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March 1, 2016

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th St., SW, Suite 5610
Washington, DC 20024

RE: Auto Distribution Workshop, Project No. P131202
Comments of the Kentucky Automobile Dealers Association

Dear Ladies and Gentlemen:

I am writing on behalf of the Kentucky Automobile Dealers Association. Our over 290 franchised motor vehicle dealers serve their customers in communities all around the Commonwealth, and have been doing so for generations.

Like many others in the industry, we were very frustrated with the recent roundtable workshop held by the FTC on January 19, 2016. This workshop focused on automobile distribution and the franchise laws that Kentucky and 49 other states have enacted to regulate certain aspects of the relationship between manufacturers and independent franchised motor vehicle dealers. Unfortunately, rather than being a thoughtful, fact based examination of an extremely important industry, the workshop showcased several speakers invited by the FTC who had clearly made up their minds about the continued need for laws that have helped serve the public interest for many years.

While persons representing the dealers' viewpoints were represented on several panels, it was obvious that the other speakers chosen by the FTC were of a single mindset: opposed to the current system of vehicle distribution in the United States and the franchise laws that regulate it. Much of the rationale advanced during the workshop was premised on the belief that the economic relationship between manufacturers and dealers is more balanced today and that dealers have grown in size to such an extent that such laws are no longer necessary to address the disparity in bargaining power between manufacturers and dealers that led to the enactment of these laws.

Unfortunately, these individuals seem to have little understanding of, or appreciation for, how the business actually operates, and their comments did a real disservice to the franchised dealers in Kentucky, their employees and, most important, to the public at large.

The public policy grounds which supported the enactment of these laws originally (the need for consumer protection, the disparity in bargaining power between manufacturers and dealers, and the value of community-based businesses) are as valid today as when these laws were first enacted.

First and foremost, these laws benefit consumers. In the end, automobiles are sold through franchised dealers because that business model is a good deal for everyone. Consumers are given extra protection in the marketplace, local communities benefit when local businesses compete to sell and service great products, and manufacturers get to invest their capital into designing, engineering and marketing great products in lieu of low-margin retailing. In addition, without local dealers, the consumer does not have an advocate to represent them when they have a problem with their vehicle. To the dealer, the customer is a friend and neighbor, to the manufacturer, the customer is just a number. For these and other reasons, state legislatures have passed laws that promote the buying, selling and servicing of cars through local franchised dealers.

What's more, these laws drive efficiency by ensuring that a stable and level playing field exists in auto retailing. The speakers at the January 19 workshop who said that there is now a fairly equal balance of power between dealers and manufacturers were simply wrong. To the contrary, manufacturers continue to have the clear upper hand in this relationship. Once a dealer has invested millions of dollars to support a particular franchise, the dealer becomes, in a very real sense, the economic captive of the manufacturer. The following examples should help educate the FTC about the continued need for these laws:

- Manufacturers routinely threaten dealers with probation and/or termination based on arbitrary performance numbers set by themselves. These performance standards are inconsistent and use old census data to arrive at the set figures, not taking into account consistent growth that outpaces the market because it is still not to the manufacturer's level of expectations.
- Dealers are frequently penalized for minor facility "issues" that are not up to manufacturer standards. Of course facilities are a major part of progress and the ability to succeed in the business, but the penalties and expectations from manufacturers get demanding and out of control. Manufacturers dictate the source of all materials rather than allowing dealers to source materials locally and sometimes at more affordable rates, including forced use of expensive architectural services when it is not even necessary. Failure on the part of the dealers to undertake these constant facility upgrades can result in penalties and loss of incentive bonuses in retaliation.

- Some manufacturers push dealers to place vehicles into their new rental vehicles lines and then force the dealers to count these vehicles in their retail sales numbers. Every dealer has a different number they are allowed to enter into rental service. This forces the dealer to falsify retail numbers in which incentives and bonuses are attached and rewarded to dealers.
- Manufacturers place an increasing burden on dealers through national ad campaigns that subtract all profitability the dealers may have requiring, for example: that the dealer offer a set lease payment on a specific vehicle that requires it to be priced at a loss in order for that payment to be achieved.
- Manufacturers also continue to transfer the burden of discounting the vehicles onto the dealer by continually lowering incentives while increasing the total number of vehicles a dealer is expected to sell. As a result, the manufacturers incentivize dealers who have an unfair advantage in generating the volume of sales required and penalize others.

Finally, this imbalance in bargaining power paves the way for manufacturers to act opportunistically toward their dealers. With the overarching control that they wield, manufacturers routinely take advantage of their dealers, seeking to transfer costs to them and punishing those who won't comply. And, as you can see, these instances are not from the distant past. Manufacturer overreaches continue to occur right up to today.

In light of these market realities, it is not hard to understand why state legislators in all 50 states have voted over and over to ensure that the system of retailing automobiles remains consumer friendly and fair. The FTC needs to look beyond the theoretical and understand the actual before reaching any conclusions about this important market. Finally, and of the utmost importance, the FTC also needs to appreciate and respect the fundamental role the states play in determining what level and type of regulation these markets need.

Thank you for your consideration of my views on this important matter.

Very truly yours,

Gay F. Williams
President

cc: KADA Executive Committee