

NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

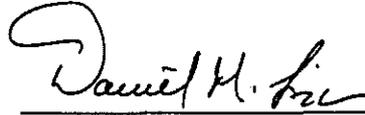
In the Matter of the Protest of)
)
HARDIN OLDSMOBILE-GMC TRUCK,) Protest No. PR-1530-96
)
) Protestant,)
)
) vs.)
)
) GENERAL MOTORS CORPORATION,)
) GMC TRUCK DIVISION,)
)
) Respondent.)
)
)

DECISION

At its regularly scheduled meeting of August 21, 1997, the Public members of the Board met and considered the administrative record and proposed decision in the above-entitled matter. After such consideration, the Board adopted the Proposed Decision as its final Decision in this matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED THIS 21st DAY OF AUGUST 1997.

A handwritten signature in cursive script, appearing to read "Daniel M. Livingston", written over a horizontal line.

DANIEL M. LIVINGSTON

President

New Motor Vehicle Board

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11	In the Matter of the Protest of)	
12	HARDIN OLDSMOBILE-GMC TRUCK,)	Protest No. PR-1530-96
13	Protestant,)	
14	vs.)	
15	GENERAL MOTORS CORPORATION,)	PROPOSED DECISION ON REMAND
16	GMC TRUCK DIVISION,)	BY THE BOARD
17	Respondent.)	

18
19
20 PROCEDURAL BACKGROUND

21 1. By letter dated May 3, 1996, Respondent General Motors, Inc.,
22 GMC Truck Division (hereinafter GMC) notified Protestant Hardin
23 Oldsmobile-GMC Truck (hereinafter Hardin) of its intent to establish an
24 additional GMC Truck franchisee within 10 miles of Protestant. The
25 additional franchisee is proposed to be located at a site in the
26 vicinity of Weir Canyon Road and Freeway 91 in northeastern Orange
27 County. Hardin filed a timely protest pursuant to Vehicle Code § 3062
28

1 on May 28, 1996.¹

2 2. GMC is a manufacturer of new motor vehicles headquartered in
3 Pontiac, Michigan and licensed by the California Department of Motor
4 Vehicles. Hardin is a licensed new motor vehicle dealer and GMC Truck
5 franchisee doing business at 1300 S. Anaheim Blvd. in Anaheim,
6 California.

7 3. Hearing on the merits of the protest was held on October 28,
8 29, and 31, and on November 11 and 12, 1996, before Administrative Law
9 Judge Kenneth Wilson. Steven E. Wittman, Esq., and John C. Redding,
10 Esq., appeared for the Protestant, and Wallace M. Allan, Esq., and
11 Lawrence M. Hadley, Esq., represented the Respondent. The matter was
12 submitted for decision at the close of the hearing.

13 4. On January 28, 1997, the Public Members of the New Motor
14 Vehicle Board (Board) considered the proposed decision of the
15 administrative law judge and remanded the decision for the taking of
16 further evidence and findings on whether it is injurious to the public
17 welfare for the additional franchise to be established. Hearing on
18 remand was held June 3, 1997.

19 ISSUES AND CONTENTIONS OF THE PARTIES

20 5. Vehicle Code section 3062 provides that a franchisor shall not
21 establish a protested additional dealership if the New Motor Vehicle
22 Board, after hearing, finds that there is good cause for not permitting
23 the establishment. In determining good cause, section 3063 requires the
24 Board to consider existing circumstances including, but not limited to,
25 all of the following:

26 (a) Permanency of the investment.

27
28 ¹All statutory references are to the California Vehicle Code.

1 (b) Effect on the retail motor vehicle business and the
2 consuming public in the relevant market area.²

3 (c) Whether it is injurious to the public welfare for an
4 additional franchise to be established.

5 (d) Whether the franchisees of the same line-make in the
6 relevant market area are providing adequate competition
7 and convenient consumer care for the motor vehicles of
8 the same line-make in the relevant market area which
9 shall include the adequacy of motor vehicle sales and
10 service facilities, equipment, supply of vehicle parts,
11 and qualified service personnel.

