

Blanch, Belinda

From: Steve Lugge <steve@elpower.com.au>
Sent: Friday, 9 October 2015 3:19 PM
To: Kelly, Theo
Cc: Griffin, Luke; Chadwick, Richard; Paul.Anderson@turkslegal.com.au; David.McCrostie@turkslegal.com.au; 'Andrew Cooper'
Subject: RE: Notification of Exclusive Dealing N98399 & N98400 granted in favour of Gerard Lighting Pty Limited [SEC=UNCLASSIFIED]

Hi Theo,

After viewing the response dated 23/9/15 from Gerard Lighting to the Elpower submission we see there are two core issues:

Issue 1:

Market Definition

The Market has not been defined by Elpower. In fact, it was defined by Gerard's in the original Notification of Agreement to the ACCC in *Point 2. Notified Arrangement* where it clearly specifies "*Magnetic Lighting Control Gear*" and NOT Magnetic and Electronic Control Gear as the market. They reiterate this approach in their response dated 23/9/15. CMP does not manufacture or sell electronic lighting control gear. Therefore, the definition of the market affected must be Magnetic Lighting Control Gear.

Contrary to Gerard's assertion in point 12 that the agreement only applies to two thirds of the Magnetic market, the 2 sub markets of wholesale/resale and OEM will be split between both the named parties to this agreement. Wholesale/resale will be exclusively Gerard Lighting (which using Gerard's quoted figure is 65.7% of the market) and OEM will be exclusively CMP (as the agreement precludes CMP selling to Elpower or any other reseller). This gives the 2 named parties a combined market share of between 70 to 80% as previously stated in our submission.

Issue 2 and most importantly

5. The ACCC may give notice to the corporation that the conduct is not approved if:

5.1 it is satisfied that the conduct has the purpose or effect of substantially lessening competition; and

In relation to point 11, Elpower can document sales of CMP magnetic control gear of around \$4 Million per year to both the wholesale/resale and OEM markets. That figure is combined with Gerard's sales of \$2-3 Million (point 9). If they purchased \$1.8 million dollars from CMP, then sales by Gerard's must be no less than \$2-3 million which accounts for \$6-7 million in sales (70%) in a market we estimated at \$8-10 Million (and Gerard have not disproved the magnetic market size).

As we are predominantly a reseller of product not an OEM (and the agreement precludes CMP selling to Elpower or any other reseller), then this deal will transfer the majority of our \$4 million share to either Gerard or CMP (both named parties of the agreement) and eliminate the possibility of a customer getting a price from Elpower. The result must, therefore, "substantially lessen competition."

5.2 in all the circumstances,

(a) there is no benefit to the public; or

(b) any benefit to the public is outweighed by the detriment to the

public constituted by any lessening in competition.2

Any argument by Gerard and CMP that “*prices will continue to fall*” (13.1) is completely undermined when within 6 weeks of the ACCC allowing the deal to proceed the market has been advised of a CMP price rise of 14-22% (as per my email dated 23/9/15). Where are the claimed cost savings promised by this deal? In fact, the opposite is true. The reduced competition has allowed CMP to substantially increase prices at a time when the cost of the raw materials that make up the bulk of the cost for these items is demonstrably going down! (also see my email dated 23/9/15).

If all the hypothetical competition Gerard and CMP suggest in point 13 is actually in the market, how would such a price rise be possible?

I strongly suggest that both 5.1 and 5.2 are clearly proven by these actions and again urge you to reverse your approval.

Kind Regards,
Steve Lugge
Director
Elpower Pty. Ltd.