

Non-Confidential Version

Restriction of Publication Claimed

Notification of resale price maintenance

Notification by HP PPS Australia Pty Ltd

ACN 603 480 628

Notifying party

1. Provide details of the notifying party, including:

1.1. name, address (registered office), telephone number, and ACN

HP PPS Australia Pty Ltd (ACN 603 480 628)

Building F, Level 5

1 Homebush Bay Drive

Rhodes NSW 2138

Telephone: 13 15 47

1.2. contact person's name, telephone number, and email address

Colin Chang (Senior Legal Counsel, HP)

Telephone: [REDACTED]

Email: [REDACTED]

1.3. a description of business activities

HP PPS Australia Pty Ltd is a supplier of HP-branded technology products in Australia.

1.4. email address for service of documents in Australia.

Ayman Guirguis (Partner, K&L Gates)

[REDACTED]

Details of the notified conduct

2. Indicate whether the notified conduct is for:

2.1. exclusive dealing (s. 47 of the Competition and Consumer Act 2010 (Cth) (the Act);

2.2. resale price maintenance (s. 48)

2.3. collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, whether the notified conduct includes a collective boycott.

The notified conduct is for resale price maintenance (section 48 of the *Competition and Consumer Act (Cth)*).

3. Provide details of the notified conduct including:

3.1. a description of the notified conduct

3.2. any relevant documents detailing the terms of the notified conduct

3.3. the rationale for the notified conduct

3.4. any time period relevant to the notified conduct.

Please refer to section 3 of Annexure A.

4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to the notified conduct and any minutes or record of the decision made.

No documents available - the Proposed Conduct is merely an extension to the conduct the subject of Notification: RPN10000453 regarding the HP Online Store.

5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct and detail how or why they might be impacted.

Please refer to section 3.4 of Annexure A.

Market information and concentration

6. Describe the products and/or services, and the geographic areas, supplied by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

Please refer to section 4 of Annexure A.

7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

Please refer to sections 2 and 4 of Annexure A.

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

Please refer to section 4 of Annexure A.

9. In assessing a notification, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

9.1. existing competitors

9.2. likely entry by new competitors

9.3. any countervailing power of customers and/or suppliers

9.4. any other relevant factors.

Please refer to section 4 of Annexure A.

Public benefit

10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

Please refer to section 6 of Annexure A.

Public detriment (including likely competitive effects)

11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC’s assessment of the detriments.

Please refer to section 7 of Annexure A.

Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.

Proposed/potential HP Online Marketplace Partners:

eBay
10th floor, 45 Market Street,
Sydney, NSW 2000
1800322928

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Consumer Groups:

CHOICE

57 Carrington Road
Marrickville NSW 2204

1800 069 552

ausconsumer@choice.com.au

HP Channel Partners:

Synnex
92 Carroll Road
Oakleigh South VIC 3167
03 8540 8888

Dicker Data
230 Captain Cook Drive
Kurnell NSW 2231
1800 688 586

Datacom
1 Julius Avenue
North Ryde NSW 2113
02 8875 3500
answers@datacom.com.au

Data3
67 High Street
Toowong QLD 4066
1300 232 823
servicedesk@data3.com.au

JB Hi-Fi
Level 4, Office Tower 2
Chadstone Place, Chadstone Shopping Centre
1341 Dandenong Road
Chadstone VIC 3148
03 8530 7333

Harvey Norman
A1 Richmond Road
Homebush West NSW 2140
02 9201 6111

Other HP Channel Partners are referred to in section 2.2.

Key Competitors:

Apple
Level 2
20 Martin Place
Sydney NSW 2000
133 511

Dell
Building 3
14 Aquatic Drive
Frenchs Forest NSW 2086
02 8972 5187

Acer
Homebush Business Village, Suite 16b
11-21 Underwood Rd
Homebush NSW 2140
02 8762 3000

Lenovo
Level 4
12 Help Street
Chatswood NSW 2057
02 8003 8200

Fuji Xerox
8 Khartoum Road
Macquarie Park NSW 2113
02 9856 5000

Canon
Building A, The Park Estate
5 Talavera Road
Macquarie Park NSW 2113
13 13 83

Epson
3 Talavera Road
North Ryde, NSW 2113
02 8899 3666

Other competitors are referred to in Schedule 2.

Any other information

13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.

Please refer to section 2 (Background) and section 5 (Counterfactual) of Annexure A.

