

6 November 2014

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COMMERCIAL-IN-CONFIDENCE

Dr Richard Chadwick
General Manager - Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
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Dear Dr Chadwick

Tooltechnic application for authorisation – Response to Draft Determination

We refer to the draft determination issued by the Australian Competition and Consumer Commission on 21 October 2014 in respect of the application lodged by our client, Tooltechnic Systems (Aust) Pty Ltd (**Tooltechnic**) for authorisation (A91433) (**Draft Determination**).

Our client welcomes the Commission's proposal to grant conditional authorisation for Tooltechnic to engage in resale price maintenance.

Tooltechnic would like to make submissions to the Commission in response to the Draft Determination. We have set out our client's submissions in this letter which deal with three aspects of the Draft Determination.

Length of authorisation

The Commission has proposed to grant authorisation for a period of three years. In its application for authorisation, Tooltechnic sought authorisation for five years. Our client is concerned that three years may not be sufficient time to be able to demonstrate to the Commission the extent of the benefits that can flow from the authorisation.

The principal reason for this is that the changes Tooltechnic wishes to implement post-authorisation are time and resource intensive. Some of those changes are set out below.

- *New dealer agreements*: the roll out of a new dealer agreement (provides for minimum retail prices and other changes such as [REDACTED]) will take some months. This involves Tooltechnic developing a new dealer arrangement, drafting of a new dealer agreement, communicating with dealers about the new arrangement and coordinating the execution of the new dealer agreements across the dealership. Tooltechnic expects this process will take at least [REDACTED] months and that the new dealer agreements will commence on [REDACTED].

- *Increase in training:* Tooltechnic proposes to provide additional training opportunities for dealers who will be more incentivised to undertake training due to resale price maintenance and training requirements under the new dealer agreement. This requires Tooltechnic to build up its capacity to provide increased training by hiring and up-skilling additional trainers and establishing additional training facilities.
- *New premium shops:* Tooltechnic will require additional capacity to install premium shops in order to meet an expected increase in dealer requests to become a premium dealer. The installation of a new premium shop costs Tooltechnic approximately [REDACTED] and requires an investment of three Tooltechnic staff over a period one week to install. Similarly, Tooltechnic expects to receive interest from new businesses wishing to become Festool dealers and Tooltechnic needs to build staff capacity to train and support new dealers.
- *Performance management of current dealers:* the transition to the new dealer agreement may see some dealers failing to satisfy new performance criteria. This requires Tooltechnic to invest time and resources to monitor performance and then give dealers sufficient time to improve their performance before taking any further enforcement action. Tooltechnic will need extra staff or reallocate staff resources to manage the end of any dealerships.

Our client consider that these changes will take approximately 12 months to implement. The following two years will also involve some degree of change as Tooltechnic may make adjustments to the new dealer arrangements depending on the outcomes achieved. Tooltechnic believes that the benefits from authorisation will not become apparent until at least one year after the commencement of the new dealer agreement. This is likely to be around [REDACTED] which will give Tooltechnic a period of [REDACTED] to demonstrate to the Commission the effectiveness of resale price maintenance.

From the dealers' perspective, there will also be a transition period of about 12 months during which the dealers will:

- familiarise themselves with the new agreement which will only be communicated to them in March 2015;
- determine the extent to which they will participate in the new initiatives and implement those initiatives some of which may take time. For example, setting up demonstration and repair facilities in-store, improving displays or increasing floor space dedicated to Festool products;
- decide whether to become a premium shop and arrange for the installation of the premium shop;
- new dealers will also require time to establish themselves as a Festool dealer;
- current and new dealers will need to raise finances to make any such investments; and
- if a dealer decides not to continue as a Festool dealer due to a limited ability to compete with other dealers in respect of retail services, then they will require time to transition out of the dealership.

Tooltechnic anticipates changes in the composition of the Festool dealership and the dealer types which it expects will settle in early to mid 2016. If the period of authorisation ends in December 2017 as proposed by the Commission, this gives dealers less than two years of certainty in relation to margins from the investments made during the transition phase (subject to re-

authorisation). Tooltechnic is concerned that this does not provide sufficient certainty for dealers and may deter them from making the types of investments described above during the transition phase. The incentive to invest in retail services would drop again during the second year of authorisation as dealers would only have one year in which to make returns on their investment (subject to re-authorisation). Therefore, our client is of the view that the improvements in retail services flowing from the authorisation will not be as significant during a three year authorisation compared to a longer period of time.

For the reasons outlined above, Tooltechnic submits that the period of authorisation should end on the date that is at least four years after the 'Commencement Date', or 1 June 2015, whichever is earlier. 'Commencement Date' is defined in Attachment B of the Draft Determination as the date on which Tooltechnic first requires any of its dealers not to sell any Festool product below a specified price.

Reporting Period

Under the proposed conditions of authorisation, Tooltechnic is required to provide a report to the Commission with information relating to each 12 month period that occurs during the authorisation. This 12 month period is referred to as the 'Period' in the Draft Determination and is defined as being *'each 12 month period ending 31 December each year, commencing with the period ending 31 December 2015'*.

Our client submits that the definition of Period should be replaced with *'each 12 month period commencing on the Commencement Date'*. This will provide a more accurate picture of the impact of authorisation to the Commission.

This submission is made regardless of whether or not the Commission agrees with our proposal regarding the length of the authorisation.

Reporting on complaints

The proposed condition 1(b)(ix) of the authorisation requires Tooltechnic to provide details of any complaints received from customers or dealers in relation to Festool products.

Some complaints received by Tooltechnic can be trivial and easily remedied by Tooltechnic (eg. Festool product has been boxed without a manual) or relate to the performance of the Festool product itself. These matters do not provide any insight into changes in pricing behaviour or service levels provided by dealers.

To reduce the compliance costs, Tooltechnic submits that the condition should be amended to refer to *'complaints received from customers or dealers in relation to the pricing of Festool products or services provided pre or post the sale of Festool products'*.

If you have any queries or would like to discuss our submission, please contact Geoff Carter on 03 8608 2090.

Yours faithfully

MINTER ELLISON

A handwritten signature in black ink, appearing to read 'Geoff Carter', written in a cursive style.

Geoff Carter

Partner

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