



February 2, 2024

Document ID FTC-2023-0077-0001
Federal Register Number 2023-28874

Henry Liu
Director, Bureau of Competition
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Director Liu:

MEMA Aftermarket Suppliers – a membership group within MEMA, The Vehicle Suppliers Association – is comprised of the hundreds of companies that manufacture and remanufacture parts, components, systems, and technologies that keep motor vehicles running safely and reliably across the lifecycle. Our member aftermarket suppliers employ hundreds of thousands of Americans who ensure that quality parts and service choices are available for the 294 million vehicles on our nation’s roads. These suppliers are the foundation of a vibrant aftermarket industry, which employs more than four million Americans across manufacturers, motor vehicle repair facilities, distribution centers, and service providers.

MEMA Aftermarket Suppliers agrees with the petitioners that enhanced federal policy is needed to preserve consumers’ right to repair their property, including motor vehicles. We write to emphasize two points for the Commission’s consideration:

First, any rulemaking in support of a consumer’s right to repair must include a consumer’s right to have their vehicle repaired by the professional and with the parts of their choice. We provide specific examples below of how that right is being restricted today, and how those restrictions will predictably grow without nationwide protection.

Second, because we do not believe the Commission yet possesses sufficient authority to achieve the goals of the petition and to protect consumers right to repair their vehicles, we enthusiastically support H.R. 906, the Right to Equitable and Professional Auto Industry Repair (REPAIR) Act, currently pending in the U.S. House of Representatives. That bill would ensure there is a nationwide set of consumer protections that the Commission is authorized to enforce.

BACKGROUND ON MEMA AFTERMARKET SUPPLIERS

For more than 100 years, vehicle owners have been able to choose where and with what parts and components to repair their vehicles. For some vehicle owners, those repairs have been "do-it-yourself" or, in the case of fleet owners, completed by an employee of the fleet. Other repairs have been performed at a dealer service center. The vast majority of repairs are conducted at independent aftermarket repair facilities.

These repair choices allowed the development of a vibrant and competitive marketplace that provides consumers with multiple options at different price points and availability. Additionally, the competition guarantees that consumers can choose quality repair locations that are convenient, affordable, and able to service their vehicles in a timely fashion.

As vehicle technology continues to advance and vehicle systems become more automated, new barriers to the competitive motor vehicle repair market are emerging. These barriers limit consumer choice and access to affordable alternatives beyond the dealership. Federal and state policies, including cybersecurity and privacy provisions, must preserve consumer choice in where, how, and with what parts to repair vehicles.

The automotive aftermarket industry is committed to ensuring safe, affordable, and accessible vehicle service, maintenance, and repair for consumers. Without action by regulators, vehicle original equipment manufacturers (OEM) and their networks will have a monopoly, preventing consumer choice. A lack of competition in the aftermarket could increase the costs and time investments to consumers, limit interoperability and advancement, and impact consumer safety. As the Commission noted in the 2021 Nixing the Fix report, there is "scant evidence" to support repair restrictions that are put in place by vehicle manufacturers.

CONSUMERS ALREADY FACE SIGNIFICANT, WORSENING VEHICLE-REPAIR RESTRICTIONS

The independent aftermarket currently services approximately 70% of motor vehicle repairs in the United States, with over 75% of after-warranty repair work performed outside of automakers' authorized dealer networks.

But consumers seeking vehicle repairs face repair restrictions established by multiple vehicle manufacturers that are being reported to us:

- **Failures to make diagnostic tools available to independent repair shops.** Automakers routinely fail to release a diagnostic tool for new models or delay shipping them several months after they are ordered. There also are reports of tools being deactivated by automakers, which prevents technicians from accurately identifying the causes of problems. The result is that vehicles cannot be serviced for weeks or months, or they must be taken to the OE dealer

service departments, which severely restricts consumer choices and increases costs to consumers.

- **Failures to make manuals and codes available.** The release of service manuals, service procedures, and diagnostic trouble codes (DTCs) to the aftermarket has been delayed in many instances by automakers. Vehicles cannot be serviced for weeks or months, or they must be taken to the dealer service departments, which severely restricts consumer choices and increases costs to consumers.
- **Limitations on the source of parts.** Limits to electronic control modules that will only work when parts with the vehicle identification number (VIN) are installed which effectively locks out aftermarket parts.
- **Limitations on parts distribution.** Restricting sales and purchases of essential parts or information to dealer networks only.
- **Subscription requirements and costs.** New automaker modules cannot be installed without a subscription to the automaker's service programming application. DIYers and any repair shop without the subscription cannot complete the repair. Multiple subscriptions to enable repair facilities to service various makes and models add significant expenses that are be paid indirectly by consumers.
- **Limitations on data access.** Prevention of consumers and independent shops from having access to vehicle data, which will remove the choice consumers currently have to repair and maintain their vehicles by relying on the independent aftermarket. Vehicles cannot be serviced for weeks or months, or they must be taken to the OE dealer service departments, which severely restricts consumer choices and increases costs to consumers. Meanwhile, incorrect diagnoses can lead to improper repairs and vehicles that do not operate properly, or vehicles must be taken to the dealer service departments, which limits choice and increases costs to consumers.
- **Limitations on configuration data.** Automakers purposely withhold configuration data and other critical programming information required to complete programming jobs for select parts with "proprietary" information integrated into the parts. This prevents aftermarket technicians from completing simple tasks and results in more expensive repairs by the independent shops or vehicles taken to the dealer, which also results in more expensive repairs for consumers. Aftermarket repair shops are already facing these difficulties, requiring consumers to make unnecessary choices, including visiting the dealer to perform a repair, ignoring the light, or, even worse, deactivating the warning light entirely. Each of these choices has a downside for the consumer, from increased costs for the dealer visit to environmental impacts and safety risks from unperformed repair and maintenance.

