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Federal Trade Commission

Office of the Regional Director
8303 Elmbrook Drive
Dallas, Texas 75247
(214) 767-7050

June 1, 1987

The Honorable William P. Clements, Jr.
Governor of Texas
Office of the Governor
Austin, Texas 78711

Dear Governor Clements:

The Federal Trade Commission staff is pleased to have this opportunity to respond to your office's request for comments on House Bill 1953.[1] This bill would prohibit dealers from selling used vehicles at temporary locations and would prevent fleet dealers, such as Hertz and Avis, from conducting fleet sales at locations other than their licensed, permanent dealer lots. The probable effect of such legislation will be to reduce competition and to increase the prices paid by Texas consumers for used vehicles. We believe that consumers will be better served if the market is left free to operate without unnecessary regulation, and we therefore recommend that this bill not be enacted.

Our interest in this legislation stems from the Commission's mandate to enforce the antitrust and consumer protection laws of the United States. 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 these restraints. In recent years, we have been involved in several issues that relate specifically to the used car market. In 1984, for example, the Commission issued the "Used Car Rule" to reduce the frequency and effect of oral misrepresentations in used car transactions.[2] The development of this rule, as well as the conduct of investigations and preparation of studies relating to the automobile industry,

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1 The comments represent the views of the Dallas Regional Office and the Bureaus of Competition, Consumer Protection, and Economics of the Federal Trade Commission and are not necessarily those of the Commission itself. The Commission has, however, voted to authorize us to present these comments.

2 Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. § 455.

provided the Commission staff with experience in many aspects of the automobile market.[3] In addition, the staff has submitted comments on other issues similar to those raised by this bill.[4]

We believe that House Bill 1953 is likely to affect Texas consumers adversely by restricting competition in the used car market. This in turn would likely lead to price increases. Currently, automobile sales may be made by any dealer holding a license for a permanent location.[5] A dealer who has such a license may operate under it anywhere within city limits. House Bill 1953 would require, however, that a dealer sell only from the specific location for which the license was originally issued. Furthermore, each location would have to qualify as an "established and permanent place of business" and would have to have an employee present during reasonable business hours.

The usual practice of fleet dealers, such as Hertz and Avis, is to hold used car sales on credit union property. Since these sales entail low overhead, fleet dealers are able to pass along substantial savings to consumers. Credit unions recently surveyed by the Illinois Credit Union League estimated that 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 for a vehicle sold by a "conventional" used car dealer.

The proposed bill would prohibit fleet dealers from selling vehicles at temporary locations, such as those set up by credit unions and rental car companies. The bill also allows the Motor Vehicle Commission to cancel a dealer's license if the dealer allows it to be utilized by another entity or individual. House Bill 1953 therefore proposes to virtually eliminate fleet sales as they are presently conducted. The principal effect of this would be to increase costs to consumers in the used car market.

The effects may be particularly pronounced in certain areas of the state. We understand that many fleet sales are made in

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3 The FTC Bureau of Economic's Staff Report on the Effects of State Entry Regulation on Retail Automobile Markets, January, 1986, is a recent example of the Federal Trade Commission's concern with anticompetitive regulations in the automobile market.

4 Letter from John M. Peterson of the FTC Chicago Regional Office to John W. Hallock, Illinois House of Representatives, November 13, 1986; Letter from John M. Peterson of the FTC Chicago Regional Office to Woods Bowman, Illinois House of Representatives, April 24, 1987.

5 Tex. Rev. Civ. Stat. Ann. art. 6686 (Vernon 1987).

smaller cities or towns where there may only be a limited number of conventional dealerships. Competition from the fleet sales may be especially important in this context.

The apparent purpose of this bill is to protect consumers from fly-by-night operators. Texas already addresses these concerns in several ways. The Texas Deceptive Trade Practices Act provides treble damages for fraudulent acts and practices.[6] Further, current Texas law requires that dealers participating in sales must hold a license number for a permanent location in Texas.[7] Thus, Texas consumers are already protected from unscrupulous operators who do not have a valid business location in the state.

The proposed bill would harm consumers in the <u>rental</u> car market as well. Fleet sales benefit this market by enabling fleet dealers to turn over their inventories more efficiently. By prohibiting fleet sales as they are now conducted, House Bill 1953 would tend to increase the cost of car rentals.

In conclusion, we believe that House Bill 1953 would virtually eliminate fleet sales as they are presently conducted and would ultimately harm consumers of used vehicles. The unjustified limitations on fleet sales are likely to increase fleet dealers' costs and, correspondingly, increase the prices consumers pay for used vehicles. Restricting fleet sales in the manner proposed would also reduce the competition that these sales provide to other segments of the used car market. Finally, the proposed bill may lead to similar increases in price in the rental vehicle market. For all of the above reasons, the staff of the Federal Trade Commission recommends that House Bill 1953 not be enacted.

We appreciate having had this opportunity to provide our views on these issues.

Sincerely,

Jim Moseley
Regional Director
Dallas Regional Office

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6 Tex. Bus. & Com. Code Ann. § 17.01 <u>et</u>. <u>seq</u>. (Vernon 1987).

7 Tex. Rev. Civ. Stat. Ann. art. 6686 (Vernon 1987).