lower retail selling prices for new vehicles.

On several occasions between 1989 and 1994, an officer of the NADA contacted automobile manufacturers to complain about dealers who had engaged in invoice advertising. The NADA officer also complained directly to the dealers in question about the advertisements. He used NADA letterhead and referred to his position with the NADA in a manner that suggested that the was acting on behalf of NADA in communicating his complaints and seeking agreement from the dealers. In some instances, the NADA officer obtained the dealers agreement not to engage in further invoice advertising. Such an agreement by a trade association or its members not to engage in certain types of advertising is a per se violation of the antitrust laws.

## 3. Agreement To Boycott Brokers

Automobile brokers generally buy new vehicles from franchised dealers at discounted prices and resell the vehicles directly to the public in competition with franchised dealers. On numerous occasions, the NADA has expressed its dissatisfaction with competition by brokers. In 1994 a task force appointed by the NADA's Board of Directors issued a report urging dealers to boycott automobile brokers. The report recommended that dealers "Refuse to do business with brokers or buying services. They inevitably do harm to new vehicle gross margin potential." Although the NADA eventually revised the report to eliminate that recommendation, the original version of the report was first disseminated to over 200 dealer representatives and other individuals active in the automobile industry. An agreement by a trade association or its members not to do business with other competitors or customers for purposes of restricting price competition is a per se violation of the Sherman Act.

## III. Explanation of the Proposed Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law. Section III of the proposed Final Judgment provides that it shall apply to the NADA and each of its officers, directors, agents, employees, committee and task force members, and successors, and any organization that acquires or merges with the NADA.

Section IV of the Proposed Final Judgment contains five categories of prohibited conduct. Section IV(A) contains a general prohibition against any agreements by the NADA with dealers to fix, stabilize or maintain prices at which motor vehicles may be sold or offered in the United States to any consumer. Sections IV (B)–(E) address the specific activities of the NADA and its officers and directors that were the source of the antitrust violations.

Section IV(B) of the Proposed Final Judgment prohibits the NADA from urging, encouraging, advocating, or suggesting that dealers adopt specific margins, specific discounts, or specific policies relating to the advertising of prices or dealer costs of motor vehicles. Similarly, Section IV(C) prohibits the NADA from discouraging dealers from adopting specific pricing systems or specific policies relating to the advertising of prices or dealer costs of motor vehicles. Sections IV (B) and (C) prohibit the NADA from urging or encouraging members to make uniform or collective decisions with respect to key areas in which they compete, such as prices or advertisements.

Section IV(D) prohibits the NADA from urging dealers to refuse to do business with particular types of persons, to reduce their business with particular types of persons, or to do business with particular persons only on specified terms. This provision is intended to prohibit the NADA from using the threat of a group boycott to attempt to pressure manufacturers into changing policies. It will also bar the NADA from urging dealers to reduce or eliminate the amount of business they do with particular types of buyers, such as brokers. Finally, Section IV(E) prohibits the NADA from terminating the membership of any dealer for reasons relating to that dealer's pricing or advertising of prices or dealer costs.

Section V of the Proposed Final Judgment contains certain limiting provisions that clarify the scope of the prohibitions in Section IV. Section V identifies specific NADA activities that are unlikely to restrict competition and are not prohibited by the decree. Specifically, Section V(A) provides that the NADA may (1) continue to disseminate specific valuation information in the N.A.D.A. Official Used Car Guide; (2) engage in collective action to procure government action, such as lobbying activities, when those actions are immune from antitrust challenge under the Noerr-Pennington doctrine; (3) present the views, opinions, or concerns of its members on topics to manufacturers, dealers,

consumers, or other interested parties, provided that such activities do not violate any provision contained in Part IV; (4) conduct surveys, and gather and disseminate information, in accordance with Maple Flooring Mfrs. Ass'n v. United States, 268 U.S. 563 (1925) and its progeny; (5) participate in bona fide dispute resolution activities involving the parties to specific transactions; and (6) disseminate information about laws and government regulations that affect dealers, and encourage dealers to comply with those laws. Section V(B) clarifies that nothing in the proposed Final Judgment limits individual dealers' rights to act independently.

Section VI of the Proposed Final Judgment requires the NADA to publish a notice describing the Final Judgment in Automotive Executive, the NADA's automobile industry trade publication, within 60 days after this proposed Final Judgment is entered, and to send a copy of the notice to each dealer who becomes a member of the NADA during the ten-year life of this Final Judgment.

Secitons VII and VIII require the NADA to set up an antitrust compliance program to ensure that the NADA's members are aware of and comply with the limitations in the proposed Final Judgment and antitrust laws. They require the NADA to designate an antitrust compliance officer and to furnish a copy of the Final Judgment, together with a written explanation of its terms, to each of its officers, directors, non-clerical employees, and members of committees and task forces that address issues related to the purchase and sale of automobiles. The NADA is also required to review the final draft of each speech and policy statement by each officer, director, employee, and committee and task force member, as well as the content of each letter, memorandum and report written by or on behalf of each director in his capacity as NADA director, in order to ensure adherence to the Final Judgment.

Section IX of the Proposed Final Judgment provides that, upon request of the Department of Justice, the NADA shall submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents of the NADA.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violations of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this