



March 4, 2016

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mr. Roach and Mr. Frost:

The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing manufacturers¹ and distributors of motorcycles, scooters, motorcycle/ATV parts and accessories and members of allied trades. The Specialty Vehicle Institute of America (SVIA) is the national nonprofit trade association which represents manufacturers and distributors of all-terrain vehicles in the United States. The Recreational Off-Highway Vehicle Association (ROHVA) is a national industry organization representing manufacturers and distributors of recreational off-highway vehicles, also known as side-by-sides. Together, these organizations represent what we herein refer to as the powersports industry which encompasses motorcycles and off-highway vehicles (OHVs).

We would first like to thank the Federal Trade Commission (FTC) for holding the January 19, 2016 workshop, *Auto Distribution: Current Issues and Future Trends*, as it addressed several issues pertaining to state dealer protection laws. Current dealer protection laws cover virtually every aspect of the relationship between manufacturers and dealers and preempt contractual agreements voluntarily entered into between the parties. We have many concerns with numerous provisions typical in dealer protection laws. However, we will limit the scope of these comments to public policy concerns, from a consumer cost and consumer choice perspective, associated with applying dealer protection laws crafted for the automobile industry to the powersports industry, as well as address dealer location and warranty reimbursement issues which were topics of the workshop.

**MIC/SVIA/ROHVA POSITION:
THE FTC SHOULD DISCOURAGE THE APPLICATION OF
AUTOMOBILE DEALER PROTECTION LAWS TO THE POWERSPORTS INDUSTRY**

Dealer protection laws are clearly crafted to address automobile dealer concerns, yet motorcycles and sometimes OHVs are included whether justified or not, making an already detrimental regulatory scheme even more inappropriate and problematic for the powersports industry which differs from the automotive industry in certain key ways.

As a result, even apart from any recommendations that the FTC may make regarding state regulation with respect to the automobile industry, we believe that the FTC should discourage states from applying the automobile dealer protection laws to the powersports industry.

THE AUTOMOBILE INDUSTRY AND THE POWERSPORTS INDUSTRY ARE DIFFERENT

Multi Brand Locations. One of the major differences between the two industries is that while automobile dealerships tend to focus on a single brand at a single location, it is far more common for powersports dealers to carry multiple brands of motorcycles and OHVs at a single location. As a result, while

¹ Please note while some powersports manufacturers are also distributors of powersports products to their dealers, not all powersports distributors are manufacturers. Dealer protection laws, however, typically apply to both manufacturers and distributors of powersports vehicles the same.

automobile dealers generally rely exclusively upon the practices and success of a single manufacturer for business, powersports dealers do not.

Required Investments. Powersports dealerships are also very different from automobile dealerships in terms of required investment. Unlike many automobile dealerships where many aspects of the facility are specified, powersports manufacturers are very flexible in working with prospective dealers in setting up their facilities. They typically don't have similar image standards and minimum facilities requirements are substantially less for powersports dealers. Automobile dealerships are housed in single-use facilities, specifically designed to be automobile dealerships and are often multi-million dollar operations occupying large unique showrooms, multi-acre display areas and service buildings housing special installed lift equipment and dedicated service bays. The vast majority of powersports dealerships are in multiple-use facilities, often basic storefront operations in strip malls and the like and very adaptable to many types of uses. They can easily be converted to any number of retail establishments if the dealership ceases to operate. Laws that for example, require a manufacturer to pay the dealer rental value of the facilities for a year or in some cases more, are unnecessary and only provide a windfall to a small group of dealers at the ultimate expense of the consumer.

