

## Resale price maintenance notification

### Notifying party

1. **Provide details of the notifying party, including:**
  - 1.1 **name, address (registered office), telephone number, and ACN**

Name: Stanley Black & Decker Australia Pty Ltd (SBD)

Registered Office Address: Baker McKenzie, Level 19, 181 William Street, Melbourne VIC 3000

Principal Place of Business Address: Level 2, 810-812 Whitehorse Road, Box Hill VIC 3128

Telephone number: 1800 338 002

ACN: 000 021 938
  - 1.2 **contact person's name, telephone number, and email address**

Name: Georgina Foster

Telephone number: [REDACTED]

Email address: [REDACTED]
  - 1.3 **a description of business activities**

SBD is an importer and wholesaler of a range of tools, hardware products and related accessories, including power tools, hand tools, and automotive tools, including the DEWALT brand of power tools. SBD distributes its products, including DEWALT, through a range of distributors and dealers across Australia (collectively, **dealers**).

See further Annexure A, section 1.
  - 1.4 **email address for service of documents in Australia.**

[REDACTED]

### Details of the notified conduct

2. **The notified conduct is for:**

Resale price maintenance (section 48 of the *Competition and Consumer Act 2010* (Cth)).
3. **Provide details of the notified conduct including:**
  - 3.1 **a description of the notified conduct**

SBD is proposing to amend its reseller trading agreements (**dealer agreements**) with dealers to include a requirement that dealers do not advertise DEWALT branded products below a price specified by SBD. SBD proposes to include this requirement for all DEWALT branded power tools, accessories and attachments (**DEWALT Products**).

Specifically, SBD proposes to amend its dealer agreements to impose a requirement that dealers do not advertise the DEWALT Products:

- (i) below the "invoice price" for those products, being the standard SBD price charged by SBD to dealers for the products excluding any rebates or discounts offered by SBD off that price to individual dealers; or
- (ii) where a reseller elects to participate in a special price promotion that is funded (in part or whole) by SBD, below the promotional price specified by SBD.

The proposed amendment to SBD's dealer agreements will only involve specifying a minimum advertised price (**MAP**) for the DEWALT Products. It will apply to all advertising, including online and in-print. It will not apply to in-store activity and will not restrict or prevent SBD dealers from selling the DEWALT Products at a price below the MAP to customers who negotiate a discount directly with the reseller.

SBD also proposes to make consequential amendments to its dealer agreements providing for the steps that SBD can take if dealers breach the MAP requirement, including an ability to reduce or remove rebates or discounts offered to the reseller and an ability to terminate for repeated breaches over a 12 month period.

See further Annexure A, section 2.

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

A copy of SBD's proposed amended dealer agreements, with the proposed changes shown in mark up, is attached at Confidential Attachment 1.

SBD enters into dealer agreements with its dealers on an annual basis.

**3.3 the rationale for the notified conduct**

See Annexure A, section 3.

**3.4 any time period relevant to the notified conduct.**

The notified conduct will not commence until after the ACCC has completed its assessment of this notification. If the notification is allowed to stand, the notified conduct will be ongoing.

- 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 notified conduct and any minutes or record of the decision made.**

There are no documents in this category.

- 5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.**

The notified conduct may impact dealers and end-users of the DEWALT Products. See further Annexure A, section 4.

## Market information and concentration

6. Describe the products and/or services supplied, 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 (eg supplier-customer).

Please see Annexure A, section 5.

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 see Annexure A, section 6.

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

Please see Annexure A, section 7.

9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:

9.1 existing or potential competitors

9.2 the likelihood of entry by new competitors

9.3 any countervailing power of customers and/or suppliers

9.4 any other relevant factors.

Please see Annexure A, section 8.

## 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.

The public benefits of the notified conduct, being the introduction of a MAP and Promotional MAP, will include:

- improved retail services for customers, including as a result of improved service from trained, knowledgeable sales staff, better display and ranging of DEWALT products, and increased non-price competition between dealers;
- supporting SBD's current and planned future investments in improved retail services, through its investment in training for its employees, dealers and end-users, as well as in its sales team which provide on the ground support to dealers;
- a more level playing field and greater sustainability for smaller specialist dealers who compete by providing high quality service, thereby increasing retail competition;
- increased consumer choice through less range reductions and improved incentives for dealers to carry a wider range of DEWALT products; and

- supporting SBD's and its dealers' investment in promotions which promotions benefit consumers and drive competition, especially inter-brand competition between manufacturers.

The implementation of a MAP is less restrictive than other alternatives that might be used to overcome the current market issues, which options would be most likely to involve limiting distribution of some or all products in the DEWALT range.

See further Annexure A, section 9.

#### **Public detriment including any competition 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.**

Due to the highly competitive nature of the relevant markets, SBD considers that any public detriment, including in relation to any impact on competition, will be minimal. See further Annexure A, section 10.

#### **Contact details of relevant market participants**

12. **Identify and/or provide 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.**

Please see Confidential Schedule 1 for relevant contact details.

#### **Any other information**

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

SBD refers to Annexure A.

## Declaration by notifying party

Authorised persons of the notifying party must complete the following declaration.

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).



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Signature of authorised person

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Managing Director  
Office held

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Adrian Davis  
Name of authorised person

This 5th day of October 2019

*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 resale price maintenance notification

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#### Introduction: SBD, proposed MAP conduct and rationale

##### 1. Notifying party (section 1)

- 1.1 SBD is an importer and wholesaler of a range of tools, hardware products and related accessories, including power tools, hand tools, and automotive tools, including the DEWALT brand of power tools.
- 1.2 SBD's ultimate holding company is Stanley Black & Decker Inc., headquartered in Connecticut, the United States of America.
- 1.3 SBD distributes tools, hardware products and accessories under a range of brands in Australia, including Stanley, DEWALT, Black & Decker, Porter Cable, Irwin Tools, Lenox, Bostitch and Sidchrome.
- 1.4 The DEWALT brand consists of a range of innovative, high performance power tools, accessories and attachments, as well as hand tools and workwear, that are targeted at the professional trade segment.
- 1.5 DEWALT products are manufactured overseas by other companies in the Stanley Black & Decker group and supplied to SBD as the exclusive authorised importer of DEWALT products in Australia.
- 1.6 SBD distributes its products, including DEWALT, through a range of distributors and dealers across Australia (collectively, **dealers**). SBD does not sell DEWALT products directly to end-users in Australia.
- 1.7 SBD's sales of DEWALT branded power tools, accessories and attachments in 2017 to customers in Australia was approximately [REDACTED].

##### 2. Notified conduct (notification form (NF), section 3.1)

###### Overview

- 2.1 SBD is proposing to amend its supply agreements with dealers (**dealer agreements**) to include a requirement that dealers do not advertise DEWALT branded products below a price specified by SBD. SBD proposes to include this requirement for all DEWALT branded power tools, accessories and attachments (**DEWALT Products**).
- 2.2 The proposed amendment to SBD's dealer agreements will only involve specifying a minimum advertised price (**MAP**) for the DEWALT Products. The proposed MAP will have two aspects. Specifically, SBD proposes to amend its dealer agreements to impose a requirement that dealers do not advertise the DEWALT Products:
  - (a) below the "invoice price" for those products, being the standard SBD price charged by SBD to dealers for the products excluding any rebates or discounts offered by SBD off that price to individual dealers (see further paragraphs 2.6 to 2.9 below); or
  - (b) where a reseller elects to participate in a special price promotion that is funded (in part or whole) by SBD, below the promotional price specified by SBD (see further paragraphs 2.10 to 2.11 below) (**Promotional MAP**).

