



Colorado Automobile Dealers Association

March 4, 2016

Submitted via web

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

Re: FTC Workshop Examining the U.S. Auto Distribution System, Project No. P131202
Colorado Automobile Dealers Association Comments

Dear Secretary:

As President and Chief Executive Officer of the Colorado Automobile Dealers Association (“CADA”), I have had the honor and privilege of representing franchised motor vehicle dealers in Colorado for fourteen (14) years. During that time, I have represented this industry before the state legislature, local governments, and the public at large. In my position, I have gained a comprehensive knowledge about how the motor vehicle industry operates in my state.

CADA’s membership includes 260 new motor vehicle dealers. The new motor vehicle dealers represented by CADA provide over 35,000 jobs and are responsible for the collection of over \$616 million in state and local taxes. Additionally, those new motor vehicle dealers collected or paid over \$289 million in federal payroll taxes. New motor vehicle dealers represented by CADA in Colorado are a significant economic engine in this state.

I am writing to express my dismay over what was presented at the workshop the FTC conducted on January 19, 2016, which I attended in person. This workshop focused on automobile distribution and the franchise laws that Colorado, and 49 other states, have enacted to regulate certain aspects of the relationship between manufacturers and local motor vehicle dealers. Instead of being a thoughtful, fact-based examination of an extremely important industry the workshop showcased several speakers invited by the FTC who had clearly made up their minds about the impact and value of this system.

Although persons representing dealers’ viewpoints were represented on several panels, it was obvious that the other speakers chosen by the FTC were of a single mindset: they were categorically 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, and dealers have grown in size to such an extent that such laws are no longer necessary to address the disparity in bargaining power. Unfortunately, these individuals have

little understanding of, or appreciation for, how the business actually operates, and their comments did a substantial disservice to franchise dealers in every state, their employees, and most importantly, to the public at large.

The public policy grounds which supported the enactment of these laws originally – the need for consumer protection, the disparity of bargaining power between manufacturers and dealers, and the value of community-based business are as valid today as when those laws were first enacted. First and foremost, these laws benefit consumers. These laws promote competition between dealers. Not only dealers of competing brands, but dealers of the same brand. The franchise laws not only regulate the relationships between manufacturers and dealers, but those same laws also regulate dealers' relations with consumers. The increased competition created in our industry benefits consumers in that they obtain the best possible prices as a result of that competition. What is more, those laws drive efficiency by ensuring that a stable and level playing field exists in auto retail retailing. One important consideration in deciding whether dealerships perform a valuable function for consumers is the subject of recalls. According to the National Highway Transportation and Safety Administration, in 2014 there were 64 million motor vehicle recalls. If a robust dealer network did not exist, consumers would have virtually no recourse to obtain quick and easy recall repairs. Thus, the dealer network the FTC so cavalierly criticizes is essential to providing safe and efficient vehicles for consumers.

The speakers at the January 19, 2016, workshop who said that there is now a fairly equal balance of power between dealers and manufacturers simply misunderstand the relationship between manufacturers and dealers. To the contrary, manufacturers continue to have far superior bargaining power—if not all of it—in this relationship. Manufacturers issue franchise agreements, also known as sales and service agreements, to dealers. Those sales and service agreements are take-it-or-leave-it agreements which frequently impose onerous and unreasonable terms and conditions on dealers. Dealers invest millions of dollars to support a particular franchise, and the dealer becomes, in a very real sense, an economic captive of the manufacturer – completely dependent for all new vehicle inventory. The following examples should help educate the FTC about the continuing need for these laws.

Manufacturers frequently make unreasonable demands on dealers in an effort to increase their market share. Those demands typically require dealers to achieve arbitrary market share in their respective market regardless of demographic or other considerations that are relevant to determine whether a dealer is performing. In fact, manufacturers typically determine that a dealer that is not in the top fifty percent (50%) of all performing dealers is failing and frequently issue notice of default, or worse, notice of termination. Recently, Colorado has seen its share of attempts by manufacturers to terminate dealers. Colorado has in place a statutory procedure whereby the Department of Revenue and an Administrative Law Judge can review a manufacturer's decision to terminate a dealer. Thus, the franchise laws help to promote fairness.

Furthermore, the franchise laws in Colorado specifically require manufacturers to treat all dealers equally. Incentives and allocations of vehicles must be made generally available to all dealers on an equal basis. This ensures that a manufacture treats all of its dealers and, therefore, all of the participating consumers, fairly. Manufacturers dictate to dealers exactly what their facilities must look like, and frequently insist on facility changes, even though a dealer may have recently made upgrades to comply with the last manufacturer mandate regarding a facility image.

One important section of Colorado's franchise laws is that governing additional locations. A manufacturer cannot establish an additional location in Colorado unless it is fair to the existing dealer network. Again, Colorado's statutory protections provide that if a dealer objects to a manufacturer's attempt to establish a new dealer too close to the existing dealer body, those dealers may file a protest that is resolved administratively.

Colorado laws also protect dealers from situations where manufacturers create unreasonable equipment requirements. For instance, a manufacturer recently dictated that a dealership located in the mountains install two (2) expensive electric vehicle charging stations at the dealership. The manufacturer made this demand despite the fact that that dealer had never sold a single electric vehicle and, as far as the dealer knew, there were no electric vehicles operating in this mountain community. Again, Colorado dealer laws were available to help protect that dealer—and the consumers that ultimately pay higher prices due to such unreasonable demands—from overreaching by the manufacturer. In our experience, manufacturers frequently overreach when dealing with simple requests from dealers. For example, we have witnessed situations where a dealer requested simple approval of a new general manager only to have the manufacturer write back to tell the dealer that they would approve the new general manager if the dealer would spend hundreds of thousands of dollars on a facility upgrade. Clearly, the manufacturer's response was an example of overreaching, which is prohibited by Colorado statutes.

In light of these market realities, 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. The FTC needs to look beyond the theoretical and understand the actual before reaching any conclusions about this important market. Finally, and of the utmost importance, the FTC needs to appreciate and respect the fundamental role that states play in determining what level and type of regulation these markets need.

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

Sincerely,



Tim Jackson, President and CEO

cc: Colorado Congressional Delegation