



18 November 2019

Simon Bell  
Assistant Director  
Australian Competition & Consumer Commission  
Level 2 | 23 Marcus Clarke Street | Canberra ACT 2601

BY EMAIL [simon.bell@acc.gov.au](mailto:simon.bell@acc.gov.au)

Dear Simon

**Resale Price Maintenance Notification RPN1000455 lodged by Stanley Black & Decker for Dewalt power tools, attachments and accessories (the Notification)**

I refer to your letter dated 28 October and our discussion on Thursday 7 November. Terms defined in the Notification have the same meaning when used in this letter.

Total Tools has the following comments in relation to the Notification.

**Invoice Price**

1. It isn't clear to us how the contemplated RPM Conduct is intended to work. It seems SBD will require that dealers not advertise below 'invoice price' (excluding rebates or discounts). It also says 'invoice price' is a 'standard SBD price charged by SBD to dealers for the products' (para 2.2(a)). However we understand SBD currently has different 'invoice prices' for different dealers. Is SBD proposing that in its new dealer agreements it will commit to sell at a uniform 'invoice price' for all Dewalt Products?
2. Total Tools is anxious to avoid a situation where it may be prevented from price matching a competitor who receives a lower 'invoice price' from SBD in respect of a Dewalt Product.

**Price promotions**

1. At para 2.12 SBD says that 'dealers who choose to participate in a promotion run...by SBD, will not be permitted to advertise below...the Promotional MAP'. Leaving aside the cost of doing so and stock availability issues, does this imply that a dealer who elects not to participate will be able to advertise below the Promotional MAP?. This notion seems borne out by the comments at para 3.26. Theoretically this would allow a low cost, no service online store who has chosen not to participate in the promotion to undercut the Promotional MAP

**National Support Office**

20 Thackray Road, Port Melbourne VIC 3207

**p** 03 9261 1905 **f** 03 9261 1999

[www.totaltools.com.au](http://www.totaltools.com.au)

2. Alternatively is it envisaged that for the duration of a promotion there could be different MRP's for the same product? A higher price for non-participants?
3. Equally it isn't clear to us how a dealer would qualify to participate in a promotion and the conditions which might apply. Would those conditions be uniform for all participants, for example?

### Overview

1. Total Tools agrees generally with SBD's observations about the nature of Dewalt Products and end-user customers reliance on advice, stock range and depth requirements and potential de-ranging decisions for products which cannot meet hurdle margin returns - in part because of the 'free-rider' issue noted (see paras 3.8 and 3.13, for example).

We would be happy to discuss the matters raised in this letter.

Yours sincerely



**David Lambert**  
General Counsel and Company Secretary

### National Support Office

20 Thackray Road, Port Melbourne VIC 3207

**p** 03 9261 1905 **f** 03 9261 1999

[www.totaltools.com.au](http://www.totaltools.com.au)