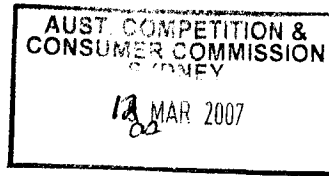


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Our ref LXW:AZW:1000879



12 March 2007

By hand

Scott Gregson
General Manager, Adjudication
Australian Competition & Consumer Commission
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123 Pitt Street
SYDNEY NSW 2000

Gilbert + Tobin

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FILE No
DOC:
MARS/PRISM:

Dear Mr Gregson,

Notification of exclusive dealing

Please find enclosed a notification of exclusive dealing under section 93(1) of the *Trade Practices Act 1974* (Cth) lodged on behalf of CNH Australia Pty Ltd, ABN 67 008 407 029 (**CNH Australia**) and CNH Capital Australia Pty Ltd, ABN 71 069 132 396 (**CNH Capital**).

We enclose a cheque in the amount of \$200, being the required filing fee.

Please do not hesitate to contact me if you would like to discuss this notification.

Yours sincerely,

Luke Woodward
Partner
T +61 2 9263 4014
lwoodward@gtlaw.com.au

Form G
Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)



NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. APPLICANT

(a) Names of persons giving notice

CNH Australia Pty Ltd (ABN 67 008 407 029) (CNH Australia) *N92848*

CNH Capital Australia Pty Ltd (ABN 71 069 132 396) (CNH Capital) *N92849*

(b) Short description of business carried on by that person

The supply of agricultural equipment in Australia under the Case IH and New Holland brands and warranty services for Case IH and New Holland branded equipment; the supply of finance services to customers who acquire Case IH and New Holland equipment from Case IH and New Holland dealers, including operating leases that cover the cost of maintenance and repair work of the equipment.

(c) Address in Australia for service of documents on that person

Luke Woodward
Partner, Gilbert + Tobin Lawyers
2 Park Street
Sydney NSW 2001
Fax: (02) 9263 4111

2. NOTIFIED ARRANGEMENT

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates

The supply of Case IH and New Holland equipment and spare parts, the supply of engine and transmission oils for Case IH and New Holland equipment, the supply of warranty services and finance services for Case IH and New Holland equipment.

(b) Description of conduct or proposed conduct

Please refer to Attachment A.

3. PERSONS, OR CLASS OF PERSONS, AFFECTED OR LIKELY TO BE AFFECTED BY THE NOTIFIED CONDUCT

(a) Class or classes of persons to which the conduct relates:

Persons who acquire new Case IH or New Holland tractors from CNH Australia and/or finance services for leasing Case IH and New Holland equipment through CNH Capital.

(b) Number of those persons:

(i) At the present time: Approximately 2,800

(ii) Estimated within the next year: Approximately 2,800

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses.

Not applicable.

4. PUBLIC BENEFIT CLAIMS

(a) Arguments in support of notification

Please refer to Attachment A.

(b) Facts and evidence relied upon in support of these claims

Please refer to Attachment A.

5. MARKET DEFINITION

(a) Provide a description of the market(s) in which goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions);

Please refer to Attachment A.

6. PUBLIC DETRIMENT

(a) Detriments to the public resulting or likely resulting from notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

Please refer to Attachment A.

(b) facts and evidence relevant to these detriments.

Please refer to Attachment A.

7. FURTHER INFORMATION


(a) Name, Postal address and contact telephone details of the person authorised to provide additional information to this notification:

Luke Woodward
Partner, Gilbert + Tobin Lawyers
2 Park Street

Sydney NSW 2001
Phone: (02) 9263 4014

Dated: 12 March 2006

Signed by/on behalf of the applicant



(Signature)

Lorne Woodward

(Full name)

Gilbert + Tabin

(Organisation)

Partner

(Position in Organisation)



DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.

**Attachment A: Submission in
support of notification under
s.93(1) of the *Trade Practices
Act 1974 (Cth)***

CNH Australia Pty Ltd

CNH Capital Australia Pty Ltd

12 March 2007

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1 Introduction

This submission is made in support of a notification under section 93(1) of the *Trade Practices Act 1974 (Cth)* (**the Act**) in relation to conduct potentially falling within sections 47(6) and (7) of the Act.

