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March 4, 2016

My name is Terry Burns. For nearly 15 years, I have had the honor and privilege to serve as the Executive Vice President of the Michigan Automobile Dealers Association. During that time, I have represented the interests of Michigan's franchised new motor vehicle dealers before the state legislature, local governments, and the public at large. In that capacity, I have gained a comprehensive knowledge about how the motor vehicle industry operates in my state.

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

While persons representing the dealers' viewpoints were 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. These speakers seemed to believe 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. These comments did a true disservice to the franchised dealers in my state, their employees and, most importantly, to the public at large.

The public policy grounds that 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 I believe you are aware, there have been a number of safety recalls involving motor vehicles. The safety recalls often require an immediate repair or replacement of a component of a motor vehicle. More often than not, manufacturers either do not have an immediate solution to address the problem, nor can they quickly manufacturer replacement component parts for the vehicle. Customers want to talk to someone, a real person about this issue, not just an 800-number. A local dealer provides that service. Manufacturers do not have a fleet of vehicles available for customers to use while they wait for a repair. Dealers, however, are in a position to address the consumers' needs, as they have a suitable inventory of vehicles to provide consumers with transportation while the vehicle is being repaired. Also, many times the recalled vehicles have to be stored and dealerships, unlike manufacturers, have the necessary facilities and real estate available to store the recalled vehicles pending the repairs.

It goes without saying that auto dealers are the face of the manufacturer in the local community. Dealers tend to be knowledgeable about local conditions based on their experience in the areas and provide useful market feedback to the manufacturer. All auto manufacturers depend heavily on their network of dealers to represent the manufacturer in the markets where the customers are located to address consumers' needs. The manufacturer is a nameless, faceless company that can easily just say no or not respond to a customer. The local dealer is a person who the customer can relate to, build a relationship with and see involved in the community.

The needs of customers are paramount when it comes to selling vehicles. Due to the fact that consumers purchase new motor vehicles infrequently they may be anxious about choosing the wrong vehicle or taking on a large financial commitment. Franchised auto dealers are the consumers' advocate to the manufacturer, the finance sources and the state, while providing consumers with the ability to:

(1) **Find competitive financing within their budget and credit ability.** Dealers have contractual relationships with dozens of lenders. These lenders compete with each other through the dealership, providing consumers with the best possible interest rates. This eliminates the need for consumers to visit banks on their own, consuming valuable time. It is unlikely that manufacturers will secure the necessary expertise or hire employees who will provide similar assistance. What is more likely to happen is that manufacturers will simply steer consumers to their own captive finance arms without considering what is in the consumer's best interest. Without dealers there is no guarantee of a choice for consumers when it comes to financing their purchase.

(2) **Sell their trade-in vehicles into a ready market for used cars and trucks.** Manufacturers are not in a position to estimate the value of trade-ins from competing manufacturers, nor are they likely to provide credible trade-in value. (Can one truly believe that Ford would pay premium for the trade-in of a Chevrolet pick-up truck?) This, again, would leave consumers on their own to find outlets to sell their trade-ins.

(3) **Obtain worry-free registration and titling services**. In many states, Michigan included, consumers turn to the dealership to secure titles and registrations to their vehicles. Dealers also provide assistance in securing out of state titles, lost titles and transferring titles to family members. Again, one cannot expect manufacturers, to delve into the minutia of registration and titling of vehicles on the scale necessary to service consumers as it is too far removed from their core business.

(4) **Have immediate access to inventory, maintenance and repairs**. This includes access to inventory of parts necessary to repair all makes and models. This is supplemented by collision repair centers operated by dealers. It is highly unlikely that a manufacturer or other third-party would make the necessary investment I order to respond to all of the needs of the customer.

(5) **Access competitive pricing – dealers are the competition.** This is one of the most competitive market places in our society and is pits dealer against dealer. The winner: the customer.

