

Submission

Comments regarding consumer impact –

Determination of Application for authorisation A91433 lodged by

Tooltechnic Systems (Aust) Pty Ltd in respect of resale price maintenance

Date: 5 December 2014 Authorisation number: A91433. Implemented April 1, 2015

Introduction

On December 5th, 2014 the ACCC determined an exemption that Tooltechnic Systems (Aust) Pty Ltd could introduce resale price maintenance for Festool products it imports in to Australia.

Regardless of whether these recommendations are implemented, wholesalers, importers and manufacturers, should now carefully consider whether they would benefit from an authorisation to set minimum resale prices for particular products. As the Tooltechnic authorisation has shown, this option may be particularly appealing to wholesalers of products that are easily sold online or by discount retailers that undercut the investment in services provided by other retailers. Opinion - Landers and Rodgers Lawyers.¹

The granting of this application sets a precedent for other tool wholesalers and distributors to make application to the ACCC. It is the competitiveness of the Australian power tool market that has benefited both retailers and consumers. If resale price maintenance was to be the norm across the industry, costs to consumers and consequently building and construction costs would consequently rise.

In reaching its Determination, during the consultative process the ACCC appears not to have consulted with Festool consumers.² Looking at the list of parties making submissions to the ACCC one finds none from Consumers.³ We note three submissions were from non Premium Festool Dealers, two from Tooltechnic Systems (Aust) Pty Ltd [Tooltechnic], and after the Determination two more from Tooltechnic.

The ACCC should have surveyed a sample of Tooltechnic customers. Was the opinion of consumer advocacy groups such as CHOICE or building and construction, joinery and furniture and other trade organisations sought? In an international Festool social media forum, the thread 'One for the Aussies' has contained continued criticism regarding the implementation of this Determination.⁴

Prior to the Determination there were attempts by Festool, both in Australia and in Europe to implement vertical fixed pricing/resale price maintenance.

- On the 21st of March 2007 The Federal Court of Australia ordered a penalty against Tooltechnic the importer of Festool power tools, for resale price maintenance. Justice Kiefel in the Federal Court, Brisbane made the orders by consent in proceedings instituted by the ACCC. The court declared that Tooltechnic engaged in resale price maintenance in 2001 and 2002, granted injunctions for three years against similar conduct and ordered the company to pay the ACCC costs of \$25 000.⁵
- Festool in the UK, trading as TTS Tooltechnic [a separate company identity to Tooltechnic Systems (Aust) Pty Ltd] was fined 8.2 Million Euros in August 2012 for vertical price fixing.⁶ Consequently Festool products in the UK now have a non binding recommended price and can be price discounted by Dealers.

¹ <http://www.landerson.com.au/publications/competition-and-consumer-law/accc-grants-first-ever-authorisation-for-resale-price-maintenance/#implications>

² Determination, Consultation, Page 5.

³ <http://registers.accc.gov.au/content/index.phtml/itemId/1179445/fromItemId/401858/display/submission>

⁴ Festool Owners Group (FOG), One for the Aussies –

<http://festoolownersgroup.com/festool-sales-dealer-area/one-for-the-aussies/390/>],

⁵ Australian Trade Practices News, Issue 589, July 2007 <http://www5.cch.com.au/atp/atp589.html>

⁶ http://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2012/20_08_2012_Festool.html

*The key issue here is the apparent incentives facing Tooltechnic. With only a small share of the market, needs to judge whether higher service levels are more important in attracting sales than lower prices. If the expected increase in services and sales does not eventuate, the Proposed Conduct is not likely to be profitable and hence in Tooltechnic's continued interest.*⁷

*But if RPM raises retail prices to finance enhanced service, and if that service is more valuable to some consumers and less valuable to others, the result may be that some consumers gain when RPM is imposed while others lose.*⁸

We propose that despite fixed resale price maintenance since the Determination, there has been little realistic improvement in consumer services nor expansion of the Australian Premium Dealer network. And despite the Determinations objectives, the current level of consumer warranty service in Australia through Festool All Inclusive is below the standards offered to Festool consumers in Germany, the United Kingdom [UK] and the United States [US].

