

20 March 2019

Mr David Jones
The General Manager
Adjudication Branch
Australian Competition & Consumer Commission

by email: adjudication@accc.gov.au

cc: joanne.palisi@accc.gov.au

Dear Mr Jones

Mustad Australia Pty Ltd: notification of exclusive dealing

I act for Mustad Australia Pty Ltd (MAU), which hereby lodges a notification in relation to exclusive dealing.

In support of MAU's notification, please see the following attachments:

- MAU's completed Form concerning its notification of exclusive dealing, including a signed declaration;
- a *public version* of MAU's supporting information, data and documents (being the **Annexure**);
- a *confidential version* of the Annexure;
- a separate letter concerning the confidential version, outlining MAU's claims for confidentiality in respect of certain sections of the Annexure; and
- proof of payment in the amount of \$2,500 in respect of the required fees.

If you have any questions in relation to this notification, please do not hesitate to contact me on 0432 942 098 or by return email.

Kind regards,



Alexandra Merrett
Competition Lawyer
Att

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic). Liability limited by a scheme approved under Professional Standards Legislation.

Notification for exclusive dealing

**made under section 93 of
the Competition and Consumer Act 2010 (Cth)**

by Mustad Australia Pty Ltd

20 March 2019

Notifying party

1. The **notifying party** is:
Mustad Australia Pty Ltd (**MAU**)
ACN 096 741 285
10 Willomavin Road, Kilmore VIC 3764
Phone: 03 5734 3536
2. The **contact person** is:
Alexandra Merrett
alexandramerrett@bigpond.com
0432 942 098
3. MAU's **business activities** principally involve the importation, wholesaling and – in Victoria and more recently New South Wales – distribution and retailing of Hoofcare Products. These products essentially comprise horse shoes, nails, farrier tools and therapeutic products. MAU's operations also include an online retail store for Hoofcare Products.
4. MAU has operated three retail equestrian businesses (the **3 Saddleworld Stores**), located in Geelong and Kilmore (in Victoria) and North Richmond (in New South Wales). These businesses sell saddles, bridewear, rugs, riding boots and clothes (including hats and helmets), tack room equipment and general riding accessories. They form part of the broader Saddleworld franchise group of independently owned and operated retail saddlery stores: see at www.saddleworld.com.au.
5. This notification has been triggered by MAU's pending sale of the 3 Saddleworld Stores, and the subsequent supply arrangements which have been proposed in relation to those stores.
6. The appropriate email address for the service of documents relating to this notification is: alexandramerrett@bigpond.com

Details of the notified conduct

7. This notification relates to **exclusive dealing**.
8. By way of a Business Sale Agreement dated 23 December 2018, MAU agreed to sell the 3 Saddleworld Stores (in the form of an asset sale) to EQ Saddleworld Pty Ltd (**EQS**).
9. As part of this broader arrangement, MAU and EQS propose to enter into an Exclusive Distribution Agreement.
10. Pursuant to the Exclusive Distribution Agreement:
 - 10.1. MAU will supply Hoofcare Products to EQS; and

- 10.2. EQS will not acquire Hoofcare Products from a competitor of MAU.
11. Meanwhile there is no restriction on MAU's ability to supply Hoofcare Products to other parties.
 12. Please refer to the Annexure for further information.
 13. **The rationale for the notified conduct:** please refer to the Annexure.
 14. **The time period relevant to the notified conduct:** please refer to the Annexure.
 15. **Documents submitted to the board or prepared by or for senior management in relation to the notified conduct:** please refer to the Annexure.
 16. **Names/classes of persons who may be directly impacted by the notified conduct:** please refer to the Annexure.

Market information and concentration

17. **Describe the product/services supplied, the degree of overlap etc:** please refer to the Annexure.
18. **Describe the relevant industry and sales process/supply chain etc:** please refer to the Annexure.
19. **Provide estimated market shares:** please refer to the Annexure.
20. **Describe the competitive constraints:** please refer to the Annexure.

