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February 27, 2016

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)
Washington, DC 20580

RE: Comments regarding Auto Distribution Workshop, Project No. P131202workshop on state automotive distribution regulation

Dear Commission Members:

My name is Michael Mader, and I am a partner with Baker Tilly Virchow Krause, LLP which is a nationally recognized public accounting firm. I have been involved with the automotive dealership industry for almost 24 years working both inside retail dealership operations in various capacities for eight years prior to serving retail automotive dealerships for almost sixteen years as an industry advisor in public accounting. I am often called upon to serve as an expert witness on behalf of automobile dealerships across the country in disputes with their franchising manufacturers. These disputes have included franchise terminations, changes in dealership ownership and management and additions of other franchises. As part of our firm's accounting practice, we provide significant services to franchised new automobile dealers. Our practice represents over 500 dealerships across the United States.

Please include the following comments in the record for the workshop on state automobile distribution regulation conducted by the Federal Trade Commission on January 19, 2016. I did not personally attend the January 19 workshop but have viewed the video of the workshop which is available on line. The workshop included a number of speakers, invited by the FTC, who argued that the economic relationship between motor vehicle manufacturers and their dealer body has become increasingly balanced over the years and that dealers have grown in stature and size to the point that they have sufficient power to negotiate and protect themselves in the marketplace and as a result, the speakers argued that the state franchise laws are antiquated and no longer needed.

Based upon the experiences we have gained from our practice, these concerns do not reflect what we see in the marketplace and do not reflect reasonableness related to size of the current automotive retail dealership as compared to the size of the manufacturers. As of December 31, 2015, there were 18,087 dealership rooftops in the United States[1]. The top 100 MEGA dealers[2] in the country make up only 15% of the total dealership body within the United States and the top 10 MEGA dealers make up only 7% of the total dealership body. The MEGA dealers are required to sign framework agreements with the manufacturers which allow them to operate a specified number of same manufacture dealerships. This is to prevent the dealer from becoming the size in which it could have the ability to negatively influence the manufacturer in its decision making process.

[1] Urban Science: 2015 year end Automotive Franchise Activity Report
[2] WardsAuto Mega Dealer 100

Throughout our practice, we have seen many instances where the manufacture has used their power and influence to control a dealer and its operations. One such instance involves the dealer's ability to sell or acquire a dealership. Most manufacturers have the right to approve a dealer before it can be sold or purchased and this limits the ability of a current dealer to either reduce or increase its size. The manufacture also has the right to deny transfer of ownership to the next of kin. We have seen where the manufacturer has essentially forced a dealer to sell their operation as the manufacturer would not allow gifting to the dealer's children. Dealers are reluctant to stand up to the manufacturer for fear of various audits the manufacturer may impose on the dealer which takes money and resources away from the daily operations of the dealership to work through these audits. The dealers often times do not have the financial resources to hire the appropriate legal counsel to initiate action against the manufacturer. They also are reluctant to stand up to the manufacturer because they have a substantial amount of their personal wealth tied up in the dealership and the ability of the manufacturer to pull the franchise. State franchise laws protect dealerships from such abuse on behalf of the manufacturer.

We do not see this level of inherent control within the business relationships of our other clients. The economic power that the manufacturers wield over the dealers allows for great opportunism on behalf of the manufacturer. Inherently, our dealers are forced to live within an involuntary cost structure with restrictions on the ability to increase prices. The manufacturers set the retail (MSRP) pricing of their new vehicles and consistently reduce the margins which the dealers are able to obtain by also increasing the dealer cost of the vehicle. We see the manufacturers' ability to use its economic power in other ways as well, such as:

- Ability to directly take money from the dealership through the "open account"
- Pressure to take the manufacturers' excess production
- Requirement by the manufacturers' to take over produce slower moving inventory in order to get popular models of vehicles. As an example, dealer is required to take 4 of model X which was overproduced in order to get one model Y which is selling well
- Requirements of dealer to use OEM vendors which are often less competitive than local vendors
- Requirements to upgrade facilities
- Requirement to use specific materials and products in the facility upgrades that are not desirable in the local marketplace

These are only a few of the many ways we have seen the manufacturer influence a dealer's operations and decision making because of their significant economic power relative to the dealer.

The state franchise laws that have evolved over time are due to the positions and actions taken by the manufacturers' in the past against their dealer body. These laws have not been established to hurt the manufacturer, but to protect the dealer from the manufacturer, and this protection is still needed today.

As an observer of the workshop, it appeared that the FTC has a bias against the state automobile franchise laws which was demonstrated by the imbalance of the panels and selection of keynote speakers in favor of the manufacturers.

As a federal agency, the FTC should support, rather than oppose, state regulation of automobile distribution. Whatever the outcome, the FTC's decision should be based on the actual realities of the market and not the theoretical speculation of economists, academics and others who have never actually worked in the industry.

I hope that the information provided here will help you to make an informed and unbiased decision. These comments are from people who work in the automotive market every day.

Thank you for your consideration of our comments.

Sincerely,

BAKER TILLY VIRCHOW KRAUSE, LLP

A. Michael Mader, CPA, CFE, Partner