



Interactive Pty Ltd
 461 Williamstown Road
 Port Melbourne VIC 3207
 Phone: (03) 9921 8444
 Fax: (03) 9921 8455
 ABN 17 088 952 023

Sydney (02) 9431 8000
 Brisbane (07) 3323 0800
 Perth (08) 9204 2785
 Adelaide (08) 7071 8800
 Canberra (02) 6228 1912

www.interactive.com.au

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Right to Repair Productivity Commission
 4 National Circuit
 Barton ACT 2600
 Australia

Submitted via online form

Dear Commissioners

Submission to Right to Repair Productivity Commission by Interactive Pty Ltd

We (Interactive) wish to thank you for the opportunity to present at the recent hearing and to make our written submission.

We provide, among other things, hardware maintenance services (primarily repair) and related machine code updates, including in relation to IT hardware. For clarity, machine code refers to all code provided for a machine and includes without limitation a machine's firmware and microcode. For the purpose of this letter and the annexed submission, the terms 'machine code' and 'firmware' are used interchangeably, and the phrases 'maintenance' and 'repair' are used interchangeably and intended to refer to maintenance and repair activities in a broad sense.

As part of our submission, we wish to highlight some practical challenges we have observed in terms of the ability for third party maintenance / repair providers (such as Interactive) to provide those services to consumers / end users and to offer alternatives to and / or reliance on manufacturers for such services.

In particular, this submission notes our observations of conditional, restricted supply of access to firmware updates or the ability to attend to those updates in respect of the hardware or equipment of certain IT hardware companies/manufacturers. Firmware updates are essential inputs to the provision of hardware maintenance services for our Australian customers.

In such a circumstance, we have observed instances of an IT hardware company/manufacturer requiring the customer to also acquire hardware maintenance services from it directly in order to access firmware updates, thereby effectively tying the ongoing functionality and performance of the relevant hardware or equipment to the acquisition of maintenance services directly from then IT hardware company/manufacturer (only).



New South Wales	Queensland	Western Australia	South Australia	Australian Capital Territory	New Zealand
Tower B 39 Herbert Street St Leonards NSW 2065 Phone: (02) 9431 8000 Fax: (02) 9431 8099	19 McKechnie Drive Brisbane Technology Park Eight Mile Plains QLD 4113 Phone: (07) 3323 0800 Fax: (07) 3323 0899	20 Milrose Drive Malaga WA 6090 Phone: (08) 9204 2785 Fax: (08) 9204 4712	64 Pym Street Dudley Park SA 5006 Phone: (08) 7071 8800 Fax: (08) 7071 8839	Unit 2A 156-158 Gladstone Street Fyshwick ACT 2609 Phone: (02) 6228 1912 Fax: (02) 6228 1913	19A Airborne Road Albany North Shore Auckland NZ Phone: 0800 444 931

The effect of this is that customer access to essential firmware updates for IT hardware or equipment, which is critical to a customer's operations, is significantly restricted, and third party providers (such as Interactive) are precluded from being able to supply hardware maintenance services in competition with the relevant IT hardware company/manufacturer.

In essence, it seems that some IT hardware companies/manufacturers are tying, or are attempting to tie, the supply of key inputs to the supply of hardware maintenance services with the acquisition of those services from them directly.

As indicated by the Commission's draft report, it seems this conduct may be occurring and worryingly may soon become the norm, because these types of right to repair issues are not the subject of bespoke regulation under the Competition and Consumer Act 2010 (Cth) (CCA) or Australian Consumer Law (ACL) which specifically addresses the circumstances in which these issues arise and which provide a framework enshrining the ability of third party providers to repair goods / services.

Interactive has serious concerns that, absent a dedicated right to repair framework, such conduct will persist in future and have detrimental impacts on both competition for the supply of hardware maintenance services and for customer choice with respect to their preferred provider of hardware maintenance / repair services. We also have concerns into the future, as technology becomes an increased component of all types of goods - from toasters to heavy machinery - that this type of behaviour may become widespread, and preclude the operation of healthy, effective repair markets across the economy.

Our detailed submission, which reflects our presentation at the recent hearing, is attached (see over).

Again, we appreciate the opportunity to make a submission, and would be pleased to discuss this matter in more detail or provide any further information if this would be of assistance.

Yours faithfully

Ari Bouras
Chief Corporate & Legal Officer and Company Secretary

SUBMISSION TO THE PRODUCTIVITY COMMISSION

1. Our submission will focus on our observations (etc) regarding the elements of the IT market that we operate in, however, we suspect that much of what we refer to is or may soon be, applicable beyond IT, as advances in technology and manufacturing now means that the full spectrum of consumable products, be it for the home or for business purposes, may include a form of IT hardware or microchip(s) and therefore micro-code; from toasters all the way to cars and heavy machinery, etc.

INTERACTIVE

2. Interactive - established in 1988 - is a privately owned Australian multi-service IT provider. It employs more than 550 staff across Australia. A key element of Interactive's service offering is the provision of hardware maintenance services, which involve the repairing, servicing and maintenance of customer's servers and IT hardware and related machine code updates.
3. Interactive provides these services to its customers across a range of vendor products.
4. We employ our own IT engineers and hold large amounts of spare parts in our warehouses in metro, regional and remote locations, for all of the critical IT hardware/devices that we repair and maintain.
5. Typically (as part of our value proposition) we promise to deliver equal or better service levels than anyone else in the market. And typically, customers engage us at the conclusion of the manufacturer's published warranty period.
6. Interactive's customers include governments departments and agencies, hospitals and healthcare services, ambulance services, NFPs, utilities organisations, transport companies, telecommunications providers, financial services and insurance organisations, and media outlets & organisations.

