Rosemary M. Rivas (SBN 209147)
David Stein (SBN 257465)
Delaney Brooks (SBN 348125)
**GIBBS LAW GROUP LLP**
1111 Broadway, Suite 2100
Oakland, California 94607
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
rmr@classlawgroup.com
ds@classlawgroup.com
db@classlawgroup.com

William H. Anderson *(pro hac vice)*
**HANDLEY FARAH & ANDERSON PLLC**
5353 Manhattan Circle, Suite 204
Boulder, CO 80303
Telephone: (303) 800-9109
Facsimile: (844) 300-1952
wanderson@hfajustice.com

Simon Wiener (*pro hac vice*)
**HANDLEY FARAH & ANDERSON PLLC**
68 Harrison Avenue, Suite 604
Boston, MA 02111
Telephone: (202) 921-4567
Facsimile: (844) 300-1952
swiener@hfajustice.com

*Counsel for Plaintiffs and the Proposed Classes*
[Additional counsel on signature page]

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JAMES GUNN and DUSTIN STAFFORD, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

FCA US, LLC,

Defendant.

Case No. 3:22-cv-02229-JD

**FIRST AMENDED CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**Table of Contents**

Plaintiffs James Gunn and Dustin Stafford, by and through their attorneys, individually and on behalf of all others similarly situated, bring this action against Defendant FCA US, LLC ("FCA"), and allege as follows:

**Introduction**

1. Plaintiffs bring this class action lawsuit on behalf of themselves and other purchasers and lessees of new, model-year 2018 and later Chrysler, Jeep, Dodge, Ram, Fiat, and Maserati-brand vehicles distributed for sale in the United States by FCA ("Class Vehicles").

2. Congress has long prioritized fair and active price competition in the market for new vehicles. Price competition, in this context, means competition on the vehicle's advertised price—the Manufacturer's Suggested Retail Price (MSRP). Car buyers use MSRP when comparison shopping. Manufacturers and dealerships use MSRP when advertising. And magazines and blogs use MSRP when discussing how vehicle models compare with the competition. In the highly competitive automotive industry, even small increases in MSRP can meaningfully affect market demand and thus the number of vehicles sold.

3. Although price competition hinges on MSRP, it is not the sole factor contributing to how much car buyers pay for new vehicles. There are also additional charges that increase the prices consumers ultimately pay. They include nonnegotiable surcharges designed to recoup automakers' cost of delivering their vehicles to dealerships, where the vehicles are ultimately sold. FCA imposes such a delivery surcharge, which it calls a "destination charge." FCA lists the destination charge on the window sticker of each of its new vehicles, tacking on an additional charge that car buyers must incur when purchasing FCA vehicles.

4. In recent years, however, FCA has not been content to merely recoup its vehicle-delivery costs through the destination charge. FCA has begun to mark up the charge, far beyond FCA's true vehicle-delivery costs. Unlike if it were to raise the

MSRP, FCA knows that it can increase the delivery charge without disturbing market demand. It relies on a well-studied phenomenon in behavioral economics known as partition pricing: consumers tend to take careful note of large base prices (like vehicle MSRPs) while failing to appreciate additional, small-by-comparison charges (like the destination charge). By using this trick, FCA subverts honest price competition, extracting hundreds of extra dollars from each new vehicle sale without providing car buyers any additional value and without suffering any competitive harm.

5. FCA's practice is not merely unfair; it also deceives the car-buying public. Reasonable consumers are not expected to know that FCA's vehicle-delivery charges are marked up to include profit or that they should compare FCA's delivery charge against other manufacturers' charges. To the contrary, consumer-facing information consistently reports that destination charges are not about generating profit. They are supposedly nonnegotiable precisely because they are intended only to pass through the automaker's actual vehicle-delivery costs onto the car buyer. So FCA, by labeling its inflated surcharge a "destination charge" without disclosing the existence of the markup, deceives the car-buying public.

6. Plaintiffs James Gunn and Dustin Stafford bring this action on behalf of themselves and all others in California who purchased or leased a new Class Vehicle. Plaintiffs seek to compel FCA to remunerate those in California harmed by FCA's unfair, inequitable, and deceptive pricing practice. To that end, Plaintiffs seek certification of a statewide class and assert claims against FCA arising under California common law as well as for violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, and Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

**Jurisdiction and Venue**

7. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. § 1332, the Class Action Fairness Act of 2005, because: (i) there are more than

100 class members; (ii) there is an aggregate amount in controversy exceeding $5,000,000, exclusive of interest and costs; and (iii) at least one member of the proposed class is a citizen of a different state than FCA.

8. This Court may exercise jurisdiction over FCA because it conducts business in California; distributed for sale and lease in California the Class Vehicles that Plaintiffs purchased; has sufficient minimum contacts in California; and intentionally avails itself of the markets within California through the promotion, sale, marketing, and distribution of its vehicles.

9. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(b)(2) and (b)(3) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District and because FCA conducts a substantial amount of business in this District. Venue is therefore proper.

**Divisional Assignment**

10. This action is properly assigned to the San Francisco or Oakland Division of this Court because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Alameda County.

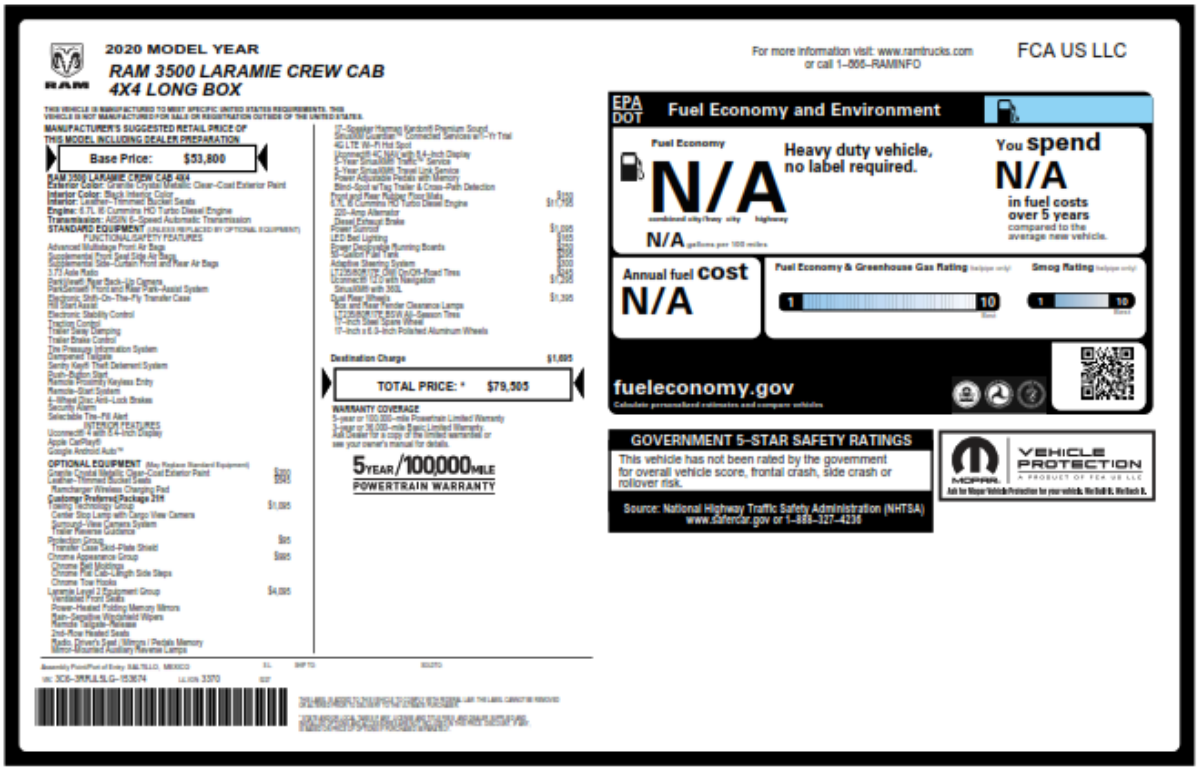
**Parties**

**Plaintiff James Gunn**

11. James Gunn is a citizen of California residing in Vallejo, California.

12. Plaintiff Gunn purchased a new 2020 Ram 3500 Laramie on or about August 26, 2020, from San Leandro Chrysler Dodge Jeep Ram, an authorized Dodge dealership and repair center located in San Leandro, California. He paid a total purchase price of $97,392.43.

13. When Plaintiff Gunn purchased the vehicle, he viewed the Monroney Sticker affixed to the window. He referenced the document, a reproduction of which is depicted below, for the feature and pricing information it contained:




14. The Monroney Sticker referenced a destination charge of $1,695. This charge was inflated, per FCA's consistent practice, materially beyond FCA's true vehicle-delivery cost. The destination charge increased the total price Plaintiff Gunn paid for his vehicle.

15. Plaintiff Gunn purchased (and still owns) this vehicle, which is used for personal, family, and household use. The vehicle bears Vehicle Identification Number 3C63RRJL5LG153674.

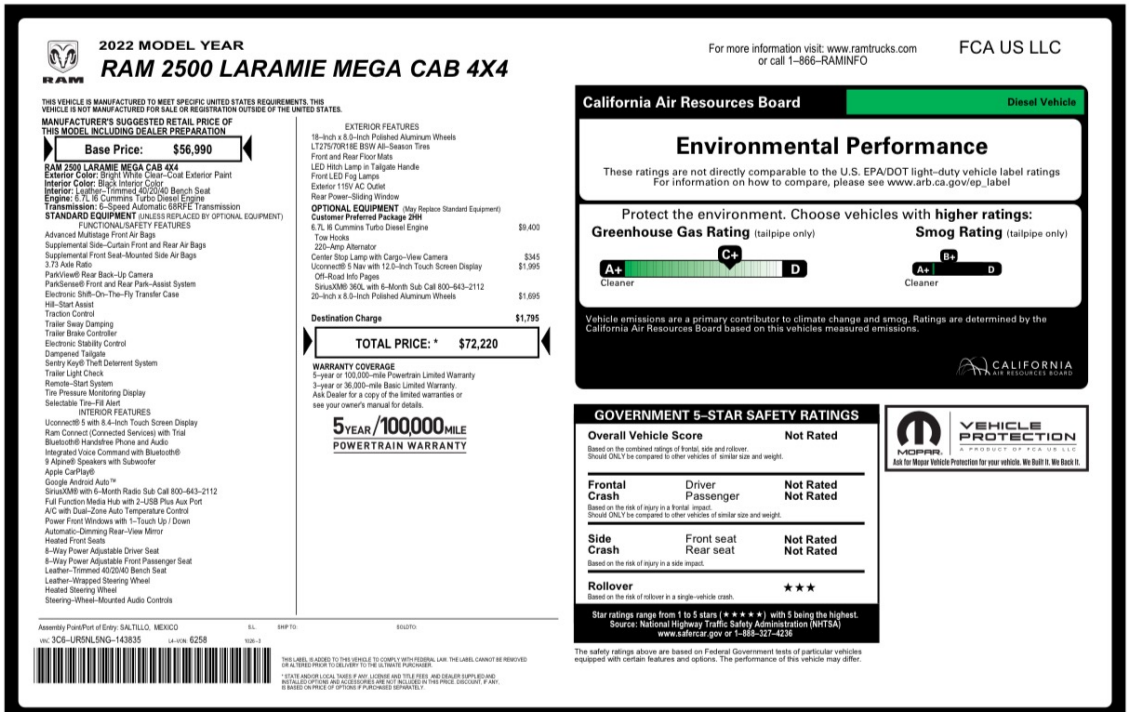
16. Neither FCA nor any of its dealers or other representatives informed Plaintiff Gunn, during or after purchase, of the fact that FCA's destination charges are marked up to generate profit.

**Plaintiff Dustin Stafford**

17. Dustin Stafford is a citizen of Oklahoma residing in Shawnee, Oklahoma.

18. Plaintiff Stafford purchased a new 2022 Ram 2500 Laramie on or about November 17, 2021, from Lodi Chrysler Dodge Ram, an authorized Dodge dealership and repair center located in Lodi, California. He paid a total purchase price of $72,220.

19. When Plaintiff Stafford purchased the vehicle, he viewed the Monroney Sticker affixed to the window. He referenced the document, a reproduction of which is depicted below, for the feature and pricing information it contained:



2022 MODEL YEAR
RAM 2500 LARAMIE MEGA CAB 4X4

For more information visit: www.ramtrucks.com or call 1–866–RAMINFO

FCA US LLC

THIS VEHICLE IS MANUFACTURED TO MEET SPECIFIC UNITED STATES REQUIREMENTS. THIS VEHICLE IS NOT MANUFACTURED FOR SALE OR REGISTRATION OUTSIDE OF THE UNITED STATES.

