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Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: *FTC Workshop: Auto Distribution: Current Issues and Future Trends, Project No. P131202*

Dear Commissioners:

I served as a panelist at the January 19 workshop examining the distribution system in the motor vehicle industry. I have more than thirty years of experience representing motor vehicle manufacturers and distributors, acting as lead national and regional litigation counsel in numerous franchise matters. The workshop afforded several industry representatives and industry observers the opportunity fairly to present their views, and I believe the issues raised warrant continued scrutiny by the Federal Trade Commission. I write to correct misstatements by dealer representatives concerning principles of federalism and the constitutional authority of states to regulate the motor vehicle industry. In response to the question whether Congress should consider federal legislation (pursuant to the Constitution's Supremacy Clause) that preempts the patchwork of state laws, dealer representatives offered only one response. Peter Welch, the President of the National Automobile Dealers Association, answered the question by proclaiming that the Tenth Amendment to the U.S. Constitution reserves the regulation of motor vehicle distribution to the "exclusive province of the states." On the panel examining warranty reimbursement laws, James Appleton, President of the New Jersey Coalition of Automotive Retailers, also cited the Tenth Amendment when referring to state authority to regulate the manufacturer-dealer relationship.

I do not think that there is any basis to assert that the Tenth Amendment somehow prohibits federal legislation in this arena. Simply stated, the Tenth Amendment does not provide states with the exclusive authority to regulate the motor vehicle distribution system. To the contrary, legislation in this area began not with individual states, but with a federal statute, one of several federal laws that regulate the distribution and sale of motor vehicles. The Automobile Dealers' Day in Court Act, enacted by Congress in 1956 (15 U.S.C. § 1221, *et seq.*), specifically regulates the relationships of dealers and manufacturers. For decades, dealers around the country have pursued claims under this federal statute. I do not believe it has ever been challenged as an unconstitutional exercise of federal power. Nor would any such challenge have merit.

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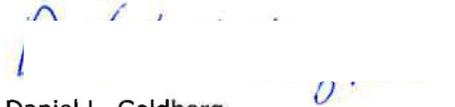
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The Constitution confers upon Congress the powers that are enumerated in Article I. One of those enumerated powers, the Commerce Clause (U.S. Const. art. I, § 8, cl. 3), authorizes Congress to regulate interstate commerce. There can be no serious question that the distribution of motor vehicles is part of interstate commerce and that Congress has the power to regulate the motor vehicle industry under the Commerce Clause. The Tenth Amendment merely reserves to the states "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States" Regulation of the motor vehicle industry may be a matter of coordinate state and federal concern (as are many areas of regulation), but it is not, under the Tenth Amendment, a concern that belongs exclusively of the states. The motor vehicle industry, which is critical to our national economy, suffers uniquely from a patchwork of state laws that, as every economist at the recent FTC Workshop pointed out, interfere with competition and are anti-consumer. The Tenth Amendment provides no impediment to federal legislation that replaces special interest state legislation with a restoration of the competitive marketplace in this industry.

I also urge the FTC to continue monitoring state legislative activity. Despite the breadth and depth of the existing state regulation of the manufacturer-dealer relationship, state legislatures continue to entertain a considerable volume of new bills at the behest of dealers and dealer associations that seek to modify or expand existing dealer protections. Any input the FTC provides will be invaluable to state legislators who are considering these bills.

Sincerely,



Daniel L. Goldberg

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