



Pentagon Federal Credit Union

Stephen A.J. Eisenberg
General Counsel

December 5, 1995

VIA FEDERAL EXPRESS

Honorable Anne K. Bingaman
Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D.C. 20530

Re: Credit Union New Car Sale

Dear Ms. Bingaman:

Pursuant to the Division's procedure contained within 28 Code of Federal Regulations, §50.6, we request a "business review" to evaluate the propriety of a new car sale which Pentagon Federal Credit Union ("PFCU") proposes to manage and participate in during the early Spring of 1996.¹

Set forth below are those facts which we believe are relevant and necessary for consideration of this request. If it should be necessary to further develop the details attending the proposed event or provide the Division with additional supporting materials, we are willing, of course, to assist your staff in any way possible.

The "sale" under consideration will be an event at which approximately twenty new car dealers representing a broad array of manufacturers will come together under the auspices of a group of credit unions lead by Pentagon Federal Credit Union to offer new cars for sale at competitive prices. The sale will closely resemble sales that had been conducted between 1989 and 1991.²

¹ Your earliest resolution of this issue is sought. Preparation and organization for such an event entails significant advance preparation and action.

² On June 25, 1991, PFCU was served with a Civil Investigative Demand ("CID") from the Attorney General's Office of the Commonwealth of Virginia relating to similar car sales that previously had been held. A copy of this CID is attached for your information. See Enclosure 1. The CID was concluded in favor of the participants on January 25, 1993. See Enclosure 2.

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Only members of the credit unions will be permitted to purchase cars at the sale. Ceiling prices for cars at the sale will be negotiated in advance between each individual dealer and Pentagon Federal Credit Union, which will organize the sale on behalf of the other participating credit unions. A negotiated ceiling price for each car will be marked on the cars at the sale. While credit union members attending the sale will be free to bargain for prices lower than the marked price, participating car dealers will not be permitted to raise prices above the marked price.

It is anticipated that, in conjunction with the sales of the vehicles, the purchasers will obtain such financing as they may need from their credit union. Importantly, credit union members are free to purchase cars at the sale for cash or with financing from other sources.

Approximately twenty credit unions from the Washington, D.C. metropolitan area are expected to participate in the event. The participating credit unions will not receive any reimbursement, direct or indirect, from the participating dealers or from the manufacturers they represent.

The primary purpose of a federal credit union is to promote the economic well-being of its members through thrift and credit services. The proposed car sale is in furtherance of this

On June 28, 1991 a request for a "business review" involving the same type of sales as described in the instant request had been submitted to your office by us. The Division was advised of the pendency of the Virginia Attorney General's CID. In approximately September, 1991 your office informed us that it had decided to defer action on the request until completion of the Virginia CID. Ultimately, we did not pursue our request for a business review nor did the Department of Justice's Antitrust Division respond to our request for one.

Because of the foregoing antitrust CID relating to automobile "tent" sales, as well as other similar concerns in various sections of the United States, PFCU is requesting a business review respecting car sales we wish to organize for credit union members. See e.g., Enclosure 3, newspaper articles describing-antitrust actions relating to car sale events in New York.

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purpose and pursuant to authority contained in 12 C.F.R. §721 which provides:

A Federal credit union may make insurance and group purchasing plans involving outside vendors available to the membership (including endorsement) and may perform administrative functions on behalf of vendors.

12 C.F.R. §721.1.

The history of this regulation, moreover, confirms the importance of group purchasing to the mission of Federal credit unions. In proposing this regulation in 1981 the National Credit Union Administration, the Federal regulatory agency for credit unions, observed:

For many decades people have looked to their credit unions for advice and guidance in matters affecting their economic well-being. Such matters have included how to select insurance of varying types, automobiles, and household durable goods of all kinds. It is even reported that during the economic depression of the 1930s, many credit unions assisted their members in obtaining coal at low cost to heat their homes.

46 Federal Register 22003 (April 15, 1981) (Enclosure 4).

In addition to the general regulatory authority to engage in group purchasing, car sales themselves have been found to be appropriate "marketing services" by Federal credit unions in opinions rendered by the Office of the General Counsel of the National Credit Union Administration (Enclosure 5). Indeed, the latter office has indicated that such programs have been properly carried out by credit unions for over fifteen years.

