

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
GENERAL MOTORS CORPORATION;
and FORD MOTOR COMPANY,
Defendants.

Civil No. 38219
Filed: May 1, 1972

COMPLAINT

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 obtain equitable relief against the above named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the above named defendants under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violations, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The defendants, General Motors Corporation and Ford Motor Company, have their principal offices, transact business and are found within the Eastern District of Michigan, Southern Division.

II.

DEFENDANTS

3. General Motors Corporation (hereinafter referred to as "GM") is hereby made a defendant herein. GM is a corporation organized and existing under the laws of the State of Delaware, with principal offices in Detroit, Michigan. GM is the largest automobile manufacturer in the United States with total sales in 1971 of \$28.3 billion.

4. Ford Motor Company (hereinafter referred to as "Ford") is hereby made a defendant herein. Ford is a corporation organized and existing under the laws of the State of Delaware, with principal offices in Dearborn, Michigan. Ford is the second largest automobile manufacturer in the United States with total sales in 1971 of \$16.4 billion.

5. Whenever in this complaint reference is made to any act, deed, or transaction of any defendant, such allegation shall be deemed to mean that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

III

CO-CONSPIRATORS

6. National Automobile Dealers Association (hereinafter referred to as "NADA"), a trade association for franchised new car dealers, is hereby named a co-conspirator herein. NADA participated as a co-conspirator in the violations alleged herein and has performed acts and made statements in furtherance thereof.

7. Peterson, Howell & Heather, Inc. (hereinafter

referred to as "PH&H"), the nation's largest automobile leasing company, is hereby named a co-conspirator herein. PH&H participated as a co-conspirator in the violations alleged herein and has performed acts and made statements in furtherance thereof.

8. Certain officers, directors and employees of CM, Ford and PH&H; certain officers, directors, employees and members of NADA; and various other firms and individuals have participated as co-conspirators in the violations alleged herein and have performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

9. There are five manufacturers of automobiles in the United States, including GM, Ford, Chrysler Corporation (hereinafter referred to as "Chrysler"), American Motors Corporation, and Checker Cab Company. GM and Ford manufacture approximately 80 percent or more of the automobiles made in the United States. These automobiles are manufactured in plants located in various states of the United States and are shipped in interstate commerce to franchised automobile dealers throughout the United States for resale.

10. The fleet market, which consists of large volume automobile purchasers, is a distinct and identifiable sub-market within the automotive industry in terms of customers, pricing, terms of sale, selling programs, and lack of competition from imported automobiles, among other things. It is so recognized in the industry as a distinct and identifiable market.

11. In 1969, approximately 12 percent of the new automobiles registered in the United States were sold or leased in the fleet market. In that year, the five American manufacturers sold or leased approximately one million automobiles in the fleet market, which were valued at approximately \$2-1/2 billion at the manufacturers' level. Most automobiles in the fleet market are purchased from franchised dealers of the automobile manufacturers. Approximately one third of the automobiles which Chrysler supplies the fleet market are leased by Chrysler to fleet accounts.

12. There are four distinct submarkets in the fleet market. They include: (a) daily rental companies; (b) leasing companies; (c) commercial accounts; and (d) state and local governments.

13. Daily rental companies represent the largest segment of the fleet market. Daily rental companies must have on hand clean, low-mileage, new automobiles which they rent on numerous occasions for short periods of time. They usually keep such automobiles in service six to twelve months. The daily rental companies purchase most of their automobiles from franchised automobile dealers. Some automobiles are leased from Chrysler Leasing Corporation, a wholly-owned subsidiary of Chrysler. Virtually all automobiles leased by Chrysler Leasing Corporation are to daily rental companies.

14. Leasing companies are those that buy automobiles and then lease them usually for periods of 12 to 36 months to such customers as industrial companies, commercial concerns and individuals. Leasing companies purchase their automobiles from franchised automobile dealers. In 1969, more than 70

percent of the automobiles in the fleet market were sold or leased to daily rental companies or leasing companies.

15. Commercial accounts include public utilities and commercial and industrial concerns that usually purchase ten or more automobiles for their own use. Such automobiles are usually kept in service 12 to 36 months. Virtually all such automobiles are purchased from franchised automobile dealers.

16. State and local governments, including state agencies, city and county governments and various entities such as school boards, usually purchase automobiles by requesting public bids. Such cars are usually purchased from the franchised automobile dealer that submits the lowest price. Sometimes these governmental agencies purchase their automobiles by negotiating with franchised automobile dealers rather than requesting public bids.

17. In 1962, GM and Ford enjoyed more than 84 percent of all fleet business while Chrysler enjoyed about 10 percent. In 1962, GM and Ford enjoyed approximately 92 percent of the daily rental and leasing segments of the fleet market while Chrysler enjoyed only approximately 4 percent of the daily rental and leasing segments of the fleet market. At that time, there was little or no price competition in the fleet market among the automobile manufacturers. Chrysler, to gain market penetration in the daily rental and leasing segments of the fleet market, organized a wholly-owned subsidiary in 1962 to engage in the business of leasing automobiles to daily rental and leasing companies. Chrysler also began offering various types of price concessions to encourage all types of fleet customers to buy passenger cars

from Chrysler's franchised dealers. In or about 1964, Ford, to protect its market penetration, also began offering price concessions for state and local government business in 1965 and for all other segments of the fleet market, in mid-1966. By 1967, Chrysler's share of the fleet market had been increased to nearly 24 percent, with most of this gain attributable to Chrysler's increased business with daily rental and leasing companies. Beginning sometime in 1968, both GM and Ford substantially increased their price concessions, and in some instances sold automobiles at or below the cost of their manufacture, in order to regain the market shares they had lost to Chrysler and reduce Chrysler's ability to compete in the fleet market.

