

February 2, 2024

Joel Christie
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Petition for Rulemaking of PIRG and iFixit, FTC-2023-0077

Dear Mr. Christie:

The Auto Care Association respectfully submits these comments in response to the Federal Trade Commission's Receipt of Petition and Request for Comment on a petition for rulemaking from the U.S. Public Interest Research Group Education Fund and iFixit to protect the right to repair.¹

The Auto Care Association is the voice of the auto care business, a more than \$400 billion industry comprised of more than 4.5 million American workers. We are a national trade association that serves the entire supply chain of the automotive aftermarket: more than 536,000 businesses that manufacture, distribute, and sell motor vehicle parts, accessories, tools, equipment, materials, and supplies, and perform vehicle service, maintenance, and repair for the nation's 292 million registered motor vehicles. The businesses we represent include more than 280,000 repair facilities and 915,000 technicians nationwide.

Like the petitioners, the Auto Care Association has long supported the right to repair and appreciates the Commission's continued commitment to ensuring that Americans have access to a competitive repair market.

I. Repair Restrictions Threaten Competitive Repair Markets.

As the Commission has recognized, the need for a strong right to repair is increasingly urgent.² Advances in technology, while providing significant benefits, are also being used to control

¹ Petition for Rulemaking of PIRG and iFixit, 89 Fed. Reg. 286 (Jan. 3, 2024); U.S. Pub. Int. Rsch. Grp. Educ. Fund & iFixit, Petition for Rulemaking to Protect Consumers' Right to Repair, FTC-2023-0077-0020 (filed Nov. 14, 2023), <https://www.regulations.gov/document/FTC-2023-0077-0020> ("Petition").

² See FTC, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions* at 3 (May 2021), <https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress->

where and how repairs occur. Across various industries, products increasingly contain embedded electronics that remain under the manufacturer’s control after purchase.³ That control allows manufacturers to implement repair restrictions, such as software locking tools that prevent repairs from being performed outside authorized channels.⁴

In addition, consumers are being bombarded with messaging that warns them that obtaining repairs outside authorized channels or using non-original equipment parts might jeopardize a product’s safety and functioning or void warranty coverage.⁵ The repair industry is also affected by manufacturers that withhold service manuals or access to required diagnostic software and that design products in a way that makes them difficult or costly to repair.⁶ For example, manufacturers often require the use of unique parts or tools that are not available to all consumers and repair shops.⁷

These repair restrictions negatively impact consumer choice in the repair markets for many different products, as both the petitioners and the Commission have recognized.⁸ The result is less competition and higher prices. For example, requiring independent competitors to purchase high-priced parts, tools, equipment, or access to information from manufacturers forces competitors to pass those high prices onto their customers, giving manufacturers the opportunity

[repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf](#) (“Congressional interest in the competition and consumer protection aspects of repair restrictions is timely. Many consumer products have become harder to fix and maintain. Repairs today often require specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software.”) (“*Nixing the Fix*”).

³ See Petition at 4.

⁴ See *Nixing the Fix* at 23–24 (noting examples in the consumer electronics and auto industries); Petition at 8–9 (noting examples in the farm equipment, consumer electronics, and auto industries).

⁵ See *Nixing the Fix* at 22–23 (noting that multiple commenters highlighted these types of repair restrictions, including the auto industry); Petition at 9–10 (noting examples in the consumer electronics and auto industries).

⁶ See *Nixing the Fix* at 18–19 (citing examples in the consumer electronics, medical equipment, and auto industries); Petition at 5–6 (noting examples in the consumer electronics industry).

⁷ See *Nixing the Fix* at 18–19 (citing examples in the consumer electronics, household appliance, and auto industries); Petition at 5 (noting an example in the consumer electronics industry).

