May 27, 2025
By regulations.gov
U.S. Department of Justice
Anticompetitive Regulations Task Force
950 Pennsylvania Avenue, NW,
Washington, D.C. 20530

Re: Public Comment to Anticompetitive Regulations Task Force; Docket No. ATR-2025-001

Dear Anticompetitive Regulations Task Force:

The National Automobile Dealers Association (NADA) represents over 16,000 franchised automobile and truck dealerships that sell new and used motor vehicles and engage in service, repair, and parts sales. Together they employ more than 1,100,000 people nationwide, yet most are small businesses as defined by the Small Business Administration.

NADA supports the Justice Department's efforts to advocate for the elimination of anticompetitive regulations that undermine free market competition. Franchised car dealers, and the laws that protect them, enhance the competitiveness of the market for new automobiles and benefit consumers. Despite anonymous attacks on the franchise system, all empirical evidence points to its beneficial nature.[1]

I. The Franchise Model is the Best New-Car Sales Model for Consumers.

The modern dealer franchise model is the most cost-effective means of distribution for new vehicle sales—more cost effective than direct-to-consumer distribution channels. The franchise model creates salutary intra-brand competition and allows for customer-by-customer price optimization—benefits that result in lower prices for consumers. Franchise laws also align the interests of consumers and dealers when it comes to warranty repairs, enhance safety through the recall system, create greater accountability to the customer, allow customers to receive support and service after the bankruptcy of a manufacturer, and provide local economic benefits.

A recent study conducted by Oliver Wyman shows conclusively that the franchise model is the most cost-effective means to distribute new motor vehicles to consumers.[2] After extensive analysis of market data, the study concluded as follows:

[1] *See* Anonymous, Comment on Anticompetitive Regulations Task Force Request for Information (Apr. 14, 2025), https://www.regulations.gov/comment/ATR-2025-0001-0047; Anonymous, Comment on Anticompetitive Regulations Task Force Request for Information (May 7, 2025), https://www.regulations.gov/comment/ATR-2025-0001-0058. Because the comments are anonymous, it is unclear if the commentors have a commercial interest in the direct sales model.
[2] *Automotive Cost of Distribution*, OLIVER WYMAN (2024), https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2024/sep/automotive-cost-of-distribution.pdf.

> [S]ome OEM executives and industry observers have publicly asserted that the traditional dealer model for mass market vehicles in the US is significantly more expensive on a per vehicle basis, when compared to a DTC [Direct-to-Consumer] approach like Tesla's. Our research emerged in response to this oft repeated assertion. After an intense analytical examination supported by actual US auto sales and distribution cost data, this study found the assertion to be incorrect. In fact, it is the traditional franchised dealer channel that has a lower net cost of distribution than the DTC and agency-like (hybrid) channels when operating at mass market scale in the US.[3]

Oliver Wyman's approach considered two often overlooked factors:

- First, some of the supposed advantages of selling directly to consumers are not tied to that sales channel—they apply no matter how the product is sold. For instance, spending less on advertising, keeping inventory low, or foregoing ornate sales locations are decisions made before choosing through which channel to sell, so the cost savings from those choices should not be credited to the sales channel itself. As Oliver Wyman explained, a proper comparison of the various channels would hold these "upstream" costs constant; but many of the assertions that a vertically integrated distribution system is more cost-effective than the franchise dealer model are based on the fact that direct sellers often simply choose not to incur these costs, a choice the manufacturers who use the dealer system could make as well.

- Second, as Oliver Wyman also explained, the franchise model delivers value that the direct-to-consumer sellers do not, including customer-by-customer price optimization. One major strength of the traditional franchised dealer model is the ability to tailor deals to each customer. Dealers have the tools and flexibility to work with buyers—offering a wider range of financing options, accepting trade-ins, and being more flexible on the final price—to help make the sale fit the customer's specific needs. In fact, the largest "value" benefit of the direct sales model to the cost of distribution was the elimination of intra-brand competition, because stores in the same geographic location no longer had to compete with each other when prices were effectively fixed.[4] But, as the study points out, intra-brand competition "almost invariably" benefits the customer.[5] The study concluded that the franchise model is, on a net basis, more cost effective than direct-to-consumer approach.[6]

A lower cost of distribution of the franchise model combined with the benefits of intra-brand competition create a competitive marketplace that benefits manufacturers, dealers, and

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[3] *Id*. at 3.
[4] *Id*. at 13.
[5] *Id*. at 16.
[6] *Why US Auto Dealerships Remain a Cost Effective Choice*, OLIVER WYMAN (last visited May 22, 2025), https://www.oliverwyman.com/our-expertise/insights/2024/sep/why-us-auto-dealerships-remain-cost-effective-choice.html.

