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RE: Agricultural machinery: After-sales markets Discussion Paper (February 2020)

John Deere Limited (JDL) thanks the ACCC for the opportunity to make submissions in response to the ACCC's Agricultural machinery: After-sales markets Discussion Paper of February 2020.

JDL considers that the markets for the sale of agricultural machinery and after-sales services and repair in Australia are competitive, and that there are no industry wide issues which would warrant legislative intervention beyond the retention of existing competition and consumer law protections. However, JDL has sought to provide comprehensive responses to each of the areas on which the ACCC has sought further information to assist in the ACCC's review. These should be read in conjunction with JDL's previous ACCC submission dated 19 October 2018. The ACCC's queries are listed below followed by JDL's response to each query.

1. Restrictions in manufacturer warranties which limit repair to authorised dealers and genuine parts during the warranty period

The John Deere Limited Warranty (the "Warranty") includes no such restrictions.

The Warranty is publicly available here: https://www.deere.com.au/assets/pdfs/region-4/parts-and-service/warranty/warranty-statements/AU_wty_statement.pdf. Per the terms of the Warranty, JDL will only pay for warrantable repairs if service is performed by authorised John Deere dealers and dealers using genuine John Deere parts. John Deere parts are designed and tested for use with Deere equipment to ensure optimal functionality and performance, and authorised dealers have specific training and experience with repairing, servicing and maintaining John Deere machinery. The purpose of those arrangements is to ensure that John Deere's exposure to liability under the Warranty is for issues that it can and should be responsible for managing.

Customers are free to perform all maintenance and repairs themselves or use independent repair providers at any time for warrantable and non-warrantable maintenance and repairs, but the costs of such maintenance and repairs will not be paid by JDL. For instance, per the Warranty, JDL will not pay for, among other things, "Any Equipment that has been altered or modified in any way not approved by John Deere Limited..." or "Failure caused by incorrect



or improper service parts.” JDL does not void the Warranty in the event a customer uses non-John Deere parts or utilises a service provider other than an authorised John Deere dealer.

JDL also acknowledges that the contractual warranty is in addition to any consumer guarantees which may apply under the Australian Consumer Law, and you will see the terms of the Warranty specifically acknowledge as such.

2. Manufacturers’ restrictions on access to technical information and diagnostic software tools

Customers and independent repair shops may perform any and all maintenance and repairs on equipment. To aide in those efforts, JDL offers operational, diagnostic and repair manuals and reference guides to the general public. These resources are available in both digital and print format and can be purchased from any of our John Deere dealers or via <https://techpubs.deere.com>. JDL also offers mobile apps, online how-to videos (primarily via YouTube at <https://www.youtube.com/user/JohnDeere>), special repair tools and electronic service tools, including John Deere Customer Service ADVISOR™, diagnostic software available for purchase from authorised John Deere dealers that allows customers and non-authorised John Deere dealers to diagnose, repair and calibrate equipment. Similar diagnostic software is also available from aftermarket third-party sellers, including but not limited to TEXA s.P.A (<https://www.texa.com/solutions/off-highway>).

JDL has extended an invitation to the ACCC to view a demonstration of John Deere Customer Service ADVISOR™, as well as other tools, manuals and resources available to the public online and through the John Deere dealer network for maintenance and repair of John Deere equipment.

Deere supports our customers’ right to maintain and repair their equipment, but not the right to modify embedded code in equipment, which raises safety, emissions and intellectual property infringement and misuse concerns. For example, the Australian market is replete with advertisements and offers to remap, chip or tune diesel engines, without regard to the impact on dealer and Deere emissions obligations, manufacturer warranty, engine durability and equipment values and resale. See examples of engine tuner/chipping companies here: <https://www.dieselperformancesolutions.com.au/>, <http://www.protuneaustralia.com.au/tractor-ecu-tuning-3/>, <https://www.steinbauer.cc/us/>. Manufacturers need to be able to protect against the significant adverse consequences for a manufacturer's reputation of there being perceived to be safety or performance issues and the resulting lost sales (even if the manufacturer has no contractual or statutory liability) which could arise from third party modifications to such embedded code.

Deere has worked with industry partners, other manufacturers and dealers to educate legislators and regulators on "Right to Repair" legislation in the United States, generally advanced by special interest organisations. The U.S. Industry Statement of Principles created by manufacturers and dealers as well as additional information on Right to Repair are available here: <https://r2rsolutions.org/>. To date, legislators in more than 30 states in the U.S.

have declined to enact Right to Repair legislation on the basis of the industry commitment and the fact that farmers, ranchers and independent repair shops do in fact have access to the necessary parts, tools, resources to perform their own repairs. Deere submits that these principles largely also apply to Australia, and to the extent the ACCC perceives there are issues is something that should be resolved with the relevant manufacturers or dealers which the ACCC considers are not making available information available in accordance with those principles rather than by broad ranging legislative intervention.

3. Differences in prices between genuine parts, and comparable quality non-genuine parts

Deere does not have broad visibility to non-Deere parts pricing and thus is not in a position to provide an informed response to this question.