MANUFACTURER'S SUGGESTED RETAIL PRICE OF THIS MODEL INCLUDING DEALER PREPARATION

Base Price: $56,990

RAM 2500 LARAMIE MEGA CAB 4X4
Exterior Color: Bright White Clear–Coat Exterior Paint
Interior Color: Black Interior Color
Interior: Leather–Trimmed,40/20/40 Bench Seat
Engine: 6.7L I6 Cummins Turbo Diesel Engine
Transmission: 6–Speed Automatic 68RFE Transmission

STANDARD EQUIPMENT (UNLESS REPLACED BY OPTIONAL EQUIPMENT)

FUNCTIONAL/SAFETY FEATURES
Advanced Multistage Front Air Bags
Supplemental Side–Curtain Front and Rear Air Bags
Supplemental Front Seat–Mounted Side Air Bags
3.73 Axle Ratio
ParkView® Rear Back–Up Camera
ParkSense® Front and Rear Park–Assist System
Electronic Shift–On–The–Fly Transfer Case
Hill–Start Assist
Traction Control
Trailer Sway Damping
Trailer Brake Controller
Electronic Stability Control
Dampened Tailgate
Sentry Key® Theft Deterrent System
Trailer Light Check
Remote–Start System
Tire Pressure Monitoring Display
Selectable Tire–Fill Alert

INTERIOR FEATURES
Uconnect® 5 with 8.4–Inch Touch Screen Display
Ram Connect (Connected Services) with Trial
Bluetooth® Handsfree Phone and Audio
Integrated Voice Command with Bluetooth®
9 Alpine® Speakers with Subwoofer
Apple CarPlay®
Google Android Auto™
SiriusXM® with 6–Month Radio Sub Call 800–643–2112
Full Function Media Hub with 2–USB Plus Aux Port
A/C with Dual–Zone Auto Temperature Control
Power Front Windows with 1–Touch Up / Down
Automatic–Dimming Rear–View Mirror
Heated Front Seats
8–Way Power Adjustable Driver Seat
8–Way Power Adjustable Front Passenger Seat
Leather–Trimmed 40/20/40 Bench Seat
Leather–Wrapped Steering Wheel
Heated Steering Wheel
Steering–Wheel–Mounted Audio Controls

EXTERIOR FEATURES
18–Inch x 8.0–Inch Polished Aluminum Wheels
LT275/70R18E BSW All–Season Tires
Front and Rear Floor Mats
LED Hitch Lamp in Tailgate Handle
Front LED Fog Lamps
Exterior 115V AC Outlet
Rear Power–Sliding Window

OPTIONAL EQUIPMENT (May Replace Standard Equipment)
Customer Preferred Package 2HH
6.7L I6 Cummins Turbo Diesel Engine $9,400
Tow Hooks
220–Amp Alternator
Center Stop Lamp with Cargo–View Camera $345
Uconnect® 5 Nav with 12.0–Inch Touch Screen Display $1,995
Off–Road Info Pages
SiriusXM® 360L with 6–Month Sub Call 800–643–2112
20–Inch x 8.0–Inch Polished Aluminum Wheels $1,695

Destination Charge $1,795

TOTAL PRICE: * $72,220

WARRANTY COVERAGE
5–year or 100,000–mile Powertrain Limited Warranty
3–year or 36,000–mile Basic Limited Warranty.
Ask Dealer for a copy of the limited warranties or see your owner's manual for details.

5 YEAR/100,000 MILE POWERTRAIN WARRANTY

Assembly Point/Port of Entry: SALTILLO, MEXICO
VIN: 3C6–UR5NL5NG–143835 L4–VON: 6258

THIS LABEL IS ADDED TO THIS VEHICLE TO COMPLY WITH FEDERAL LAW. THE LABEL CANNOT BE REMOVED OR ALTERED PRIOR TO DELIVERY TO THE ULTIMATE PURCHASER.

* STATE AND/OR LOCAL TAXES IF ANY, LICENSE AND TITLE FEES, AND DEALER SUPPLIED AND INSTALLED OPTIONS AND ACCESSORIES ARE NOT INCLUDED IN THIS PRICE. DISCOUNT, IF ANY, IS BASED ON PRICE OF OPTIONS IF PURCHASED SEPARATELY.

California Air Resources Board — Diesel Vehicle

Environmental Performance

These ratings are not directly comparable to the U.S. EPA/DOT light–duty vehicle label ratings
For information on how to compare, please see www.arb.ca.gov/ep_label

Protect the environment. Choose vehicles with higher ratings:

Greenhouse Gas Rating (tailpipe only): A+ Cleaner — C+ — D
Smog Rating (tailpipe only): A+ Cleaner — B+ — D

Vehicle emissions are a primary contributor to climate change and smog. Ratings are determined by the California Air Resources Board based on this vehicles measured emissions.

CALIFORNIA AIR RESOURCES BOARD

GOVERNMENT 5–STAR SAFETY RATINGS

Overall Vehicle Score: Not Rated
Based on the combined ratings of frontal, side and rollover. Should ONLY be compared to other vehicles of similar size and weight.

Frontal Crash: Driver — Not Rated; Passenger — Not Rated
Based on the risk of injury in a frontal impact. Should ONLY be compared to other vehicles of similar size and weight.

Side Crash: Front seat — Not Rated; Rear seat — Not Rated
Based on the risk of injury in a side impact.

Rollover: ★★★
Based on the risk of rollover in a single–vehicle crash.

Star ratings range from 1 to 5 stars (★ ★ ★ ★ ★), with 5 being the highest.
Source: National Highway Traffic Safety Administration (NHTSA)
www.safercar.gov or 1–888–327–4236

The safety ratings above are based on Federal Government tests of particular vehicles equipped with certain features and options. The performance of this vehicle may differ.

MOPAR VEHICLE PROTECTION
A PRODUCT OF FCA US LLC
Ask for Mopar Vehicle Protection for your vehicle. We Built It. We Back It.

20. The Monroney Sticker referenced a destination charge of $1,795. This charge was inflated, per FCA's consistent practice, materially beyond FCA's true vehicle-delivery cost. The destination charge increased the total price Plaintiff Stafford paid for his vehicle.

21. Plaintiff Stafford's vehicle bears Vehicle Identification Number 3C6UR5NL5NG143835.

22. Neither FCA nor any of its dealers or representatives informed Plaintiff Stafford, during or after purchase, of the fact that FCA's destination charges are marked up to generate profit.

**Defendant FCA US, LLC**

23. FCA US, LLC, is a Delaware limited-liability company with its principal place of business at 1000 Chrysler Drive, Auburn Hills, Michigan. The Class Vehicles at issue here were manufactured by an entity within the FCA US, LLC, family of companies.

24. FCA US, LLC, engages in interstate commerce by marketing and distributing vehicles for sale under the Chrysler, Jeep, Dodge, Ram, Fiat, and Maserati brands through its authorized dealers located in every state of the United States, including within this District.

**Relevant Non-Party Stellantis N.V.**

25. In 2021, PSA Group and what was previously known as Fiat Chrysler Automobiles merged to create a new corporation, Stellantis N.V. Stellantis is a Dutch corporation with its headquarters in Amsterdam, the Netherlands.

26. Plaintiffs previously named Stellantis as a Defendant in this action. Plaintiffs subsequently dismissed their claims against Stellantis without prejudice in November 2022 pursuant to the parties' stipulated tolling agreement.

## Factual Allegations[1]

### I. Automakers compete, and consumers comparison shop, with a focus on new vehicles' MSRPs.

27. The market for new vehicles in the U.S. has long been highly competitive.[2]

28. Domestic manufacturers like FCA have striven to increase their sales of new vehicles, even as foreign manufacturers have gained market share and car buyers are presented with a panoply of options.[3]

#### A. The market for new vehicles is intensely competitive, and much of that competition hinges on vehicle pricing.

29. Automakers have long competed over vehicle prices.[4] "Prices are adjusted and incentives offered to improve the positioning of vehicles, the success of which . . . govern[s] market outcomes" for particular manufacturers.[5] "Market

---

[1] Excerpts of the relevant legislative history are attached as **Exhibit A**. Pin cites refer to the pagination of Exhibit A, not the page numbers stamped on the original documents.

[2] Am. Auto. Pol'y Council, *State of the U.S. Automobile Industry 2020* 6 (2020), https://www.americanautomakers.org/sites/default/files/AAPC%20ECR%20Q3%202020.pdf (FCA is a member of the Council); Martin Packman, *Competition in Automobiles* (1954), https://cqpress.sagepub.com/cqresearcher/report/competition-automobiles-cqresrre1954070100.

[3] Martin Neil Baily et al., McKinsey Glob. Inst., *Increasing Global Competition and Labor Productivity: Lessons from the US Automotive Industry* 26–30 (2005), https://www.mckinsey.com/~/media/mckinsey/business%20functions/economic%20studies%20temp/our%20insights/increasing%20global%20competition%20and%20labor%20productivity/mgi_lessons_from_auto_industry_full%20report.pdf.

[4] *Id.* at 31.

[5] *Id.* at 54.

outcomes are ultimately determined by the perceived value proposition of a particular vehicle, relative to price."[6]

30. In its most recent Annual Report, FCA (through its parent company Stellantis) acknowledged this reality: "[t]he automotive industry has historically experienced intense price competition," and remains "highly competitive in terms of . . . pricing" today.[7]

31. Major domestic manufacturers, including FCA, "have to make aggressive use of price incentives to compensate for their perceived quality gap" compared to foreign and newer brands.[8]

32. Automakers thus "understand that the demand for their products is affected by the prices of competing vehicles. This strategic interaction means that the elasticity of demand (and hence the markup) for a particular car depends on the prices set by other manufacturers."[9]

33. FCA knows that to remain viable amidst this "[i]ntense competition," it must compete on vehicle price.[10] Stellantis recently advised investors that due to continued "downward pressure on inflation-adjusted vehicle prices," the industry

---

[6] *Id.* at 55.

[7] Stellantis N.V., *Annual Report and Form 20-F for the year ended December 31, 2022* 62, 105 (Feb. 24, 2023), https://www.stellantis.com/content/dam/stellantis-corporate/investors/financial-reports/Stellantis-NV-20221231-Annual-Report.pdf ("Stellantis Annual Report").

[8] Baily et al., *supra* note 3, at 55.

[9] Saylor Academy, *Microeconomics: Theory through Applications*, § 16.3 Market Outcomes in the Automobile Industry (2012) https://saylordotorg.github.io/text_microeconomics-theory-through-applications/s20-03-market-outcomes-in-the-automob.html; *see also, e.g.*, Steven Berry et al., *Automobile Prices in Market Equilibrium*, 63 ECONOMETRICS 841, 879–91 (1995).

[10] Stellantis Annual Report, *supra* note 7, at 105.

faces a "challenging pricing environment . . . for the foreseeable future."[11] Given these market realities, Stellantis predicted that automakers "may attempt to make their vehicles more attractive or less expensive to consumers . . . by reducing vehicle prices."[12]

34. Accordingly, the advertised price of a new vehicle is a critical factor in influencing market demand for that vehicle. As economic analyses show, comparably slight changes in new vehicle price greatly affect consumer demand.[13] Car buyers are price-sensitive: they adjust their purchasing decisions based on advertised price.[14]

35. In recognition of the importance of new-vehicle pricing to consumers, Congress has expressed a legislative policy recognizing the need to "lend integrity to the marketing of automobiles," and to promote "price competition . . . [in] the industry."[15]

**B. When it comes to price competition in the new-vehicle market, both automakers and consumers focus on MSRP.**

36. For decades, MSRPs have been uniquely prevalent and prominent in vehicle advertising. "We are enlightened on present-day marketing methods by recent

---

[11] *Id.* at 106.

[12] *Id.*

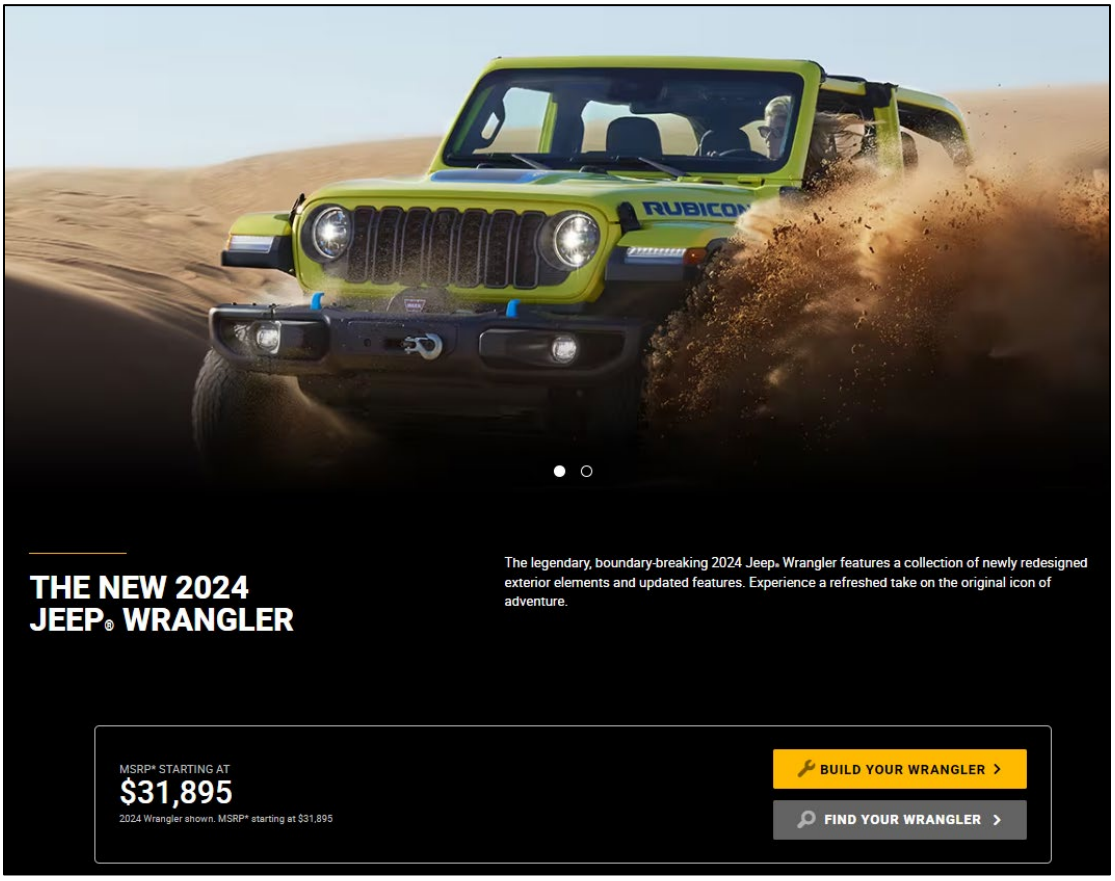
[13] Jing Dong et al., Fed. Highway Admin., *Analysis of Automobile Travel Demand Elasticities with Respect to Travel Cost* 10 (2012), https://www.fhwa.dot.gov/policyinformation/pubs/hpl-15-014/TCElasticities.pdf.

[14] Adam Copeland, *The Dynamics of Automobile Expenditures* 2 (Fed. Reserve Bank of N.Y. Staff Rep. No. 394, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1474361.

[15] *See infra*, Section III-B-2.