MACHINE CODE / FIRMWARE

7. Machine code or firmware refers to all code provided for a machine and includes without limitation a machine's firmware and microcode.
8. We wish to highlight concerns relating to the conditional, restricted supply of access to firmware updates or the ability to attend to those updates from some major IT hardware companies that we have observed.
9. The ability to update the firmware, through the useful life of a device, is an essential input or element to/of the provision of hardware maintenance services for our Australian customers.

DIGITAL LOCKS & RESTRICTED ACCESS TO FIRMWARE UPDATES

10. From Interactive's perspective, in the past few years we have observed a number of IT hardware companies/manufacturers implementing or seeking to implement versions of what the Commission's draft report refers to as a 'digital lock' as a way of apparently seeking to control/limit access to firmware updates by third parties.
11. At a high level, Interactive has observed instances where the customer needs to enter into a hardware maintenance services contract from the manufacturer as the only way to practically access updates to the firmware.
12. This conduct effectively ties the ongoing functionality and performance of the relevant hardware or equipment to the acquisition of maintenance services from only the IT hardware company/manufacturer, and therefore significantly restricts customer access to essential firmware updates for IT hardware or equipment which is critical to a customer's operations.

13. The conduct essentially precludes customers from being able to self-repair, and precludes competing maintenance providers (such as Interactive) from being able to supply hardware maintenance services in competition with the relevant IT hardware company/manufacturer.
14. In essence, this ties the supply of a key input to the supply of hardware maintenance services from them directly.
15. In doing so, they seem to be attempting to create a monopoly for repair/maintenance services in relation to their own hardware, which will likely lead to prices going up, whilst service goes down.

UNDERSTANDING THE NATURE OF FIRMWARE UPDATES AS REPAIRS

16. We have observed IT hardware manufacturers, when seeking to explain this conduct, making representations regarding intellectual property rights which Interactive does not consider to be correct.
17. Firmware is a specific class of computer code that is installed within IT equipment/device (often a server) and provides low-level control for a device's specific hardware.
18. Some devices, such as computers and servers, receive essential firmware updates over the lifetime of the device. Firmware updates are provided for a number of reasons, including bug fixes, security issues, as well as performance fixes for known issues.
19. They are designed to strive for 100% error free hardware operability. During the life of the device, these updates are only installed to provide enhanced hardware operability and do not provide any form of increase in capability (such as speed).
20. In other words, firmware is better characterised as a tool which is used to ensure the hardware is operating in the manner it was originally intended to (not as a tool for enhancing or improving hardware).
21. This can be contrasted to when software receives a software update. A software update can enhance software capability, but a firmware update cannot enhance hardware capability.
22. This is a very important distinction.
23. As part of the claims made by IT hardware manufacturers regarding intellectual property rights and protections to justify the conduct we have observed & detailed, firmware updates are being characterised as being an enhancement, whereas they can only be reasonably/accurately characterised as a repair or fix to a known problem.
24. Firmware cannot alter or enhance IT hardware or IT devices. It is a physical impossibility. Therefore, an update to firmware cannot itself alter or enhance the hardware/device beyond its original construction.

IMPACTS

25. As indicated by the Commission's draft report, it seems this conduct may be occurring and worryingly may soon become the norm, because these types of right to repair issues are not the subject of bespoke regulation under the Competition and Consumer Act 2010 (Cth) or Australian Consumer Law which specifically addresses the circumstances in which these issues arise and which provide a framework enshrining the ability of third party providers to repair goods / services.

26. Interactive has serious concerns that, absent a dedicated right to repair framework, such conduct will persist in future and have detrimental impacts on both competition for the supply of hardware maintenance services and for customer choice with respect to their preferred provider of hardware maintenance services, or their ability to self-repair.
27. The driver of restricting access to firmware appears to be a way of seeking to monopolise the repair/maintenance market for manufacturer's own products, and therefore tie annuity revenue (via ongoing maintenance contracts) to one-off hardware purchase(s).

CONCLUSION

28. From Interactive's perspective, the ultimate impact of this on the consumer and competition is likely to be:
 - consumers are or will be unable to repair and maintain their own IT hardware/devices;
 - third-party providers will exit the market and/or go out of business;
 - consumers will lose the choice of repairer;
 - service levels will decrease, whilst fees will increase;
 - increased downtime to critical IT infrastructure, and therefore the negative impact on systems and related services into the community will increase; and
 - e-waste will increase.
29. Having regard to the matters outlined in this submission, Interactive considers that it is in the best interests of consumers, business, and the Australian economy for legislative changes to be implemented which enshrine the ability of third party repairers to repair the goods / services of consumers / users. Legislative changes of this kind would ensure a healthy, effective repair market across the country. In this context, Interactive respectfully requests the Commission consider measures such as:
 - legislation that expressly requires manufacturers to openly provide unrestricted access to any necessary input for a repair (including, in the present context, firmware updates) both consumers / users and third party providers (ie regardless of whether the consumer has a repair contract with the manufacturer or otherwise chooses to obtain repair services from the manufacturer);
 - amending copyright laws to make it clear that consumers and third-party repairers can access, copy and share any necessary input for a repair (including, in the present context, firmware updates) and otherwise to remove any form of digital locks; and
 - prohibiting manufacturer warranties from being voided if consumers do not use the repairers and spare parts specified by the manufacturer.