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- 2.3 The notified conduct (the **MAP Conduct**), including the Promotional MAP, will apply to all advertising, including online and in-print. It will not apply to in-store activity and will not restrict or prevent SBD dealers from selling the DEWALT Products at a price below the MAP to customers who negotiate a discount with the reseller.
- 2.4 A diagram is set out below showing how the MAP will work in practice.
- 2.5 SBD also proposes to make consequential amendments to its dealer agreements providing for the steps that SBD can take if dealers breach the MAP requirement. These are an ability to reduce or remove rebates or discounts offered to the reseller and, in cases of repeated breaches of the MAP requirement, an ability to terminate the reseller agreement.

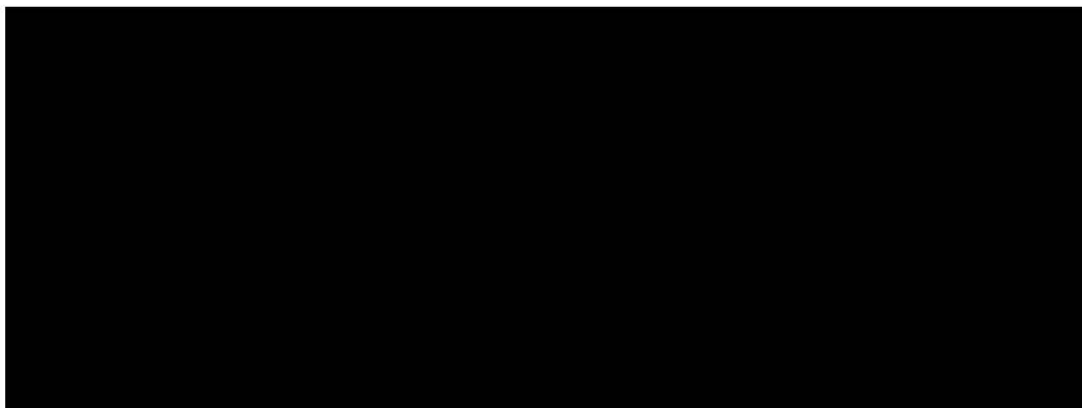
**Invoice price**

- 2.6 SBD issues all DEWALT dealers with a price list setting out for each product in the range the recommended resale price (**RRP**), the 'stockist price' (also referred to as the invoice price) and a quantity buy price for each product [REDACTED]
- 2.7 [REDACTED] In this regard, it is important to note that SBD aims (and will continue to do so) to set RRP's on its DEWALT branded products at a realistic market price, taking into account a range of factors including competitor products and prices. SBD will adjust its RRP's down if it considers that the RRP does not reflect a realistic market price. Accordingly, the MAP Conduct will still allow for some scope for dealers to compete through advertised discounts on the DEWALT Products.
- 2.8 In addition to the quantity buy price discount, SBD offers additional rebates to its dealers. These are negotiated on an annual basis and can include:
- (a) a base rebate which is a guaranteed rebate;
  - (b) for buying groups, a buying group rebate;
  - (c) marketing rebate, to assist in funding catalogues and other marketing activities; and
  - (d) long term incentive rebates which are generally volume based rebates for meeting certain sales targets.

The actual price paid by the reseller (being the stockist or invoice price less the various discounts and rebates that may apply) is known as the 'net net price'.

[REDACTED]

**Diagram 1: MAP and SBD pricing**



### Price promotions

- 2.10 During the course of each year, SBD will often run price promotions where SBD helps fund (either in whole or part) a special discounted price to be offered to end-user customers. SBD helps fund the promotion by offering participating dealers a discounted supply price for the duration of the promotion. SBD will also often invest in advertising and marketing activity to promote the discounted price to potential customers.
  - 2.11 SBD may offer price promotions to all DEWALT dealers who wish to participate or may offer a price promotion to only to certain dealers. SBD funding of a certain level of promotional activity is included in some of SBD's dealer agreements.
  - 2.12 The MAP Conduct will mean that for promotions, those dealers who choose to participate in a promotion run and funded by SBD, will not be permitted to advertise the promoted product below the discounted promotional price, being the Promotional MAP.
3. **Rationale for the MAP Conduct (NF, section 3.3)**

### Overview

- 3.1 SBD's DEWALT power tools are high quality, technically innovative products aimed at the professional segment of the market. The innovative nature of DEWALT's products can particularly be seen with DEWALT's FlexVolt range as well as its dust extraction systems.
- 3.2 SBD's distribution model for DEWALT relies on its dealers being able to provide a high level of pre- and post-sales services to end-user customers. This pre- and post-sales service is particularly important for a premium product such as DEWALT which is targeted at professional / trade end-users and frequently requires additional levels of retail service and advice to be provided to the end customer. In particular:
  - (a) Notwithstanding that most end-user customers are professional tradespeople, they still need advice about which product will best suit their needs, how to use a particular product or which other products, accessories or attachments are required or desirable to use the product most effectively.
  - (b) In order to provide this advice, it is very important that dealers have knowledgeable sales staff who are trained on the products and are willing to spend time explaining and demonstrating the products to potential customers. This requires significant investment by both SBD and its DEWALT dealers in



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regular training. Continuous product innovation and the release of new DEWALT products means that ongoing investment in training is required.

- (c) It is also important that dealers carry a wide range of DEWALT products, with sufficient display space devoted to the products so that they are well displayed in store and potential customers can readily inspect products 'out of the box', and further that there is sufficient stock on hand. Appropriate display space and product presentation, can be particularly important to support new products and promotions.
- (d) Post-sales support is also important to ensure that customers have a good overall experience of DEWALT, this includes ad hoc advice and trouble-shooting as well as good warranty and repair service for products that develop a problem.

Pre- and post-sales support is discussed further below at paragraphs 6.6 and following, with SBD's investment in training and support staff discussed at 6.12 and following, and the specific support required for new product launches discussed at 6.18 and following.

- 3.3 However, in a market with very aggressive pricing behaviour, dealers are often not prepared to invest in such service if they are not going to earn a sufficient return on their investment. Ever increasing price competition for trade quality power tools has meant that dealers have been continually undercutting each other on advertised prices. Margins on DEWALT products are considered by many dealers to be too low, particularly when compared to the margins that they earn on products from competitors such as Makita, Milwaukee and Festool which margins are perceived by resellers to be protected (whether by reason of manufacturers' actual or understood policies on discounting, or ACCC notification).
- 3.4 The price competition and comparatively low margins on DEWALT products has been largely driven by two inter-connected factors: the significant growth in the online promotion and sale of power tools (including the growth and use of price comparison websites) and the price guarantee policies of various dealers whereby they promise to beat a competitor's lower price. These price guarantee policies mean that dealers with these policies will reduce their prices to match another reseller's online advertised price to so avoid having to offer additional discounts under their price guarantee policy.
- 3.5 The heavy discounting is often driven by smaller dealers who may have a single store but mainly sell online, offering much lower levels of service (as most of their sales are online). These include dealers such as [REDACTED]. However, there is also discounting pressure as a result of advertised online prices from non-authorized dealers, such as Audels, Supergrip and Melbourne Tool Company. These dealers acquire product through non-authorized channels and advertise products online at highly discounted prices. In SBD's experience, they often don't even carry the stock they are advertising, not to mention providing very little customer service. However, other dealers - with price guarantee policies - will lower their prices to meet these dealers. There is very little that SBD can do in relation to such dealers

