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March 2, 2016

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

Re: Auto Distribution Workshop, Project No. P131202
Comments of the Tennessee Automotive Association

Dear Ladies and Gentlemen:

On behalf of the members of the Tennessee Automotive Association (TAA) and the 23,000 Tennessee men and women who earn their living in the retail and wholesale automotive industry in our state, I respectfully submit these comments relative to the January workshop on auto distribution held in Washington, DC on January 19, 2016. My name is Roberts V. Weaver, Jr. For the past thirty years, I have had the privilege to serve as President of the Tennessee Automotive Association. As such, I have represented the interests of Tennessee's franchised and independent motor vehicle dealers and related industries before the Tennessee General Assembly as well as state governmental agencies. In that capacity, I have had a keen vantage point to observe the motor vehicle industry in our state.

TAA commends the Federal Trade Commission and its efforts to review the retail auto distribution system in the United States for the purpose of ensuring that the system is efficient, maximizes consumer protection and fully addresses the needs of today's automobile consumers. From the comments of the various panelists representing dealers during the January 19th workshop, it is clear that the current system of automobile distribution utilizing independent dealers in fierce competition with one another operates in a manner that provides the highest levels of customer service, price competition, and consumer protection.

A significant portion of the January workshop focused on automobile distribution and the franchise laws that Tennessee and 49 other states have enacted to regulate certain aspects of the relationship between manufacturers, distributors and independent business people who have been appointed franchised motor vehicle dealers. While anticipating a balanced, thoughtful, fact based examination of an extremely important industry, I was truthfully disappointed the workshop showcased several speakers who had clearly made up their minds about the laws that have helped serve the public interest for many years.

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While persons representing the dealers' viewpoints were represented on several panels, it was obvious that the other speakers chosen 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. My experience over the last thirty years disagrees. Just as we learned through the Congressional and public discussions leading up to and during the Great Recession, the workshop presenters evidenced little understanding of, or appreciation for, how the retail automotive business actually operates. Therefore, their comments did a real disservice to the franchised dealers in my state, their employees and, most important, our valued customers.

In my mind, there is one underlying truth . . . 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. Tennessee's law was enacted in 1955.

First and foremost, franchised new car and truck dealers make the auto retail market intensely competitive, which benefits both consumers and manufacturers.

The automotive retail market is intensely competitive. Today, there are more than 16,000 independent, franchised new-car dealers across America, all of whom compete fiercely with one another for the sale, service and financing of new cars and trucks to consumers.

As a result, consumers have extensive choices, both among different brands and, more importantly, among different, independent dealers of the same brand. This vast array of choices puts downward pressure on new-car prices, which is why new vehicles are usually sold below the MSRP, and why the retail margin on new vehicles is exceedingly low compared to other retail sectors.

Manufacturers benefit with a no or low cost retail distribution system for their products. Local, independent dealers have spent more than \$200 million on retail infrastructure and its low margin profits, leaving manufacturers free to focus on design, engineering and marketing their vehicles. Virtually every manufacturer supports the franchised dealer system.

Secondly, I would ask FTC staff to consider fact-based evidence demonstrating the competitive nature of the franchised dealer network saves consumers money.

A 2015 analysis of hundreds of thousands of car sales transactions by the Phoenix Center for Advanced Legal & Economic Public Policy Studies showed that having multiple same-brand dealers (intra-brand competition) competing in close proximity produced significant price reductions for consumer – often in the hundreds of dollars per sale. For example, having multiple independent dealers competing within a 30-mile radius lowered the price of a new Honda Accord by about \$500.

The Phoenix Center analysis and its findings have not been challenged or rebutted in the public sphere. Yet even as the FTC's workshop sought to investigate "the advantages and disadvantages to manufacturers, dealers, and consumers of the existing system of motor vehicle dealer franchising," the authors of the Phoenix Center study were not asked to participate. I would respectfully ask their workproduct to be considered.

In my experience, franchise 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.

