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FEDERAL TRADE COMMISSION
Chicago Regional Office

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November 13, 1986

The Honorable John W. Hallock, Jr.
Minority Whip
House of Representatives
State Capitol Building
Springfield, IL 62706

Dear Mr. Hallock:

The Federal Trade Commission's Chicago Regional Office and Bureaus of Competition, Consumer Protection, and Economics are pleased to have the opportunity to respond to your letter of November 7, 1986, requesting our comment on HB 787 and Governor Thompson's amendatory veto of HB 787.¹ In essence, HB 787, as originally passed, would have the effect of prohibiting fleet dealers, such as Hertz and Avis, from conducting fleet sales at locations other than licensed, permanent dealer lots. The probable effect of such legislation is to increase the prices paid by consumers for used cars. Governor Thompson's amendatory veto of HB 787 substantially reduces the anticompetitive effect of the legislation as originally passed by expressly permitting off-site fleet sales when certain conditions are met. However, as we discuss below, there does not appear to be a need for imposing new restrictions on the issuance of a supplemental vehicle dealers license simply because the dealer wishes to conduct a sale outside the dealership's usual market. We believe that consumers will best be served if the market is left free to operate without unnecessary regulation.

The interest of the Federal Trade Commission staff in this legislation stems from the Commission's mandate to enforce the antitrust and consumer protection laws of the United States.

¹ These comments represent the views of the Chicago 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 Federal Trade Commission, however, has reviewed these comments and has voted to authorize their presentation.

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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 experience in analyzing the impact of various restraints on competition and the costs and benefits to consumers of such restraints. Further, the Federal Trade Commission has been actively involved in used car market issues during recent years. In 1984, the Commission issued the Used Motor Vehicle Trade Regulation Rule ("Used Car Rule") to reduce the effects of oral misrepresentations in used car transactions.² The development of this rule as well as the conduct of investigations and studies relating to the automobile industry have provided the Commission staff with substantial expertise in numerous aspects of the automobile market.³

HB 787 amends the Illinois Vehicle Code to prohibit the issuance of a supplemental license to a licensed new or used vehicle dealer intending to hold a sale outside that dealer's relevant market area. Section 2 of the Motor Vehicle Franchise Act defines relevant market area as a 10 or 15 mile radius around the dealer's principal location, depending on the population of the county. It is our understanding that most fleet sales are currently held outside the seller's relevant market area. Thus, the effect of the bill is to virtually eliminate fleet sales as presently conducted.

HB 787 is contrary to the public interest because it will unnecessarily restrain competition in the used car market. The usual practice of fleet dealers, such as Hertz and Avis, is to hold used car sales on credit union property. Such sales entail low overhead, and fleet dealers may therefore pass along substantial savings to consumers. Credit unions recently surveyed by the Illinois Credit Union League estimated that credit union members paid an average of \$1,118 less for a used car sold at a credit union sponsored fleet sale than they would have paid a "conventional" used car dealer. Thus, the principal effect of restricting supplemental licensing for used car dealers is simply to increase costs to consumers in the used car market.

2 16 C.F.R. § 455.

3 The FTC Bureau of Economics' Staff Report on the Effect of State Entry Regulation on Retail Automobile Markets, January 1986, is a recent example of the FTC's concern with anti-competitive regulations in the automobile market.

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Fleet sales directly promote competition in the used car market. We understand, for example, that fleet sales are often held in or near smaller cities or towns where there are otherwise few used car outlets. Fleet sales also benefit consumers in the car rental market by enabling fleet dealers to turn over their inventories efficiently. By effectively prohibiting fleet sales as they are now conducted, HB 787 will tend to increase the cost of car rentals.

Under Governor Thompson's amendatory veto language, fleet sales may be conducted outside a dealer's relevant market area if sponsored by a financial institution or credit union operating in Illinois. We understand that this provision was added to address concerns about "fly-by-night" used car sellers. It appears, however, that most fleet sales in Illinois are already conducted in conjunction with a financial institution or credit union, so that the amendatory veto simply mandates what the market already provides. Further, it would seem that concerns about unscrupulous dealers are already addressed by the general licensing requirements for automobile sellers. Thus, it is not evident that the provision proposed by the Governor is necessary except to counteract the effects of HB 787 as passed. The bill, even amended as the governor proposes, could harm consumers by constraining future innovation in the financing of used cars.

The Governor's amendatory veto also requires dealers to provide service warranties on vehicles offered for sale outside the dealers' relevant market areas. This provision may be unnecessary, since it is our understanding that major fleet dealers such as Hertz and Avis already offer complete service records and warranties with the used cars they sell. In addition, the Federal Trade Commission's Used Car Rule, as noted above, affords warranty-related protection to consumers whether they purchase used cars from off-site dealers or from "conventional" used car dealers. The Used Car Rule requires car dealers, including off-site dealers, to post a "Buyers Guide" in the window of each used vehicle they offer for sale. The Buyers Guide must state whether the vehicle comes with a warranty and, if so, what specific warranty protection the dealer will provide. If the vehicle comes with no warranty, then the sticker must also disclose this information. Under the rule, the Buyers Guide becomes part of the consumer's sales contract and overrides any contrary provisions that may appear in that contract.

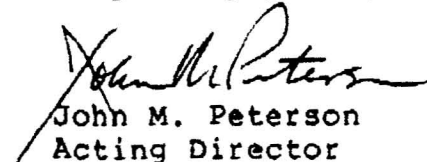
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We do not believe that requiring fleet dealers to provide warranties would be in the best interest of consumers. Generally, when dealers are required to provide warranties, their costs increase and the result is higher prices to consumers. We believe that consumers are in the best position to determine whether they wish to purchase used cars with or without warranties, and dealers, in turn, are in the best position to react to perceived consumer interest in such information. In addition, such a course of action would allow consumers to pay for the level of warranty service desired. The important point is that there be a disclosure, as mandated by the FTC Used Car Rule, of whether or not consumers are receiving a warranty.

In conclusion, we believe that HB 787 as originally passed by the Illinois General Assembly would ultimately harm consumers of used vehicles. Restricting competition in the manner proposed would lead to unnecessary increases in fleet dealers' costs and, correspondingly, to unnecessary increases in the prices consumers pay for used vehicles. Similar effects are also likely to be felt in the rental market for vehicles. Governor Thompson's amendatory veto of HB 787 substantially reduces the anti-competitive impact of the bill by preserving competition in the used vehicle market. However, as discussed above, there does not appear to be a need to impose any new restrictions of this nature on sales by fleet dealers.

It is our position that consumers will best be served by competition in a market free from unnecessary regulatory restraints. We appreciate this opportunity to provide our views on the competitive effects of HB 787.

Very truly yours,



John M. Peterson
Acting Director
CHICAGO REGIONAL OFFICE

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