March 4, 2016

To Whom It May Concern:

My name is Lou Vitantonio, Jr. and I am President of the Greater Cleveland Automobile Dealers Association, representing over 260 franchised motor vehicle dealers, including new-car, truck, motorcycle and RV dealers in a 21-county region of northern Ohio.

I am writing to express my frustration over much of what I heard presented at the workshop conducted by the FTC on January 19, 2016. This workshop focused on automobile distribution and the franchise laws that my state and 49 other states have enacted to regulate certain aspects of the relationship between manufacturers and independent franchised motor vehicle dealers.

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. 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 and the existence of franchised dealers benefit consumers in a number of ways, including the following:

- They require motor vehicle dealers and their salespersons to be licensed, and thus accountable to a regulatory agency;
- Dealers by law are required to conduct business in a licensed, inspected facility that must be deemed adequate for both sales and service transactions;
- Dealers often act as advocates on behalf of consumers with the manufacturer over a variety of potential disputes involving the products;
- The mere presence of dealers competing against both like-franchised dealers and those selling other makes promotes competitive pricing for consumers;
- Dealers provide immediate access to inventory and later to routine maintenance and fulfillment of the factory's obligation for warranty and recall repairs;
- Dealers provide consumers the opportunity to sell their trade vehicles into a liquid market for used cars and trucks, and avoid the hassle of selling the vehicles on their own;
- Dealers offer consumers the ability to obtain competitively priced financing consistent with their budget and credit standing; and
- Dealers are actively involved in their local communities, supporting charities and sponsoring local clubs and organizations, while fueling the local economic engine by providing well- paying, competitive jobs, that provide their employees with health benefits, insurance, professional development, and training.

The current imbalance in bargaining power between manufacturers and dealers allows manufacturers to routinely take advantage of their dealers, seeking to transfer costs to them and punishing those who won't comply. Examples include:

- Manufacturers retaliating against dealers who have questioned factory practices, such as requiring dealers report cars as sold that actually have not yet been retailed to a consumer (so the manufacturer can report inflated sales figures). In at least one instance where a dealer pushed back against this practice, the dealer was forced to defend a retaliatory service audit assessing several hundred thousand dollars in penalties;

- Limiting the amount or type of vehicles distributed to dealers who are not "in good favor" with the manufacturers, thereby limiting those dealers' ability to profit and meet manufacturer's randomly imposed sales goals;
- Each manufacturer has its own formula to determine how many like-franchised dealers are sustainable in a certain geographic region or Area of Responsibility (AOR). Many of these AORs are overlapping and dealers are measured on their sales effectiveness in the particular AOR. Sales effectiveness is measured by the amount of sales compared to a state average. The issue here, the state average does not take into consideration geographic conditions of an area, like a manufacturing plant. For example a Nissan dealers sales effectiveness in an area were Chevrolet vehicles are manufactured and sold to employees of the factory..
- Manufacturer issued termination notices or threats based on the dealer failing to meet sales requirements due to a revised AOR. If the dealer were graded on the recent, previous AOR, the dealer would be meeting his sales requirements. However, since the dealer's AOR was revised in the last few years, now the dealer's sales performance is not matching the sales required by the manufacturer. Again, each manufacturer creates their AOR separately and does not take into consideration local factors effecting sales in a particular area;
- Manufacturers unreasonably require dealers to upgrade or relocate their sales and service facilities at great expense to the dealers. Some examples include making dealers upgrade facilities for lines that are soon to be eliminated by the manufacturer (examples include Pontiac and Oldsmobile), or forcing separate facilities (and therefore greater dealer costs) for under-producing brands, and/or forcing dealers to maintain separate facilities for more than one franchise at a location;
- Manufacturers will justify requiring new or upgraded facilities by arguing that they subsidize the costs of such upgrades, but then require the dealer to use manufacturer-provided vendors, suppliers, supplies, fixtures, etc. thereby preventing the dealer from obtaining competitive quotes on such costs;
- Prohibiting dealer access to new, popular models of vehicles unless the dealer is willing to spend a large sum of money for "training", diagnostic computer equipment, "special" tools and equipment.

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,

Louis A. Vitantonio, Jr.

President