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 that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Signature of authorised person

Managing Director
Office held

Michael Boyle
Print Name of authorised person

This 17 day of July 2020

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

Annexure A - Submission in support of notification for resale price maintenance

1. Summary

On 16 July 2019, HP PPS Australia Pty Ltd (**HP**) notified the Australian Competition and Consumer Commission (**ACCC**) of its proposed new model for its online store (**HP Online Store**) (the **Initial Notification**).

Due to the structure utilised by HP to effect sales on the HP Online Store, the model proposed by HP involved resale price maintenance (**RPM**).

On 10 October 2019, the ACCC issued its statement of reasons confirming the ACCC's decision not to take further action in respect of the RPM notification (**Approved Proposed Model**).

Following the ACCC's determination, HP began taking steps to implement the Approved Proposed Model and is continuing to do so to date (the **Implementation**).

During the Implementation of the Approved Proposed Model, HP identified a business imperative to alter its model for HP online sales being undertaken through the HP eBay Store and any prospective HP stores on online market places (**HP Online Marketplace Stores**).



HP therefore needs to adopt a new model to allow for the continuity of the HP eBay Store and the HP Online Marketplace Stores more generally.

HP is proposing to leverage the arrangements the subject of the Approved Proposed Model, namely:

- utilising an eCommerce platform from a third party provider; and
- outsourcing order fulfilment functions to a third party,

for the purposes of continuing the HP eBay Store and the future HP Online Marketplace Stores.

Under the proposed model, HP will supply HP products to a third party and the third party will receive payments direct from customers (through the abovementioned eCommerce platform) and be responsible for the physical supply of HP products to customers.

Apart from the above, HP proposes to continue to control all other aspects of the HP Online Marketplace Stores, including product and marketing strategies, and in particular, the setting of retail prices for HP products that appear on the HP Online Marketplace Stores.

Such an arrangement may technically be considered to amount to HP entering into an agreement for the supply of goods to a third party where one of the terms is that the third party sells goods at prices specified by HP. HP therefore seeks legal protection by way of a notification for resale price maintenance.

It is important to note that the proposed model, and hence Notification, only applies in circumstances where, but for the proposed model, HP would be the third-party party (3P) seller on relevant online marketplace. HP is not proposing to control either the pricing of, or

the product promotional strategies for, HP products where the operator of the relevant online market place is the first party seller (1P) in its own right (by way of example, where Amazon is selling direct to consumers).

In addition to continuity of the HP Online Marketplace Model, the purpose of the proposed model is to improve the experience of, and service offerings to, customers of the HP Online Marketplace Stores, in the most efficient and cost effective manner.

HP submits that there are numerous public benefits resulting from the proposed model for the HP Online Marketplace Store (HP's control of retail pricing being an integral and inseparable component of this model), including that customers of the HP Online Store will:

- be able to avail themselves of improved service offerings including a wider range of delivery options, faster delivery, returns and refunds processes, and a wider range of payment options; and
- improved accessibility to a broader range HP products.

Importantly, without the ability to continue to control the retail pricing of HP products on the HP Online Marketplace Stores, HP will not be proceeding with the proposed model for the HP Online Marketplace Stores.

HP submits that there are no public detriments associated with the conduct, including no competitive detriments, due to the fact that there are numerous competing brands, in each category of product sold on the HP Online Marketplace Stores, together with the fact that sales from the HP Online Marketplace Stores account for a very small portion of total sales of those products.

Further, the proposed model for the HP Online Marketplace Stores maintains the status quo whereby HP continues to utilise its experience and expertise in setting retail prices for HP products, as it does across the globe, in a manner that develops the HP brand while protecting the viability of the broader HP distribution network.

2. Background

2.1 HP

The ultimate parent company of HP is HP Inc., a manufacturer of HP-branded technology products (**HP Products**) including desktop computers, notebooks, printers and related accessories and supplies.

HP imports, distributes and supplies HP Products in Australia through its network of authorised distributors, retail channel partners and resellers for resupply to consumer and business customers. HP also sells directly to consumers via several means, one of which, at present, is through the HP eBay Store. HP will going forward seek to expand its sales to customers through additional HP stores operating on online marketplaces [REDACTED]

2.2 HP Distribution Network

The distribution of HP Products through the HP supply chain primarily involves a network of HP Channel Partners (**HP Distribution Network**). [REDACTED]

The HP Channel Partners in the HP Distribution Network consist of four broad groups:

(a) T1 Distributors

- HP sells large volumes of HP products to distributors who have experience in supply chain management, warehousing and logistics services (known as Tier 1 or T1 Distributors).
- There are [REDACTED] T1 Distributors that HP sells to including Ingram Micro, Synnex, Dicker Data, BlueChip Infotech and Sektor.
- These T1 distributors on sell HP products to the T1 Resellers, T1 Retailers and T2 Resellers across Australia (see details below).

