

March 4, 2016

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

Dear Mr. Clark,

My name is Daniel P. Thompson and I am a Principal with Boyer & Ritter Certified Public Accountants and Consultants and current Chair of our Dealership Services Group which serves more than 200 dealerships in Pennsylvania and surrounding states.

Our firm is writing to comment on your recent workshop, *Auto Distribution: Current Issues & Future Trends*. Although the workshop covered a variety of topics our comments will be primarily focused on the relationship between the manufacturers and the dealers.

It was more than a little surprising to see that a number of the presenters indicated they believe that automotive manufacturers were not in a position to bring to bear economic leverage over the dealer body. Equally surprising was when the presenters went on to argue that state franchise laws had consequently outgrown their usefulness.

The current market capitalization of each of the major automotive manufacturers approximates \$50 billion dollars as compared to the largest public auto group, Auto Nation, Inc. that approximates \$5 billion dollars for ALL of the franchises it represents. Furthermore, Auto Nation, Inc. is not representative of the retail dealer network where a majority of the operators are still one or two point dealers. According to NADA statistics, the average net worth of a single point dealership in 2014 was \$4 million dollars. We find it difficult to comprehend how one could conclude that manufacturers are not in a position to exercise undue influence over the dealer body.

Even in today's environment, with state franchise laws in place, we often see situations where manufacturers *exploit* their influence over dealers because "they can". For example, they require the use of certain software vendors who often are not the choice of the dealer and often more expensive than competitors. They strongly encourage the use of the dealer inventory to be used as free loaner vehicles for service customers. Although often supported somewhat financially by the manufacturer, it is not without cost to the dealer. Two of the more common areas of influence are related to facilities and warranty reimbursement. .

The most significant and costly of these is the requirement the manufacturer puts on the dealer to continually operate from an image compliment facility. These requirements at times can be irrational. We have seen owners construct new dealerships in specific compliance with facility requirements and at great expense to the dealer. Often, within only a few years, the manufacturer will require changes, sometimes cosmetic, where the investment is at least hundreds of thousands of dollars and can often exceed a million dollars. These manufacturers stipulate that failure to comply with facility requirements, whether needed or not, can result in not qualifying for specific manufacturer programs. Often, failure to qualify for programs may make the dealer non-competitive. In some instances we have seen the manufacturer withhold renewal of the dealer Sales and Service agreement for non-compliance.

A second significant area where the manufacturer can exert undo financial pressure on the dealer is through the warranty repair process. The manufacturer not only negotiates an hourly rate to be paid to the dealer but then dictates the specific number of hours they will pay for any given repair regardless of the actual time to complete the repair. In many cases the manufacturer has reduced time allowances and increased the complexity of process and required documentation to receive the appropriate warranty reimbursement. Consequently, the dealer pays for a portion of the warranty for a repair that may be the result of a defective vehicle produced by the manufacturer.

Considering these examples of where the manufacturer currently exerts significant influence over the current dealers, we find ourselves very concerned for our dealership clients when we imagine the industry without the protections of the state franchise laws.

Without state franchise laws the investment our dealer clients have made in their dealerships will be greatly diminished. A dealership requires a significant amount of capital to be invested for real estate, buildings, service equipment, vehicle and parts inventory and of course working capital. Without the franchise laws the dealer may be unprotected from the manufacturer opening a new dealership point within close proximity to the existing dealership. Considering the razor thin margins (NADA average 2.2%) without the geographical territory restrictions found in franchise laws one may question who would make such a capital investment.

Our firm has represented dealerships for more than 60 years and I personally have had the good fortune to work with these entrepreneurs for more than 30 of them. In that time dealerships have weathered multiple recessions, benefitted from record sales, and watched a number of manufacturers come and go. Through it all, the dealer retail network has continued to serve the American people while operating effectively and efficiently in large part because of the franchise laws that have been in effect during that time.

While I appreciate the theoretical insight of both academics and economists, I would hope that the information provided here will be seriously considered as you evaluate the current state franchise system and its critical role in the automotive distribution system.

Respectfully submitted,

Daniel P. Thompson, CPA  
Chair, Boyer & Ritter Dealership Services Group