



Motor Trades Association of Australia

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Dear Mr Gregson

I write on behalf of the Motor Trades Association of Australia (MTAA), of which the Farm and Industrial Machinery Dealers Association of Australia (FIMDAA) is an Affiliated Trade Association, in relation to the Exclusive Dealing Notification lodged by Case IH and New Holland (CNH) on 12 March 2007 (N92848 and N92849).

CNH's desire to undertake exclusive dealing conduct in the form of only offering its Standard and Extended Warranties to purchasers of new Case IH and New Holland tractors on conditions relating to the purchase of parts, lubricants and specified maintenance and operation procedures, has serious implications for consumers and the dealers.

MTAA would like to address a number of the points raised by CNH in its notification application; specifically:

- *1. Introduction*
 - *1.2 CNH Australia's Dealer Network and Warranties*

CNH markets a common platform product through two distinct brands and separate dealerships. In doing so, CNH presents the illusion of competition in the market, whilst controlling distribution and pricing of those two brands.

In the notification no detail on the referenced "Standard Warranty" provisions for these "competing" products is provided; therefore no judgement can be made on the equity of that warranty from a consumer's perspective.

In relation to the "Extended Warranty", which, as the Association understands matters, is compulsory when purchasers opt for an operating lease through CNH Capital, the submission provides no indication of pricing of that product, which by definition would have been agreed to between the retailer and financier, at the exclusion of the consumer.

- *2. Proposed Conduct*
 - *2.1 Details of proposed conduct*

The relationship between CNH and CNHC is not at arms length and blurs the boundaries of competition when they act in unison in a captive market when selling their Extended Warranty product as a condition of finance approval. MTAA questions why obtaining finance through CNHC should impose an obligation of purchasing an extended warranty product through a related company; CNH, when alternative and more affordable products may be available.

In the Association's view a manufacture's product warranty is a statutory obligation, whereas the Extended Warranty should be an option offered to purchasers and not made a condition of finance approval.

- *2.2 High performance tractors*

As CNH notes in appendix 1 (Manufacturers agribusiness equipment), there are many competitive models of similar configuration to CNH products, that perform the exact same tasks and are comprised of essentially the same technology. As the Association understands it, CNH manufactures products other than its own brands, specifically McCormick tractors, and sells those to other marketers. MTAA therefore questions whether purchasers of McCormick tractors would also be bound to use the nominated genuine spare parts and lubricants determined to be critical to CNH products financed through CNHC.

- *3. Public benefits/Public detriments*

MTAA does not agree that the proposal is in the public interest in accordance with section 93(3A(b)) of the Trade Practices Act. This is due to the purchasers being obliged to take the CNH branded warranty package, including CNH genuine parts and specified lubricants, as a condition of finance approval. In the situation proposed by CNH/CNHC, purchasers would have no recourse to alternative competitive products and may well be financially disadvantaged by the proposed conduct.

- *3.2 Public benefits*

MTAA believes the statements contained in this section of the notification are purely subjective. This is evident in the lack of tables/graphs comparing the cost of the Extended Warranty, alleged savings to the purchaser and resale value assertions. Given that the cost of the Extended Warranty is to be incorporated into the financing, MTAA believes that cost should be clearly made known to intending purchasers and not concealed in the purchase price of the tractor or other equipment being the subject of finance.

- *3.3 No lessening of competition*

MTAA disagrees with the view that the proposed conduct will have no anti-competitive impact on consumers. When contract conditions dictate that CNHC finance for CNH tractors

is only available when packaged with the CNH Extended Warranty product, from a related company, then the customer is effectively left with no alternative arrangement. In a free market, consumers should be able to buy CNH products, shop for competitive extended warranty products and then obtain the best available finance, without the undue influence of CNH and CNHC in influencing and limiting consumer choice.

MTAA is also concerned that the CNH/CNHC has not demonstrated any benefit to CNH franchisees from these proposed arrangements: which arrangements may well interfere with commercial arrangements that franchisees already have in place.

In conclusion, MTAA believes that the use of exclusive dealing with regards to the conditions being imposed on consumers wishing to obtain a warranty for a purchased or leased Case IH or New Holland tractor is anticompetitive and likely to be financially detrimental to the consumer. In addition, the proposed public benefits of this arrangement appear to be purely subjective and even if benefits were able to be substantiated, in the Association's view, they would be minimal.

I would therefore request that the Australian Competition and Consumer Commission investigate this matter further, with a view to denying the CNH Notification.

Yours sincerely

A handwritten signature in black ink that reads "Michael Delaney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

MICHAEL DELANEY
Executive Director

29 May 2007