Off-Highway Vehicle Inclusion. Complicating the regulatory landscape even more for the powersports industry is a more recent trend to attempt to include OHVs in equipment dealer protection laws or to enact stand-alone OHV dealer protection laws, approaches which pose additional obstacles, if not outright untenable positions for powersports manufacturers. Most OHV manufacturers are on-highway motorcycle manufacturers as well. On-highway motorcycles generally fall under the umbrella of the motor vehicle dealer protection laws, and creating a different structure for OHVs leads to conflicts between the two statutory frameworks. Trying to comply with the myriad laws regulating business is complicated enough already. Subjecting manufacturers and dealers to multiple disparate laws can become unworkable. Including OHVs in unnecessary and inappropriate laws again only serves to increase the cost of doing business and therefore the cost of OHVs to the consumer.

THE GENERAL CONCERNS WITH THE DEALER PROTECTION LAWS

With respect to dealer protection laws generally, we believe that the FTC should discourage states from enacting more onerous motor vehicle dealer protection laws.

The dealer protection laws prevent manufacturers and dealers from addressing evolving market environments. It is our view that public policy should strive to balance the best interests of all stakeholders, including consumers, the dealer body, and manufacturers. Manufacturers and dealers need the flexibility to adapt to changing market and economic conditions. Over-reaching laws lock in unworkable business practices in perpetuity. Erecting more barriers through legislation only serves to create an environment for both manufacturers and dealers where options become more limited to respond to economic challenges.

The dealer protection laws increase consumer costs. Adding additional layers of onerous regulation to existing dealer protection laws results in significant increases in the costs of doing business. Ultimately, when the cost of doing business increases, it hurts everyone -- consumers, manufacturers and dealers. For this reason, we oppose overly burdensome laws that cause unnecessary and unfair costs to be built into the price a consumer pays for powersports vehicles.

The dealer protection laws create an overly complicated business environment. The relationship between a dealer and a manufacturer is governed by a contract and these contracts are already extensively regulated by existing dealer protection laws. Further government intervention into these contractual agreements creates an increasingly complicated and difficult business environment. Very few businesses in the free enterprise system enjoy the protections provided by existing dealer protection laws. Unreasonable dealer protection laws further insulate dealers from the business risks common to other businesses, make them less responsive to consumers' needs and desires.

**SPECIFIC AUTOMOBILE DEALER PROTECTION LAWS
CAUSE UNIQUE CONCERNS FOR THE POWERSPORTS INDUSTRY**

Establishment and Relocation Laws. The ability of an existing business to delay the operation of a competitor constitutes very strong economic power. We are aware of no other type of business which enjoys such power. Dealer protection laws which discourage the opening of new dealerships can also serve to distort competition. The laws may encourage circumventive tactics by hopeful new dealers wishing to avoid the costs and delays inherent in the procedure. For example, a new dealer might select a new location just beyond the perimeter of the relevant market area or area of responsibility specified by the dealer law in order to avoid a protest by another same line-make dealer, while passing up a location that might better serve consumers. Worse, these dealer protection laws can drive businesses out of the state completely to states with no such restrictions on competition. Additionally, in the case of a powersports dealership where the facility is well suited to many types of businesses, the prospective dealership site, chosen to best serve the customer base, may not still be available by the time a protest challenging its establishment is resolved. Often locations are more difficult to find in powersports industry because a manufacturer must find an existing multi-line location to add its brand to.

Under these provisions, this businessperson's opportunity to compete is subordinated to those of the dealer or dealers who started their business ventures earlier. Any decision to insulate the first arrivals from competition from later entrants raises fundamental questions of fairness, equality of opportunity and harm to consumer choice.

Shifting populations result in changes in optimal dealer locations, yet laws regulating new dealer establishments make these changes more difficult and costly, not only harming manufacturers and prospective dealers, but inconveniencing consumers.

Laws regulating dealer location protect a specific class of businesses from competition at the expense of others such as consumers, potential new powersports dealers, and the powersports manufacturers. These laws shelter established dealers from direct competition and sustain higher prices for vehicles, parts, and service. Such laws can only adversely affect the public by discouraging competition, preserving higher prices, and generating protracted and costly protest proceedings, the costs of which ultimately are passed on to consumers.