(b) T1 Resellers

- There are [REDACTED] T1 Resellers (including Datacom and Data3) that purchase HP products from the T1 Distributors. In limited cases, HP may also sell directly to T1 Resellers if volume criteria can be met.
- T1 Resellers only supply HP products to large corporate and government end-users.

(c) T2 Resellers

- There are over [REDACTED] T2 Resellers who purchase HP products from T1 Distributors and sell to a broad range of end-users including government, large corporates, small-to-medium businesses and to a lesser extent, home consumers.

(d) T1 Retailers

- T1 Retailers are large retailers that purchase HP products from T1 Distributors or may also purchase direct from HP if volume requirements are met.
- There are [REDACTED] T1 Retailers including Harvey Norman, Officeworks and JB Hi-Fi, who sell directly to end-users, primarily home consumers and small-to-medium businesses.

2.3 HP Online Marketplace Stores

One of the means by which HP sells direct to customers is through HP Online Marketplace Stores. Currently, the only online marketplace on which HP operates an online store is eBay. It is HP's intention to further extend its direct reach to customers by setting up HP Online Marketplace Stores on other online marketplaces such as [REDACTED]

Sales made through the HP Online Marketplace Stores make up a small portion of HP's total sales in Australia. For each category of product sold on the HP Online Marketplace Stores, the revenue as a percentage of HP's total revenue in Australia for the 2018-19 financial year is set out in **Schedule 1**. [REDACTED]

HP's current model for the HP Online Marketplace Stores

As set out above, at present the HP eBay Store is only online marketplace on which HP sells directly to customers.

At the HP eBay Store, HP directly manages some functions, whilst other functions are facilitated by eBay as part of the services eBay offers to online/Third Party (3P) sellers.

Functions directly managed by HP include:

- Product and marketing strategy - HP establishes the strategic direction of the business in terms of product ranges, target markets, business objectives and goals. All aspects of product strategy are formulated and executed by HP including pricing, promotion and distribution strategies, forecasting and range depth.
- Resourcing - HP resources all aspects of the HP eBay Store, from management, sales, marketing to pre and post sales call centre support.

Functions partially managed by HP include:

- Finance - eBay currently processes all payments made on the HP eBay Store through its own payment gateway. Following the deduction of a transaction fee, eBay then sends the remaining payment amount to HP's PayPal account. Once the payment amount is

received, HP then sends an invoice to the customer and contractually, HP is the merchant and seller of record.

- Technology - eBay is responsible for the management of the "eCommerce platform" and development of content for the general platform, including the maintenance and integration of the platform into payment gateways. HP is responsible for the development of content on the HP eBay Store and the manual extraction of orders received from eBay's order management system and the input of such orders into HP's order management system [REDACTED]

At present, the only aspect of the HP eBay Store that is not directly or partially managed by HP (in all instances) is the physical fulfilment of orders [REDACTED]

As HP does not have large inventory holdings in Australia, HP sources many HP products sold on the HP eBay Store from the inventory of one of its T1 Distributors and purchases these products from the T1 Distributor. For these products, the physical supply of the product is then undertaken by the T1 Distributor instead of HP, although contractually the supply is direct from HP to the customer.

Limitations of HP's current model for the HP eBay Store and operational issues for future HP Online Marketplace Stores

The model for the HP eBay Store has significant limitations and the HP eBay Store and any future HP Online Marketplace Stores cannot operate in the same way as the HP eBay Store has operated to date.

HP's ability to enhance the quality of experience for customers is limited and going forward, cannot operate as presently structured, for the following reasons:

- Customer orders are received first into eBay's order management system and await extraction by HP. Every 30 minutes to an hour, HP logs into the HP online eBay account to extract customer order details. Once extracted, the customer order details are "inputted" manually into HP's order management system [REDACTED]. The data in the HP order management system is then sent to the order management system of the T1 Distributor, which creates duplication in processes and some delays for customers in receiving products.
- As order fulfilment functions are split between HP and the T1 Distributor, products have varied delivery times meaning that customers may receive different products in a single order at different times. Accordingly, HP is limited in its ability to streamline its delivery methods to achieve efficiency and ultimately customer satisfaction.
- HP's core business is not in the provision of logistics services. It lacks the expertise and third-party relationships of a specialist in this area to facilitate innovative logistics and delivery methods that may improve delivery times and offer more convenient delivery options for customers.

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HP's proposed model for the HP Online Marketplace Stores

On page 14 of HP's Initial Notification to the ACCC pertaining to the HP Online Store, HP indicated to the ACCC that:

"The new eCommerce platform also allows for orders from marketplaces such as eBay and Amazon to be more easily integrated into the T1 Distributor's order management system which HP may consider leveraging in the future."