Public benefit

21. Please refer to the Annexure.

Public detriment including any competition effects

22. Please refer to the Annexure.

Contact details of relevant market participants

23. Please refer to the Annexure.

Any other information

24. Please refer to the Annexure.

Declaration by notifying party

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Solicitor on behalf of the Notifying Party

Office held

Alexandra Merrett

(Print) Name of authorised person

This 20th day of March 2019.

ANNEXURE

Details of the notified conduct

25. As noted in the body of the accompanying Form, this notification relates to **exclusive dealing**.
26. Further to the Business Sale Agreement between and EQS, MAU will hold a [REDACTED] interest in EQS, with the remaining [REDACTED] to be held by EQ Holdings Co Pty Ltd (ACN 628 713 575). In consequence, therefore, MAU will retain a [REDACTED] interest in the 3 Saddleworld Stores (and any further retail stores opened by EQS).
27. The Exclusive Distribution Agreement which prompts this notification is a condition precedent to the broader transaction (which is scheduled for completion in late March). Consequently, the terms of the Exclusive Distribution Agreement, including the notified conduct, cannot be divorced from the broader context.
28. A draft version of the Exclusive Distribution Agreement is attached as a Schedule to this notification.
29. The exclusive dealing components of the agreement are set out in clause 2, which provides that:
 - 29.1. MAU will supply Hoofcare Products to EQS during the Term; and
 - 29.2. EQS will not acquire Hoofcare Products from a competitor of MAU.
30. Meanwhile there is no restriction on MAU's ability to supply Hoofcare Products to other parties.
31. [REDACTED]
32. [REDACTED]
33. The **rationale** for the overall arrangement is to allow MAU to return its focus to its wholesaling and distribution operations, whilst maintaining an interest in retail

operations. In the parties' view, however, those operations are best managed by someone with a specialist focus on retail. For this reason, the principal shareholder of EQS, EQ Holdings Co Pty Ltd, is ultimately owned by parties with extensive retail experience, although none which specifically relates to Hoofcare Products.

34. The **following classes of persons are likely to be impacted** by the notified conduct:
- 34.1. customers of the 3 Saddleworld Stores: in essence, nothing will change for such customers as the 3 Saddleworld Stores will continue to carry the stock they currently carry as members of the MAU group; and
- 34.2. competing suppliers of Hoofcare Products: again, little will change for such parties. They currently do not (or only to a limited extent) supply to the 3 Saddleworld Stores, again because these stores are existing members of the MAU group.
35. There are no **documents** which were submitted to MAU's board or prepared by or for the notifying party's senior management for the purposes of assessing or making a decision in relation to the notified conduct, nor any minutes or record of the decision made