12 (e) Whether the establishment of an additional franchise
13 would increase competition and therefore be in the public
14 interest.

15 6. Protestant contends that existing circumstances of topography
16 and population demographics in the relevant market area (hereafter *RMA*)
17 will force the proposed franchisee to seek the bulk of its sales from
18 within Hardin's immediate area, and a "funnel blast" of competition
19 will be directed at it.

20 7. Protestant claims that local consumers exhibit a strong
21 preference for full size GMC sport-utility trucks over GMC's other light
22 truck models. Since demand for these models presently exceeds
23 production supply, Protestant asserts that it would be inappropriate to
24 subject Hardin to additional competition.

25 8. Protestant contends that the poor performance of other line-

27 ²The term "relevant market area" is defined at Vehicle Code
28 section 507 as "...any area within a radius of 10 miles from the site
of a potential new dealership."

1 make dealerships in the area indicate that the proposed franchisee is
2 not viable.

3 9. Protestant contends that the intended site is inadequate
4 because of its small size, lack of on-street parking and difficult
5 access from the major street serving it.

6 10. In support of its positions, Protestant presented the
7 testimony of three witnesses. Mr. Dennis Hardin, part owner of Hardin
8 Oldsmobile-GMC Truck, gave testimony as to the development and operation
9 of the dealership and on the topography and demographics of the area.
10 Mr. John Hawkins, a new motor vehicle dealer and marketing expert,
11 provided opinion testimony concerning market conditions in the subject
12 area. Michael G. Willoughby, Ph.D., an economist and chartered
13 financial advisor, gave expert testimony concerning the permanency of
14 Hardin's investment and the adequacy of competition.

15 11. GMC contends that GMC Truck sales in the RMA is below
16 reasonably expected levels and that an additional GMC dealership is
17 necessary in order to adequately represent its product line.

18 12. GMC contends that there are sufficient additional potential
19 sales in the RMA such that the proposed new dealership will not
20 adversely affect Hardin.

21 13. GMC contends that the proposed franchisee is economically
22 viable and that the proposed site is adequate.

23 14. Respondent presented the testimony of six witnesses. The
24 first witness was, Mr. James A. Anderson, president of Urban Sciences,
25 Inc. Mr. Anderson presented a comprehensive study which analyzed the
26 adequacy of GMC's existing representation in the subject area and
27 determined that it was not adequate. He next evaluated the cause of the
28 inadequacy, and determined the probable impacts of adding an additional

1 franchisee. Respondent's witness, Mr. Victor D. Nelowake, a Certified
2 Public Accountant in the State of Michigan, testified as to the
3 permanency of Hardin's investment and provided an analysis of Hardin's
4 service and repair department. Mr. Joseph Milton, former Los Angeles
5 area GMC sales executive, testified as to the production and allocation
6 of GMC vehicles. Mr. Donald J. O'Rourke, Manager of Pontiac/GMC Trucks
7 western region, testified concerning the viability of the proposed
8 franchisee. Richard Bruckner, Economic Redevelopment Manager for the
9 City of Anaheim, presented evidence concerning the relation of the
10 proposed franchise to the city redevelopment program. Mr. Edgar Desoto,
11 the proposed dealer, testified as to his qualifications in the retail
12 automotive industry.

13 FINDINGS OF FACT

14 A. Findings concerning population and demographics in the RMA.

15 15. The Anaheim Hills area of northeastern Orange County has
16 experienced rapid growth in recent years. Within the set of contiguous
17 U.S. census tracts which lie entirely or partly within the RMA, total
18 population increased from 549,204 in 1980 to an estimated 857,692 in
19 1996. Households increased from 184,464 to 277,338.