Dealer Network

*One or two Premium dealers are heavy discounters, some have occasional storewide sales once or twice a year, and others do not run regular discount promotions but may price match or provide a discount for a large purchase.*⁹

This statement does not suggest that discounting of Festool products in Australia was widespread - *One or two Premium Dealers*. Tooltechnic and the ACCC believed the granting of this exemption would strengthen the Festool Dealer network as Tooltechnic believed Internet sales were the main form of discounting.¹⁰ Consequently Tooltechnic proposed to the ACCC that if the Determination was not granted it would have to prevent/ban dealers from Internet sales, keeping such sales exclusively to itself.

Tooltechnic also submitted that dealers involved in discounting were not providing a quality retail experience. . . , *some dealers have been identified by Tooltechnic as providing lower quality retail services despite achieving high rebate levels as the dealers' poor services were not captured by the quality standards in the dealer contracts.*¹¹ None of the three dealers who made submissions on behalf of Tooltechnic to the ACCC were then, or indeed are now listed as Premium Dealers.^{12 13} We also note :

- Tooltechnic continues to compete against its own dealers through its own internet sales and offering free delivery for sales over \$500.^{14 15} Some Dealers have responded through Internet sales and free freight deals on any sale, but their competitive edge remains in how they offer personal customer service.¹⁶
- There is social media evidence and personal experience by two of this Submissions signatories to suggest that a Melbourne Festool Premium Shop involved in discounting was providing high quality customer experiences such as trained staff, customer focused service and retail demonstrations prior to the Determination.¹⁷

⁷ Determination, point 147, page 24]

⁸ Kenneth G. Elzinga and David E. Mills* - THE ECONOMICS OF RESALE PRICE MAINTENANCE. http://people.virginia.edu/~kge8z/publications/resale_price_maintenance.pdf

⁹ Determination, paragraph 11, page 2!

¹⁰ Determination, paragraph 76, page 12.

¹¹ Determination, paragraph 68, page 11.

¹² <http://registers.accc.gov.au/content/index.php/itemId/1179445/fromItemId/401858/display/submission>

¹³ http://www.festool.com.au/epages/tooltechnic.sf/en_AU?ObjectPath=/Shops/tooltechnic/Categories/Dealers/Premium_Shops

¹⁴ https://www.festool.com.au/epages/tooltechnic.sf/sec74c6d22c1c/?ObjectPath=/Shops/tooltechnic/Categories/Services_Support/Shipping_and_Delivery

¹⁵ Tooltechnic asks its online customers to specify a Dealer, but this is to facilitate tool drop off to a Dealer if Warranty Repairs are required.

¹⁶ <http://justtools.com.au/festool-eccentric-sander-571816-ets125eq-plus-aus>

¹⁷ Festool Owners Group – One for the Aussies

Premium Shops and Partner Plus

*So long as the margin between the minimum retail price and the wholesale price is sufficient, more retailers are likely to become full- service retailers.*¹⁸

Since the determination smaller Festool Dealers have remained Partner Plus Dealers. Larger Capital City Dealers have remained Premium Dealers. As in the past, Premium Dealers are expected to stock the full Festool range. Before the Determination, smaller dealers stocked popular sale items or specialised in certain trades such as automotive body repair. We see no change in sales services offered in general by Partner Plus Dealers.

There has been no increase in the number of Premium Dealers in Sydney and Melbourne, no net gain in Adelaide and there remains one Premium Dealer each in Brisbane, Hobart and Perth. Despite the Determination's aims in increasing *full service* dealers as yet there has been no over all increase in Premium Dealerships.

Customer Service

Are Festool Tools Unique?

*Not all products or all premium products require a high level of services in order to be sold to customers. In many circumstances, customers are able to assess the attributes of products for themselves without the need for any prolonged or significant interaction with sales staff. Tooltechnic has submitted, however, that the provision of retail services is essential to its distribution model. Tooltechnic is particularly concerned that a variety of pre-sales services are needed in order to communicate the unique features of the Festool range, in particular its specialised functionalities, high durability and complex integrated systems. Tooltechnic submits that these features are not obvious to customers.*¹⁹

We believe that the majority of Festool products are not sufficiently unique to *require a high level of services in order to be sold to* [professional and experienced DIY/Hobbyist] *customers*. What is unique is the higher quality of the Festool product, not necessarily its basic function for use by the professional tradesperson or experienced DIY/Hobbyist. The inexperienced DIY/Hobbyist watches lifestyle programs, goes to big hardware chain stores and seldom purchases any brands mentioned in this submission.

