

Summary of submissions received on a confidential basis¹

Market analysis

- The Artisan mixer is a “must-have” product for a kitchen appliance retailer to stock in order to compete effectively in the relevant market(s). While there are currently a few other premium mixers available in Australia at a similar price range (over \$500), including Kenwood “kMix” stand mixer, Breville “Scraper Mixer Pro” and the Sunbeam Cafe Series “Planetary Mixmaster”, these brands account for a small proportion of high-end mixer sales relative to the KitchenAid Artisan mixer.
- Online distribution channels are a growing source of vigorous price competition in the supply of premium small appliances, especially in the past two or three years.

Notified conduct

- The notified conduct is a concern in an environment where online distribution channels are a growing source of vigorous price competition.
- The conduct, particularly the internet restriction, has the purpose and/or effect of substantially lessening competition in the relevant market(s). In particular, the purpose of the internet restriction is to:
 - prevent retailers from continuing to supply KitchenAid products via the internet; and/or
 - deter retailers from supplying KitchenAid products at a discount,so as to lessen the competition generated by online retailers in the supply of premium small kitchen appliance products.
- There should be objective criteria set out by the Applicant identifying defined standards that distributors must meet in order to become a distributor appointed to sell KitchenAid products online, such as certain levels of expertise, after-sales service etc. No such criteria or justification has been offered in the notification; rather, the applicant seems to justify the internet restriction on the basis that internet sales lead to lower prices.
- In all the circumstances the notified conduct is not likely to result in any benefits to the public. There is no evidence offered in the notification to explain how the notified conduct can:
 - improve price margins of bricks and mortar retailers of kitchen appliances;
 - impact on the general level of retailer service; and
 - result in a perceptible increase in employment levels in Australia.

¹ The ACCC notes that the views expressed in the summary of this submission are the views of the interested party.

Additional comments

- The internet restriction does not appear to constitute the kind of conduct referred to in the Form G and therefore immunity afforded to the Applicant from lodgement of the notification should not validly extend to the internet restriction.
- The notified conduct is inherently anti-competitive and should be tested under the cartel and exclusionary provisions in the *Competition and Consumer Act 2010*.
- The interested party is of the view that, due to the “must-have” nature of KitchenAid products the Applicant is likely to have a substantial degree of power as a result of its position as exclusive distributor of KitchenAid products in Australia. By engaging in the conduct the Applicant would be taking advantage of that power for the purpose of deterring or preventing retailers from supplying via the internet KitchenAid products and/or discounting them.