ALLIANCE FOR AUTOMOTIVE INNOVATION

May 27, 2025

Submitted via Regulations.gov

United States Department of Justice
Anticompetitive Regulations Task Force

RE: Anticompetitive Effects of Statutes Governing Automobile Franchise Laws
Docket No. ATR-2025-0001

Dear Members of the Anticompetitive Regulations Task Force:

The Alliance for Automotive Innovation ("AFAI") is a trade association that represents automobile manufacturers, distributors, and suppliers of automotive technologies and components. Our members are longstanding participants in the motor vehicle industry who have been engaged in the distribution and service of new motor vehicles and related products throughout the United States for many decades. We have been made aware of your notice inviting public comment on state and federal laws and regulations that create barriers to competition and negatively affect consumers, particularly those in industries that have the greatest impact on American households like transportation, and we appreciate the opportunity to comment on this important initiative.

As you may be aware, state laws require most motor vehicle manufacturers and distributors (particularly the legacy brands) to distribute their products and provide warranty service on motor vehicles only through a network of authorized dealers. Virtually every state has enacted a series of motor vehicle franchise laws that regulate nearly every aspect of the relationship between motor vehicle manufacturers and their authorized dealers. While the stated purpose of these statutes is to protect consumers, many of these statutes also significantly restrict competition in this industry and can actually harm the consumers they purport to protect. Following its 2018 Roundtable Discussion Series on Competition & Deregulation, the Antitrust Division of the Department of Justice issued a report stating that "[t]hese regulations have been shown to cause higher retail prices and higher distribution costs, at the expense of both consumers and manufacturers – particularly U.S. carmakers."[1] While this and other reports have addressed various provisions in these state regulations, this submission will focus on two state statutory issues that have a direct and significant effect on American consumers: (1) state laws restricting the establishment of new motor vehicle dealerships and (2) state laws governing the performance of warranty service.

[1] U.S. Department of Justice Antitrust Division. "Roundtable Discussion Series on Competition & Deregulation (2018), p. 176. Available at: https://www.justice.gov/atr/page/file/1120641/dl?inline.

State Laws Restricting the Establishment of New Motor Vehicle Dealers Hinder Competition and Negatively Affect Consumers

Virtually every state has enacted a statutory framework that significantly limits the ability of automotive manufacturers to establish new dealerships to serve consumers and the general public. Under these statutes, manufacturers generally are required to provide written notice of their intention to establish a new dealership to existing dealers of the same brand that are located within the statutorily-defined "relevant market area," and provide existing dealers located within that area the right to file a legal action challenging the proposed new dealership.

While dealers take the position that these statutes are necessary to protect their investments, these provisions, by their very nature, significantly hinder inter-brand and intra-brand competition in this industry at the expense of consumers. Specifically, by permitting existing dealers to challenge the proposed establishment of a new dealer within the "relevant market area," these statutes essentially provide existing dealers a geographical area where they are free from competition by other dealers of the same brand. Dealers may sell into other dealers' area, but the distance from consumers acts as a disincentive to invest resources to do so. This is particularly concerning given the overbreadth of these statutes. For example, California has enacted a statute that allows existing dealers to challenge the addition of a new competitor within a 10-mile radius (as measured by air distance) from their location.[2] While this radius could make some sense in rural parts of the state, it is extremely limiting to competition in densely-populated markets like Los Angeles where automotive companies need multiple dealerships in a small area to meet consumer needs. Other states have enacted statutes that permit dealers to challenge proposed new dealerships at varying distances from their locations based on the population in the applicable county.[3] Accordingly, these statutes permit existing dealers to challenge (and halt) the establishment of new dealerships needed to serve consumers and compete with rival brands, even in situations where the proposed dealership is located a significant distance away from their locations, and in some cases, in an entirely different community and market.

These statutory frameworks further impede competition by providing for an automatic stay of the proposed new dealership during the length of the legal action. Under common legal principles, court orders enjoining a party from taking some action (like establishing a competing business) generally are granted only after the complaining party (1) presents evidence that it has a substantial likelihood of success on the merits and (2) provides a bond securing the value of the injunction. That is not the case here. Instead, these state regulations expressly provide that the opening of the proposed new dealership is automatically stayed for the duration of the case—potentially including all appeals—without any hearing on the likely merits of the challenge or any bond whatsoever. These statutes therefore make it extremely difficult for manufacturers to adjust their dealer networks to account for changes in customer needs, and instead allow dealers to protect

[2] Cal. Veh. Code §§ 507, 3062.