consumers alike. In fact, intra-brand competition can reduce consumer costs by as much as 4% to 5% per vehicle.[7]

In addition to providing economic benefits to manufacturers and consumers, there are other public policy reasons for states to enact laws supporting automobile franchises.[8] Franchise laws operate to ensure that there is a healthy economic alignment between those that advocate for and perform warranty work and the consumer. New car warranties are a key component to vehicle ownership. However, manufacturers see warranty work as a cost while dealers view warranty repairs as an opportunity to perform remunerative work and deliver customer satisfaction.[9] This puts dealers firmly on the side of the consumer. Many of these laws also require that manufacturers file the details of their warranty coverage with the state and ensure that manufacturers and dealers perform their warranty obligations.

The unique relationship that dealerships have with both their customers and their auto manufacturers allow them to play a vital role in helping to ensure their customers' safety. Current franchise agreements are structured such that manufacturers compensate dealers for recall repairs; thus, dealers have an independent financial incentive to do this work which benefits consumers. Additionally, it is in the dealer's interest to ensure that customers remain satisfied with the operation of their vehicles—and this can be achieved, among other ways, by handling recalls and technical service bulletins expeditiously as they arise. Vehicle owners often ignore recall notices if they think the repair is not critical; dealers, however, routinely confirm that vehicles brought in to them for service are up to date on all recall repairs.

In contrast, warranty repairs and recalls represent a cost for the manufacturers. As a result, the manufacturer's economic incentive is to do the minimum (subject to concerns about safety liability and consumer loyalty). Accordingly, the franchised model has a distinct advantage in ensuring the completion of warranty and recall work.

In addition to providing essential warranty and recall work throughout the life of a vehicle, independent franchised dealers also service vehicles in the circumstance in which the vehicle's manufacturer goes out of business. As was witnessed during the 2008-2009 recession, this became a great concern for owners of Saab, Fisker, and Suzuki vehicles, among others. Given the financial investment associated with purchasing a vehicle, it is exceedingly valuable for

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[7] T. Randolph Beard, et al., *Spatial Competition in Automobile Retailing*, APPLIED ECONOMICS, *53*(22), 2554–2566 (Jan. 17, 2021), https://doi.org/10.1080/00036846.2020.1863322.
[8] NADA made similar policy arguments while participating tin the Federal Trade Commission's Auto Distribution Workshop. *See Auto Distribution: Current Issues and Future Trends*, FED. TRADE COMM'N, (Jan. 19, 2016), https://www.ftc.gov/news-events/events/2016/01/auto-distribution-current-issues-future-trends.
[9] Tesla has admitted as much, stating in its securities law disclosures that one of the reasons it wants to vertically integrate its vehicle distribution is that "by owning [its] sales network [it] will avoid the conflict of interest in the traditional dealership structure inherent to most incumbent automobile manufacturers where the sale of warranty parts and repairs by a dealer are a key source of revenue and profit for the dealer but often are an expense for the vehicle manufacturer." Tesla Motors Inc., *2014 Annual Report (Form 10-K)* at 8 (Feb. 26, 2015) https://www.annualreports.com/HostedData/AnnualReportArchive/t/NASDAQ_TSLA_2014.pdf.

consumers to have a reliable and efficient source of service for their vehicles. As a result of these concerns, states require independent franchised dealers because dealers serve as a backstop for customers if their vehicle manufacturer ceases to exist. When this occurs, the dealer is more likely to stay in business and will still be around to perform needed repairs and routine maintenance. Many dealerships sell multiple brands and consequently will have available trained technicians and expertise in both locating parts and servicing vehicles, even if the manufacturer has ceased operation. For example, many former dealers of the shuttered brands mentioned above continued to service their customers' cars and trucks. Dealers thus ensure the availability of service solutions independent of the manufacturer, providing additional protection to consumers and increasing consumer confidence.

Independent franchised dealers fuel local economic activity, creating jobs and economic opportunity for local residents and generating significant tax revenues. Collectively, the nation's more than 16,000 dealers employ over one million people, offering high paying jobs with good benefits and attractive opportunities for personal advancement and professional development. And local dealers hire local people for jobs that cannot be outsourced. When the going gets tough, a vertically integrated manufacturer could opt to close a local retail outlet and move on, which will be significantly less likely with a local dealer.

