



Australian
Competition &
Consumer
Commission

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Our Ref: N93197
Contact Officer: Louise Hird
Contact Phone: 03 9290 1484

21 January 2008

Scott Buchanan
Director
Buchanan Law
GPO Box 579
Canberra ACT 2601

Dear Mr Buchanan

Exclusive dealing notification N93197 – MIBroadband Pty Ltd (Engin)

I refer to the above notification lodged with the Australian Competition and Consumer Commission (the ACCC) on 1 November 2007 and your correspondence with Kate Michalak of this office in relation to the notification.

Engin has described the notified conduct as Engin requiring appointed dealers to obtain their requirements for Engin Hardware only from Engin or otherwise from authorised distributors being entities that have been pre-approved by Engin.

As you are aware, the ACCC may act to remove the immunity afforded by a notification in relation to third line forcing conduct if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

The purpose of this letter is to inform Engin that the ACCC has some concerns regarding the notified conduct and to provide Engin with an opportunity to comment on or address these concerns.

Please note that the ACCC has not reached a concluded view in relation to the notified conduct and is seeking this additional information to assist its consideration of the notification.

In its notification Form G, Engin states that at present only one distributor has been authorised by Engin to distribute Engin hardware to dealers. Engin further states that if other

distributors are able to consistently meet its technical requirements, functionality and reporting standards with respect to its hardware, then Engin would consider expanding its network of authorised distributors to such other companies.

[REDACTED]

[REDACTED] I note that while Engin states that it would consider expanding its network of authorised distributors if other distributors are able to meet its requisite standards, it does not appear that Engin's testing standards are readily accessible to other VoIP equipment suppliers.

[REDACTED]

Engin submits that the notified arrangements will not generate any significant anti-competitive detriments as:

- End-users are able to use their own third party hardware and it is not a condition of becoming an Engin customer that the customer uses Engin hardware; and
- Engin's arrangements with dealers do not preclude them from supplying and promoting products and services offered by Engin's competitors.

While I note that customers are not restricted in sourcing hardware from third parties by the notified arrangements, VoIP broadband phone services and VoIP equipment are highly complementary as both are required to operate the service. Further, customers, in many instances, will have a preference for purchasing complementary service and equipment components together. To the extent that this is the case, it would appear that Engin's VoIP broadband phone services and VoIP equipment supplied by authorised distributors are effectively a bundled product.

Consequently, the notified arrangements may place VoIP equipment suppliers (other than Engin's authorised distributor) at a significant disadvantage in competing to supply these services to Engin broadband phone service customers. In this respect, I note that Engin's website states that its share of the VoIP broadband phone service market within Australia is 44%.

Accordingly, to the extent that the notified arrangements affect the capacity for VoIP equipment suppliers other than Engin's nominated distributor to compete to supply these services to Engin customers, a substantial proportion of this market would seem to be affected. Limiting the customer base available to other distributors could in turn also impact on competition to supply remaining non-Engin customers, particularly in an emerging market such as that for VoIP equipment.

To assist the ACCC in its consideration of the notification, I request that you provide the following further information.

1. Details of how potential distributors are made aware of Engin's required technical, functional and reporting standards and afforded the opportunity to demonstrate to Engin that they meet these standards, with a view to being appointed as an approved distributor.

2. Has Engin at any time sought to expand its network of authorised distributors? If so, please provide details of distributors contacted and the reasons why they were considered unsuitable.
3. Have any distributors approached Engin seeking to be appointed as authorised distributors? If so, please provide details of distributors who have sought to be appointed as authorised distributors and why they were considered unsuitable.
4. Engin's view of the impact of Engin appointing a single distributor on the incentives for other potential suppliers to seek to compete to supply hardware in the broader market for VoIP equipment.

I would appreciate your response in relation to the matters raised by **cob Thursday, 31 January 2008.**

I note that some of the information contained in your response may be commercially sensitive. As you are aware you may request that commercially sensitive information included in your response not be placed on the ACCC's public register. However, the ACCC would expect that the majority of your response be placed on the public register.

Please find attached a version of this letter that I propose to place on the ACCC's public register. I have masked material provided by you that has previously been excluded from the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Louise Hird on 03 9290 1484.

Yours sincerely



David Hatfield
Acting General Manager
Adjudication Branch