20 16. The population in AGSSA 30 grew at an average annual rate of
21 3.6 percent between 1980 and 1996, a rate three times that of the
22 national population.³

23 17. The bulk of existing population and households in the RMA are
24 distributed in the southwestern quarter of the RMA with additional
25

26 ³An AGSSA, or Area of Geographic Sales and Service Advantage, is
27 GMC Truck's terminology for a set of contiguous U.S. census tracts
28 within which a given franchisee has the advantage of being more
convenient than any other GMC Truck franchisee. AGSSA 30 is the AGSSA
GMC intends to assign to the proposed franchisee.

1 concentrations to the northwest and to the east along the 91 Freeway in
2 and around Corona in Riverside County.

3 18. The topography of the area is such that future population
4 distribution will continue to be influenced by mountains to the north
5 and south of the Santa Ana Canyon, and, to some extent, by the Cleveland
6 National Forest to the southeast.

7 19. Based on specific development proposals in Anaheim Hills, an
8 additional 15,005 households and 40,049 population is expected.

9 20. Population and households in the RMA are forecast to reach
10 about 940,000 and 301,500 respectively. This represents an increase of
11 about 80,000 population and 24,000 households (rounded figures) by the
12 year 2001.

13 21. The planned Orange County Eastern Transportation Corridor,
14 running northeast from the 5 Freeway to the 91 Freeway, will provide
15 additional access to Anaheim Hills.

16 22. Annual household income distribution in the RMA is such that
17 97 percent of the census tracts in the area have median incomes of
18 \$15,000 and over. More than a third of the tracts have median household
19 incomes higher than \$60,000 which is the median income of new truck
20 buyers.

21 B. Findings related to the supply and distribution of GMC Trucks.

22 23. General Motors Corporation manufactures Chevrolet and GMC
23 brand trucks. These products are almost identical, differing primarily
24 in name and brand identity and in that GMC Trucks are slightly higher in
25 price.

26 24. General Motors Corporation determines the annual production
27 split between Chevrolet and GMC based on respective brand sales and
28 dealer network size.

1 25. The current split in production is four Chevrolet to one GMC
2 truck.

3 26. Nationally, there are approximately 10,000 Chevrolet and 2,400
4 GMC Truck dealers.

5 27. Post production allocation to GMC dealers is by way of a "turn
6 and earn" process whereby GMC dealers compete with each other for a
7 share of the GMC trucks produced. There is no post production
8 competition for vehicles between Chevrolet and GMC dealers.

9 28. Under GMC's turn and earn allocation system, each GMC dealer
10 competes with every other GMC dealer nationwide for the supply of
11 available vehicles based on each dealer's days supply of each model
12 compared with the national average day supply.

13 29. GMC's allocation system does not involve management discretion
14 in the allocation of new vehicles among its dealers.

15 30. Hardin specializes in selling Yukons and Suburbans, and
16 consistently earns high allocations of these models and Safari vans and
17 club cab pick-ups as well.

18 31. Hardin's low sales effectiveness as shown in Mr. Anderson's
19 analysis is not the result of limited supplies of GMC trucks because
20 sales effectiveness is a comparison of Hardin to dealers nationally.
21 All GMC dealers are similarly affected by the volume of supply.

22 32. GMC has increased and will continue to adjust the production
23 of popular sport utility models in order to eliminate the present
24 shortfall.

25 C. Findings concerning the viability of the proposed additional
26 franchisee.

27 33. GMC intends to offer the proposed franchise to a qualified
28 minority dealer candidate along with financial participation by Motors

1 Holding, Inc.⁴

2 34. The reason for the closing of the dealerships formerly located
3 in the Anaheim Hills Auto Mall was not established by the evidence
4 presented.⁵

5 35. The proposed site has superior visibility to that of the
6 dealerships formerly located in the Anaheim Hills Auto Mall.

7 36. Sales of Honda vehicles at Mr. Hardin's Honda dealership in
8 the Anaheim Auto Mall and those of a competing Honda dealership nearby
9 exceed expected sales performance levels.

