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Our Ref: SBM:LL 121233
Your Ref: 48923/M95877

29 June 2012

Adjudication Branch
Australian Competition &
Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

EMAIL: adjudication@accc.gov.au

Dear Sir

Notification N95877 lodged by Peter McInnes Pty Ltd & E & S Trading Co (Discounts) Pty Ltd

We act for E & S Trading and enclose an interested party submission on our client's behalf in relation to the above matter.

Yours faithfully
ADAMS MAGUIRE SIER



Shane Maguire

Encl.

Notification N95877 lodged by Peter McInnes Pty Ltd

Interested party submission lodged by E&S Trading Co (Discounts) Pty Ltd

E&S Trading Co (Discounts) Pty Ltd (*E&S Trading*) retails high end kitchen, bathroom and laundry appliances. It maintains five high quality shopfronts as well as an online store which is designed to mirror the physical stores in terms of availability of products and customer service. KitchenAid appliances are a significant product among the high end kitchen appliances which E&S Trading retails. As sole distributor of KitchenAid products in Australia, Peter McInnes Pty Ltd (*Peter McInnes*) is a significant market player in the market of high end kitchen electrical appliances.

E&S Trading has a large range of KitchenAid products, with the full range of colours, on display and available for purchase by their customers, as compared with a more limited range of products that other retailers maintain. E&S Trading is a significant retailer of KitchenAid products in Victoria through its stores, both online and physical. E&S Trading considers it likely that it is one of Peter McInnes' largest accounts nationally for KitchenAid products, certainly in the top ten.

By the Notification Peter McInnes has signalled its intention to control which retailers can compete in the online market for high end kitchen electrical appliances, as well as limiting the territory in which retailers can sell.

Purpose and/or effect of substantially lessening competition

E&S Trading is concerned that the purpose of the Notification is to prevent E&S Trading from retailing and discounting KitchenAid products in its online store. E&S Trading is also concerned that the effect of the Notification will be to prevent E&S Trading from having any KitchenAid products available in its online store. This in itself provides for a disconnect between E&S Trading's online store and physical stores. In addition, it will inhibit the competitiveness of E&S Trading in the online market for high end kitchen electrical appliances.

The Notification indicates that some retailers, or Peter McInnes itself, may be permitted to sell online while others will not. E&S Trading has invested considerable resources into a quality and full-service online store; it is not a no-name internet site offering no services. Its customers, whether attending one of its physical stores or using its online store, expect E&S Trading to have the full range of high end products available. E&S Trading also provide full customer service including product demonstrations, personal service and servicing of the products they retail, and provide those services equally to customers who have chosen to purchase online. E&S Trading also consider their online store as informative for prospective customers, who may then choose to come into a store to make their purchase and receive customer service.

E&S Trading has a sales strategy that includes discounting. It is aware, from its dealings with representatives of Peter McInnes, that Peter McInnes disapprove of the way that E&S Trading goes to market and would prefer that they maintained RRP. For example, E&S

Trading is of the view that Peter McInnes has been withholding marketing support from it and refusing it access to new ranges of products, despite the significance of E&S Trading as a retailer of KitchenAid products. E&S Trading is concerned that Peter McInnes intend to control the online market of KitchenAid products to exclude retailers with a policy of discounting.

Public Benefit vs Public Detriment

The ACCC has the objective of ensuring the digital and online economy produces the benefits of new and innovative competitors to challenge incumbents that it promises, and that this promise is not eroded by anticompetitive conduct.¹ Online retailing is a legitimate form of retailing and the proposed conduct would be an unwarranted restriction on the ability of retailers, such as E&S Trading, to participate in this market and of consumers who prefer online shopping.

In the Notification Peter McInnes has not cited any facts or evidence to support its claim that the proposed conduct of prohibiting some/all of its retailers from internet sales of KitchenAid products has a public benefit. E&S Trading is precisely the kind of high end speciality store with a shop front that Peter McInnes claims to be supporting by the proposed conduct, however E&S Trading has also committed to its online store and provides all the same services to customers who choose to purchase online.

The Productivity Commission, in considering the role that online retailing plays in providing consumers with greater choice, access and convenience, found that Australia lags behind a number of comparable countries in its development of online retailing.² The Commission expressed the view that government can assist Australian retailers to respond effectively to the challenges of an increasingly global retail marketplace by not unnecessarily constraining retailers' ability to adapt their business models in response to changing consumer preferences.³

If the entire range of one of E&S Trading's significant products, KitchenAid, is not available for online sales, E&S Trading would effectively be prevented from maintaining an online store that mirrors its physical stores, and thereby unable to provide full service to its customers who prefer to shop online for this type of product. The proposed conduct cannot be for the benefit of the public.

In the Notification Peter McInnes has conceded that limiting internet sales "*may reduce the accessibility of discounts on the kitchenware products distributed by Peter McInnes including, without limitation, KitchenAid*". E&S Trading is concerned that this will be the case and that, even if internet sales of KitchenAid products are not altogether abolished, the availability of discounted KitchenAid products online will be controlled by Peter McInnes.

¹ Rod Sims, Chairman, 2012 Competition Law Conference "ACCC priorities in enforcing competition law", 5 May 2012, Sydney.

² *Economic Structure and Performance of the Australian Retail Industry: Productivity Commission Inquiry Report* No.56, 4 November 2011, at iv and xiv (online at www.pc.gov.au)

³ *Ibid*, xxiv-xxv

This would have an impact on the price at which consumers, including those geographically remote from physical stores and those who prefer to shop online, are able to acquire KitchenAid products. If Peter McInnes is successful in controlling internet sales of KitchenAid products, E&S Trading is concerned that distributors of other high end kitchen electrical appliances may follow.