In order to address the limitations of the current HP eBay Store/HP Online Marketplace Stores model, it is HP's intention to implement the Approved Proposed Model to HP Online Marketplace Stores. Specifically:

- HP will integrate HP Online Marketplace Stores with the new eCommerce platform in the Approved Proposed Model.
 -].
- Similar to the Approved Proposed Model, HP will outsource the order fulfilment function in its entirety to a T1 Distributor.
 -
 - Instead of HP purchasing products to be sold on the HP Online Marketplace Stores from the T1 Distributor, the T1 Distributor will order products from HP based on forecasts supplied by HP and store the products in its warehouses. However, with respect to low run-rate SKUs, the T1 Distributor will leverage its own vast stock holdings.
 - The T1 Distributor will be the merchant and seller of record. When a customer makes a purchase, in the first instance, the payment will be processed by the relevant online marketplace and then be sent directly into a bank account/PayPal account nominated by the T1 Distributor. The T1 Distributor will invoice the customer and title of the product will flow from the T1 Distributor to the customer.
 - The T1 Distributor is already working with HP to integrate the new eCommerce platform into the T1 Distributor's ERP IT System, specifically the order management system. The new eCommerce platform will enable orders to directly flow from eBay and other marketplaces into the order management system via an application programming interface, removing the need for manual extraction of orders from the

marketplace platform. The marketplace orders will in effect be treated in the same automated way an order is received via the HP Online stores.

- From a financial and back-end operational perspective, the T1 Distributor will manage all product returns and refund payments in accordance with the consumer guarantee provisions of the Australian Consumer Law for HP products purchased on HP Online Marketplace Stores, under indemnification from HP. However, from the customer's perspective, the process will remain unchanged. The customer will deal exclusively with HP's first tier customer support team on all aspects of their orders. HP's customer support team will then coordinate with the T1 Distributor on returns and refunds.

Apart from the above changes, HP will continue to be the operator of the HP Online Marketplace Stores, maintaining control over all other aspects of its operations.

3. Proposed Conduct

3.1 Description of the Proposed Conduct

Under the proposed model for the HP Online Marketplace Stores, HP will retain all responsibilities with respect to product and marketing strategies and in particular, will continue to set the retail prices for HP products that appear on HP Online Marketplace Stores (**Proposed Conduct**). The Proposed Conduct only applies in circumstances where, but for the Proposed Conduct, HP would be the third-party seller (3P) on the relevant online marketplace. HP is not proposing to control either the pricing or product promotional strategies for HP products where the operator of the relevant online market place is the first party seller (1P) in its own right (by way of example, where Amazon is selling direct to consumers).

As the proposed model will technically involve the supply of HP products from HP to the T1 Distributor who on-sells direct to consumers, the Proposed Conduct may be considered to amount to HP entering into an agreement for the supply of goods to the T1 Distributor where one of the terms is that the T1 Distributor sells goods at prices specified by HP.

HP therefore seeks legal protection by way of a notification for resale price maintenance to engage in the Proposed Conduct that will form part of HP's proposed model for operating HP Online Marketplace Stores.

3.2 Rationale of the Proposed Conduct

A significant element in HP's rationale for moving to the proposed model for HP Online Marketplace Stores stems from HP's omnichannel strategy that is built around placing the customer at the heart of the purchasing journey by allowing them to choose when and how they wish to purchase HP products. HP Online Marketplace Stores are extension of its existing channels offered to its broad customer base.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As detailed above, the primary reason for implementing the proposed model for HP Online Marketplace Stores is that HP is seeking to provide customer with better accessibility to HP products whilst improving the overall customer experience to customers that source HP products from HP Online Marketplace Stores in the most efficient and cost-effective way.

To achieve this goal, HP is proposing to partner with third parties (already part of the Approved Proposed Model) that can contribute valuable skills, capabilities and infrastructure in order to create an improved experience for customers of HP Online Marketplace Stores, in circumstances where HP presently lacks the capabilities to create such improvements (see limitations identified in section 2.3). Logically, HP will retain functions for which it is best placed to optimise, in order to achieve its purpose of improving the experience of customers on HP Online Marketplace Stores.