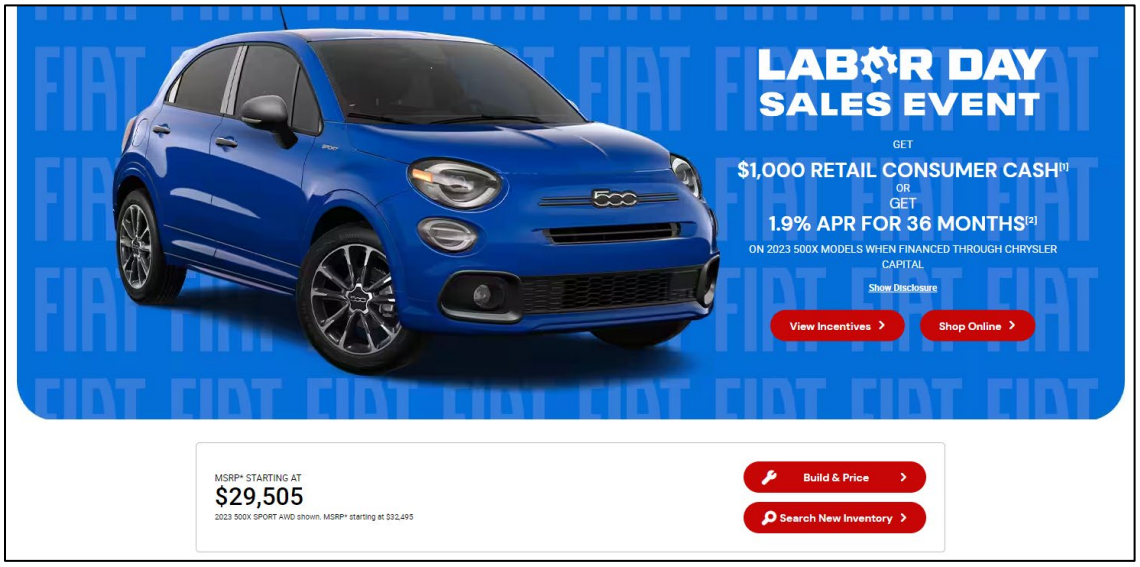
congressional investigations," the Supreme Court noted in 1964. "In the automobile field the price is 'the manufacturer's suggested retail price . . . .'"[16]

37. Indeed, FCA's advertising has long prominently displayed the MSRP, as the examples below from the top of FCA's websites for these models illustrate:[17]

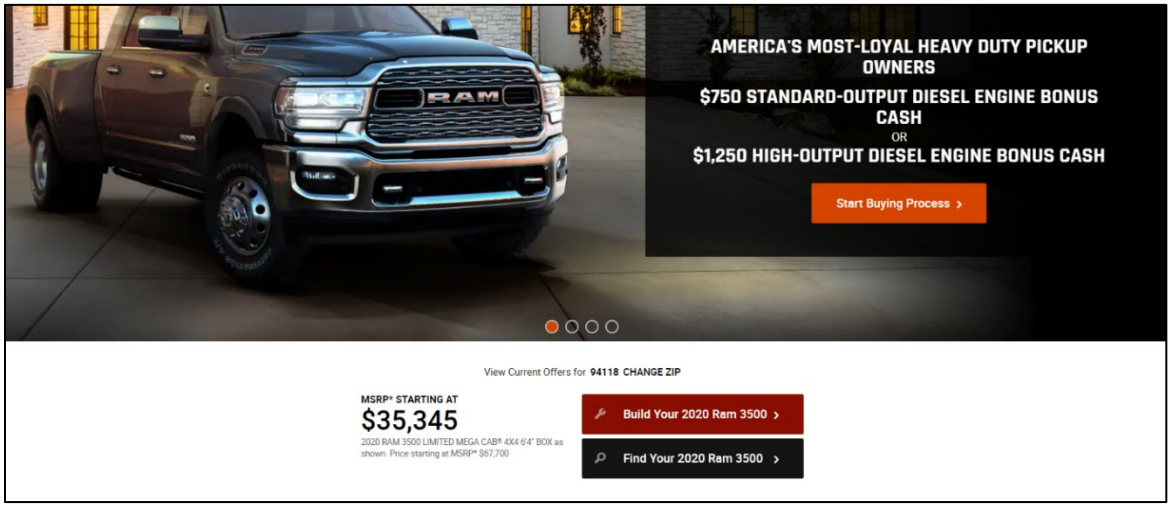



[16] *Simpson v. Union Oil Co.*, 377 U.S. 13, 18 (1964).

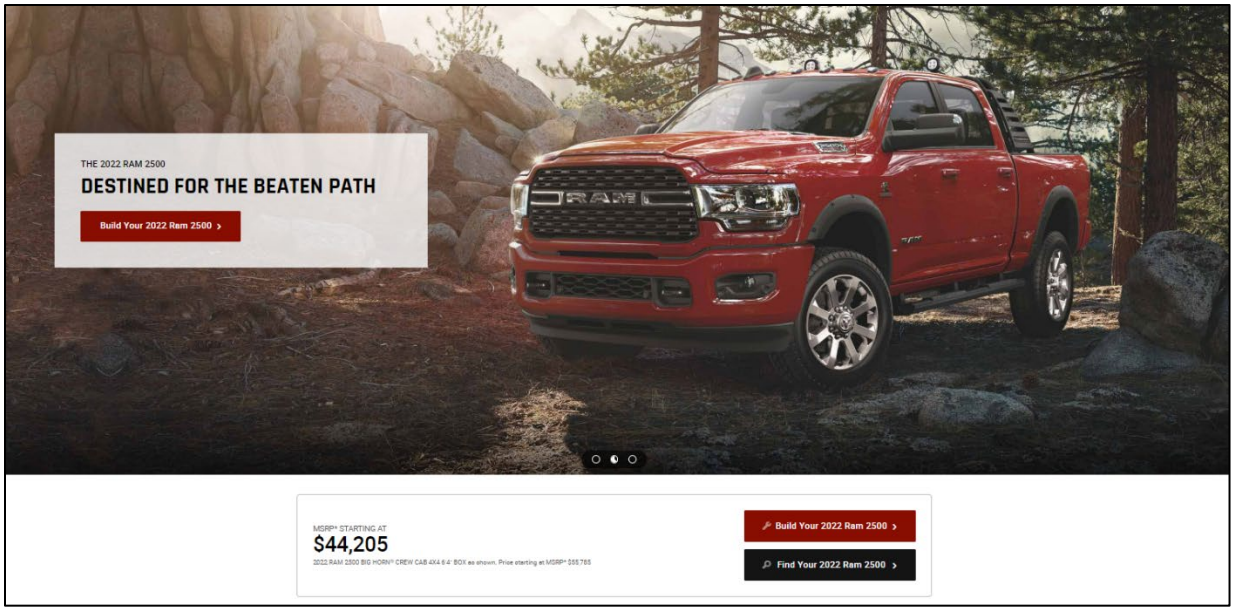
[17] Jeep, *2024 Jeep Wrangler*, https://www.jeep.com/wrangler.html; Fiat, *2023 Fiat 500X*, https://www.fiatusa.com/500x.html.



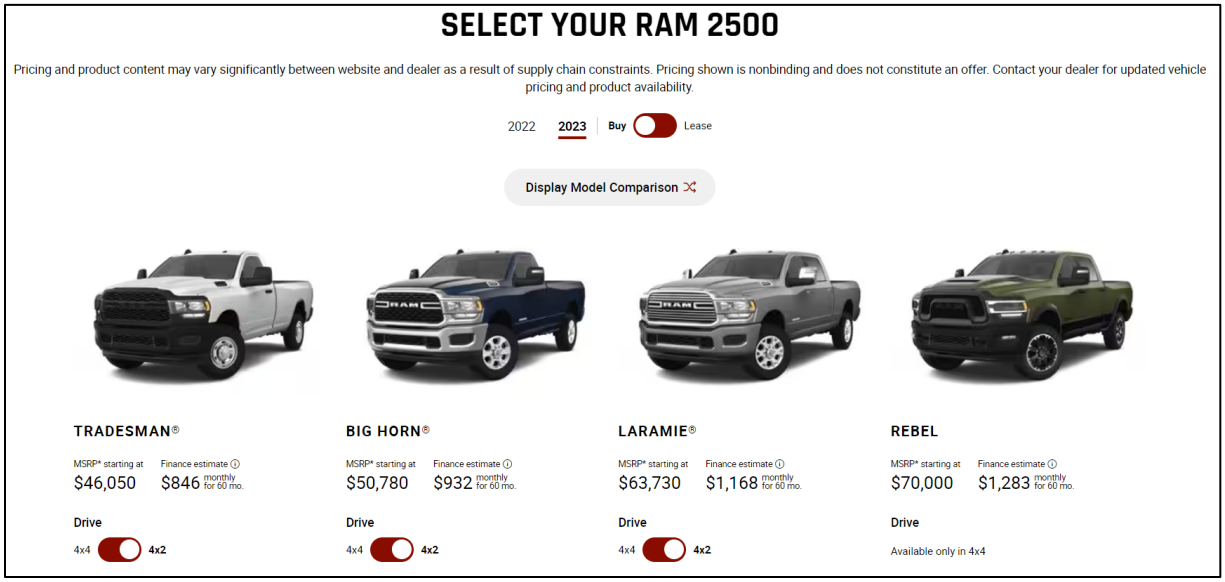

38. FCA's marketing reflects the primacy of MSRPs. For example, it is no coincidence that the webpages for the vehicles that Plaintiffs purchased—the 2020 Ram 3500 and 2022 Ram 2500—displayed the MSRP as the most prominent piece of information, in bold typeface:[18]




[18] Ram, *2020 Ram 3500* (Aug. 11, 2020), https://web.archive.org/web/20200811012314/https://www.ramtrucks.com/ram-3500.html; Ram, *2022 Ram 2500* (Dec. 23, 2022), https://web.archive.org/web/20221223063224/https://www.ramtrucks.com/ram-2500.html.




39. FCA's website for comparing different Ram 2500 models also displays the MSRPs in large bold text just under the model's name and picture, facilitating easy price comparison:[19]




[19] Ram, *Select Your Ram 2500*, https://www.ramtrucks.com/bmo.ram_2500.html#/models/2023/ram_2500.

40. Popular and trusted resources for consumers seeking to compare new vehicles routinely highlight the MSRP as the key piece of pricing information. Edmunds, for instance, provides an "MSRP Range" corresponding to the various trims available at the top of its page for the 2022 Ram 1500 pickup truck,[20] as does Cars.com.[21] Being able to quickly look at a single number, the meaning of which is consistent across manufacturers and models, significantly simplifies consumers' research and purchasing decisions. These sources, on the other hand, do not routinely provide "below the line" pricing information, such as destination charges, and reasonable consumers do not know to comparison shop using the destination charges. "Unfortunately, destination charges are not often advertised clearly."[22]

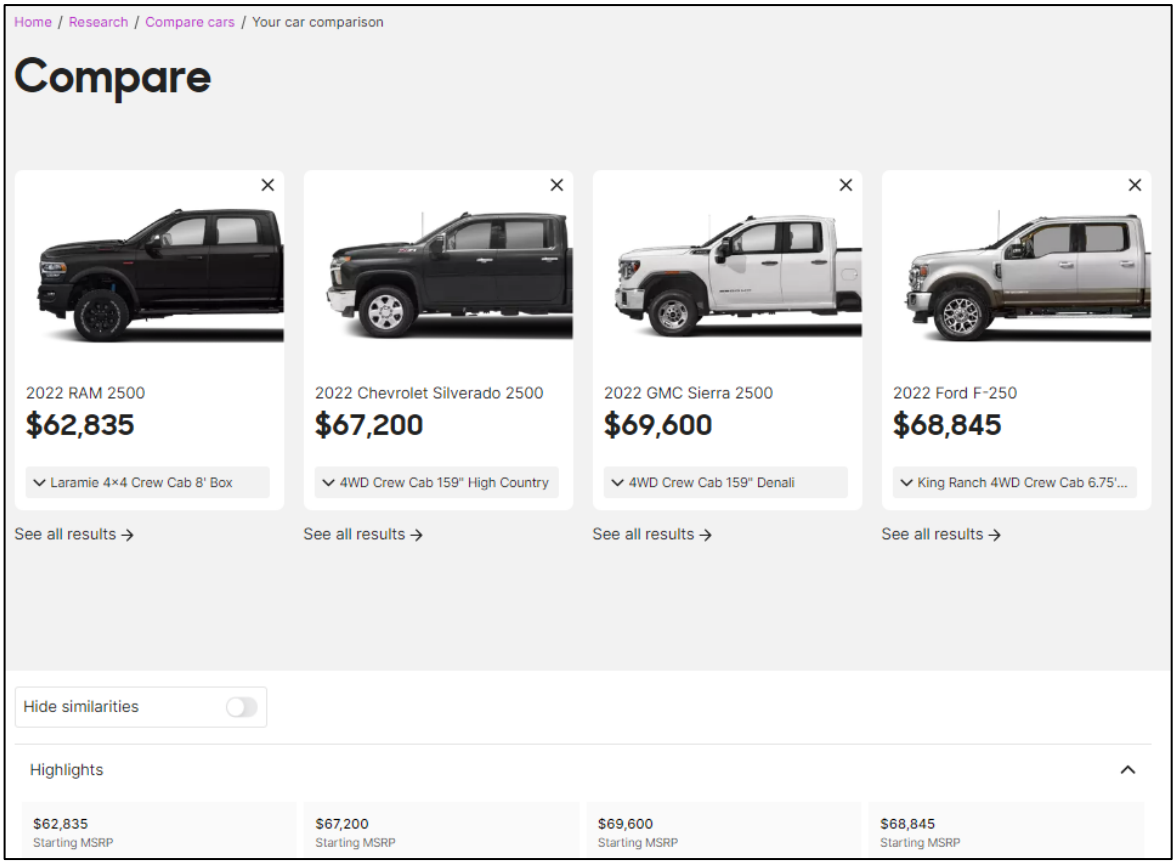
---

[20] Edmunds, *2022 Ram 1500*, https://www.edmunds.com/ram/1500/2022/.

[21] Cars.com, *2022 Ram 1500*, https://www.cars.com/research/ram-1500-2022/.