10 D. Findings concerning permanency of the investment.
11 [Vehicle Code Section 3063(a)]

12 37. Hardin's net assets after paying liabilities would be \$3.2
13 million as of December 31, 1995. Of these, \$2.9 million are liquid
14 assets and \$336,000 are less liquid, the latter consisting of Hardin's
15 lease valued at \$93,000, company vehicles valued at \$134,000, and
16 equipment valued at \$109,000.⁶

17 38. Liquidity is only one aspect of permanency of investment.
18 Other relevant factors such as length of time in business, continuity of
19 ownership, investment of earnings and foregone investment opportunity
20 may also be considered.

21 39. Hardin has been a GMC Truck franchisee since 1991.
22

23 ⁴Motors Holding Inc. is a financing corporation owned by General
24 Motors Corporation.

25 ⁵The Anaheim Hills Auto Mall was located a short distance east of
26 the proposed franchisee. The three import dealerships located there
have recently closed.

27 ⁶Liquid assets is an accounting term for those assets which would
28 be normally expected to be converted to cash within the period of one
year.

1 40. Hardin acquired its GMC Truck franchise directly from GMC and
2 was not required to pay GMC anything for the privilege of acquiring it.

3 41. Hardin Oldsmobile-GMC Truck is owned by Dennis Hardin and his
4 father, Mr. Victor Hardin.

5 42. The Hardins also own an Oldsmobile dealership which was
6 established in 1957 and a separate Honda dealership now located at the
7 Anaheim Auto Center. In the past, the Hardins have owned DeLorean and
8 Suzuki franchises.

9 43. From 1970 to 1991, Hardin dualled its Oldsmobile dealership
10 with a Honda dealership. In 1980, Hardin built a separate showroom for
11 Honda, and in 1987, Hardin established separate service facilities for
12 Honda. In 1991, Hardin relocated the Honda dealership to the Anaheim
13 Auto Center and placed GMC Truck in the former Honda facilities.

14 44. In 1993, Hardin became an authorized wholesale parts dealer
15 for all General Motors makes (except Saturn).

16 45. Hardin's GMC truck facility is situated on leased premises.

17 E. Findings related to the effect on the retail motor vehicle
18 business and the consuming public. [Vehicle Code Section
19 3063(b)]

20 46. In 1995, about 20 percent of Hardin's total GMC Truck sales
21 and 23 percent of Yukon and Suburban sales were made to customers living
22 in the vicinity of the proposed AGSSA.

23 47. The testimony of the witness, Mr. Hardin, to the effect that
24 he anticipates that Hardin will lose business equivalent to Hardin's
25 present sales in the area between Hardin and the proposed franchisee is
26 not based on market analysis, but is, rather, an assumption.

27 48. In 1994 and 1995, profits from Hardin's wholesale parts
28 operation accounted for 89 and 61 percent, respectively of Hardin's
total profits. Wholesale parts profit exceeded dealership profits in

1 1994 and 1996 through June.

2 49. Hardin's Oldsmobile dealership would remain viable even if it
3 lost all it's GMC truck sales.

4 50. Based on a comparison of average distances between existing
5 customers in the proposed AGSSA and all fourteen truck sales competitors
6 in the Orange County Multiple Dealer Area (MDA), GMC presently ranks
7 last in relative convenience with an average distance of 7.4 miles.⁷
8 With the establishment of the proposed franchisee, GMC would move to
9 second place with an average distance of 3.1 miles.

10 51. The proposed site is near the optimal point identified by
11 computer analysis as having the shortest distance from all U.S. census
12 tracts in the RMA and the MDA.

13 52. Based on annual average nationwide sales adjusted for local
14 segment preferences and current actual registrations, an opportunity for
15 an additional 496 registrations exists in the RMA and for 1,324
16 registrations in the MDA. Insell represents an additional opportunity
17 of 753 in the RMA and 1,245 in the MDA.⁸

18 53. Compared to opportunity levels in all other market sub-areas
19 (AGSSAs and MDAs) in California, the RMA ranks first now and would have
20 the third highest opportunity level in the state with an additional GMC
21 franchise.