HP's rationale in more detail with respect to the proposed partnership with third parties is as follows:

- The third parties have already been "approved" by the ACCC as indicated in the Approved Proposed Model. The ACCC has made a comprehensive assessment pertaining to the suitability of the third parties as part of its assessment of the Initial Notification.
- HP's new eCommerce platform capabilities allow for orders from marketplaces such as eBay and Amazon was foreshadowed in the Initial Notification.
- HP's partnership with the third parties has already taken effect as part of the Approved Proposed Model. The Proposed Conduct will merely extend the nature of the partnership to include HP Online Marketplace Stores.
- As indicated in the Initial Notification, the new eCommerce platform allows for the streamlining of ordering and logistics processes.
- The new eCommerce platform will allow for the identification of the originating platform source for an order and will automatically process such order. For example, if an order is received via eBay, the new eCommerce platform will identify that this is an order from eBay and will proceed to automatically send the order to the T1 Distributor for fulfilment. This removes the requirement of manually logging into HP's eBay store to identify

whether an order was received or not and then manually inputting the order details into another order management system to enable fulfilment.

- The outsourcing of the order fulfilment function to a T1 Distributor allows for a more efficient process for fulfilment and shorter delivery times of HP products by eliminating the current complex process of HP purchasing some HP products from a T1 Distributor with some orders being fulfilled by HP and some by a T1 Distributor.
- Streamlining the order management process and leveraging the logistics expertise of the T1 Distributor allows for faster delivery times, a wider range of delivery and tracking options and faster refunds and returns processes for HP customers.
- As providing logistics services is not core to HP's business, it lacks the expertise and experience to seamlessly offer the above improvements to customers of HP Online Marketplace Stores.

HP considers that the Proposed Conduct (HP maintaining control over retail prices on HP Online Marketplace Stores) is essential to the proposed model for operating the HP Online Marketplace Stores for the following reasons:

- The T1 Distributor's core business is the distribution of technology products to resellers (not end users) including providing warehousing and logistics services. It is not in the business of, nor does it has any experience with, or the appropriate resources for, developing retail price, promotion and product placement strategies for almost 2000 SKUs.
- Conversely, HP is in the business of, and has expertise and experience in, retailing HP products including developing and implementing effective product, place, price and promotional strategies that meet the needs of customers, develop the HP brand and protect the viability of the HP Distribution Network. Further details about the complexity of these strategies and HP's internal resources that are required to develop and implement them, are set out in the confidential section below.

HP's pricing strategies and resources for HP Online Marketplace Stores

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]
- | [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.3 Time period relevant to the Proposed Conduct

The Proposed Conduct will commence if and when the ACCC allows this notification to stand and will be ongoing thereafter.

3.4 Persons impacted by the Proposed Conduct

The parties or classes of persons that will be impacted by the Proposed Conduct are:

- Customers - purchasers of HP products from HP Online Marketplace Stores;
- The T1 Distributor that HP intends to partner with for the proposed model for the HP Online Marketplace Stores;
- The operators of the relevant online marketplaces; and
- The HP Distribution Network.

Customers

Under the proposed model, HP intends to maintain the same pricing strategies that it has employed in recent years. This means that customers of HP Online Marketplace Stores can continue to avail themselves of the price points and promotions that are presently available.

From a customer experience perspective, the only difference under the Proposed Conduct will be that customers can benefit from a wider range of delivery options and faster delivery and returns processes.

Customers will also be purchasing HP products direct from the T1 Distributor, rather than HP. HP intends to clearly communicate with customers about the identity of the organisation with whom they are contracting with when purchasing HP products from HP Online Marketplace Stores.

As is the case currently with the HP eBay Store, customers have numerous alternative online and "bricks and mortar" retailers from which to purchase HP products or competing brands. The proposed model for HP Online Marketplace Stores does not seek to limit the availability or the retail pricing of these alternatives.

T1 Distributor

The T1 Distributor with whom HP intends to partner for the proposed model for the HP Online Marketplace Stores will be impacted by the Proposed Conduct, as theoretically, it will be acting as a supplier of HP products purchased by customers from the HP Online Marketplace Stores without the ability to set prices.

However, as stated above, the T1 Distributor is a warehousing and logistics provider that supplies to resellers and does not have the experience, expertise or resources to set retail and promotional pricing. By engaging in the Proposed Conduct as part of the HP Online Marketplace Stores, the T1 Distributor will benefit from being able to obtain an additional income stream in light.

The operators of the relevant online marketplaces (such as Amazon, eBay and Third Party Sellers on online marketplaces)

Each of Amazon and eBay provide an online marketplace to third-party sellers who sell direct to customers (**Third Party Sellers – 3P**). Amazon is also an online retailer in its own right where it also sells direct to customers (**Amazon Retail - 1P**).

As such, the Proposed Conduct is likely to impact both the Third Party Sellers and Amazon Retail in that customers who may ordinarily purchase from these respective stores may ultimately decide to purchase from the HP Online Marketplace Stores.