If Tooltechnic believes that pre-sales services are *needed in order to communicate the unique features of the Festool range*, why then does it promote its own internet sales, or allow dealers to similarly sell Festool products on line?

We do not have access to Tooltechnic's Festool sales figures but we suspect the popular tools include the Rotex 150 Sander, TSC55 and TS55 Req Track saws, Kapex Compound Saw, Planex Plaster Sander and Domino 500. With the exception of the Domino all of these tools have equivalent tools in purpose and basic operation made either by Metabo, Bosch, Makita or DeWalt. These companies, like Festool, manufacture and distribute appropriate dust extractors. These companies do not have price maintenance in Australia. In many cases their tools are sold by the very same Dealers who sell Festool.

Pricing

Retail Price of Festool Tools increased as in the past, in January this year. They also effectively increased on April 1, 2015. Price rises are inevitable, if not at least due to the vagrancies of exchange rates for the Australian and US dollars and the Euro.

Except for occasional accessory discounts and product bonuses, there have been no cash discounts offered in Australia on individual tools in three quarterly sales promotion brochures since April 1, 2015. This

¹⁸ Determination, paragraph 44, page 8

¹⁹ Determination, paragraph 108, page 18

compares, for example; with the promotion brochure for February – March 2015 which offered price discounts on dust extractors and systainers.²⁰

In the UK the size of discount offered by dealers compared to Festool UK's *non binding price recommendation* can be significant. On January 24th 2016, via Internet, Axminster offered a ROTEX 150 REQ Plus 240V Sander for £422, Tool Fest for £384 (on special from £468) and Festool UK's internet price was £560.²¹ *

In the United States vertical price fixing is allowed; although there is some recent evidence of dealer discounting or special offers there too.²² There also Festool and its dealers offer a 10% discount when certain tools are purchased as a package with a dust extractor or a multifunction table.²³ In Australia few such equivalent discounts have been offered since the Determination was implemented. The Australian Promotion Catalogue ending on October 31st 2015 offered a Rotex Sander and 26 litre Dust Extractor package at \$2104. But this was the exact total each of the sander and dust extractors' full prices. There was a \$105 valued bonus Sandpaper Systainer, but a cash discount of 10% would have equaled \$1894, a discount of \$210. In January this year via its web site, Tooltechnic offered a 5% package discount with a ETS-EC 150 Random Orbital Sander, Anti Static Plug It Hose and CT26 Hepa Class Dust Extractor.²⁴ Note this deal only appears to apply to these sander models and one air powered sander model, but not as in the US, to other Festool sanders or tools requiring dust extraction, and it is a 5 not 10 percent package discount.

Consumer Demographics and the Dealer Experience

Who is the typical Festool Consumer in Australia? In the US 60% of Festool consumers are professional, 40% are experienced hobbyists.²⁵ The signatories are regular customers of Festool products. Between us we own approx. \$200,000 of Festool products. We represent a range of related interests and occupations - tradespersons, business owners, owner builders, renovators, hobbyists and Festool enthusiasts.

The Determination presented a view of Festool users –

*The ACCC notes that there is some overlap between the DIY users and trade users as serious hobbyists seeking a trade quality result often buy trade quality power tools. Similarly, trade users seeking a more 'throwaway' tool requiring little capital investment for a basic short term application may buy lower quality DIY tools.*²⁶

Assuming that Australia has a similar 40/60 hobbyist/professional ratio to that of the US consumers,, Tooltechnic needs to still strengthen the consumer purchasing experience for both groups. As consumers living in four states, we believe there are consistent Dealer performers for demonstrations, excellent displays, knowledgeable staff (and Internet sales) both before and since the Determination. These are all Premium Dealers and include – C&L Tool Centre in Brisbane, Northern Abrasives and Sydney Tools [Penrith] in Sydney, and Just Tools and The ToolHouse in Melbourne.

²⁰ Festool Promotion Brochures, Jan – March, 2015 and Jan – March, 2016.