[3] *See, e.g.*, N.Y. Veh. & Traf. Law §§ 462(15), 463(cc)(1); and Wash. Rev. Code §§ 46.96.140, 150.

themselves from increased competition and delay the establishment of a new dealership for several years—even if a dealership is needed to serve the public—without regard to the effects on consumers.

Warranty Reimbursement Statutes Discourage Price Competition and Incentivize Higher Prices for All Service Work on Motor Vehicles

New vehicles sold in the U.S. are covered by manufacturer limited warranties that typically cover vehicle parts for a number of years or specified mileage and entitle owners to receive repairs free of charge. Over the past several decades, nearly every state has enacted a statutory framework that regulates the performance of warranty service on motor vehicles and mandates the compensation dealers are entitled to receive from manufacturers for completing warranty repairs. Under these statutes, warranty service generally must be performed by an authorized dealership, and many states have enacted statutes making it unlawful for a manufacturer to authorize any person other than a franchised dealer to perform warranty repairs on a motor vehicle.[4] Accordingly, authorized dealers effectively have a monopoly when it comes to the performance of warranty service on consumer vehicles despite the manufacturer being the warrantor.

In addition to making authorized dealers the sole source for warranty work, virtually every state has enacted statutes governing the amount of compensation that manufacturers must pay to dealers for completing such work. These statutes generally require manufacturers to pay their dealers for any parts and labor used for warranty service at the same rates those dealers charge to retail consumers for non-warranty repairs. Under these statutes, a dealer's "warranty labor rate" and "warranty parts markup rate" typically are determined by allowing dealers to select a sample set of repair orders for non-warranty work reflecting what the dealers have charged retail consumers for similar repairs. Manufacturers then are required to accept the dealer's average retail "labor rate" and "parts markup rate" based on those repair orders and compensate the dealer at those same rates for warranty service going forward. Many states even limit manufacturers' ability to protect themselves from unreasonable rates declared by a dealer pursuant to the state statute.[5]

While these statutes may have some logical appeal at first glance (compensating dealers for warranty work at the same rates they charge for non-warranty repairs), these statutes also have several unintended yet significant adverse effects on competition and consumers. In particular, warranty work often is the largest single source of income for a dealer's service department and one of the most significant profit centers for a dealership overall. For this reason, the statutes outlined above operate to discourage dealers from engaging in competition—including price competition—for customer-paid service work. Instead, because the amount of money a dealer receives for warranty work is based on the price it charges retail consumers for non-warranty work, these

[4] *See, e.g.*, Colo. Rev. Stat. § 12-6-120(1)(n); La. Rev. Stat. § 332:1261(A)(1)(t)(i); N.Y. Veh. & Traf. Law § 463(2)(q); and Wisc. Stat. § 218.0116(1)(w).
[5] *See, e.g.*, Cal. Veh. Code § 3065.2(d).

statutes actively incentivize dealers to charge retail consumers higher prices for labor and parts for completing non-warranty repairs on their vehicles.[6] A 2010 article in the *Journal of Economic Perspectives* by economists Francine Lafontaine and Fiona Scott Morton expressly noted that these statutes "give incentives to dealers to increase their 'list' prices for repairs."[7] These statutes have even led to a new market entrant in the motor vehicle industry: companies that advertise services designed to maximize warranty labor and parts rate increases for dealers and their service departments.[8]

Warranty Reimbursement Statutes Inflate the Amount of Time it Takes for Dealers to Complete Repairs and Further Increase the Expense of Service Work

Repair service is by no means a loss leader for auto dealers. As noted in a *Wall Street Journal* article in 2023, "Service, body and parts account for 10% to 15% of dealers' revenue but 30% to 35% of gross profit."[9] Automakers combined purchased roughly $28.2 billion of parts and labor from dealers for warranty in 2024 ($14.57 billion for parts and $13.63 billion for labor).[10] In light of that volume, state laws that push warranty costs higher will have significant impacts on automakers and the consumers that purchase automobiles.

These competitive concerns and issues have intensified in recent years given the latest trend in the area of warranty compensation legislation—state regulations requiring manufacturers to compensate dealers not based on the time they spent performing the repair, but instead based on the time prescribed in advance by an unrelated third party, known as "third-party time guides." Generally speaking, the amount of compensation a dealer receives for warranty labor is determined by multiplying the dealer's warranty labor rate by the hours it takes for the dealer to complete the repair. To address this second variable, most manufacturers have established a uniform "time guide" that sets forth the amount of time it should take a qualified technician to complete a specified warranty repair. These manufacturer time guides are developed through substantial research regarding dealer repair times, including actual time studies and repair times clocked by technicians in settings similar to a dealership such that a dealer's technicians should be able to meet or beat the manufacturer time allowance. This rigorous process helps ensure that dealers receive

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[6] This strong incentive for dealers to maximize their warranty compensation rates is further evidenced by the statutes in several states that expressly permit a dealer to submit one set for repair orders for calculating its warranty labor rates and a completely separate set of repair orders for determining its warranty parts markup rate. *See., e.g.*, Mont. Code Ann. § 61-4-213(1)(c)(ii); Ohio Rev. Code Ann. § 4517.52(B)(1); and W. Va. Code § 17A-6A-8a(d).

