Productivity Commission Right to Repair Inquiry

Closing comments by Tractor & Machinery Association of Australia

20 September 2021

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Executive Summary

Following the Productivity Commission's Right to Repair Inquiry submission process and a meeting with Commission representatives, the Tractor and Machinery Association of Australia (TMA) would like to make closing comments for the Commissioners' consideration.

This document highlights the TMA's position on draft and final recommendations made by both the Productivity Commission and the Australian Competition and Consumer Commission (ACCC) in recent reports concerning Right to Repair and the agricultural machinery market.

The TMA is in agreement with some recommendations but expresses concern that a small number do not warrant reform or have not been demonstrated to have improved consumer outcomes in Europe or the United States.

The TMA's position on a number of issues is orientated around a major underlying factor impacting the industry and consumers - the serious lack of service technicians in rural communities, which impacts not only dealership workshop capacity to service customers but the number of independent repairers in those communities.

The TMA would welcome any government initiatives to address this issue.

In two sections, the TMA has highlighted qualitative and quantitative evidence of both the importance of investing in a greater Australia-wide talent pool of qualified technicians and spare parts experts and the serious challenges of that labour market.

This document also further outlines the concerning safety and environmental issues of modification or tampering of complex agricultural equipment, with an Australian example and comprehensive US data.

We have restated our commitment to provide as much customer information as possible and demonstrated the renewed commitment to this by major US manufacturers.

Finally, the TMA has provided a fact sheet on understanding the important difference between automobiles and farm and construction equipment when considering consumer regulation reform. These issues translate to the Australian setting.

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1. TMA Response to Productivity Commission Draft Report, June 2021.

Recommendation	Explanation	TMA Response
Information Request 4.2 A Positive Obligation To Provide Access To Repair Supplies. The Commission is seeking feedback and evidence on the costs and benefits of different approaches to designing and implementing a positive obligation on original equipment manufacturers to provide access to repair supplies to third-party repairers.	In particular: • evidence on the effectiveness of positive obligation schemes overseas (such as motor vehicle repair information schemes in the United States and Europe, and spare parts requirements in Europe) • should a positive obligation be applied across all product markets or targeted towards particular product markets? If so, which product markets, and why? • should a positive obligation mandate access to all repair supplies or a subset of repair supplies (such as repair information, spare parts, or diagnostic tools)? • how should a positive obligation be implemented and enforced in practice?	*The TMA is not able to comment on the effectiveness of these positive obligations and agrees with the Draft Recommendation 4.1 that "a review of the operation of the mandatory service and repair information sharing scheme for motor vehicles after it has been in operation for a minimum of three years is also required before considering further a substantial regulatory intervention in the form of a positive 'right to repair'".* *It is expected that an outcome of the adoption of the scheme will be the establishment of "Certified" 3rd party repairers. An unintended consequence of this will be that in order for these repairers to maintain their certification ongoing training and development will be required which will add to the cost of delivering this service* *That said, the enquiries made by TMA members to their counterparts in Europe and US has revealed that in the US where there is no mandatory scheme implemented in respect of farm machinery, the OEMs have voluntarily initiated customer centric versions of repair information.*

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		The European scheme does not appear to have resulted in better outcomes for the customer. *The TMA has made enquiries of its members to identify if there is a market failure which needs to be addressed by a positive obligation.* *TMA members have formal and informal measures to monitor the performance of dealers with respect to customer satisfaction in respect of service and parts sale fulfilment. <u>Please see Annexure A for more detail.</u>* *The evidence does not support any allegation that there is widespread or systemic failure which could justify regulatory intervention.* ***TMA Proposal*** *What is evident is that there is a serious lack of service technicians in rural communities, which impacts not only dealership workshop capacity to service customers, but the number of independent repairers in those communities.* *The TMA would welcome any government initiatives to address this Issue.*
Draft Recommendation 3.2: Powers For Regulators To Enforce Guarantees	State and Territory Governments should introduce alternative dispute resolution mechanisms to better resolve complaints about the consumer guarantees, such as compulsory conciliation or direction powers (as are	*The TMA notes that the statutory consumer guarantees do not apply to most farm machinery sales and therefore such a scheme is unlikely to apply.* *Notwithstanding the inapplicability of the*

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	used in South Australia and New South Wales). To inform the most effective design and use of any alternative dispute resolution mechanism, appropriate cost-benefit analysis and sufficient regulator resourcing would be required prior to implementation.	*Australian Consumer Law (ACL) to most farm machinery transactions, the TMA notes that most farm machinery sales include a <u>contractual</u> warranty by the manufacturer, the terms and management of which are driven by market demand.* *The TMA does not support the extension of the consumer statutory guarantees to farm machinery for the following reasons:* *i) there does not appear to be evidence of market failure justifying such regulatory intervention;* *ii) the contractual warranties from the manufacturer generally provide customers with efficient and effective recourse where products are faulty;* *iii) the current regime provides a fair balance between the varying interests of affordability and customer recourse.*
Draft Recommendation 3.3 Enabling A Super Complaints Process.	The Australian Government should enable designated consumer groups to lodge 'super complaints' on systemic issues associated with access to consumer guarantees, with the complaints to be fast tracked and responded to by the Australian Competition and Consumer Commission (ACCC). The Australian Government should design the super complaints system in	*See comments above in relation to the applicability of consumer law to the sales of farm machinery.* *TMA members have detailed complaints handling processes to manage customer complaints.*

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	consultation with the ACCC, relevant State and Territory regulators and consumer groups. The system should be underpinned by sound operational principles — including criteria for the assignment (or removal) of designated consumer bodies, evidentiary requirements to support a complaint, and the process and time period by which the ACCC should respond.	
Draft Recommendation 3.1: Guidance On Reasonable Durability Of Products	The Australian Competition and Consumer Commission (ACCC) should develop and publish estimates of the minimum expected durability for products within major categories of common household products. The estimates would be a guide only to support application of the acceptable quality consumer guarantee in section 54 of the Australian Consumer Law. It could use ranges to take into account lower and higher value products in each category. The ACCC guidance should be developed in consultation with State and Territory consumer law regulators, consumer groups and business groups representing product suppliers and manufacturers, and should be updated over time.	*This is not applicable to farm machinery and is probably unlikely to be capable of application in any meaningful way due to the type and range of products and the varying uses to which they are applied.*
Information Request 4.3: A Prohibition On Warranty Void Terms. The Commission is considering recommending provisions similar to the	In particular: • would manufacturers respond by increasing product prices or making their warranties less generous?	*TMA members have concerns regarding this recommendation.* *Given the warranties that accompany most farm machinery sales are*