However, as discussed in section 3.1, the Proposed Conduct does not fetter the ability for Third Party Sellers and operators of the relevant online marketplaces to sell HP products direct to customers. The presence of HP Online Marketplace Stores is merely an addition to the already competitive online landscape for HP products, broadening product availability for customers. It is ultimately the customer's choice to determine if, in what, and from where, they will purchase HP products.

HP Distribution Network

The impact of the Proposed Conduct on the HP Distribution Network will be neutral as HP will be continuing with its 'go to market' strategies which, subject to the competitive impacts of alternative brands, seek to maximise sales of HP products whilst ensuring that price points on

the HP Online Marketplace Stores and RRP's provide for a margin that maintains the viability of the HP Distribution Network. This strategy seeks to promote intra-brand competition within the HP Distribution Network.

The Proposed Conduct will not have any direct impact on the supply chains of competing brands other than possibly resulting in these competitors similarly improving their product offerings on online marketplace stores.

4. Markets impacted by the Proposed Conduct

HP sells HP products on the HP eBay Store, and that in future are envisaged to be available at other HP Online Marketplace Stores, that can be broadly categorised as PC or Print products.

The PC category includes desktops, workstations, displays, notebooks and accessories and the Print category includes printers and supplies such as ink and toner.

In both the PC and Print categories, the HP products sold on the HP eBay Store are mainly focused for two main target markets:

- commercial – small to medium sized businesses consisting of approximately 1-99 employees; and
- consumer – at home users or students.

The HP products that are presently on the HP eBay Store, and that in future are envisaged to be available at other HP Online Marketplace Stores, can be purchased and supplied to customers throughout all regions of Australia.

HP considers that the relevant markets that may be impacted by the Proposed Conduct are likely to be markets for the retail supply of:

PC	Print
<ul style="list-style-type: none"> • Consumer desktop products • Consumer notebook products • Commercial desktop products • Commercial notebook products • PC accessories 	<ul style="list-style-type: none"> • Home printers • Office printers • Home print supplies • Office print supplies

Further details about the types of products included in the above market segments are included in **Schedule 1**.

The market shares of HP and its key competitors in each of the product markets identified above is set out in **Schedule 2**.

If HP was to engage in the Proposed Conduct under the new model for the HP Online Marketplace Stores, it would be constrained from increasing retail prices given that:

- In each of the relevant product markets, there are a large number of alternative suppliers from which HP faces strong competition. Prices of HP products are largely determined by market forces and increasing retail prices on the HP Marketplace Stores would make HP products sold through that avenue uncompetitive with other brands.

- Sales from the HP Online Store make up a very small proportion of the total sales of HP products. Increasing prices on the HP Online Store may merely shift sales to other retailers of HP products in the HP Distribution Network and undermine the viability of the HP Online Store which offers a trusted channel from which customers can purchase genuine HP products.

5. Counterfactual

In assessing the likely benefits and detriments to the public from the Proposed Conduct, HP considers that the ACCC should take into account the likely state of affairs if the Notification is allowed to stand or alternatively, if it is revoked.

If the Notification in respect of the Proposed Conduct is not allowed to stand, HP will not be proceeding with any aspect of the proposed model for the HP Online Marketplace Stores referred to in section 2.3.

In the event the Notification is not allowed to stand, HP's current plan is to cease operation of HP Online Marketplace Stores. [REDACTED]

Therefore, in the event the Notification is not allowed to stand, customers seeking to avail themselves of the HP eBay Store or prospective additional HP Online Marketplace Stores will not be able to avail themselves of an HP branded Store on these market places, thereby losing the benefits that would be offered by such stores, namely a wider HP product range online than is offered by non-HP branded stores, or the enhanced customer experience that is expected on an ongoing basis under the proposed model.

In light of this, the counterfactual scenario should not be considered as HP proceeding with the new model for the HP Online Marketplace Stores in the absence of the Proposed Conduct (i.e. a situation where the T1 Distributor sets retail prices rather than HP).

Lack of commercial alternatives

The proposed model for HP Online Marketplace Stores is presently the only reasonable way forward in terms of commercial viability and HP being in a position to offer its customers better accessibility to HP products and improved service offerings.