1.1 Notifying Parties

(a) *CNH Australia Pty Limited*

CNH Australia Pty Limited (**CNH Australia**) is part of the CNH Global group of companies. CNH Global was created in November 1999 through the merger of Case Corporation and New Holland NV and its businesses are organised regionally with separate, brand-driven commercial organisations and distribution networks.

In Australia, CNH Australia sells the following agricultural equipment under the Case IH and New Holland brands:

- the New Holland range of agricultural equipment includes tractors, backhoes, excavators, harvesters and specialist agricultural equipment such as balers and seeding machines; and
- the Case IH range of agricultural equipment includes tractors, harvesters and specialist agricultural machinery such as planting, tilling and seeding equipment and sprayers.

Case IH and New Holland tractors are sold in Australia through separate networks of independent Case IH and New Holland dealers. Dealers are locally based retailers of agricultural equipment.

(b) *CNH Capital Australia Pty Limited*

CNH Capital Australia Pty Limited (**CNH Capital**) is a wholly-owned subsidiary of CNH Australia and provides finance for the purchase of Case IH and New Holland equipment by way of fully maintained rental agreements for Case IH and New Holland equipment as well as financing equipment by other means.

(CNH Australia and CNH Capital collectively referred to as **Notifying Parties**)

1.2 CNH Australia's Dealer Network and Warranties

CNH Australia sells agricultural equipment through two dealer networks – the Case IH Dealer network and the New Holland Dealer network. These networks comprise 160 dealers with 220 outlets across Australia. Through its dealer networks, CNH Australia sold 2,800 tractors to Australian customers in 2006.

CNH Australia supplies the equipment to the dealer, which in turn then sells such equipment to the end customer. CNH Australia does not sell equipment directly to end customers.

However, CNH Australia does provide purchasers of all new Case IH and New Holland tractors with a standard manufacturer's warranty (**Standard Warranty**). The Standard Warranty is in addition to, and does not affect the application of, any statutory warranties that may apply under the Act.

In addition, CNH Australia also offers:

- an extended warranty, known as the Extended Service Plan in respect of New Holland equipment; and
- “Red Cover” for Case IH equipment to approved purchasers on application,

(collectively referred to as **Extended Warranties**).

The Extended Warranties begin at the expiration of the Standard Warranty and covers new agricultural tractors manufactured by CNH Australia. CNH Australia provides, and the purchaser can choose between, a range of extended warranty options which will cover the tractors for an additional one to four years (or 2000 to 5000 operating hours).

CNH Australia, through CNH Capital, provides finance services to end customers seeking to purchase Case IH and New Holland equipment from its dealers. These finance services are provided, in some instances, by way of operating leases of CNH equipment. CNH Capital, as the lessor of that equipment, is then responsible for the maintenance and repair of that equipment. This is referred to as a fully maintained operating lease.

2 Proposed conduct

2.1 Details of proposed conduct

CNH Australia proposes to offer its Standard Warranty and Extended Warranties to purchasers of new Case IH and New Holland tractors on the condition that the purchaser uses only genuine parts and specified lubricants (**Warranty Condition**). These genuine parts and specified lubricants will be available from CNH Australia’s dealer networks.

CNH Capital proposes to offer fully maintained leases of Case IH and New Holland branded tractors on the condition that:

- the purchaser acquires the Extended Service Plan for New Holland tractors or Red Cover for Case IH tractors; and
- the lessee uses the equipment in accordance with CNH Australia’s instructions and recommendations relating to the care and operation of such equipment (including the use of only genuine parts and specified lubricants),

(collectively referred to as **Lease Condition**).

In particular, the Warranty and Lease Conditions will require that owners of Case IH and New Holland tractors use genuine parts and specified lubricants if they are to obtain the benefits of the warranties and the lease.

The Warranty and Lease Conditions will be clearly and fully disclosed to all customers prior to purchase and, where applicable, prior to entering a fully maintained lease with CNH Capital.

2.2 High performance tractors

The agricultural equipment that CNH Australia provides to customers through its dealer networks range from compact tractors for domestic use to large, commercial grade agricultural tractors.