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Magnuson-Moss Warranty Act in the United States, which prohibits manufacturer warranties from containing terms that require consumers to use authorised repair services or parts to keep their warranty coverage.	Would this latter change have any practical impact on consumers given they are also covered for defects under consumer guarantees? • how could such a prohibition be designed and communicated to ensure that consumers are aware that voiding terms are now prohibited? • how could the prohibition be designed to limit manufacturer liability for damage beyond their control? For example, the Magnuson-Moss Warranty Act permits warranty terms that limit manufacturer liability for damage caused by unauthorised repairs or parts, if they can demonstrate third-party fault. Information Request 4.3 also asks whether terms within end-user license agreements that purport to restrict repair related activities (discouraging third-party repair) should also be prohibited? Is a disclosure as proposed under draft recommendation 4.2 sufficient or is a legislative prohibition required?	*contractual and not statutory under the ACL, there are legitimate reasons why a manufacturer may require customers to use authorised services and parts as a condition of maintaining the warranty including the governance they maintain over their authorised dealers, in terms of technical expertise, facilities and tooling requirements.* *The TMA believes there is a great risk of manufacturers being held liable for poor-quality repair work by unauthorised and untrained parties which is outside of their control.* *To the extent the latter can be excluded from liability, it can be difficult and costly to determine if poor-quality repair work has caused or contributed to a defect in the product.* *The impact on product safety and increased risk to the operator is equally as important.* *These costs and delays can be avoided by requiring customers to use only authorised repairers and authorised parts.* *The TMA members believe that disclosure requirements should be sufficient.*
Draft Recommendation 4.2: **Additional Mandatory Warranty Text.**	The Australian Government should amend r. 90 of the Competition and Consumer Regulations 2010, to require manufacturer warranties ('warranties against defect') on goods to include text (located in a prominent position in the warranty)	*This is not relevant to farm machinery which generally does not attract the ACL due to the application of s64A Australian Competition and Consumer Act 2010.*

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	stating that entitlements to consumer guarantees under the Australian Consumer Law do not require consumers to use authorised repair services or spare parts	
Information Request 5.1: Improving Access to Repair Information.	The Commission is considering recommending amendments to intellectual property laws to improve access to repair information through the options outlined in draft finding 5.2. It is seeking views on each option, in particular: • whether the proposed reform options will assist repairers in accessing repair information, and therefore facilitate third-party repair • what types of contractual arrangements that could override such reforms are most likely to be of concern • the costs, benefits and risks of pursuing each option.	*TMA members currently make available reasonable and necessary access to the IPRs relating to their products. This is to facilitate the service and/or repair (but not to modify) machines.* *(See above relating to information sharing)* *The TMA notes that:* *i) IPRs relating to farm machinery require considerable investment by OEMs to bring the best product into the market;* *ii) authorised dealers are also required to invest in service related IPRs as part of their franchise obligations.* *The TMA does not object in general terms to providing access to IPRs to the extent necessary to optimise use of the product. However, TMA members want to be able to receive reasonable licence fees and impose appropriate restrictions on supply/ use, to ensure customer safety and regulatory compliance.* *The TMA is concerned that any reforms in relation to the ability to access and use of IPRs, beyond what is contemplated in the OEM customer versions of repair information, may have the*

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		unintended consequence of allowing the commercial exploitation of such IPRs without any investment, to the disadvantage of authorised dealers and OEMS, who have made large investments.
Draft Finding 5.2: Options to Improve Access to Repair Information.	There are two main options to amend intellectual property protections to improve access to repair information. • Amend the Copyright Act 1968 to allow for the reproduction and sharing of repair information, through the introduction of a fair use exception or a repair-specific fair dealing exception. • Amend the Copyright Act 1968 to allow repairers to legally procure tools required to access repair information protected by technological protection measures (TPMs), such as digital locks. This may also require the Australian Government to clarify the scope and intent of the existing (related) exception for circumventing TPMs for the purpose of repair. To reduce the risk of manufacturers using contractual arrangements (such as confidentiality agreements) to 'override' the operation of any such reforms, it may also be beneficial to amend the Copyright Act 1968 to prohibit the use of contract terms that restrict repair-related activities otherwise	*The TMA repeats its commentary relating to the availability of customer versions of repair information.* ***Please refer to Section 5 Customer information.*** *Safety is the TMA's major concern here.* *The TMA is concerned that any legislation which requires access to be given to unlock technological protection measures (digital locks) may have the unintended consequence of increasing the prevalence of illegal tampering or legal modification, which may have the effect of compromising the safety or performance of the equipment.* *Please refer to NHVR's* On The Road *article,* **South Australian operator charged over engine remapping. (**23/02/2021)

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	permitted under copyright law.	