As set out in the Initial Notification, HP identifies below some alternative models for the HP Online Marketplace Stores that may be raised in response to this submission and reasons why these alternatives are presently unviable for HP and not in the best interests of HP customers:

- HP proceeding with the new model for the HP Online Marketplace Stores in the absence of the Proposed Conduct (i.e. a situation where the T1 Distributor sets retail prices rather than HP).
 - For the reasons outlined in this submission, HP considers that the Proposed Conduct cannot be considered in isolation to the other elements of the proposed model for the HP Online Marketplace Stores.
 - HP has highly-experienced, dedicated teams that specialise in setting product distribution, price and promotional strategies, including for the HP eBay Store and in

the future other proposed HP Online Marketplace Stores. As identified previously, HP's pricing strategies are both complex and dynamic and cannot be separated from the other product-related strategies that HP employs.

- HP considers that the T1 Distributor, whose primary business is warehousing and logistics, does not have the necessary expertise, experience or insights into HP's business to set prices in a way that balances the interests of HP customers and participants in the broader HP Distribution Network.
- Further, the high level of promotional activity across all of the HP Omnichannel businesses, including at present, on the HP eBay Store means that, for example, HP providing the T1 Distributor with RRP's for the T1 Distributor to set prices is not an option that is likely to result in a successful business model or a positive outcome for customers – hence HP will not be adopting such a model.
- HP using the third-party eCommerce platform and appointing the T1 Distributor under an agency model.
 - [REDACTED] Appointing the T1 Distributor as an agent of HP to sell the products on the HP Online Marketplace Stores while HP remains as the merchant and seller of record (to avoid engaging in RPM) would therefore involve the T1 Distributor holding significant amounts of stock on consignment, in addition to its holding of stock in its own right as a distributor.
 - Under this model, the consigned stock held by the T1 Distributor would need to be designated for sale on the HP Online Marketplace Stores and therefore efficiencies from pooling other stock held by the T1 Distributor (for sale to its wholesale customers) will not be realised from a logistics and operational perspective. The ability to share pooled inventory results in a wider selection of products being available and in stock on the HP Online Marketplace Stores and faster turnaround times for customers.
 - A consignment model would also create additional complexities from a financial and accounting perspective for both HP and the T1 Distributor since the inventory would remain on HP's "books" without being in its effective control, while the T1 Distributor bears the responsibility of managing two sets of inventory.

■ [REDACTED]

■ [REDACTED]

6. Public benefits

The main beneficiaries of the Proposed Conduct will be customers of the HP Online Marketplace Stores who will benefit from having access to a broad range of HP products in newly emerging channels such as Online Marketplaces, as well as giving customers the ability to undertake comparisons of a broader range of HP products and competitive products, as compared with more traditional retail models - due to the fact that it is proposed that HP will offer a broader range of SKUs on HP Online Market places than at traditional retail stores. Customers will be also be able to avail themselves of the benefits associated the increased logistics and delivery functionality being proposed by HP's Online Marketplace experience due to a wider range of delivery times and options.

Having regard to HP's rationale for implementing the proposed model for the HP Online Marketplace Stores (see section 3.2), the Proposed Conduct is inextricably linked to the proposed model for the HP Online Marketplace Stores. The likely benefits to customers of HP Online Marketplace Stores are as follows:

Faster delivery times

Customers of the HP Online Marketplace Stores will benefit from faster delivery times, including faster refund and returns processes. Speed of delivery is particularly important for online retailers such as the HP Online Marketplace Stores given that "bricks and mortar" retailers with whom the HP Online Marketplace Stores competes with, offer customers the convenience of having products immediately available on purchase.

In addition, since all products will be sourced from the inventory of the T1 Distributor, customers will no longer face the frustration of potentially receiving different products in the same order at different times.

Wider range of delivery options

At present, deliveries from the HP eBay Store to customers take place from 9am to 5pm, Monday to Friday, without the ability to track orders.

Under the proposed model for the HP Marketplace Stores, customers will benefit from a wider range of delivery options that will also make the HP eBay Store and future HP Marketplace Stores more competitive in the market in terms of service offerings to customers.

It is envisaged that some of the expanded options will include express delivery, same day or next business day delivery and "Click and Collect" options, in addition to real-time tracking capabilities that will give customers greater certainty with respect to delivery times. Again, these capabilities will be directly connected from the eCommerce platform at the front end, to the T1 Distributor's systems at the back end.

Additionally, there is the potential for the T1 Distributor to leverage its existing supply chain relationships to offer more convenient delivery options to customers. [REDACTED]

Improved accessibility to a broader range HP products

It is envisaged that following implementation of the proposed model, HP will be in a better position to broaden the product listings on the HP eBay Store, [REDACTED]

[REDACTED]

Improved marketing, content and product information

HP has established teams internally whom are solely responsible for improving and merchandising the product content and information on marketplaces [REDACTED]. In addition these teams will be working closely with Marketplaces partners on marketing campaigns and promotional activity, allowing customers to avail themselves of HP product at competitive prices.