[7] Lafontaine, Francine, and Fiona Scott Morton, "State Franchise Laws, Dealer Terminations, and the Auto Crisis." *Journal of Economic Perspectives*. Vol. 24, No. 3, Summer 2010, pp. 233-250, p. 240.

[8] *See, e.g.*, https://www.dynatronsoftware.com/filesmart-warranty-labor-and-parts-rate-increase/; https://www.dealeruplift.com/retail-warranty-reimbursement/; and https://www.withum.com/industries/dealerships/warranty-reimbursement/.

[9] Lee, Jinjoo, "A Sweetheart Deal on Car Dealers After Auto Strikes," The Wall Street Journal, Oct. 29, 2023.

[10] NADA DATA. *2024 Annual Financial Profile of America's Franchised New-Car Dealerships*, p. 11. *Available at:* https://www.nada.org/media/4695/download?inline.

fair and reasonable compensation for the amount of time they spend on a particular warranty repair. Manufacturers also make available review processes so that dealers can request changes to the manufacturer's time guide if a dealer believes that a particular time allowance is unreasonable or inaccurate.

Instead of basing warranty compensation on the manufacturer's time guide or even the actual time spent by the technician on a certain repair, however, several states have enacted statutes requiring manufacturers to compensate dealers for warranty labor based on the number of hours allotted to a particular repair as set forth in any "third-party time guide" that a dealer unilaterally chooses to use in its service department.[11] One state, Illinois, has even has enacted a statute providing that if the manufacturer does not agree to use the third-party time guide selected by a dealer in that state, then the dealer's "fair" compensation for warranty work will be determined by simply taking the amount of time allotted for the repair in manufacturer's time guide "multiplied by 1.5," regardless of how long the repair actually takes.[12] That statute caused manufacturers' warranty costs for labor to increase 50% overnight.

These statutes raise several concerns. Third-party time guides are not substitutes for manufacturer warranty time guides because the two are different products written for different audiences to be used for different purposes. Third-party time guides are designed to assist independent repair facilities in providing time and cost estimates to their customers. Independent repair facilities perform service on several brands, on vehicles of all different ages, and they often do not have special time saving tools that dealers would have. Third-party time guides also are not based on time studies of actual repairs, but instead only on estimates of how long the guides' publishers believe it will take for an independent repair facility to perform a repair based simply on a written description of the repair procedures. For these reasons, applying a third-party time guide's time allowances to warranty work at a dealership would overestimate the amount of time it takes for a trained dealer technician to complete a specific warranty repair. Some states have even gone so far as to prohibit manufacturers from requiring dealers to show that they even use the claimed third-party time guide for charges to retail customers.[13]

AFAI estimates that if every state in the country were to adopt a law allowing dealers to demand to be compensated for labor hours via a third-party time guide or a multiplier, then the result would be a combined cost increase to manufacturers of more than $5 billion per year in overpayments to dealers—payments for hours of labor that were not worked.

These state regulations—alone and in combination with the statutes addressed in the previous section—have several adverse effects on competition and consumers. As set forth above, these statutes provide dealers with a significant financial incentive to utilize the third-party time guide

[11] *See, e.g.*, N.Y. Veh. & Traf. Law § 465(1); Minn. Stat. § 80E.041(4)(a).
[12] 815 Ill. Comp. Stat. 710/6(b).
[13] *See, e.g.*, North Dakota HB 1515, already signed into law and taking effect on August 1, 2025.

that provides the highest allotment of time to perform various repairs. These statutes significantly increase the expense incurred by manufacturers in complying with their consumer warranty obligations—an expense that necessarily must be passed on to customers. A federal court even recognized that the increased manufacturer costs are "not merely hypothetical [and] to shift the costs onto consumer is a rational business measure."[14] The court also said, "there is no reason to think that it quite mattered to the legislature which group on either end of the stream—manufacturers or consumers—absorbs the costs, as long as dealers are reimbursed for warranty repairs at the level that the legislature deemed appropriate."[15]

As referenced above, these time guides also are used by dealers to provide time and cost estimates for retail consumers who need non-warranty repairs to their vehicles. Because third-party time guides contain more than number of hours it should take a dealership to perform a specified repair, these time guides also result in retail consumers paying for more hours of labor than are actually worked, which substantially increases the cost of vehicle repairs for consumers whose vehicles are out of warranty but who still want their vehicle serviced by an authorized dealer.

