



February 2, 2024

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Submitted via Regulations.gov, Docket No. FTC–2023–0077

Re: Petition for Rulemaking of PIRG and iFixit

Farm Action wholly supports the petition submitted by the U.S. Public Interest Research Group Education Fund (U.S. PIRG) and iFixit requesting that the Federal Trade Commission (FTC) initiate a rulemaking process on consumers’ right to repair.¹

Farm Action is a farmer-led organization that develops and advances bold solutions to stop corporate monopolies and build fair competition in rural America. While repair restrictions are imposed by companies in diverse sectors, negatively impacting conditions across the U.S. economy, our comment examines this issue in the context of the harms inflicted by consolidated farm equipment manufacturers on farmers, independent farm equipment repair shops, and rural economies.

Farm equipment manufacturers have begun imposing restrictions on the repair of their products in recent decades, violating farmers’ consumer rights by severely curtailing their ability to fix the tractors they own, and imposing on them inflated repair costs and lengthy repair delays they can ill afford. By preventing anyone but authorized dealerships from working on the equipment, equipment manufacturers are also obstructing independent competitors’ access to the market for aftermarket repairs. This has led to the widespread shuttering of independent repair shops in rural communities, dealing an additional blow to economies already decimated by decades of concentration and disinvestment.

¹ November 14, 2023. “Petition for Section 5 Rulemaking Addressing Consumers’ Right to Repair.” Fairmark Partners, LLC on behalf of U.S. PIRG and iFixit. Available at: <https://pirg.org/edfund/wp-content/uploads/2023/11/2023.11.14-Petition-for-Rulemaking-SUBMISSION.pdf>

FTC has the authority and the responsibility to regulate this conduct under existing antitrust law. By issuing a strong, comprehensive rule under Section 5 of the FTC Act, FTC can protect the rights of farmers, ensure the competitiveness of the repair marketplace, and make explicit what conduct is prohibited.

I. Repair Restrictions Harm Farmers, Small Businesses, and Rural America while Consolidating the Market Power of Farm Equipment Manufacturers

The pronounced increase in restrictions on who can repair the products sold by equipment manufacturers has been aided in recent decades by industry consolidation and advancements in software technology.² These restrictions take several forms, many of which are listed in the Commission’s own *Nixing the Fix* report.³ Of particular interest to this comment are the all-too-common End User Licensing Agreements (EULA), under which manufacturers license the equipment’s operating software to the consumer. In agriculture, this means the farmer may have purchased the equipment, but has merely licensed a copy of its operating software under the terms of the EULA, which dictates that only an authorized dealer may work on the farmers’ property.

The restriction on third party repair is reinforced by the technology, which gives manufacturers a new and arguably disturbing level of control over the equipment they sell.⁴ Today’s farm equipment is vastly complex: A single combine can have 125 software-connected sensors, each of which is connected to a controller network.⁵ These sensors and their associated networks are now the likeliest part of farm equipment to fail.⁶ A problem with any one of these networks will cause the equipment to “go limp” and require a software key to diagnose.⁷ By withholding these keys — along with other information, instructions, and manuals needed to diagnose and repair farm equipment — from everyone but authorized dealers, manufacturers have been able to exert undue control over the repair market for the products they sell at the expense of farmers, independent repair shops, and rural communities.

² November 14, 2023. “Petition for Section 5 Rulemaking Addressing Consumers’ Right to Repair.” Fairmark Partners, LLC on behalf of U.S. PIRG and iFixit. Available at:

<https://pirg.org/edfund/wp-content/uploads/2023/11/2023.11.14-Petition-for-Rulemaking-SUBMISSION.pdf>

³ May 2021. “Nixing the Fix: An FTC Report to Congress on Repair Restrictions.” Federal Trade Commission. Available at:

https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

⁴ May 26, 2022. Cynthia Brumfield. “Remote bricking of Ukrainian tractors raises agriculture security concerns.” CSO. Available at:

<https://www.csoonline.com/article/572811/remote-bricking-of-ukrainian-tractors-raises-agriculture-security-concerns.html>

⁵ February 2021. Kevin O’Reilly. “Deere in the Headlights.” U.S. PIRG. Available at:

https://uspig.org/sites/pirg/files/reports/DeereInTheHeadlights/WEB_USP_Deere-in-the-Headlights_V3.pdf

⁶ February 23, 2022. Kevin O’Reilly. “Deere in the Headlights II.” U.S. PIRG. Available at:

<https://pirg.org/edfund/resources/deere-in-the-headlights-ii/>

⁷ Ibid.