In addition to furthering the mandate of Federal credit unions, the proposed event greatly benefits competition. Because of the number of dealers involved, consumers are presented the opportunity, with a minimum of inconvenience, to compare and evaluate a wide range of automobiles and to negotiate the best possible purchase price (starting from a preestablished ceiling

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price that itself has been negotiated in advance). Moreover, because of the large number of potential purchasers drawn to the site, the participating dealers have incentive to price cars at highly competitive levels.

To participate in the sale each dealer must sign a participation agreement with PFCU. Each agreement, in addition to setting general terms for participating in the sale, includes a negotiated maximum "markup" over the dealer's invoice price for each type of vehicle or set of options that the dealer intends to offer at the sale. At the sale the dealers will then display numerous new cars from the lines they sell with signs indicating the manufacturer's suggested retail price ("MSRP") and the sale price.

The main features of the proposed sale are as follows:

- The maximum markup, or price, included in each participation agreement will be determined in one-on-one negotiations between PFCU and each dealer involved. The margins established in each of the individual dealer agreements are arrived at after discussion and negotiation with the dealer concerned in an effort to derive the lowest possible price for potential buyers while providing sufficient incentive for the dealer to participate in the sale.
- It is expected that many, but not all, of the agreed markups will be similar within classes of domestic and foreign models. Certain models will have higher or lower markups than others depending on the popularity and availability of the vehicle.
- A credit union member can purchase a vehicle at the stated price without negotiating with the dealer in question and, thus, the servicemarked characterization "No Haggle, No Hassle" under which the sale is promoted. Moreover, a buyer can attempt to obtain the vehicle on more favorable terms. Similarly, the dealer can, of its own accord, lower the price displayed on the sticker to meet competition that develops at the sale.

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- A prospective purchaser is entitled to purchase the make and model displayed on special order with different options (and colors) on the date of the event for later delivery.
- There is no limitation on transactions consummated at a participating dealer's permanent place of business. Thus, at those locations, a dealer may price vehicles in any way it chooses, even during the proposed event.
- In some cases, more than one dealer selling the same make of vehicle will participate in the sale. Indeed, automobile dealers across the Northern Virginia area have manifested a strong, widespread interest to join in the event.

Dealers participating in the sale, and the choice of dealers, are affected by the following considerations:

- The sale is to be held in Alexandria, Virginia because this location is central to the credit unions associated with the activity. The participating credit unions seek the broadest possible participation of diverse car dealerships to provide the widest range of choice to their members. For this reason the participating credit unions impose no limitations on the dealers that can be involved in the event.
- Notwithstanding the credit unions' goal of promoting the broadest possible manufacturer participation, the law of the Commonwealth of Virginia restricts participation by dealers whose franchises are not within the local area of the event. Specifically, §46.2-1516 (Enclosure 6) requires dealers to obtain a supplemental license to sell off-site from their permanent places of business. In reality, only those dealerships that have a contractual market area covering the credit union sale site are issued such supplemental licenses. Other dealerships that might wish to participate, and which the credit unions would like to participate, will in all probability have their supplemental license applications "vetoed" by a similar

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dealership entitled to the market area.³ This leads to fostering a non-competitive environment with normally only one type of vehicle dealer representing a brand. It is this situation which the credit unions wish to counteract.

- Each dealer which participates will pay a fee to help defray the costs of the event. This fund will be used to underwrite the lease of the site where the sale is held, advertising costs, and miscellaneous operating expenses associated with the conduct of the event. It should be noted that none of these funds will ever become available to the participating credit unions. If there is a surplus it will be held aside to defray the costs of future events or if none, refunded to the dealers. Should a deficit occur dealers will be charged on a pro rata basis for any additional expenditures.