However, Deere has encouraged dealers to develop a tiered approach to supply of parts, offering customers a variety of options at a range of prices and levels of performance, including lower priced "will fit" parts distributed by Deere subsidiaries, A&I and Vapormatic which provide alternatives to genuine parts. Most John Deere dealers also carry a variety of "will fit" parts supplied by third parties, including but not limited to Worthington, Neil's, Shoup, Bareco, Sparex and AgParts, many of which we understand are generally also offered by the independent repair shops, presumably at similar prices.

4. Terms in manufacturer warranties which limit purchasers' ability to seek recourse and full compensation for faulty equipment

JDL considers that the JDL Warranty includes no such terms.

The Warranty Statement, which includes all Warranty terms and conditions, is signed by the customer at the point of sale and is available at any time from the dealer or online (https://www.deere.com.au/assets/pdfs/region-4/parts-and-service/warranty/warranty-statements/AU_wty_statement.pdf). Pursuant to JDL's agreements with its authorised dealers, dealers are responsible for explaining terms of the Warranty to customers.

The Warranty is non-negotiable to ensure the Warranty terms are equally available to all customers and is offered as an additional guarantee on the purchase of John Deere products. Dealers may offer additional warranties to customers if they so choose, but any such warranties are between the dealer and customer(s) and Deere does not endorse or support those warranties.

Pursuant to JDL's agreements with authorised John Deere dealers, dealers are obligated to support John Deere products and customers (and JDL reimburses all dealers equally for warranty repairs) regardless of which dealer originally sold the products. Travel is not paid as part of warranty repairs; however, under some circumstances, JDL may commit discretionary monies to offset travel costs to dealers and customers.



Per the Warranty, customers are advised to consult with a dealer for warrantable failures and dealers are responsible for administering the Warranty. JDL reimburses dealers for warrantable parts and labor costs pursuant to the terms of JDL's agreements with dealers. JDL has a robust process and system for receiving and processing dealer requests for reimbursement. All claims are submitted in the John Deere Warranty System and reimbursed subject to the terms of the Deere's Warranty Administration Manual. Generally, dealers are incentivised to submit all claims within 30 days of the repair. This reimbursement process occurs in the background and customers should not experience any delays in repairs to their equipment. Most dealers also carry loan equipment to ensure customers operations are not delayed during repairs.

5. Concerns about terms in agreements between manufacturers and dealers, particularly those which are potentially unfair or which limit competition between dealerships

No such terms exist.

For completeness, JDL notes that pursuant to JDL's agreements with dealers, the dealer's market area, known as the Area of Responsibility (the "AOR") is non-exclusive. Dealers may sell wherever and to whomever they choose. The AOR is only used as the reference area in which the dealer is measured for the purposes of market share performance and customer and product support.

Per the Warranty Administration Manual, which is part of the John Deere Dealer Agreement, John Deere dealers are obligated to support all John Deere products and customers (whether goods are in or out of warranty), regardless of which dealer sold the goods.

6. Whether manufacturer and dealer agreements would be covered by the existing unfair contract term legislation

Assuming the ACCC is seeking information on manufacturer agreements with dealers (as opposed to dealer or Deere agreements with customers, including but not limited to purchase orders and invoices), most such manufacturer agreements would be beyond the scope of the unfair contract terms regime due to dealers exceeding the 20-employee threshold.

Pursuant to Section 3.2 (d) (vi) of the John Deere Limited Dealer Agreement (a copy of which has previously been supplied to the ACCC, with the relevant clause extracted below), dealers are obligated to service John Deere Goods regardless of whether the Goods were sold by another dealer or outside of the servicing dealer's AOR.

(d) *Dealer will:*

(vi) *promptly and efficiently meet the service requirements of all Customers, other purchasers and users of the Goods either in the AOR or in the case where Dealer has sold the Goods outside the AOR;*



7. The collection and uses of data as it relates to agricultural machinery

JDL collects, uses and discloses data to monitor and improve machine quality, notify customers of upcoming maintenance and repairs and reduce downtime and to market to John Deere customers. Data is collected and used pursuant to Deere's Privacy Statement available here: <https://www.deere.com.au/en/privacy-and-data/> and the John Deere Data Services & Subscriptions Statement available here: <https://www.deere.com.au/en/privacy-and-data/data-services/>. All customers are able to opt out of sharing their data. Deere does not sell any data to third parties.

The International Standards Organisation (ISO) has specified a serial data network for control and communications on equipment to standardise the method and format of data transfers in electronic systems, thereby allowing for communication between tractors and implements across all manufacturers. For agricultural equipment, this is specified in ISO 11873. Customers may use tractors and implements interchangeably, though the operator experience may vary from brand to brand.

Production data may be stored in Deere programs (e.g. John Deere Operations Center) and may be shared with trusted partners, but only with the customer's consent. Deere's Operations Center strategy and approach supports an open, transparent, customer-friendly platform, which has the effect of increasing competition in the marketplace.

Please advise if you require any additional information or clarification on any of the information outlined above.

Yours sincerely

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