

INTRODUCTION

CNH Industrial Australia Pty Limited (**CNHI**) is part of the global group of companies owned by CNH Industrial NV (listed on Italian Borso and New York Stock Exchange). The group manufactures agricultural and construction equipment and CNHI imports and distributes the same through an independent dealer network In Australia.

CNHI welcomes the Productivity Commission's enquiry into the Right to Repair as outlined by the Issues Paper (**the Issues Paper**). On 27 May 2020, CNHI made formal submissions to the ACCC's review of the Agricultural machinery industry. A copy of CNHI's submissions is attached (**the CNHI Submissions**). As many of the issues canvassed in ACCC's review also fall within the scope of the Issues Paper's inquiry, CNHI wishes to make only a small number of additional submissions to address some specific points raised.

1. CNHI Goods Do Fall Within Scope of the Issue Paper Enquiry

Nature of goods sold: It is CNHI's position that agricultural machinery tends to fall into one of the categories expressed to be a focus for the Productivity Commission namely "High-cost durable goods". The significant and infrequent outlay required for replacement of these types of products can make the consequences of barriers to repair costly and salient to consumers."

Moreover, the goods sold are also "products that are primarily purchased by businesses". CNHI recognises that the stakes are high for purchasers of agricultural machinery. The dependence on these goods for income generation means purchasers cannot afford for a machine to breakdown or be out of operation for a great length of time. In addition, the machinery is technologically complex and requires a high level of expertise to repair and service which can only be ensured by high quality professional training.

In recognition of this CNHI has invested heavily in developing the technical expertise to meet the ever emerging technologies. CNHI refers the Productivity Commission to the CNHI Submissions outlining CNHI's investment in training in addition to the purpose-built customer support platforms developed by CNHI to enable repairs to be performed remotely to minimise a machine's downtime.

To ensure the optimum service is available to its customers, CNHI has the largest networks of dealers located throughout Australia with the greatest number of standalone outlets for each of its brands. CNHI authorised dealers are prepared to not only work all hours to provide parts and service to customers, but also travel wherever required. As the industry is small and the participants in each market well known to the customers, service and repair work is priced very competitively. The cost is usually comparable between independents and authorised dealers making the opportunity to gouge or charge monopoly pricing very restricted.

CNHI refers the Productivity Commission to the CNHI Submissions in relation to the choice of repairer and data sharing. The main thrust of the CNHI Submissions was the need to make a clear distinction between motor vehicles and agricultural machinery.

2. Barriers to Accessing Competitive Repair Services:

The Issues Paper referred to a number of barriers to accessing competitive repair services to which CNHI makes the following responses.

□ **the scope and limitations of existing consumer rights under the Australian Consumer Law (ACL) and the ability of consumers to enforce those rights**

The CNHI Submissions analysed the agricultural industry and the nature of the farm machinery purchaser. The majority of these purchases are made by savvy business owners in support of their complex and sophisticated operations. These individuals are in the main very capable of negotiating transactions and understanding their legal rights.

- **conduct by manufacturers and authorised repair networks that inhibits competition from independent repairers**

The CNHI Submissions explain why it is CNHI's preference for all service and repairs to be carried out by authorised dealers. To encourage this, CNHI reserves to itself some rights to its warranty for example the requirement that warranty work for which CNHI pays is carried out by an authorised dealer. The reasons for this are set out clearly in the CNHI Submissions. In summary we think this is the best outcome for the customer.

- **legal and technical measures used by manufacturers to protect their intellectual property from unauthorised use**

The CNHI Submissions set out CNHI's position with respect to intellectual property. The customer retains ownership of the agronomic data collected during the operation of CNHI products. The customer is free to choose how they use their agronomic data and by what means. CNHI has provided for many years a free viewing platform by which a customer can examine their agronomic data. CNHI also offers data manipulation software to modify, create or even export data into other formats commonly used by competitors so the customer is not tied to one brand of product.

CNHI has collaborated on *ISOBUS* technology which gives the customer access to the machine performance data, trouble codes and diagnostic information. The customer also can clear/silence non-critical codes which, if ignored, do not pose a safety hazard or risk harm to the machine, in CNHI's opinion. This means the machine can continue its operations unimpeded by not having to stop in the field or requiring the intervention of a dealer to clear a code. The core driver for CNHI is to keep the customer's operations rolling.

However, there are some functions which the customer cannot access or override. The reason the customer is not given unfettered access to proprietary diagnostic systems and embedded software is to minimise the risk of tampering. Unfortunately, some disreputable players in the market have been known to interfere with the manufacturer's settings of farm machinery for improper purposes. For example, "chipping" involves modifying a piece of equipment to increase engine horsepower which can have implications for the longevity and/or safe operation of the machinery. Tampering can also defeat compliance with emissions standards. It is for this reason that CNHI has struck a balance between the demand for open access to the machine systems and data with the need to ensure the integrity of safety or performance features.

- **manufacturers adopting strategies that mean products rapidly become obsolete and require a replacement (which include designing products in a way that prevents repair).**

CNHI works towards continuously improving its products but does not entertain the above.

3. Potential Policy Options that Could Be Considered

In response to the Productivity Commissions' potential policy options CNHI makes the following responses:

- **the provision of additional information to consumers at the point of sale, such as information relating to consumer rights, product reparability or warranties**

CNHI is very comfortable providing information to customers as to what their rights and options are for repair and service.

- **clarification of what 'reasonable' means in relevant ACL provisions (such as in relation to the availability and time period of repair supplies) for given products**

CNHI would welcome such clarification, although it currently provides a warranty based on its experience of in what period it is likely a defect in design or assembly to manifest which is no doubt differs depending on the product.

□ **the rationale for use of 'opt-out' clauses for the provision of spare parts and repair facilities**

CNHI does not attempt to undermine the operation of the ACL by informing its customers that parts will not be available after a specified time and CNHI has a parts retention policy to ensure that customers have access.

CNHI considers the current protections under the ACL to ensure repair facilities are reasonably available along with spare parts being kept for a reasonable period of time to be adequate.

To this end, CNHI notes that even if a manufacturer sought to avoid having to keep a spare parts inventory by informing the customer, the manufacturer would only be legally permitted to do so if it was reasonable in the circumstances. The reasonableness should ultimately be determined by the pricing of the goods and expectations as to durability and longevity of the product. Farm machinery has a longer life expectancy than, say, the guidance technology that is used with it.

Ultimately, the requirement to retain access to parts needs to be balanced against the costs of doing so, by reference to the number of customers still benefitting from the older version of products. Most farmers who take up technology are quick to adopt new and updated products

□ **the availability of consumer guarantees for business products over the value of \$100 000**

CNHI would not necessarily object to the consumer guarantees extending to business products over the value \$100,000.00 as long as CNHI would be permitted to limit its liability for breach to the repair and/or replacement of the goods as it is currently permitted under the ACL. If CNHI was unable to exclude liability for consequential loss, CNHI would have to cost that exposure into the pricing of its goods which in turn would significantly increase the purchase price, which would ultimately affect the consumers. CNHI believes excluding liability for consequential loss is a reasonable compromise because it is open for business customers to separately insure such risks.

□ **compliance with, and enforcement of, consumer guarantees as they relate to consumers' ability to obtain repairs.**

CNHI considers it essential for its customers to have ready access to the most technologically advanced repair facilities. CNHI and its customers share a mutual interest in ensuring CNHI products function at their most optimal level.