



October 14, 2016

***Via Web***

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

Re: Auto Buyer Consumer Survey  
Project No. P154800

Dear Secretary:

The National Automobile Dealers Association (“NADA”)<sup>1</sup> submits the following comments in response to the second Notice that the Federal Trade Commission (“Commission”) published in the *Federal Register* in the above captioned matter,<sup>2</sup> which invites comment on, among other items, “the practical utility of the proposed survey” and “the proposed survey methodology and specific issues or questions that should be included in the interview process.”<sup>3</sup> As briefly explained below, the Commission’s limited and incomplete responses to the comments that were presented on these topics in response to the first Notice coupled with its apparent predisposition towards many of the issues it is examining continue to invite cynicism into this initiative.

NADA’s comments in response to the Commission’s first Notice (see attachment) described in detail how the Commission’s planned Auto Buyer Consumer Survey was redundant and unnecessary and failed to provide important details about the mechanics of the survey process. We then requested that the Commission provide greater transparency about the survey process in six delineated areas. Our comments below briefly detail how the Commission, while providing some limited additional information about the survey mechanics, failed to address most of the questions presented to it and largely failed to provide greater transparency in the delineated areas specified in our comments.<sup>4</sup>

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<sup>1</sup> NADA represents over 16,000 franchised dealers in all 50 states who (i) sell new and used cars and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members collectively employ over 1 million people nationwide. Most of our members are small businesses as defined by the Small Business Administration.

<sup>2</sup> 81 Fed. Reg. 63,179 – 63,186 (Sep. 14, 2016).

<sup>3</sup> 81 Fed. Reg. at 63,185.

<sup>4</sup> Regarding our concerns about the redundant and unnecessary nature of this exercise, the Commission cites several enforcement actions it has taken against auto dealers since the FTC Motor Vehicle Roundtable process concluded in 2012 as examples of “persistent conduct [which] indicates that additional measures are necessary, including to study

## Examples of Issues That Are Inadequately Addressed by the Commission

In response to our question about how the Commission will control for the effects of respondent fatigue that can set in during a 90-minute interview, the Commission simply responded: “There is no indication that respondent fatigue will impede consumers in their ability to describe their own experiences, which they will do on a voluntary basis”<sup>5</sup> (suggesting that respondent willingness to participate in a voluntary survey somehow prevents the possibility of respondent fatigue and the inaccuracies that it can produce).

In response to our question about how the Commission will control for the effects of interviewer influence during the planned survey and our explanation of how a loosely structured qualitative survey is susceptible to such influence, the Commission simply ignored the issue of controls and declared: “The interviewer will avoid suggesting particular problems.”<sup>6</sup>

In response to the question that we and others asked about what questions will be asked by the interviewers, the Commission acknowledged what we asked but failed to identify the questions that will be presented to the respondents.

In response to our question about how the Commission will control for the distortions that can be produced by using a small number of central location research facilities to conduct its interviews, the Commission acknowledged that the interviews will take place in a single metropolitan area (Washington, DC) and failed to explain how such localized results are reflective of consumer experiences nationwide.<sup>7</sup>

Regarding the Commission’s plan to interview consumers who had purchased and financed an automobile from an automobile dealer in the past six months, the Commission responded to our question about how it will control for different consumer attitudinal and

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consumer experiences and help determine additional ways to protect consumers in auto transactions.” 81 Fed. Reg. at 63,183. However, the examples cited by the Commission pertain almost exclusively to alleged federal advertising violations. The Commission’s planned Auto Buyer Consumer Survey is considerably broader than advertising and includes topics, such as (“among other things”) contacts between the consumer and the dealer after the purchase, that are completely unrelated to dealer advertising. Consequently, the Commission’s recent enforcement actions do not support its foray into such a wide swath of issues. Nor does the Commission’s reference to its “auto-related complaints” data in Footnote 35 of its second Notice offer support for this exercise as the complaints in its Consumer Sentinel Network Data Book are unverified, do not specify whether they involve alleged conduct by automobile dealers or other types of entities in the automotive sector, and include complaints such as “price gouging concerns against gas stations and oil companies” that cannot involve conduct by automobile dealers.

<sup>5</sup> 81 Fed. Reg. at 63,184.

<sup>6</sup> Id.

