





A MAN'S TOYSHOP
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REF: AMT210218/1 – **Amendment to original response letter sent 02/03/18**

27th February 2018

Australian Competition & Consumer Commission
adjudication@accc.gov.au

**RE: Tooltechnic Systems (Aust) Pty Ltd
Retail Price Maintenance Notification RPM20181**

Dear Commissioners,

Please find attached a submission for your Board's consideration of retailers thoughts regarding the submitted RPM notification from Tooltechnic Systems (Aust) Pty Ltd for your adjudication of a new arrangement and the reviewing a previous arrangement to grant minimum retail prices for their range of Fein and Festool power tool products and accessories, as following:-

- * New proposed arrangement requiring dealers to not sell any Fein product below a price(s) nominated by Tooltechnic.
- * Continuation of an existing arrangement of requiring dealers to not sell any Festool product below a price(s) nominated by Tooltechnic.

My name is Ross Mylrea and I am Managing Director at A Man's Toyshop. We pride ourselves on having one of Australia's largest ranges of Workshop Equipment, Hand Tools and Specialist Tools to suit the Mechanical, Building, Farming & Contracting Specialists. Established in 1974 with strong and proud regional Queensland origins and employing over 45 people, the company was created and moulded with a focus on providing our vast and ever growing client base with unparalleled service excellence in terms of product range and quality, industry knowledge and expert advice, responsive service, and value for money. Our website can be viewed at www.amanstoyshop.com.au.

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I must say I am a little confused with the role the Australian Competition and Consumer Commission are playing here. My perception was that the ACCC was there to protect all parties from market and price abuse and to ensure there is fair competition and that consumers are protected from all forms of market manipulation and unfair, unscrupulous types of behaviors especially price control at both the purchasing level and at the consumer level? In this instance it appears that you are trying to burn the candle at both ends?

I was told about Tooltechnics good fortune when you approved their previous application in 2014 for Festool price control and on hearing about this I thought “That’s not right. How could that possibly happen?” Then I was talking to a Festool dealer and he assured me that the information was correct. He had stocked a range of Festool product and was instructed under no circumstances was he allowed to discount this product. Tooltechnic had arranged with the ACCC to sell their Festool product at a fixed price. He thought this was a directive from the ACCC itself on this policy!!! I have also been informed reliably that some Festool dealers themselves are telling the customers that they are unable to discount the product because of the ACCC directive. All I can say is if this is true how unfair is that to all the other power tool companies and Festool competitors?

I think the above highlights that through your Board’s approval of how much power it has given to Tooltechnic Systems in the market place. All the talk in the industry is about what Tooltechnic Systems did to the ACCC. This has completely destroyed any of their opposition’s plans with what items they have in their range that can be considered as an alternative product to the Festool range as their products are subject to retailers discounting them on the open market and Tooltechnics can tell the retailer how their Festool products cannot be discounted at all – What a sales pitch.

Tooltechnic Business Activities – their business description as listed is no different from 3 or 4 other major power tool suppliers in Australia and many other brands of products in the market place.

1 – Highly Differentiated Products that require a high level of both pre and post sales services. Well there are a few suppliers out there who would argue about that statement. Let’s be frank – Tooltechnics are not here for the wellbeing of their consumer or the reseller. It’s all about them getting Market Share, Gross Profit and Controlling their Brand in the Market Place. Like all importers into this country the services side has to be added into your landed costings, not to be complained about because you haven’t made enough profit on the sale to give that service.

2 – The ACCC considers that on balance the likely public benefit expected increase in retail services. This is not services but retail sales share for Festool product. The expected increase from Festool is only about more retail sales as at present 90% of their product would be sold to a trade. Remember they have been marketing in Australia since 1985 and their trade penetration has plateaued and to obtain growth they have decided on this alternative. Basically this is about getting more market share at a retail level. Now Joe Blow buys 1 tool at the fixed retail price, OK fair enough. (He won’t buy many tools anyway) but on the other hand a big cabinetmaker who has 10 of their tools in his shop and replaces them quite regularly – needs no servicing back up as they wear out with use - gets no discount! He has to pay the retail price. Any other brands of tools he would buy at least 20% better than Joe Blow.

How are you helping the reseller or the consumer? All this is about Tooltechnics trying to increase their retail market share on their own terms and for their benefit – no one else’s.

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3 – Providing retail pricing before and after. This is a joke as we are dealing with a world wide organisation whose cost base is moved around the world to get the best advantage so that when the retail price is at the top of the premium price range they don't have to give a retail price adjustment in Australia. To keep within those guidelines you have placed is only a matter of Tooltechnics head office overseas giving Australia better buying prices.

