

February 16, 2016

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

To whom it may concern:

These comments are in response to the FTC's Public Workshop Examining the Auto Distribution System which was held on January 19, 2016. Prior to the workshop, I submitted my comments regarding my experience as an attorney representing automotive dealers for over 25 years, and the necessity for maintaining the existing framework of state franchise laws which govern the manufacturer/dealer relationship.

As an initial matter, I would note that I viewed the entire roundtable on your website, as I was unable to attend in person. In addition, I have spoken to several people who were in attendance. What is clear from viewing the workshop and comments from those in attendance is that the deck was clearly stacked against the dealers. This occurred despite the request of NADA to include speakers that would have rendered the discussion more evenhanded. The simple fact is that if you counted the number of participants who opposed the current statutory framework, and the length of time they spoke, versus the number of panelists and the length of time they spoke in favor of the current system, it is clear that the workshop was not fair and balanced. I would hope that the FTC would be fair and impartial in its investigation of the issue and allow equal input from all stakeholders, especially the dealers who are on the front line dealing with the consumer. It is dealers who interface with consumers and thus would be able to best inform the FTC of how the current system benefits consumers.

The dealer franchise system has been in place since the 1950s. The reason that it still remains in place, and has been supplemented and strengthened over the years, is because it works. The current dealer franchise system is a system that is fairest to the consumer, and yields the lowest possible cost to the consumer. Any direct manufacturer to consumer model would eliminate intra brand competition which lowers the cost of vehicles and financing to consumers. Theoretically there would still be inter-brand competition, but consumer choice would be limited and with fewer choices of where to buy, the consumer will pay a higher price. Eliminating this competition, would in effect permit the manufacturers to have a monopoly and set prices without fear of being undercut by competitors. This system would clearly not benefit the consumer.

The current dealer franchise system also protects the 17,000 dealers throughout the United States from the overbearing and unreasonable actions of the manufacturers which led to the imposition of these laws in the first place. Some have argued that because there are now larger auto groups,

for example, AutoNation, that the relative bargaining strength is now equal. This is just not the case and in any event a majority of the 17,000 car dealerships throughout the United States, are small, family owned business who still need the protections against overreaching by the manufacturers.

I would note two specific areas, which as a lawyer I have seen which show the need for continued protection of the dealer. First it is still the case that the sales and service agreements tendered by the manufacturer are non-negotiable. I have tried many times to negotiate them, without success. Of course, there are many industries where a contract is one of adhesion, but in this case it is particularly troublesome. First a car purchase is the second largest purchase a consumer will make. If a dealer is not free to run its business as it sees fit, the consumer will suffer. The franchise laws protect that independence against the onerous and overbearing terms and conditions of a typical sales and service agreement. Second, dealers' have an enormous amount of capital invested in land and buildings, which are sizeable given the broad scope of a dealership's functions: sales, maintenance of adequate inventory on the ground, service, etc.

Lastly, as a lawyer who is on the ground dealing with manufacturers every day, I can say with confidence that it is not a level playing field. Absent the statutory protections afforded the dealer, the manufacturer would impose arbitrary and unreasonable policies on the dealer. For example, I have seen on many occasions, where the manufacturer has attempted to take unreasonable action to terminate a dealer, and in the absence of the laws preventing these practices, the dealer would have been terminated. Several examples are illustrative. First, I have many dealers that receive so called "lack of performance standards" letter(s) and in many cases these letters have a requirement that the dealer acknowledge that if it does not reach compliance within a certain number of days it acknowledges default and allows the manufacturer to terminate. This is troubling for several reasons. First, the measurement tools used by manufactures (CSI, Sale Effectiveness) are not accurate and fail to take into account the different demographics, geography and buying preferences in each dealer's market. A number of courts have questioned the validity of these measurements. Second, the failure of a dealer to sell more cars is most often caused by the manufacturer's inability to supply an adequate supply of the best-selling models. Any lack of so called performance, is in part the fault of the manufacturer.

A second case of hard bargaining I see very often involves unreasonable building demands. Who can remember how many different building plans Chrysler had before it finally plunged into bankruptcy? I have many dealers who are pressured to make improvements to their facilities, which are not possible because of zoning restrictions, or do not make economic sense to the dealer. After all, it is the dealer's capital which is at risk. Again, fortunately, state laws prohibit facility upgrades unless the manufacturer can prove the need for same, and some states limit multiple facility upgrades within a certain term of years.

I could probably go on for another 10-15 pages, but think that is unnecessary. As a business lawyer, I represent many different types of businesses and the dealership business is unique and thus requires a specific legal framework to allow dealers to control their own destiny, serve

Federal Trade Commission
February 16, 2016
Page Two

customers at the lowest price, in order to compete in the marketplace against same brand and other brand dealerships, and realize an adequate return on their very large capital investment. Any decision to alter a framework that has been in place and adequately served consumers for decades should not be dismantled because of a few special interests who want to directly sell to consumers. This is the proverbial tail wagging the dog. I would hope that the FTC in examining this issue would conduct additional workshops which are more representative of the industry. To do otherwise amounts to arbitrary and capricious action.

Sincerely,

HAILE, SHAW & PFAFFENBERGER, P.A.

By _____
OREN S. TASINI, ESQUIRE