[22] Autolist, *What Is a Destination Charge on a Car?* (Apr. 14, 2022), https://www.autolist.com/guides/what-is-a-destination-fee.

41. Third-party comparison tools that consumers use to evaluate new vehicle models also reinforce that MSRPs are the most relevant reference price consumers see:[23]




[23] Cars.com, *Your Car Comparison*, https://www.cars.com/research/compare/ (emphasizing the "Starting MSRP").

42. Reasonable consumers thus understand MSRP to be the prime information available to them to gauge what they will pay for a new vehicle.[24] This means that when consumers comparison shop by price, they compare MSRPs and not charges below the line like destination charges.

**C. Manufacturers' delivery charges, including FCA's "destination charge," do not factor into price competition in the new-vehicle market.**

43. Many automakers charge additional amounts, over and above the MSRP, for vehicle options and for vehicle delivery. FCA calls its vehicle-delivery surcharge a "destination charge."

44. FCA presents the destination charge to car buyers on the window stickers that FCA prints and attaches to each new vehicle for sale at FCA dealerships. Although federal law requires FCA to disclose the amount it charges its dealerships—if it charges a delivery fee at all—for vehicle delivery, FCA's window stickers do not characterize the destination charge as being imposed on the dealership. Rather, FCA adds the destination charge as a surcharge on top of its MSRP, ratcheting up the overall cost of the vehicle presented to the consumer.[25]

---

[24] Dan Yavorsky et al., *Consumer search in the U.S. auto industry: The role of dealership visits*, 19 QUANTITATIVE MARKETING AND ECONOMICS 1, 15 (2021) ("we use MSRP as a measure of price[, because] . . . the MSRP better reflects consumers' knowledge of prices prior to visiting a dealership.").

[25] Separately, and not the target of this litigation, FCA bills dealerships the same amount for vehicle delivery that it imposes on consumers through window-sticker destination charges. This suit does *not* take issue with FCA's charge to its dealers; it takes issue only with the distinct charge that FCA imposes on car buyers. The only relevance of FCA's charge to its dealers is that because the dealer has a contractual obligation to pay FCA for vehicle delivery upon selling new vehicles, the dealers are not in a position to waive or reduce the destination charge for car buyers. Dealers treat the charge as nonnegotiable and, upon completing the sale of new vehicles, the dealers collect the destination charge payments from the car buyers and pass that full amount directly back to FCA.

45. Reasonable consumers understand destination charges to be nonnegotiable pass-through charges. They understand that they have no choice but to pay the surcharges. One popular resource for prospective vehicle purchasers succinctly explains: "Destination fees are not negotiable. No amount of bargaining makes them go away."[26] In another expert's words, "[t]he destination charge shows up late, eats away at your pocketbook, and is ultimately unavoidable."[27] It is "one of the few extra fees when buying a new car that [cannot] be negotiated"; "[i]t's set by the manufacturer and it's always in addition to the suggested retail price."[28]

46. FCA thus understands that, as it increases the destination charge, it is effectively increasing the overall price of the vehicle for the car buyer.

## II. FCA artificially inflates its destination charges to subvert fair price competition.

47. In recent years, FCA has failed to generate its desired level of revenue from new-vehicle sales. As a ploy to boost its revenue, without incurring any competitive trade-off, FCA has begun using an unfair and deceptive pricing practice. It substantially inflates the delivery surcharge on its new vehicles—well beyond the true delivery costs that the surcharge is meant to recoup and which reasonable consumers understand it to be recouping.

48. Through this pricing trick, FCA can charge car buyers more money for vehicles, without providing them any additional value, and without sacrificing overall

---

[26] Kelley Blue Book, *What Are Destination Charges?* (Feb. 3, 2021), https://www.kbb.com/car-advice/what-are-destination-charges/.

[27] Rick Press, *What Is a Destination Charge, and Do I Need to Pay It?* (Dec. 19, 2019), https://www.capitalone.com/cars/learn/getting-a-good-deal/what-is-a-destination-charge-and-do-i-need-to-pay-it/1073.

[28] Jake Lingeman, *What Goes into Determining a Car's Destination and Delivery Fee?*, Newsweek (Nov. 15, 2022) https://www.newsweek.com/what-goes-determining-cars-destination-delivery-fee-1758763.

market demand for FCA vehicles. In other words, the pricing trick allows FCA to keep its MSRPs artificially low, manipulating market demand for its vehicles and thwarting longstanding federal policies that seek to promote fair and open pricing competition in the automotive industry.[29]

**A. FCA uses inflated destination charges to subvert honest price competition, imposing increased costs on car buyers without sacrificing market demand.**

49. FCA takes advantage of two well-known phenomena that behavioral economists have found exploit consumers' patterns of thinking: partition pricing and drip pricing.

50. "Partition pricing is defined as an advertised price divided into two parts: the larger price is the base price . . . and the smaller component is the surcharge price."[30] Here, FCA's base price is its MSRP and its surcharge price is the destination charge.

51. "Drip pricing" is a species of partitioned pricing. It occurs when a seller advertises a product's base price up front and reveals additional surcharges ("drips") as the consumer progresses through the buying process.[31] As detailed above, FCA markets its vehicles to ensure that car buyers have been presented with the MSRP before they are later presented with the delivery surcharge.

---

[29] *See infra*, Section III-B.

[30] Kenneth E. Jull, *Digital Advertising and Purchasing: Fun or a New Type of Deception?* 4 (June 16, 2019), https://ssrn.com/abstract=3404765.

[31] *The Economics of Drip Pricing*, F.T.C. (May 21, 2012), https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing.

52. As one meta-analysis of partitioned pricing concluded, the practice "enables sellers to manipulate consumers into making transactional decisions that overly advantage the seller."[32]

53. Both regulators and academics acknowledge that the "retail car-buying process . . . gives a lot of opportunities for drip pricing and partitioned pricing."[33] Meghan Busse, a professor at the Kellogg School of Management at Northwestern, speaking at the FTC's "Drip Pricing Conference" in May 2012, called out new-vehicle destination charges as a prime example of "partitioned prices."[34]

54. The FTC has studied the proliferation of drip and partitioned pricing for over a decade.[35] In 2022, the FTC granted a petition by the Institute for Policy Integrity in support of rulemaking to address the practice.[36] According to the petition, drip pricing deceives consumers acting reasonably under the circumstances, is not reasonably avoidable, and is not outweighed by countervailing benefits to consumers or to competition—meeting the FTC Act's standard for a deceptive, unfair, and anticompetitive trade practice.[37]

55. Academic literature supports the FTC's concerns. In the field of behavioral economics, experiments and empirical analyses confirm that drip and

---

[32] David Adam Friedman, *Regulating Drip Pricing*, 31 STAN. L. & POL'Y REV. 53, 55 (2020).

[33] Tr. of a Conference on the Economics of Drip Pricing, FTC, at 84 (May 21, 2012), https://www.ftc.gov/sites/default/files/documents/public_events/economics-drip-pricing/transcript.pdf.

[34] *Id.*

[35] *Id.*

[36] Inst. for Policy Integrity, Pet. for Rulemaking Concerning Drip Pricing 1 (2021), https://policyintegrity.org/documents/Petition_for_Rulemaking_Concerning_Drip_Pricing.pdf.

[37] *See generally id.*

partitioned pricing lead consumers to underestimate the total price of a product,[38] causing them "to perceive that their total costs are less than with an equivalent [all-in price]."[39] And if consumers perceive lower costs with a partitioned price versus an equivalent all-in price, "willingness to pay [] and demand should increase" to the consumers' detriment.[40]

56. Standard economic theory dictates that consumers should be "just as willing" to purchase a product priced at $500 with a delivery fee of $100 as they are to buy the same product priced at $600 with free delivery. But that's not the case:

> [R]ecent research suggests that price partitioning … affects customers' price perceptions [and] their willingness to purchase . . . . [C]onsumers tend to focus on the base price . . . rather than the ancillary fees that boost the total price. And the research suggests that consumers mentally process the base price more thoroughly than they process other components, such as taxes and fees. Thus, when consumers try to recall the total price (the combination of the base price and other components) after seeing a partitioned price, they tend to recall the base price accurately but forget about the other components, thereby remembering a lower total price. That is especially true when the base price is much larger than the other charges, which seem minor in comparison.[41]

This means that companies like FCA that are willing to engage in these manipulative practices will find partitioned pricing "attractive," since it "position[s] their products more favorably when consumers comparison shop, especially when they shop online."[42]

---

[38] Friedman, *supra* note 32, at 53.

[39] Eric Greenleaf et al., *The Price Does Not Include Additional Taxes, Fees, and Surcharges: A Review of Research on Partitioned Pricing*, 26 J. CONSUMER PSYCHOL. 105 (2016).

[40] *Id.*

[41] Rebecca W. Hamilton et al., *When Should You Nickel-and-Dime Your Customers?*, 52 MIT SLOAN MGMT. REV. 58, 60 (2010).

[42] *Id.*

57. Separating a product's price into component parts causes consumers to underestimate the total cost of the transaction because of phenomena called "anchoring" and "adjusting." Buyers "anchor" on the most prominently presented price when initially estimating their total costs.[43] And the "adjustments" consumers make based on surcharges and later-presented drip prices are "insufficient to correct the initial estimate."[44] Buyers are so influenced by the anchor that "a lower base price create[s] the impression of a lower overall price," and in turn inflates demand.[45]

58. In one study, researchers tested a phone with a base price of $69.95, "plus $12.95 for shipping and handling," against a phone with an all-in price of $82.90, "including shipping and handling." Subjects recalled significantly lower total product costs for the partition-priced phone than the phone bearing an all-inclusive price.[46] Almost one quarter of participants "completely ignored the surcharge."[47] The researchers concluded that "partitioned prices do tend to increase consumers' product demand compared with all-inclusive, combined prices."[48]

59. In another study, researchers tested six different pricing strategies to understand their effects on consumers' willingness to pay, and the time consumers

---

[43] *See* Friedman, *supra* note 32, at 67.

[44] *Id.*

[45] *Id.*

[46] Vicki G. Morwitz et al., *Divide and Prosper: Consumers' Reactions to Partitioned Prices*, 35 J. MARKETING RES. 453 (1998).

[47] *Id.*

[48] *Id.*

spent searching for alternative offers.[49, 50] As for the subjects' willingness to pay sub-optimal prices, drip pricing was the "most detrimental to consumers[,] . . . wip[ing] out 22% of consumer surplus."[51] The study suggested "that consumers who see a low base price and do not yet know that the effective price will go up through 'shipping and handling' charges experience an increase in their willingness to pay for the good."[52] The researchers attributed this effect to loss aversion, or "the so-called endowment effect," which describes how:

> Consumers who decide to buy the product at the low price experience a shift in their reference point as they already imagine departing with the good. Changing the initial decision, that is, giving up the good that is already in the virtual basket would be perceived as a loss. This loss can be avoided by purchasing the product despite an increased price.[53]

---

[49] Steffen Huck & Brian Wallace, *The Impact of Price Frames on Consumer Decision Making: Experimental Evidence*, University College of London, 1, 8 – 9, 23 (Oct. 15, 2015), https://www.ucl.ac.uk/~uctpbwa/papers/price-framing.pdf.

[50] To test drip pricing, the researchers presented a good for sale and advertised only its base price. As the subjects clicked through the online store towards checkout, they were presented with drip charges, titled "shipping" and "handling," and had to decide whether to accept the charges and proceed with the transaction, or to continue searching elsewhere. *Id.* at 8–9.

[51] *Id.* at 32; *see also* Chris B. Murphy, *Consumer Surplus Definition, Measurement, and Example* (Mar. 19, 2023), https://www.investopedia.com/terms/c/consumer_surplus (defining "consumer surplus" as the difference between what a consumer was willing to pay and the price they actually paid; when consumer surplus is positive, it means the consumer paid less for something than they were willing to pay).

[52] Huck, *supra* note 49, at 32, 33, 38 (explaining that the "endowment effect" or "loss aversion" describes how a consumer's imagination of owning a good increases their valuation of the product and therefore their willingness to pay).

[53] *Id.* (explaining that the "endowment effect" and "loss aversion" describe how a consumer's imagination of owning a good increases their valuation of the product, and

60. And with respect to the amount of time spent comparison shopping for better offers, the researchers found that "drip pricing turns consumers who tend to search too much into consumers who tend [to] search too little." The under-searching effect was "particularly striking," the researchers noted, given that the transaction costs in the experimental setting (a few mouse clicks) were "very close to zero."[54]

61. That is not to say transaction costs don't matter—they do.[55] Drip pricing turns out to be especially coercive when the drip charge is presented in a physical location, where the transaction costs of continued search are high. Likening drip pricing to bait-and-switch advertising, law professor David Friedman explains why place matters:

> Consumers may have been lured by an initial "drip" to a physical location . . . . Once lured into that space, further consumer search becomes more burdensome, as the marginal time left for shopping evaporates. The opening phases of the transaction may have taken up the buyer's limited time, and completing the transaction, even on less-desirable dripped terms, may emerge as the consumer's best option.[56]

62. In other words, advertised prices entice consumers to begin a transaction. Once confronted with additional charges, especially in a physical place like a dealership, the cost of unwinding the transaction and continuing to search may be so high that it is rational to accept the charges—even though it means paying more for a

---

in turn, their willingness to pay); *see also* The Economist, *You've been framed*, (May 27, 2010), https://www.economist.com/finance-and-economics/2010/05/27/youve-been-framed (citing another study by Huck and describing the same effect: "shoppers, having resolved to buy a good, feel as if they already own it. To abandon the sale would feel like a loss").

[54] Huck, *supra* note 49, at 32.

[55] *See id.* (discussing how accepting a higher price to avoid the higher transaction costs of continued search is "entirely rational").