The New Holland branded commercial grade tractors include a range of speciality tractors (e.g. vineyard, high clearance and extreme terrain crawler tractors, large four wheel tractors). All tractors are engineered to perform to the highest standards under the harsh weather conditions and difficult environments that are experienced in agricultural use.

For example, the TJ Series tractors are specifically designed for the demanding environments of commercial scraping, grading and land levelling operations.¹

New Holland tractors use a range of high performance and high powered engines. These include a six-cylinder, turbocharged, 8.3-litre, 24-valve New Holland engine and for larger models a 500 horsepower, 15-litre Cummins QSX engine.

Transmission speeds for New Holland tractors range from 18 to 24 speeds. They can operate at ground speeds as slow as 0.86 kph which makes the tractors ideal for specialty crops and low-speed applications.

Case IH also has a variety of tractors ranging from small 18-45 horsepower domestic tractors to large four wheel and quad tracked 500 horsepower tractors. The Case IH commercial grade tractors use a variety of engines which range in size from 8.3 litre Case branded engine to the 15 litre Cummins engine. In their large four wheel tractors, Case IH use high performance 16 or 18 speed transmissions that allow the tractors to operate in a critical working range of between 5 and 13 kph.

2.3 Specialist oils and lubricants

CNH Australia, through its parent CNH Global NV and in partnership with FL Selenia and FL Viscosity Oil Company, has developed oils specifically for the performance needs of the New Holland and Case IH range of high performance tractors.

In Australia, these oils are blended by Fuchs from additives supplied either through FL Selenia or Viscosity. These oils are supplied to Case IH and New Holland dealers by CNH Australia. Dealers then supply these oils to their customers for use in the engines and transmissions of Case IH and New Holland tractors, either in conjunction with dealer-provided servicing of those tractors or on a stand alone basis.

The current specified lubricants for use for Case IH and New Holland tractors are set out in the table below:

	Case IH	New Holland
Specified engine oil	Akcela No. 1	AmbrA Mastergold
Specified transmission oil	Akcela Hy-Tran Ultra	AmbrA Mastertran

(a) AmbrA oils

The AmbrA products designed specifically for New Holland equipment are specialised high viscosity, anti-wear oils for the protection of hydraulic system components, gears and transmission elements. The AmbrA oils are available from New Holland dealers only.

¹ New Holland, "TJ Tractors 275 to 500 hp 4WD Tractors", Information Sheet available at http://www.newholland.com/FILES/tbl_s25SeriesText/PDFUpload290/480/8120215AUS%20NH%20TJ%20brochure%20%20Final%2019-06.pdf.

(i) Mastertran

AmbrA Mastertran is a high performance hydraulic transmission oil for New Holland equipment. Mastertran is the only oil available that satisfies CNH-developed specifications (MAT 3505) and is designed by the FL Selenia group based in Italy. Information on why Mastertran oil is the optimal oil for the New Holland range can be found at:

- the FL Viscosity website at http://www.viscosityoil.com/nh_mastertran.htm; and
- the FL Selenia AmbrA Mastertran data sheet at Appendix 2 of this Attachment.

(ii) Mastergold

Mastergold HSP Engine Oil is a premium, high performance engine oil, specifically designed and tested to provide maximum protection, performance, and life, for the heavy-duty, high temperature operation of construction, agricultural, and other off-road diesel-powered equipment.

Mastergold complies with a particular standard developed by CNH (MAT 3507), the specifications of which are confidential, and has been extensively tested and approved by CNH's Engineering Division to provide outstanding performance in heavy-duty diesel engines operating under the most severe conditions.

(b) Akcela oils

The Akcela Hy-Tran Ultra and Akcela No. 1 oils are blended in Australia by Fuchs and is substitutable for the AmbrA oils above although it does not conform to the MAT 3505 specifications. The Akcela oils are available from Case IH dealers only.

(i) Akcela Hy-Tran

While not conforming with MAT 3505, the Akcela Hy-Tran Ultra has similar properties and performance to AmbrA Mastertran.²

(ii) Akcela No. 1

Akcela No. 1 Engine Oil, also called Case IH No. 1 Engine Oil, is a premium, high performance diesel oil which protects engines against wear, acidic corrosion and soot deposits. Case IH engine oil meets and exceeds the American Petroleum Institute API CI-4 classification to reduce exhaust emissions for diesel engines, which is recommended by most major engine manufacturers for new engines sold in North America.³

3 Public benefits/Public detriment

For the reasons set out below, the impact of the proposed conduct is not such that, under the test laid down in section 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by any likely detriment to the public.