²¹ <http://www.axminster.co.uk/festool-rotex-ro-150-feq-plus-sander-ax481227>

<http://www.toolfest.co.uk/festool-rotex>

<https://www.festool.co.uk/Products/Pages/Product-Detail.aspx?pid=571808&name=G geared-eccentric-sander-ROTEX-RO-150-FEQ-Plus-GB-240V>

²² <http://www.festoolproducts.com/Festool-499848-Battery-15-Volt-Lithium-Ion-4-2-A-p/499848.htm>

²³ <http://www.bobmarinosbesttools.com/package-deals/c/1317/>

²⁴ http://www.festool.com.au/epages/tooltechnic.sf/en_AU/?ObjectPath=/Shops/tooltechnic/Products/F28282/Sub-Products/F28282

²⁵ The Dichotomy Between Professional Tool Users and Hobbyists. Festool Australian Blog, January 5, 2016.

²⁶ Determination, paragraph 50, page 8.

Appendix 1 outlines a signatories consumer experiences across two Premium and one Partner Plus Dealership during January this year. The Dealer names have been removed. There are other Dealers known within a range of Festool based social media to be giving poor service. These are mainly Partner Plus Stores, where sales persons appear to receive less training and are not able to focus on just Festool. Festool should focus on lifting the standard of customer service in many of its Partner Plus Stores. The Determination aimed to do this – we believe it is not happening.^{27 28}

Festool Service all Inclusive

Festool Service All Inclusive existed in Festool's other major markets including Germany, the US and UK prior to the Determination. Since April 1, 2015 Tooltechnic has promoted a comparatively reduced form of *Service All Inclusive*. Their Australian version has a – '36 Month Comprehensive Warranty, 30 Day Money Back Guarantee, Rapid Repair Service, 10 Years Parts Availability, 3 Years Free Shipping, Knowledgeable Service Hotline, 24/7 On line Service Hub and Instructional Videos.'²⁹ No doubt Tooltechnic would submit that this is a comprehensive consumer support package – yes and no!

Apart from 30 Day Money Back Guarantee, most of these elements existed prior to the Determination and consequently do not represent new or improved customer services.

In the discount market of the UK, *Service all Inclusive* also offers – 36 Month Theft Protection and *My Festool* (allowing registered customers to directly access information on line about their tool such as remaining Warranty and the status of repairs).³⁰ Germany's *Service All Inclusive* is the same.³¹ The USA, has the same *Service All Inclusive* elements as Australia but with an enhanced customer focus.³²

36 Month Comprehensive Warranty -

For customers registering their new tools, the Australian Festool Warranty is similar to that offered by Festool in Europe, the USA and UK³³, and no different to other Australian Warranties offered by other quality tool companies such as Milwaukee³⁴, Metabo³⁵ and Bosch (Blue).³⁶ Indeed Milwaukee offers its customers a 5 year warranty on cordless lithium powered tools.

The Determination discusses loan tools for customers whose tools are receiving warranty repairs.³⁷ This does not exist in other Festool markets, and to our knowledge has not been offered in Australia, either pre or post the Determination.

30 Day Money Back Guarantee -

This is also offered in the US and UK. It is a significant customer service in the US due to lower levels of consumer rights than in the UK and Australia. DeWalt, an American Company also offers this Guarantee in Australia.³⁸ We suggest that it adds little to the Australian customers rights to return goods under current Australian Consumer Law and that offered by some Australian retail businesses.

²⁷ Festool Owners Group – One a For the Aussies/

²⁸ Appendix, Dealer 2

²⁹ http://www.festool.com.au/epages/tooltechnic.sf/en_AU/?ObjectPath=/Shops/tooltechnic/Categories/Services_Support/service_all_inclusives

³⁰ <https://www.festool.co.uk/Service/Pages/Service-overview.aspx>

³¹ <https://www.festool.de/Service/Pages/Service.aspx>

³² <http://www.festoolusa.com/service/>

³³ Ibid

³⁴ <http://www.milwaukeetools.com.au/assets/Uploads/MilwaukeeWarrantyA3.pdf>

³⁵ <http://www.metabo.com.au/Warranty-Service.4947.0.html>

³⁶ <https://crm.bosch-pt.com.au/au/en/professional/service/warranty-extensions/warranty-extensions.html>

³⁷ Determination, paragraph 19, page 3.

