

UNITED STATES OF AMERICA  
Federal Trade Commission  
WASHINGTON, D.C. 20580

Office of Policy Planning  
Bureau of Competition  
Bureau of Economics

May 7, 2015

Senator Darwin L. Boohar  
35<sup>th</sup> Senate District  
P.O. Box 30038  
Lansing, Michigan 48909-7538

Dear Senator Boohar:

Thank you for requesting comments from the Federal Trade Commission ("FTC"<sup>1</sup>) staff regarding Senate Bill 268 pending in the Michigan legislature and relating to the sale and servicing of automobiles. This bill would create a limited exception to current provisions of Michigan law that have been interpreted to prohibit automobile manufacturers from selling new motor vehicles to consumers except through independent franchised dealers. In our view, current provisions operate as a special protection for dealers that is likely harming both competition and consumers. We therefore appreciate this opportunity to provide our views as to the effect of the bill on direct sales by all manufacturers, rather than the enactment of a

<sup>2</sup> Our opinion is limited to bills addressing blanket restriction on manufacturer sales and service to consumers. We do not attempt to comment or review the myriad additional provisions of Michigan that regulate the relationship between automobile manufacturers and their independent dealers.



In carrying out its mission, the Commission has developed considerable expertise in analyzing markets for the sale of motor vehicles. For example, in 1988 and again in 2014, FTC staff submitted advocacy letters opposing limitations imposed by Illinois law on the hours of operation of auto dealerships. The FTC also used its enforcement authority to protect competition in motor vehicle sales in the late 1980s, when it issued a complaint against several motor vehicle dealerships in the Detroit area and the Detroit Auto Dealers Association (“DADA”) for imposing anticompetitive restrictions on hours of operation.

In 1986, the FTC’s Bureau of Economics issued a report on the effect of state regulation in retail motor vehicle markets that restrict the establishment of new motor vehicle dealerships near existing dealers selling cars of the same make. The report found that these state laws harmed consumers because they raised motor vehicle prices. In addition, in 2001, then-Commissioner Thomas Leary expressed concern about the same kind of state laws now at issue in Michigan—laws that insulate motor vehicle dealers from competition from automotive manufacturers. While dealers at one time tended to be small businesses, he observed, in 2001 they were frequently much larger entities and the once highly concentrated motor vehicle manufacturing industry had become far more competitive. Commissioner Leary questioned, therefore, whether this kind of regulatory protection for dealers could still be justified, especially because it tended to interfere with the development of new and potentially more efficient methods of motor vehicle distribution, such as e-commerce.<sup>10</sup>

More recently, in 2014, FTC staff submitted comments in connection with proposed bills in Missouri and New Jersey addressing restrictions on manufacturer direct distribution of motor vehicles in those states.<sup>11</sup> This comment echoes the views expressed in those comments.

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<sup>7</sup> Comment from FTC Staff to James Oberweis, State Senator of Illinois (Nov. 26, 2014), available at [http://www.ftc.gov/system/files/documents/advocacy\\_documents/staffcommentillinois-statesenate-regardingsenatebill-2629-which-would-repealcertain/140327illinoisautostaffcomment.pdf](http://www.ftc.gov/system/files/documents/advocacy_documents/staffcommentillinois-statesenate-regardingsenatebill-2629-which-would-repealcertain/140327illinoisautostaffcomment.pdf); Comment from FTC Staff to James R. Thompson, Governor of Illinois (Dec. 22, 1988), available at [http://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/staffcommentgovernorjames.r.thompsonconcernings.b.1870-limit-auto-basereatal-chargesalter-limit](http://www.ftc.gov/sites/default/files/documents/advocacy_documents/staffcommentgovernorjames.r.thompsonconcernings.b.1870-limit-auto-basereatal-chargesalter-limit) -





from using independent retail networks, when that is what they want to do, also can have negative competitive consequences. The common message in both situations is that competitive processes effectively aligns the interests of firms and consumers on the issue of distribution method. In order to make their product as attractive as possible, firms choose the distribution method that can bring their product to market as efficiently as possible.

Specific evidence to support these views can be found in many industries, including retail automotive markets and industries like gasoline retailing. Studies by both academic researchers and FTC staff have concluded that imposed restrictions on automobile manufacturers' ability to negotiate with their dealers increased the prices paid by consumers without leading to notable improvements in service quality.<sup>20</sup> Similarly, studies have found a causal link between laws that inhibit gasoline refiners' ability to operate or own retail stations, and higher prices.<sup>21</sup> In our view, the well-developed body of research on these issues strongly suggests that government restrictions on distribution are rarely desirable for consumers. When they are adopted at a minimum, such restrictions should be clearly linked to specific policy objectives that the legislature believes warrant deviation from the beneficial pressures of competition, and should be no broader than necessary to achieve those objectives.<sup>22</sup>

Those who support a blanket prohibition on direct manufacturer sales have made a number of arguments that FTC staff find unpersuasive. Perhaps the central concern reflected in the current law regulating the manufacturer-dealer relationships is that government intervention is required to protect independent dealers from abusive behavior by their suppliers. But a blanket prohibition of direct manufacturer sales is not a narrowly crafted provision to protect franchised

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Third, past work by economists has shown that vertical integration (c)-8(-8(s)-ra599 2 )Tc<t abd pro2(i)7(r)2(d,)3(367av)i29(



by current auto manufacturers and also by future entrants to the market. Michigan consumers are paying the price of such a date. The essential mechanism that drives markets is the interaction between the supply by manufacturers and the demands of consumers is being curbed. The market is less responsive to consumer preferences and less innovative in anticipating their evolving needs.