[56] Friedman, *supra* note 32, at 55.

product than originally anticipated. Drip pricing thus inhibits consumers' ability to comparison shop.[57]

63. Behavioral economics teaches that even full disclosure of a surcharge, including a materially inflated surcharge like FCA's destination charge, does not promote informed purchasing or comparison shopping over that surcharge because consumers remain focused on the base price or MSRP. Professor Vicki Morwitz of the NYU Stern School of Business addressed an FTC conference on drip pricing and explained that:

> [I]n both partitioned and drip pricing, . . . there is a base price, . . . the advertised price . . . and then there's one or more surcharges . . . . [The surcharges] are sometimes stated up front; sometimes they're revealed only after an initial or a final choice. And in all the behavioral research that's been done on it, the surcharges have always been revealed up front and fully revealed, fully disclosed . . . . And in that partitioned pricing literature, we have seen a number of effects . . . . We've seen ***that merely separating out the mandatory surcharges -- everything, again, is fully disclosed -- can increase a firm's profits and can decrease consumers' perceptions about what was . . . the total price that they had to pay for that transaction***.[58]

64. These principles help explain why reasonable consumers are harmed by FCA's practice of markedly inflating its destination charge. FCA prominently advertises its new vehicles' MSRP, the base price to which car buyers are first exposed, only to present them with the delivery surcharge later. This thwarts reasonable consumers' ability to factor the surcharge into their perception of FCA vehicles' total price. Because reasonable consumers are led to underestimate the total cost of the

---

[57] *Id.* at 51.

[58] Tr. of a Conference on the Economics of Drip Pricing, *supra* note 33, at 74–76 (emphasis added).

transaction, their individual willingness to pay, and the market's collective demand for the good, increase when they otherwise would not have.[59]

65. FCA's practice also benefits from market trends in which car buyers do most of their pre-purchase research online, visiting fewer and fewer dealerships during the car-buying process.[60] Often, the consumer has made up their mind about which make and model they intend to purchase and then go to the dealership just for a test drive.[61] The physical setting of a car dealership plays a role too. Once there, Professor Friedman explains:

> Starting the buying process from scratch with another car at another dealer requires significant expenditure of incremental time—without a transparent guarantee of a better overall deal. Advice to buyers to 'walk' if unsatisfied already assumes that a buyer has the resources to do so.[62]

Where transaction costs are high, consumers tend to under-search for alternatives. FCA's scheme thus thwarts consumers' ability to comparison shop.

66. Thus, once a consumer decides to purchase a particular vehicle, they are unlikely to abandon the transaction over the destination charge. This leads consumers to spend more money than they were otherwise willing or expecting to pay even as it

---

[59] Greenleaf, *supra* note 39 ("If consumers perceive their total costs are less with partitioned pricing than with all-in pricing, willingness to pay and demand should increase.") (cleaned up).

[60] Sean Tucker, *Study: Car Buyers Satisfied Despite High Prices, Low Inventory,* Kelley Blue Book (Jan. 19, 2022) https://www.kbb.com/car-news/study-car-buyers buyers-satisfied-despite-high-prices-low-inventory/.

[61] Dealer Specialties, *Maximizing Dealership Performance: 3 Tips for Attracting Buyers Based on Today's Car Shopping Habits* (Jun. 28, 2023) https://blog.dealerspecialties.com/car-buying-habits-your-dealership-needs-to-know.

[62] *See* Friedman, *supra* note 32, at 96 (encouraging increased scrutiny of drip pricing in the auto industry, recommending "targeted laws and regulations directed at the sector").

allows FCA to extract more from car buyers without providing them any additional value and without competing with other manufacturers on surcharge pricing.

67. FCA has made public comments reflecting that it consciously takes the destination charge into account when it sets its overall vehicle prices: "When assessing vehicle pricing, we do not look at any single element of the pricing equation, but rather at the entire equation, which includes MSRP, options, destination/transportation etc. Vehicle pricing is not about just one element, but rather the total vehicle package."[63]

68. In addition to developing a better understanding of how to use surcharges to manipulate consumer behavior, FCA has also seen a change in market realities that favor its use of artificially inflated destination charges. Whereas dealers once paid cash upfront for vehicles (and for vehicle delivery), it is now common for dealers to acquire vehicles on credit, paying FCA (both for the vehicle and for vehicle-delivery) for the first time only after selling the vehicles. One ramification is that dealerships no longer have incentives to resist inflated destination charges because they no longer bear the cost of those charges (even temporarily). Instead, the car buyers are the ones to pay the charge to FCA, with the dealer merely acting as the conduit.

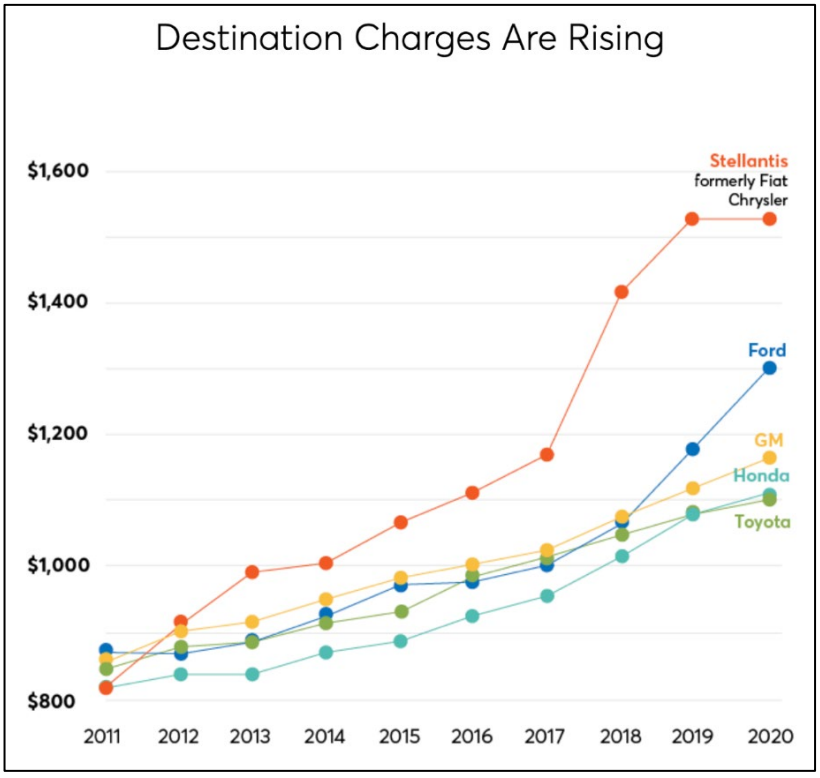
**B. FCA's unfair and deceptive practice of inflating its delivery surcharge has generated substantial additional revenue in recent years.**

69. Since at least the 2018 model year, FCA's destination charges for Class Vehicles have been substantially higher than FCA's underlying vehicle-delivery costs. Rather than charging the true cost of delivery, FCA inflates the charges to generate additional profit for itself. Only by engaging in these unfair and deceptive practices is FCA able to sell the volume of Class Vehicles it has sold, at the prices for which they were sold.

---

[63] Lingeman, *supra* note 28.

70. *Consumer Reports* reported in its April 2021 issue on the substantially inflated destination charges for Class Vehicles. "Destination fees rose an average of 90 percent on Chrysler, Dodge and Jeep vehicles; 74% on Ram trucks since 2011; and 114% on Fiats since 2012," it found.[64] The following chart from *Consumer Reports* reflecting the average destination charges among top manufacturers demonstrates both the concerning industry-wide growth of this inflated charge, and the degree to which FCA (referred to by its parent company's name, Stellantis) is winning the race to the bottom:[65]




71. Although there has been the suggestion that at least one or two other manufacturers have likewise begun inflating their own destination charges, the above

---

[64] Mike Monticello, *Sticker Shock: The Truth about Destination Fees*, Consumer Reports (Feb. 18, 2021), https://www.consumerreports.org/buying-a-car/the-truth-about-destination-fees-a1615480982/.

[65] *Id.*

chart shows how FCA has increased its destination charges at rates substantially outpacing all other manufacturers. Indeed, *Consumer Reports* found that even though destination surcharges among "mainstream automakers" had increased "more than 2.5 times the rate of inflation" between 2011 and 2020,[66] FCA consistently charged *hundreds* of dollars more per vehicle than all of the other manufacturers identified.

72. FCA has been unable to identify any underlying costs that have risen to such a degree that would justify increasing its destination charges this much. In addition to substantially overtaking its competition in ratcheting up destination charges, FCA's increases consistently outpace both inflation and transportation costs generally.

73. To cite one example, consider the Ram 1500 pickup truck. Over an eight-year period, FCA's destination charges on the Ram 1500 increased over 58%.

| Model Year | Transportation Fee on Monroney Sticker |
|---|---|
| 2023 | $1,895 |
| 2022 | $1,795 |
| 2021 | $1,695 |
| 2020 | $1,695 |
| 2019 | $1,695 |
| 2018 | $1,395 |
| 2017 | $1,395 |
| 2016 | $1,195 |

74. The Ram 1500 is no outlier among destination charges on FCA vehicles. Indeed, if anything, it represents a conservative demonstration of the problem. As noted above, of the FCA brands referenced by the *Consumer Reports* article, Ram trucks

---

[66] *Id.*

have seen the most modest increase (74% since 2011). Another FCA model, the Jeep Cherokee, saw its destination charge rise 50 percent during a mere three-year span.

75. One widely recognized measuring stick for transportation costs is the IRS published mileage reimbursement rate, which "is based on an annual study of the fixed and variable costs of operating an automobile."[67] The table below demonstrates that from 2016 to 2023, the IRS mileage reimbursement rate increased 21.3%, less than half of the increase to the Ram 1500's destination charge over the same period. Notably, when prices for transportation dropped between 2019 and 2022, FCA did not lower its destination charges.

| Year | IRS Mileage Reimbursement Rate |
|---|---|
| 2023 | 65.5 cents per mile |
| 2022 (2nd half) | 62.5 cents per mile |
| 2022 (1st half) | 58.5 cents per mile |
| 2021 | 56 cents per mile |
| 2020 | 57.5 cents per mile |
| 2019 | 58 cents per mile |
| 2018 | 54.5 cents per mile |
| 2017 | 53.5 cents per mile |
| 2016 | 54 cents per mile |

76. Nor do increasing transportation costs explain the meteoric rise of FCA's destination charges. The United States Bureau of Transportation Statistics publishes data concerning Average Freight Revenue per Ton-Mile. From 2016 to 2020 (the most

[67] I.R.S., IRS *Issues Standard Mileage Rates for 2022*, News Release No. IR-2021-251 (Dec. 17, 2021), https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2022.

recent data available), the cost for Class I rail went from 3.99 (2016) to 4.40 cents (2020).[68] This data indicates an increase of just 10.3%.

77. Manufacturers primarily use rail and trucks to transport new passenger vehicles to dealerships for sale.[69] But increases in these transportation modes' costs do not remotely reflect the rate of increase in FCA's destination charges for vehicles since 2016.

78. In the words of a *Consumer Reports* executive, "If [companies like FCA] had a valid reason beyond just driving up the price, they would actually be able to point us toward specific examples of costs that have gone up within the shipping process."[70] With no such explanation given, *Consumer Reports* concludes the ratcheted-up destination charges are "little more than a stealthy way for automakers to raise prices without fully owning up to it."[71] This is precisely the type of unfair business conduct that consumer protection laws are intended to target and stop.

79. FCA's alternative would be to build the desired profit margin into MSRPs, which is where consumers expect it to be. Indeed, when automakers had occasion to reduce their destination charges in the past, they opted to increase their vehicles' list prices.[72]

---

[68] U.S. Bureau of Transport. Stats., *Average Freight Revenue per Ton-Mile*, https://www.bts.gov/content/average-freight-revenue-ton-mile.

[69] The original method of calculating destination charges was "charging the dealer the actual cost of rail transportation from the home plant." Ex. A at 24 (*Digest of Testimony Relative to Hr'gs on Auto. Mktg. Practices, Subcomm. of Comm. on Interstate and Foreign Commerce*, 84th Cong. (Aug. 15, 1957)).

[70] Monticello, *supra* note 64.

[71] *Id.*

[72] Ex. A at 24-25 (*Digest of Testimony, Hr'gs on Auto. Mktg. Practices* (Aug. 15, 1957)).

80. But FCA neither wants to fairly disclose the truth about the fee up front, nor move profit from its vehicles' destination charges to their MSRPs, because that would cause it to lose money. After automakers previously agreed to reduce their destination charges in the 1950s (for reasons discussed in Section III-B below), the *New York Times* reported that Chrysler (FCA's predecessor) reduced its destination charges by as much as $74 per vehicle while only raising MSRPs by $35.[73] In other words, while Chrysler sought to recoup lost revenues of up to $74 per vehicle, consumer demand would only tolerate an increase of $35 in list price—well under 50% of the amount by which FCA's predecessor had reduced its delivery charge.

81. As Jack Gillis, executive director of the Consumer Federation of America put it, "[t]here is no reason why destination charges are not incorporated into the cost of the vehicle," and thus the MSRP, "except that it enables the manufacturer to charge more."[74]

## III. Reasonable consumers do not expect a delivery surcharge, like FCA's "destination charge," to be marked up to include profit.

82. Reasonable consumers do not expect FCA's destination charge to be marked up to generate profit for FCA. Instead, they expect it to cover only the underlying vehicle-delivery cost.

### A. Public information about destination charges informs consumers that destination charges merely recoup new-vehicle delivery costs.

83. For years, consumer-facing, publicly available information about destination charges has conveyed to prospective car buyers that destination charges

---

[73] N.Y. Times, *Chrysler Ends Charge: Follows Rivals in Eliminating 'Phantom Freight' Cost* (Feb. 29, 1956), https://timesmachine.nytimes.com/timesmachine/1956/02/29/86534118.html?pageNumber=24

[74] Monticello, *supra* note 64.

merely cover the costs associated with delivering new vehicles to dealerships. Consumers are told explicitly that destination charges do not include profit.

