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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
ATLANTA REGIONAL OFFICE

COMMISSION AUTHORIZED
V 880027

March 29, 1988

The Honorable Gwen Margolis
Chairman
Committee on Economic, Community and Consumer Affairs
The Florida Senate
430 Senate Office Building
Tallahassee, Florida 32399-1100

Dear Senator Margolis:

The staff of the Federal Trade Commission is pleased to respond to the request of your staff for our views on Florida's statutory provisions that regulate motor vehicle manufacturers and most aspects of their relationships with their franchised dealers.¹ Our comments focus on two specific provisions that appear to restrict competition. We believe that repeal of these provisions would likely result in lower automobile prices for consumers.

The Federal Trade Commission is charged by the United States Congress with maintaining competition and protecting consumers from restraints of trade.² In accordance with this role, the staff of the Commission submits comments upon request to federal, state and local governmental bodies to help them assess the competitive and consumer welfare implications of pending policy issues.³

¹ These comments represent the views of the Atlanta Regional Office and the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission and do not necessarily represent the views of the Federal Trade Commission or any individual Commissioner. The Commission, however, has voted to authorize the submission of these comments.

² See 15 U.S.C. § 41 et seq.

³ See Letter from William P. Golden to The Honorable Lynn Adelman, Chairman, Judiciary & Consumer Affairs Committee, Wisconsin State Senate (June 19, 1987), commenting on a bill that would have repealed portions of that state's statutes which allow existing automobile dealers to challenge new dealerships; Comments of the
(continued...)

Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition, and unfair or deceptive acts or practices. By enforcing this statute, the Commission staff has gained substantial expertise in analyzing the impact of various restraints on competition and the costs and benefits to consumers of such restraints. In recent years, the Commission staff has addressed issues specifically concerning retail automobile dealerships. In January 1986, for example, the FTC's Bureau of Economics published a study of the "Effect of State Entry Regulation on Retail Automobile Markets." ("Staff Report")⁴ Commission staff has also gained experience relating to the automobile industry through many investigations and litigated cases.⁵

Repealing the Relevant Market Area Provisions Will Benefit Consumers

Current Florida law provides existing retail automobile dealers with administrative avenues for challenging a decision by a dealer's supplier to establish a competing dealership in the same "relevant market area" ("RMA"). We believe that this statute restricts competition unnecessarily.

Florida Statute § 320.642 states that the Division of Motor Vehicles

shall deny an application for a motor vehicle dealer license in any community or territory where the licensee's presently licensed franchised motor vehicle

³(...continued)

Staff of the FTC on The Regulation of Motor Vehicle Dealer Franchises, Senate Bill 103, before the Senate Committee on Highways, Transportation and Local Government, General Assembly of the State of Ohio (April 21, 1987).

⁴ We are enclosing a copy of this Staff Report (Attachment 1) for your information.

⁵ General Motors Corp., 102 FTC 1741 (1983); Ford Motor Company, 102 FTC 1732 (1983); American Honda Motor Co., Inc., 99 FTC 305 (1982); Volkswagen of America, Inc., 52 Fed. Reg. 12546 (April 17, 1987) (Proposed Consent), amended 52 Fed. Reg. 17960 (May 13, 1987), corrected 52 Fed. Reg. 20096 (May 29, 1987).

dealer or dealers have complied with licensee's agreements and are providing adequate representation in the community or territory for such licensee. The burden of proof in showing inadequate representation shall be on the licensee.

The Division of Motor Vehicles has promulgated regulations requiring that all prospective dealers notify the Director of their intentions to establish a dealership. The Director then notifies all present dealers of the same make or makes of vehicles in the community or territory and gives them the opportunity to protest and demonstrate at an administrative hearing that they are providing adequate representation. (Florida Administrative Code, Rule 15C-1.08). The Policy Manual of the Division of Motor Vehicles defines "community or territory" as the county in which the new dealership will be located if there are existing dealers of the same make or, if the new dealership will be located near the edge of the county, that county and the adjoining county. In instances in which no present dealers of the same make are located in the county, all dealers of the same make in all adjoining counties are given the opportunity to be heard.⁶ If existing dealers do object to the establishment of the new dealership, hearings are held and findings are made, with the burden of proof on the new dealership and the manufacturer to show inadequate representation by the existing dealerships.