22 54. The proposed franchisee could reasonably be expected to
23

24 ⁷A Multiple Dealer Area is a combination of AGSSAs which
25 comprises a distinct market area.

26 ⁸Mr. Anderson repeated his analysis using an alternative
27 performance standard based on average California penetration, with and
28 without adjustment for local segment preferences. In all cases, the
analysis consistently supported his conclusion that GMC is not
adequately represented in any of the study areas, including the RMA.

1 account for somewhere between 161 and 401 annual registrations, assuming
2 it performs within the range established between the 1995 registrations
3 of Hardin and the Victor GMC dealership in Corona.

4 F. Findings concerning whether it is injurious to the public
5 welfare for an additional franchise to be established.
6 [Vehicle Code Section 3063(c)]

7 55. The lack of direct left-turn lanes in Weir Canyon Road,
8 connecting the 91 Freeway to the proposed site, will not significantly
9 affect its viability.

10 56. On-street parking is currently prohibited on at least one of
11 the local streets bounding the site.

12 57. The proposed franchise is located within the City of Anaheim's
13 River Valley Redevelopment Project Area and will further the City's
14 redevelopment objectives.

15 58. Under GMC's retail planning guide for the proposed franchisee,
16 the proposed facility would accommodate an annual sales level of 760
17 vehicles for GMC Truck and the Pontiac and Buick franchisees to be
18 located there. The site plan contemplates a bi-level structure on 2.3
19 acres of land.

20 59. The proposed franchise will generate revenues for the City of
21 Anaheim through business taxes and fees, sales tax, and electric and
22 water utility charges.

23 60. The City of Anaheim has approved the proposed site for use as
24 a retail automobile dealership.

25 61. Based on Pontiac, Buick and GMC composite sales, including
26 vehicles, parts and taxable labor, each vehicle sold generates an
27 average of about \$31,000 in taxable retail sales. Applied to its
28 proforma sales estimate (including Buick and Pontiac), the proposed
dealership would generate some \$291,812 in annual local sales tax

1 revenue.

2 62. The proposed dealer for the additional franchisee, Mr. Edgar
3 Desoto, was born in Puerto Rico and is a participant in General Motors'
4 Minority Dealer Development Program. He has worked in the retail
5 automobile industry since 1978 and is presently an owner and dealer
6 principal for Northridge Cadillac/Oldsmobile.

7 G. Findings concerning whether the franchisees of the same line-
8 make in that relevant market area are providing adequate
9 competition and convenient consumer care for the motor
10 vehicles of the line-make in the market area which shall
11 include the adequacy of motor vehicle parts and service
12 facilities, equipment, supply of vehicle parts and qualified
13 service personnel. [Vehicle Code Section 3063(d)]

14 63. Hardin Oldsmobile-GMC Truck in Anaheim and Victor GMC in
15 Corona are the only existing GMC Truck franchisees in the RMA.

16 64. Retail light truck registrations for all light duty truck
17 makes combined grew from 6,399 in 1982 to 22,184 in 1996 (projected to
18 year-end) in the RMA and increased similarly in the proposed AGSSA and
19 the MDA as well, reflecting rapid population growth and an increasing
20 consumer preference for light trucks.

21 65. There are 116 franchises of all line-makes in the MDA, of
22 which only seven (6 percent) are GMC Truck franchises. Nationwide, GMC
23 Truck averages 6.9 percent of all franchises, indicating that GMC would
24 require one additional franchise in the MDA to meet its national average
25 representation level.

26 66. From 1993 to midyear 1996, GMC light truck retail
27 registrations in the RMA ranged from 68.6 to 75.9 percent of the level
28 that would be expected if RMA sales equaled the average national dealer
performance adjusted for local segment preferences. Hardin and Victor
combined contributed about 20 percent with the balance contributed by
inselling dealers from outside the RMA. Hardin's contribution accounted

1 for 7 to 8.4 percent of the expected registrations. In the first half
2 of 1996, Hardin sold 57 vehicles and Victor sold 100 out of 614 total
3 actual RMA registrations.

