



FEDERAL TRADE
COMMISSION

Repair Restrictions and their Impact on Consumers

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*The views expressed in this presentation are my own and not necessarily those of the Commission or any individual Commissioner.

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Why Repair Matters

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What the FTC Is Doing About It

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Questions

- Harm to competition and to consumers
- This issue touches everyone

What the FTC Is Doing About It

Background on FTC

- Five Commissioners
 - Only 3 can be from President's party
 - Confirmed by the Senate
 - Staggered 7 year terms
- The nation's consumer protection agency
 - Bureau of Competition
 - Bureau of Consumer Protection
 - Bureau of Economics
- HQ in Washington DC
- Regional Offices: Atlanta, Chicago, Cleveland, Dallas, Los Angeles, NYC, San Francisco and Seattle

Applicable FTC Law

- Section 5 of the FTC Act, 15 U.S.C. § 45
- Sections 1 and 2 of the Sherman Act, 15 U.S.C. § § 1-2
- Section 3 of the Clayton Act, 15 U.S.C. § 14
- Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.*
 - Regulations: 16 C.F.R. Part 700



FTC & The Right to Repair – Mag-Moss Anti-tying Provision

- 1975 - Magnuson-Moss Warranty Act
- Anti-tying Provision (15 U.S.C. § 2302(c))

“No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer’s using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name [unless granted a waiver by the FTC].”

FTC & The Right to Repair – Mag-Moss Anti-tying Provision

- Law Enforcement – FTC v. BMW (2015)
- Warning Letters – Several Companies (2018)
- Business and Consumer Education Campaigns

But . . .

- Still Compliance Issues
- Warranty Tying is Only Part of the Problem

. . . FTC Set Out to Study Repair Restrictions

Nixing the Fix

FTC & The Right to Repair – Nixing the Fix

- March 2019 – Request for Comments and Empirical Research
- July 2019 – Nixing the Fix Workshop
- May 2021 – Report to Congress by Unanimous Commission

Nixing the Fix: An FTC Report to Congress on Repair Restrictions



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May 2021

- Identified types of repair restrictions
 - Product designs that complicate or prevent repair
 - Unavailability of parts and repair information
 - Designs that make independent repairs less safe
 - Policies or statements that steer consumers to manufacturer repair networks
 - Application of patent rights and enforcement of trademarks
 - Disparagement of non-OEM parts and independent repair
 - Software locks and firmware updates
 - End User License Agreements

- Evaluated Manufacturers' Justifications for Repair Restrictions
 - Protection of intellectual property
 - Safety
 - Cybersecurity
 - Liability and reputational harm
 - Design choices and consumer demand drive the repairability of devices
 - Quality of service

- Examined Right to Repair Advocates' Arguments Against Repair Restrictions
 - Timing of repairs
 - Cost of repairs
 - Environmental harm
 - Small business and employment

- Commission's Conclusions
 - repair restrictions have diluted the effectiveness of the anti-tying provision and steered consumers into manufacturers' repair networks or to replace products before the end of their useful lives
 - the burden of repair restrictions may fall more heavily on communities of color and lower-income communities
 - there is scant evidence to support manufacturers' justifications for repair restrictions
 - opening access to repair parts, documentation and tools is well supported by the record

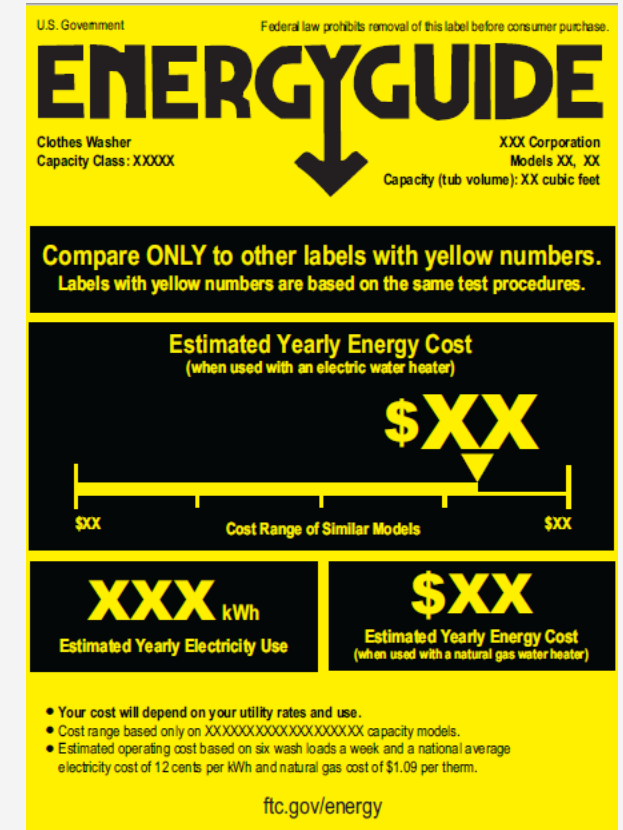
FTC & The Right to Repair – Recent Developments



FTC & The Right to Repair – Recent Developments

Advanced Notice of Proposed Rulemaking under the Energy Policy and Conservation Act of 1975

- FTC can require manufacturers of certain types of appliances to provide **repair and maintenance information** to purchasers, if Commission finds:
 - Information would be useful to consumers when purchasing or using the products, and
 - Not unduly burdensome to manufacturers
- Comments due Jan. 31, 2023
- If Commission decides rule would be appropriate, it would begin a rulemaking proceeding



Conclusion and Question/Answer

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