- 3.6 In recent years, SBD has found that customers are visiting specialist dealers in-store who carry a range of DEWALT products that are on display in-store and are able offer a high level of pre-sales service and advice, but then purchasing the product at a lower price from another reseller who provides little or no pre- or post-sales services but promotes a cheap price online - or requiring the dealer to match the other reseller if they wish to retain the sale.
- 3.7 Major dealers, especially those with price guarantee policies, will match the discounted price in order to comply with their policies and retain the sale. As noted above, some dealers are also proactively discounting DEWALT in order to price match advertised online prices, often from dealers who mainly operate online and provide little service. However, this has an adverse impact on their margin which in turn impacts their ranging decisions unless SBD is willing to provide additional financial support so that they can maintain margin. Pricing issues and complaints are raised with SBD employees with a high degree of frequency, and SBD can receive complaints on a daily basis.
- 3.8 Accordingly, it can be seen that there is a 'free-riding' problem whereby those dealers who do invest in providing high levels of pre- and post-sales services do not earn sufficient margins to reward their efforts. In the absence of SBD engaging in the MAP Conduct, the decline in margins is likely to lead to existing dealers reducing their pre- and post-sales service to cut costs and/or de-ranging DEWALT products. SBD has already experienced de-ranging of its products by dealers who provide good customer service. This will result in a reduction in consumer welfare, through reduced service and reduced consumer choice.
- 3.9 Further to this, there are currently specialist power tool dealers who will not carry DEWALT products because they do not believe they will be able to earn a sufficient margin to justify the investment that would be required. Competitor brands where margins are protected are preferred to DEWALT. The MAP Conduct would mean that more of these dealers, who are often the smaller independents who invest in high quality service, would be willing to carry DEWALT.
- 3.10 The MAP Conduct will also support SBD's current and proposed increased investments in improving customer service, particularly through its training initiatives. SBD currently makes significant investment in its promoting high quality retail services through its own employees and through the extensive training it provides to its employees, its dealers and end-users. SBD has plans to significantly increase these investments over the next few years. This is described further at paragraphs 6.12 and following below.
- 3.11 SBD's ability to make these and the planned future investments will be compromised if these investments are not supported by its dealers, and if it has to provide additional rebates and funding to resellers to support them maintaining their margins as a result of having to provide additional discounts to their customers.
- 3.12 As discussed below at paragraph 6.10, if the MAP Conduct is allowed to stand SBD proposes to introduce a premium dealer program as a means of ensuring improved retail services from its dealers.

#### **De-ranging and reduced customer choice**

- 3.13 Free-riding behaviour creates the risk that dealers providing good customer service will not achieve sufficient returns to enable them to continue to carry the DEWALT Products or alternatively will reduce their service to reduce costs. Such actions

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cause consumer detriment, either by reducing consumer choice or by reducing the service offered to consumers.

3.14 Dealers will usually set targets as to the expected margin they seek to earn on a particular product. SBD understands that most dealers will usually seek to earn a retail margin of around [REDACTED], which level is generally considered to be profitable having regard to overheads.

3.15 If a product is not earning sufficient margin because the reseller is having to discount the product in order to match competitor activity, a reseller will usually de-range the product. In some cases, a reseller may elect to de-range an entire brand. Some recent examples involving DEWALT products are set out below.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Undermining promotions**

3.22 The aggressive price competition in the market is also undermining promotions. Promotions drive competition, both intra- and inter-brand competition, and can offer significant benefits to customers, providing them with access to favourable terms for

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a particular product for a short period of time. Promotions often require significant investment by both SBD and participating dealers, however that investment can be undercut by certain dealers deciding to undercut the promotion. If promotions do not provide the expected return to SBD and its dealers, then they will both be less likely to invest in promotions in the future.

3.23 This issue is illustrated by a recent DEWALT promotion, where customers were given the opportunity to purchase a DEWALT FlexVolt drill and charger for \$199, compared to the recommended resale price of \$459. For SBD, this promotion, provided the opportunity to encourage customers to try the FlexVolt platform by offering them a 'kit' (i.e. product, battery and charger) at a heavily reduced price. In order to run this promotion:

- (a) SBD ordered about [REDACTED] kits to meet expected demand;
- (b) various SBD dealers agreed to take part in the promotion, purchasing kits and agreeing to sell this product at no more than the promotional price [REDACTED] and [REDACTED];
- (c) SBD invested approximately [REDACTED] on marketing, including print and radio advertisements.

3.24 One reseller, [REDACTED], who only acquired a relatively small volume of products for the promotion [REDACTED] promoted the kit on line at \$189, \$10 below the recommended promotional price. This resulted in two of SBD's largest resellers, who had made significant investment in the promotion, reducing their promotional prices to match this reseller and not earning an acceptable return on this promotion. [REDACTED]

[REDACTED] This type of incident means that dealers such as these are much less likely to support promotions in the future as there is no guarantee that they will obtain an appropriate return for their investment and involvement.

[REDACTED] A further example was the [REDACTED], a yearly promotional SKU for SBD which SBD has not been able to run again after one of its major resellers refused to take their allotment unless SBD's price to them was reduced in response to a price promotion advertised by another reseller. [REDACTED]

3.26 The Promotional MAP conduct would allow SBD and dealers to participate in promotions with security that the promotional price and their investment would not be undercut by other dealers who are also electing to participate in the promotion and receive the benefits of that promotion. In this regard, it is important to note that dealers are not required to participate in promotions - the Promotional MAP requirement would only apply to those dealers who elect to participate in the promotion and receive the promotional price and other support from SBD.

- 3.27 Promotions offer benefits and significant value to consumers and drive competition, particularly at the inter-brand level between manufacturers.

**Sustainable prices and service focus enables smaller dealers to be better compete**

- 3.28 The MAP Conduct will result in sustainable prices on DEWALT for smaller dealers and enable them to better compete with the larger DEWALT dealers.
- 3.29 Smaller dealers such as independent, non-branded hardware and tool specialists are increasingly not able to withstand the pressure on margins that has resulted from the heavy discounting behaviour that is referred to above.
- 3.30 Unlike the concerns raised by the ACCC in response to the Meredith Dairy notification, the MAP Conduct will not have the effect of protecting large incumbent retailers from price competition from smaller retailers. Smaller power tool dealers are not able to beat the larger dealers on price. The larger retailers regularly undertake 'scraping' activities to monitor the prices of their competitors, including smaller online competitors, and will often make temporary adjustments to their prices so their prices match any lower advertised prices in the market. The price guarantee policies of the larger dealers mean that they will match if not beat smaller dealers who advertise a discounted price in order to protect their margins against offering a further discount against the lower advertised price as promised under their price guarantees.
- 3.31 The larger resellers with their strong bargaining power as well as economies of scale are generally able to negotiate better trading terms from SBD. Further, they will often pressure SBD to provide them with additional funding to support their price matching activities.
- 3.32 SBD's experience is that some of these smaller dealers will not stock DEWALT at all as they are unable to earn a sufficient margin on DEWALT to provide the level of service that enables them to compete. The type of additional service provided by smaller dealers who do high quality service includes having representatives attend construction sites to explore customers' specific needs and explain the benefits of the power tools they carry to customers, taking into account the requirements of the specific site and job. These representatives may go alone or with members of DEWALT's Site Solutions team.
- 3.33 DEWALT produces marketing materials to assist dealers who engage in these activities. By way of example, Attachment 2 is a copy of the DEWALT Site Solutions - Exterior Building Construction Trades brochure. This brochure which explains the range of tools available for exterior building construction trades and how they are used to meet specific requirements. It is used by both dealer representatives and DEWALT's Site Solutions team when they go on-site to promote and educate end-users on DEWALT products.
- 3.34 For those smaller dealers that do stock DEWALT, some are de-ranging DEWALT in whole or part, or decreasing their support for DEWALT as it is not commercially viable for them to continue to carry and support DEWALT to the same extent.
- 3.35 Some smaller dealers have even been forced to close entirely due to increasingly aggressive price competition. SBD has observed an ongoing decline in the number of smaller independent tool dealers and a growth in sales of the major resellers such as Bunnings, Total Tools and Sydney Tools.

