

COMMENTS REGARDING E-COMPETITION

Comments of the National Independent Automobile Dealers Association (NIADA) Directed to The Federal Trade Commission, Washington, D.C. 20580.

On October 8-10, 2002, the Federal Trade Commission (FTC) held a public workshop on "Possible Anticompetitive Efforts to Restrict Competition on the Internet" to explore how certain state regulations and private business practices may be having significantly anticompetitive effects on e-commerce. In the Federal Register Notice published on July 24, 2002, the FTC invited comments on a number of issues, including the role current laws play in fostering or hindering e-commerce and whether the benefits of such regulations outweigh the costs. While it has been suggested that States have enacted regulations that have the effect of protecting local brick and mortar merchants from new Internet competitors, with respect to the used motor vehicle industry, most of the Federal and State laws and regulations that impact a motor vehicle dealership's ability to sell motor vehicles online have been in effect for well over a decade and are geared not toward protecting the motor vehicle dealerships, but rather the consuming public.

The motor vehicle industry is one of the most heavily regulated industries in America today. All fifty states require motor vehicle dealerships to be licensed before they can sell new or used vehicles and they can only sell motor vehicles at a licensed location and use licensed salespeople. Additionally, most products and services sold in connection with a motor vehicle are subject to regulation and, depending upon State law, a motor vehicle dealership may be required to obtain additional licenses before selling them. State licensure laws are designed to offer a measure of protection to consumers and to assure that sales are conducted in an appropriate manner and in accordance with a prescribed standard of conduct. Consumer grievances can frequently be brought before a State's licensing board and many States have recovery funds from which consumers can seek redress for damages when a licensed entity is found to be at fault. It is the responsibility of the States and the Government Agencies they appoint to assure that the activities of those who engage in a licensed activity conduct their business in accordance with the law and in the best interest of the public. While conducting business over the Internet may make sense for many industries, removing licensing laws for motor vehicle sales transactions that occur online would likely lead to a number of unscrupulous business practices and cause more harm than good to consumers.

There are also a whole host of Federal and State laws that impact a motor vehicle sales transaction, including State Unfair and Deceptive Acts and Practices (UDAP) Statutes, State Motor Vehicle, Titling and Retail Installment Sales Acts, the Uniform Commercial Code, the Magnuson Moss Warranty Act, the Fair Credit Reporting Act, the Truth in Lending and Leasing Acts, the FTC Used Car Rule and the Federal Privacy and Anti-Terrorism Laws and their implementing Regulations, to name a few. These laws contemplate and, in some cases mandate, that the completion of a motor vehicle sales

transaction take place face-to-face at a fixed location. For example, in order to comply with the Truth in Mileage Act, a motor vehicle dealership must complete a federally mandated odometer statement. The National Highway and Transportation Safety Administration has taken the position that the transferor and transferee of a motor vehicle must each handwrite their respective names and sign this statement. Similarly, in virtually every State, a motor vehicle dealership must obtain a State mandated Power of Attorney that is executed in the presence of a Notary Public. These laws are rooted in sound public policy. With so much attention being directed at protecting the privacy of personal information and preventing identity theft and terrorist activities, there is a significant risk to motor vehicle dealers and consumers alike in permitting an entire motor vehicle sales transaction to occur online.

To the extent that applicable laws would otherwise permit a transaction to be conducted electronically, permitting such transactions could also erode protections afforded by a number of other laws designed to protect consumers. There are numerous reports that self-regulation of various industries conducting transactions online has led to high incidences of theft and fraud. From the advertising of a motor vehicle for sale to the public to completing the mandated disclosures and the terms of a sale and financing, motor vehicle dealerships must abide by Federal and State regulations designed to protect the public interest. While State Motor Vehicle Codes and Unfair and Deceptive Acts and Practices (UDAP) Statutes typically require that every retail sale of a motor vehicle be preceded by a written contract that contains all of the agreements of the parties, including all material statements made prior to obtaining the customer's signature on the purchase contract, there is little uniformity in what disclosures must be made from State to State. For example, information printed on motor vehicle titles, prior use and damage disclosure requirements, safety inspections and warranty obligations, among other things, vary from State to State. Permitting a consumer located in a particular State to purchase a vehicle via the Internet without licensure that requires the maintenance of a physical location in that State would raise substantial legal and practical issues regarding the applicable laws and respective rights and obligations of the parties.

For most consumers, the purchase of a motor vehicle is the second largest, if not the largest, investment they will make. The Federal and State laws and regulations that have been enacted are not only justified by consumer protection interests, they are rooted in sound public policy and should remain in place. Any proposed Federal regulation of the Internet and transactions conducted via the Internet should not preempt or otherwise limit the ability of individual States to enact and enforce laws and regulations designed to protect their citizens. Furthermore, it is unnecessary to uproot current laws and business practices to foster competition in the used motor vehicle industry as it is already thriving. Use of the Internet is prevalent among purchasers of used motor vehicles and there is an enormous amount of information available to consumers, including information about dealerships, their inventories and even their prices, which often induces the dealerships to compete for consumers' business.

Consumers can also research trade-in values, financing options and the cost of insurance products, service contracts and other related products and services. Even a cursory look at the motor vehicle dealership licensing laws and use of the Internet within the used motor vehicle industry demonstrates that current Federal and State laws and private business practices related to the sale of used motor vehicles are not having anticompetitive effect on e-commerce.

NIADA would like to thank the FTC for the opportunity to comment with respect to whether certain state regulations and private business practices may be having anticompetitive effects on e-commerce. Any questions the FTC has regarding NIADA's comments and the position taken herein may be directed to NIADA's Legal Counsel, Keith E. Whann or Deanna L. Stockamp, of the Law Firm Whann & Associates located at 6300 Frantz Road, Dublin, Ohio 43017.