4 67. In 1995, GMC light truck registrations in the RMA failed to
5 reach average adjusted penetration levels for nine of the ten GMC Truck
6 models. Only mid-size van sales exceeded the expected sales level.

7 68. In 1995, GMC light truck registrations in Hardin's own AGSSA
8 failed to reach expected penetration levels for any of GMC's ten models.

9 69. GMC's overall light truck penetration in Hardin's own AGSSA
10 was 64.7 percent in 1993, 63.9 percent in 1994, 66.3 percent in 1995 and
11 75.2 percent for the first half of 1996.

12 70. Hardin's sales effectiveness is relatively low in the area
13 within one and two miles from its location.

14 71. In comparison with all 87 GMC dealer areas in California,
15 registrations in the RMA ranked equivalent to 74th in terms of sales
16 effectiveness.

17 72. Hardin's retail sales performance within the proposed AGSSA in
18 comparison with its total sales was: 30 of 280 in 1993; 32 of 236 in
19 1994, 39 of 321 in 1995, and 17 of 154 in the first half of 1996.

20 73. Protestant's estimate of 65 potential sales in the proposed
21 AGSSA is not reliable in that it employs California penetration levels
22 without adjustment for local consumer preferences and because it assumes
23 that all new franchisee sales would be registered in the AGSSA.

24 74. Hardin's facility is located 9.8 miles west of the site of the
25 proposed additional dealership, while Victor GMC Truck is located about
26 8 miles to the east.

27 75. Travel time between Hardin and the proposed franchisee is
28 roughly 15 minutes. The trip can be made using either freeway or local

1 surface streets.

2 76. Hardin's facility is situated in central Anaheim on five acres
3 of land. The facility includes separate showrooms and service areas for
4 both Oldsmobile and GMC vehicles with 38 service bays and a full service
5 body shop. The facility has some 20,000 square feet of parts storage
6 area and 90,000 square feet and 650 frontage feet of vehicle storage and
7 display area.

8 77. Hardin has invested about \$450,000 in service equipment and
9 employs about 20 trained service technicians. Hardin requires that all
10 of its technicians have training certification.

11 78. Hardin's non-warranty service and repair rate per vehicle sold
12 was 43.5 for Oldsmobile and 6.1 for GMC Trucks in 1995. The GMC rate
13 was about average for comparable GMC Truck franchisees.

14 79. Hardin was awarded the GMC five star performer award for two
15 of its five years as a GMC Truck franchisee.

16 H. Whether the establishment of an additional franchise would
17 increase competition and therefore be in the public interest.
[Vehicle Code Section 3063(e)]

18 80. Between 1992 and 1996, Hardin's profit per new vehicle sold
19 increased, and its profit on Suburbans and Yukons in particular has
20 remained substantially higher than on other GMC models as shown below:

<u>Year</u>	<u>All GMC Vehicles</u>	<u>Yukon and Suburban</u>
1992	\$1,448	\$2,396
1993	\$1,621	\$2,200
1994	\$2,091	\$3,517
1995	\$2,245	\$3,797
1996	\$2,319	\$3,625

21 Source: Exhibit R-2.

22
23
24
25
26
27 81. The national average profit per new Yukon and Suburban vehicle
28

1 sold in 1996 was \$2,200, which is substantially lower than Hardin's
2 profit of \$3,625.

3 82. Hardin specializes in sales of Yukon and Suburban models.
4 Hardin attributes over fifty percent of its dollar sales and sales
5 profit to these two models.

6 83. In 1995, approximately one-third of Hardin's total GMC sales
7 were Yukons and Suburbans, compared to an average of about fifteen
8 percent among competing GMC franchisees.