Dealer Termination Laws. Dealer protection laws regulating dealership termination are more problematic for powersports manufacturers in this respect. Many dealer protection laws require long dealership termination notice periods, such as 180 days. This time period presents significant problems in that it unreasonably slows the dealership termination process and results in significant harm to consumers, the manufacturer and neighboring same line-make dealers. A delay of this nature causes high levels of customer dissatisfaction, inflicts needless damage on brands and raises business costs. If given 180 days before termination can occur, the vital activities that the manufacturer relies on the dealer to perform can be done in a slipshod manner with no regard to quality or customer need, or may not be done at all. The logical result will be an exacerbation of the negative impacts resulting from the dealer's misconduct that in some cases can even extend to defrauding or mistreating customers. Extended cure periods, followed in some laws by an additional notice of termination period, may have a lower impact on the automobile industry, but will eliminate a whole powersports selling season and prevent customers from getting adequate service due to the seasonal nature of powersports sales and use.

Post-Termination Product Buy-Back Laws. It is important to note that each dealer operates as an independent business. Powersports dealers make their own decisions on how to run their individual businesses, including selecting the facilities to house their dealerships, deciding whether to carry or drop additional product lines, and deciding how much inventory they carry for each product line. Powersports manufacturers currently have no oversight or control of these and other business decisions. Unreasonable dealer protection laws are thus especially punitive to multi-line powersports manufacturers, as they essentially require the manufacturer to become an insurance company for dealers who make independent decisions that may have nothing whatsoever to do with a particular manufacturer's brand. Manufacturers

are not insurance companies, and should not be required under law to insulate their dealers from risk when all other business owners assume that risk in a free enterprise system. If dealers have the guarantee that a manufacturer will be obligated to buy back their unsold inventory upon dealer termination, they are free to switch between manufacturers without any consequences for their independent business decisions about inventory purchases and management.

Warranty Service and Reimbursement Laws. We generally oppose a number of aspects of dealer protection laws regulating warranty service and reimbursement rates. We have concerns with laws which require all dealers to be reimbursed for warranty work at the dealer's retail rate. This provides for no differentiation between dealers who spend considerable effort and resources to meet or exceed service performance standards and to employ qualified technicians at their dealerships and those who do not. Some manufacturers offer incentives that guarantee dealers retail rates or even better than retail rates if they have suitably trained technicians. This encourages dealers to employ highly qualified technicians, which significantly benefits consumers. Mandating that all dealers receive the same reimbursement rate only punishes dealers who invest in consumer care. Ultimately this hurts consumers who rely on dealers for quality service.

Dealer protection laws prescribing warranty reimbursement based on dealer retail rates don't lower the cost of service for retail customers but rather encourage and sustain higher retail rates for nonwarranty customers since the dealer warranty reimbursement rate is based on average retail.

To prohibit a manufacturer from recovering costs associated with reimbursing dealers for parts and labor used in warranty work is to prohibit a standard business practice. It is essential that a manufacturer be able to recover the costs of doing business from ongoing operations or it will go out of business. This is not a new concept.

Often these dealer protection laws overly complicate business operations, such as requirements that the manufacturer accept amended warranty claims that were submitted after long periods, for example, up to 120 days, after original submission and to accept claims. Powersports manufacturers offer reasonable deadlines for dealers to complete warranty reimbursement claims. They must receive claims in a timely manner to identify potential trends and potential safety issues. If claims were delayed beyond such reasonable deadlines, it would cause delays in discovery of these issues that could jeopardize consumer safety.