84. J.D. Power, a research firm that markets itself as "a global leader in consumer insights," capable of "delivering incisive industry intelligence on customer interactions with brands and products,"[75] publishes "Car Shopping Guides" to provide car buyers with information. In one such guide, J.D. Power explains destination charges. It defines them as being "a charge for delivering a new car from the factory to its point of sale."[76] It explains that "[t]he car is transported from the factory to the dealer, and it costs money to transfer it." The guide states explicitly that the destination charge "is *not about profit*."[77]

85. In a separate public-facing article on the topic, Tyson Jominy, a J.D. Power vice president who advises automakers about pricing new vehicles, wrote that the use of destination charges is "intentionally a profit neutral activity."[78] Jominy, who previously worked in the finance and marketing departments at Ford Motor Company and Nissan North America,[79] wrote that automakers "aren't supposed to hide profit in the field. An [automaker] attempts to set a rate that is the average across its portfolio to ship vehicles to all parts of the country."[80]

---

[75] J.D. Power, *Truth That Transforms*, https://www.jdpower.com/business/about-us.

[76] Dustin Hawley, *Are Destination Charges Negotiable?*, J.D. Power (Sept. 28, 2022) https://www.jdpower.com/cars/shopping-guides/are-destination-charges-negotiable.

[77] *Id.* (emphasis added).

[78] Kelsey Mays, *Destination Fees on Cars Are Way Up; Here's Why,* Cars.com (Jul. 16 2019) https://www.cars.com/articles/destination-fees-on-cars-are-way-up-heres-why-405847/.

[79] J.D. Power, *Tyson Jominy Bio*, https://www.jdpower.com/sites/default/files/file/2020-03/JominyTyson.pdf.

[80] Mays, *supra* note 78.

86. Other consumer-facing information makes similar points. For example, a 2013 Cars.com article quoted a representative of Chrysler (FCA's predecessor) discussing destination charges in a way that makes them sound like their sole purpose is to recoup vehicle-delivery costs. The spokesperson explained that Chrysler (now FCA) "sets the destination charge for each nameplate based on our costs to deliver a new vehicle from the assembly plant to the dealership. Our costs include shipments by rail and truck."[81] An industry analyst quoted in the article underscored the point that the charges do not generate profit. The analyst, acknowledging the increase in destination charge amounts circa 2013, stated: "The increase *isn't a way for manufacturers to try and pad their prices upwards*, but reflects the increased costs of logistics in recent years due to higher fuel costs."[82]

87. In that same article, a Honda spokesperson provided a comparable explanation of the nature of destination charges. He explained that the charge "consists of all transportation and processing costs for all finished vehicles covering their movement from plants or ports to dealers." The "[c]osts are calculated into a national average which results in equalized freight charges—and is the same for all dealers regardless of their distance from the vehicle's origin." Neither spokesperson suggested any possibility that the charges were profit centers; rather, they presented the charges as being strictly utilized to recoup vehicle-transport costs.

88. Other consumer-facing information about destination charges only reinforces this notion. Various articles and blog posts advising consumers on how to navigate the car-buying process all characterize the destination charge the same way:

---

[81] Kelsey Mays, *What Makes Up a Destination Charge?*, Cars.com (Sept. 23, 2013) https://www.cars.com/articles/what-makes-up-a-destination-charge-1420663050695/.

[82] *Id.* (emphasis added)

as a pass-through surcharge meant to reimburse automakers for vehicle delivery. See, for example:

- "[D]estination fees . . . aren't a money-making line item."[83]
- "Automakers levy th[e destination] charge in order to recoup the expenses associated with preparing a vehicle for transportation at the factory, transporting it to the dealership, and finally, the dealer prep involved in getting it ready to go on sale at the dealership."[84]
- "The destination charge, sometimes called a freight fee or freight delivery charge, is the amortized cost of getting a car from the factory to the dealership."[85]
- "[The destination charge] covers the cost to deliver the vehicle from the factory to the dealership and is shown on the vehicle's window sticker. It's set by the automaker and is typically the same for all models within a particular brand. Yes, you have to pay this charge. It's a straight pass-along cost."[86]

89. In sum, for years, consumers have been consistently told that destination charges are to cover the manufacturer's transportation costs only, and that the charges do not contain profit. Nowhere publicly has an FCA representative ever acknowledged that the charges are marked up to make profit. Nor have any other automakers said

---

[83] TrueCar Blog, *What You Need to Know about Destination Fees* (Apr. 20, 2020) https://www.truecar.com/blog/destination-fees-on-new-cars-what-you-should-expect-to-pay/.

[84] Autolist, *What Is a Destination Charge on a Car?* (Apr. 14, 2022) https://www.autolist.com/guides/what-is-a-destination-fee.

[85] Lingeman, *supra* note 28.

[86] Consumer Reports, *Watch Out for These Dealership Fees When Buying a Car*, (Aug. 9, 2017) https://www.yahoo.com/news/watch-dealership-fees-buying-car-193441571.html.

that delivery charges will include profit. A reasonable consumer, in this context, would not expect FCA's destination charges to be marked up hundreds of dollars per vehicle beyond the true underlying vehicle-delivery costs.

90. This conclusion, too, is backed by academic studies in behavioral economics. Whether consumers will consider a given surcharge fair, such that they will agree to pay it without protest and without searching for an alternative product to buy, may depend on the stated purpose of the charge.[87] Because it is generally understood that vehicles need to be transported to dealerships for consumers' benefit, and that vehicle delivery is not free, consumers may well perceive as fair the surcharges tied to transporting new automobiles to dealerships. By contrast, consumers may perceive other automotive-related surcharges as unfair when nominally attributed to something less concrete—like "dealer preparation."

91. In sum, by inflating its "destination charge," FCA preys on reasonable consumers' understanding that the charge is aimed only at recouping underlying costs.

**B. Congress's actions confirm that a reasonable consumer should understand a destination charge to not include a markup for profit.**

92. In the mid-to-late 1950s, Congress conducted a multi-year investigation of the automotive industry, which was later called "the most exhaustive study of automobile marketing practices ever undertaken by Congress."[88]

93. The investigation led to the reform of various marketing and pricing practices in the industry. It began with a review of automaker-dealership relations and then moved on to address pricing practices that consumers encountered at dealerships.

---

[87] Morwitz, *supra* note 46.

[88] Ex. A at 31 (*Auto. Price Labeling Hr'gs Before the Auto. Mktg. Subcomm. of the S. Comm. on Interstate and Foreign Commerce*, S. 3500, 85th Cong. (Apr. 21, 1958)) (opening statement of Senator Monroney).

94. The recurring theme throughout the investigation was Congress's concern that the car-buying public was being manipulated into overpaying for new vehicles as well as for new-vehicle costs like component options and delivery charges.

**1) Congress reforms automaker-dealer relations, ending automakers' practice of inflating their vehicle-delivery charges.**

95. Congress held hearings on these topics throughout 1955 and 1956 in the Interstate and Foreign Commerce Committees in both the United States House of Representatives and United States Senate. Senator Almer Stillwell "Mike" Monroney, a six-term representative and three-term senator from Oklahoma, was a member of the Interstate and Foreign Commerce Committee during the 1950s. In 1955, the Chairman of the Committee, Warren Magnuson, appointed Senator Monroney to lead the Subcommittee on Automobile Marketing.

96. The hearings involved a great deal of testimony and submissions from various stakeholders, including automobile manufacturers and related trade organizations, automobile dealers and related trade organizations, consumers, the Federal Trade Commission, the Better Business Bureau, and the American Automobile Association.

97. Congress began in 1955 and 1956 by focusing on the relationship between manufacturers and dealers. As a result of this investigation, Congress would later tout that it achieved "49 major reforms" relating to manufacturers' practices in connection with "factory-dealer relationships."[89]

98. Among the manufacturers' practices that Congress investigated and reformed was misconduct so common that it earned a moniker: "phantom freight." Phantom freight referred to the practice of automakers charging dealerships an amount for vehicle delivery that exceeded the manufacturers' true vehicle-delivery

[89] *Id.*

costs. In an interim report from the Subcommittee on Interstate and Foreign Commerce in 1955, Senator Monroney acknowledged that the "Subcommittee . . . was appointed . . . to inquire into and make a thorough investigation of 'all phases of automobile marketing practices especially considering "phantom freight" charges and other accessorial charges that influence the price of automobiles to the purchaser.'"[90]

99. Congress investigated phantom freight as an issue pertaining to the manufacturer-dealer relationship because back in the 1950s, FCA did not impose its inflated delivery surcharges onto the consumer directly. In the 1950s, FCA imposed the charge on dealerships only.[91] At the time, there was far less interaction between manufacturers and car buyers concerning vehicle pricing. There was no window sticker on each new vehicle, for example.

100. Notwithstanding the fact that the manufacturers imposed phantom freight on dealerships, the Congressional hearings recounted how it was the car-buying public that ultimately bore the cost of phantom freight. In a hearing held on July 6, 1955, for example, California Representative Carl Hinshaw explained the problem in a colloquy with Frederick Bell, Executive Vice President of the National Automobile Dealers Association:

> Mr. Hinshaw: . . . ***[W]ith phantom freight*** . . . the packing of freight charges requires ***the public*** to pay an inflated and unrealistic fee for freight charges that are not in fact incurred. Is that charge made to the dealer first and passed on from the dealer to the consumer, or is it made directly to the consumer?
>
> Mr. Bell: It is made first to the dealer, sir, and then to the consumer. The dealer pays cash on the barrel for his automobiles.

---

[90] Ex A. at 16 (*Interim S. Rep. of Subcomm. on Auto. Mktg. Practices of Comm. on Interstate and Foreign Commerce*, 84th Cong. (July 28, 1955)).

[91] Ex. A at 24 (*Digest of Testimony, Hr'gs on Auto. Mktg. Practices* (Aug. 15, 1957)) (summary of statement of Fredric G. Donner of General Motors Corp.).

> Mr. Hinshaw: And he has to pay that phantom freight in conjunction with the purchase of the automobile. And naturally he passes it onto the consumer.
>
> Mr. Bell: That is correct sir.[92]

101. Representative Hinshaw proceeded to explain how the cost to consumers from the inflated delivery charges was massive—even by today's standards: "I was informed by a very substantial person in the automobile business, who did not wish his name to be disclosed, that [a single] large automobile manufacturer . . . made between $300 million and $350 million a year on nothing but spurious freight charges."[93]

102. At the time, the pass-through of destination charges by dealers onto consumers was a matter of straightforward economics. The dealers paid a wholesale price for their vehicles and then the destination charge on top of that wholesale price. To generate profit and to stay in business, dealers necessarily pass along both of those costs, marked up with the dealer's profit margin, to car buyers.

103. The genesis of the phantom freight that Congress focused on in the 1950s coincided with vehicle-assembly plants opening around the country. Automakers, recently able to assemble their vehicles closer to dealerships, could begin transporting them at lower costs. As their underlying vehicle-delivery costs dropped, automakers opted to lower their list price for vehicles while charging the same vehicle-delivery charges as they had previously. In this way, they began to reap profit from inflated delivery charges.

---

[92] Ex. A at 10 (*Auto. Mktg. Legislation Hr'gs Before a Subcomm. of the H.R. Comm. on Interstate and Foreign Commerce*, H.R. 528, 84th Cong. (July 6, 1955)) (emphasis added).

[93] *Id.* at 13.

104. At various Congressional hearings, the manufacturers acknowledged that the "growth of outlying assembly plants effected reductions in transportation costs."[94] Just as FCA in the 21st century has shown a preference for keeping its MSRPs low and its delivery surcharges artificially high, manufacturers in the 1950s applied the "net realized savings" from lower freight costs to "the list price of cars rather than to transportation charges."[95]

105. In several hearings, members of Congress condemned phantom freight as being unfair and deceptive to consumers. Representative Hinshaw, for instance, called the inflated delivery charges "spurious," underscoring the widespread belief that a reasonable person would consider the practice misleading.[96]

106. Congress's investigation and condemnation of phantom freight ultimately led all three major automakers to cease charging phantom freight. Ford Motor Company was the first to abandon phantom freight. General Motors then did so as well. FCA, then known as Chrysler, followed suit with apparent reluctance. The *New York Times* reported that Chrysler "followed the lead today of its two chief competitors in eliminating so-called phantom freight charges on new cars."[97]

107. In a March 1956 hearing, a General Motors spokesperson confirmed that the "economic benefits" from the transport costs lowered by "outlying assembly plants

---

[94] Ex. A at 24 (*Digest of Testimony, Hr'gs on Auto. Mktg. Practices* (Aug. 15, 1957)) (summary of statement of F. G. Donner of GM).

[95] *Id.* at 25.

[96] The Oxford Learner's Dictionary defines "spurious" as "false, although seeming to be real or true." *Spurious*, Oxford Advanced Learner's Dictionary, https://www.oxfordlearnersdictionaries.com/us/definition/english/spurious.

[97] N.Y. Times, *Chrysler Ends Charge*, *supra* note 73.

are now being shared [with] customers . . . and so-called phantom freight has been eliminated."[98]

**2) With phantom freight gone, Congress scrutinized other automotive pricing practices (including "price packing"), before passing the AIDA.**

108. Having succeeded in eradicating phantom freight, Congress turned its attention in 1957 and 1958 to the pricing practices consumers encountered at dealerships in the lead-up to enacting the Automobile Information Disclosure Act (AIDA).[99]

109. Chief among Congress's concerns, at this point, was how little pricing information manufacturers shared with car buyers at the point of sale. There were no standardized window stickers in that era, for example, so the typical car-buyer frequently did not know even the MSRP for a given vehicle, let alone the cost of vehicle options or delivery. As the legislative counsel for the American Automobile Association put it: "As to delivery and handling charges, [the typical car buyer] recognizes that these costs must be reflected to some extent in the final cost of his purchase, but he will have no idea of what is reasonable for such charges."[100]

110. This lack of information allowed unscrupulous dealerships to "pack" prices, effectively lying to car buyers about the list price of vehicles or other associated costs (whether the cost of delivery, the cost of a vehicle option, or something else). Dealerships could prey on this lack of information by telling customers that the prices and costs were higher than they truly were. This allowed the dealer to offer a large,

---

[98] Ex. A at 25 (*Digest of Testimony, Hr'gs on Auto. Mktg. Practices* (Aug. 15, 1957)) (summary of statement of F. G. Donner of GM).

[99] *See* 15 U.S.C. § 1231 *et seq.*

[100] Ex. A at 82 (*Auto. Labeling Hr'g Before a Subcomm. of the H.R. Comm. on Interstate and Foreign Commerce*, S. 3500, 85th Cong. (May 28, 1958)) (statement of Ross D. Netherton of the American Automobile Association).

supposed price discount, often in connection with a trade-in, to make it seem like the customer was getting a great deal, when in reality much of the "discount" was being taken off of falsely inflated prices.

