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Edith Ramirez, Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**RE: Comments to FTC Workshop on the Auto Distribution System**

Dear Chairwoman Ramirez,

I respectfully submit these comments, in response to the FTC’s January 19 workshop that I attended, on behalf of the Massachusetts State Automobile Dealers Association. Our Association represents the interests of 427 new-car and truck franchised dealerships in the Commonwealth of Massachusetts, whose economic footprint here, as the frontline retailers for over 25 vehicle manufacturers, is not insubstantial. Our dealers directly employ almost 25,000 men and women and play a considerable role in indirectly employing an equal number of individuals working for companies that externally support dealership operations. Economic activity at our franchised dealerships represents almost 20% of the Massachusetts retail economy. This economic activity generates hundreds of millions of dollars in sales taxes alone, in addition to corporate, payroll, vehicles excise, and property taxes, upon which state and municipal government has come to depend.

Firstly, I wish to express our appreciation to the Commission for conducting the January 19 workshop on the auto distribution system. It is our humble experience that, when dealing with legislators, the media, and the public, transparency is a vital component of educating those who do not possess a personal understanding of the franchise system and vehicle retailing other than when he or she may have made a personal purchase or lease. The workshop provided those who attended and watched via the Internet a flavor of the numerous issues entangled within the current system as well as the varied opinions parties possess regarding the dealer-manufacturer franchise relationship – a relationship, I may add, wedded into the statutory framework in each of our fifty states and proven in practice to enhance positively the customer’s vehicle buying experience.

The workshop came up short in two areas, however. In a situation in which many parties are provided an opportunity to expound on their vision of a matter, the level of discourse is perfunctory at best and lacks discussion in considerable detail. This was true on January 19. Perhaps the Commission can schedule follow-up workshops to drill down and place more meat on several of the topics. The workshop covered a football field-size of issues but only an inch or two worth of depth. Further, the Commission should have had at least one dealer speak that day on his or her frontline experience regarding hands-on retailing to the buying public and the dance which all dealers must navigate with their franchisor manufacturers if one is to be successful. Regulators and the viewing public cannot obtain the full flavor of the retail aspect of the auto distribution system through the expressed opinions of hired guns alone; having an actual franchised dealer or two on the panels, in our humble opinion, would have added considerable heft to the day’s proceedings. The workshop did an excellent job framing the issues but left to be desired a further enunciation of the details and nuances of the distribution issue. The Commission needs to get

beyond a theoretical presentation of the system amongst academics and travel into the field and see how the real world of the auto retail system works.

MSADA and our member dealers, obviously, are strong supporters of the auto franchise system. We would not be in the business if we were not. However, we are also zealous advocates of the need for a strong auto dealer-manufacturer franchise law in our state as well as in all states across the country. When the Massachusetts General Court originally wrote and enacted Chapter 93B in 1970, legislators intended to create a fair and level playing field on which dealers, distributors, and manufacturers could co-exist. The Legislature also wanted to give consumers a competitive marketplace that would protect them from the dominance of any single entity. The benefits of the current dealer franchise system are considerable. The franchise network promotes consumer competition and public safety, and instills confidence in the consumer that there will be someone there when help is needed.

Dealers depend on a strong franchise law for their survival. In practice, under the current dealer-manufacturer relationship, the manufacturers hold all the cards. The law is intended to promote some element of equity in the relationship between the multinational manufacturers with billions of dollars in corporate wealth and thousands of employees versus our independent Main Street small businessmen and women dealers who on average employ fifty individuals, usually at one or two stores each. The Chapter 93B franchise law exists to provide the dealer some element of protection and fallback in the negotiations and business practices with the manufacturers. Without a strong dealer franchise law, the current dealership model will not be able to properly serve the needs of the consumers as it has successfully done for decades.

No better example of the disparity in the manufacturer-dealer relationship exists than the experience of the GM and Chrysler bankruptcies several years ago. Every states' franchise law contains a provision on how to address underperforming dealers and the termination of such. The process can be time consuming and expensive, especially if the manufacturer is attempting to alter the dealer composition in a particular state or region. The bankruptcies, however, under the ruse that the dealerships cost manufacturers considerable money, served the purpose of eliminating irritant dealerships through a federally protected process that by-passed each states' termination laws. Here in Massachusetts we saw a number of well-established, successful, family-owned dealerships eliminated simply because the manufacturer considered them superfluous to their corporate family moving forward. Several dealerships ultimately were able to obtain their dealerships back under an arbitration law passed by Congress; for most, however, the damage, and closure, was irreparable and final. In the end, the TARP inspector general, after considerable investigation, reported to Congress that the manufacturers misled Congress when they said that the terminations were necessary to save them money; as the IG uncovered, the dealerships do not cost the manufacturers anything.