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2. TMA Response to ACCC Recommendations: Agriculture Machinery Market Study, May 4, 2021

ACCC Recommendation	Explanation /commentary from ACCC	TMA Response
The ACCC recommends that agricultural machinery be considered for inclusion in the motor vehicle service and repair information sharing scheme.	The ACCC considers that work regarding how agricultural machinery could be incorporated into the scheme should commence with a view to it being considered for addition at the first review of the scheme. The scope of the motor vehicle service and repair information sharing scheme would not enable it to address all issues that exist in machinery markets, such as access to replacement parts. As such, broader right to repair pathways should also be pursued.	*The TMA believes that the regulator should monitor and review the new scheme before expanding its sphere, especially in the absence of evidence of a market failure justifying regulatory intervention.* *TMA members will be willing to provide customer versions of repair information on a voluntary basis as has been introduced in the US.* *It should be noted that wholesale provision of service and repair information without limitation may make more prevalent the illegal practice by some third parties of "tampering" by way of equipment modifications (rather than repair) which have the potential to undermine the safety and environmental integrity of the machine.*
The ACCC recommends that agricultural machinery be included as part of any broader right to repair scheme introduced in Australia. **This will enable right to repair issues in agricultural machinery markets to progress in line with markets in the broader economy.**	Referred to the Productivity Commission	*TMA members support the ability for farmers and purchasers of machinery to maintain and repair their machinery.* *We have published a **Statement of Principles**, a document that outlines our support for Australian farmers and dealerships.* *It states the principles we will follow and implement as an industry and is available on our website:*

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		Tractor and Machinery Association of Australia (tma.asn.au)
The ACCC considers that future Australian right to repair legislation could include provisions that require manufacturers to: …grant access to diagnostic software tools and OEM parts to independent repairers on commercially reasonable terms ('duty to deal').		*The TMA does not believe legislation is required.* *TMA members support the ability for farmers and third-party repairers to carry out repairs for which they are qualified and commits to making available appropriate diagnostic tools and services to enable this to occur.*
…require that a sufficient supply of parts be readily available in Australia for a defined period from the date of the sale agreement.		*The TMA and its members support a commitment to supply parts for all machines in their ranges for a period of at least 7 years from date of release.* *OEMs also make large investments in spare parts in country to support new product introductions into this market to ensure adequate availability for initial stocking programs.* *However, given the extensive range of machines distributed across the country, it may not be economically possible to hold all parts for all machines in all locations.* *Parts may need to be sourced from other locations from time to time.* ***Please refer to Annexure A Part A** provided by CASE IH as an example of major manufacturers' commitment to the best possible access to parts and services for customers.*

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… provide purchasers with information regarding how long a certain software system will be supported.		*The TMA and its members support the principle of this recommendation; however, it may not always be possible to provide this detail at time of purchase.*
The ACCC recommends that manufacturers and dealers provide clear and concise information to purchasers about warranties at the earliest practical opportunity in the sales process and before the point of sale.	This information should include a one-page statement about the terms and key limitations of the warranty and should set out a clear process for resolving disputes over warranty claims.	*The TMA and its members support this recommendation and will continue to work with the authorities to ensure that this recommendation is delivered.*
The ACCC recommends that manufacturers and dealers provide information to purchasers about data issues at the earliest practical opportunity in the sales process and before the point of sale.		*TMA members commit to providing details of their End User Agreements in plain English.*
This should include: **. information about machinery interoperability** **. explaining how purchasers can access and transfer their data** **. a statement about how the manufacturer will use data captured by the machine, including options which allow purchasers to 'opt out' of schemes that would share or aggregate the data.**		*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 has increased.* *Using new Farm Management Information Systems farmers can extract, manage and retain production data collected*

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		across all of the machinery park, regardless of brand.

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3. Modification/Tampering of Farm Equipment

The following information illustrates the potential for Right to Repair reform to increase perverse incentives for the modification of farm equipment. This has safety consequences and may affect equipment performance and environmental standards.

Examples of tampering are provided as are US examples and data.

Please also refer to the comments and data provided in *Annexure A: Part B Safety Implications of Modifications and Prevalence of Tampering* provided by CHII to highlight the issues faced by major manufacturers.

Below is an article from the National Heavy Vehicle Regulator's (NHVR) On the Road newsletter.

South Australian operator charged over engine remapping

(https://www.nhvr.gov.au/news/2021/02/23/south-australianoperator-charged-over-engine-remapping) 23-02-2021

The National Heavy Vehicle Regulator (NHVR) has charged a South Australian company with a primary duty offence for allegedly remapping the engines of heavy vehicles.

The charges stem from a South Australia Police operation in June 2020. The NHVR will argue that the checks conducted during the operation indicate the vehicle was not using Adblue, suggesting its emissions control system had been tampered with.

Examinations were conducted on other heavy vehicles registered to the company which form the basis of additional charges.

It is alleged that the operator of the vehicles disabled the emission controls on the heavy vehicles. NHVR Executive Director of Statutory Compliance Ray Hassall said that emissions tampering caused significant health and environmental risks.

"Engine remapping is inconsistent with the primary duty to ensure safety under the HVNL, as the resultant increased emissions have the potential to harm the health of the driver and other members of the community," Mr Hassall said.

"We know that truck drivers, who are constantly exposed to high levels of diesel emissions, suffer higher rates of diesel-related illnesses, including cancer, heart disease and asthma.

"Operating in a compliant way levels the playing field and supports the health and safety of drivers in their workplace."

The Company has been charged under section 26H (category 3) offence for breaching its primary duty to eliminate or minimise the risk of harm to the environment.

The company has also been charged with four offences of tampering with emissions controls systems and four offences of operating a heavy vehicle other than in accordance with the manufacturer's design.

The matter is first before the Berri Magistrates' Court on 24 March 2021.

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From the US Association of Equipment Manufacturers and the US Equipment Dealers Association is the following fact sheet on tampering.

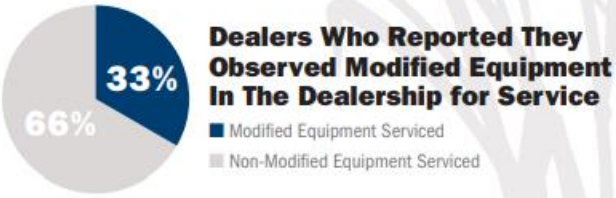
ILLEGAL TAMPERING

Illegal tampering is the likely outcome of so-called right to repair legislation. The bottom line is that even today, illegal tampering is undermining advances in safety and emissions for equipment users across sectors. In April of 2019, the Equipment Dealers Association surveyed its members and the statistics surrounding illegal tampering are staggering.

Modifications to Safety and Emissions Features in Off-Road Equipment

770 Equipment Dealers responded to the April 2019 survey. This is a significant sample generated across a broad range of original equipment manufacturers (OEMs).