Nashville attorney James Cameron has represented automobile, truck and motorcycle dealers in Tennessee and other states for the past forty years. From personal experience, I can vouch for his veracity. He has previously submitted Comments on this matter. In pertinent part Mr. Cameron filed, "for anyone to say that the relationship between automotive and manufacturers and distributors with their dealers is fair or balanced, is to express a lack of understanding of what actually transpires between manufacturers and dealers on a daily basis."

"The point is that a dealer and his family have everything at risk every day the doors are opened for business. The dealer is at the mercy of the manufacturer to build and engineer vehicles the public wants to buy and at a competitive price. The manufacturer sells its vehicle to a dealer the minute it leaves the factory, and it becomes the dealer's problem to then find customers, take care of those customers and protect those customers in the face of enormous safety recalls. Our Tennessee statute proscribes approximately 15 things a manufacturer cannot do to a dealer without involving the jurisdiction of the Motor Vehicle Commission. Each of those items is in our statute because at one time or another some manufacturer has acted unilaterally to affect a dealer by those actions. The Tennessee Licensing statute ("the Act") has been reviewed for constitutionality by both Tennessee Supreme Court and by the United States Supreme Court and has been upheld by each of those Courts. The Tennessee Supreme Court in the *Capitol Chevrolet* case made a specific finding that one of the purposes of the Act was to create a level playing field for both dealers and manufacturers. Without the limited protection afforded by the Tennessee law, dealers would be at much more significant risk, the value of dealerships would plummet, and the public would be ill served." I concur without reservation.

Third, FTC staff are urged to focus on the market and public-policy justifications for franchise laws.

Laws exist in every state governing the retailing of new cars and trucks to consumers, and these laws are responsible for the large numbers of independent franchised new motor vehicle dealers throughout the country. As stated above, these laws create competition that lowers prices, create extra accountability when warranty and recall issues arise, and promote local ownership of key businesses in local communities that create living wage jobs.

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While beneficial to consumers, these laws are also necessary to correct the imbalance between manufacturers and dealers in their contracts. I think it important to remember federal antitrust laws prohibit dealers from freely banding together to negotiate their contracts with manufacturers. Franchise agreements are not negotiated . . . many times they are "take it or leave it" propositions. Franchise laws most often provide for an impartial administrative tribunal to decide disputes and to prevent abusive practices.

The only "evidence" that a direct-sales model would benefit consumers is based on a flawed or misapplied (or both) understanding of the automotive retail market.

There is no evidence that vertical integration in retailing, let alone automotive retailing, would provide any benefits to consumers.

In fact, the economic analyses presented by the FTC to date can only identify a handful of industries where there is a clear benefit to vertical integration: 1) bauxite production and aluminum smelting; 2) coal mining and coal fired power plants; and 3) the airline and truck transportation/logistics industries. There are simply no examples that apply to the general retail sector, let alone to automotive retailing in particular, which is why, I suspect, none were presented at the workshops in January.

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 motor vehicles remains consumer friendly and fair. I would strongly encourage the FTC to look beyond the theoretical and understand the actual before reaching any conclusions about this important market. Our members would implore the FTC to appreciate and respect the fundamental role the states play in determining what level and type of regulation these markets need.

One final observation . . . the Tennessee statute provides a level-playing field not an unfair advantage . . . for either side. In my experience, both manufacturers/distributors and dealers have prevailed about half the time in contested cases brought before the chief administrative agency.

In summary, the Tennessee Automotive Association strongly supports the Tennessee motor vehicle franchise law and the efforts of the Tennessee General Assembly to regularly review the law to maximize the numerous benefits which this law provides to Tennessee consumers. TAA encourages the FTC to take a reasoned approach in assessing the information presented at the workshop and to reject what we believe to be erroneous arguments of those that would completely dismantle a system of vehicle distribution that has worked so well to efficiently protect and serve consumers throughout the nation.

Thank you in advance for your every favorable consideration.

Respectfully submitted,


Roberts V. Weaver, Jr.
President