

In The United States District Court
For The District of Columbia

United States of America,

Plaintiff,

vs.

National Automobile Dealers
Association,

Defendant.

Civil Action No.: 95 1804

Entered: June 28, 1996

FILED

JUN 28 1996

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint on September 20, 1995. Plaintiff and defendant, National Automobile Dealers Association ("NADA"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against nor an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II. DEFINITIONS

As used in this Final Judgment:

A. "Communication" means any exchange, transfer or dissemination of information, regardless of the means by which it is accomplished.

B. "Consumer" means any person who is an actual or potential purchaser of any motor vehicle.

C. "Dealer" means a person selling motor vehicles to consumers, including each of its divisions, parents, subsidiaries, and affiliates.

D. "Gross margin" means the difference between an automobile manufacturer's suggested retail price for a motor vehicle and a dealer's cost to purchase that vehicle from the manufacturer.

E. "Manufacturer" means any person which manufactures motor vehicles, including each of its divisions, parents, subsidiaries, and affiliates.

F. "NADA" means the National Automobile Dealers Association, including each of its divisions, parents, subsidiaries, and affiliates, and any person acting on behalf of any of them, except that NADA shall not include

1. NADA Charitable Foundation;

2. Dealers Election Action Committee (DEAC);
3. National Automobile Dealers Insurance Trust (NADIT);
4. National Automotive Insurance and Service Agency, Inc. (NAISA);
5. National Automobile Dealers Association Retirement Trust (NADART);
6. NADA Services Corporation (NADASC);
7. Salesperson Certification Program;
8. American Truck Division (ATD).

G. "Organization" means any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business, legal, or government entity.

H. "Person" means any individual or natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business, legal, or government entity, and any employee or agent thereof.

I. "Retail margin" means the difference between the price a consumer pays to purchase a motor vehicle and a dealer's cost to purchase that vehicle from the manufacturer.

III. APPLICABILITY

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, committee or task force members, successors, and assigns.

B. Defendant shall require, as a condition of any merger with or acquisition by any other organization, that the organization to which defendant is to be merged or by which it is to be acquired agree to be bound by the provisions of this Final Judgment.

IV. PROHIBITED CONDUCT

Defendant is hereby enjoined and restrained from:

A. directly or indirectly entering into, adhering to, or enforcing any agreement with any dealer to fix, stabilize or maintain the prices at which motor vehicles may be sold or offered by any person for sale in the United States to any consumer;

B. urging, encouraging, advocating or suggesting that dealers adopt specific prices, specific gross or retail margins, specific pricing systems, specific markups, specific discounts, or specific policies relating to the advertising of prices, invoices or costs for the sale of motor vehicles by dealers in the United States;

C. urging, encouraging, advocating or suggesting that dealers refrain from adopting specific pricing systems or specific policies relating to the advertising of prices, invoices or costs for the sale of motor vehicles by dealers in the United States;

D. urging, encouraging, advocating or suggesting that dealers (1) refuse to do business with particular persons or types of persons, (2) reduce the amount of business they do with particular persons or types of persons, or (3) do business with particular persons or types of persons only on specified terms;

E. terminating from membership any dealer for reasons relating to that dealer's price or prices, gross or retail margins, pricing systems, markups, discounts, or specific policies relating to the advertising of prices, invoices or costs for motor vehicles in the United States.

V. LIMITING CONDITIONS

A. Nothing in this Final Judgment shall prohibit defendant from:

1. continuing to disseminate specific valuation information in the N.A.D.A. Official Used Car Guide;

2. engaging in collective actions to procure government action when such actions are protected under the *Noerr-Pennington* doctrine, as established by *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523 (1961) and *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585 (1965);

3. presenting 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. above;

4. conducting surveys or gathering statistical facts or other facts and data relating to dealers, publishing or disseminating such information in written materials, studies, reports, seminars or programs, or otherwise providing information to manufacturers, dealers, consumers or other interested parties in accordance with *Maple Flooring Mfrs. Ass'n v. United States*, 268 U.S. 563 (1925) and its progeny, provided that such activities do not violate any provision contained in Part IV. above;

5. participating in bona fide dispute resolution activities, including but not limited to AUTOCAP, involving complaints by specific consumers or dealers arising from specific transactions to which such consumers or dealers are parties;

6. disseminating information about, or encouraging compliance with, any laws and government regulations including, but not limited to, tax laws, Federal Trade Commission

rules and guides, Internal Revenue Service cash reporting requirements, and Federal Reserve Board regulations.

