

Summary of submissions received on a confidential basis¹

- The notification should be revoked because the online sales prohibition is likely to substantially lessen competition in the markets in which the Applicant supplies products. This will be to the detriment of consumers who will face higher prices than they presently do for these products. There is no public benefit from the proposed prohibition and real consumer detriment both in the form of higher prices as well as discouraging bricks and mortar retailers from using the internet as a means of enhancing and supplementing their bricks and mortar offering.

Market analysis

- The market is not the market for kitchen products and appliances because, for example, mixers and dinnerware are products which have significantly different functions and are incapable of performing each other's respective functions.
- KitchenAid products are at the upper end of a premium product segment within the market for food preparation products and consumers shopping in this segment do not regard products in the mid or entry segments as substitutable. In relation to KitchenAid products:
 - The products have a unique 'retro' look which, combined with their reputation for superior quality, gives the KitchenAid brand a very strong consumer following.
 - The only food preparation products which consumers would truly regard as substitutable for KitchenAid products in terms of premium design and quality are Kenwood products. However, Kenwood products have quite a different look to KitchenAid products, which means that for consumers who place importance on the particular retro look of the product they are not substitutes.
 - Even within the KitchenAid range, certain models or colours such as Candy Apple Red are regarded by customers as more desirable and in certain circumstances not substitutable for any other model or colour.
- In contrast, the mid segment of the food preparation product market includes products from a variety of brands including Breville, Sunbeam, Cuisinart and Phillips. Consumers are likely to be influenced by brand loyalty in this market segment but will still regard products as comparatively substitutable.
- In relation to the online environment, note the Productivity Commission's December 2011 report on *Economic Structure and Performance of the Australian Retail Industry* that found consumers are attracted to online shopping for three main reasons: lower prices, convenience, and a wider range of goods to choose from. Online retailing is an inevitable reality to which Australian retailers must adapt.

Notified conduct

- The online sales prohibition will inhibit the ability of many retailers of KitchenAid products to compete to sell KitchenAid products to consumers by, for instance, limiting the ways the retailers can communicate with the consumer about the brand

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

and product; and reducing the ways in which the consumer can ultimately purchase the product.

- There is likely to be reduced competition as the presence of fewer online retailers weakens the competitive constraints on existing bricks and mortar and online retailers, resulting in less discounting and a dampening on the incentives for retailers to invest in innovative ways to better use the online environment to improve consumers' shopping experiences.
- KitchenAid products will presumably continue to be available from overseas based retailers. Accordingly the proposed arrangements will prevent consumers being able to purchase from domestic online retailers while having no effect on lower-priced international sales. The interested party submits that encouraging the development of online retailers – whether by implementing bricks and mortar/online solutions ('omni-channelling'), or by enabling 'pure play' online retailers – is beneficial to consumers and to the public.
- The purported purpose of the online sales prohibition, to protect and promote bricks and mortar speciality stores, is not supported by any factual information or analysis as to the reasons why these stores need protection, the way in which the prohibition is intended to provide that protection or why such protection is in the public interest.
- Although the intention of the notified conduct may be to control, rather than prohibit, internet sales, it will result in a reduction in the availability to consumers of KitchenAid products online and a reduction in the competitive constraints on bricks and mortar retailers, particularly with respect to pricing. This will result in consumers paying more for KitchenAid products in Australia.