<sup>7</sup> While the Commission states that “this survey is not intended to be representative of the full population,” it also states that “the proposed survey is expected to provide in-depth information about consumer protection issues that could be addressed through FTC initiatives, including enforcement, *rulemaking*, or education.” (Emphasis added.) 81 Fed. Reg. at 63,183. In light of the Commission’s acknowledgement that the localized information it will obtain is not generalizable to the entire population, it should not entertain the possibility that such information could be used to support a rulemaking that would affect businesses nationwide.

experiential responses that may occur throughout this time period by simply asserting that six months “is a recent timeframe.”<sup>8</sup>

Our requests for greater transparency on several related issues – such as our recommendation that the Commission publish its study design plan and identify the scope of and the pre-set review criteria that will be applied to the review of the consumer’s documentation – were also not addressed by the Commission. Similarly, the Commission did not respond to our recommendation that it identify the pre-set criteria the it will apply in determining whether to exercise the option to interview 40 consumers beyond the initial 40 consumers who will be interviewed other than to suggest that this decision “may, in part, be contingent on the time required for that first segment”<sup>9</sup> and that, ultimately, the decision will be based on whether “the FTC deems the additional interviews likely to be helpful.”<sup>10</sup>

The Commission’s unwillingness to provide important details about the survey it plans to conduct cannot be viewed in a vacuum. Unfortunately, it exists alongside recent Commission actions that suggest a predisposition towards the topics it intends to research. Recent examples of such a predisposition include the unbalanced nature of several videos the Commission recently posted to its website<sup>11</sup> and its erroneous description of “Operation Ruse Control” in 2015.<sup>12</sup>

## Conclusion

For the Commission’s planned Auto Buyer Consumer Survey to be probative of reliable and meaningful information that can assist it in its consumer protection mission, it must be structured in a transparent manner that controls for potential distortions,<sup>13</sup> and it must be

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<sup>8</sup> 81 Fed. Reg. at 63,184.

<sup>9</sup> Id.

<sup>10</sup> 81. Fed. Reg. at 63,180.

<sup>11</sup> See, e.g., the FTC video entitled “Understanding Car Add-ons” (Jun. 23, 2016)(currently available at <https://www.ftc.gov/news-events/audio-video/video/understanding-car-add-ons>), which focuses exclusively on the price of “add-on” products without any recognition of the benefits such products can provide to consumers.

<sup>12</sup> See Footnote 11 of NADA’s first set of comments in this matter. Regrettably, notwithstanding the information that we presented in that footnote specifying the inaccurate nature of the information the Commission has used to describe “Operation Ruse Control,” the Commission continues to associate the full range of those actions with automobile dealer conduct. See 81 Fed. Reg. at 63,180, including the link it provides at the end of Footnote 7, which leads to a FTC blog entitled *Operation Ruse Control* (Mar. 26, 2015) that references “more than 250 enforcement actions” under the statement: “Not all dealers play by the rules” (currently available at <https://www.consumer.ftc.gov/blog/operation-ruse-control>).

<sup>13</sup> See Office of Information and Regulatory Affairs. Office of Management and Budget, *Questions and Answers When Designing Surveys for Information Collections* 15-16 (2006)(“The quality of a survey design can be judged by the strategies that are taken to prevent, adjust for, and measure potential problems and sources of error in surveys. How well a survey is designed and conducted can lead to either more or less variance (or noise) or bias (or systemic errors) in results. Well-designed and conducted surveys anticipate potential problems and try to prevent or minimize the impact of different sources of error as much as possible. Additionally, good surveys make efforts to measure and adjust for errors that are not controlled. The best surveys are those that check and verify each step of the research process.... Agencies designing and conducting surveys need to consider all of the potential sources of errors and plan to adequately prevent, measure, and adjust for them. Conducting a high quality survey requires careful planning and sufficient resources to yield quality data that have practical utility for the agency. Agencies should carefully document and justify the adequacy of their survey methods in their ICRs [Information Collection Requests].”).

developed and executed in an objective manner. Simply dismissing structural concerns that have been raised so as to move on to the next phase of the project falls well short of this imperative and inspires little confidence in this exercise.

Thank you for the opportunity to comment on this matter. Please contact me if we can provide further information that would be useful to the Commission.

Sincerely,

Paul D. Metrey  
Vice President, Regulatory Affairs