Barred from hiring qualified mechanics in their own communities, farmers are forced to haul their equipment sometimes hundreds of miles to one of a handful of authorized dealerships. These transport distances have gotten longer in recent years due to rampant consolidation: In 2021, dealers with five or more locations owned 91% of John Deere locations. The next year, that number jumped to 95%.⁸ As of 2022, there was just one John Deere dealership chain — with an average of only eight sites per chain — for every 12,018 farms and every 5.3 million acres of American farmland.⁹

Beyond the time required for long transports, lengthy wait times for repairs are common¹⁰ given the concentrated demand on a dwindling number of total dealerships. These wait times come with an additional financial burden, according to a survey that found farmers lose an average of \$3,348 per year to downtime caused by repair restrictions, totaling an estimated \$3 billion per year in costs to all U.S. farmers.¹¹ The costs themselves are higher on average at dealerships, as well: Farmers reported in that same survey that dealership mechanics charge an average of \$58.90 more per hour of labor than independent mechanics. Extending this rate to farmers across the U.S. brings the estimate to \$1.2 billion per year in increased repair costs.¹² Adding insult to injury is that the fix may be as simple a solution as clearing diagnostic error codes.^{13 14} Taken together, these long transports, lengthy wait times, increased repair prices, and general restrictions on farmers' ability to repair their own machinery is estimated to cost farmers \$4.2 billion per year.¹⁵

It should be noted that these are merely the easiest harms to quantify: additionally, there is a significant impact on farmers' operations to consider. The profitable production of crops rests on the ability to take strategic advantage of small windows of opportunity. When farmers' equipment is decommissioned during those critical periods of time, they can lose tens or even hundreds of thousands of dollars in potential yields.¹⁶

⁸ December 9, 2022. Ben Thorpe. "Single-Store Dealer Finds Success After Losing John Deere Contract." Farm Equipment Magazine. Available at: <https://www.farm-equipment.com/articles/20978-single-store-dealer-finds-success-after-losing-john-deere-contract>

⁹ February 23, 2022. Kevin O'Reilly. "Deere in the Headlights II." U.S. PIRG. Available at: <https://pirg.org/edfund/resources/deere-in-the-headlights-ii/>

¹⁰ April 2023. U.S. PIRG. "Out to Pasture: Repair Restrictions Lead to Tractor Downtime and High Costs; Right to Repair Would Help." Available at: <https://publicinterestnetwork.org/wp-content/uploads/2023/04/Out-to-Pasture-1.pdf>

¹¹ Ibid.

¹² Ibid.

¹³ February 23, 2022. Kevin O'Reilly. "Deere in the Headlights II." U.S. PIRG. Available at: <https://pirg.org/edfund/resources/deere-in-the-headlights-ii/>

¹⁴ July 13, 2021. Grey Moran. "Farmers Will Soon Have the Right to Repair their Tractors." Civil Eats. Available at: <https://civileats.com/2021/07/13/farmers-just-got-a-new-right-to-repair-their-tractors/>

¹⁵ April 2023. U.S. PIRG. "Out to Pasture: Repair Restrictions Lead to Tractor Downtime and High Costs; Right to Repair Would Help." Available at: <https://publicinterestnetwork.org/wp-content/uploads/2023/04/Out-to-Pasture-1.pdf>

¹⁶ Ibid.

Severe repair restrictions also limit the ability of independent aftermarket repair service businesses to compete. Denied access to the tools required to fix farm equipment, independent mechanics cannot provide necessary services to their communities. John Deere, for example, refuses to provide pairing software to local repair shops; even if these qualified mechanics were allowed to replace a part on a John Deere tractor, without the ability to then pair the equipment to Deere software, the engine will “brick,” or refuse to start, rendering the machine inoperable. In this way, companies like John Deere have created artificial barriers to competition, foreclosing the possibility of their rivals winning over customers based on superior service and better prices. The independent agricultural equipment repair industry once employed thousands of workers across the country,¹⁷ but has lost a critical customer base due to these repair restrictions.