Price Protection and Incentive Regulation Laws. Competition is stifled by dealer protection laws that require manufacturers to offer like vehicles to all dealers at the identical price, prohibiting them from applying well-established, pro-competitive exceptions to federal and state price discrimination laws, or that prohibit allocating vehicles or evaluating dealer performance based upon vehicle sales. One of the most egregious permutations of such price protection requirements is the requirement that manufacturers sell a vehicle, parts, or accessory to their dealers at the same "actual price" regardless of cost savings that result from the volume a dealer does with a certain manufacturer. Preferred wholesale purchasing terms for volume ordering are common in the marketplace making lower prices available to the customer. As an example, Costco presumably gets a better wholesale price for purchasing two truckloads of product "X" than does a 7-11 that only purchases a pallet of product because the greater volume results in a lower cost to the manufacturer. Costco is then able to pass the cost savings on to the consumer. Likewise, when powersports manufacturers offer preferred wholesale prices and flooring incentives, the lower prices can then be passed on to the consumer.

These laws can in effect prohibit all forms of promotional programs. Prohibiting different pricing and discount allowances or bonuses eliminates a manufacturer's ability to incentivize and reward dealer performance and does not permit manufacturers to offer greater support for dealers that want to take on greater risk and grow their businesses, which may include carrying a larger inventory of stock to meet customer wants and needs. Not only does it restrict a manufacturer's operation of its business, just as importantly, it harms dealers who wish to actively promote the brand. Prohibiting benefits to dealers based on performance hinders natural market incentives for dealers to fairly compete and improve

performance, which ultimately hurts consumers. Without being able to use performance as a qualification for incentive programs, the benefits and promotions a manufacturer will be able to offer will be at a low common denominator level. The need for these programs is obvious – dealers that commit to a product line should be rewarded for their commitment. All of these incentive programs are optional programs. Dealers are under no obligation to participate.

Currently, assistance is offered in the form of special co-op advertising assistance, rebates, sales bonuses and other programs such as offering all dealers longer flooring terms for taking a higher allocation of inventory. These promotional programs, which are generally offered to all comparable competing dealers on proportionately equal terms, provide a number of significant benefits to participating dealers by reducing inventory carrying costs, freeing up dealership operational capital, enabling the dealer to better compete in the marketplace and to pass along benefits to customers at dealer's discretion. Manufacturers likely quit offering promotional programs altogether in order to avoid potential violations of this type of law, yet these promotions continue to be offered to dealers in neighboring states. Consumers either have more expensive products to purchase at their local dealer or travel to an out-of-state dealer who continues to have access to the enhanced retail programs.

Prohibiting price differences without regard to competitive effect restricts the ability of manufacturers to adjust their price and incentive structures to competitive levels and diminishes competition.

CONCLUSION

In conclusion, no industry can remain static. It must be able to change and adapt and have the ability to be flexible in order to survive. The dealer network model has a long history of being a successful partnership for both manufacturers and dealers and we expect this model to continue far into the future. But to have every aspect of the relationship and practices strictly prescribed in law is a failed paradigm that prevents, or at very least slows and makes difficult, the ability to adjust to changing market dynamics and ultimately not only hurts consumers and manufacturers, but dealers as well.

Competition is the ideal form of consumer protection. Government intervention is only merited when this competition fails. Competition is pronounced in the powersports industry and there is no showing that it is not working that would warrant extending these laws to the powersports industry.

Further, a one-size-fits-all approach to the regulation of disparate types of motor vehicle manufacturers and dealers only leads to inefficiencies and inflexibility and hamstring the ability to conduct business and respond and adapt to a changing business landscape.

Sound public policy would dictate a concrete public justification for government intervention, one that is not simply to tilt the scale in a voluntary contractual relationship. There should be solid evidence that an industry is so unique as to merit its protection. From a public policy perspective and especially from a consumer perspective, we fail to see justification for certain aspects of state regulation that micromanage the dealer/manufacturer contractual relationship. We cannot envision any legitimate way in which more invasive dealer protection laws serve consumer interests. Likewise we find nothing that sets the motor vehicle distribution market apart from that of all other industries that would make such invasive regulation merited and what failure necessitates such. As provided in examples above, we believe overreaching dealer protection laws can ultimately harm the consumer and are anti-competitive in a number of ways.

Thank you for your interest in these very important issues and for the opportunity to provide comments.

Respectfully submitted:



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