LANE GORMAN TRUBITT PLLC
Accountants & Advisors

My name is Collin Kanelakos and I am the partner in charge of Lane Gorman Trubitt's dealer services niche. We are a 100 person firm founded in 1950 based in Dallas, Texas servicing a wide array of industries, but with a concentration in both franchised car/truck dealers as well as heavy duty truck, trailer and motorcycle dealerships. We also have a concentration in independent dealerships including buy-here-pay-here dealerships and their related finance companies and sub-prime finance companies. We are actively involved with dealership associations in Texas and nationally including Texas Automobile Dealers Association, as the endorsed CPA firm and actively involved in Auto Team America, a group of CPA firms with concentrations in working with dealerships. We work with around 300 dealerships with a concentration in Texas but our dealerships are located throughout the United States.

We are writing with reference to the workshop that the FTC conducted on January 19, 2016 inquiring into the franchise laws that regulate auto retailing and the relationships between the dealers and the vehicle manufacturers in all 50 states. It is our understanding that, at that workshop, a number of the speakers that the FTC invited argued that the economic relationship between motor vehicle manufacturers and their dealers was increasingly balanced, that dealers had grown in stature and size to the point that they had sufficient power in the marketplace to protect themselves, and that, as a result, any manufacturer over-reach was a thing of the past. Based upon these assertions, these speakers argued that the state franchise laws were outdated and unnecessary.

Unfortunately, these assertions do not reflect the realities of this marketplace, especially for the single point to small sized dealership group (5 to 25 dealership locations) which is our firm's concentration. Based upon the experiences I have gained from my practice, I can attest to the fact that auto dealers are generally not in a position to effectively negotiate their relationships with their manufacturers. Simply put, the manufacturers routinely retain far too much control over the dealers for this to occur. Further, the manufacturer is inherently involved in dealership operations on a day to day basis with significant control.

This can be seen in a number of ways.

- The owners of many smaller dealerships have the majority of their net worth invested in their dealership or dealerships. Dealership growth (organic) and growth through acquisitions require significant capital, which can lead to increased leverage of already concentrated dealer assets into the operation of the business. As a result, dealers are hesitant to partake in a battle against the manufacturer who is imperative to the preservation of their net worth.

- Acquisition opportunities – The manufacturers have the right of first refusal for acquisitions whereby qualified dealers find themselves removed from an acquisition with a manufacturer preferred dealer being subbed into the buy-sell.

- Succession planning and minority ownership approval process – The manufacturer has control over the transfer of the dealership from the current dealer to another family member or in bringing in key members of management into ownership, even when such parties are qualified.

- Open point process – Often new franchise points are opened in growing areas or near dealerships who the manufacturer deems underperforming based on the manufacturer's market data. These open points have the immediate effect of drawing existing sales and especially service customers and can reduce the value and profitability of the existing dealerships.

- Base vehicle allocation – Dealerships are constantly required to take non-desired models and colors which management knows will not be a good seller in order to obtain desired models for their market and customers. (This is not a market/demand based ordering system, rather a manufacturer opinion based system)

- Special allocations of non-base allocation inventory – Most manufacturers have non-allocated vehicles which their market managers or other factory representative have control over which of his/her dealers is allocated.

- Market area measurements – Often market areas and target volume requirements are not inclusive of natural obstructions like rivers and un-natural traffic drivers like freeways.

- Facility image upgrade requirements – The manufacturer has built upgrade provision requirements into their dealer agreements. While this provision has to be accepted, the dealer is really not in the driver's seat in their ability to negotiate, to remove or modify these canned provisions from these agreements. As a result, the dealership will routinely be required to upgrade to the latest and greatest vision requirement of the manufacturer. This can be as general as controlling the facing of the dealership (view from the road) to as controlled as the type of tile or the approved vendor (not vendors) the dealer can use for this required upgrade.

- Special tools and other service equipment – dealerships are required to purchase custom tools at non-negotiated prices from the manufacturer. This can extend into service equipment as well as dealership signs.

- Warranty charge-backs – manufacturers have the say on what is accepted and what is rejected for customer warranty repairs with the burden of proof after the chargeback on the dealer.

- Warranty labor rates and parts markup – while this area has been getting better, historically the manufacturer had control of approved labor rates and parts markups for dealership repairs to customer vehicles.

Whatever the outcome of this workshop and succeeding meetings, it should be based on the actual realities of the market and not the speculation of outsiders who do not live it. We trust that the information provided here – from people whose jobs involve them working in that market every day of the week – will be of assistance to the FTC.

Thank you for your consideration of our comments.

Collin Kanelakos