The ripple effects of large corporations’ anticompetitive practices have drowned many once-vibrant rural communities across America. As independent farmers and small businesses are pushed out, population decline and a corresponding drop in tax revenue eventually lead to losses in funding for schools and hospitals. Dwindling opportunities and disinvestment in infrastructure lead to higher rates of poverty and food insecurity.¹⁸

As harmful as repair restrictions have been to farmers, independent mechanics, and rural America, they’re a boon to equipment manufacturers seeking additional profits and market power. Service and repair can yield 3-6 times more profit than new equipment sales,¹⁹ and manufacturers have used repair restrictions as a tool to secure these profits for themselves — thus seizing the repair market for the products they sell. John Deere provides a compelling illustration for the power of this tactic: Long a dominant player in the original equipment manufacture market, Deere now accounts for more than 50% of all sales of large tractors and combines in the U.S.²⁰ By barring competitors from repairing the products they sell, Deere has extended its dominance to the repair market — in addition to the outsized share it controls of the original equipment market.

¹⁷ March 3, 2022. “Complaint requesting investigation and action to enjoin unfair methods of competition and trade practices by Deere & Company.” Fairmark Partners, LLC on behalf of National Farmers Union, Iowa Farmers Union, Missouri Farmers Union, Montana Farmers Union, Nebraska Farmers Union, Ohio Farmers Union, Wisconsin Farmers Union, Farm Action, the U.S. Public Interest Research Group, the Illinois Public Interest Research Group, the Digital Right to Repair Coalition, and iFixit. Available at: <https://farmaction.us/wp-content/uploads/2022/03/Deere-Right-To-Repair-FTC-Complaint.pdf>

¹⁸ December 18, 2007. Linda Lobao & Curtis W. Stofferahn. “The Community Effects of Industrialized Farming: Social Science Research and Challenges to Corporate Farming Laws.” *Agriculture and Human Values*. Available at: <https://link.springer.com/article/10.1007/s10460-007-9107-8>

¹⁹ March 5, 2020. Lydia Mulvaney and Peter Waldman. “Farmers Fight John Deere Over Who Gets to Fix an \$800,000 Tractor.” *Bloomberg*. Available at: <https://www.bloomberg.com/news/features/2020-03-05/farmers-fight-john-deere-over-who-gets-to-fix-an-800-000-tractor>

²⁰ January 2020. Thomas Jeffrey Horton and Dylan Kirchmeier. “John Deere’s Attempted Monopolization of Equipment Repair, and the Digital Agricultural Data Market - Who Will Stand Up for American Farmers?” *CPI Antitrust Chronicle*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541149

Restoring and protecting the right to repair farm equipment would drastically reduce repair costs and wait times for farmers, and allow them to focus on what they do best: farm. Codifying the right to repair would also reopen entrepreneurial pathways unjustly closed by equipment manufacturers, facilitating the return of independent repair shops that bolster rural economies. And perhaps most importantly, enshrining the right to repair would help reclaim the spirit of self-sufficiency and innovation in rural America.

II. FTC Has the Legal Authority and Responsibility to Address Repair Restrictions

Under the very statute that created it, the Commission carries the authority to regulate anticompetitive conduct²¹ — even once the specifics of that conduct have evolved beyond the exact letter of antitrust laws like the Clayton and Sherman Acts.²² With Section 5 of the FTC Act, Congress placed “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce” squarely within the Commission’s jurisdiction.²³ Written by Congress to “give the Commission flexibility to adapt to changing circumstances,”²⁴ Section 5 renders flexible the Commission’s authority over abusive and anticompetitive behaviors that may not fall neatly under the Clayton and Sherman Acts, but which harm competition.²⁵