18. Approximately 22,000 new car dealers are members of NADA. A majority or close to a majority of these members are GM franchised dealers. The Board of Directors of NADA consists of 57 members elected from various geographic areas throughout the United States. In 1969, forty-one of these directors were GM franchised dealers and eight were Ford franchised dealers. In 1970, forty-two of these directors were GM franchised dealers and nine were Ford franchised dealers. NADA has various industry programs which are authorized and approved by its Board of Directors. The Industry Relations Committee ("IRC") is one of several committees in NADA that has responsibility to develop NADA's industry programs. IRC has acted and acts as a liaison between NADA, its Board of Directors and the automobile manufacturers. Members of IRC visit with the top officials of the automobile companies at least three or four times a year to encourage the automobile manufacturers to cooperate in the accomplishment of NADA's

industry programs.

19. NADA has consistently opposed the use of fleet market price concessions by the automobile manufacturers and direct leasing by Chrysler. Between 1966 and 1968, NADA unsuccessfully sought federal legislation to outlaw the price competition in the fleet market caused by price concessions and direct leasing by Chrysler. In or about 1969, NADA adopted as its number one priority, the elimination of this type of price competition in the fleet market. NADA's IRC was given the responsibility to obtain the automobile manufacturers' cooperation in this program to eliminate these price concessions.

20. PH&H is the largest leasing company in the United States and a customer of GM, Ford and Chrysler. Its representatives are in constant contact with representatives of the automobile manufacturers. PH&H opposed the granting of price concessions in the fleet market by the automobile manufacturers because this practice aided the competitors of PH&H. PH&H's corporate goal was to eliminate all such price concessions.

V

VIOLATIONS ALLEGED

First Violation

21. Beginning sometime in early 1969, the exact date being unknown to the plaintiff, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy to unreasonably restrain the aforesaid interstate trade and commerce in the manufacture, sale and distribution of automobiles for the fleet market, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

22. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators to eliminate price concessions and otherwise restrict competition in the sale or lease of automobiles to the fleet market.

23. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including, among other things, the following:

- (a) GM and Ford regularly made individual public statements concerning their desire to achieve an elimination of price concessions in the fleet market and the difficulty of effecting such an elimination unilaterally;
- (b) GM and Ford individually made similar statements, or disseminated other information concerning their willingness to discontinue price concessions in the fleet market, on a regular basis to various industry groups or representatives, including NADA and PH&H, with the knowledge and expectation that such statements and information would be transmitted to competitors;
- (c) NADA, PH&H, and others regularly transmitted between GM and Ford statements and information which they had received from either GM or Ford concerning price concessions in the fleet market;
- (d) GM and Ford relied on information obtained in their communications through public statements

- and contacts with NADA, PH&H, and others to plan strategy designed to accomplish the elimination of price concessions in the fleet market;
- (e) GM and Ford individually met with or contacted NADA, PH&H, and others at various times in late 1969 and early 1970 to ascertain the intentions and willingness of each other to substantially reduce or eliminate price concessions in the fleet market, and to communicate an understanding to jointly undertake such a program;
 - (f) In late April and early May of 1970, GM and Ford each selectively eliminated price concessions to state and local governments and to identical segments of the fleet market in Canada for the purpose of verifying the desire of each company to agree to jointly eliminate or substantially reduce all fleet market price concessions;
 - (g) In late May 1970, GM and Ford jointly eliminated or substantially reduced price concessions in the fleet market;
 - (h) After their joint elimination of fleet market price concessions, GM and Ford communicated to the industry by implications, threats and suggestions that each would retaliate if the other competitors did not follow their actions by substantially reducing fleet market price concessions; and
 - (i) In June and July of 1970, GM and Ford learned

through various industry sources that Chrysler intended to reduce, but not eliminate, its fleet market price concessions, and GM communicated to Ford and Chrysler its intention to not retaliate against the Chrysler plan.

Second Violation

24. Beginning sometime in early 1969, the exact date being unknown to the plaintiff, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy to monopolize for GM and Ford the aforesaid interstate trade and commerce in the manufacture, sale and distribution of automobiles for the fleet market, in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and the co-conspirators to eliminate price concessions and otherwise restrict competition in the sale or lease of automobiles to the fleet market.

26. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including, among other things, those actions set forth in subparagraphs (a) through (i) of paragraph 23 of this complaint, which are realleged with the same force and effect as though set forth here in full detail.

VI

EFFECTS

27. The aforesaid combinations and conspiracies have had the following effects, among others:

- (a) Prices of automobiles in the fleet market have been raised, fixed, and maintained at artificial and noncompetitive levels;
- (b) Price competition among automobile manufacturers in the fleet market has been eliminated;
- (c) Customers in the fleet market have been denied the benefits of free and open competition; and
- (d) Competition generally in the fleet market has been unreasonably and arbitrarily suppressed.

PRAYER

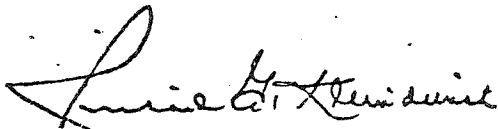
WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that each of the defendants has unlawfully combined and conspired to restrain and monopolize the aforesaid interstate trade and commerce in the manufacture, sale and distribution of automobiles for the fleet market, in violation of Sections 1 and 2 of the Sherman Act.

2. That each defendant, its successors, assignees, transferees, officers, directors, agents and employees, and all persons acting or claiming to act on behalf thereof, be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the violations alleged in this complaint, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect.

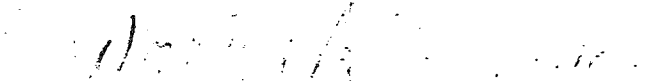
3. That the plaintiff have such other relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this suit.



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