111. Related to these concerns, the Congressional record contains a letter from a consumer in St. Louis: "Reading about your inquiry on car 'price pack'. . . I am enclosing correspondence I have had with General Motors Corp. . . ." The consumer's letter had asked GM: "Will you please send me the retail price [a vehicle]; also what the freight is on this car to St. Louis. . . . It seems impossible to get this information from the dealer . . . ."[101]

112. This consumer's frustration illustrates how both falsely inflated vehicle prices and falsely inflated vehicle-delivery costs, were being used to artificially drive up the prices consumers paid. General Motors responded by letter (also in the record), refusing to provide the consumer with the requested pricing information and telling him it "desires that each prospective owner receive individual attention and accordingly rely upon the dealer" and that "the prices that are quoted by dealers may vary somewhat."[102]

113. GM's response in this regard illustrated a key point: While dealerships were often culpable for price packing, the automakers had encouraged the practice too. For example, in responding to a Ford executive's contention that the blame lay with a few bad-apple dealers, one senator remarked: "You say . . . that [the AIDA] is directed

---

[101] Ex. A at 35 (*Auto. Price Labeling Hr'g* of Apr. 21, 1958).

[102] *Id.* at 35-36; *see also* Ex. A at 21-22 (*Auto. Dealer Franchises Hr'gs Before the Antitrust Subcomm. of the H.R. Comm. on the Judiciary*, H.R. 11360, S. 3879, 84th Cong. (July 10, 1956)) ("The pack is facilitated by the fact that there is no real local list price; manufacturers' price are quoted f.o.b., Detroit. This practice is sometimes called the top pack in contrast to a plain pack, in which various charges for mysterious accessories and services are packed onto the sales price.") (excerpt from news article entered into the Congressional record).

at practices imposed upon the industry by relatively few dealers . . . . I don't think it was all actually the dealers. I think there was a lot to be said on both sides of the question . . . ."[103] The Congressional record contains references to a Pennsylvania Ford dealer testifying that "certain manufacturers suggested that [price packing] be engaged in by their dealers"; a "Pontiac dealer [who testified] that packing was condoned and encouraged by General Motors"; and "a Lincoln-Mercury dealer" who "testified extensively to like effect."[104]

114. In reaction to concerns about price packing, Senator Monroney stated that to "restore public confidence in automobile marketing," he "firmly believe[d] that there should be a windshield sticker disclosing to the customer in detail what the factory suggests as a retail price for the car and accessories together *with the cost of transportation* and other pertinent information."[105] He made those comments on April 21, 1958, just days before the Senate passed the AIDA on May 14, 1958.

115. The AIDA mandates that a Monroney Sticker be affixed to the window or windshield of each new vehicle for sale in the U.S. Under the AIDA, automakers must include on the sticker a disclosure of, among other things, the vehicle's MSRP and "the amount charged, if any, to [the] dealer for the transportation of [the] automobile."[106] Just before Congress voted to pass the bill, the Senate Committee on Interstate and

---

[103] Ex. A at 63 (*Auto. Price Labeling Hr'gs Before the Auto. Mktg. Subcomm. of the S. Comm. on Interstate and Foreign Commerce*, S. 3500, 85th Cong. (Apr. 24, 1958)).

[104] Ex. A at 41 (*Auto. Price Labeling Hr'g* of Apr. 21, 1958) (statement of William M. McCune, Ford Dealer).

[105] *Id.* at 38 (emphasis added).

[106] 15 U.S.C. § 1232(f)(3).

Foreign Commerce declared in no uncertain terms that "[t]he purpose of [the AIDA] is disclosure."[107]

116. The clear implication of the Congressional hearings leading up to the AIDA's passage, and the text of the statute itself, reflect that the AIDA sprung from a Congressional policy to protect the public from being unfairly overcharged in connection with buying new vehicles. In particular, Congress sought to ensure that American consumers would not be overcharged by manufacturers presenting them with overstated vehicle prices and associated costs—whether the cost of delivery, the cost of an optional component, or otherwise.

117. The Senate Committee on Interstate and Foreign Commerce's final report regarding the AIDA confirms that the statute's goals include to "lend integrity to the marketing of automobiles," and to "restore price competition to the manufacturing segment of the industry."[108] Weeks before the Senate passed the AIDA, Senator Monroney remarked: "Many well-informed people have alleged that there is competition in every field of the automobile business except in price."[109]

118. The price competition that Congress had in mind was competition on MSRP: the advertised price of the vehicles, which already contained the contemplated profit margins for both automaker and dealership. As Senator Monroney put it: "I believe competition must come about in the pricing of automobiles . . . . It will be found that Ford and Chevrolet will try to beat each other's advertised price on the same kind of model."[110]

---

[107] Ex. A at 68 (S. Rep. No. 85-1555 (1958)); *see also* Ex. A at 29 (*Auto. Price Labeling Hr'g* of Apr. 21, 1958) ("A bill to require the full and fair disclosure of certain information in connection with the distribution of new automobiles in commerce.").

[108] Ex. A at 69 (S. Rep. No. 85-1555).

[109] Ex. A at 39 (*Auto. Price Labeling Hr'g* of Apr. 21, 1958).

[110] *Id.* at 33.

119. As Congress recognized, integrity and price competition in the automotive market cannot be achieved when manufacturers subject consumers to inflated vehicle-delivery charges, whether through phantom freight imposed on the dealer and then passed onto the consumer, or by manufacturers imposing a marked-up surcharge on consumers through their window stickers.

**3) That the AIDA does not explicitly address inflated destination charges does not suggest that Congress intended to leave automakers free to inflate the charges.**

120. By mandating that the Monroney Sticker disclose the manufacturer's vehicle-delivery charge, the AIDA imposed one form of protection for consumers: dealerships could no longer lie to them about the amount they had paid the automaker for transportation.

121. The AIDA, however, does not directly restrict how automakers set their transportation charges in the first place. But the AIDA's omission in this regard cannot accurately be viewed as Congressional policy to leave automakers free to mark up their new-vehicle delivery charges.

122. At the time it passed the AIDA, Congress correctly understood automakers' delivery charges to be entirely free of phantom freight; Congress had just recently reformed the industry to ensure the automakers' delivery charges were only as high as needed to recoup their actual freight costs.[111]

123. For that reason, when it required disclosure to the consumer of the amount that the automaker had charged the dealer for delivery, Congress was effectively mandating the disclosure of a phantom-freight-free destination charge. This explains why, on May 14, 1958, just days before the Senate passed the AIDA, Senator Monroney described its impact as follows:

---

[111] *See, e.g.*, *supra* ¶¶ 106-07.

> This bill, Mr. President, will not compel the manufacturer to do anything except to show the suggested retail price of the car, plus the price of each factory installed accessory and the delivery cost, if any, which was charged to the dealer for the transportation of the car from the factory. ***This will be the delivered price with accessories in a plain honest-to-goodness figure*** on the windshield or window of the car, where every buyer can see it.[112]

The "plain honest-to-goodness figure" that Senator Monroney had in mind was a dollar amount that had not been tainted with phantom freight.

124. This belief by Congress that phantom freight had been eliminated at the time of the AIDA's passage was not a mere uneducated guess. Rather, Congress had policed manufacturers' compliance leading right up to the AIDA's passage.

125. In an April 1958 hearing about the AIDA, a General Motors Vice President made a statement to Congress about the portion of the contemplated bill that would require disclosing the destination charge. He confirmed through his testimony that the destination charge to be listed on GM's window stickers would be one that did not exceed GM's underlying vehicle-delivery costs:

> General Motors charges the dealer a "destination charge" which represents a charge to the dealer . . . for transporting the car to the dealer's place of business. Under this method the total amount received by General Motors from dealers in assembly plant areas is no more than the excess cost of assembly plant operations, including the cost of transporting the necessary component parts to outlying locations for assembly, and the cost of shipping the finished cars from outlying assembly plants, to the dealers, by whatever method used.[113]

126. In the same hearing, when Congress was working to finalize and approve passage of the AIDA, Senator Monroney put into the record a letter he had just recently

---

[112] Ex. A at 76 (104 Cong. Rec. 8700 (May 14, 1958)) (emphasis added).

[113] Ex. A at 48 (*Auto. Price Labeling Hr'g* of Apr. 24, 1958) (statement of W.F. Hufstader, Vice President, General Motors Corp.).

sent to GM's president.[114] In the letter, Senator Monroney wrote that his committee had received "several inquiries" in recent months "regarding freight charges on automobiles being increased by your corporation."[115] Senator Monroney wrote that he had been under the impression that his subcommittee's investigation had led GM to "immediately reduce[ ] . . . freight on new cars ***from the phantom rate to the proper destination charge***."[116] GM's President responded by letter (also in the Congressional record), and confirms Senator Monroney's understanding. GM assured Senator Monroney that it had not resumed charging phantom freight. Rather, GM explained that "actual freight rates and vehicle weights have increased, with resulting increases in transportation costs," but that "***[s]o-called phantom freight is [still] eliminated***."[117]

127. Senator Monroney's use of the phrase "proper destination charge" confirms Congress's understanding. As Congress was on the verge of mandating disclosure of the destination charge on every new vehicle's window sticker, it understood that the destination charge would reflect the automakers' underlying vehicle-delivery costs, and that the charge would not be artificially inflated.

128. The fact that Congress continued to police the automakers' abandonment of phantom freight, even as they were on the verge of passing the AIDA, shows that Congress did not view the AIDA as the sole expression of what was—and was not—permissible when it came to automotive-industry pricing practices. Rather, Congress consistently framed the AIDA as one of many successful reforms of abusive automotive industry pricing practices, working together in tandem.

---

[114] *Id.* at 56 (letter from Senator Monroney to Harlow E. Curtice, President of General Motors Corp.).

[115] *Id.*

[116] *Id.* (emphasis added).

[117] *Id.* (letter from H.E. Curtice to Senator Monroney) (emphasis added).

129. Some language in the AIDA's legislative history may at first blush appear confusing on this point. For example, Senator Monroney submitted a committee report about the bill that stated:

> Probably the most important feature of S. 3500 is that it would in no way infringe upon the freedom of the manufacturer to price his product; that it in no way would infringe upon the car purchaser's freedom to bargain over the price of the car, while at the same time the dealer would be free to sell the new car for any price he desired, or pay anything he wanted to for the trade-in allowance. The label would simply assure that the purchaser would start the negotiations with the minimum necessary information.[118]

It continued: "It is not the purpose . . . to either approve or disapprove the methods by which transportation charges are made. It simply requires that, whatever amount is charged to the dealer, that amount be disclosed."[119] "It is not the purpose of S. 3500 to restrict the freedom of the manufacturer to establish and announce a suggested retail delivered price for the automobile, its optional equipment, and any services to be performed by the dealer in acquiring and making ready the vehicle for sale to the purchaser."[120]

130. These statements about freedom in pricing were not intended to convey that automakers were free to resume marking up their delivery charges in a return to phantom freight. Rather, they refer to the fact that Congress had allowed automakers certain other freedoms: (a) to decide whether to build their delivery charge into their sale price or, instead, to list the charge separately;[121] (b) to choose between a

---

[118] Ex. A at 68 (S. Rep. No. 85-1555).

[119] *Id.* at 72.

[120] *Id.* at 71-72.

[121] *See* Ex. A at 48, 53 (*Auto. Price Labeling Hr'g* of Apr. 24, 1958) (discussion between W.F. Hufstader and Senator Monroney about whether the suggested retail price of the automobile listed on the window sticker "should include . . . the manufacturer's suggested dealer delivery and handling charge").

nationwide delivery charge or to "charge actual freight on each car";[122] and (c) to employ their preferred mode(s) of delivery, without imposing additional requirements that might confuse consumers.[123]

131. On the second of these points, for example, Congress heard testimony from a GM vice president about the

> inability of a single assembly plant to produce enough of each model to meet the customer demand during the high-volume year. To offset this, large numbers of cars may have to be shipped in or out of an assembly-plant area. Under such circumstances a figure to cover transportation costs requires a 'terrific amount of averaging.'[124]

So, by stating that it was not restricting automakers' pricing freedom, or their freedom to set transportation charges, Congress was conveying (among other things) that it had refrained from legislating that the destination charge needed to precisely match the cost of transporting each particular vehicle. Instead, automakers could "average out" their destination charge so that all buyers would see the same destination charge no matter how far their local dealership happened to be from an assembly plant. In no way was Congress suggesting that automakers had carte blanche to inflate their destination charges to generate profit, as FCA does today.

132. In fact, Congress saw its decision to allow these averaged delivery charges as helping ensure the elimination—not the revitalization—of phantom freight.

---

[122] Ex. A at 27 (*Digest of Testimony, Hr'gs on Auto. Mktg. Practices* (Aug. 15, 1957)) (summary of statement of F. G. Donner of GM).

[123] Ex. A at 49-50 (*Auto. Price Labeling Hr'g* of Apr. 24, 1958) (discussion between W.F. Hufstader and Senator Monroney about how the methods of transportation used to deliver each vehicle "varies by zone," and therefore "it might be better to maybe lump under a common title" all domestic transportation costs, irrespective of method, in the delivery surcharge).

[124] Ex. A at 27 (*Digest of Testimony, Hr'gs on Auto. Mktg. Practices* (Aug. 15, 1957)) (summary of statement of F. G. Donner of GM).