In a competitive market, consumers prefer independent service providers over OEM dealers for post-warranty repairs by a ratio of 70% to 30%; a split that has persisted for decades. An independent study conducted by a firm that works with both automakers and the aftermarket estimated that if repair restrictions are not addressed, that share would drop to 56% by 2035 and continue to decline in the future.¹ The sole reason for this estimate is the inability of the independent repair community and parts suppliers to continue to service vehicles as they do today. By locking independent service providers out of the market, repair restrictions artificially distort consumers' natural preference for more cost-effective independent maintenance, repair services, and implement monopoly pricing.

EXISTING PROTECTIONS REMAIN INEFFECTIVE

There is insufficient consumer protection today. About two-thirds of the States have sought to adopt a patchwork of consumer protection laws related to repair rights, with just two applying to motor vehicles (Massachusetts and Maine). More is needed.

The automakers similarly are not doing enough. Some, though not all, vehicle manufacturers adopted in 2014 and in 2023 voluntary, unenforceable Memoranda of Understanding (MOUs)² to respond to the aftermarket's concerns. In its 2021 report, "Nixing the Fix," the Commission noted that the 2014 MOU, "had the effect of creating a broad, if not complete, right to repair in the automotive industry across the United States."³ But, as the Commission noted, those terms were incomplete, and the vehicle manufacturers' 2023 update did not solve the problems: Many manufacturers did not sign on and, in any event, the update fails to address the real needs of consumers to have:

- A binding enforcement mechanism;
- Rights as to all on-road vehicles including light-duty, medium-duty, and heavy-duty;
- Direct access for vehicle owners and the aftermarket to telematically-generated repair and maintenance data rather than requiring access through OEM controlled systems and tools; and
- Rights to bi-directional communications to diagnose and repair vehicles, safely and appropriately configure replacement parts and technologies, and return vehicles to safe operating performance.

Each of these is necessary for sufficient consumer protection and competition.

¹ Roland Berger. "The U.S. Automotive Aftermarket in 2035." May 1, 2022.

² Available at <https://www.autosinnovate.org/about/advocacy/right-to-repair/2014%20R2R%20MOU%20as%20signed.pdf>; <https://www.autosinnovate.org/about/advocacy/right-to-repair/1%20-%20National%20Automotive%20Repair%20Data%20Sharing%20Commitment%20July%202023.pdf>

³ Federal Trade Commission. "Nixing the FIX: An FTC Report to Congress on Repair Restrictions." Federal Trade Commission." May 2021.

FEDERAL POLICY MUST PROTECT CONSUMERS' FULL RANGE OF VEHICLE REPAIR RIGHTS AND PROMOTE VEHICLE SAFETY

The aftermarket industry seeks policy solutions that will allow competition to continue in the aftermarket. MEMA strongly supports H.R. 906, the Right to Equitable and Professional Auto Industry Repair (REPAIR) Act, because it would address the full range of protections for consumers' right to repair their motor vehicle:

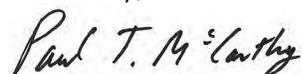
- All vehicles in operation, including light-duty, medium-duty, and heavy-duty vehicles;
- Access to telematics and diagnostics data beyond that available just through the OBDII port;
- An enforcement mechanism;
- The ability for independent repair shops, using bi-directional communication, to update vehicles and parts to the latest software;
- The authority for NHTSA to set cybersecurity rules governing wireless access;
- Language addressing the risk of repair monopolies; and
- Language to protect consumers' access to both light-duty and heavy-duty vehicle repair, maintenance, and parts of their choosing through all iterations of vehicle technology on the road today and to come.

This comprehensive bill addresses the issues facing the independent aftermarket and will protect consumer's ability to choose where and with what parts to repair their vehicles.

We do not believe the Commission has yet been granted the authority to accomplish these consumer protections, and so we will continue to support H.R. 906.

MEMA Aftermarket Suppliers welcomes the Commission's consideration of the current petition and, should you have questions, please contact Catherine Boland, vice president, legislative affairs at cboland@mema.org or 301-509-2791.

Sincerely,



Paul McCarthy
President and Chief Operating Officer
MEMA Aftermarket Suppliers