Of the responding dealers, **33%** had modified equipment come into their dealership for service in the past 24 months. Modified equipment is defined as equipment which has been altered from manufacturer settings. Examples of modifications include engine tuning or chipping, changes to hydraulic systems or safety mechanisms.



While each responding dealers' percentage varied, some participating dealers reported that up to **50%** of the equipment brought into their dealership(s) for service had been modified or altered from manufacturer settings.

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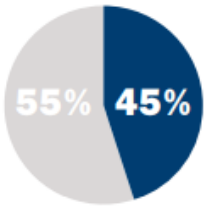
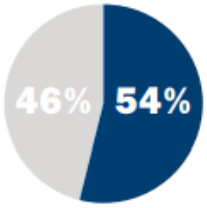
Of the responding dealers (257) who ***did*** have modified equipment come into their dealership for service in the past 24 months, **45%** reported that the modifications included those which removed, impaired or disabled Federally-required emissions control equipment, such as the installation of engine tuning or chipping devices and other modifications that increase injection pump fuel delivery or disable Exhaust Gas Recirculation or Diesel Particulate Filters. EPA regulations state that if a dealer performs service on a tampered emission control system and does not return the system to its certified emissions configuration, the dealer may be liable for violating the Clean Air Act.



Modifications that Removed, Impaired or Disabled Emissions Control Equipment

- Emissions Tampering
- Tampering Not Related to Emissions

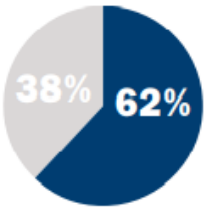
Of the responding dealers (257) who ***did*** have modified equipment come into their dealership for service in the past 24 months, **54%** reported that the modifications included those which removed, impaired or disabled OEM safety features.



Modifications Removed, Impaired or Disabled OEM Safety Features

- Safety Features Removed, Impaired or Disabled
- Modification Unrelated to OEM Safety Features

Of the responding dealers (257) who ***did*** have modified equipment come into their dealership for service in the past 24 months, **62%** reported that the modifications could reduce reliability, durability or resale value of the equipment. One such example would be a modification making the engine run at higher horsepower than specified, thereby increasing wear on components and reducing durability, reliability and resale value for subsequent owners.



Modifications Would Reduce Reliability, Durability or Resale Value of the Equipment

- Modifications would reduce reliability, durability or resale value of the equipment
- Modifications would not reduce reliability, durability or resale value of the equipment

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ILLEGAL EQUIPMENT TAMPERING:
Risky Business for Equipment Dealers and Equipment Manufacturers

Illegal tampering of equipment presents serious safety and environmental risks to equipment manufacturers and dealers. For example Derive Systems, which manufacturers the "Bully Dog" and "SCT" chipping software systems, was fined $300,000 and will have to pay more than $6,000,000 to make sure that any future products it creates are compliant with the Clean Air Act. Despite the risk of Clean Air Act violations, proponents of so called "Right to Repair" legislation seek unfettered access to modify and disable emissions and safety features. These proponents argue that the pursuit of unrestricted tampering with respect to safety and emissions features would not lead to increased liability risks for dealers and manufacturers. These arguments are misguided and fall flat with a simple evaluation of existing product liability law. Cases across the country have routinely demonstrated that when an end user illegally modifies a piece of equipment, and an injury results, equipment dealers and equipment manufacturers are targeted *even when they had no part in the illegal modification*.

NEW YORK - An equipment owner damaged a plastic safety shield during use. The equipment owner then removed the plastic safety shield instead of replacing it. Shortly after removal, equipment owner suffered severe injuries because the safety shield had been removed. The equipment owner sued the equipment dealer and the manufacturer of the product alleging that the injury was attributable to a protruding bolt or screw rather than the equipment owners own removal of the safety feature. The court refused to dismiss the equipment dealer or the manufacturer and a jury awarded damages based upon the equipment owner's allegations despite the fact that the equipment owner had personally removed the safety feature!

OHIO - An equipment owner purchased a tractor and subsequently installed a turbocharger on the tractor's engine. The equipment owner sustained injuries and sued the manufacturer and equipment dealer alleging that his injuries were the result of negligence on the part of the manufacturer and dealer.

OREGON - An equipment owner purchased a tractor from an equipment dealer and then illegally tampered with the exhaust system. The equipment owner was then injured when the tractor caught fire. The equipment owner sued the equipment dealer and the equipment manufacturer claiming his injuries were caused by their negligence rather than his own.

As you can see, even though the equipment owners in these representative cases illegally tampered with the safety features on their equipment, that did not stop the equipment owner from making claims against the equipment dealer and equipment manufacturer. Despite the lack of any wrongdoing, the equipment dealer and equipment manufacturer were forced to incur substantial legal costs fighting the allegations and clearing their names! While the equipment industry supports customers repairing their own equipment, we do not support breaking federal safety and environmental laws.

Equipment manufacturers and dealers have made a commitment to make available a comprehensive toolkit of maintenance, diagnostic and repair information for tractors and combines by 2021. While much of this information is already available, manufacturers and dealers are going the extra step to provide end users with commonsense solutions that strike the proper balance in the way overly broad, so called right to repair legislation would not.

FOR MORE INFORMATION, VISIT WWW.ILLEGALTAMPERING.COM

AEM Association of Equipment Manufacturers

Equipment Dealers ASSOCIATION

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4. Technicians Valued – John Deere

The following *Qld Country Life* article, published on September 7, 2021, highlights the opportunities and challenges of John Deere apprentices and service technicians.

The company invests heavily to attract and retain technician talent in regional communities and has launched a John Deere Technician of the Year award. The article also demonstrates that service staff are an embedded part of the local community and support farmers and business.

https://www.queenslandcountrylife.com.au/story/7419334/john-deere-technician-awards-finalists-announced/

Other TMA members, including CNH Industrial, are investing in similar apprenticeship programs.

5. Customer Information

TMA members, as outlined in their Statement of Principles published 19 July 2021and provided to the Productivity Commission, are supporting farmers' ability to maintain and repair their machinery. All TMA members provide customers with information relating to consumer rights, product reparability and warranties at the point of sale.

The following is an outline of a similar commitment by US manufacturers' and dealers' to provide comprehensive information tool kits for customers.

