



ACCC Agricultural machinery: After-sales markets

Submission by Tractor & Machinery
Association of Australia

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Submission in Response to ACCC Discussion Paper

The Tractor & Machinery Association of Australia welcomes this opportunity to provide our initial comments in relation to the ACCC's review of the how the agricultural machinery industry operates, focusing on key issues relating to manufacturer warranties, services and repairs foreshadowed in the February 2020 discussion paper. (the Discussion Paper).

Background & Introduction

The Tractor & Machinery Industry of Australia (TMA) is a member-based industry organisation which was established over 70 years ago to represent the interests and development of importers, manufacturers and sellers of agricultural tractors and machinery in Australia. Its member base includes:

- John Deere Ltd
- CNH Industrial
- AGCO
- Kubota Australia Ltd
- Landpower Group Ltd
- Power Farming Group Australia

With members representing every facet of farm machinery, the TMA speaks as one voice for the industry on issues relating to government regulation and legislation, OH&S, industry training and development and market sales statistics for the industry and its members.

TMA members either operate as importer/distributors of product and generally market and provide aftersales support via a network of independent authorised dealerships (OEM members); or they are themselves an independent dealer of product (Dealer members) (together TMA Members). The TMA's members are competitors and compete vigorously in the retail and after sales agricultural machinery markets.

Authorised dealerships are required, under their respective agreements with OEM members, to maintain a high standard of service to the consumer, including in relation to the quality of their dealership site and service facilities and the technical qualifications of their technicians. This requires a significant and ongoing investment by the authorised dealer. Ultimately these dealer requirements seek to:

- Maximise customer satisfaction with supplied product;
- Provide for the efficient and effective maintenance and support of those products;
- ensure the safety of the customer by maintaining applicable industry standards and ensuring that products reliably perform to specification.

The compact between the OEM member and their respective authorised dealers is critical to the efficient supply of farm machinery to Australian markets. OEM members appoint and support independent local businesses to act as dealers. They are dependent upon these dealers to make sales and support customers in their dealership area. OEM members require that their dealers meet minimum performance standards and, in return, the

authorised dealer is supported by the OEM member. If the OEM members were to support independent repairers to the same extent as dealers, then the dealer would have no incentive to meet the high performance standards required of them, or to incur the expenditure required to meet these standards. This would produce a lower standard of support for customers and unacceptably compromise both the performance and safety of TMA member equipment.

The following submission provides comment using the major headings used in the Discussion Paper.

I. 'Access to independent agricultural machinery repairs is limited'

The TMA notes that the ACCC suggests that restrictions upon the ability of independent businesses to repair or service agricultural machinery 'may allow manufacturers to charge monopoly prices in order to increase profits of their dealer networks' and that this 'may disproportionately affect purchasers in remote areas'.

The restrictions that are identified in the Discussion Paper include:

- independent repairers not having access to genuine parts, technical information and diagnostic software tools necessary to conduct a repair;
- manufacturer's warranties requiring that warranty repairs be undertaken by an authorised dealer;
- manufacturers warranties being voided by use of an independent repairer during the warranty period.

The TMA submits that a level of restriction as to who can carry out both warranty and maintenance services on agricultural machinery is both appropriate and necessary to ensure the proper operation and safety of the equipment concerned. We also dispute the suggestion that authorised dealers charge 'monopoly prices' for service or repairs.

Pricing

The service rates charged by TMA member dealers are set independently by those dealers. OEM members do not have any input into the setting of service rates by authorised dealers. Some OEM members provide their authorised dealers with business training that may include reference to the need for their pricing to be set with reference to their underlying costs. This is done in in the interests of maintaining the commercial viability of their business. Any such process is however left entirely for the dealer to implement. Genuine parts are supplied to dealers with a recommended



retail price, but these are recommendations only and are not enforced by OEM members.

Ultimately the prices charged by dealers are a product of the market in which they operate. Relevantly some districts which have competing employer demand, such as mining activity, may charge higher hourly rates for service work as they pay higher wages to apprentices than may apply in other districts. Competitive pressure between other brands in the market and with independent services agents however are the key drivers of pricing in the applicable markets.

Authorised dealers also are often part of their local community and have a vested interest in maintaining a good reputation, not least in order to get repeat business. Monopoly pricing is not consistent with this business model or the competitive nature of market.

The dealer agreements between TMA members and dealers outline and define how the manufacturer and dealer/authorised repairer conduct their business together and the standards expected of them and their respective responsibilities. In relation to warranty repairs this includes that the manufacturer determines the applicable level of technician that should be engaged to undertake particular warranty tasks (which dictates the hourly rate) and a time limit for the work to be done.