Many state franchise laws were borne out of necessity because manufacturers have a long history of taking advantage of that superior position and behaving opportunistically relative to their dealers. Examples abound, including: (1) threats of termination or a shorter-term franchise agreement on renewal based on a dealer's failure to meet sales performance targets that were not realistically attainable; (2) pressure to upgrade facilities without any evidence of a positive return on investment; (3) pressure to accept slow-moving inventory; (4) requiring a dealer to compete when other dealers in the same market are given preferential pricing ("two-tiered pricing"); (5) requiring a dealer to join, and contribute financially to, a cooperative advertising association even when the advertising is of little or no benefit in the dealer's market; and (6) pressure to accept unordered parts and essential special tools whether needed or not.

The existence of federal antitrust laws is, ironically, one of the reasons why state franchise laws are so necessary. The federal antitrust laws significantly constrain collective dealer activities. Individual dealers may complain, criticize, second-guess, and vent about their manufacturers. Dealers acting as a group, however, are subject to extensive antitrust restrictions on their activities—and have no effective bargaining mechanism once the massive investment is made in a retail establishment. Dealer groups may not, for example, agree to refuse to sell an unpopular car or decline to participate in an exploitative manufacturer program. Dealer groups may not require better financial arrangements as a condition of using a manufacturer's captive finance company. Lastly, and most importantly, no group of dealers may jointly refuse to accept a manufacturer's unilateral revisions to its franchise contract. If these antitrust law-based restrictions did not exist, dealers would be in a position to exercise collective economic self-help to address manufacturer overreach and abuse. However, they do exist, and dealers' only viable option, as a result, is seeking redress in state legislatures.

II. Franchise Laws are an Appropriate Exercise of State Power in the Context of Federalism.

State franchise laws do not "hinder progress and consumer choice"; rather, they serve legitimate public policy aims and allow state voters to make a choice of business model that best serves the public. Ours is a federalist system of government, and one of the important aspects of that system is that the states retain the authority to determine what level of regulation is appropriate for a given market within their borders. Our system establishes a prudent approach. In such a large and diverse country, there are many variables from state to state, including: the needs, wants, and habits of consumers; political philosophies; the nature of the markets and the market participants themselves; prevalent market behaviors; and the list goes on and on. On many matters, one size does not fit all.

In fact, significant variations exist among the states on a host of issues addressed by the state franchise laws. Some states have determined that the direct sales model is preferable for their constituent consumers and their local markets while others have concluded the opposite. These choices are reserved for the decision making of the duly elected state legislatures. At the same time, although there are variations among the states in the specific franchise law provisions they have enacted, it is also significant that, at a higher level of abstraction, there is no disagreement among the states that some form of regulation of this market is needed. All fifty states have enacted auto distribution franchise laws, including states that are large and those that are small, those that are rural and those that are urban, and those that are politically liberal and those that are conservative. The fact that the legislative bodies to whom this decision has been committed—bodies that on many other matters may vote very differently—have unanimously determined that regulation is required speaks volumes about the appropriateness of these laws from a consumer and public interest perspective.

III. The Franchise Model Does Not Create Any of the Harms That Its Opponents Assert.

Opponents of the franchise system make unsupported assertions that are undermined by all available evidence. Anonymous commenters argue that dealer franchise laws reduce competition, act as an inefficient "middleman," inflate vehicle prices, hinder the sale of electric vehicles, create "geographical monopolies," stifle innovation, are unfair to manufacturers, and "fleec[e] manufacturers and consumers" through warranty repair.[10] None of these assertions withstand scrutiny—they are simply conjured out of thin air.

As shown above, the franchise system creates a net benefit in terms of both economic efficiency and benefits to the consumer. As Oliver Wyman points out, "[t]he concept of dealers as middlemen, somehow adding an unnecessary step in the distribution process, and thus creating inefficiency, does not hold up when one considers the critical activities for which they are responsible. . . . The major differences between the channels are a shift in who is responsible for

[10] Anonymous, Comment on Anticompetitive Regulations Task Force Request for Information (Apr. 14, 2025), https://www.regulations.gov/comment/ATR-2025-0001-0047.

performing each activity."[11] A key assertion made by anonymous detractors, that "forcing consumers through a dealership middleman and not allowing direct sales adds unnecessary costs," is demonstrably false.

Similarly, the argument that "significant costs imposed by the franchise system are passed directly onto consumer in the form of higher prices" should be inverted. The logic that costs are passed on to consumers is sound, but the assumption that the franchise system imposes costs is false. In fact, the cost *savings* associated with the franchise system, the most cost-effective distribution channel, are passed onto consumers in the form of *lower* prices. Indeed, intra-brand competition resulting from the franchise system creates a more competitive marketplace than the direct sales model, reducing prices for consumers. According to Cox Automotive Q1 2025 report, the average new vehicle sells for 96% of MSRP. And as discussed above, intra-brand competition can reduce consumer costs by as much as 4% to 5% per vehicle. Therefore, assertions that the franchise model raises prices for consumers is also demonstrably false.