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MANUFACTURERS AND DEALERS SUPPORT COMMONSENSE REPAIR SOLUTIONS

Farm equipment manufacturers and their dealers support their customers by working to maximize productivity and reduce downtime for machinery.

That is why farm equipment manufacturers and dealers are **making a commitment** to make available a comprehensive toolkit of maintenance, diagnostic and repair information for tractors and combines by 2021.

While much of this information is already available, manufacturers and dealers are going the extra step to provide end users with **commonsense solutions** to perform basic maintenance and repairs, or determine when to involve a dealer in more complex repairs.

By model year 2021, manufacturers and dealers will make available:

- Manuals (Operator, Parts, Service)
- Product Guides
- Product Service Demonstrations, Training, Seminars, or Clinics
- Fleet Management Information
- On-Board Diagnostics via in-cab display or telematics interface
- Electronic Diagnostic Service Tools, and training on how to use them
- Other publications with information on service, parts, operation, and safety

RIGHT TO REPAIR ≠ RIGHT TO MODIFY

This commitment ensures that farmers and ranchers have the tools they need — and have asked for — to perform basic service, maintenance and repairs. Overly-broad "Right to Repair" legislation is not only unnecessary — it would risk the safety, durability and environmental sustainability of equipment.

To encourage innovation and ensure regulatory compliance, manufacturers and dealers will not allow for:

- Resetting immobilizer systems or other security-related electronic modules;
- Reprogramming electronic control units or engine control units;
- Changing equipment or engine settings that affect emissions or safety compliance;
- Downloading or accessing the source code of any proprietary embedded software or code

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Annexure A: Customer Access to Parts and Service

Part A: Measurement and Analysis of Dealer Support

1. Parts Inventory

CNHI holds parts inventory in two locations in Australia to support its product. The main warehouse is located in St Marys, Sydney NSW with a second warehouse is in Kewdale Perth WA.

In addition, we have assisted regional dealers to hold surplus inventory, as "hub" dealers who will make available parts to their neighbouring dealers, especially during peak seasons.

Please note:

- Parts supply inflow for Case IH and New Holland machinery have maintained strong levels since February and is providing 17.5% more inventory than the same time last year.

- CNH Industrial began increasing the local parts supply in February and since then, the Western Sydney-based depot has increased stock levels by almost 13% since the beginning of 2021, focusing on combine and high horsepower tractor parts.

- Over the past few weeks, we have shipped more than $4 million worth of critical harvest parts to 24 strategic dealer locations across the country. Parts can be delivered to farms in hours and machinery up-time maximised.

- More than 100 cubic metres of parts on average was being air-freighted each week, and additional charter flights were currently being coordinated for a final top-up of parts in preparation for the harvest season.

- The 2020 harvest was the first year CNH Industrial operated the dealer hub, a program that moves parts from the national distribution centre to dealer locations to increase support during harvest.

- For farmers it means that if they need a part urgently, surrounding dealers can draw on this centralised supply to ensure the fastest possible response.

2. Measurement of Dealer Parts Availability – You can't fix what you don't measure.

CNHI parts sales to customer are made through the authorised dealer network. As a result, CNHI does not have direct access to real time dealer transactions and inventory levels and we cannot get a real time dealer fill rate.

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Instead, we can simulate a dealer's fill rate based on the aggregate data we receive from the DMS (Dealer Management Software) for the dealers we have integrated with the Nidasu software platform. Not all dealers have subscribed to this platform, but we believe we have a good sample.

Effectively we take a snapshot of the dealer inventory levels at the start of the week then measure this inventory coverage against the demand profile for the week (Parts sales over the counter + Part consumed for workshop production orders). The coverage rate for this is measured as dealer fill rate first pass.

As a secondary measurement we also measure a second pass fill rate which uses the same data as above but also adds in any goods that have been receipted during the same period. This measure picks up on the orders placed to cover the demand, plus any stock orders that were due, during this period.

The fill rate experienced by the end customer would effectively fall somewhere between first pass and second pass fill rates. Over time we anticipate more dealers subscribing to the Nidasu platform and the reporting being more useful to help us identify where we need to focus to help dealers supply parts to meet customer needs.

3. Customer Satisfaction Surveys Relating To Service

CNHI routinely conducts customer surveys to get feedback as to customer satisfaction in relation to the service provided by the authorised dealer network.

These surveys are used to determine an individual score by dealer which helps CNHI identify where we need to focus to help dealers improve their service fulfilment. See Exhibit A for sample report).

Larger dealer groups also conduct their own customer satisfaction surveys in relation to service. One dealership shared with us their July 2021 report which we can provide to the Commission separately on a confidential basis, as they have requested it be treated as commercial-in-confidence.

4. CNH Industrial Dealer Capacity Survey

In response to the Right to Repair enquiry CNHI has conducted a dealer capacity survey. The purpose was to get feedback in relation to the resources available at dealer locations, and the survey questions revolved around staffing levels particular with respect to parts and service.

The following results were found:

1. **Participation**: In total invitations to survey were sent out to 91 dealer entities, of which 74 completed the survey – 81% response rate. This accounted for 175 trading locations (approx. 90%) of the entire Case IH & New Holland dealer network.

2. **Spread/representation encompassing all brands, states and dealer sizes:** the responses were from a very even spread of dealers both between Case IH and New Holland (36 responses and 33 responses respectively), and between small and large dealers with 51% of respondents operating only one branch, another 37% operating

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between 2 & 4 branches, and the rest being more than 4 branches. The two largest CNHI dealers are also included in the responses.

Staff

- Cumulatively, the 74 respondents shared with us that they have a total of 2,932 employees
- 97% of respondents had advertised for staff in the period July 20 to June 21 seeking 799 additional staff.
- 50% of these advertised positions remain unfilled as at 1st July 21, with 43% attracting 2 or less applicants, and that 46% of those that did fill positions took longer than 6 weeks to achieve.

Technical Support

This was reported as the dealers' greatest need, and the hardest to find.

This resource shortage is relevant also to the volume of independent repairers in rural communities, as they often originate from OEM dealerships.