As indicated above, the key purpose of the sale is to afford credit union members a convenient opportunity to purchase new cars at fair and reasonable prices with the ready availability of generally advantageous financing terms. Financing arrangements at the sale are made as follows:

- The credit unions associated with the sale will offer their membership the chance to apply for the normally highly competitive interest rates then in effect or, indeed, for special rates and terms that may be established for the sale itself. In no cases will interest rates be raised for the sale by participating

³ §46.2-1516 provides: A temporary supplemental license may be issued for a period not to exceed seven days, provided that the application is made fifteen days prior to the sale. A temporary supplemental license for the sale of new motor vehicles may be issued only for locations within the dealer's area of responsibility, as defined in his franchise or sales agreement, unless proof is provided that all dealers in the same line-make whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought do not oppose the issuance of the temporary license. (Emphasis added)

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institutions. Notably, the participating credit unions are not-for-profit cooperative associations whose sole aim is to benefit their members. The moving force behind the sale is the commitment of these associations to make inexpensive credit services and competitive purchasing power available to their members. See 12 United States Code §1751.

- To ensure that credit union members are not the targets of strong-armed sales techniques or other manipulation, participating dealers must agree in their participation contract not to discuss any financing terms with a potential purchaser until after a credit union has had the opportunity to discuss the subject with the member. Specifically, the contracts will require that a participating dealer will be permitted to offer financing to a member purchasing a car at the sale provided that the member has submitted to the appropriate credit union either (1) an application for financing or (2) notification, in writing, that he or she has reviewed the credit union's financing options and has decided not to apply to the credit union for financing.
- In many cases credit unions will take measures to enable members to receive preapproved loans. Thus, once arriving at the sale, the purchase of a vehicle will be made as simple as possible.
- There will be no obligation for a credit union member to avail him/herself of financing from a credit union to purchase a vehicle during the sale. An individual may pay by cash or receive financing from some alternative source such as a bank or manufacturer's financing organization.

In sum, the environment established for the sale is intended to be conducive in every conceivable way to benefit the consumer. Indeed, credit union members will be informed about the nature of the proposed sale to generate their interest, presence, and involvement. Members will be notified about the significant benefits available to them at the sale and they will be advised that the markups on the cars at the sale will reflect only

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maximum prices and that they are welcome to attempt to obtain a lower price for the vehicle of their choice.

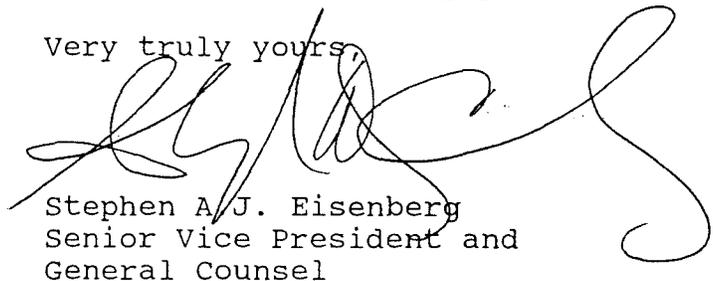
In short, the milieu created by the sale will intensify and enhance an already competitive marketplace. By reducing transaction costs, the sale will enable sellers to offer cars at highly competitive prices to consumers, who will benefit not only from a low market price, but also from a reduction in the steps ordinarily required to comparison shop before acquiring a new car.

Contemporaneous with submitting this request, a complete copy of it is being provided to Frank Seales, Jr., Esquire, Senior Assistant Attorney General and Chief, Antitrust and Consumer Litigation Section, Commonwealth of Virginia, Office of the Attorney General. This action will permit Mr. Seales' office to be aware of, consider, and coordinate as warranted, the Commonwealth's position, albeit not pursuant to a formal request for a "business review" under the policy of that office.

In regard to the foregoing, I would appreciate it if, during the pendency of this request for a business review, your office would provide copies of any correspondence, inquiries or decisions relating to this matter to Mr. Seales.

Thank you for your office's consideration of, and action on, this request for advice. If there is anything that we can assist you with in the course of your evaluation it would be my pleasure.

Very truly yours,



Stephen A. J. Eisenberg
Senior Vice President and
General Counsel

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Enclosures

cc: F. Seales, Jr.