2.2 Suppliers of power tools and power garden equipment to Bunnings have not been identified as a class of persons "affected or likely to be affected by the notified conduct" in item 3 of Bunnings' notification. Notwithstanding this, in our view condition 4 relates to, and will directly impact upon, suppliers of power garden equipment to Bunnings including Victa Lawncare (we will leave to the Commission the issue of whether this has any impact upon the validity of the notice). Accordingly, the focus of our interest in the notified conduct is condition 4, which has the apparent potential to significantly limit Bunnings' freedom to supply competitor power tools or power garden equipment which duplicate current or future product offerings of Ryobi in those categories.
- 2.3 Exclusive dealing is a form of vertical restraint. We accept as a general proposition that vertical restraints of the type notified in the nature of exclusive dealing can promote competition by allowing a manufacturer to achieve efficiencies in the distribution of its products. It is, however, also well recognised that exclusive dealing arrangements of this type can lessen competition by creating or extending a supplier's market power and restraining horizontal competition. This can obviously have adverse consequences by allowing one supplier of goods to deprive other suppliers of a market for their goods.
- 2.4 The scope of the conditions is not entirely clear from the notification. Although it is not explicitly stated, it appears that the arrangement is intended to continue indefinitely from "2008 and beyond". We note that a long or indefinite application of conditions can often raise concerns in assessing exclusive dealing arrangements.
- 2.5 In addition, use of language such as "enabled Bunnings to agree to Techtronic's requirement" suggests that the exclusive supply of Ryobi products to Bunnings by Techtronic is in fact conditional upon Bunnings significantly reducing the range of competitor products offered by Bunnings. Even if the parties had not intended the implementation of conditions 1 to 3 to impact upon implementation of condition 4 (and vice versa), it appears unlikely that either party would continue to comply with its obligations under the conditions if the other party were not also complying with its obligations. Accordingly, although the arrangement is expressed not to be legally binding, it seems likely that both parties would maintain the arrangement while it remained valuable to each of them.
- 2.6 The issue for the ACCC in the context of Bunnings' notification, as we understand it, is whether the arrangements between Techtronic and Bunnings freeze out a significant fraction of buyers or sellers for a significant period of time, or whether it is instead an arrangement of narrow scope posing no threat of adverse economic consequences. To help consider that issue you have asked us to provide comments in relation to what we see as the likely public benefits and effect on competition, or any other public detriment of the proposed arrangement. We respond to those questions in section 4 of this letter.

3. Victa Lawncare

- 3.1 Victa Lawncare produces domestic and professional power garden equipment including a wide range of lawnmowers, along with trimmers and vacuum blowers, spares and accessories.
- 3.2 Victa Lawncare has been supplying power garden equipment to Bunnings for more than seven years, and in that time we have worked with Bunnings to grow our respective businesses in Lawncare to the current leading position. Victa Lawncare primarily supplies lawnmowers and associated consumable parts to Bunnings, but it also supplies its vacuum blowers and associated consumable parts to Bunnings. In addition, Victa Lawncare produces trimmers which are not stocked by Bunnings.
- 3.3 Supply of power garden tools to Bunnings by Victa Lawncare is subject to Bunnings standard National Trading Terms, and the parties do not have any formal or informal arrangements in place relating to spend or volume commitments beyond a minimum order threshold of three mowers. Although not part of the National Trading Terms, historically, supply of items to Bunnings was subject to an annual range review during which Bunnings would determine which products and brands it wished to acquire. This has been replaced with a rolling review system under which ranges remain unchanged unless a review is initiated by Bunnings or a supplier.

4. Answers to the ACCC's questions

- 4.1 In your letter of 7 March 2008, you have invited us to make a submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements. To assist the Commission with its enquiries we respond below to the specific questions addressed to suppliers in your letter dated 7 March 2008.

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

- 4.2 Victa Lawncare supplies garden power equipment to the following retailers (Detail of retailers and proportion of sales supplied to the ACCC).

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

- 4.3 The main competitors of Victa Lawncare are (details provided to ACCC).

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

- 4.4 In our view the main power garden equipment brands that currently compete with Ryobi are:

- (a) Black & Decker;
- (b) GMC;
- (c) Ozito;
- (d) Arlec;

- (e) McCullough;
- (f) Talon;
- (g) MTD.

4.5 The factors which contribute to these brands being in competition with Ryobi include the fact that they each produce a broad range of similar products to each other under well known brands, that they fall within similar price points and that distribution tends to be retailer focused rather than dealer focused.

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?

- 4.6 Obviously, if our ability to supply power garden equipment were significantly reduced this would have an enormous impact upon our revenue and ability to compete for the wholesale supply of power garden equipment.
- 4.7 A reduction in our ability to supply to Bunnings would likely significantly reduce our ability to continue to develop our brand and expand our range of product offerings by significantly reducing our brand exposure, sales and revenue. There is no power garden equipment retailer in Australia who can move as much stock as Bunnings. Accordingly, any wholesale producer who is not supplying to Bunnings is necessarily a less significant competitor. Victa Lawncare is not an international company and therefore would not be able to counterbalance such a significant reduction in sales in Australia through international operations. Similarly, the current value of the Australian dollar is not conducive to export. If we were no longer able to supply power garden equipment to Bunnings we would need to seek to expand our current pattern of distribution to smaller retailers outside of the Bunnings channel. This would likely significantly increase our distribution costs, if only by increasing the number of distributors we would need to deliver to.
- 4.8 Given that these impacts would also likely be experienced by other competitors of Techtronic, it is likely that a reduced ability to supply to Bunnings would decrease our and others' ability to compete with Ryobi and provide competitive constraint.