It seems that just about every day we hear from a dealer regarding some new manufacturer scheme that may not necessarily hold each franchised dealer in an equal light or some example of individual slight, including, but not limited to, the forcing of inventory or an inequitable allocation of vehicles; sales performance issues; unilateral alteration of areas of responsibility; unnecessary facility upgrades; training, computer, special tool and equipment purchase requirements (which, by the way, are dinged automatically out of the dealer's bank account); unfair incentive programs that improperly favor one dealer over another; and the improper alteration of dealers' duties and compensation for warranty work. Even while ignoring the legal firewall of a state's franchise law, a manufacturer often is perceived to be taunting the dealer with "What are you going to do about it?"

There is a pro-consumer side of the franchise law as well, which is missing in the equation when the topic is Tesla, a manufacturer that, for now, has opted for a non-dealer model to distribute and sell its vehicles. Our 427 franchised new vehicle dealerships provide incalculable competitive opportunities for

consumers that keeps prices competitive and low. Not only do our dealers compete for the consumers' dollars inter-brand (Ford dealer vs. Chrysler dealer vs. Toyota dealer, etc.), but they also compete against each other intra-brand (Ford dealer vs. Ford dealer, Nissan dealer vs. Nissan dealer, etc.), all to provide the best value for the astute consumer. What's better for the consumer – competition amongst 427 stores or a system of 25 manufacturer entities offering factory-dictated terms at set prices? As we see here in Massachusetts, one can purchase a \$80,000-\$125,000 car at one of the three Tesla stores, but one is not going to be able to play off one store against another to negotiate a better price – the price is the price, take it or leave. I don't compare this to the Apple store model Tesla executives like to cite. It is more like the McDonald's model where the price of a Big Mac is the same in downtown Boston, as it is in Worcester, as it is all across the Commonwealth – the price is what the price is. I fail to see the consumer benefit to that scheme.

All state governments, in effect, require the dealer to invest in brick-and-mortar facilities to ensure there is an independent franchised dealer available to car owners for the life of the vehicle, not just at the point of sale. Buying a car is not like buying any other product. When you have a problem with your iPad, for example, it affects only you. When you have a problem with your car, it affects you and the driving public. It's a matter of public safety. We always ask legislators and regulators to keep in mind the following points as this debate unfolds in our Commonwealth and elsewhere:

- It's up to the states to control how new vehicles are distributed, sold and serviced. States should decide who is licensed to sell cars to consumers. States have the right to license many important retail industries, from alcoholic beverages to eyewear. Here, the Massachusetts Legislature has affirmed a dealership system, anchored by store ownership by independent small businessmen and women and not the franchisor factories.
- For more than 100 years, automakers have contracted with franchised dealers to sell and service their vehicles *because it's the most efficient and cost effective option.*
- Ford and General Motors tried owning their own dealerships and failed. Factory stores do not deliver better customer service, and they do not reduce customer cost. Auto dealers' total investment in land, equipment, and facilities exceeds \$150 billion nationally. Without the franchise system, auto manufacturers would shoulder these expenses themselves.
- Most buyers value a combination of online service, personal service and physical locations over standalone web distribution. That's what franchised dealers provide every day.
- Consumers win when they are served by multiple retailers who *compete* for their business. (A Ford dealer's biggest competitor, for example, is usually the other Ford dealer down the street.)
- Franchised dealerships are vital American businesses that are at the heart of our economy, and are the backbone of our communities.

No more obvious benefit of the current dealer-manufacturer franchise system can be seen today than through the prism of the innumerable recalls manufacturers are experiencing for safety and non-safety reasons. Franchised dealers create accountability for consumers with warranties and safety recalls. When a customer has a warranty or recall issue, dealers are incentivized to act on behalf of the consumer; in effect, the dealer is incentivized to take the side of the consumer.

Finally, as it relates to this Tesla debate which your workshop attempted to cover, franchise laws do not stifle manufacturing or marketing innovation. Local franchised dealers sell thousands upon thousands of cars and trucks each year with new technology and spend roughly one-third of their own advertising budgets online. The auto retailing business is fiercely competitive, which drives innovation at every level. Dealers now sell cars over the Internet and are even able to market their customers in different states. Competition between dealers drives innovation in the sales and retail experience, while delivering lower prices and creating great deals for consumers.

Thank you for the opportunity to provide comments regarding the issues raised by the January 19 workshop. As we stated earlier, the Commission needs to expand its view of these issues beyond the theoretical and understand the situation as it exists in the realm of the actual before it can reach any proper conclusions about the auto distribution system, the retailing of motor vehicles, and the proper role of franchise laws in the dealer-manufacturer-consumer relationship. Should you wish to augment your proceedings with an additional review of the actual retailing of motor vehicles to the buying public, we offer our assistance in that endeavor, especially as it can be supplemented with a realistic discussion of the importance of the franchise system and its legal basis and framework in the Commonwealth of Massachusetts and elsewhere.

Sincerely,



Robert O'Koniewski, Esq.  
MSADA Executive Vice President