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### Complaint

## (For Violations of Section 1 of the Sherman Act)

United States of America, Department of Justice, Washington, D.C. 20530, Plaintiff, v. National Automobile Dealers Association, 8400 Westpark Drive, McLean, Virginia 22102, Defendant. Civil Action No.: 1:95CV01804; Judge Harold H. Greene.

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to prevent and restrain the defendant, the National Automobile Dealers Association ("NADA"), from engaging in unlawful anticompetitive conduct intended to reduce price competition among automobile dealers, and complains and alleges as follows:

Since at least 1989, the NADA has actively engaged in a campaign designed to lessen price competition in the retail automobile industry. Through the use of a group boycott, the NADA attempted to pressure automobile manufacturers to change their policies by eliminating consumer rebates and significantly reducing discounts given to large volume automobile buyers, who often resold slightly used cars to consumers at prices substantially below the price of a new car. In particular, the NADA recommended that all dealers significantly reduce their inventories to 15-30 days' supply to coerce manufacturers to raise the prices the manufacturers charged large volume automobile buyers and thereby constrain the latter's ability to compete. The NADA also solicited agreements from its members not to advertise retail prices based on the invoice price of an automobile, and agreed to tell its members to refuse to do business with automobile brokers. The instant action seeks to enjoin the NADA from continuing to engage in conduct intended to limit price competition in the retail automobile industry.

#### I. The Defendant NADA

- 1. The NADA is a corporation organized and existing under and pursuant to the laws of the State of Delaware. It maintains offices at 8400 Westpark Drive, McLean, Virginia 22102, and 412 1st Street SE, Washington, DC 20003.
- 2. The NADA is a national trade association that represents franchised new car and truck dealers in the United

States. In 1994, approximately 84% of franchised dealers in the United States were NADA members. Its members sold approximately \$375 billion of cars and other automobile products and services in 1993.

#### II. Jurisdiction and Venue

- 3. This complaint is filed pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, in order to prevent and restrain violations by the NADA of Section 1 of the Sherman Act, 15 U.S.C. 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1331 and 1337.

  4. Venue is properly laid in this
- 4. Venue is properly laid in this District pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because the NADA transacts business and is found within this District.
- 5. The NADA and its members are engaged in, and their activities substantially affect interstate commerce.
- 6. The members of the NADA compete with each other and with other car and truck dealers to sell cars and other automobile products and service to consumers. Dealers compete on, among other things, price, quality of service, and the selection of cars available for purchase at their dealerships.

#### III. Concerted Action

# A. Agreement Concerning Inventory Levels

- 7. In recent years, automobile manufacturers have engaged in a number of sales and marketing practices that have been unpopular with many automobile dealers. Among these practices are the use of fleet subsidies and consumer rebates.
- 8. Fleet subsidies are substantial discounts offered by manufacturers on the purchase of large quantities of cars by rental car companies, large corporations, and other high volume buyers. Manufacturers have sometimes offered fleet subsidies that are larger than the discounts they offered to franchised dealers.
- 9. Fleet purchasers, and, in particular, rental car companies, frequently resell fleet vehicles directly to the public or, in some instances, to independent (*i.e.*, non-franchised) automobile dealers, who in turn sell them to the public. Through at least 1991, used fleet vehicles with relatively low mileage were often sold in the same year as new cars of the same model year. Thus, sales of some fleet vehicles competed directly with sales of new vehicles, but fleet vehicles were often priced at thousands of dollars less than a new car.
- 10. Consumer rebates are cash incentives offered by manufacturers

directly to consumers. In recent years, manufacturers have increased the amount and frequency of consumer rebates that they offer to entice consumers to purchase new automobiles. In many cases, manufacturers' cash rebates constitute most, if not all, of a consumer's down payment for a new car. Consumer rebates thus make new cars more affordable to those who otherwise would not be able to purchase a new car

- 11. Beginning at least as early as 1989 and continuing at least until 1992, the NADA frequently stated its opposition to the increased competition generated by fleet subsidies. In particular, it alleged that fleet subsidies created a class of nearly new vehicles that, because of their lower prices, unfairly competed with new vehicle sales. The NADA repeatedly urged manufacturers to stop offering fleet subsidies that were greater than the discounts offered to franchised dealers.
- 12. The NADA also objected to consumer rebates. It believed that when manufacturers offered rebates to consumers, franchised dealers were forced to offer their own rebates to consumers who purchased cars immediately before and after the rebate period. On numerous occasions between 1989 and 1992, the NADA urged manufacturers to give franchised dealers, rather than consumers, all of the discounts and incentives offered by manufacturers to induce the purchase of a new car.
- 13. In September, 1989, the NADA's president drafted a document entitled "An Open Letter to All Dealers" ("Open Letter"). The Open Letter discussed financial difficulties facing many dealers and stated that fleet subsidies contributed to automobile dealers' financial difficulties. It also discussed the NADA's attempts to convince manufacturers not to offer rebates and instead give all incentives to dealers.
- 14. The Open Letter concluded with several "recommendations for survival." Among these was the recommendation that all automobile dealers reduce their inventories to a 15–30 day supply of new vehicles. The letter then stated that the NADA would "advise dealers immediately of any movement by their franchisors which will assist dealers."
- 15. The Open Letter was unanimously endorsed by the NADA's Executive Committee on October 16, 1989, and by its board of directors on October 17, 1989.
- 16. On October 23, 1989, the president of the NADA wrote to Oregon dealers, urging them to look for the Open Letter in the October 30 issue of