⁸ See Petition at 11–20; *Nixing the Fix* at 38–44; see also FTC, *Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers* at 1 (July 21, 2021), https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf.

to raise prices even further.⁹ Repair restrictions can also make it more difficult or time-consuming to obtain repairs.¹⁰ And repair restrictions may have a negative environmental impact, by making it more likely that parts or products will be discarded rather than reused or repaired.¹¹

II. Repair Restrictions in the Auto Care Industry Harm Consumers in Multiple Ways.

The negative effects of limited consumer choice are particularly acute in the auto repair market. Through our members, which represent every part of the automotive aftermarket supply chain, the Auto Care Association has seen how vehicle manufacturers have implemented the repair restrictions described above. For example, vehicle manufacturers such as Kia and Hyundai have failed to provide independent repair shops with access to their repair software.¹² In other instances, manufacturers have limited the availability of physical parts. For instance, Volvo restricted the distribution of certain parts to only “Volvo Certified Collision Facilities.”¹³ And Honda and Kia have issued bulletins disparaging aftermarket parts.¹⁴ Consumer surveys in Florida and Maryland showed that about 25% of new car purchasers were told by the dealership that they must have the vehicle serviced at the dealership to maintain the warranty.¹⁵

In 2012, a Massachusetts ballot measure supporting the right to repair passed with overwhelming support. This strong signal of consumer support for a competitive repair industry led to a 2014 Memorandum of Understanding (“MOU”) in which all major vehicle manufacturers (except Tesla) agreed to comply with the Massachusetts right to repair law nationwide.¹⁶ The key provisions of the Massachusetts law require manufacturers to make available to consumers and the independent vehicle repair industry on fair and reasonable terms the same tools, software, and repair information that they make available to franchised dealers and to establish websites containing the same information and software that dealers have access to, such as diagnostic

⁹ See *Nixing the Fix* at 40; Petition at 11–12.

¹⁰ See *Nixing the Fix* at 39.

¹¹ See *Nixing the Fix* at 41–42; Petition at 15–16.

¹² Auto Care Ass’n, Comment at 2, FTC-2019-0013-0010 (filed May 6, 2019), <https://www.regulations.gov/comment/FTC-2019-0013-0010> (“Auto Care Comment”).

¹³ See LKQ Corp., Empirical Research at 14, 21, FTC-2019-0013-0020 (filed Apr. 30, 2019), <https://www.regulations.gov/comment/FTC-2019-0013-0020>.

¹⁴ Auto Care Comment at 4.

¹⁵ See *id.*

¹⁶ See Auto. Aftermarket Indus. Ass’n, Coal. for Auto Repair Equal., All. of Auto. Mfrs., & Ass’n of Glob. Automakers, *Memorandum of Understanding* (Jan. 15, 2014), <https://www.autocare.org/docs/default-source/government-affairs/r2r-mou-and-agreement-signed.pdf>.

computers using a standardized vehicle interface. The following year, industry trade associations entered into a similar MOU specific to commercial vehicles.¹⁷

Unfortunately, the existing automotive and commercial vehicle right to repair MOUs have not solved the problem. The MOUs lack a binding enforcement mechanism; manufacturers can exit the MOUs without penalty; and their participation is voluntary in any event. Indeed, the limitations on repair software and physical parts described above occurred *after* the MOUs were in place.

Significantly as well, the MOUs have limited value because they do not address direct access to vehicle telematics data (i.e., data accessed through wireless transmissions).¹⁸ Direct access to telematics data is particularly important because telematics represent an increasingly common avenue for restricting independent repair shops' ability to perform maintenance and make repairs. When the MOUs were signed, vehicle data was primarily accessed through an onboard diagnostics (or "OBD") port—a wired connection comparable to accessing the Internet through an ethernet cable plugged into the wall. These days, vehicle manufacturers are increasingly using wireless transmission of data. In 2021, half of new vehicles used telematics; by 2030, practically all will.¹⁹ Being able to access vehicle telematics data is critical to diagnose problems and, in some cases, communicate with the vehicle to repair problems. Unlike vehicle data that can be accessed by independent repair shops through an OBD port, vehicle telematics data is sent only to the vehicle manufacturer, which then serves as a gatekeeper for the data, determining who can have access and at what cost.