² See FL Viscosity Oil, "HyTran Ultra Tractor Fluid", at <http://www.viscosityoil.com/hy-tran.htm>.

³ Case IH, "Case IH No. 1 Engine Oil", at <http://www.caseih.com/parts/parts.aspx?&navid=123&RL=ENNA&typeid=21&partid=99> (viewed 8 February 2007).

For the purposes of this notification, the markets in which the Notifying Parties supply their services may be considered broadly to be:

- (i) the market for agribusiness equipment; and
- (ii) the market for finance services for equipment leasing.

3.2 Public benefits

The most significant public benefit associated with the proposed conduct is the reduction in the cost of providing warranty services, namely the repair and maintenance of Case IH and New Holland equipment, which will result in a reduction in the cost of these services to consumers.

By requiring purchasers of Case IH and New Holland tractors to use genuine parts and specified lubricants, the Notifying Parties are able to control the cost of repairing and maintaining the equipment.

It is important to note that under the warranty and leasing terms the Notifying Parties have an economic exposure to repair and maintenance costs. The proposed conduct is intended to help the Notifying Parties manage this exposure, which will allow them to make warranty and leasing services more widely available and at lower overall costs to the consumer. Under the Standard Warranty, for example, the proposed conduct would allow CNH Australia to manage their cost exposure so as to continue to provide such services at no charge.

The use of genuine parts and specified lubricants helps to prevent the effects of low quality parts and lubricants on the quality and performance of the tractors. This will, in turn, reduce the frequency of required servicing and ensure greater customer satisfaction with Case IH and New Holland products.

Specifically, the use of genuine spare parts and dedicated lubricants in Case IH and New Holland tractors will assist in:

- (a) improving the overall operational life of the tractors by ensuring that spare parts and other components operate within the manufacturer's tolerances;
- (b) minimising tractor repair costs and downtime;
- (c) enhancing the equipment's resale value;
- (d) improving fuel efficiency by using appropriate and dedicated high quality oils and lubricants; and
- (e) reducing the costs associated with servicing to the customer.

The agricultural industry requires high performance machinery to operate effectively in conditions that are both unique and environmentally harsh. To allow tractors to perform at the level demanded of them in agricultural work, the tractors need to be technologically advanced and robust. To facilitate this, the regular and consistent use of specialised oils is necessary.

In addition, by ensuring that New Holland and Case IH equipment will be maintained appropriately, CNH Australia can confidently continue to develop high performance and specialist machinery that is suitable for the demanding and specific requirements of the agricultural sector.

3.3 No lessening of competition

The proposed conduct does not have any anti-competitive impact on consumer choice, nor does it remove existing competitive constraints on the supply of agribusiness equipment or finance services for equipment leasing.

As there is substantial competition from other suppliers of agribusiness equipment (see Appendix 1 for list of other equipment manufacturers), consumers will still be able to choose from a vast range of agricultural equipment from these suppliers. These suppliers also offer their own warranty services and equipment leasing arrangements.

Concerns regarding possible anti-competitive effects of the conduct do not arise where the goods and services bundled by the conduct remain independently available. The proposed conduct will not prevent customers who wish to buy Case IH or New Holland equipment from doing so independently.

Purchasers of Case IH and New Holland tractors will not be required to purchase genuine parts and specified lubricants. Under the proposed conduct, only purchasers of Case IH and New Holland tractors who wish to gain the benefit of the relevant warranty or use leasing services from CNH Australia or CNH Capital respectively will be required to purchase the lubricants.

Nor are purchasers of Case IH and New Holland tractors required to purchase the specified genuine parts and lubricants from any one particular supplier. Genuine parts are available from Case IH and New Holland dealers, Akcela oils from any Case IH dealer and AmbrA oils from any New Holland dealer.

