September 12, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5160 (Annex C)
Washington, D.C. 20580

Re: Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, No. P204800

On behalf of Americans for Tax Reform and the Open Competition Center, we write in opposition to the Federal Trade Commission's Proposed Motor Vehicle Dealers Trade Regulation Rule—Rulemaking, No. P204800. If implemented, the proposed rule would increase the complexity of the car-buying process in a way that would increase burdens on small businesses and leave consumers worse off.

Americans for Tax Reform (ATR) is a taxpayer advocacy organization that opposes all tax increases and supports limited government, free-market policies. The Open Competition Center is a special project of ATR that advocates for a rule-of-law approach to antitrust regulation.

The FTC has regulatory power over most American businesses and is the primary regulator of the auto retail industry, a sector that generates $1 trillion/year in economic activity. Despite its size, the industry is fairly fragmented - there are more than 16,500 new car dealerships and 40,000 used car dealerships. Combined, these dealerships sell more than 45 million new and used cars each year.

Given the dynamic and complicated nature of the auto retail industry, a regulatory approach laser-focused on targeting bad actors benefits both consumers and retailers while conserving agency resources. The FTC has employed this light-touch strategy over the past decade – between 2012 and present day, the agency has launched 37 enforcement actions against 36 dealerships, a rate of approximately four per year. These enforcement actions rooted out bad actors while leaving the rest of the industry to serve American consumers.

While targeting bad actors is important and within the FTC's charter, the evidence does not suggest a need for onerous one-size-fits-all regulations on the auto retail industry. Yet, Chair Lina Khan's regime has been more characterized by the pursuit of ideological crusades than following the evidence or protecting American consumers. This proposed rule is no different.

The rule enacts a host of new restrictions on auto dealers that would increase the complexity of the purchasing process for consumers, including new record-keeping and disclosure requirements that will likely increase transaction time. The new mandates put government in between consumers and retailers, an unwarranted federal intervention into negotiations between private parties. For example, one requirement would prohibit sellers from informing consumers about any aspect of a vehicle without first stating the initial selling price, even though the ultimate selling price could end up being much lower.

The FTC has proposed this rule with scant little evidence that the auto retail industry is in need of new federal regulations. To justify the rule's scope, the agency cherry-picks comments from a set of roundtables the FTC hosted in 2012 that examined the business practices of auto dealerships. In the NPRM, the FTC ignores that the 2012 roundtables did not lead to any new FTC regulations of the auto retail market.

The proposed rule is several orders of magnitude larger in economic scope than other FTC rulemakings in progress this year. According to the cost-benefit analysis furnished by the FTC in the NRPM, the agency estimates that the rule would impose $1.4 billion in costs on auto dealers and yield billions more in benefits for consumers. Analysis from the American Action Forum shows serious gaps in the FTC's methodology and concludes that the cost-to-benefit ratio is much closer to even than the FTC's lopsided analysis suggests.

Ultimately, the FTC's proposed rule seems to be born out of an ideological hostility towards the auto retail industry than any demonstrable consumer harm. The proposed rule is a thinly-veiled attempt to blame local auto dealers for rising used car prices instead of the Biden Administration's failed, reckless policies.

The FTC promulgated this rulemaking without an in-depth examination of the market, ignoring prior evidence that the industry generally functions well. The FTC's cost-benefit analysis vastly overestimates the proposed rule's benefit to consumers, raising critical questions about the agency's methodology in promulgating the rule.

The last thing consumers need when they purchase a car is more government-mandated paperwork to fill out. Instead of treating all auto retailers as guilty until proven innocent, the FTC should withdraw this proposed rule and focus on enforcing current law to target bad actors.

Onward,

Grover Norquist
President, Americans for Tax Reform

Tom Hebert
Executive Director, Open Competition Center