



Office of Commissioner
Andrew N. Ferguson

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Dissenting Statement of Commissioner Andrew N. Ferguson
Joined by Commissioner Melissa Holyoak
In the Matter of Deere & Company
Matter Number 2110191**

January 15, 2025

Farmers are the backbone of America. Thomas Jefferson, for example, envisioned a nation of yeoman farmers, and described “[a]griculture” as “our wisest pursuit, because it will in the end contribute most to real wealth, good morals and happiness.”¹ Jefferson was an avid and creative farmer and paid particular attention to farm equipment, even developing iron and mould board plows for use on the hilly country of Central Virginia.² Of course, farm machinery has changed a great deal since Jefferson planted at Monticello. Such machinery has become increasingly computerized and automated, as we leverage new technologies to increase productivity and yields. But with advancement also come new challenges. For example, repairs are no longer a strictly mechanical exercise. Rather than simply replacing a part, repairs require software tools to diagnose a problem and to calibrate and, at times, reprogram any affected components before the equipment returns to the field. Whether manufacturers can limit the right to repair farm equipment merely to authorized dealers—thereby excluding customers and independent repair shops—has been the subject of great debate in Congress, in the state legislatures, and among antitrust enforcers.

Today, the Commission takes a position. It files a suit against Deere & Company (“Deere”),³ which develops, manufactures, and sells complex farm equipment and repair tools.⁴ The Complaint alleges that Deere restricts independent repair shops and customers by making available only to Deere’s network of authorized dealers a fully functioning software tool necessary for repairs that require reprogramming.⁵ The Commission claims that these restrictions violate Section 2 of the Sherman Act⁶ and Section 5 of the Federal Trade Commission Act.⁷

I am glad the Commission is taking up the cause of the farmer, and that the Antitrust Division has recently devoted substantial resources to promoting competition in agriculture

¹ From Thomas Jefferson to George Washington, 14 August 1787, Founders Online, National Archives, <https://founders.archives.gov/documents/Jefferson/01-12-02-0040>.

² Thomas Jefferson’s design for a plow, ca. 1794, Manuscript/Mixed Material, Libr. of Congress, <https://www.loc.gov/item/mcc.026/>.

³ Complaint, *FTC v. Deere & Co.* (N.D. Ill.) (“Complaint”).

⁴ *Id.* ¶¶ 3, 7–8.

⁵ *Id.* ¶¶ 7–8; 43–59; 83–88.

⁶ *Id.* ¶¶ 114–19.

⁷ *Id.* ¶¶ 120–25.

markets.⁸ Having grown up in the Shenandoah Valley, historically the breadbasket of the American South, I acknowledge the importance of farmers to the American way of life. I recognize that the right to repair one's own equipment matters a great deal. And I favor right-to-repair legislation.⁹ But I must dissent from the filing of today's Complaint on three procedural grounds.

First, given the timing of this filing, today's action appears to be one taken in haste to beat President Trump into office, and lends to the suit the stench of partisan motivation. I cannot support Commission conduct that appears to be the result of brazen partisanship. The outgoing Democratic majority's decision to bring suit mere days before the presidential inauguration does the Commission a disservice. After all, cases the Commission brings with bipartisan support are stronger.¹⁰

Second, the Democratic majority's decision shortchanges an ongoing investigation. The repair market is extremely complicated, comprised of a web of authorized dealers, independent repair shops, customers, and parts manufacturers. The Commission staff has worked diligently to understand the market, but to date we simply do not have the evidence to file this Complaint with any real confidence of our ultimate chance of success. Perhaps we could have developed additional evidence with further investigation; perhaps we will discover that evidence in litigation.¹¹ Either way, the Commission should not expend taxpayer resources on lawsuits on the basis of an evidentiary record as underdeveloped as this one.

Finally, filing the Complaint now is deeply imprudent. The parties are in active negotiations over a fix that, if brought to fruition, could provide meaningful relief to America's farmers. I favor settling this litigation but *only* if that settlement provides real, tangible benefits to America's farmers. If the Commission and Deere cannot reach such a settlement, then the courts will resolve the right to repair question here. Securing real relief for farmers in short order should

⁸ See, e.g., Complaint, *United States v. Agri Stats, Inc.*, 23-cv-03009 (D. Minn. Sept. 28, 2023); Complaint, *United States v. Cargill*, 22-cv-01821 (D. Md. July 25, 2022); Remarks of Deputy Assistant Att'y Gen. Michael Kades, R-CALF USA Annual Conference, Cattle Drives to Captive Supply, Competition in the Cattle Industry (June 21, 2024) (announcing DOJ's plan to increase civil and criminal antitrust enforcement in and creation of an enforcement team focused on the agriculture industry).

⁹ For example, Colorado's right to repair statute covers agricultural equipment. Colo. Rev. Stat. § 6-1-1503(a).

¹⁰ One recent example of such a bipartisan success story is the Commission's suit to block the proposed acquisition by Tapestry, Inc. of Capri Holdings Limited, which involved the "accessible luxury" handbag market. All five members of the Commission voted to bring the action. Press Release, FTC, FTC Moves to Block Tapestry's Acquisition of Capri (April 22, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-moves-block-tapestrys-acquisition-capri>. After hearing seven days of testimony, the district court judge ruled in favor of the Commission, entering a preliminary injunction. *FTC v. Tapestry, Inc.*, 2024 WL 4647809, at *1 (S.D.N.Y. Nov. 1, 2024). The parties abandoned shortly thereafter. Capri and Tapestry abandon plans to merge, citing regulatory hurdles, CNBC (Nov. 14, 2024), <https://www.cnbc.com/2024/11/14/capri-and-tapestry-abandon-plans-to-merge.html>.

¹¹ Deere has announced its plans for an "addition to Deere's suite of digital solutions [that] will ... enabl[e] customers and independent repair technicians] to reprogram Deere-manufactured electronic controllers." Empowering Farmers Through Innovation: John Deere Expands Self-Repair Solutions, Furthering Farmer Independence, PR Newswire (Jan. 14, 2025), <https://www.prnewswire.com/news-releases/empowering-farmers-through-innovation-john-deere-expands-self-repair-solutions-furthering-farmer-independence-302350996.html>.

be the Commission's focus, rather than launching potentially years-long litigation in order to secure another triumphant press release on the Democrats' way out the door.¹²

I respectfully dissent.

¹² My vote today should not be understood as a vote against amending the complaint to allow States to join the Commission in seeking meaningful redress for farmers. I am a former state enforcer who participated alongside the United States in major antitrust litigation. The more federal-State collaboration, the better.