- Making up 46% of the entire dealer workforce of dealers that responded, 1,350 are either qualified technicians or are apprentice technicians.

- Qualified Technicians total 869 nationally, with **90%** of respondents having advertised for additional technicians since July 2020 seeking a total of **352 additional people.**
- As at the end of June 2021, only 41% of these positions had been filled with 46% of filled positions attracting 2 or less applicants.

- Additionally, of those that were filled, 80% took longer than 6 weeks to fill.

- SA and WA are the hardest states to find qualified Technicians with 70% and 74% respectively of the advertised positions remaining unfilled.

- **1st, 2nd, 3rd and 4th Apprentice Technicians total 481 nationally, with 76% of respondents having advertised for new 1st year apprentices since July 2020 seeking a total of 224 people.**

- As at the end of June 2021, 69% of these positions had been filled with 61% of filled positions attracting only 5 or less applicants.

- Additionally, of those that were filled, 80% took longer than 6 weeks to fill. TAS and NSW are the hardest states to find apprentice Technicians with 50% and 42% respectively of the advertised positions remaining unfilled.

- There currently remains demand for 71 additional 1st year apprentices.

- The rate of apprentice numbers leaving the trade before they complete their qualification is unknown. Dealers did state however that of those that complete their trade qualification, they are only able to retain approximately 50% for two more years beyond their apprenticeship period.

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SPARE PARTS – Dealers reported that although not generally seen as a position that requires a qualification, it is still difficult to find suitable people.

- Making up 16% of the entire dealer workforce that responded, 468 are people dedicated to spare parts sales or inventory management.
- **70% of respondents have advertised for additional parts salespeople since July 2020 seeking a total of 132 additional people.**
- As at the end of June 2021, only 66% of these positions had been filled with 31% of filled positions attracting 2 or less applicants.
- Additionally, of those that were filled, 58% took longer than 6 weeks to fill.
- VIC is the hardest state to find spare parts people with 80% of the advertised positions remaining unfilled.

Response

CNHI has been working with TAFE colleges and the Dealer networks to create training programmes and incentives (see CNHI's 2020 submission to the ACCC previously provided to the Commission)

Part B: Safety Implications of Modifications and Prevalence of Tampering

We refer the Productivity Commission to the following article which relates to the US experience but articulates well the concerns of TMA members locally.

What You Need to Know About Illegal Tampering & the Right to Repair Movement

The feedback from our US colleagues is that State legislation has been slow to implement due to the need to give due consideration to the safety and illegal tampering implications.

It was difficult to collect data in Australia as to the scale of illegal tampering, as it is not being measured by any organisation and, as it is often illegal or in breach of contract, it is done in such manner as to remain undiscovered.

However, please note the following feedback from a New Holland dealership in QLD in response to the question:

Do you have any examples or evidence of where a modification has given rise to a safety or performance issue and do you have any data as to how frequently engine chipping occurs?

> *"We don't have data as we fix each issue as it comes about. We recently repaired the hydraulics on a cultivator that had been plumbed incorrectly by an independent. This resulted in intermittent unintended movement that was very dangerous due to the size and weight of the cultivator.*

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“We were also called to a T9 that an independent from Dalby had turned the adBlu off and boosted the HP. This resulted in a mechanical failure of the fuel pump which was several thousand (dollars) to repair. The issue was difficult to diagnose as the grower was reluctant to admit he had the work done.”

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Exhibit A: Sample CNHI Daily Ag. BDA/Uptime Survey Report for 29-July-2021

- 107 surveys created and sent
- 74 surveys completed in 2021
- 33 surveys pending a response
- Average Service score for 2021 is **9.4**
- Net Promoter Score for Recommend the Dealer is **91.9%**

2021 BDA/Uptime - Service Experience		
Brand - Survey Type	**Serial Number**	**Service Score**
Case IH - BDA Service Experience	ZFF304493	9.5
Case IH - BDA Service Experience	ZJF315653	10.0
Case IH - BDA Service Experience	ZHF312108	7.0
Case IH - BDA Service Experience	YLT050409	10.0
Case IH - BDA Service Experience	ZLRK04064	9.0
Case IH - BDA Service Experience	ZLF500626	9.0
Case IH - BDA Service Experience	JEEZ0400CJF314665	10.0
Case IH - BDA Service Experience	ZKF319255	9.5
Case IH - BDA Service Experience	ZJF315353	9.5
Case IH - BDA Service Experience	ZLF500616	10.0
Case IH - BDA Service Experience	ZLF500687	10.0
Case IH - BDA Service Experience	ZKF318901	9.0
Case IH - BDA Service Experience	ZLF323319	8.0
Case IH - BDA Service Experience	ZLF500687	10.0
Case IH - BDA Service Experience	ZLF500548	-
Case IH - BDA Service Experience	ZLF323120	9.0
Case IH - BDA Service Experience	ZLF500822	10.0
Case IH - BDA Service Experience	ZLF321659	9.0
Case IH - BDA Service Experience	ZHF314262	10.0
Case IH - BDA Service Experience	ZHF312181	6.5
Case IH - BDA Service Experience	ZLF323308	4.5

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Case IH - BDA Service Experience	ZKF319604	9.0
Case IH - BDA Service Experience	JEEZ0400CJF314612	10.0
Case IH - BDA Service Experience	ZKF319756	-
Case IH - BDA Service Experience	ZKF319401	10.0
Case IH - BDA Service Experience	ZLF500866	10.0
Case IH - BDA Service Experience	ZKF319772	-
Case IH - BDA Service Experience	ZLF323074	9.0
Case IH - BDA Service Experience	ZGF306331	10.0
Case IH - BDA Service Experience	ZJF315462	10.0
Case IH - BDA Service Experience	ZJF315522	8.0
Case IH - BDA Service Experience	ZLF500729	9.5
Case IH - BDA Service Experience	ZKF318736	9.0
Case IH - BDA Service Experience	ZLF500822	-
Case IH - BDA Service Experience	ZHF314368	10.0
Case IH - BDA Service Experience	ZLF500591	-
Case IH - BDA Service Experience	ZLF323335	9.0
Case IH - BDA Service Experience	ZJF315657	-
Case IH - BDA Service Experience	ZHF314179	9.0
Case IH - BDA Service Experience	ZLF323211	-
Case IH - BDA Service Experience	ZLF500866	10.0
Case IH - BDA Service Experience	ZFRF03646	-
Case IH - BDA Service Experience	ZLRK02863	-
Case IH - BDA Service Experience	ZLF500624	-
Case IH - BDA Service Experience	JFGYS444TLT050696	-
Case IH - BDA Service Experience	ZJF315353	10.0
Case IH - BDA Service Experience	ZLF500585	-
Case IH - BDA Service Experience	ZJF315522	9.5
Case IH - BDA Service Experience	ZKF319303	-
Case IH - BDA Service Experience	ZKF319401	10.0
Case IH - BDA Service Experience	ZGF306368	10.0
Case IH - BDA Service Experience	ZJF318305	9.0