7. Public detriments

HP submits that there are no public detriments (including no competitive detriments) associated with the Proposed Conduct. In these circumstances, HP submits that even the modest public benefits will justify the Notification being allowed to stand.

Although the Proposed Conduct means that the T1 Distributor will not be in a position to set retail prices of HP products on the HP Online Marketplace Stores, this is not a public detriment having regard to the fact that this is no different to the present position for the current HP Online Marketplace Stores and the position that HP will take should Notification not be allowed to stand.

Additionally, the Proposed Conduct will have no impact on competition on the markets for products sold on the HP Online Marketplace Stores (other than potential pro-competitive effects) having regard to the following:

- HP is only proposing to control the retail prices of HP products sold on Online Marketplace Stores in its capacity (together with the T1 Distributor) as a 3P seller.. No other retailers in the HP Distribution Network nor will operators of online marketplaces selling HP products directly to customers or other Third Party Sellers operating in online marketplaces be impacted as the Proposed Conduct will ensure that the status quo remains, meaning that other retailers of HP products retain the widest possible freedom to set retail prices as they please.
- HP is merely leveraging the benefits obtained from the Approved Proposed Model to HP Online Marketplace Stores as was foreshadowed in the Initial Notification to the ACCC.
- The HP eBay Store presently represents a very small part of the HP supply chain. [REDACTED] Customers will remain free to purchase HP products from a large number of alternative online and "bricks and mortar" retailers. Such retailers account for the vast majority of sales of HP products to consumers and small businesses at present.
- HP faces strong competition from the many alternatives brands in each product category identified in **Schedule 2**. Under the Proposed Conduct, customers remain free to purchase PC and Print Supply products from a number of alternative brands who offer similar products. In any event, with or without the Proposed Conduct, retail prices of HP products are largely influenced by the prices of the many other competing brands.

- Under the Proposed Conduct, it is also possible that non-price competition in the market may be enhanced as alternative retailers of both HP and non-HP products may offer similarly improved offerings that will be made available to customers of the HP Online Marketplace Stores.

HP submits that in the absence of any public detriments (including competitive detriments), the Proposed Conduct (which in the circumstances described in this submission, cannot be considered in isolation to the other elements of the proposed model for the HP Online Marketplace Stores), generates a net benefit to the public which justifies this Notification being allowed to stand.

Schedule 1 – Product segments and HP Online Store revenue

The table below contains:

- the types of products included in each product segment; and
- the revenue generated from the HP Online Marketplace Stores as a percentage of HP total Australian revenue in 2018-19 HP financial year for each relevant product segment.

NON-CONFIDENTIAL		
Category	Product Segment	
PC	Consumer desktop products (including desktops and displays)	
	Consumer notebook products	
	Consumer PC accessories (including power adapters, cables, mouse, bags, keyboards, pens, audio, Office 365)	
	Commercial desktop products (including desktops, displays and workstations)	
	Commercial notebook products (including mobile workstations)	
	Commercial PC accessories (including power adapters, cables, mouse, bags, keyboards, pens, audio, Office 365)	
	PC Total	
Print	Home printers	
	Office printers (including printers for home office, small to medium businesses, and large format printers for design or production businesses)	
	Home print supplies (including ink, media and toner)	
	Office print supplies (including ink and toner)	
Print Supply Total		
PC and Print Supplies Combined Total		

Schedule 2 – Market shares

The table below contains Australian market share data sourced from IDC based on sales in the first/second half of 2019.

NON-CONFIDENTIAL		[REDACTED]	
Category	Product Segment	[REDACTED]	[REDACTED]
PC	Consumer desktop products	[REDACTED]	[REDACTED]
	Consumer notebook products	[REDACTED]	[REDACTED]
	Commercial desktop products	[REDACTED]	[REDACTED]
	Commercial notebook products	[REDACTED]	[REDACTED]
	PC accessories	[REDACTED]	
Print Supply	Home printers	[REDACTED]	[REDACTED]
	Office printers	[REDACTED]	[REDACTED]

NON-CONFIDENTIAL		[REDACTED]	
	Home print supplies (Ink) ¹	[REDACTED]	[REDACTED]
	Office print supplies (Toner)	[REDACTED]	[REDACTED]

¹ HP only has share of sales data with respect to ink cartridges for use in HP Inkjet printers or toner cartridges for use in HP Laser printers. Inkjet printers are primarily targeted at consumers for home use but may also be used in home offices or smaller offices. Laser printers are primarily targeted for office use, but may also be used at home.

[REDACTED]