Again, FTC staff offer no opinion on the question of whether motor vehicle manufacturers would be best served by selling their products directly or through independent distributors. Nor do we express a view as to whether any particular vehicle manufacturer should succeed or fail. Our principal point is that in some legitimate public purpose consumers would be better served if the choice of distribution method were left to motor vehicle manufacturers and the consumers to whom they sell their products.

#### B. Proposed Bill to Ease a Manufacturer Sales Ban

Your request for the FTC's view and comment refers to <https://www.ftc.gov/press-release/2015/04/2015-04-23-ftc-issues-views-comments>



- x The current prohibition against a manufacturer directly owning, operating or controlling a new motor vehicle dealer<sup>26</sup> would be modified to permit “the ownership, operation or control by a manufacturer of autocycles of a new motor vehicle dealer or a used motor vehicle dealer that is engaged in purchasing, selling, ~~leasing~~, or dealing in autocycles manufactured or assembled by that manufacturer.”
- x The current prohibition against a manufacturer selling a new motor vehicle directly to a retail customer other than through franchised dealers<sup>27</sup> would be made subject to the new subsection (4) above
- x The current prohibition against a manufacturer authorizing a nonfranchised motor vehicle service and repair facility to perform motor vehicle warranty repairs and recall work<sup>28</sup> would be modified to permit “work on an autocycle that was manufactured or assembled by the manufacturer.”

## 2. Benefits of the Proposed Bill

Removing the direct sales and service ban for the autocycle motor vehicle category would eliminate an obstacle to market entry in Michigan by a new manufacturer. Elio Motors has announced plans to manufacture innovative lowcost, highmileage, enclosed three wheeled vehicle. The firm plans to manufacture the vehicles at a facility in Shreveport, Louisiana, beginning in 2016. As of March 29, 2015, it had accepted more than 41,000 reservations for the vehicles. Elio Motors does not intend to establish an independent dealer network. Warranty service will be provided through the Pep Boys auto service chain.<sup>29</sup>

Distribution of Elio products is planned through a series of company owned retail sales centers and a smaller number of regional company owned “Marshaling Centers” Customers will place orders at the retail centers and the orders will be filled overnight from the Marshaling Centers that will maintain product inventory. Basic models of the Elio vehicles stored at the Marshaling Centers will be configured with optional equipment selected by the customer and then delivered to the retail center for pickup by the customer. This distribution method, which maintains product inventory at locations away from the sales outlets, and tailors final product assembly to the configuration chosen by the customer is an important part of the firm’s business plan to drive down the consumer price of its products. By fitting cars with only those options that the customer chooses, Elio plans to avoid charging options “packages” containing costly items that customers neither need nor want.<sup>30</sup>

<sup>26</sup> Id., § 445.1574(1)(h).

<sup>27</sup> Id., § 445.1574(1)(i).

<sup>28</sup> Id., § 445.1574(1)(j).

<sup>29</sup> Elio Motors, <http://www.eliomotors.com> (last visited March 30, 2015). See Elio One Page Specs Sheet, [http://www.eliomotors.com/One\\_Page\\_Specs\\_Sheet.pdf](http://www.eliomotors.com/One_Page_Specs_Sheet.pdf)

The proposed bill would help clear the way for an innovative production distribution method not yet available to Michigan consumers. Moreover, the bill is not specific to Elio Motors; it would also permit other manufacturers of autocycles to reach customers directly in the event consumer demand grows in this market segment. The proposed bill therefore would enhance competition in a new product category and would provide tangible benefits for Michigan consumers.

### III. Conclusion

Although Senate Bill 268 would likely facilitate innovation in new products and distribution methods in the autocycle category of motor vehicles, it would leave in place existing law for other forms of motor vehicles. In other words, a blanket ban on direct manufacturer sales would remain in effect for the products that make up the vast majority of vehicles sold in Michigan today. FTC staff believe that current law, interpreted to ban direct manufacturer sales of motor vehicles, is very likely anticompetitive and harmful to consumers, and cannot be justified as a way to protect franchised dealers from abuse of their franchise relationships, and the other arguments offered in its defense appear to be contrary to a significant body of economic study and FTC experience.

The proposed bill carves out a limited exception to current law. In FTC staff's view, any effort to loosen or reduce the blanket prohibition on direct manufacturer sales may prove beneficial. However, we note that innovations in distribution methods (including the kind planned by Elio Motors) could be undertaken for a much broader range of motor vehicle products than just autocycles.

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thousands of dollars of stuff you neither need nor want. Tavarish, Interview with CEO Paul Elio, <http://carbuying.jalopnik.com/elio-explains-how-he-can-sell-an-84-mpg-car-for-6-1677743693/> (last visited March 30, 2015). See also New York International Auto Show: Elio Press Conference, <https://www.youtube.com/watch?v=RJUXhK4pHx8&feature=youtu.be> (published April 2, 2015) at 11:25 14:15.