9 84. In two recent GMC Truck case studies where Mr. Anderson's
10 analysis indicated the existence of sales opportunity, the addition of
11 a franchisee resulted in increased interbrand competition and reduced
12 inselling.

13 DETERMINATION OF THE ISSUES

14 85. Respondent established that substantial additional sales
15 opportunity exists in the RMA, notwithstanding that the population is
16 concentrated in the direction of Hardin. So long as sufficient
17 opportunity exists in the RMA, the exact geographic distribution of
18 population is not a significant factor. The addition of the proposed
19 new franchisee will certainly result in increased competition, but the
20 fact that the population of the proposed RMA is not uniformly
21 distributed does not disadvantage Protestant.

22 86. Accessibility and off-street parking at the proposed site are
23 not such that the site is not viable. Neither the participation of
24 Motors Holding in financing the new franchisee nor the performance of
25 other dealerships in the area was shown to have any bearing on the
26 viability of the proposed dealership.

27 87. There are several reasons why the present excess of demand
28 over availability of new Yukon and Suburban vehicles is not good cause

1 for not permitting the establishment of the proposed franchise.
2 Firstly, Respondent's assessment of additional sales opportunity took
3 that factor into account in that the expected penetration benchmark is
4 based on a comparison of national average adjusted sales which are
5 themselves subject to the effect of the supply shortfall. Secondly, GMC
6 allocates new vehicles on the basis of turn and earn, not on the number
7 of dealerships. Therefore, the additional franchisee would not directly
8 affect Protestant's allocation. Thirdly, Protestant has not
9 consistently met benchmark registration levels even for those models
10 which are not in short supply. Finally, the production shortfall of
11 Suburbans and Yukons is not a long term condition.

12 88. Considering the length of time Protestant has owned its GMC
13 Truck dealership, that the facilities it occupies were originally built
14 for Honda, that Hardin did not pay any purchase premium, and the fact
15 that less than nine percent (\$336,000) of Protestant's net assets is
16 considered less liquid, Protestant's investment is not substantially
17 permanent.

18 89. The establishment of an additional franchisee in the RMA would
19 not adversely affect Protestant in that sufficient potential additional
20 sales exist in the RMA to support both Hardin and the proposed
21 franchisee and because Protestant is not now adequately penetrating the
22 market in its own AGSSA. The consuming public would benefit by
23 additional intrabrand and interbrand competition and by increased
24 convenience.

25 90. Protestant did not demonstrate that it would be injurious to
26 the public welfare for an additional franchisee to be established.

27 91. Considering existing penetration levels and the volume of
28 potential additional sales, and the average distances between consumers

1 and the existing franchisees, GMC Truck is not adequately represented in
2 the RMA. The inadequacy of representation was not shown to be the
3 result of fault in Protestant, but rather, it arises from the growth of
4 the retail light truck market in the RMA.

5 92. Considering GMC's current levels of market penetration,
6 additional sales opportunity, Protestant's high profit per new vehicle
7 sold, and inselling in the RMA, the establishment of an additional
8 franchisee would increase both interbrand and intrabrand competition and
9 therefore, would be in the public interest.

10 CONCLUSION

11 93. Protestant has not met its burden of proof under Vehicle Code
12 section 3066(b) to show that there is good cause not to enter into a
13 franchise establishing the proposed additional motor vehicle dealership.

14 PROPOSED DECISION

15 Based on the evidence presented and the findings and conclusions
16 herein, the protest is overruled. GMC Truck Division shall be permitted
17 to establish the proposed Anaheim Hills franchisee.

18 I hereby submit the foregoing
19 which constitutes my proposed
20 decision in the above-entitled
21 matter, as a result of a
22 hearing had before me on the
23 above dates, and I recommend
24 its adoption as the decision of
25 the New Motor Vehicle Board.

26 DATED: July 16, 1997

27 BY Kenneth Wilson
28 KENNETH WILSON
Administrative Law Judge
New Motor Vehicle Board