How easy is that when you are all controlled by the one integrated identity? What happens when Tooltechnics start manufacturing a product that was originally made in Europe and is now in China, cost goes from \$100 down to \$30 – does Tooltechnics pass this benefit on? You would be joking or live in fairy land. There is no market pressure to make Tooltechnic move their price down at all. The resellers don't mind as they would prefer to make 20% on \$500 than on \$300 and none of his fellow resellers can discount so his price is very safe in the market as no one is allowed to discount. The poor old consumer has just been bashed again.

Free riding. some Tooltechnic retailers – lets be frank - these are the retailer's who've discounted – Festool has now signed them up in agreement to control them. They were the ones giving Joe Blow and the Cabinetmaking shop a better deal. Now there are no deals - you have to taken the wheel out of the marketing system that keeps prices honest in the market place.

4 – Alternative pricing that is being used in the market place. The way some importers control their prices is quite simple. If a reseller sells at a big discount that the supplier does not like (he thinks it upsets his pricing credibility in the market place) through a third party (Ebay, Gumtree, Gray's Online on their website. (Note: can only put suppliers products on your web site after they have been approved)) Their discount drops to 30% off their price list. When the reseller who does not madly discount or sell through a third party or discounts their product excessively, they get a discount of 50% off their price list so in effect this system kills the discounter. The supplier is not concerned at what price the discounter sells in his shop, it is only when he puts it in the public domain. Why did Tooltechnic not go this way? I tell you why - The main discounters who were smashing the price are the people they have signed up in an exclusive dealership. Now they control them.

ADDITION TO PREVIOUS SUBMITTED LETTER – AMT21022018/1 – DATED 27-02-18

UNFAIR ADVANTAGE – FLOOR SPACE IN SHOPS

Your previous ruling gave Festool (Tooltechnics) an unfair market advantage against all other power tool suppliers. As Festool insist all their Resellers are required to have a designated floor space display requirement within their total shop floor space, an area ranging from 25 square metres up to 350 square metres, dependant on reseller's shop size, and when Festool can guarantee a return from 15% to 20% depending on rebates this puts their opposition at a complete disadvantage.

On approaching shop owners with their sales pitch about their price protection and guaranteed returns, no other power tool supplier (their competitors) can offer a similar deal. Now this gives Festool a total unfair advantage over the shop owner.

Say the Festool Display Area is 200 square metres and like all power tool stockists floor space is always at a premium, a restrictive requirement is that no other brands can be displayed in the area that Festool Products are displayed. Other Power Tool Suppliers can not guarantee that return or make those conditions of sale because the free market will dictate what price the stockists has to sell at and this can vary quite considerably.

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Floor space is always a premium in all tool shops so this effectively gives Festool (Tooltechnics) an unfair advantage in the market because if a reseller wants to deal with more brands he now has limited floor space and is not allowed to mix other brand tools within his Festool dedicated modules.

This in turn has a very negative effect for other Tool Suppliers as they won't have access to this stockist because of floor space availability.

In summing up I am of the belief that Tooltechnic Systems is using this as a guise to protect their market and enhance their profits through their restrictive outlets, which allows them to manipulate the market to the price point that they desire to the detriment of the consumer.

Please find attached a retailer's perspective that I sent out to all of my fellow members in the AIS Group. This will give you some insight into how the market views the above situation. I would like you to note that the situation Tooltechnic Systems are proposing and that if you allowed numerous other companies to do a mirror image of what Tooltechnics are doing my business would certainly enjoy extra benefits but it would be at the detriment of consumers and other most importantly reseller shops both large & small.

I look forward to your early response to help clearing our thoughts on the above conundrum as I am a member of an industrial buying group of 80 members & the directors are eagerly looking forward to what your response is because the above situation has the ability to restrict our current trading environment with over 350 suppliers

Yours sincerely



Ross E Mylrea – MANAGING DIRECTOR

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27th February 2018

Hello Fellow Retailers

Thoughts and concerns on the following Resale Price Maintenance Notification RPM20181 lodged by Tooltechnic Systems (Aust) Pty Ltd on 12th February 2018 with the ACCC for interested party consultation regarding the following two proposals:-

- That ACCC to continue an existing arrangement which required Tooltechnics dealers to not sell any Festool Products below a price(s) nominated by them which was authorised by the ACCC in 2014.
- Submission for consideration of a new arrangement that requires Tooltechnics dealers to not sell any Fein product below a price(s) nominated by the company.