These and other repair restrictions directly harm consumers by making repairs less affordable and convenient. According to the U.S. Bureau of Labor Statistics, the cost of repairing a vehicle has increased by approximately 125% since 2000—significantly outpacing the increase in the

¹⁷ See Com. Vehicle Sols. Network, Equip. & Tool Inst., Heavy Duty Aftermarket Can., Auto Care Ass'n, & Truck & Engine Mfrs. Ass'n, *Memorandum of Understanding: National Commercial Vehicle Service Information* (Aug. 2015), <https://www.autocare.org/docs/default-source/government-affairs/rtr-national-commercial-vehicle-service-information-mou.pdf>.

¹⁸ In July 2023, the Automotive Service Association, the Society of Collision Repair Specialists, and Alliance for Automotive Innovation entered into a "right-to-repair" pact. See All. for Auto. Innovation, *Independent Auto Repairers, Automakers Strike Major Right-to-Repair Pact* (July 11, 2023), <https://www.autosinnovate.org/posts/press-release/independent-auto-repairers-automakers-strike-major-right-to-repair-pact>. By its own terms, this agreement—which the Auto Care Association was not consulted about, was not a party to, and does not support—merely "affirms" the 2014 MOU rather than implementing meaningful measures to preserve the entire automotive aftermarket and the competition and consumer choice that it creates. *Id.*

¹⁹ Michele Bertoncello et al., *Unlocking the Full Life-Cycle Value from Connected-Car Data*, McKinsey & Company (Feb. 11, 2021), <https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/unlocking-the-full-life-cycle-value-from-connected-car-data>.

overall cost of consumer goods and services over the same period.²⁰ Further, a 2020 study found that, on average, repairs performed by franchised dealers were 36.2% more expensive than the same repairs performed by independent repair shops.²¹

Reduced competition may also increase prices in ways that are not captured by traditional statistical measures. For instance, vehicle owners may have to travel further to reach a dealer than to visit their local independent repair shop.²² A longer trip may result in a vehicle owner paying more for gas or alternative transportation to and from the dealer and higher lost wages or other opportunity costs.

Repair restrictions not only harm vehicle owners financially; they also affect vehicle safety, the environment, and the supply chain. Higher prices and longer trips disincentivize owners from maintaining and repairing their vehicles. As a result, more unsafe vehicles are on the road.²³ In addition, more expensive repairs increase the likelihood that a repairable vehicle will be considered a total loss, leading to more frequent purchases of new vehicles. The manufacturing process is responsible for up to 20% of a vehicle's lifecycle emissions and uses valuable natural resources that, significantly more often than not, go unrecycled at the end of the vehicle's lifecycle.²⁴ Finally, the American economy depends on goods and services made available by the more than 9 million vehicles in the commercial vehicle trucking industry. Less convenient repairs decrease commercial vehicle uptime, straining the supply chain.

²⁰ Compare U.S. Bureau of Labor Statistics, *Consumer Price Index for All Urban Consumers: Motor Vehicle Maintenance and Repair in U.S. City Average*, FRED, <https://fred.stlouisfed.org/series/CUSR0000SETD> (total percentage increase from January 2000 to December 2023), with U.S. Bureau of Labor Statistics, *Consumer Price Index for All Urban Consumers: All Items in U.S. City Average*, FRED, <https://fred.stlouisfed.org/series/CPIAUCSL> (total percentage increase from January 2000 to December 2023).

²¹ Lang Marketing, *Massachusetts Vehicle Repair Cost Study* at 1 (Oct. 20, 2020), <http://www.langmarketing.com/pdf/Lang-Marketing-MA-Repair-Cost-Report-10-20-2020.pdf>.

²² Cf., e.g., Petition at 7–8 (explaining that farmers travel significant distances to dealerships because local farm equipment repair shops do not have access to manufacturer-specific payload files necessary for repairs).