- 3.36 In either case, the effect is that the DEWALT Products are available in a reduced number of channels and, as a result, consumer choice becomes more limited. The MAP Conduct will support the smaller dealers who provide high quality service, enabling them to carry a wider range of DEWALT products and better compete with the larger resellers.

#### **Limited scope of MAP Conduct**

- 3.37 It is important to note that SBD is **not** seeking to stop price competition between its dealers, including through their advertising, and the MAP Conduct will not do this. SBD is only seeking to put in place a floor price below which certain DEWALT products cannot be advertised. This floor price is set by reference to SBD's stockist price excluding the additional discounts and rebates offered by SBD. As set out above, the stockist price is well below SBD's RRP (which is set by reference to market price) and accordingly, there will continue to be significant scope for dealers to compete through advertised discounted prices on DEWALT products. Dealers will also be able to continue offer discounted prices below the MAP to customers attending in-store.
- 3.38 This scope for continued price competition on DEWALT products between dealers will, together with the strong inter-brand competition, mean that dealers will not be able to set inflated retail prices for the DEWALT Products.
- 3.39 Further, the strong inter-brand competition would mean that if SBD attempted to increase RRP's or set the MAP above market prices it would lose sales to its competitors and dealers would de-range DEWALT products.

## DEWALT dealers, products and distribution

### 4. **Classes of persons directly impacted by the MAP Conduct (NF, section 5)**

4.1 The MAP Conduct may impact dealers and end-users of the DEWALT Products.

#### Dealers

4.2 SBD's dealers for DEWALT products fall into the following broad channels:

- (a) hardware retailers, which includes Bunnings, Independent Hardware Group (IHG), whose brands include Mitre 10, Home Timber & Hardware, Thrifty-Link and True Value Hardware, and hardware dealers in the Natbuild and HBT hardware buying groups;
- (b) specialist tool dealers, including Sydney Tools, Total Tools, United Tool Group and Adelaide Tools, and many smaller independent dealers; and
- (c) construction and industrial suppliers, including Blackwoods, AIS, CSS Group and Konnect.

4.3 While the MAP Conduct will prevent dealers from advertising DEWALT branded power tools, accessories and attachments below the MAP if they wish to receive additional discounts from SBD, as discussed further below, dealers will not be adversely impacted by this. The MAP is set at the SBD stockist price, which is below the RRP, and accordingly dealers will be able to continue to advertise discounts on the DEWALT Products below the RRP. Dealers will also be able to sell the DEWALT Products for prices below the MAP to customers who seek to negotiate a better price directly with the reseller.

4.4 SBD has had many dealers (both large and small) request that it put in place a MAP in order to assist those dealers earn a viable margin on the DEWALT Products. These dealers also consider the current environment is not sustainable and damaging to their business.

#### End-users

4.5 End-users of DEWALT products are primarily professional tradespersons. DEWALT power tools may also sometimes be purchased by 'aspirational' DIY end-users who may be seeking a higher quality, higher cost power tool product. The DEWALT brand offers quality products primarily targeted at professional tradespeople, rather than DIY end-users. SBD estimates that about 80% of DEWALT customers are professional trades people.

4.6 As discussed further below, end-use customers will not be adversely impacted by the MAP Conduct. SBD will continue to face strong price competition from competing brands which will prevent SBD setting the MAP at a non-competitive level. Further, as the MAP sets a floor on the advertised price that is below the RRP for the product, it will not eliminate intra-brand price competition on DEWALT branded products. In addition, end-customers will still be able to negotiate discounted prices below the MAP with dealers.

### 5. **Products and services supplied (NF, section 6)**

5.1 SBD distributes across Australia tools, hardware products and accessories under a range of brands, namely Stanley, DEWALT, Black & Decker, Porter Cable, Irwin Tools, Lenox, Bostitch and Sidchrome.

- 5.2 The DEWALT range of products consists of high performance power tools, accessories and attachments, as well as hand tools and workwear, designed for the professional trade segment. The professional trade segment includes tradesmen working in building and construction, cabinet making and joinery, mining, automotive, marine building and repairs and manufacturing.
- 5.3 The DEWALT Products include the following categories of power tools:
- (a) saws (including mitre saws, plunge saws, circular saws, jigsaws and reciprocating saws);
  - (b) routers, trimmers, planers and biscuit joiners;
  - (c) sanders and polishers;
  - (d) drills, screwdrivers and hammers;
  - (e) grinders;
  - (f) cutters; and
  - (g) landscaping tools (chainsaws, line trimmers).
- 5.4 DEWALT branded power tools include both corded and cordless products for a number of product categories.
- 5.5 DEWALT has two lines of particularly innovative, high quality power tool products that require additional education and support. First, its FlexVolt range and second its dust extraction systems. Each of these are discussed further below.
- 5.6 A copy of the current DEWALT price lists, which contains a complete listing of DEWALT products, covering the DEWALT Products are attached as Confidential Attachments 3 and 4 (FlexVolt).

#### **DEWALT FlexVolt**

- 5.7 DEWALT's cordless power tools include its FlexVolt range, a specialised high performance cordless range of power tools designed for professional tradesmen. DEWALT FlexVolt products is a range of 54V power tools that run off a flexible battery platform (compared to most cordless power tools which are 18V).
- 5.8 The FlexVolt product is unique in the power tool market. The 54V battery will deliver a higher amount of power and means that a cordless product can be used where for other brands of power tool it may be necessary to use a corded or petrol product. For example, a rotary hammer or concrete saw. The ability to also run 18V tools from the FlexVolt battery means that the battery will deliver the correct amount of power but can run for a longer time before recharging is needed. In other words, the platform provides both power and long run time depending on the specific tool needs.
- 5.9 The additional power is a significant benefit for tradespersons as it means that they do not need to use corded products. This can save time as all corded products must be tagged and tested on each job site. It also provides portability for areas of a job site where there may be restricted power access. The FlexVolt system also has safety benefits as there is no need to have electric power cords running across sites..
- 5.10 In addition, the FlexVolt platform means that the battery automatically changes voltage so that it is at the correct voltage depending on the tool being used. The



FlexVolt platform also features 'backwards compatibility' which means that existing cordless DEWALT products can be used with this new battery platform.

- 5.11 DEWALT's competitors do not have equivalent cordless products with this higher power. Makita has some products which use two 18 volt batteries, which is double the power but still less than FlexVolt. The competitor products that compete on performance with FlexVolt are corded products.
- 5.12 DEWALT considers products in its FlexVolt range to be of equivalent quality and technical sophistication to the equivalent products in the Festool range. By way of illustration Attachment 5 contains a comparison prepared by SBD of three Festool and FlexVolt products where SBD believes its products are superior.

#### **DEWALT dust extraction systems**

- 5.13 Construction dust exposure and dust management on construction sites is becoming an increasingly important work health safety issue in the construction industry.
- 5.14 DEWALT has been developing its vacuums and other dust extraction products in response to this need. However, these products will only be fully effective if they are used correctly by the end-user with the right products used together as a system.
- 5.15 It is also important that the correct dust extraction products are used to deal with the particular dust issues arising on a job-site. For instance, the maximum allowable concentrations for concrete dust are much lower than for soft wood dust. Accordingly, a higher filter performance is required for dust extraction systems used in conjunction with power tools for working with concrete.
- 5.16 In addition to the general benefits of better retail service, there are clearly significant public health benefits in ensuring that tradespeople are educated on dust issues for construction sites, dust extraction technology for their power tools and how to use this technology correctly.
- 5.17 Attachment 6 is a document prepared by SBD which provides an overview of dust management issues and its dust management systems and products.