In this regard it is worth noting that the hourly rates paid by TMA members to their respective dealers for warranty repairs are generally the same as the retail service rates charged by those dealers. This differs from other markets, such as the motor car service market, where dealer warranty rates (paid by the manufacturers for warranty repairs) are usually at a discount to retail rates. The fact that dealer warranty rates and retail rates are broadly the same for the servicing of agricultural equipment is reflective of these retail rates being competitive market rates and in no way reflective of 'monopoly' pricing.

Access to genuine parts, technical information and diagnostic software tools

TMA members have differing policies in relation to access to parts, information and tools. However, in all instances OEM members provide equipment owners with access to operators' manuals. Genuine parts are generally supplied via the dealerships, as they are the authorised retailers of these products, so both independent repairers and owners can generally access genuine parts.

OEM member warranties commonly state that repairs carried out by an independent repairer **may** void the warranty. In addition, a critical service or 'Product Improvement' being carried out by a repairer who has not received the approved training will usually void a member warranty. This is because such critical repairs or upgrades are, by definition, matters that will cause performance or operational issues with the unit if they are not correctly carried out.

However, the use of independent repairs for other non-critical work will generally not automatically void an OEM member's warranty. However, if work undertaken by an independent repairer causes a fault to develop, then this will not be covered under OEM member warranties. This is reasonable as the manufacturer should not be liable for a repair that was only necessary due to a third-party defective repair, or a failure to properly maintain a unit.

The TMA acknowledges that its members do not provide the same level of support to independent repairers that they do to their authorised dealers. They do provide some, but not full access to diagnostic tools and software. However, this is not aimed at reducing competition in the aftermarket space, rather it is directed at ensuring the quality of services provided to equipment owners. This includes both critical performance and safety considerations. The commercial and economic basis for this approach is outlined in more detail below.

Warranty Repairs

An initial point to make is that warranty repairs (as distinct from scheduled servicing or maintenance repairs) are necessarily required to be undertaken by authorised dealers. Warranty repairs are funded by the manufacturer under the terms of their respective manufacturer's warranties. Manufacturer's warranties are voluntarily provided, they are not a legal requirement. However, they are a commercial requirement, as the market expectation is that the manufacturer stand behind their product and a failure to provide a competitive warranty would inevitably (negatively) impact sales.

In addition manufacturers may be liable under product liability laws for any death, injury or property damage resulting from the equipment not being as safe as users generally would expect (*Part 3-5 Australian Consumer Law*) and also have obligations under various State and Territory *Occupational Health & Safety* laws to ensure the safety of plant used in workplaces. By way of example the Victorian WorkSafe Plant Code of Compliance states that:

'All modifications or alterations to the design of the plant or a component of plant should be undertaken by the original designer.' (Paragraph 87 Worksafe Victoria Plant Code of Conduct March 2018).

In order to manage these risk of legal liability OEM members adopt measures to ensure that the equipment they manufacture is safe, including by reference to its maintenance schedules and by taking reasonable steps to ensure the quality of warranty repair work undertaken.

One such reasonable step is to require warranty repair work be undertaken by the authorised dealer. The manufacturer has an ongoing contractual relationship with authorised dealers, which includes provisions specific to their performing warranty repairs and the way these are performed. The manufacturer has no such contractual (or indeed any) relationship with independent repairers.

As the party funding the repair the manufacturer must have the right to determine who undertakes this work and OEM members uniformly entrust this task to their respective authorised dealers. The concept of legally requiring a manufacturer to contract with independent repairers who have unilaterally undertaken otherwise warrantable work, is entirely contrary to the basic legal concept of freedom of contract.

The TMA further notes that the practice of requiring warranty work to be undertaken by an authorised repairer is consistent across most industries, including the motor vehicle industry. The TMA submits that there are no compelling public interest reasons to deviate from the current practice for warranty repairs. The following submission therefore primarily addresses the ability of independent repairers to conduct scheduled servicing and out of warranty break down repairs.

Quality Control of Repairs

As noted in the Discussion Paper, agricultural machinery is increasingly computerised and complex. This is primarily due to increased functionality of the equipment that

has been sought by customers and ultimately is directed at providing greater efficiency and overall value to the customer.

However, with increased product complexity comes an increase in maintenance requirements and increased complexity in carrying out those requirements. Further, agricultural machinery is commonly worked hard on a seasonal basis. This intensive manner of working makes proper maintenance and repair particularly critical to the performance and safety of that equipment.

Ad hoc changes to the software or machinery can lead to:

- unsafe operation of the product and the equipment no longer complying with safety standards,
- disruption of machine capabilities and performance,
- changes to emissions controls and
- lack of transparency of any changes to the equipment when the equipment is sold to another user.

The level of repairs and service can be controlled and recorded (to ensure that only legitimate changes are made) through the authorised dealer involvement. This assists to maintain the value and inter-operability of the machine for future purchasers.