³⁸ <http://www.dewalt.com.au/warranty/>

Rapid Service and Three Years Free Shipping -

*If your tool has been registered for Service All-Inclusive, your freight from the dealer to the service centre is FREE of charge for the first 3 years of ownership.*³⁹

So in Australia for warranty or indeed all repairs, tools must be returned to a designated Dealer for Tooltechnic to collect. Repairs are guaranteed within 7days from pick up and delivery from and back to the dealer. This service is no different to that offered prior to the Determination. For some Australian customers this requires freighting or driving their tools great distances to the dealer and at their own expense. Festool Dealers also add an administrative delay.

Most of the other tool manufacturers in the Australian market have many more Dealers and some have service agents, so this is not as much an issue as it is for Festool products. Colac, a rural town in South Western Victoria, for example; has service agent workshops for Metabo and Makita.

Compare this to Germany, the UK and US, where Festool covers complimentary free Freight costs directly to and from the Customer to the Service Centre for Warranty Repairs, and in the US guarantees after repair dispatch within 48hrs of receipt.⁴⁰ And Festool UK and Germany keeps in touch directly with the customer at each stage of the repair process by SMS/Email.^{41 42} *SERVICE all-inclusive offers you complete protection for your machines, and now includes a quick and easy repair process. Simply complete the repair information online via your myFestool account, and your machines will be collected and returned to you for free after repair. During the repair process, you are always kept up to date via email or SMS about the current repair status.*⁴³

10 Years Parts Availability -

Standard across all Festool markets. It compares with Bosch, 3-5 years.⁴⁴

Knowledgeable Service Hotline, 24/7 On line Service Hub and Instructional Videos -

These services exist across all major Festool markets. As to Instructional Videos, the majority on the Australian Festool YouTube Channel, Website and Facebook Pages are links to Festool USA, UK and Germany. YouTube also has a Festool USA and International Channel. YouTube also has a wealth of American, European and Australian customers videos⁴⁵.

As signatories, we have all invested heavily within our own financial means to obtain some of the highest quality manufactured tools and accessories. We want to see Festool continue in the Australian market but in ways enjoyed by international customers. Looking at the UK market experience, we do not believe retail price maintenance is required to offer a better customer experience.

Where facts have been presented these have been cross checked using the best of our resources as of February 8th, 2016. At times we have presented opinion, but that is our collective opinion as consumers and users of Festool products.

We trust the ACCC will take this Submission in to account both now and when the Determination is reviewed in 2017.

³⁹http://www.festool.com.au/epages/tooltechnic.sf/en_AU/?ObjectPath=/Shops/tooltechnic/Categories/Services_Support/Repair_Returns

⁴⁰ <http://www.festoolusa.com/service/>

⁴¹ <https://www.festool.co.uk/Service/all-inclusive/Pages/online-repair-and-pickup-service.aspx>

⁴² <https://www.festool.de/Service/all-inclusive/Pages/Reparatur-online.aspx>

⁴³ <https://www.festool.co.uk/Service/all-inclusive/Pages/online-repair-and-pickup-service.aspx>

⁴⁴ <http://www.bosch-pt.com.au/au/en/professional/service/spare-parts-service/spare-parts-service.html>

⁴⁵ <http://youtu.be/WrQTrXup9w4>. By Untidy Shop

Appendix 01.

The Personal Experiences of one of the Signatories during January 2016.

However, now that the dealers margins are protected, the sales service has not changed. I have never seen a Festool tool demonstrated to myself or any other person whilst being in a premium dealer store. I have recently visited three dealer stores in Sydney. My experiences are as follows;

Dealer A

Probably the most customer interaction of them all, and in the end this is my preferred premium dealer, and who I purchased the tools I currently own from. Now that they know I drink the green Kool aid they expect my return.

Dealer B

So so sales presentation. I went during the week, and was in the Festool area for the good part of an hour. Nobody spoke to me whatsoever. I asked some questions about an MFT, and was pointed in the general direction of the MFT. D

Dealer C

*Premium Dealer. This shop is an absolute hole, the "premium" Festool section can be best described in an engineering term as s**t. There were tools just lying around, I was the only person in the shop (wonder why?). Everything was dirty and poorly lit.*

The names of these dealers can be supplied to the ACCC if required.