Regarding your previous thoughts on the ACCC authorising Minimum Retail Prices on Festool Tools. In our discussion following that decision when I brought this matter to your attention you didn't seem too perturbed about the situation and I was quite shocked how easy you took it. I think this is the thin edge of the wedge where suppliers will in future try to emulate what Tooltechnic have achieved with the ACCC for the Festool retail price control. I don't see any benefit for the average retailer or customer in any of this. Now what my concern is that if Tooltechnic want to establish a dealer in Rockhampton for Fein and Festool products they could approach me and give me a proposition and if I accepted and signed it, from that point on I am totally controlled by them with my retail sell price, my buying price, what I stock and how I present their product. How am I going to do a volume deal with Festool for 50 pieces of routers when they don't have to? They will only sell me 50 if it suits them. I can't discount off my retail price and why should they sell me 50 at a discount when my buying price is set? Consequently I am completely in the hands of Tooltechnics.

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What those dills at the ACCC do not realise is that controlling the selling price through the preferred dealer arrangement that Tooltechnics has created is that you restrict the purchasing power of the reseller who has signed up. The normal market pressure does not apply so using my example of buying 50 routers is what will be the result. The only winner here is Tooltechnics.

Now what if the other “boutique” suppliers in Australia such as Honda, Husqvarna Yanmar, Kubota, Briggs & Stratton, Kohler or Stihl to name a few, all turn around and say they want to do what Tooltechnics is doing and go to the ACCC for approval to sell at a fixed price?

What is the ACCC going to do? There are going to have a hard time knocking them back because the precedent has been set no matter what the conditions set by them.

Now in a normal trading position I can ask three other power tool suppliers to sell me 50 routers and they will fall over themselves to get the deal with price discounting off my normal price. Now if Tooltechnics was not in the position it is with the ACCC they would also fall over themselves to supply me with 50 units at a better than normal price because they have to. This is then passed on to our customers and the savings for the customer as you know can be considerable. Now another way this type of agreement will affect us is what if there are four of us selling any of the above boutique brands in the town now? They go to the ACCC and get their approval to do what Tooltechnics is doing and come knocking on my door saying “Blue, this is the proposition. Do you want it?” If it is a prominent brand I am already selling I would be a fool to say no than let someone else get a hold of it. But what if they say “Blue, we are not going to give you this deal to you because you stock opposition brands and we only want one preferred dealer in this area? We don’t like your style of shop or how you talk to us or what price you sell at.” Now they tell me they will close our account and all the other accounts in town and only sell to one dealer in the town. Now if I play up and discount the prices on the exclusive brand that I have an agreement on I will lose it and one of my opposition will get the product off me as Honda did to you. Is this the way we want to do business? Is it good for me? No, but it is a lot worse for the poor old consumer. He will never get a discount off the retail price because the ACCC said we cannot discount! And what do we say to the trade user? Sorry Mate! He will probably cut my throat and tell me to get stuffed! I get the agreement to sell that particular product and my opposition has to go and find another brand and do the same as I have to do and what about the poor customer – He is not getting a discount or deal off anything!!

I thought the ACCC was there to protect the customer??? Would this practice be considered a conflict on their Restrictive Trade Clause where an importer whether by stealth or manipulation of an agreement or an arrangement would restrict or control the purchasing of an independent reseller? Those people at the ACCC have really lost me on this one. They seem to be burning the candle at both ends.

The ACCC have said that there are certain conditions attached to this application.

The Tooltechnic Systems statement to the ACCC that their range is the only “Complex and highly differentiated product range” can be challenged by many importers in the same boat. E.g.: What about Komatsu who brought out a range of Dump Trucks that operate by computer only – no driver needed (Komatsu have them in Western Australia now) Now for arguments sake - the training and maintenance on how to use these machines is all new and ongoing but let’s say Komatsu has a problem that the price of these machines is being discounted by the dealers to the end users. Komatsu do not like this. It is devaluing the intrinsic value of the Komatsu brand. So they go to the ACCC to have a minimum retail price to stop the dealers discounting their price. How ridiculous is that situation. I am sure the mining industry would not take that lying down, they would attack the ACCC with their legion of lawyers. So what is different about Tooltechnics?

There are many reasons why a retail outlet has to at times discount the selling price -

- Cash flow
- Bank pressure
- Meeting opposition prices
- Overstocks
- Lack of space for storage
- Taking advantage of a buying opportunity
- Local market share
- Generate awareness of his business
- Quit slow stock
- Old models
- Poor appearance of shelf stock

But if he discounts Tooltechnic products he will lose the right to sell the Festool and Fein products and the account will be given to another reseller in his area. (That is a pretty big stick the supplier is holding) And if they give it to another reseller this has the capacity to really damage the original reseller who may have been selling Tooltechnic power tools for years and have spent a lot of money representing the their brands in this area, who is not operating as per their agreement.