Moreover, the public record contains ample data demonstrating that consumers are generally very happy with their experiences acquiring automobiles. For example, the Sales Satisfaction Index compiled by renowned market research firm J.D. Power shows that overall customer satisfaction with all dealers (both those where they bought and those they interacted with but did not buy from) is high, scoring 789 on a 1,000-point scale in 2021. Further, satisfaction with those dealers where buyers purchased their vehicle is even higher, scoring 841 on the same scale. Similarly, the 2021 Cox Automotive Car Buyer Journey Study indicates that a full 78% of new car buyers are highly satisfied with their experience at their dealership of purchase.[12] (And when additional data Cox provided to NADA is considered, which includes both moderately satisfied and highly satisfied customers, the combined overall satisfaction percentage jumps to 93 percent).[13]

Commentor's arguments that franchise laws create "geographical monopolies" is similarly misguided. State-level Relevant Market Area (RMA) laws, for example, are simply business-to-business regulations that create a process of review whereby independent third parties are allowed to examine a manufacturer's choice of placing a new retail outlet into a same brand dealer's current area. These laws do not impact consumers and, in fact, are wholly invisible to any new vehicle purchaser. RMA laws simply do not grant any market power, and we are unaware of any dealer with market power sufficient to charge monopoly rents. In fact, as noted above, the franchise model *reduces* prices to consumers through intra-brand competition between local competitors.[14]

Opponents of the franchise model also continue to perpetuate the myth that franchise dealers are inferior to direct sellers when it comes to vehicle choice and the sale of electric vehicles. The

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[11] OLIVER WYMAN at 12.

[12] *2021 Car Buyer Journey Study Released*, COX AUTO. (Jan. 18, 2022), https://www.coxautoinc.com/market-insights/2021-car-buyer-journey-study/.

[13] NADA, Comments on FTC Proposed Combatting Auto Retail Scams Trade Regulation (Sept. 12, 2022). https://www.regulations.gov/comment/FTC-2022-0046-8368 at 14-15.

[14] *See* Beard, *Spatial Competition in Automobile Retailing* at 12.

inconvenient truth, however, is quite the opposite. Franchise manufacturers offer much greater vehicle choice at lower prices, and franchised dealers are on track to sell more electric vehicles than direct-selling manufacturers in 2025.[15]

The anonymous commentators' remaining arguments are easily rebutted by evidence and logic. Franchise laws stifle innovation? Sixteen thousand locally-owned companies are far more innovative than a handful of manufacturers, as evidenced by the thousands of dealers and vendors who participate in the NADA Show and the entrepreneurism of events such as Autovate.[16] Manufacturers are "shackled" by franchise laws? The cost effectiveness of the franchise model proves otherwise.[17] Franchise laws "fleece" manufacturers and consumer through warranty repair? As discussed above, franchise laws align manufacturers and consumer interests—vertical integration would hurt the consumer and be *anti*-competitive because the power imbalance between the manufacturer and consumer is stark. In short, the anonymous submissions attacking the franchise model are not supported by facts or logic, and reflect a complete misunderstanding of the auto-retail market.

IV. Conclusion

As the Anticompetitive Regulations Task Force conducts its important work in advocating for the elimination of anticompetitive laws and regulations, it should recognize that the dealer franchise model is part of the solution, not the problem, and that it reduces the net cost of distribution and provides countless benefits to consumers.

Respectfully submitted,

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[15] *Electric Vehicle Sales Report Q1 2025*, COX AUTO. (Apr. 11, 2025), https://www.coxautoinc.com/wp-content/uploads/2025/04/Q1-2025-Kelley-Blue-Book-EV-Sales-Report-04-11-25.pdf.

[16] *See NADA Show*, NAT'L AUTO. DEALERS ASS'N, (last visited May 22, 2025), https://www.nada.org/nada-show; *Autovate: Driving the Future*, AUTOVATE (last visited May 22, 2025), https://autovate.org/?utm_source=chatgpt.com.

[17] Indeed, Oliver Wyman found that it would be prohibitively expensive for an OEM to replicate the dealer model: "Should the OEM decide to abandon its dealership network, the estimated network replication cost for any of the "Detroit 3" legacy US OEMs is between $25 billion and $45 billion in fixed capital costs alone (inclusive of land, facilities, furniture, fixtures, and equipment), in addition to substantial working capital costs to maintain national inventory levels (with legal and other transition expenses ignored)." OLIVER WYMAN at 16.