What is more, these laws drive efficiency by ensuring that a stable and level playing field exists in auto retailing. The speakers at the January 19th 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. Once a dealer has invested millions of dollars to support a particular franchise, the dealer must protect that investment and play ball with the manufacturer, sometimes to their own detriment.

All franchise agreements involve an exchange of promises to act in a way that meets a mutual interest. As both parties, left to their own device, would maximize their interest at the expense of the other, they must negotiate an agreement that governs their behavior. However, manufacturers do not negotiate when it comes to their franchise agreement. These "take it or leave agreements" are draconian and are always written in favor of the manufacturer. More often than not, a dispute will arise when one party (usually the manufacturer) believes that the other party has not fulfilled their end of the agreement.

Often disputes arise when the manufacturer does not provide enough product to sell, or when the manufacturer feels the dealer is not selling enough vehicles. Manufacturers have also been known to place unreasonable criteria on a dealer in an effort to replace that dealer in the market area. A dispute often leads the manufacturer to threaten to terminate the dealer's franchise agreement. Indeed, the power to terminate a dealer is the biggest hammer in the tool box of the manufacturer.

The franchise laws level the playing field between the dealer and the one-sided agreement championed by the manufacturer by:

(1) Limiting the manufacturer's ability to simply place another dealership next door to another dealer, thereby negatively impacting the value of the investment the dealer has in his own dealership. If this was allowed the manufacturer could then use the pricing of the product to drive the original dealer out of business.

(2) Protecting dealers from having to undertake costly image and facility upgrades when it does not make financial sense or there is no expectation of any return on investment. Manufacturers have become rather obsessed with requiring dealers to continually upgrade their facilities to satisfy a certain image. This is true even when the dealers have made recent costly improvements to their facility to satisfy prior image requirements. It is not uncommon for a dealer to complete the building of a new facility to meet all the current standards of the manufacturer, only to find that two to three years later they have to update again to meet a new image or standards required by the manufacturer. A recent example is construction to enlarge a showroom to meet a new image standard, at a cost of $800,000.00 – $1,000,000.00 – just three years after the previous upgrade.

(3) Restricting the manufacturer's right to terminate a dealership for lack of sales without first taking into consideration unique market factors that impact a dealer's ability to sell vehicles. This is quite common, especially in a community with a large auto manufacturing presence.

An imbalance in bargaining power paves the way for manufacturers to act opportunistically toward their dealers. With the overarching control they wield, manufacturers routinely take advantage of their dealers, seeking to transfer costs to them and punishing those who will not comply. And, as you will see, these instances are not from the distant past. Manufacturer overreaches continue to occur today.

For example, in Michigan the domestic manufacturers are responsible for the bulk of the sales to consumers. This is due in large part to the fact that the domestic manufacturers have dozens of manufacturing facilities as well as their respective world headquarters here in Michigan. All the employees of these manufacturers, along with their family and friends, are entitled to some type of employee discount for the purchase of a vehicle, which makes selling vehicles from non-domestic manufactures very difficult. Most of the top volume dealers for domestic manufacturers are located in Michigan. Conversely, dealers who do not sell vehicles from the domestic manufacturers struggle with sales, which is reflected in their comparatively low sales volume.

Notwithstanding the foregoing, the non-domestic manufacturers assert an incredible amount of pressure on their dealers to sell in greater volumes or risk being terminated in the absence of sales. Non-domestic manufacturers have repeatedly tried to terminate their dealers as they do not see the influence of the domestic manufacturers as being an acceptable excuse for their lack of sales. However, without the franchise law requiring them to account for unique factors of a particular area that impact sales, these dealers all would have been terminated and no longer a part of the dealer body.

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. These legislators live, work and buy vehicles in their local area and see this dynamic played out every day. The FTC needs to look beyond the theoretical and understand the actual before reaching any conclusions about this important market. The FTC needs to understand and respect the fundamental role the states play in determining what level and type of regulation these markets need. Fact based examinations of industries are healthy. It is unfortunate that this workshop was not presented on that basis.

Thank you for your consideration of my views on this important matter.

Very truly yours,

Terry Burns