There are specialised tools, equipment and software required to maintain, service and repair the machinery. The specialised tools go beyond service manuals, product guides and on-board diagnostics. These specialised tools and equipment themselves require training for proper operation. Electronics control the basic functions of all major farm equipment as well as the most complicated functions. A single

malfunction can impact the whole machine which means modifying software requires a high level of care.

The complexity of the machinery means that the performance of many repairs requires properly trained and qualified technicians. 'Dodgy' repairs happen and the consequences of these can include:

- compromising the performance of the equipment (as against environmental and other regulatory standards, as well as performance specifications);
- directly contributing to other breakdowns (knock on effects which can be expensive to remedy);
- compromising the safety of persons working with that equipment.
- compromising the functionality of steering, speed and breaking causing serious risk on and off road to both the user and members of the public.

Dealers and authorised technicians are trained and educated by the manufacturer to have the up to date expertise necessary to repair and service the equipment correctly and maintain it in safe and efficient working order. In addition, OEM members commonly have their own technicians in the field to back up and support their dealers. Manufacturers have an ongoing quality control function that they can and do exercise over their authorised dealers, which they cannot exercise over independent repairers.

Free Rider Risk

Authorised dealers are required to maintain fully equipped workshops and support remote service delivery across their defined prime market area. Authorised dealers support technicians of varying degrees of expertise from apprentices to top technicians. This allows them to allocate the correctly skilled level of service technician, depending upon the issue at hand. They also are required under their dealer agreements to maintain the training and skills of those technicians.

This involves a significant investment in time and money by those authorised dealers. By way of example, a training session for a technician may involve a 3-day course in a State capital city, with a day lost to travel either side, so each employee technicians may be out of action for a week at a time. Overall authorised dealers are required to provide a high level of service to customers and must make a significant investment in their businesses to maintain this level of service and retain their authorised dealer status. The *quid pro quo* of incurring these costs is that they are then given full access and support by the manufacturer.

Many independent repairers are not sufficiently resourced to provide this level of service or are unable or unwilling to incur the cost associated with this service level. We note that an exception to this is some larger corporate farming operations that may have well equipped workshops and commonly will employ ex-dealer technicians to provide on-site repairs and maintenance. In this regard however they are doing so to gain the benefit of a technician's training and expertise that has been developed at

the cost of a prior employer/authorised dealer and the manufacturer. This however remains an option for larger operators.

For the services to be viable for the dealer and repairers, the manufacturer must endeavour to ensure there is an acceptable return from them being an authorised dealer, so that their business is sustainable. This is important to both the manufacturer and the authorised representatives, as the level and service and care to be provided as well as development of the products, is dependent on profitability for reinvestment.

In some instances local or 'back yard' repairers are seeking to 'free ride' in that they do not have the necessary expertise or training but will, if given full access to the level of support provided by manufacturers to authorised dealers, undercut the aftermarket pricing of the authorised dealer without having to provide the minimum standard of service (or incur the underlying costs) required of the dealer. If this occurs it has the potential of giving rise to significant inefficiencies in the aftersales market and could ultimately undermine the dealership model, without commensurate benefits to the equipment owner or agricultural sector.

Further, providing independent repairers with diagnostic tools and software that they do not know how to properly use would be inviting sub optimal outcomes for the customer.

Sophisticated Customers

TMA member's customers are generally and increasingly sophisticated, with even the 'family farm' operation now commonly being a substantial and professionally run

business. Further, the purchase of agricultural machinery is often a significant cost and critical to that farming business. The product is often purchased by way of trade in of a former model of the machine for the purpose of an upgrade. Often the changeover is from the former model, either in the same brand or another brand.

TMA members are finding the customers are less brand loyal than in the past and that they will engage in considerable research seeking an upgrade in the capabilities of the product since their last purchase. It is not a spur of the moment purchase, as may be the case with 'consumer' purchases.

Most customers have budgeted for the product and aware of the running costs going forward, commonly because they have had a history from previous ownership. The product is rarely sold to the purchaser at the recommended retail price but instead at a discount or trade-in, this is not controlled by the manufacturer but by the dealers themselves. The market is generally driven by regional competition between competitors offering both same and different brands of products.

Professional farmers typically purchase based upon a full assessment of the features that are offered and after making comparisons between competing product. Part of this is an assessment of whole of life cost of the equipment being purchased. Initial purchase price is a component of this purchase decision but is not necessarily determinative.

By way of example large corporate customers will often negotiate a price to cover maintenance for the, say, three-year initial usage of the equipment. All TMA members are open to negotiation of such deals with any customer and offer various forms of extended warranty or service packages. This is to give the customer certainty in relation to the equipment running cost, but also ensures that the equipment is properly maintained throughout its working life and assists in maintaining value.