#### **6. Distribution of DEWALT products (NF, section 7)**

- 6.1 SBD, through its DEWALT range, supplies power tools, accessories and attachments specifically designed for professional tradespeople. DEWALT power tools are used by tradespeople working in a range of industries, including building and construction, mining, automotive and manufacturing.
- 6.2 SBD distributes DEWALT products through more than a thousand dealers across Australia. These dealers supply DEWALT branded products to end-user customers, who range from corporate customers to individual tradespeople. SBD's DEWALT resellers fall into three broad categories:
  - (a) hardware retailers - including Bunnings and other retail hardware outlets which dealers generally carry professional power tools for the trade segment, as well as consumer power tools for DIY customers;
  - (b) specialist tool dealers - which are usually focused on supplying professional power tools to the trade segment; and

- (c) construction and industrial suppliers - such as Blackwoods, which are focused on supplying professional power tools as well as other products to construction and industrial customers.
- 6.3 Some dealers will carry a broad range of DEWALT branded products and other power tools, while others may specialise in tools for certain trades (e.g. plumbing, electrical or automotive) or certain types of power tools (e.g. fasteners). While SBD will negotiate ranging with its dealers, ultimately it is a matter for each reseller to determine what DEWALT or other SBD products they wish to carry out of the available range of SBD products for that reseller.
- 6.4 SBD enters into annual agreements with its dealers, usually based on SBD's standard reseller agreement with specific commercial terms negotiated with each reseller individually. These commercial terms can cover such matters as additional rebates and discounts, as well as advertising and promotion support. The SBD reseller agreement covers the supply of DEWALT branded products as well as any other SBD brands that the reseller may carry.
- 6.5 SBD's dealer agreements do not prevent dealers from carrying power tools supplied by other manufacturers and nearly all dealers, including those focused on the trade segment as well as those supplying both the trade segment and DIY customers, will carry a range of power tools from different manufacturers.

#### **Pre- and post-sales support**

- 6.6 High quality retail services requires ongoing investment by both SBD and its dealers. If dealers are not earning the required returns on DEWALT products due to having to meet aggressive discounting by resellers who do not offer similar service or losing sales to online resellers who offer minimal customer service, then they will be reluctant to make the necessary investment to support the continued provision of that service.
- 6.7 The supply of pre- and post-sales support and service is very important to the distribution and sale of DEWALT products as professional, high end power tools. In particular, it is important that:
- (a) a range of DEWALT products are carried, are on display for inspection by potential purchasers and the outlet holds appropriate stock levels to avoid 'out of stock' issues when a customer wishes to purchase a product. This requires sufficient display space to be allocated to DEWALT products so that products are available for inspection 'out of the box' and can be demonstrated to potential customers. Attachment 7 contains photographs of sample in-store displays for DEWALT (one for an independent reseller and one for Bunnings), as can be seen from Attachment 7 are similar to those provided for Festool;
  - (b) there are knowledgeable sales persons on hand in-store who have received training on DEWALT products who are able explain the specific features of the product, how the product compares with other professional power tools, and demonstrate the operation of the tool to potential customers, as well as to deal with any follow up queries or trouble-shooting post-sale (The training that SBD provides to its dealers is discussed further below);

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- (c) this pre-sales support is particularly important for the DEWALT FlexVolt range, as well as DEWALT dust extraction systems
    - (i) FlexVolt has a unique platform which requires additional investment by the customer upfront to acquire both the product and the battery (for example, the RRP for a FlexVolt Brushless 3 Mode Dedicated Cordless Rotary Hammer is \$649, but in a kit with the battery the RRP is \$1049), but can then offer significant value to the customer through its flexible platform;
    - (ii) DEWALT dust extraction systems where products are designed to be used together as a system and will not be fully effective unless they are used correctly;
  - (d) a range of DEWALT accessories and attachments for the relevant tools are also readily available for purchase;
  - (e) appropriate post-sales support is provided by the reseller, this includes providing ad hoc support to customers, including advice on the use of a DEWALT product and basic trouble shooting where support short of warranty assistance is required, as well as warranty support for customers whose product develops a problem (whether as a warranty agent themselves, or working with authorised DEWALT warranty agents). Poor post-sales support may mean that product issues are not resolved which then reflects adversely on the DEWALT brand.
- 6.8 The importance of high quality service to the distribution of DEWALT products is not inconsistent with Bunnings being the largest DEWALT reseller. As discussed further below, while Bunnings may not provide the same level of service as a specialist power tool dealer, it is not a low service reseller. Bunnings provides a significantly higher level of service than many small, online resellers and does invest in the professional power tool segment and providing good service to professional tradespeople. However, Bunnings will not invest if a product does not generate sufficient return. FlexVolt requires additional investment by dealers in order to be successfully sold but dealers will not make this investment if they cannot earn a sufficient return on the products. [REDACTED]
- 6.9 If a dealer is able to sell sufficient volumes and earn a good margin on a particular brand, it will be incentivised to invest in that brand including through providing improved pre- and post-sales service. In addition to training and better customer service, this can also include carrying a broader range of products, devoting more floor space to the products and participating in demonstrations, trade events or special offers.
- 6.10 Some years ago, SBD attempted to introduce a 'premium dealer' program to encourage and support its dealers in providing better retail services. This program was not successful and was withdrawn by SBD as resellers were not prepared to make those investments. If the MAP Conduct is permitted to stand, then SBD proposes reintroducing such a program as a means of ensuring that its dealers are investing in and actually providing better retail services. It is envisaged that this new program would include metrics around such matters as employee training, in-store displays, product ranging and stock levels, and customer-facing activities such as demonstrations.

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6.11 SBD also makes significant investment in supporting its dealer provide quality post-sales support. Post-sales support is critical to maintaining the DEWALT brand premium and product performance reputation. SBD's Keysborough Distribution Centre includes a purpose built integrated repair and service facility. This facility includes spare parts holding to support all DEWALT products as well as trained technicians to repair FlexVolt and other DEWALT products, as well as providing training and technical repair support to SBD's network of 118 authorised repair agents across Australia. SBD supports over 14,000 repair and warranty jobs each year, with about 5,700 undertaken at the SBD facility. Attachment 7 has photographs of the SBD facility.

**SBD training**

6.12 A key element of the investment by SBD and its resellers is in product training. This is an investment of both money and time. SBD does not charge its dealers for training.

6.13 Training is particularly important for professional quality power tools such as DEWALT so that the person selling the power tools can explain the capabilities of the product and any specific features or developments. SBD invests heavily in product training, particularly for its DEWALT products. The training provided by SBD covers SBD's own employees as well as training for its dealers and end-user customers. Further details regarding the training provided by SBD is set out below.