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Case IH - BDA Service Experience	ZJF314467	10.0
Case IH - BDA Service Experience	ZJF314681	10.0
Case IH - BDA Service Experience	ZKF319360	-
Case IH - BDA Service Experience	ZFF304486	10.0
Case IH - BDA Service Experience	ZLF323319	9.0
Case IH - BDA Service Experience	ZLF323287	10.0
Case IH - BDA Service Experience	ZHF314051	10.0
Case IH - BDA Service Experience	ZJF314665	9.0
Case IH - BDA Service Experience	ZKF319784	-
Case IH - BDA Service Experience	ZLRK04337	-
Case IH - BDA Service Experience	ZLRK02729	10.0
Case IH - BDA Service Experience	ZGRF05761	-
Case IH - BDA Service Experience	ZLRK04391	-
Case IH - BDA Service Experience	ZLRK04107	10.0
Case IH - BDA Service Experience	ZLRK04049	-
Case IH - BDA Service Experience	ZLRK02760	9.5
Case IH - BDA Service Experience	ZLRK02758	-
Case IH - BDA Service Experience	ZFRF03277	-
Case IH - BDA Service Experience	ZLRK04550	9.0
Case IH - BDA Service Experience	ZLRK02863	-
Case IH - BDA Service Experience	ZLRK02668	9.0
Case IH - BDA Service Experience	ZFRF05201	-
Case IH - BDA Service Experience	ZLRK02599	9.5
Case IH - BDA Service Experience	ZGRF01898	8.5
Case IH - BDA Service Experience	ZLRK02681	9.5
Case IH - BDA Service Experience	ZHRF01456	-
Case IH - BDA Service Experience	ZLRK04208	10.0
Case IH - BDA Service Experience	ZHRF02914	-
Case IH - BDA Service Experience	ZLRK02772	8.5
Case IH - BDA Service Experience	ZLRK04376	-
Case IH - BDA Service Experience	ZLRK04376	-

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Case IH - BDA Service Experience	ZLRK04107	10.0
Case IH - BDA Service Experience	ZMRK01184	10.0
New Holland Agriculture - BDA Service Experience	931962014	9.0
New Holland Agriculture - BDA Service Experience	JEEZ9670KLF407631	10.0
New Holland Agriculture - BDA Service Experience	ZJF405138	10.0
New Holland Agriculture - BDA Service Experience	JEEZ9450HLF407676	9.0
New Holland Agriculture - BDA Service Experience	ZLF408024	9.5
New Holland Agriculture - BDA Service Experience	ZJF406581	9.0
New Holland Agriculture - BDA Service Experience	ZJF405128	9.0
New Holland Agriculture - BDA Service Experience	ZJF405138	10.0
New Holland Agriculture - BDA Service Experience	ZLF600562	9.0
New Holland Agriculture - BDA Service Experience	ZMF601012	8.5
New Holland Agriculture - BDA Service Experience	ZHF405073	10.0
New Holland Agriculture - BDA Service Experience	ZJF406565	-
New Holland Agriculture - BDA Service Experience	ZJRE04568	-
New Holland Agriculture - BDA Service Experience	ZGRE02240	-
New Holland Agriculture - BDA Service Experience	ZERE09742	9.0
New Holland Agriculture - BDA Service Experience	ZKF406601	-
New Holland Agriculture - BDA Service Experience	ZKF406590	10.0
New Holland Agriculture - BDA Service Experience	ZKF406803	10.0

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New Holland Agriculture - BDA Service Experience	ZJF405228	9.0
New Holland Agriculture - BDA Service Experience	ZFRE03210	-
New Holland Agriculture - BDA Service Experience	ZLRJ04202	-
New Holland Agriculture - BDA Service Experience	ZJRE04333	9.0

Average for Completed	**9.4**	**91.9%**	**NPS: Recommend the Dealer**
New	0	**1.4%**	% of Detractors
Sent	107	**5.4%**	% of Passive
Completed	74	**93.2%**	% of Promoter
Pending Response	33		