Unlike most purchasers of a service or product, automakers cannot choose to take their business elsewhere should they find that the cost of the product or service (in this case warranty repair) is unreasonable. Nor can automakers readily add new dealerships to spur competition. That means that it is critical that state laws not be structured to allow for unreasonably high compensation demands because market forces cannot push back if there is unreasonable cost created.

The Anticompetitive and Anti-Consumer Effects of Warranty Compensation Regulations

There is no doubt that state regulations governing warranty compensation limit competition and result in consumers paying substantially more for service work. As set forth in detail above:

- Warranty service generally must be performed by authorized dealers, and thus authorized dealers have little to no competition in the warranty service market;

- State statutes that determine a dealer's warranty compensation rates based on the amount of money the dealer charges to retail consumers discourage price competition for service work and instead directly incentivize dealers to charge higher prices to consumers; and

- State statutes incentivizing the use of third-party time guides by authorized dealers, despite these guides being developed for independent, non-franchised repair facilities, encourage dealers to inflate the time and resulting expense charged for retail repairs.

[14] *Volkswagen Group of America, Inc. v. Illinois Secretary of State Alexi Giannoulias*, 732 F.Supp.3d 914 (N.D. Ill. 2024) at 931.
[15] *Id.* at 934.

The impact of these regulations on consumers, however, goes far beyond the amount of money they are spending on vehicle repairs at their local dealership. While warranty service is often thought of as "free," its cost is built into the prices consumers pay for new motor vehicles. As set forth above, these statutes also significantly increase the costs incurred by manufacturers in complying with their consumer warranty obligations. This impact cannot be understated. During the 2016 Federal Trade Commission's Workshop on state regulations effecting motor vehicle distribution, David Sappington, Professor of Economics at the University of Florida, presented evidence that between 2008 and 2012 alone, the warranty reimbursement statutes in the State of Florida caused the warranty payments of just four automotive manufacturers to increase by more than $80 million.[16] Extrapolating this data to all automotive companies and every state over the past several decades, it is no exaggeration that these statutes have increased warranty expense for automotive manufacturers by hundreds of millions or even billions of dollars. As Prof. Sappington noted, this expense necessarily will be passed on to consumers, which means that franchise laws governing warranty payments cannot be assumed to be in the best interests of consumers.[17]

As the FTC also heard at its 2016 workshop, "it is not apparent that we really need government intervention here to force these manufacturer and dealer teams to agree upon warranty terms that will serve consumers." [18] "Consumers are eventually going to pay some or all of this increase, and so it's not at all clear that these laws really are working in the best interests of consumers." [19] "And, therefore, other than serving to transfer wealth from manufacturers to dealers, it's not clear what role these rules are playing. And so, in fact, these rules have the substantial potential to distort market outcomes to the detriment of consumers." [20] AFAI agrees, and as detailed above, state laws have become more protectionist since the 2016 FTC workshop, and the trend continues.

Concerning bills that would add more anti-consumer warranty reimbursement laws are pending in state legislatures today.[21]

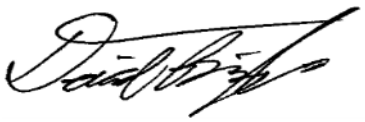
Conclusion

AFAI appreciates the opportunity to comment on this important issue. Based on the foregoing, AFAI respectfully requests that the Anticompetitive Regulations Task Force evaluate state automobile franchise laws—particularly those governing the establishment of additional dealerships and compensation for warranty service—and the effect of those laws on consumers and competition. AFAI also respectfully asks the Task Force to advocate for the elimination or revision of harmful

[16] U.S. Federal Trade Commission, January 19, 2016 Workshop Transcript, Auto Distribution: Current Issues and Future Trends, p. 59. *Available at:* https://www.ftc.gov/system/files/documents/public_events/895193/auto_distribution_transcript.pdf.
[17] *Id*.
[18] *Id*. at 58.
[19] *Id*. at 59.
[20] *Id*. at 60.
[21] *See, e.g.*, Massachusetts H. 4019, New Jersey A. 4380/S. 3309, and Rhode Island H. 5590/S. 885.

franchise regulations, and advocate against adoption of new similar regulations. Thank you for your consideration.

Sincerely,



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