²³ The National Highway Traffic Safety Administration estimates that vehicle-related problems are the immediate reason for about 44,000 traffic accidents annually. See Santokh Singh, *Traffic Safety Facts: Crash•Stats: Critical Reasons for Crashes Investigated in the National Motor Vehicle Crash Causation Survey*, DOT HS 812 506, NHTSA (Mar. 2018), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812506>.

²⁴ Blair O'Neal, *Gaming the System, a Backdoor Monopoly: How OEM Patent Practices in the Automotive Industry Impact Consumers, Local Economies, and the Environment* at 20 (2023), <https://backdoormonopoly.info>; see *id.* at 22 (“However, recycling still only accounts for 17% of total waste disposal for vehicles.”).

III. The Commission Can Promote a Competitive Auto Repair Market by Supporting the REPAIR Act.

The Auto Care Association agrees with the petitioners that the proliferation of repair restrictions demands action now.

For that reason, we urge the Commission at a minimum to support the REPAIR Act.²⁵ We need action from many sides to protect repair competition, given the urgency of these issues to consumers. The REPAIR Act is a comprehensive, bipartisan piece of federal legislation that would preserve access to high-quality and affordable vehicle repair by ensuring that as vehicles continue to modernize, vehicle owners and their repairers of choice have equal access to repair and maintenance tools and data.

The REPAIR Act achieves that result in four ways. First, it prevents vehicle manufacturers from employing barriers to repair and maintenance. Specifically, it ensures that all tools, equipment, and critical information needed to repair a vehicle be made available to the independent repair industry at a fair, reasonable, and non-discriminatory price.²⁶

Second, it requires that vehicle owners and their designees get direct access to vehicle-generated data.²⁷ For vehicle telematics data, it requires manufacturers to provide vehicle owners and their designees with access to this data via a standardized access platform managed by an independent entity designated by this Commission in consultation with the National Highway Traffic Safety Administration and governed by appropriate industry standards for cybersecurity, data communication, and data management.²⁸

Third, the REPAIR Act prohibits vehicle manufacturers from mandating the use of particular brands of parts, tools, or equipment when doing repairs other than recall and warranty repairs.²⁹ It also bars manufacturers from recommending particular brands without a prominent disclosure that vehicle owners have a choice in which parts, tools, and equipment to use.³⁰ This requirement preserves vehicle owners' ability to choose aftermarket parts needed to fully maintain and repair a vehicle.

Finally, the Act establishes a stakeholder advisory committee to examine emerging barriers to repair and maintenance.³¹ This committee would be led by the Chair of this Commission or her

²⁵ Right to Equitable and Professional Auto Industry Repair Act, H.R. 906, 118th Cong. (2023).

²⁶ *Id.* § 3(a)(2)(C).

²⁷ *Id.* § 3(a)(2)(A).

²⁸ *Id.* §§ 3(a)(2)(B), 5(a)–(b).

²⁹ *Id.* § 3(a)(3)(A).

³⁰ *Id.* § 3(a)(3)(B).

³¹ *Id.* § 4.

designee and would be comprised of impacted stakeholders including consumer advocates, motor vehicle manufacturers, trucking companies, independent repairers, dealership service centers, motor vehicle parts manufacturers, retailers and distributors, aftermarket parts and tools manufacturers, and auto insurers.³²

In these ways, the REPAIR Act would preserve vehicle owners' choice as to who, where, when, and at what cost their vehicles can be repaired. It thus would provide an effective way to address significant and growing competitive concerns about the automotive aftermarket and the ongoing harm to vehicle owners, independent businesses, and society at large.

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The Auto Care Association appreciates the opportunity to comment and welcomes the Commission's attention to the right to repair.

Sincerely,

Lisa Foshee

Lisa Foshee
Senior Vice President, Government Affairs and General Counsel
Auto Care Association

³² *Id.* § 4(a)–(b).