I only know of one other supplier in Australia that has this power and uses it ruthlessly – and that is your mates – Honda. They are the best at it in Australia as you know at controlling their product and prices. No matter how Tooltechnic sugar coat this to the ACCC a supplier who is given the power to be judge/jury/executioner is impossible to deal with. He makes all the decisions and all you can do is say Yes Sir! You cannot tell him what to do. Tooltechnics has probably had to tell the ACCC that we will look after the dealers stock – exchange the stock, remove old models, update their stands and help them market the product. Treating them like old friends no more than any other supplier is prepared to do in our shops.

The ACCC I think is moving out onto a playing field it does not belong in. Market forces are what regulate good healthy competition and if your product has a problem living in that environment whether by how complicated or complex it is to operate or by price the market will sort that out as it always has.

Retail prices – before and after

That is the easy part for Tooltechnic Systems to control, remember this is a world wide company with 27 locations around the globe we are dealing with, a company who manufacture their own products. What a good spot to be in. The Australian management would have worked very closely with a formidable legal team to put this proposition to the ACCC. This is no overnight thought bubble. This is a well structured, calculated attack on the (minimum retail prices) segment of the Act. Their head office in Germany would have been well aware of this program and the benefits of the outcome to their Australian operations and I bet the company had the champagne corks popping when approval was given in 2014 for the Festool retail price maintenance approval. High Fives All Round! “Look fellows, this is what we have done in Australia, we convinced the pricing authority - the ACCC to give us retail price protection and allow us time to set up an exclusive dealer network across Australia totally protected. The dealers we set up have signed to buy our full range of products in each module they take as per our agreement and have them on the shelf at all times and displayed on our stands and presented in our format with agreements of what they can and can't do with our products. They must sell at a set price and under no circumstances allowed to discount. We have total and complete control.

What about Tooltechnics opposition? They are stuffed because Tooltechnic can say to their reseller “Look we have this approved by the ACCC to protect your retail prices.” What a statement – we have the ACCC in our corner who has approved everything. The opposition’s product has not got a hope in this situation. It’s like having the Tax Office in your corner. You cannot lose!

With all of the manufacturers now opening factories in China, the costs cannot be compared to what they are in Europe, Tooltechnic now produce their products at a lower cost base I bet there will be no reflection in the retail price. (Why would they, their product is the best in their business according to them) So there are no market forces to control them. So as they are governed by Head Office the cost shown in Australia charged by their factories can be any amount they like on their import documents. I bet it would not reflect their real cost!! The only question they have to ask themselves is what amount can we get for this product in the Australian market (That is exactly what importers do when they bring an item into this country) Tooltechnic is no different to any of us. All we want is the highest price at the retail level and this crap about high level pre and post sales service on the product before and after is done by many companies is Australia without asking for price protection!!

Why haven’t the ACCC asked them for a cost base assessment. They know the cost can be adjusted. I bet Tooltechnics profits are right up there (If their invoices reflect the factories true costs and their product being a premium product in the market place and from what I heard the resellers return is fairly average compared to what is asked to invest in the range.)

Short Fact - I went through the Bosch Chinese factory and they were making at the time a 100mm angle grinder for Japan. We went through all modules in their factory and as we went our German guide (Factory Manager) was telling us the cost for this grinder and it ended up being for a 100mm 900 watt Bosch Grinder could be made at \$US5.60 and I said “What about the labour?” He said we don’t count the labour as we lose more money with the off cuts in the production line. So what would you sell that grinder for to Australia for and he said it would probably be \$A30.00 to \$A35.00 depending on quantity and they would wholesale it at \$65 or \$70 and retail at \$99.00. Let me assure you Tooltechnic would have the same base costs as Bosch even with all their complex highly differentiated range (These are power tools we are dealing with – not rocket science.)

I used to sell Festool many years ago and yes a great product and always at an extra high price but even then they were paranoid about the dealer discounting the products they would say we are the best – no need to discount or range! Indeed they told me that if I discount they will not sell to me.

Importers

AIS are importers of a lot of products so when we decide to bring a product into Australia we decide on what **our benefits** are first then **the customers**. (This is being honest) So if we look at a product that is difficult to service or the marketing could be a problem, it’s our decision whether to Import it or not import it. Tooltechnic have the same option and if they decide to bring a product into Australia let me assure you it’s not for the retailer’s benefit or the customers benefit – it is for their benefit first and foremost, and then they would ask themselves:

- Is there a market for this item?
- What is our cost and what retail price will I get for it? (And like all of us if we can buy it overseas for \$100 and sell it in Australia for \$1000 we will. The only thing that controls this situation is market forces or opposition. Festool are no different.)
- What opposition have we got in the market place?
- What market segment would use this product?
- What marketing and education programs are needed

Internet Price

That is about the only product in our industry on the web that has the same price no matter which dealer you go to. (How's that? Is that what we dream of as retailers?)

