



**Australian
Competition &
Consumer
Commission**

Our Ref: C2007/679
Your Ref: LXW:AZW:1000879
Contact Officer: Sarah Chubb
Contact Phone: (02) 6243 1088

PO Box 1199
Dickson ACT 2602
470 Northbourne Ave
Dickson ACT 2602
ph (02) 6243 1111
fax (02) 6243 1199
www.accc.gov.au

5 July 2007

Mr Luke Woodward
Partner
Gilbert + Tobin
GPO Box 3810
SYDNEY NSW 2001

Dear Mr Woodward

Third line forcing notification N92848 lodged by CNH Australia Pty Ltd

I refer to notification N92848 lodged by CNH Australia Pty Ltd (CNH Australia) with the Australian Competition and Consumer Commission (the ACCC) on 12 March 2007. I also refer to our previous correspondence on this matter.

The ACCC has several substantial concerns regarding CNH Australia's proposed conduct. Accordingly, the ACCC wishes to obtain some additional information from you in respect of the notified conduct. In particular, could you please provide a response to each of the following questions:

1. Do purchasers of new Case IH and New Holland tractors have a choice as to whether they obtain a Standard Warranty? If so, are purchasers able to acquire new Case IH and New Holland tractors at a lower price if they choose not to obtain a Standard Warranty?
2. Are Case IH and New Holland tractor owners able to purchase genuine parts and specified lubricants from Case IH and New Holland dealers on a stand-alone basis, or are the genuine parts and specified lubricants only available in conjunction with dealer servicing?
3. Are repairers who are not part of CNH Australia's dealer network able to purchase genuine parts and specified lubricants from Case IH and New Holland dealers?

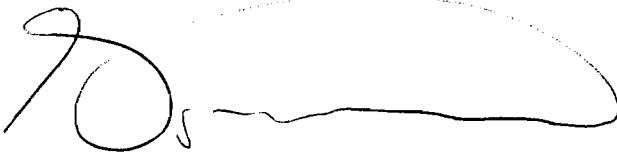


4. Are Case IH and New Holland tractor owners required to obtain repair and maintenance services from Case IH and New Holland dealers in order to retain the benefits of the Standard Warranty? If so, how is this requirement imposed on tractor owners (eg. is it an explicit term of the Standard Warranty)?
5. Does CNH Australia manufacture all the necessary spare parts for Case IH and New Holland tractors?
 - a. If the answer to question 5 is no: In respect of the parts that CNH Australia does not manufacture, does CNH Australia source these parts from other manufacturers, repackage the parts, and then market them as genuine Case IH or New Holland parts?
 - b. If the answer to question 5a is yes:
 - I. Where does CNH Australia obtain the parts that it does not manufacture itself?
 - II. What proportion of the parts sold as genuine Case IH or New Holland parts is manufactured by parties other than CNH Australia?
6. On average, what is the difference in price between genuine parts and non-genuine parts, and specified lubricants and generic lubricants?
7. The submission accompanying notification N92848 states that the Standard Warranty is in addition to, and does not affect the application of, any statutory warranties that may apply under the *Trade Practices Act 1974* (the Act). Can you please comment on the application of Part V, Div 2 of the Act to the sale of new Case IH and New Holland tractors? In addition, can you please comment on any other contractual remedies (outside the Standard Warranty) that may be available for purchasers of new Case IH and New Holland tractors (eg. conditions and warranties implied into contracts by state and territory sale of goods legislation)?

I would appreciate it if you could provide a response to this letter by **16 July 2007**.

A copy of this letter has been placed on the ACCC's public register. If you have any questions in relation to this matter, please contact Sarah Chubb on (02) 6243 1088.

Yours sincerely



Scott Gregson
General Manager
Adjudication Branch