“RIGHT TO REPAIR ACT”

Prepared Statement of the Federal Trade Commission

The FTC is currently hard at work reviewing its Appliance Labeling Rule pursuant to Section 137 of the Energy Policy Act of 2005[6] and is on track to meet rigorous Congressional deadlines.

The Commission's work is critical to protect and strengthen free and fair markets in the United States. Among the Commission's accomplishments are the implementation and enforcement of the National Do-Not-Call Registry, the protection of the availability of lower-cost prescription drugs, the halting of deceptive or abusive lending practices, the elimination of unfair or deceptive practices in e-commerce, and the challenge of mergers and acquisitions that likely would harm competition.

Auto repair is an important service for U.S. consumers. U.S. consumers spend billions of dollars each year to repair and maintain the more than two hundred million cars currently on the road.[7] Consumers thus have a significant interest in automobile repair and maintenance markets that operate effectively and efficiently, consistent with safety and other quality standards.

For some time, Chairmen Barton and Stearns, and this Subcommittee have considered ways to ensure that independent car repair facilities and vehicle owners have access to information and tools needed to diagnose, service, or repair vehicles.

As the Commission has previously noted, such access is not as easy or inexpensive as it once was. Auto manufacturers have adopted sophisticated technology to improve the performance, comfort, safety, and security of their products. This technology requires expensive

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[6] Pub. L. No. 109–58, 119 Stat. 594 (Aug. 8, 2005). Section 137 of the Energy Policy Act of 2005 amended the Energy Policy and Conservation Act of 1975 ("EPCA"), 42 U.S.C. § 6291 *et seq.*

[7] U.S. Census Bureau, STATISTICAL ABSTRACT OF THE U.S. (2006).

computerized tools to diagnose and repair problems, as well as knowledge of particular software access or computer codes. Independent repair shops claim that it can be difficult to acquire all of the equipment it may need to repair all makes of cars, or to easily access all of the information required to make timely repairs. Generally, the marketplace will provide strong incentives for automobile manufacturers to ensure that their customers have an appropriate range of repair options because the manufacturers depend on repeat purchases of their products. With the increasing sophistication of automobiles, however, independent repair shops have been concerned about continued access to the high tech information and tools they need to repair motor vehicles.

H.R. 2048

To address these concerns, last May, Chairman Barton and Representatives Towns, and Issa introduced H.R. 2048. This legislation would require automobile manufacturers to promptly disclose to a vehicle owner, or to a repair facility of an owner's choice, the information "necessary to diagnose, service, or repair" the owner's car. In particular, it requires manufacturers to provide equal access to service and training information to both dealers and independent shops on a non-discriminatory basis. The information would include activation of controls, and diagnostic tools and capabilities. Auto manufacturers would be exempt from providing any information that constitutes a trade secret unless that information already has been provided to franchised dealerships or other repair facilities. The proposed legislation also would require the Commission to promulgate regulations to prescribe the manner in which the information would be provided.

A violation of this regulation would constitute an unfair or deceptive act or practice in violation of Section 5 of the FTC Act[8] and would be treated as a violation of a rule defining an unfair or deceptive act or practice.[9] Violations would, therefore, be subject to both civil penalties and injunctive relief.

This bill is the successor to a bill from the prior Congress, H.R. 2735. The Commission appreciates the willingness of Chairmen Barton and Stearns, and the Subcommittee to consider the concerns of the Commission and its staff in drafting the new legislation.[10] Among other things, H.R. 2735 required the Commission to review massive amounts of highly technical information on an ongoing basis to determine whether particular information is entitled to trade secret protection.

unwilling to make the compromises necessary to resolve the matter. Last year, Chairman Barton and Senator Graham urged representatives of the independent auto repair facilities and automotive manufacturers to try to reach a voluntary agreement for the provision of service information. In August and September 2005, manufacturer and aftermarket representatives met for more than sixty hours of discussions facilitated by the Council of Better Business Bureaus ("CBBB") and attended by Commission staff. In these discussions, the parties looked to the information-sharing structure created by the National Automotive Service Task Force ("NASTF")[11] to provide information, training, and tools to automotive service professionals.[12] In the course of their discussions at the CBBB, both sides looked to improve the NASTF structure to streamline the process and provide the necessary support to technicians who face problems

interests were represented in a balanced matter; (3) the mechanism for resolving disputes regarding tools, including tool costs; (4) the calculation of monetary remedies for aggrieved parties; (5) the penalties, if any, to be assessed against a non-compliant manufacturer; and (6) a means of providing key codes to the aftermarket without compromising vehicle security.

Last November, the Commission testified before this Subcommittee to discuss the efforts of the manufacturers and aftermarket representatives to reach an accord. We expressed our disappointment that the parties were unable to come to a final agreement and our hope that the parties could eventually reach consensus.

One key area of agreement between the parties was the creation of an independent NASTF board to oversee the information sharing process. Significantly, both manufacturers and aftermarket representatives agreed that if they could concur on board membership, that board could resolve other areas of dispute. The parties, however, did not then agree on the composition of the board.

We continue to believe that the best approach to resolve particular disputes between the parties, including the determination of the composition of any governing board, should be decided and implemented by industry participants rather than the government. Such an approach is preferable because the parties' full faith in the board is imperative for it to accomplish the goals of a self-regulatory process, and that full faith would best be obtained by consensus in determining its composition.

While the parties still have not succeeded in resolving their disputes and developing a comprehensive solution to the issue, the Commission staff has been informed that NASTF recently elected a Board of Directors with the mission of providing automotive service