Confirming and clarifying this authority, FTC’s policy statement on Section 5 enforcement sets forth the two conditions that must be met for conduct to be addressed under Section 5.²⁶ To violate Section 5, the conduct must be (1) a method of competition undertaken by an actor in the marketplace, and (2) unfair, meaning it goes beyond competition on the merits. Repair restrictions violate both these conditions: the first, in that these restrictions are a construct created and imposed by manufacturers and not a condition of the marketplace.²⁷

²¹ Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended (1914). Available at: <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act>

²² July 21, 2021. “Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers.” Federal Trade Commission. Available at:

<https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-repair-restrictions-imposed-manufacturers-sellers>

²³ Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended (1914). Available at:

<https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act>

²⁴ July 21, 2021. “Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers.” Federal Trade Commission. Available at:

<https://www.ftc.gov/legal-library/browse/policy-statement-federal-trade-commission-repair-restrictions-imposed-manufacturers-sellers>

²⁵ Ibid.

²⁶ Ibid.

²⁷ November 14, 2023. “Petition for Section 5 Rulemaking Addressing Consumers’ Right to Repair.” Fairmark Partners, LLC on behalf of U.S. PIRG and iFixit. Available at:

<https://pirg.org/edfund/wp-content/uploads/2023/11/2023.11.14-Petition-for-Rulemaking-SUBMISSION.pdf>

Conduct that qualifies as unfair, or going beyond competition in the merits, must meet two further conditions. To be considered unfair, the conduct must first be “coercive, exploitative...abusive, [or] deceptive.”²⁸ Because of the integral role tractors and other agricultural equipment play in today’s food production system, repair restrictions are clearly coercive and exploitative. The success or failure of a farmers’ operation rests on the functionality of their equipment, without which their entire livelihood and all their investments are at risk. When equipment that easily costs a few hundred thousand dollars stops functioning or is in need of repair, farmers cannot simply replace it in most cases, and have no option other than to repair it by whatever means is available to them. That manufacturers put farmers in this impossible position — wait days or even weeks to have the equipment repaired at any cost because of the control the equipment manufacturer has over the repair business, or replace an otherwise-functioning and costly asset — is clearly coercive, exploitative, and abusive.

The second hallmark of unfair conduct is that it affects competitive conditions; namely, anything that “tends to foreclose or impair the opportunities of market participants, reduce competition between rivals, limit choice, or otherwise harm consumers.”²⁹ Repair restrictions affect competitive conditions by preventing independent repair shops from fixing equipment manufactured by certain corporations — but ostensibly owned by a consumer. Absent these restrictions, manufacturers like John Deere could not force farmers to drive hundreds of miles in order to utilize authorized dealerships, and would instead have to compete with independent shops on the merits of their services, including prices, customer service, and proximity.

We have compelling reasons to believe the Commission will be moved to address these violations of its statutory jurisdiction. Early in this administration’s term, FTC committed to prioritizing investigations under Section 5 of the FTC Act.³⁰ Moreover, the Commission’s own comprehensive report on repair restrictions states a rulemaking procedure is warranted due to the “breadth of concern about and potential harm to consumers and markets from widespread repair restrictions and the inefficiency of ex post enforcement.”³¹ With this comment, we are respectfully encouraging the

²⁸ November 10, 2022. “Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act.” Federal Trade Commission. Available at:

https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf

²⁹ November 10, 2022. “Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act.” Federal Trade Commission. Available at:

https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf

³⁰ Ibid.

³¹ May 2021. “Nixing the Fix: An FTC Report to Congress on Repair Restrictions.” Federal Trade Commission. Available at:

https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf

Commission to act in accordance with its founding statutes and carry out its publicly-expressed intention to exercise its authority against unfair conduct.

III. Benefits and Elements of a Successful Right to Repair Rule

Ideally, a rule addressing the unfair and deceptive nature of repair restrictions would perform a number of necessary functions benefiting farmers, repair shops, and the Commission itself. A federal rule would explicitly articulate for farmers and independent mechanics exactly what conduct is prohibited, empowering them to report violations and ensure their rights are respected.

Additionally, a federal rule would enable the Commission to address abusive repair restrictions regardless of courts' reluctance to enforce existing antitrust law to the fullest extent. Currently, manufacturers can sidestep enforcement of the Sherman Act per the *Eastman Kodak Co. vs. Image Technical Service* ruling by imposing aftermarket restrictions at the point of sale.³² But with a strong Section 5 of the FTC Act rule in place, FTC's enforcement efforts would be liberated from what mechanisms may or may not be enshrined in other antitrust case precedent.