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

- 4.9 It is well recognised that Bunnings is a significant force in the Australian hardware industry, with a brand that has grown rapidly in recent years and is expected to continue to expand.
- 4.10 Based upon our experience, we estimate that Bunnings would have a share of around ...% of the power garden equipment segment. If the proposed exclusive dealing arrangement is undertaken, depending upon the breadth of the Ryobi product offerings, potentially ...% of the power garden equipment segment will be tied up in sales of Techtronic products. Accordingly, many existing manufacturers of power garden equipment, and presumably all new entrants to the manufacture of power garden equipment, may be denied access to up ...% of the market for sales of their products.

It seems inevitable that this would have a chilling effect on the capacity for producers to enter the market.

Submission on the likely public benefits and effect on competition, or any other public detriment, from the proposed arrangements.

- 4.11 The conditions outlined in the Bunnings notification are also unclear as to the effect of any expansion of Ryobi product offerings. For example, it is possible that Ryobi itself may seek to enter into new segments of the market. Indeed, we understand that a strategy of entering into exclusivity arrangements and rapid product expansion has driven much of Ryobi's recent international success. In North America, in a space of just five years, Ryobi went from being a small producer of cordless drills to one of the broadest and best selling product lines at Home Depot (the world's largest home improvement specialty retailer, with stores in all 50 states in the United States). It is apparent that part of this success is attributable to product expansion and exclusivity arrangements with Home Depot.
- 4.12 The impact of such a strategy on the Australian market would be greatly amplified by an exclusivity arrangement with by far Australia's largest hardware retailer. For example, although Ryobi does not currently produce lawnmowers it is conceivable that it would seek to expand into that segment in the future. There is nothing in the notification to suggest that the arrangement will be limited to current product offerings, indeed the Strategic Plan at Attachment B to the notification appears to assume that Ryobi will continue to expand and develop products. Accordingly, far from encouraging new entrants, it seems likely that as Ryobi's product offerings continue to develop, more and more competitor products will be deemed to be duplicative and acquisition of those products potentially discontinued by Bunnings.
- 4.13 The primary public benefit to be derived from the proposed arrangement is suggested to be increased availability of 'product support services' by Techtronic without a corresponding price increase of Ryobi products. The notification refers to the arrangement allowing Techtronic and Bunnings to provide customers with additional marketing literature to assist selection of appropriate products, product specific training for sales staff and 'in-store' training for customers who have purchased or are considering purchasing Ryobi tools. In the notification it is suggested that such product support services could not be provided by Techtronic at every retailer that it currently supplies to without considerably increasing the cost of distribution, and therefore increasing the cost to consumers.
- 4.14 However in our view, it seems likely that if the planned 'product support services' which Bunnings and Techtronic have valued at more than \$1million were genuinely of value to consumers, then sales of Ryobi products would increase with the introduction of the 'product support services' without the need for an exclusive dealing arrangement. Although Techtronic points to the prohibitive cost of introducing such 'product support services' at all of their current Ryobi retailers, we note that there is nothing to prevent it from introducing the product support services only at select retailers, such as Bunnings, and seeking to obtain the envisaged sales benefits without the need for an exclusive dealing arrangement. As we understand it the costs of introducing the 'product support services' at Bunnings (which have obviously been identified by Techtronic as being manageable) will be the same regardless of whether they are associated with exclusivity at Bunnings.

- 4.15 The Bunnings notification recognises that the proposed arrangement will be of detriment to the public by preventing the public from viewing a full range of power tools and power garden equipment side by side in Bunnings stores, but suggests that this detriment is limited in that the public will still be able to access and view alternative products at other retailer stores. Proposed conditions 1 to 3 will have the effect of ensuring that there are no distributors or retailers of Ryobi power tools and garden equipment offered at Bunnings anywhere other than Bunnings. This will completely remove intra-brand competition in terms of the pricing of Ryobi products. This lack of a comparator price for the retail of Ryobi power tools and power garden equipment will limit any incentive for Bunnings and Ryobi to continue to price Ryobi products competitively.
- 4.16 It seems unlikely that this reduction in intra-brand competition will be offset by increased inter-brand competition to nullify its public detriment. Rather, it appears that the removal of some or all competitor products from Bunnings shelves contemplated in condition 4 will also reduce inter-brand competition. The degree to which this decrease in competition is mitigated by the availability of competitor products at other retailers becomes significantly smaller when considered in the context of Bunnings being by far the largest hardware retailer in Australia, and estimated to be responsible for ...% of sales of power garden equipment.
- 4.17 In our view there is also a real risk that a reduction by Bunnings of duplicative competitor products will significantly impact upon manufacturers of power tools and power garden equipment, many of whom rely heavily on sales to Bunnings stores to make up a large piece of their revenue. The offer of customer training limited solely to Ryobi products may also discourage customers from purchasing those competitor products which Bunnings chooses to retain, further reducing sales of those remaining products. It is difficult to see that increased product support for power tools and power garden equipment is a public benefit of enough weight to counter the significant public detriment that would arise were competitors of Techtronic forced to reduce product offerings as a result of reduced sales.