6.14 SBD's investment in training has four main aspects:

(a) **dedicated SBD training managers** who deliver training to SBD employees as well as to dealer's employees, both at SBD University, SBD's Keysborough training facility and at customer sites. [REDACTED]

(i) [REDACTED]

(b) the **SBD University**, a custom-built training facility at Keysborough in Victoria, dedicated to providing training to SBD employees and customers. SBD estimates the annual operating costs of this facility is about [REDACTED]

(c) **digital training** through e-learning portals through the SBD BlueVolt platform, which training is made available to both SBD employees and customers, as well as live-streaming courses:

[REDACTED]

[REDACTED]

[REDACTED]

(d) the SBD field teams servicing SBD customers, including the SBD Enterprise Solutions team consisting of:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.15 In addition to the training provided by the SBD Enterprise Solutions team, the SBD Sales Team is also actively involved in training as part of their dealer relationship role, in addition to providing other support to dealers to help them provide high quality retail services. The sales team manages customer relationships, promotes DEWALT products (including new products and new promotions), assists with in-store ranging and presentation of DEWALT products and also trains and demonstrates DEWALT products instore to both dealer staff and end-users. [REDACTED]

[REDACTED]

6.16 While the SBD training team covers the full portfolio of SBD products, SBD estimates that about [REDACTED] of the training provided is for DEWALT products. [REDACTED]

[REDACTED]

6.17 See further details in the document attached as Attachment 7.

**Support for new product launches**

6.18 The market for the supply of professional quality power tools is characterised by continuous innovation with new products with new features being regularly released

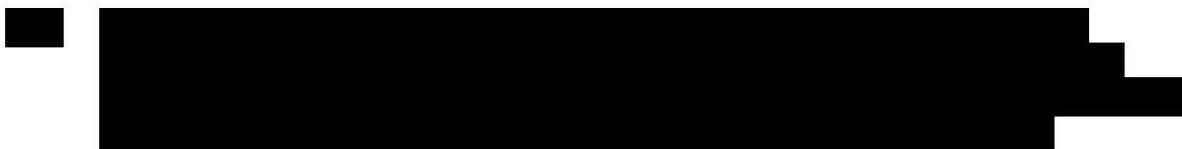
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(see further paragraph 8.11 below). Dealers need to continually invest in training their staff so that they are up to date with the new products and their features and are able to share this knowledge with potential customers.

- 6.19 When SBD launches a new DEWALT product, SBD will invest heavily in training and promoting that product. SBD may also require additional investment from dealers who it is partnering with for the launch.
- 6.20 By way of example, for the launch of the FlexVolt XR range SBD produced product brochures, videos and other collateral to promote the range and educate dealers and end-users on these products. In addition, there were specific displays set up in major retailers to support the product launch. Total Tools and Bunnings were the two key launch partners for this product range.
- 6.21 For the FlexVolt XR range launch, SBD sent representatives from its EUS team as well as sales representatives to Total Tools outlets to provide training and demonstrations to both Total Tools' staff as well as to Total Tools' customers. Total Tools also had specific merchandising displays set up in its stores so that the FlexVault range was well-displayed with customers given the opportunity to inspect and test products in the range. Attachment 10 contains photographs of the displays and copies of some of this material that was used to support the launch of FlexVault

### Major DEWALT distributors and the DEWALT distribution footprint

- 6.22 The largest distributors of DEWALT products are Bunnings, Sydney Tools and Total Tools. All three are important to the successful distribution of DEWALT products and while Bunnings may not provide the same service as the specialist it does still invest in providing good service to its customers for the products it carries.



- 6.24 Sydney Tools ([sydneytools.com.au](http://sydneytools.com.au)) and Total Tools ([www.totaltools.com.au](http://www.totaltools.com.au)) are examples of dealers who provide high levels of service. Their staff are able to provide expert detailed advice to potential customers, carry a wide range of DEWALT products that are well displayed and hold appropriate levels of stock on hand. The DEWALT products are well displayed in their stores, with products shown out of their box so that the product can be inspected by potential customers.
- 6.25 Each of these dealers have store staff experts who are able to advise customers on different power tools and their capabilities, as well as demonstrate the use of these products. These experts are able to explain the benefits of premium products such as DEWALT and why they are worth additional investment. For both Sydney Tools and Total Tools, high customer service is a key feature of how they compete in the market.
- 6.26 Sydney Tools and Total Tools ensure that their power tools staff undertake training on DEWALT products - which can include in-person training (whether at SBD's training facility or delivered at the their own premises) as well as online training. This training is discussed further below.
- 6.27 They are also focused on providing quality post-sales service, particularly Sydney Tools which has 21 service and repair workshops within its store network.

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- 6.28 In addition to DEWALT, Sydney Tools and Total Tools carry all major leading brands of professional power tools including Festool, Makita, Milwaukee, Bosch and Fein.
- 6.29 While Bunnings does not provide the same service as specialist dealers, such as Sydney Tools and Total Tools and is known more for its consumer offering, Bunnings does invest in and service the professional segment, and is increasing its investment in this space. Bunnings proposed increased investment in the trade segment is referenced in its 20 March 2019 Bunnings Presentation, which presentation recognises as part of its trade strategy the importance of good service noting Bunnings' investment in trade team training and having in-store trade specialists.<sup>1</sup>
- 6.30 In addition to DEWALT, Bunnings also exclusively carries AEG, a professional power tool brand supplied by Techtronic. For the products that it decides to carry, Bunnings stores will usually have those products well displayed with appropriate stock on hand.

[REDACTED]

[REDACTED]

- 6.33 Bunnings also supports SBD providing demonstrations of its products in store.

Accordingly, notwithstanding its consumer focus and warehouse presentation Bunnings should not be seen as a low service dealer, unlike some of the other dealers who mainly sell on-line and have a very limited in-store offering including in terms of staff support, stock on display and stock on hand.

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<sup>1</sup> Wesfarmers, Bunnings Presentation and Operational Site Tour, 20 March 2019, pages 28-30 (<https://www.wesfarmers.com.au/docs/default-source/asx-announcements/bunnings-presentation-and-operational-site-tour.pdf?sfvrsn=0>).

## Competition for the supply of trade quality power tools

### 7. Estimated market shares (NF, section 8)

- 7.1 There is no independent market share data available for the supply of power tools in Australia. SBD has set out in Confidential Schedule 2, its best estimate of the market shares of SBD and its major competitors.
- 7.2 SBD has provided these market share estimates for the national market for the supply of power tools, as well as providing estimates for the professional power tool segment. In its prior consideration of power tools, the ACCC has noted that power tool supply is highly differentiated and that mass market brands will compete with brands more targeted at professionals.
- 7.3 The market share estimates show that Techtronic (Milwaukee, AEG, Ryobi) and Makita are the largest suppliers of power tools by a significant margin. They are also the two largest suppliers of professional power tools, again by a significant margin. SBD estimates that Techtronic and Makita account for around [REDACTED] of the professional segment.
- 7.4 SBD is the third largest supplier of power tools and the third largest supplier of professional power tools through its DEWALT brand. There are also a number of other suppliers who are well established major global power tool manufacturers, who, while they may have smaller shares of the overall market or professional power tools segment, are still strong and effective competitors.

### 8. Competitive constraints (NF, section 9)

#### Strong and effective competitors

- 8.1 The market for the supply of professional quality power tools is highly competitive with a range of strong and effective competitors. SBD will not be able to set a MAP above competitive prices otherwise SBD will lose sales to competitor products: both by reason of dealers preferring to promote competitor products as well as customers choosing to purchase competitor products rather than DEWALT.
- 8.2 SBD's competitors, including for the supply of power tools that compete with DEWALT include:
- (a) **Makita**, the largest power tool supplier in the Australian market, supplying Makita and Maktec power tools. Makita branded products are aimed at the professional segment, while Maktec is Makita's consumer brand. Makita's power tools are distributed through all channels and major dealers. Makita is one of the strongest competitors for SBD's DEWALT products, offering a similar range of products that are targeted at a similar price point.
  - (b) **Techtronic**, the second largest power tool supplier in the Australian market, supplying Milwaukee, AEG and Ryobi branded power tools. Milwaukee and AEG are designed for the professional segment, while Ryobi is Techtronic's consumer brand and the market leader in this segment. Techtronic supplies a similar range of power tools to SBD. Techtronic's Milwaukee brand is another particularly strong competitor to DEWALT products and is also sold at a similar price point. AEG and Ryobi products are exclusive to Bunnings, while Milwaukee is sold mainly through specialist dealers.
  - (c) **Bosch**, a major supplier of professional and consumer power tools, through its Bosch Blue and Bosch Green brands respectively. Bosch recently