By being able to offer warranty and leasing services in the most cost-effective way whilst maintaining the high performance of the vehicles CNH Australia can continue to provide their services competitively. Further, by maximising the potential for technical advances across the sector, competition within the sector will be enhanced. In that sense, the proposed conduct may be considered pro-competitive.

As outlined above, the proposed conduct provides a tangible benefit and no detriment to the consumer, and causes no detriment to any competitor beyond legitimate competitive conduct.

Appendix 1 – Manufacturers agribusiness equipment

Other manufacturers of agribusiness equipment who provide the same or similar services to the Notifying Parties include:

(a) John Deere

John Deere is the world's leading manufacturer of farm equipment. The company offers a complete line of farming services and solutions with products sold and serviced through a dealer network.

The worldwide construction and forestry division offers mobile equipment for construction, public works, material-handling, and forestry. The company is the world's leading manufacturer of forestry equipment and is a major manufacturer of construction equipment in North America.

(b) AGCO Corporation

AGCO Corporation, headquartered in the USA, is a global designer, manufacturer and distributor of agricultural equipment and related replacement parts. AGCO's products are distributed in 140 countries.

The group controls various brands of agricultural machinery available in Australia including Fendt, Gleaner, Iseki, Challenger and Massey Ferguson.

(c) Caterpillar

Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel engines and industrial gas turbines. In 2005, it had sales of \$36.34 billion.

The Caterpillar equipment product line consists of more than 300 machines including backhoe loaders, off-highway tractors and specialist excavation and road-making equipment.

Australia, New Zealand and the South Pacific are serviced by dealers with over 60 stores and are supported by offices in Brisbane, Melbourne, Perth and Sydney. Caterpillar maintain engineering, marketing, financial services, and a major parts distribution hub in Melbourne. They also manufacture motor graders, truck bodies and attachments in Melbourne and mining equipment in Burnie, Tasmania.

(d) Buhler-Versatile tractors

Buhler Versatile Inc. is a division of Buhler Industries Inc., which designs, manufactures and distributes agricultural equipment. The products are marketed under the Buhler brand name, including the Farm King, Allied, Inland and Versatile product lines.

In Australia, Buhler tractors are distributed by PFG Australia. This company also distributes Deadong, Landini and McCormack tractors.

Appendix 2 – AmbrA Mastertran Data Sheet



MASTERTRAN

DESCRIPTION

Specific fluid for hydraulic transmission systems, final reduction gears, oil bath brakes, for New Holland and New Holland Construction equipment.
The only product satisfying MAT 3505 specifications.

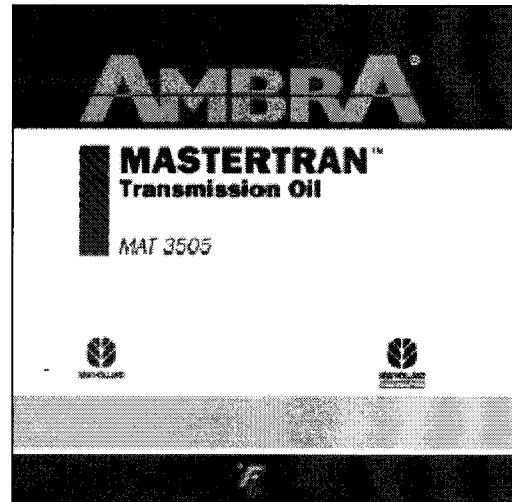
CHARACTERISTICS

High anti-wear properties for the protection of the hydraulic system components, of gears and of all transmission elements as well.

High friction features to ensure optimal effectiveness of the brake and clutch equipment, with absolutely no noise.

Excellent stability to water and filtration capability, ensuring the protection of the hydraulic system against corrosion and the abrasive action of any possible residual swarf.

High viscosity stability to optimise the performance under all operating conditions.



ADVICE ON USE

- Thanks to its special formula, MASTERTRAN can be used all year round.
- Do not mix with other products
- Replacement procedures must be performed in accordance with Manufacturer's indications.

TECHNICAL DATA

MAT 3505

From:

http://www.flseleonia.it/en/agricoltura/ambra/prodotti.asp?type_main=CATALOGOPRODOTTO&cod_prd=2738&id_lingua=2&idlivello=14&idcanale=7&idcategoria=11&MiniSito=#