



**Australian
Competition &
Consumer
Commission**

Our Ref: C2007/679
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16 May 2007

Mr Vin Delahunty
Executive Director
Tractor & Machinery Association of Australia
3/21 Vale Street
North Melbourne VIC 3051

Dear Mr Delahunty

CNH Australia Pty Ltd and CNH Capital Australia Pty Ltd – third line forcing notifications N92848 and N92849

On 12 March 2007, the Australian Competition and Consumer Commission (the ACCC) received third line forcing notifications N92848 and N92849 from CNH Australia Pty Ltd (CNH Australia) and CNH Capital Australia Pty Ltd (CNH Capital) respectively. The notifications require purchasers of Case IH and New Holland tractors to use genuine parts and specified lubricants if they wish to obtain a standard or extended warranty from CNH Australia, or enter into a fully maintained rental agreement with CNH Capital.

The ACCC seeks your comments in order to complete its assessment of the above notifications.

The Trade Practices Act 1974 and the notification process

As you may be aware, the ACCC is responsible for administering the *Trade Practices Act 1974* (the Act). The competition provisions of the Act prohibit certain forms of anti-competitive conduct or arrangements, including conduct known as third line forcing. Third line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to such a condition.

While the Act prohibits certain forms of anti-competitive conduct, it also recognises that conduct which may breach the competition provisions of the Act may, in certain circumstances, deliver a benefit to the public. Consequently, the Act allows parties to obtain protection from legal action in relation to conduct that may otherwise breach the Act, if the conduct delivers a net public benefit.



One way in which a party may obtain protection from legal action for third line forcing conduct is by lodging a notification with the ACCC.

The protection afforded by a third line forcing notification arises 14 days after the notification is lodged with the ACCC. However, the ACCC may revoke a third line forcing notification if it is satisfied that the likely benefit to the public from the conduct will not outweigh the likely detriment to the public from the conduct.

Notifications N92848 and N92849 lodged by CNH Australia and CNH Capital

As indicated above, CNH Australia and CNH Capital lodged third line forcing notifications N92848 and N92849 with the ACCC on 12 March 2007. A copy of the notifications is attached, together with a submission from the notifying parties in support of the notifications.

Notification N92848 – CNH Australia

CNH Australia sells agricultural equipment under the Case IH and New Holland brands, via separate networks of independent Case IH and New Holland dealers.

CNH Australia offers a standard manufacturer's warranty (Standard Warranty) to purchasers of new Case IH and New Holland tractors. It also offers an Extended Service Plan in respect of New Holland equipment, and "Red Cover" in respect of Case IH equipment (together, the Extended Warranties).

According to notification N92848, CNH Australia proposes to offer its Standard Warranty and Extended Warranties to purchasers of Case IH and New Holland tractors on condition that the purchaser uses only genuine parts and specified lubricants.

Notification N92849 – CNH Capital

CNH Capital is a wholly-owned subsidiary of CNH Australia. CNH Capital provides finance for the purchase of Case IH and New Holland equipment by way of "fully maintained rental agreements" and other financial arrangements.

CNH Capital proposes to offer fully maintained leases in relation to Case IH and New Holland branded tractors on condition that the purchaser acquires the relevant Extended Warranty 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).

Availability of genuine spare parts and specialist lubricants

In a letter to the ACCC dated 10 April 2007, CNH Australia indicated that it only supplies genuine spare parts and accredited oils to its dealer network (ie. Case IH and New Holland dealers), and that it does not have trading relationships with other dealers. Therefore, genuine Case IH and New Holland tractor spare parts, and the specialist lubricants developed by CNH Australia for Case IH and New Holland tractors, are only available through Case IH and New Holland dealers, or from suppliers who source these

products (either directly or indirectly) from overseas. CNH Australia has stated that this is standard commercial practice for many equipment suppliers.

Request for information

The ACCC is in the process of assessing notifications N92848 and N92849. In order to assist the ACCC with its assessment, I would greatly appreciate any submission that you wish to provide, including information in response to the following questions:

1. To what extent do purchasers of new tractors require a standard manufacturer's warranty?
2. Is it standard commercial practice for tractor manufacturers to offer standard warranties for new tractors on condition that the purchaser uses only genuine spare parts and/or specialist lubricants?
3. Is it standard commercial practice for tractor manufacturers to offer extended warranties for new tractors on condition that the purchaser uses only genuine spare parts and/or specialist lubricants?
4. Is it standard commercial practice for tractor manufacturers to supply genuine spare parts and specialist lubricants only to their own dealer network?
5. To what extent do dealers and/or retailers of tractors stock products from more than one manufacturer?
6. To what extent are non-genuine spare parts and generic lubricants available for tractors?
7. Is it customary for tractors to be serviced by a member of the relevant manufacturer's dealer network?
8. If the owner of a tractor does not want their tractor serviced by one of the manufacturer's dealers, what alternative options are available to the owner in relation to the provision of repair and maintenance services?

If you intend to provide a response to this letter, it would be appreciated if you could do so by **23 May 2007**.

Submissions can be sent to:

Sarah Chubb
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Alternatively, submissions can be faxed to (02) 6243 1211 or emailed to sarah.chubb@acc.gov.au.

Please note that the ACCC is generally required under section 95 of the Act to place documents provided to it in relation to a notification on the ACCC's public register. The Act provides that a person submitting a document in relation to a notification may request that confidential information included in the document be excluded from the

public register. Guidelines for requesting exclusion from the public register are attached.

If you have any questions in relation to this matter, please contact Sarah Chubb on (02) 6243 1088 or Darrell Channing on (02) 6243 4925.

Yours sincerely

A handwritten signature in black ink that reads "DChanning". The signature is written in a cursive style with a large, looping initial "D" and a trailing flourish.

Darrell Channing
Director
Adjudication Branch