- (d) rationalised the distribution of its products and reduced its dealer network. Bosch power tools are sold through most major dealers of power tools, including Bunnings, Total Tools, Mitre 10 and Blackwoods.
- (e) **Hitachi**, is a supplier of cordless power tools for the professional segment. Hitachi products are sold through all channels except for Bunnings. Hitachi is a strong competitor for the supply of cordless power tool products.
- (f) **Metabo**, is a supplier of power tools for the professional segment. Metabo power tools are mainly sold through specialist dealers.
- (g) **Tooltechnic**, is the Australian importer and distributor of a number of premium power tool brands for the professional segment, notably Festool. Tooltechnic's products are mostly sold through a network of specialist dealers, which network has been expanding following the ACCC's grant of authorisation and then notification for its resale price maintenance conduct.
- (h) **Hilti**, a supplier of premium power tools for the professional segment. Hilti does not use third party distributors and sells its products direct to end-user customers.
- (i) **ITW**, through its Ramset brand, is a supplier of a range of power tools focused on fastening products. The Ramset brand is targeted at the premium end of the market. Ramset products are sold directly to end-user customers as well as through specialist dealers.
- (j) **Einhell**, is a relatively new entrant to the Australian market, with its Ozito brand that is sold exclusively through Bunnings and targeted at the consumer segment, with a low end price point. Einhell has been very successful and SBD estimates that it is now the second largest supplier of consumer power tools.
- (k) **WORX**, a supplier of power tools for the consumer segment, through its Rockwell brand. WORX power tools are sold through IHG dealers (Mitre 10), as well as Supacheap Auto
- (l) **ALDI** through its Taurus range is becoming a relatively significant supplier of power tools, focused on the low end consumer segment.

8.3 As recognised by the ACCC in the Tooltechnic authorisation determination, there is a history of entry and expansion by established international power tool manufacturers. Relatively recent new entrants have included Einhell (mentioned above) as well as Keyang, a South Korean power tool brand targeted at the professional segment. In addition, Milwaukee has significantly expanded its market position over recent years.

#### **Strong competition on price and innovation**

8.4 The market is characterised by very strong competition, particularly on price but also on innovation and product quality.

8.5 Price competition takes place at the manufacturer level as well as the reseller level. This competition is particularly strong between brands such as DEWALT and its closest competitors Makita, Milwaukee and Bosch which offer a similar range of products at similar price points.

8.6 When SBD is setting the RRP for a new product it will compare the key features of its product with its closest competitors (which will often include Makita, Milwaukee

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- 8.7 and/or Bosch products) and set a RRP that SBD considers to be realistic having regard to the prices of competitor products and the differences between the products.
- 8.8 Manufacturers also compete in relation to the terms they offer their dealers and the margin that their product is likely to deliver to a reseller. In assessing margin, dealers take into account the net net price of the product as well as the likely retail price and the products ability to sustain that price. Dealers will not carry products that do not earn them sufficient margin and will de-range products if the margin is too low.
- 8.9 Dealers compete very aggressively on price for power tools. Overall the market has shifted more to 'every day low prices' model through the growth of dealers such as Bunnings and the need for other dealers to compete with their offering. However, even dealers with an everyday low prices approach if it is backed with a price guarantee (such as Bunnings has) will be continuously reviewing advertised prices and making temporary adjustments to their own prices to ensure that they are matching other dealers in the market, even much smaller dealers and particularly those with an online presence.
- 8.10 Customers, including trade customers, are very price conscious and will shop around to get a better price. Customers will often attend a store offering higher levels of service to assist them in choosing their product, but then buy elsewhere from another dealer offering a lower price. Or, alternatively, they may require their preferred dealer to match an online price in order to retain the sale.
- 8.11 In relation to innovation, power tool manufacturers are continually developing their product range, releasing new models of existing products and bringing new products on to the market. By way of example, in a typical month SBD may release 7 to 8 new products in the market. The typical lifecycle for a power tool from initial release to when it is replaced by an updated model or new product is around 18 months.

**Countervailing power of dealers**

■ SBD's largest dealers, Bunnings, Sydney Tools and Total Tools, have significant countervailing power. [REDACTED]

■ [REDACTED]

## Public benefits and detriments of the MAP Conduct

### 9. Public benefits (NF, section 10)

- 9.1 By reason of the matters set out above, it can be seen that the public benefits of the MAP Conduct will include:
- (a) improved retail services for customers, including as a result of improved service from trained, knowledgeable sales staff, better display and ranging of DEWALT products, and increased non-price competition between dealers;
  - (b) further to (a), better retail services will lead to customers making more informed purchasing decisions which, in addition to resulting in more efficient outcomes, is also likely to result in broader public health benefits in relation to dust extraction systems;
  - (c) support for SBD's current and planned future investments in improved retail services, through its investment in training for SBD employees, dealers and end-customers, as well as its investment in its sales team which provides on the ground support to dealers;
  - (d) increasing non-price competition between dealers, including by creating a more level playing field and greater sustainability for smaller specialist dealers who compete by providing high quality service;
  - (e) increased consumer choice through less range reductions and improved incentives for dealers to carry a wider range of DEWALT products;
  - (f) support for SBD's continued investment promotions which benefit end-customers and drive competition, especially inter-brand competition between manufacturers.
- 9.2 These benefits are discussed further below.

### Supporting investment by dealers and SBD in improved retail services and better outcomes for customers

- 9.3 High quality retail services require ongoing investment by both SBD and dealers. If dealers are not earning the required returns on DEWALT products due to having to meet aggressive advertised discounting by dealers who do not offer similar service or are losing sales to online dealers who offer minimal customer service, then they will be reluctant to make the necessary investment to support the continued provision of that service.
- 9.4 The MAP Conduct will provide dealers with the incentive to continue to invest in and improve their provision of good pre- and post-sales service. This includes:
- (a) carrying a wider range of DEWALT products, having stock on hand and allocating additional display space to DEWALT products so that customers can inspect products out of the box;
  - (b) ensuring that staff attend training on DEWALT products so that they are knowledgeable about the features and benefits of DEWALT products, including new products as they are developed and released, and can provide better assistance to customers;
  - (c) further to (b), it is also important that dealers have sufficient numbers of trained knowledgeable staff present in-store who are able to advise customers

on different power tools and their capabilities, as well as demonstrate the use of these products;

- (d) partnering with SBD to provide product demonstrations and training to customers on DEWALT products;
- (e) providing post-sales service, including ad hoc support to customers on the use of a DEWALT power tool and basic trouble shooting, as well as warrant and repair service support when a product has developed a problem.

