



Joe Fisher, Chairman

Bobbi Sparrow, President

4701 N. 24th St., Suite B-3 (85016) • P.O. Box 32717 (85064-2717) • Phoenix, Arizona

To Whom It May Concern:

I am the President of the Arizona Automobile Dealers' Association ("AADA") and have held that position for the last eleven (11) years. Prior to that, I was the main lobbyist for AADA for approximately ten (10) additional years. All in all, I have represented the interests of Arizona's franchised new motor vehicle dealers before the state legislature, governmental agencies, local governments, and the public at large for over twenty (20) years. I have also been deeply involved in the national organization for Automotive Trade Executives. These positions have given me a very thorough understanding of the retail automotive industry in not only Arizona, but across the country.

I am deeply concerned regarding the substance of the workshop conducted by the FTC on January 19, 2016. This workshop focused on automobile distribution and the franchise laws that have existed in my state and 49 other states to regulate certain aspects of the relationship between and, candidly, to level the playing field between, manufacturers and independent franchised motor vehicle dealers. My great concern is based upon the clear appearance that 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 my state, 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. As we have seen on more than one occasion in recent years, franchised dealers are often the last resort for consumers when an automobile manufacturer elects, or is forced to, go out of business. One need not look further than examples such as Fisker, Suzuki and others to see the potential harm which could be suffered by consumers without strong independent dealers in their communities. When these manufacturers ceased operations, it was the local dealers who were there for the consumers who had purchased these vehicles prior to the manufacturers' cessation of operations. Had it not been for the local dealers, these consumers would not have had anywhere to turn for warranty repairs, recalls, etc . . . They would have been left with no place to turn. Certainly, the FTC cannot condone such a situation.

Additionally, many times the local franchised dealer is the consumer's sole advocate when it comes to mechanical issues with vehicles. I could fill many pages with specific examples of situations where a consumer purchases a new vehicle, which, for most consumers, is the largest single purchase they will ever make outside of their personal residence, and encounters a mechanical issue which cannot be easily identified or resolved by the dealer. Often times, the dealer is forced to work through many levels at the manufacturer level to get to the bottom of such a problem. This often involves the dealer and the manufacturer working together to identify and cure the problem. Without the dealer's dedication and involvement, the consumer would have neither the knowledge nor the time to work through the complex system with the manufacturer. Consumers need local franchised dealers. It is as simple as that. Any assertion to the contrary fails to recognize reality.

In addition to the obvious consumer protection benefits of these laws, these laws drive efficiency by ensuring that a stable and level playing field exists in automobile 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. This power is demonstrated on a daily basis.

Independent franchised dealers invest millions of dollars to support a particular franchise through the construction of facilities, the advertising of the manufacturer's product and the establishment of the brand in the local community, all of which takes a substantial investment. In doing so, however, the dealer becomes, in a very real sense, the economic captive of the manufacturer.

Unlike the apparent belief of many of the workshop's panel, not all independent franchised dealers are large, publically traded companies. To the contrary, in my state, like many others, there are many dealers, in both the larger municipalities as well as the rural areas, who are family owned business, some of which have been continued on for multiple generations. These dealers invest everything they have in these dealerships. In return, they are routinely told by manufacturers to make certain facility improvements in order to satisfy the manufacturer's ever-changing image requirements. Often times, these facility improvement demands involve millions of dollars of improvements to facilities that are perfectly suited for their intended purpose. Sometimes, they involve demands such as changing the color of the tile floors in the service department, when there is absolutely nothing wrong with the existing floor other than the shade of it is slightly off the manufacturer's current desires.

Sometimes these facility improvement demands border on the absurd. A local dealer in our state was recently told by its manufacturer that is needed to redesign it's showroom to get rid of any wall that was not perpendicular. This was in a building that was approximately ten years old, had been meticulously maintained and had been previously approved by the manufacturer. Now, the manufacturer decided that all walls needed to be at 90 degree angles and that the dealer needed to tear down and reconstruct the walls in the showroom. How this demand would help the dealer sell more cars was (and still is) beyond comprehension. Nevertheless, the manufacturer made the demand.

Another example includes a dealer with less than a five year old building that had rock on the front of it to blend into the surrounding trees and neighborhood which building was approved by the manufacturer. Less than five years after approving the design of the building, a new image program was demanded for a facility upgrade and the manufacturer demanded that the dealer tear off the front of his building and put up a steel front to look like all the other dealers. This was not only extremely expensive but didn't fit the surrounding neighborhood at all.

Small independent dealers have been told to build facilities in small towns which would rival counterparts in large metropolitan areas despite the dealer's allocation of vehicles from the manufacturer is only a fraction of the large metropolitan dealer's allocation.

The imbalance in bargaining power and the economic advantage the manufacturer holds over its dealers 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. Unfortunately, examples of this imbalance of power and of manufacturers taking full advantage of it are not hard to come by. If dealers question or resist such demands, they are often met with threats of termination, reduced allocation of vehicles, loss of incentives or other economic sanctions or increased warranty and incentive audits. Too often, the manufacturers approach the dealer / manufacturer relationship as if it is a game played on the manufacturer's field, with the manufacturer's ball and under the manufacturer's rules.

For example, in our State, we have a dealer in a small community that is into the second generation of ownership that desires to pass the dealership to his son who works in the dealership. This is a right, subject to certain qualifications, that is protected by our franchise statute. Nevertheless, the manufacturer is refusing to approve the transfer to the dealer's son for the sole reason that the manufacturer has unilaterally elected not to stay in that particular market. As a result, this family has invested millions of dollars into the market and the dealership over two generations and stands to lose everything simply because the manufacturer has changed its mind. Again, this is something that should not be condoned.

Manufacturers have historically forced excess inventory of non-selling vehicles, especially electric or alternative fuel vehicles, on dealers with threats of loss of incentives if such vehicles are not accepted into the dealers' inventories. These are not the only games manufacturers play with inventories. For example, in areas where large four-wheel trucks are needed because of weather, manufacturers do not provide it dealers with sufficient allocations of such vehicles unless the dealers agree to take certain actions requested or required by the manufacturers.

Sales performance is another area where the heavy hand of the manufacturer often appears. Under the guise of sales performance analysis, manufacturers threaten dealers with terminations for the sole reason of forcing a sale to get another dealer into the market area. In truth, the manufacturers establish complex

formulas to measure a dealer's "sales effectiveness". We have seen on more than one occasion where the manufacturer has changed the formula for determining "sales effectiveness" and overnight, the "sales effectiveness" of well-performing fell dramatically to the point that within a very short period of time, these dealers received notices of default from the manufacturer threatening to terminate the dealer's franchise if the dealer does not immediately improve its performance under the new, often times more complex, sales effectiveness formula. This tactic is often potentially devastating to the dealer because the cost and expense to defend against such heavy handed tactic is extremely time consuming, expensive and often involves third party expert testimony due to the complexity of the manufacturers' formulas.

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,


Bobbi Sparrow
President