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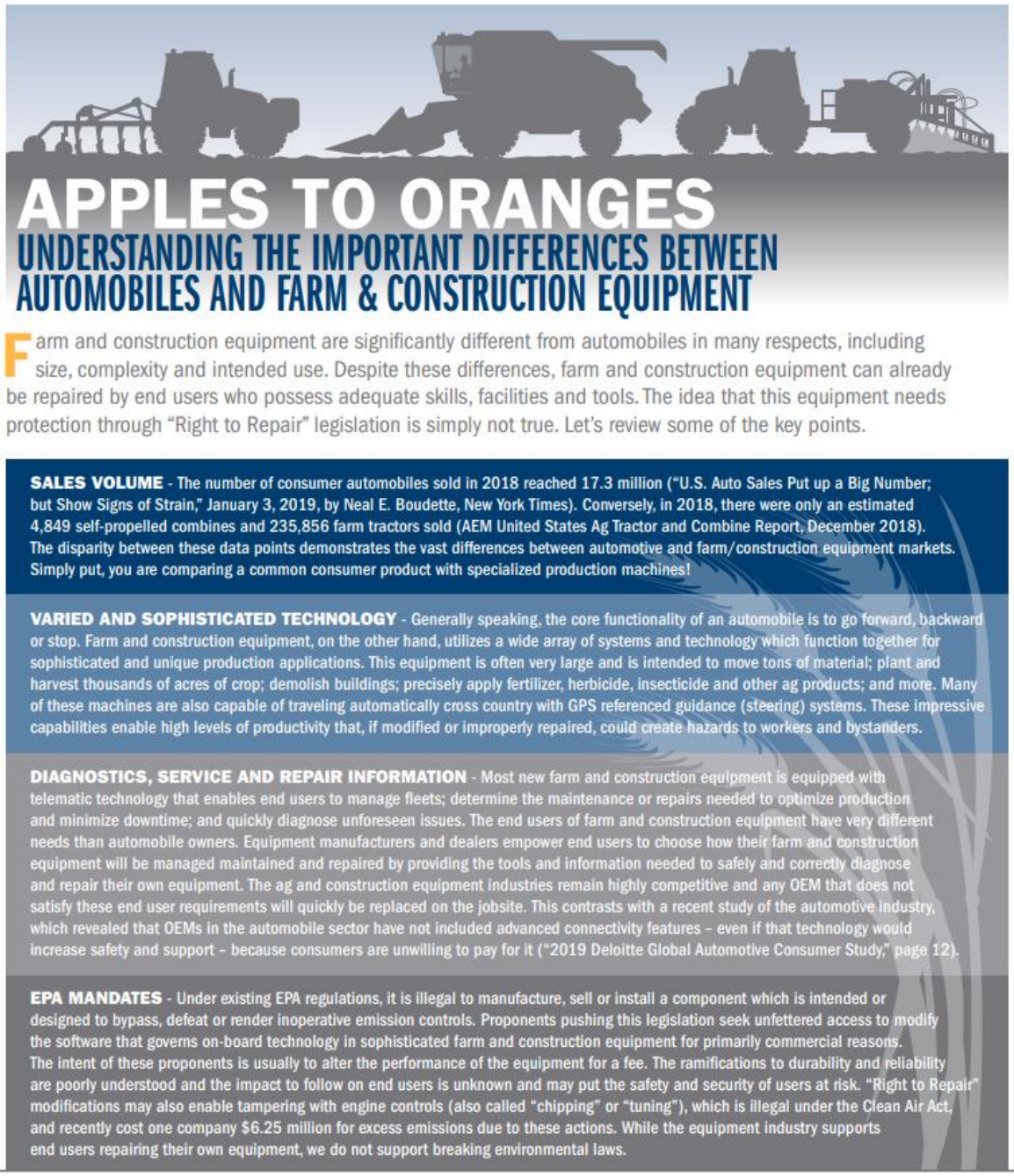
Annexure B:

Apples to Oranges: Understanding the Important Difference Between Automobiles and Farm and Construction Equipment



APPLES TO ORANGES

UNDERSTANDING THE IMPORTANT DIFFERENCES BETWEEN AUTOMOBILES AND FARM & CONSTRUCTION EQUIPMENT

Farm and construction equipment are significantly different from automobiles in many respects, including size, complexity and intended use. Despite these differences, farm and construction equipment can already be repaired by end users who possess adequate skills, facilities and tools. The idea that this equipment needs protection through "Right to Repair" legislation is simply not true. Let's review some of the key points.

SALES VOLUME - The number of consumer automobiles sold in 2018 reached 17.3 million ("U.S. Auto Sales Put up a Big Number; but Show Signs of Strain," January 3, 2019, by Neal E. Boudette, New York Times). Conversely, in 2018, there were only an estimated 4,849 self-propelled combines and 235,856 farm tractors sold (AEM United States Ag Tractor and Combine Report, December 2018). The disparity between these data points demonstrates the vast differences between automotive and farm/construction equipment markets. Simply put, you are comparing a common consumer product with specialized production machines!

VARIED AND SOPHISTICATED TECHNOLOGY - Generally speaking, the core functionality of an automobile is to go forward, backward or stop. Farm and construction equipment, on the other hand, utilizes a wide array of systems and technology which function together for sophisticated and unique production applications. This equipment is often very large and is intended to move tons of material; plant and harvest thousands of acres of crop; demolish buildings; precisely apply fertilizer, herbicide, insecticide and other ag products; and more. Many of these machines are also capable of traveling automatically cross country with GPS referenced guidance (steering) systems. These impressive capabilities enable high levels of productivity that, if modified or improperly repaired, could create hazards to workers and bystanders.

DIAGNOSTICS, SERVICE AND REPAIR INFORMATION - Most new farm and construction equipment is equipped with telematic technology that enables end users to manage fleets; determine the maintenance or repairs needed to optimize production and minimize downtime; and quickly diagnose unforeseen issues. The end users of farm and construction equipment have very different needs than automobile owners. Equipment manufacturers and dealers empower end users to choose how their farm and construction equipment will be managed maintained and repaired by providing the tools and information needed to safely and correctly diagnose and repair their own equipment. The ag and construction equipment industries remain highly competitive and any OEM that does not satisfy these end user requirements will quickly be replaced on the jobsite. This contrasts with a recent study of the automotive industry, which revealed that OEMs in the automobile sector have not included advanced connectivity features – even if that technology would increase safety and support – because consumers are unwilling to pay for it ("2019 Deloitte Global Automotive Consumer Study," page 12).

EPA MANDATES - Under existing EPA regulations, it is illegal to manufacture, sell or install a component which is intended or designed to bypass, defeat or render inoperative emission controls. Proponents pushing this legislation seek unfettered access to modify the software that governs on-board technology in sophisticated farm and construction equipment for primarily commercial reasons. The intent of these proponents is usually to alter the performance of the equipment for a fee. The ramifications to durability and reliability are poorly understood and the impact to follow on end users is unknown and may put the safety and security of users at risk. "Right to Repair" modifications may also enable tampering with engine controls (also called "chipping" or "tuning"), which is illegal under the Clean Air Act, and recently cost one company $6.25 million for excess emissions due to these actions. While the equipment industry supports end users repairing their own equipment, we do not support breaking environmental laws.

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