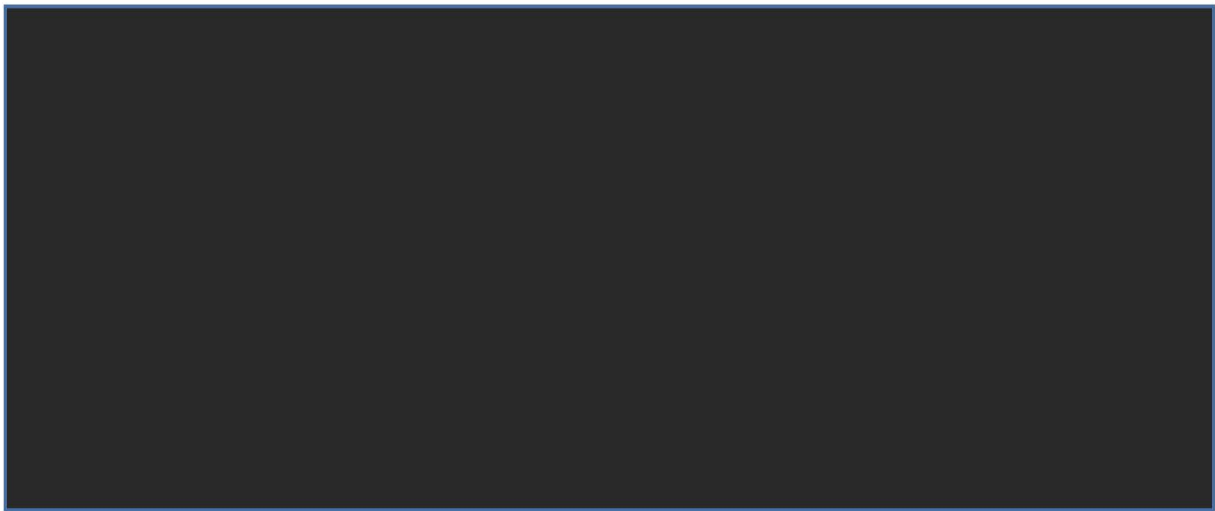
Market information and concentration

36. The products/services supplied, including the extent of any overlap between the notifying parties are explained elsewhere in this document. See in particular paragraphs 3-5 of the accompanying Form and paragraph 33 of this Annexure.
37. [REDACTED] The relevant markets in which MAU operate are quite mature [REDACTED].
38. [REDACTED] there are **two principal markets** affected by the notified conduct:
- 38.1. a wholesale/distribution market for Hoofcare Products in Australia; and
- 38.2. state-based retail markets for the same products. In this case, Victoria and New South Wales are the relevant states.
39. Note that, following the commencement of the notified conduct (and its ancillary arrangements), MAU will continue to operate within the wholesale/distribution market, with a very small presence in retail. This presence will be confined to MAU's online retail business, as discussed below.
40. EQS (other than via the MAU shareholding) has, of course, no current presence in either market. Upon commencement of the notified conduct and ancillary arrangements, it will be active in the retail markets only.

41. [REDACTED] independent data regarding market shares is not available. [REDACTED]
[REDACTED]

Wholesale market

42. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Retail markets

43. In relation to the 3 Saddleworld Stores:
- 43.1. the two Victorian stores generate annual turnover in the range of [REDACTED], of which [REDACTED] relates specifically to Hoofcare Products. The total market in Victoria is estimated to generate around [REDACTED] annually, with the other major competitor being JC Milton;
- 43.2. in FY18, the Sydney retail store achieved turnover of [REDACTED], of which [REDACTED] related to Hoofcare Products. Note, however, that included sales to resellers/B2B amounting to [REDACTED] – MAU will continue to service such customers following entry into the sale of the 3 Saddleworld Stores. JC Milton and Horseshoe Express are the major competitors.
44. In relation to online retail sales, MAU's annual turnover is in the range of [REDACTED] (of which Hoofcare products account for [REDACTED]). There are several alternative online suppliers, including JC Milton, Stockmans Supplies and farriershop.com.au
45. **Competitive constraints** remain largely unchanged over recent years. In short, barriers to entry and expansion remain low, and retailers have significant countervailing power. MAU notes that [REDACTED] more products have entered the market, resulting in increased competition in several key product categories, particularly nails and shoes.

46. Given the nature of this entire transaction (with MAU effectively stepping back from a frontline retail role, by transforming its existing interests into a somewhat different form), there should be no substantive change to any such constraints.

Public benefit

47. The public benefit likely to result from the notified conduct will be in the form of the continuation of the efficiency benefits that derive from vertical integration while the parties adjust the exact form of that vertical integration. Effectively, the elimination of double marginalisation (as typically achieved by vertical integration) will largely continue. Additional benefits include: reduced transaction costs, security of supply, known consistency of quality, and the cost benefits typically associated with volume-based purchasing.
48. As the notified conduct must be viewed in the context of the broader transaction, consumers will also benefit from an experienced retail focus, with EQS better able to deliver an effective customer experience.

Public detriment including any competition effects

49. The exclusive supply arrangement replicates the current reality of the market: the 3 Saddleworld Stores currently source Hoofcare Products exclusively from MAU, while MAU remains able to supply third parties. Accordingly, there is no detriment that is likely to result from the notified conduct, particularly in relation to its effect on competition.

Contact details of relevant market participants

50. The ACCC is referred to the information provided in [REDACTED].

Any other information

51. The information set out in 2005 notification (as referred to in the body of the accompanying Form) was relevantly updated during the course of [REDACTED].

SCHEDULE

Draft Exclusive Distribution Agreement

Confidential