

**“RIGHT TO REPAIR:
INDUSTRY DISCUSSIONS AND LEGISLATIVE OPTIONS”**

Prepared Statement of the Federal Trade Commission

James A. Kohm

Associate Director, Division of Enforcement

Bureau of Consumer Protection

Before the

Committee on Energy and Commerce

Subcommittee on Commerce, Trade and Consumer Protection

United States House of Representatives

Washington, D.C.

November 10, 2005

Mr. Chairman and members of the Subcommittee, I am James A. Kohm, Associate Director of the Division of Enforcement in the Federal Trade Commission's Bureau of Consumer Protection.¹ I appreciate this opportunity to discuss the Commission's mission and the discussions between representatives of the automotive manufacturers and representatives of independent auto repair facilities.

The Federal Trade Commission ("FTC" or "Commission") is a small agency with a big mission: to enhance consumer welfare and protect competition in broad sectors of the economy. The FTC enforces the Federal Trade Commission Act² and other laws that prohibit business practices that are anticompetitive, deceptive, or unfair to consumers, and seeks to do so without impeding legitimate business activity. The FTC also promotes informed consumer choice and public understanding of the competitive process.

In addition to the FTC Act, the agency has responsibilities under more than fifty federal laws, including, most recently, the Controlling the Assault of Non-Solicited Pornography and Marketing Act,³ the Fairness to Contact Lens Consumers Act,⁴ and the Fair and Accurate Credit Transactions Act.⁵ The Commission's work is critical to protect and strengthen free and fair

¹ This written statement presents the views of the Federal Trade Commission. Responses to questions reflect my views and do not necessarily reflect the views of the Commission or any Commissioner.

² 15 U.S.C. § 45(a).

³ 15 U.S.C. § 7701 and implementing regulations.

⁴ 15 U.S.C. § 7601 and implementing regulations.

⁵ Pub. L. No. 108-159, 117 Stat. 1952 (Dec. 4, 2003), codified at 15 U.S.C. § 1681 *et seq.*

markets in the United States and, increasingly, the world. Among the Commission's accomplishments are the implementation and enforcement of the National Do-Not-Call Registry, the protection of the availability of lower-cost prescription drugs, stopping deceptive or abusive lending practices, attacking unfair or deceptive practices in e-commerce, and the review of corporate mergers reported to the antitrust agencies under the Hart-Scott-Rodino premerger notification process.

Auto repair is undoubtedly an important issue for U.S. consumers. U.S. consumers spend more than \$80 billion annually to repair and maintain the two hundred million cars currently on the road.⁶ Consumers thus have a significant interest in automobile repair and maintenance markets that operate properly and efficiently, consistent with safety and other quality standards.

For some time, members of this Committee – and especially Chairman Barton – have considered ways to ensure that independent car repair facilities and vehicle owners have access to information and tools needed to diagnose, service, or repair vehicles.

Such access is not as easy or relatively inexpensive as it once was. For example, the sophisticated technology used in most cars today can require expensive computerized diagnostic tools to diagnose problems, as well as knowledge of particular software access or computer codes. It can be difficult for one independent repair shop to acquire all of the equipment it may need to repair all makes of cars, or to easily access all of the information required to make timely repairs. Generally, the marketplace will provide strong incentives for automobile manufacturers to ensure their customers have an appropriate range of repair options because the manufacturers depend on repeat purchases of their product. With the increasing sophistication of automobiles,

⁶ U.S. Census Bureau, STATISTICAL ABSTRACT OF THE U.S.(2004-2005).

however, independent repair shops have been concerned about continued access to high tech information and tools.

To address these issues, market participants have taken some initial steps that provide a foundation upon which to build an effective self-regulatory mechanism. For example, a group of automotive trade associations has created an information-sharing structure, the National Automotive Service Task Force (“NASTF”), to aid in the provision of timely service information needed by independent repair facilities. In addition, third-party information providers, such as ALLDATA and Mitchell, can provide useful services to automobile repair facilities. The amount of auto repair data available is voluminous and not always easily accessible. By packaging data for sale, third-party information providers can allow repair facilities to access necessary technical information with the speed the marketplace demands.

More recently, legislation has been proposed to address the provision of information to the aftermarket, that involves relations among automobile manufacturers, franchised dealers, independent repair shops, tool manufacturers and sellers, and – most importantly – consumers.

A Voluntary Industry Solution

Chairman Barton and Senator Graham urged representatives of the independent auto repair facilities and automotive manufacturers to try to reach a voluntary agreement for the provision of service information. In response, the parties, with the Commission staff’s assistance, chose Steven J. Cole of the Council of Better Business Bureaus (“CBBB”) as the facilitator. Participants included the Coalition of Auto Repair Equality (“CARE”) and the Automotive Aftermarket Industry Association (“AAIA”), the Alliance of Automobile Manufacturers (“AAM”), the Association of International Automobile Manufacturers (“AIAM”),

the National Automobile Dealers Association (“NADA”) and the Automotive Service Association (“ASA”). FTC staff attended all the meetings. The parties began discussions on July 26, 2005 with an expectation that the facilitation would conclude September 1, 2005. Because of the progress the parties made, that deadline subsequently was extended to September 30, 2005.

Throughout August and September, the parties, the CBBB, and Commission staff met for more than sixty hours to try to reach an agreement on what information the auto manufacturers would provide to independent auto repair facilities and how they could provide that information in an efficient and affordable manner. In addition, the parties spent considerable time discussing an appropriate mechanism to address those instances where the system failed. In formulating a plan, the parties looked to the information-sharing structure created by NASTF to provide information, training, and tools to automotive service professionals. In the course of their discussions at the CBBB, both sides looked to improve the NASTF structure to streamline the process and provide the necessary support to technicians who face problems obtaining information.

Despite hard work by both sides, the parties were unable to come to an agreement and, on September 30, 2005, concluded negotiations without a solution.

The parties continued to have difficulties in reaching agreement regarding such issues as the precise scope of information to be shared, access to diagnostic tools, and the breadth of industry interests that should be represented in the conflict-resolution organization. The Commission is disappointed that the facilitation process was unsuccessful. Nonetheless, the parties’ efforts to reach agreement were significant and should receive consideration throughout the ongoing legislative process in which this Committee is engaged.

Although the parties have failed to reach agreement, the parties' work thus far could provide the basis for a solution to this issue. The Commission continues to believe that, in the long run, a voluntary, self-regulatory approach is the best solution to the concerns that have been raised. If the Congress determines, however, that legislation is appropriate, the Commission believes it is important that the resolution of particular disputes be decided and implemented by industry participants rather than the government. Further, any governmental intervention in this area requires great care to avoid unnecessary impact on existing markets. The Commission is concerned that a mandatory, uniform approach could result in higher costs for consumers and leave the industry less flexible to address a rapidly changing marketplace.

Mr. Chairman, members of the Subcommittee, thank you for providing the Federal Trade Commission the opportunity to appear before this Subcommittee. We look forward to working with you.