Short story – I had to buy a washing machine and dryer and ended up at Harvey Norman. They had a washing machine running in the store with a 50c piece standing on its side on top of the machine. Wow, my old shitbox used to bounce all around our laundry and to see one running with a 50c standing up on its side not moving?! I said “I want this, how much? Give me the price?” He stated that this brand is made in Italy exclusive to Harvey Norman so the price will not be discounted.” It is the same in every store. They are not allowed to discount this brand. So I said “OK, give me the price and part number of the machine.” I then went straight onto the internet and started searching straight away. I got different prices and ended up saving over \$450. I rang the store that gave me the part numbers and price and said your \$450 short what are you going to do, do you want the deal? He went to the manager and we did the deal. (So much for not being able to discount!)

Price control at both ends

Tooltechnic can pretend it's about specialty products exclusive to the range all they like but this is about price control. Normal market forces prices up and down. For other Power Tool importers to get market share they have to go out and buy it. As we all know how it is. **At the moment Milwaukee next year or it could be Hitachi or Makita? When they get a new GM in Australia he is given a 4 year plan, he looks at the numbers and market share and is not happy and says, “Right Fellows we want market share, overseas Head Office says we agree with you and we will give you a lower cost or x amount of dollars to go and attack the market.” That is when Milwaukee walks in our door and goes up to the Hitachi range and says ok we will buy all this off you and replace it with the Milwaukee range and of course the price is very attractive with all of the bonus stock given to you as an incentive. For this is the way we have done it over the years. Hitachi is very unhappy but that is how the market works. Next year it is Makita's turn to go through the process to reclaim their market share.

What have Tooltechnic promised the dealers? (I have not seen a contract) but it will revolve around all the things us retailers like –

- 1 – Market price protection
- 2 – Guaranteed margin
- 3 – Exclusivity on product
- 4 – Service agreements for repairs at set prices

Tooltechnic in effect controls a lot more than the product on the dealer showroom. He has control of

- Retail price
- Cost to Dealer and the gross profit he receives
- Range of product
- Floor space area
- Advertising
- Can control of any oppositions product by stealth, such as: We hold the big stick – we don't like you stocking that product” What can the dealer do? He is stuffed. Where is the free trade here – This is restricted trade. (Not that they would make that statement in writing, it would be done with a wink and a nod) If you get rid of XBrand we will give you 5% more on our products. Remember the company representatives have budgets to achieve.
- We will send all our enquiries for this area to you if you remove that brand

By this time the poor bloody retailer (Which I am one) is wetting his pants and this is just what I want – no opposition! Fixed price is heaven!!

The above takes all the market forces away from what traditionally makes our industry roll around. And the only bloke who is paying here is the poor customer. What all we retailers would kill for, and the ACCC has handed it to them on a plate. How good's that!

The problem is that as I stated at the beginning of this letter (the thin edge of the wedge) now they are asking for price protections on their accessories and Fein Power Tools. Now if other power tool companies go this way of marketing they will constrict the amount of dealers selling their product in a town/city so instead of having 8 resellers in a town/city they will only have 3 that suits their way of doing business. The other resellers that are hard to work with or have purchasing procedures that they don't like or company images that don't suit their tastes. Where in an open market they have to fit in with the market place with price/image so at the end the customer has a product at the most competitive price and has the ability to shop prices around to obtain better value for their dollar spent.

Now if you let other companies take the same road as Tooltechnic you will have a lot of Reseller Shops that won't have products to sell, so let me assure you that price will rise very quickly in this "Exclusive Trading Environment", and the shops that do not suit the image/product presentation will be left to wither on the vine. So what will that do to the competitive marketplace???

I think the ACCC could just about be taken to task on this with court action in a joint action from many companies all claiming Exclusive Products and looking for price protection in the market place. How are they going to select a range of products without upsetting the industry? What a can of worms.

The bottom line is this – if Tooltechnic stopped importing their tools what would happen to the industry – absolutely nothing! We have seen so many brands coming and going over the years that thought they had their be all and end all of specialised tools but there is always an opposition product that will fill the void. If there wasn't they would not need price protection from the ACCC their product would sell at any price.

All the best



Ross E Mylrea
MANAGING DIRECTOR

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