The final rule should be nimble and comprehensive enough to respond to the evolving mechanisms by which manufacturers restrict farmers' consumer rights. For example, the Magnuson-Moss Warranty Act (MMWA) once protected consumers from so-called "tying" agreements, which forced them to utilize the manufacturer's repair services or risk losing warranty coverage;³³ but manufacturers have been evading the reach of the MMWA by imposing restrictions on repair through means other than warranties.³⁴ A comprehensive rule would anticipate and forestall manufacturers' current and future evasion attempts.

A successful federal rule enshrining the right to repair would prohibit manufacturers from using software as a barrier to prevent farmers and independent mechanics from diagnosing problems and replacing parts. This rule would ensure farmers' rights to have their equipment repaired by any mechanic they choose, and to diagnose and make basic repairs to equipment they have purchased. It

³² November 14, 2023. "Petition for Section 5 Rulemaking Addressing Consumers' Right to Repair." Fairmark Partners, LLC on behalf of U.S. PIRG and iFixit. Available at:

<https://pirg.org/edfund/wp-content/uploads/2023/11/2023.11.14-Petition-for-Rulemaking-SUBMISSION.pdf>

³³ Magnuson Moss Warranty-Federal Trade Commission Improvements Act, 15 U.S.C. §§ 41-58 (1975). Available at:

<https://www.ftc.gov/legal-library/browse/statutes/magnuson-moss-warranty-federal-trade-commission-improvements-act>

³⁴ November 10, 2022. "Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act." Federal Trade Commission. Available at:

https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf

would further protect small businesses from anticompetitive conduct that excludes them from competing to provide aftermarket repair services on their own merits.

IV. Refuting Claims Made in Opposition to the Right to Repair

In the face of pushback from the public, policymakers, and farmers themselves, equipment manufacturers claim that everything farmers need to make repairs is already provided — yet we have seen abundant evidence substantiating the limitations to what can be repaired by consumers.

Another tactic manufacturers have taken to defend their conduct is pushing false narratives about the dangerous consequences of restoring farmers' right to repair their own equipment. One common narrative is that the requirement to provide software code will force them to divulge trade secrets or compromise their intellectual property (IP).³⁵ However, diagnosing, maintenance, and repair merely requires embedded software, not source code, so there is no risk of IP disclosure.³⁶ Another such claim is that farmers will use these tools to modify their equipment to violate emissions and safety controls.³⁷ But such an override would require modification software tools. To respect farmers' rights, manufacturers need only provide the same diagnostic software given to authorized dealers, which does not enable modifications to emissions systems and safety controls.

What seems likeliest is that these excuses, rather than protecting the public from harm, serve instead to protect the monopolistic control manufacturers have been able to accrue by cornering the repair market.

V. Conclusion

Farmers know best how global equipment manufacturers like John Deere have obstructed their operations, coerced inflated repair costs from them, and violated their consumer rights with the denial of basic information. Farm Action urges FTC to swiftly — before the end of this administration's term — issue a strong rule capturing and addressing each of the anticompetitive, unfair, and deceptive practices set forth by this comment.

³⁵ January 12, 2020. Adam Beltz. "Right-to-repair' fight extends from iPhones to tractors." Star Tribune. Available at: <https://www.startribune.com/right-to-repair-fight-extends-from-iphones-to-tractors/566910242/>

³⁶ February 2021. Kevin O'Reilly. "Deere in the Headlights." U.S. PIRG. Available at: https://uspirg.org/sites/pirg/files/reports/DeereInTheHeadlights/WEB_USP_Deere-in-the-Headlights_V3.pdf

³⁷ June 4, 2020. Jessica Wesson. "Farmers Who Own Modern Equipment can Still Perform 95% of Repairs on Their Own." Successful Farming. Available at: <https://www.agriculture.com/news/machinery/farmers-who-own-modern-equipment-can-still-perform-95-of-repairs-on-their-own>