- 9.5 A consequential benefit of dealers having trained staff on hand to advise and assist customers in their purchasing decision is that customers will be able to make more informed purchasing decisions. Not only does this result in more efficient outcomes, for products such as DEWALT's dust extraction systems it will result in broader public benefits as it will lead to better dust management on construction job sites. Dust management is an increasingly important health issue in the construction industry. While there are dust extraction products available, for these products to be effective in managing dust issues the right products must be used as part of an integrated dust managed system.
- 9.6 SBD currently monitors dealer performance through sales calls. During a sales call the sales representative will check that the store has good representation of the DEWALT brand. This includes checking stock (i.e. stock weight and no out of stocks), displays, reinforce training, marketing promotions and check that any POS material is on display. The sales representative may also check in on any demonstrations that are being provided. Sales visits will be recorded in SBD's CRM, with the sales representative filling inserting pre and post call content. They may also take photographs of the store and upload these. For instance if there is a new initiative (promotion or new product) they may take photos of how this is being implemented at the store.
- 9.7 In addition to continuing this monitoring, as set out above, if the MAP Conduct is permitted to stand SBD proposes to reintroduce its premium dealer program as a means of ensuring that its dealers are investing in and actually providing better retail services. This program will include metrics going to measures of improved customer service, such as staff training, displays, etc.
- 9.8 SBD is also considering introducing an accredited training program and will more actively monitor training within resellers. As part of this, SBD is looking to offer accreditation to reseller employees who have completed all requisite training units, e.g. accreditation as a "DEWALT Master".
- 9.9 SBD currently makes significant investments in training, particularly for DEWALT products and has plans to increase this investment over the next few years. This training covers SBD's own employees as well as training for its dealers and for end-customers. However, if the current conditions continue and dealers derange DEWALT or SBD has to provide additional financial support so that dealers do not derange DEWALT products (or so that they are prepared to carry new products) then this will adversely impact on SBD's margins and its ability to continue making these significant investments in training and support for its dealers.

**Promoting increased competition by dealers and manufacturers, as well as better ranging leading to increased consumer choice**

- 9.10 The MAP Conduct will incentivise dealers to compete on service, not just price, for the supply of DEWALT products. This includes competing through providing better

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service having regard to product ranging, product knowledge and expertise, product displays, demonstrations and training.

9.11 The MAP Conduct is also likely to mean that there are less range reductions of DEWALT products, and more dealers, especially the high service, independent specialists, will be more willing to carry a wider range of DEWALT products as they will have greater certainty of being able to earn an acceptable margin on those products. In particular, some of the smaller, independent specialist dealers who have deliberately not supplied DEWALT or have elected to de-range DEWALT are likely to be more willing to carry DEWALT. The MAP Conduct will result in sustainable prices and mean that these dealers will be able to better compete with the larger dealers.

9.12 Accordingly, the MAP Conduct will increase the channels and outlets through which a wide range of DEWALT products are available, resulting in greater customer choice and promoting competition.

■ The MAP Conduct will also support SBD in being able to launch more products and more innovation into market, rather than limit supply. The current market issues also mean that some products are not brought to market. ■

■ Bunnings, Total Tools and Sydney Tools will not range products unless they expect those products to be able to meet their margin targets. For example, when building new kits if SBD cannot make it to resellers' margin expectations SBD will not present it to their customers.

9.14 In addition, the implementation of a Promotional MAP will help enable SBD and those dealers who choose to participate to be able to continue to offer promotions on DEWALT products. For dealers, they will be able to commit to purchasing additional stock and setting up displays knowing that they won't be undercut by other dealers advertising a price lower than the Promotional MAP.

### MAP Conduct is a less restrictive option

9.15 The implementation of a MAP is a less restrictive than other alternatives that might be used to overcome the current market issues. For instance, some dealers are increasingly seeking exclusive supply arrangements so that there will not be intra-brand competition on a particular range of products ■

## 10. Public detriments (NF, section 11)

10.1 SBD considers that any public detriment, particularly in relation to any impact on competition, will be limited.

10.2 First, due to the vigorous price competition in the market, SBD will not be able to set MAPs for DEWALT products above competitive levels. If SBD did attempt to do so, both dealers and end-users would switch to competing brands, including notably Makita and Milwaukee. SBD does not supply any 'must have' products through its

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DEWALT brand. The MAP will not enable SBD to increase wholesale margins on the sale of DEWALT products - it would lose market share if it sought to do so.

- 10.3 Second, the MAP will be set at the stockist or invoice price which is well below RRP and accordingly still allow significant price competition between dealers through their advertising of the DEWALT Products. Unlike the Tooltechnic notification, the MAP Conduct will not eliminate intra-brand price competition.
- 10.4 If the MAP Conduct is allowed to stand, SBD would be willing to provide the ACCC with reporting on its RRP, MAPS and wholesale prices and margins so that the ACCC can monitor the impact of the conduct on prices and margins.
- 10.5 Third, as the MAP Conduct only imposes a MAP for online and in print advertising. It does not restrict in-store competitive activity by dealers. Further end-user customers will still be able to negotiate discounts below the MAP with dealers. They will still be able to shop around and seek the best price in-store.
- 10.6 The combined effect of these factors, taken together with the benefits of increased non-price competition between dealers, is that the MAP Conduct will not have an adverse impact on competition at the retail level and will not simply permit dealers to increase their margins above competitive levels. Any attempt to do so would result in a loss of sales with potential customers either switching to other power tool brands or to other dealers.

### Any other information

- 10.7 If the notification is not allowed to stand and SBD cannot engage in the notified conduct then:
  - (a) SBD is likely to increase its use of exclusive distribution whereby it limits certain DEWALT products and / or specific DEWALT promotions to a specific dealer or group of dealers (which are likely to be the major dealers, such as Bunnings, Total Tools or Sydney Tools, not smaller independents given their much lower volumes).
  - (b) Dealers are likely to continue to de-range DEWALT products (either specific products or the entire range), particularly products such as those in the FlexVolt range which require additional investment by dealers in order to be successfully sold.
  - (c) Dealers will also reduce their investment in DEWALT, including by allocating it less display space and reducing their investment in DEWALT training.
  - (d) Smaller dealers providing high levels of customer service will be less likely to carry DEWALT and will carry those brands where they consider their margins are protected, [REDACTED], over DEWALT.
  - (e) SBD may not be able to continue to make the planned increased investment in training and improving dealer customer service if dealers continue to de-range DEWALT products or SBD has to reduce its margins to ensure that dealers continue carrying DEWALT.
  - (f) All of the above risks resulting in the DEWALT brand becoming weaker in the market and market concentration increasing, with the two major suppliers (Makita and Milwaukee) accounting for a greater share of professional power tool sales.

[RESTRICTION OF PUBLICATION OF PART CLAIMED]

Schedule 1 (CONFIDENTIAL)

Contact details

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

Schedule 2 CONFIDENTIAL

Estimated market shares

| Brand                       | Manufacturer /<br>Authorised distributor | Estimated sales | Estimated share |
|-----------------------------|--|-----------------|-----------------|
| <b>Power tools</b>          |  |                 |                 |
| Makita                      | Makita                                   |                 |                 |
| Techtronic, Ryobi           | Techtronic                               |                 |                 |
| <b>DEWALT, B&amp;D</b>      | <b>SBD</b>                               |                 |                 |
| Ozito                       | Einhell                                  |                 |                 |
| Bosch                       | Bosch                                    |                 |                 |
| Hilti                       | Hilti                                    |                 |                 |
| Festool                     | Tooltechnic                              |                 |                 |
| ALDI                        | ALDI                                     |                 |                 |
| Hitachi                     | Hitachi                                  |                 |                 |
| WORX (Rockwell)             |  |                 |                 |
| ROK                         |  |                 |                 |
| Exceed                      |  |                 |                 |
| <b>Total</b>                |  |                 |                 |
| <b>Professional segment</b> |  |                 |                 |
| Makita                      | Makita                                   |                 |                 |
| Milwaukee                   | Techtronic                               |                 |                 |
| <b>DEWALT</b>               | <b>SBD</b>                               |                 |                 |
| Hilti                       | Hilti                                    |                 |                 |
| Festool                     | Tooltechnic                              |                 |                 |
| Bosch Blue                  | Bosch                                    |                 |                 |
| AEG                         | Techtronic                               |                 |                 |
| Hitachi                     | Hitachi                                  |                 |                 |
| Metabo                      | Metabo                                   |                 |                 |
| <b>Total</b>                |  |                 |                 |



