



DEPARTMENT OF JUSTICE
Antitrust Division

ANNE K. BINGAMAN
Assistant Attorney General

Main Justice Building
10th & Constitution Ave., N.W.
Washington, D.C. 20530
(202) 514-2401 / (202) 616-2645 (f)
antitrust@justice.usdoj.gov (internet)
<http://www.usdoj.gov> (World Wide Web)

April 16, 1996

Stephen A. J. Eisenberg, Esquire
Pentagon Federal Credit Union
Box 1432
Alexandria, Virginia 22313-2032

Dear Mr. Eisenberg:

This is in response to the request of Pentagon Federal Credit Union, on behalf of some twenty Washington, D.C. metropolitan area credit unions, for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department of Justice's antitrust enforcement intentions with respect to a proposed tent sale of new cars in which a credit union representative would negotiate, on an individual dealer basis, with participating car dealers, a maximum sales price for that dealer's cars offered for sale at the tent sale.

The participating credit unions wish to promote a tent sale for new cars in which their members would have the opportunity to compare many brands of new cars at a single site and to purchase a new car at a price no higher than that which a credit union representative negotiated with the new car dealer. The tent sale will be advertised as a "no haggle, no hassle" sales event. The price negotiated by the credit union and the dealer will be displayed on each vehicle at the sale. Credit union member purchasers will have the right to negotiate for a lower price and the dealer will retain the right to reduce the price from the level that it agreed to with the credit union representative.

While the sponsoring credit unions hope to provide financing for many of the cars sold to credit union members at the tent sale, a purchaser will be under no obligation to finance through his/her credit union. Purchasers may use other financial institutions, or

manufacturer/dealer financing organizations to finance their tent sale purchases. They may also buy on a cash basis. However, the sponsoring credit unions, assertedly to protect their members from unscrupulous auto-dealer financing tactics, will require participating auto dealers to enter a contractual commitment not to discuss financing terms with a potential purchaser until the purchaser has applied for credit union financing or notified the credit union that it has reviewed the credit union financing options and decided to go elsewhere. Thereafter, the auto dealer would be free to compete for the customer/credit union member's car financing business.

On the basis of the information and assurances provided to us on behalf of the sponsoring credit unions, the Department of Justice has no current intention to challenge the proposed new car tent sale. We would be very concerned if the participating car dealers agreed, either amongst themselves directly or indirectly as a result of price communications through the credit union negotiator, on prices to be charged at the tent sale. Any such agreement would constitute price-fixing which is a per se violation of the antitrust laws. You have assured us, however, that the credit union negotiator will deal with each dealer on an individual, or one-on-one basis, and will not communicate any information to a dealer relating to what prices have been agreed to by other dealers. Under such circumstances, the credit union proposal would not involve its negotiator in any pricing agreement among the dealers.

On the basis of the evidence and assurances provided by you, the Department of Justice does not believe that the temporary delay that would be imposed on the initiation of auto-dealer financing discussions with credit union members would have any anticompetitive effect in any car financing market. Purchasers of new cars at the proposed tent sale would retain all of their current financing sources. They could seek financing from banks or other types of financing institutions without notifying their sponsoring credit union. They could pay cash, or they could obtain financing through the selling dealer (or a related financing company). In the latter situation, the customer's credit union would have to be given a right to compete or informed that the member did not want to use the credit union's financing. The Department takes no position on the asserted reason for the proposed special condition for initiation of auto-dealer financing discussions. Under the circumstances, we do not think it likely that the proposed delay on auto dealer initiation of financing discussions with tent sale car purchasers will have an anticompetitive effect in any car financing market.

To the extent that the proposed tent sale allows potential new car purchasers to reduce the inconvenience and anxiety of purchasing a car without adverse effects on pricing, the proposed tent sale could have a procompetitive effect.

This letter expresses the Department's current enforcement intention. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future if the actual operation of any aspect of the proposed tent sale proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's Business Review Procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, unless you request that part of the material be withheld in accordance with Paragraph 10 (c) of the Business Review Procedure.

Sincerely,

/s/

Anne K. Bingaman
Assistant Attorney General