

STATE REGULATION OF DEALER NETWORKS: JOINT OVERVIEW



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Federal Trade Commission
Washington, D.C.
January 19, 2016

General Franchise Overview

- 60-Year History Of Increasing Regulation
- Automobile Dealer Day-In-Court Act (1956)
- State Focus Since The 1970's:
 - “Unequal Bargaining Power”/“Leveling The Playing Field”
 - Promoting the “Public Welfare”
- Statutes Override Contractual Agreements
- States Regulate Most Areas Of Relationship
- Only Other Federal Regulation Concerns Arbitration Clauses In Dealer Agreements

Overview Of Termination Statutes

- Core (And Oldest) Aspect Of Franchise Protection
- Require “Good Cause” To Terminate Or Not Renew
 - Multi-Factor Balancing Test (e.g., CA, TX)
 - Material Breach Of Dealer Agreement (e.g., NJ, NY)
- Durational “Terms” Are Overridden
- Franchises Become “Evergreen”
- Notice Required/Automatic Stays 4371 Tm (2Br(om)S

Overview Of Add-Points/Relocations

- Almost Every State Restricts Manufacturers' Rights To Add Or Relocate Dealerships
- Formal Notice Must Be Issued To Existing Dealers
- Statutes Give Protest Rights To Dealers Within Statutorily-Defined Relevant Market Area ("RMA")
- Action Is Stayed Pending Outcome Of Protest
- Exemptions Cover Certain Otherwise-Protestable Add-Points And Relocations

RMA Statutes: Who Can Protest?

- Existing Dealers Within Statutorily-Defined Areas
 - Air-

Add-Point/Relocation Hearings

- Usually Decided By Administrative Agency
- Burden Of Proof Usually On Manufacturer To Establish “Good Cause”
- Multifactor Test In Most Jurisdictions:
 - Amount And Permanency Of Protesting Dealer’s Investment
 - Effect On Retail Motor Vehicle Business In RMA (Lost Sales)
 - Effect On Consuming Public In RMA
 - Public Welfare
 - Adequacy Of Competition
 - Convenient Customer Care
 - Adequacy Of Sales And Service Facilities, Equipment, Supply Of Parts, Qualified Service Personnel
 - Increase Competition/In Public Interest

Other Types Of Regulations

- Post-Termination Obligations
- Withdrawal Of Line-Make
- Proposals To Sell Franchise
- Allocation Of Vehicles
- Incentives
- Facilities/Exclusivity
- Warranty Reimbursement (Labor Then Parts)
- Audits/Chargebacks
- Modification Of Dealer Agreement
- Factory Stores/Direct Sales
- Participation In Advertising