Customers who do not seek such ongoing support can and do 'shop around' various brand dealerships to negotiate competitive sales, service and repair pricing. The franchised dealership structure of individual businesses means that dealerships need to be competitive both in their own product market and, to an extent, those of competing brands.

An aspect of this is the need for dealers to obtain repeat business. Providing competitively priced maintenance and support is one way of a dealer increasing the likelihood of repeat business and generating brand loyalty. This results in competitive rates, as well as a high quality of after sales care being provided to the customer.

II. Farmers may lack recourse in the event of a problem

The agricultural machinery market is highly competitive, with a range of brands to choose from in a relatively small population of consumers in comparison to that of the United States and United Kingdom. To keep this level of competition in the market,

authorised dealers and repairers must remain competitive but also viable. As the products are imported, it must remain worthwhile for the manufacturers to continue to distribute to Australia. Manufacturers are therefore dependent upon their authorised dealers and repairers to maintain a viable market share. Ultimately however they

must provide a product that meets the expectations of the market and is competitive with that offered by competing manufacturers.

The TMA notes that the Discussion Paper notes that the 'purchasers' recourse for faults is usually limited to the manufacturer's warranty or paying for the repairs themselves.' The TMA notes that this is the same as for the purchase of most items in commercial markets and is entirely appropriate when the purchasers are themselves sophisticated commercial entities. This is not a market that is characterised by significant imbalances of market power, or where the purchaser is in some way disadvantaged and needs consumer protection.



In this regard the TMA submits that it is not useful to compare an agricultural machinery manufacturer's warranty with the consumer guarantees offered under the Australian Consumer Law. These are deliberately limited by reference to a \$40,000 threshold or by reference to goods of a kind that are 'typically used for personal domestic or household' use. As noted above the typical purchaser of agricultural machinery is not uninformed or unsophisticated and therefore does not require this level of 'consumer' protection.

Further the TMA submits that its members do provide comprehensive warranties that provide for the repair of most faults that develop during the warranty period. OEM member's warranties clearly disclose the conditions that apply to those warranties and these are reasonable in the context of the complex types of machinery covered and the costs of providing this warranty cover. The average annual value of warranty work funded by manufacturers varies across the industry from approximately 0.9% to 2% of the value of the machine per annum.

Dealers assist the customer with what repairs and maintenance can and should be done to the machinery and the time frame of those events to ensure warranty is not compromised. Farmers are long term and repeat purchasers of agricultural equipment and generally understand the limitations on the warranty provided with the equipment they purchase.

Dealers commonly go to considerable trouble to support Customers who have a major break down. Where the farmer will be without his or her machine for days it's not uncommon for a loan machine to be made available, many times at no cost, or for a very reasonable hire fee, which is something the independent repairer cannot do. Similarly, it is not uncommon for a dealer to offer help, at no cost, if a customer has had an ongoing problem which was not covered under warranty.

Warranty guidelines given to the customer provide further information as to what self-assistance in the upkeep of the machinery may be undertaken by the customer without the authorised dealer's assistance. This usually includes many routine maintenance tasks such as greasing, oil level checks, cleaning and replacement of

worn parts. Extended warranty is often available on purchase of the machinery. It is commonly a warranty requirement policy that a review/service of the product take place, usually on a yearly basis. This review generally takes place post harvesting where a list of maintenance needed on the product is provided to the customer. The customer can request from the provider a list of what repairs and maintenance can be

done themselves to ensure the warranty is not voided and safety of the machine not compromised, this information is also usually specified in the operators manual.

The TMA submits that this approach is entirely appropriate for major complex machinery that is worked hard and for long hours on a seasonal basis.

III. Data ownership and management may raise privacy and competition issues

The Discussion Paper postulates that there 'is significant uncertainty in the market around data ownership, control and the rights to data in certain circumstances.'

TMA members uniformly allow all production data to be retained by the equipment owner. While interoperability is enhanced by using same brand machinery, the TMA is not aware that the form or access of production data is 'locking' farmers into a manufacturer's ecosystem.

The number of manufacturers enabling the transfer and sharing of data is has increased. Using new Farm Management Information Systems farmers can extract, manage and retain production data collected across all of the machinery park, regardless of brand. An example of data sharing programs for agricultural machinery that is currently available and information on the software can be found at the following site

<https://www.claas.co.uk/products/easy-2018/connected-maschines/data-connect>.

IV. Conclusion

The TMA would welcome the chance to meet with the ACCC to discuss any of the matters raised in the Discussion Paper of this submission. While the TMA understands what is driving the 'right to repair' argument, it believes that the level of restrictions currently imposed by its members is objectively justifiable in the context of the complexity of the machinery and the manufacturer's ongoing responsibility to the owners and operators of that machinery.

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