The repeal of § 320.642 and its implementing administrative rules and policies is likely to increase competition in retail automobile markets in Florida and thereby benefit consumers. FMA laws limit manufacturers' freedom to expand, and therefore tend to increase the cost of distributing automobiles and facilitate escalation of automobile prices. Consumers may find fewer opportunities to shop among dealerships for better prices and may have to travel farther and expend more time in the course of their

⁶ Based on these definitions, a dealer in West Palm Beach may protest a new dealership in Bel Glade, approximately 40 miles away, because they are both in the same county. Similarly, a dealer in Jacksonville may protest the opening of a new dealership in St. Augustine, again approximately 40 miles away, if there is no other dealership of that same make in St. Augustine, because these two cities are in adjacent counties.

shopping. The FTC Bureau of Economics' Staff Report⁷ supports this analysis. The report concluded that RMA laws raised automobile prices, on average, by six percent.⁸

The claim that markets will be flooded with more dealers than potential sales in a market can support appears unfounded. It would not be in the economic interest of either prospective dealers or manufacturers to invest in such a market. Prospective dealers are likely to give careful consideration to what the market will bear in order to protect their investment in real estate, inventory and personnel. Manufacturers will likewise avoid over-saturating a market, because they have an interest in the financial well-being of existing dealers. A manufacturer that treats existing dealers badly is likely to have difficulty finding new dealers when the need arises.⁹

In addition to the natural protection of market forces, dealers' interests are further protected by existing laws,

⁷ After the release of the Bureau of Economics (BE) Staff Report, Wharton Econometric Forecasting Associates (WEFA), at the request of the National Auto Dealers Association, prepared a report that reviews the Staff Report and challenges its conclusion that prices of automobiles would rise as a result of RMA laws in areas of growing population. The WEFA report also discusses the theoretical arguments that RMA laws are desirable. Attachment 2 is a BE paper that responds to the WEFA report.

⁸ Price increases resulting from RMA laws are most likely to occur in counties or metropolitan areas experiencing increases in population (and therefore increases in demand). The results of this FTC study are consistent with other studies showing that increased prices result from RMA laws. See Eckard, E.W., Jr., "The Effects of State Automobile Dealer Entry Regulations on New Car Prices," Economic Inquiry, Vol. XXIV, No. 2 (April 1985), pp. 223-42, and Smith, R.L. "Franchise Regulation: An Economic Analysis of State Restrictions on Automobile Distribution," Journal of Law and Economics, Vol. XXV (April 1982), pp. 125-57.

⁹ Henry Ford discovered this to be true when in 1929-30 he increased the number of Ford dealerships while cutting commissions from 20% to 17.5%. Many Ford dealers defected, often turning to rival Chevrolet. A. Nevins & F. Hill, Ford: Expansion and Challenge 1915 - 1933 at 579-81 (1962).

including the Automobile Dealer's Day in Court Act ("ADDC Act"), 15 U.S.C. §§ 1221-1225 (1976)¹⁰, and the right to sue for breach of contract in the same fashion as franchisees in any other industry. Consequently, RMA laws appear unnecessary to protect the interests of dealers.¹¹

Without the restraint that the RMA laws place on manufacturers' ability to compete, manufacturers can be more responsive to consumer demands. It is also unlikely that repealing RMA laws will reduce the quality of dealer service below the level that consumers seek; vigorous competition among manufacturers and dealers will ensure that consumers receive the mix of service, quality, quantity and price they desire.

Section 320.645 May Also Harm Consumers

Section 320.645 may also raise consumer automotive costs. It prohibits automotive manufacturers from owning or operating a dealership except in periods of transition of ownership from one independent dealer to another.¹² As a general proposition, we believe that a manufacturer should be permitted to establish whatever mix of wholly-owned and independent outlets the manufacturer finds most satisfactory. Manufacturer-owned

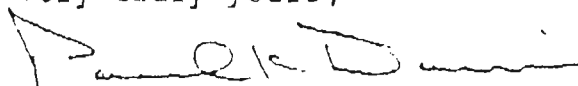
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- ¹⁰ ADDC Act imposes upon automobile manufacturers the duty to deal in good faith with their dealers and grants dealers the right to sue manufacturers for breach of that duty.
- ¹¹ If the ECCA Committee decides to reenact some version of § 320.642, we would recommend that "community or territory" be statutorily defined and limited. In many states the RMA laws establish a radius based on mileage (e.g., 10 miles) from the proposed new dealership in which existing dealers may protest. The present rules of the Department, based on a county or adjacent or contiguous counties, allow protests from much greater areas, many of which go beyond what is normally judged to be a community. A mileage radius would reduce the anticompetitive effects of the law. Additionally, the burden of proof as to showing adequate representation could be shifted to the protesting dealers. This would discourage dealers from protesting purely to delay the establishment of a new dealership.
- ¹² This section does not apply to any dealerships owned by a manufacturer prior to May 31, 1984.

dealerships might entail efficiencies that would lower the costs of vehicles to Florida consumers.¹³

Conclusion

In summary, the repeal of §§ 320.642 and 320.645 would remove certain restraints presently imposed on the retail automobile market. By removing these restraints, we believe the Florida Legislature will aid consumers of motor vehicles and motor vehicle services. We appreciate this opportunity to provide our views on these provisions.

Very truly yours,



Paul K. Davis
Regional Director
Atlanta Regional Office

¹³ If the state decides to retain § 320.642, requiring notice under that section of a decision to establish a manufacturer-owned dealership would be preferable to the ban on such dealerships contained in § 320.645.