B. Nothing in this Final Judgment shall prohibit any individual dealer, acting alone and not on behalf of or in concert with defendant or any of defendant's officers, directors, agents, employees, committee or task force members, successors, or assigns, from negotiating any terms of the dealer's business relationship with any manufacturer, including a manufacturer's policies.

VI. NOTIFICATION PROVISIONS

Defendant is ordered and directed:

A. to publish the Final Judgment and a written notice, in the form attached as Appendix A to this Final Judgment, in *Automotive Executive* within sixty (60) days of the entry of this Final Judgment; and

B. to send a written notice, in the form attached as Appendix A to this Final Judgment, to each dealer who becomes a member of NADA within ten (10) years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty (30) days after the dealer becomes a member of NADA.

VII. COMPLIANCE PROGRAM

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and

achieving full compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, be responsible for the following:

A. furnishing a copy of this Final Judgment within thirty (30) days of entry of the Final Judgment to each of defendant's officers, directors, employees, and committee or task force members, except for employees whose functions are purely clerical or manual and members of committees or task forces that do not address issues related to the sale or purchase of automobiles;

B. furnishing in a timely manner a copy of this Final Judgment to any person who succeeds to a position described in Section VII (A);

C. arranging for an annual briefing to each person designated in Sections VII (A) or (B) on the meaning and requirements of this Final Judgment and the antitrust laws;

D. obtaining from each person designated in Sections VII (A) or (B), certification that he or she (1) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (2) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer; and (3) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against NADA and/or any person who violates this Final Judgment;

E. maintaining (1) a record of all certifications received pursuant to Section VII (D); (2) a file of all documents related to any alleged violation of this Final Judgment; and (3) a record of all non-privileged communications related to any such violation, which shall identify the date and place of the communication, the persons involved, the subject matter of the communication, and the results of any related investigation;

F. reviewing the final draft of each speech and policy statement made by any officer, director, employee, or committee or task force member in order to ensure its adherence with this decree;

G. reviewing the purpose for the formation or creation of each committee and task force in order to ensure its adherence with this decree;

H. reviewing the content of each letter, memorandum, and report written by or on behalf of any director in his or her capacity as an NADA director or on NADA stationery in order to ensure its adherence with this decree.

VIII. CERTIFICATION

A. Within 75 days of the entry of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI (A) above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections VI and VII.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall immediately take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

IX. PLAINTIFF ACCESS

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

1. access during the defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. to interview the defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

X. DURATION OF FINAL JUDGMENT

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until ten (10) years from the date of entry.

XI. CONSTRUCTION, ENFORCEMENT, MODIFICATION AND COMPLIANCE

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: June 28, 1996

April L. Gure
UNITED STATES DISTRICT JUDGE

APPENDIX A

On September 20, 1995, the Antitrust Division of the United States Department of Justice filed a civil suit that alleged that the National Automobile Dealers Association ("NADA") had engaged in certain practices that violated one section of the antitrust laws. NADA denies that its conduct violated the law. However, in order to avoid the delay, expense and burden of protracted litigation, NADA, without admitting any violation of the law and without being subject to any monetary penalties, has agreed to the entry of a civil Consent Order to settle this matter. This Consent Order applies to NADA and all of its officers, directors, employees, agents, and committee and task force members, but not to dealers acting on their own.

Under the Consent Order, NADA may not enter into, adhere to, or enforce any agreement with any dealer to fix the prices at which new cars are sold or offered. NADA is also prohibited from recommending that dealers (1) adopt specific prices or pricing policies, specific margins, or specific advertising policies relating to prices or costs for automobile sales, (2) refrain from adopting specific pricing systems or specific policies relating to the advertising of prices or costs for automobile sales, such as invoice advertising, and (3) refuse to do business or reduce the amount of business they do with particular people or types of people. NADA is further prohibited from terminating from membership any dealer based upon that dealer's prices or specific policies relating to the advertising of prices or costs for automobile sales. Failure to comply with this Consent Order may result in conviction for criminal contempt of court.

This Consent Order does not prohibit NADA from continuing certain activities, including publishing the N.A.D.A. Official Used Car Guide, lobbying before legislatures and regulatory agencies, offering dispute resolution programs, including the AUTOCAP program, educating

members on compliance with laws and regulations, and presenting dealers' views to manufacturers, consumers or other interested parties in ways that do not otherwise violate the Consent Order.