This can be seen in the following colloquy during an April 1958 hearing, just weeks before the AIDA's passage:

> Senator MONRONEY. The "destination charge" that you mention—that is, the "transportation charge" that ***is averaged out so that this thing you do to save the customer millions of dollars in abandoning phantom freight***, would be the averaged-out "transportation charge."
>
> . . .
>
> Mr. POWER.[125] . . . I am a little afraid of using the word "transportation charge." The public might think it was the actual charge. That has been one of the reasons why we went to the term "destination charge" before. Maybe that is the one to use now, but we want to make it clear that they wouldn't expect that it is the actual freight.
>
> . . .
>
> Senator MONRONEY. We understand. I don't know how many of the buyers know ***this is an average transportation charge and the result of a lot of work by this committee of getting the abandonment of the old phantom freight*** that bore no relationship whatever to the distance from the factory and a lot of other things.[126]

133. In addition, in the days and weeks leading up to the AIDA's passage, members of Congress repeatedly placed the bill within the greater context of Congress's reforms of the automotive industry, including as a chief example its success in eliminating phantom freight. It would have made no sense to do this had Congress viewed the goal of AIDA as permitting automakers to resume the practice of inflating their destination charges.

134. In a hearing on April 21, 1958, for example, Senator Monroney recounted how automakers had voluntarily entered into "49 major reforms . . . ."[127] The very first reform of the 49 achieved, that Senator Monroney called out, was "the breakdown of

---

[125] A. F. Power was assistant counsel for General Motors at the time.

[126] Ex. A at 54-55 (*Auto. Price Labeling Hr'g* of Apr. 24, 1958) (emphasis added).

[127] Ex. A at 31 (*Auto. Price Labeling Hr'g* of Apr. 21, 1958) (opening statement of Senator Monroney).

the old 'phantom freight' . . . whereby all automobiles were charged with freight from Detroit regardless of where they were made." Senator Monroney boasted that the elimination of phantom freight had "made a difference to the American public—outside the Detroit area—of some $212 million a year."[128] Three days later, at another hearing about the AIDA, Senator Monroney again touted Congress's success in eliminating phantom freight. He recounted how "Ford was the first to abandon phantom freight," and how Congress had succeeded in getting the inflated delivery charges "out of the automobile picture."[129]

135. The Congressional hearings leading up to the passage of the AIDA thus make clear that the AIDA was intended to ensure that deceptive pricing practices were not used to artificially inflate the amount consumers pay for new vehicles. Congress viewed the AIDA within the broader framework of its reform of the industry and believed it to be consistent with, and in furtherance of, its efforts to eliminate phantom freight from the industry.

**Tolling of the Statute of Limitations and Estoppel**

136. FCA's knowing and active concealment of the true cost of transporting Class Vehicles has tolled any applicable statute of limitations. Through no fault or lack of diligence, Plaintiffs and members of the proposed classes were deceived regarding the destination charge and could not reasonably discover that deception.

137. Plaintiffs and members of the proposed classes did not discover and did not know of any facts that would have caused a reasonable person to suspect that FCA was engaging in the unfair, unjust, and deceptive practices alleged in this complaint—including that FCA has been marking up its delivery surcharge, far beyond its true cost of vehicle delivery, to extract extra profit from its sale of new vehicles. As alleged

---

[128] *Id.*

[129] Ex. A at 66 (*Auto. Price Labeling Hr'g* of Apr. 24, 1958).

herein, FCA's overcharge was and is material to Plaintiffs and members of the proposed classes at all relevant times. Within the time periods of any applicable statutes of limitations, Plaintiffs and members of the proposed classes could not have discovered through the exercise of reasonable diligence that FCA was concealing the actual transportation costs for the Class Vehicles.

138. Consequently, FCA's knowing, active, and ongoing affirmative concealment of the facts alleged herein, including the actual transportation costs, have tolled all applicable statutes of limitations. Plaintiffs and members of the proposed classes reasonably relied on FCA's knowing, active, and ongoing affirmative concealment.

139. At all times, FCA was and is under a continuous duty to disclose that it was charging more than the actual cost of transporting Class Vehicles to the dealerships where they were sold. Instead, FCA actively concealed the true costs of delivery using the claimed destination charge as a profit center. Plaintiffs and members of the proposed classes reasonably relied on FCA's misrepresentation and concealment of the facts alleged herein.

140. Plaintiffs were only able to discover the truth about FCA's practices with respect to the destination charges because of the online publication of the *Consumer Reports* article in February 2021 (and its subsequent print publication in April 2021). Accordingly, any applicable statutes of limitations should be tolled at minimum through the date on which that article was originally published.

141. For these reasons, all applicable statutes of limitation have been tolled based on the discovery rule and FCA's fraudulent concealment. Moreover, FCA is estopped from relying on any statutes of limitations in defense of this action.

**Class Allegations**

142. Plaintiffs bring this action pursuant to the provisions of Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of themselves and the following proposed "Class":

*All persons and entities who purchased or leased a new Class Vehicle in California.*

143. Plaintiff Gunn brings the Consumers Legal Remedies Act claim on behalf of himself and the following proposed "CLRA Class":

*All persons who purchased or leased a new Class Vehicle in California for personal, household, or family purposes.*

144. Excluded from the Class and CLRA Class ("Classes") are FCA, its employees, officers, directors, legal representatives, heirs, successors, parent, subsidiaries, and affiliates; FCA dealers; proposed counsel for the Classes and their employees; the judicial officers and associated court staff assigned to this case and their immediate family members; all persons who make a timely election to be excluded from either class; and governmental entities.

145. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

146. This action has been brought and may be properly maintained on behalf of the Classes proposed herein under Federal Rule of Civil Procedure 23.

147. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of the Class and CLRA Class are so numerous and geographically dispersed that individual joinder of Class and CLRA Class members is impracticable. FCA sells an average of approximately 2,000,000 Class Vehicles per year in the United States, and California has had over 10% of the nation's population during the relevant time period. Class and CLRA Class members may be notified of the pendency of this action by

recognized, Court-approved notice dissemination methods, which may include U.S. Mail, email, Internet postings, and/or published notice.

148. Commonality and Predominance. Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class and CLRA Class members, including, without limitation:

a. Whether FCA has systematically inflated its destination charges for Class Vehicles, charging substantially more than the actual cost of delivery to dealerships;

b. Whether the money FCA received in the form of destination charges was required to be exclusively used for the benefit of consumers to transport their vehicles to local dealerships;

c. Whether FCA is obligated to return to consumers the excess amounts it charged in the form of destination charges, which is to say the amounts that went beyond the actual cost of transporting Class Vehicles to dealerships for sale or lease;

d. Whether FCA's conduct is unfair in that it violates the policy aims of the Automobile Information Disclosure Act;

e. Whether FCA's conduct is unfair because the harm caused by the conduct outweighs any corresponding benefit;

f. Whether FCA has been unjustly enriched to the detriment of Plaintiffs and Class members;

g. Whether FCA's practice of imposing "destination charges," without disclosing FCA marks up the charges well beyond FCA's underlying vehicle-delivery costs, constitutes deceptive and misleading conduct;

h. Whether the hundreds of dollars in excess costs that FCA obtains through use of its destination charges are material to reasonable consumers; and

i. Whether Plaintiffs and members of the Class and CLRA Class are entitled to equitable relief, including, but not limited to, restitution or injunctive relief.

149. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of Class and CLRA Class members' claims because, among other things, FCA's wrongful conduct comparably injured all Class and CLRA Class members as described in this complaint.

150. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate class representatives because their interests do not conflict with the interests of the other members of the Class and CLRA Class they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. Plaintiffs and their counsel will fairly and adequately protect the interests of the Class and CLRA Class.

151. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure 23(b)(2): FCA has acted or refused to act on grounds generally applicable to Plaintiffs and members of the Class and CLRA Class, thereby making appropriate final injunctive relief and declaratory relief with respect to the Class and CLRA Class as a whole.

152. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriments suffered by Plaintiffs and other Class and CLRA Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against FCA, so it would be impracticable for them to individually seek redress for FCA's wrongful conduct. Even if Class and CLRA Class members could afford individual litigation, the court system could not. Individualized litigation creates a

potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**Violations Alleged**

**Count I**

**Money Had and Received**

**(On Behalf of the Class)**

153. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

154. Plaintiffs bring this Count on behalf of the Class.

155. FCA received money that was intended to be used for the benefit of the Plaintiffs and Class. In particular, FCA charges inflated destination charges for Class Vehicles and thereby obtains money intended to benefit Plaintiffs and Class members by paying for the cost of delivering Class Vehicles to dealerships for sale or lease.

156. FCA failed to use the money for the benefit of Plaintiffs and Class members. As alleged above, rather than charging destination charges to pay for the true cost of delivery, FCA has inflated the destination charges in order to generate additional profit for itself, which it has not spent for the benefit of Plaintiffs and the Class.

157. FCA has not returned that money to the Plaintiffs and Class members.

158. As a result, FCA has received money which belongs to Plaintiffs and the Class, which in equity and good conscience should be paid over to the Plaintiffs and the Class, but which FCA has instead unlawfully retained.

159. Plaintiffs and the Class are therefore entitled to recover the excess money they paid in the form of destination charges because that money was paid by mistake,

oppression, or where an undue advantage was taken of Plaintiffs' and Class members' situation whereby money was exacted to which FCA had no legal right.

**Count II**

**Violation of California's Unfair Competition Law**

**(Cal. Bus. & Prof. Code § 17200, *et seq*.)**

**(On Behalf of the Class)**

160. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

161. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq*., proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

162. FCA's acts and practices relating to destination charges, as alleged in this complaint, constitute unfair and fraudulent business practices in violation of the UCL.

163. FCA's practice of imposing a delivery surcharge on car buyers and lessees, that substantially exceeds FCA's underlying vehicle-delivery costs, is unethical, unscrupulous, and substantially injurious to new-vehicle purchasers and lessees, and thus constitutes an unfair practice under the UCL. FCA's practice is also unfair because it is contrary to legislatively declared and public policies that seek to lend integrity to the marketing of automobiles and promote price competition within the industry, as reflected by the Automobile Information Disclosure Act, and which seek to prevent automakers from charging inflated vehicle-delivery costs to the detriment of members of public seeking to buy or lease vehicles, as reflected by the ample Congressional hearings, investigations, and actions geared toward eradicating phantom freight. The harm that FCA's practice caused to Plaintiffs and the Class members substantially outweighs its utility, if any.

164. FCA's practice also constitutes a fraudulent practice in that it is likely to deceive and harm reasonable consumers. The practice is designed to prey on the heuristics of reasonable consumers and to mislead them into underestimating the full cost of Class Vehicles, boosting both overall demand for vehicles and consumers' willingness to pay the prices charged. FCA misrepresents its vehicle-delivery charges as "destination charges" and fails to disclose that the surcharges do not reflect the actual cost of vehicle delivery and instead include additional amounts that FCA adds in to generate additional and hidden profit. The markup of these charges is material to reasonable consumers.

165. As a direct and proximate result of FCA's business practices, Plaintiffs and the other Class members suffered injury in fact and lost money or property, because Class members purchased and leased more Class Vehicles than they otherwise would have, and Plaintiffs and the other Class members paid prices they would not otherwise have paid.

166. Plaintiffs bring this Count on behalf of the Class in the alternative to any Counts brought for legal remedies and expressly allege that for purposes of this Count they lack adequate remedies at law. Without conceding any arguments FCA may raise with respect to tolling, the statute of limitations for this claim is four years as compared to three years or two years for other claims brought in this complaint. In addition, the restitution that may be available under this claim, including for restitutionary disgorgement of revenues attributable to increased volume of vehicle sales and leases made possible by the challenged practices, may not be recoverable as damages or otherwise at law. Given the market share held by FCA, and manufacturers' race to the bottom, Plaintiffs, individually and as Class members, have no adequate remedy at law for the future unlawful acts, methods, or practices as set forth above absent an injunction. Furthermore, Plaintiffs have an interest in buying or leasing vehicles in the future, often see marketing for FCA vehicles, and will consider purchasing or leasing

FCA vehicles in the future if possible, but have no way of determining whether destination charges have been inflated and will thus be unable to rely on the information set forth in Monroney Stickers in the future.

167. FCA's alleged misconduct is ongoing. Therefore, damages are not certain or prompt and so are an inadequate remedy to address the conduct that injunctions are designed to prevent.

**Count III**

**Unjust Enrichment**

**(Quasi-Contractual Claim for Restitution)**

**(On Behalf of the Class)**

168. Plaintiffs incorporate by reference all preceding allegations as though fully set forth herein.

169. Plaintiffs bring this Count on behalf of the Class in the alternative to any Counts brought for legal remedies and expressly allege that for purposes of this Count they lack adequate remedies at law.

170. Plaintiffs and Class members have no contract with FCA directly. Nevertheless, Plaintiffs and Class members conferred benefits upon FCA by purchasing or leasing Class Vehicles and paying destination charges. Although the Class Vehicles are sold by authorized dealers, the destination charge is a direct pass-through of the car buyers' money to FCA; FCA directly profits from the sale or lease of each Class Vehicle and the payment for each concomitant destination charge. Plaintiffs and members of the Class are entitled to restitution of their overpayments caused by FCA's artificially inflated destination charges.

171. FCA had knowledge that these improper benefits were conferred upon it.

172. FCA, having received these benefits, is required to provide remuneration under the circumstances. It is unjust for FCA to retain monies obtained by the illegal conduct described above. Such money or property belongs in good conscience to

Plaintiffs and Class members and can be traced to funds or property in FCA's possession. Plaintiffs' and Class members' detriment and FCA's enrichment are related to and flow from the conduct challenged in this Complaint.

173. Plaintiffs and Class members are entitled to all available restitution and disgorgement of revenues, as it would be inequitable and unjust for FCA to retain such benefits. Other remedies and claims may not permit them to obtain such relief, leaving them without an adequate remedy at law.

**Count IV**

**Violation of California's Consumers Legal Remedies Act**

**(Cal. Civ. Code § 1750, *et seq.*)**

**(On Behalf of the CLRA Class)**

174. Plaintiff James Gunn incorporates by reference all preceding allegations as though fully set forth herein.

175. Plaintiff Gunn brings this Count on behalf of himself and the CLRA Class.

176. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

177. The Class Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

178. Plaintiff Gunn and the other CLRA Class members are "consumers" as defined in Cal. Civ. Code § 1761(d).

179. Plaintiff Gunn, the other CLRA Class members, and FCA are "persons" as defined in Cal. Civ. Code § 1761(c).

180. As alleged above, FCA's destination-charge practices are likely to deceive and harm reasonable consumers. The practices are designed to prey on the heuristics of reasonable consumers and to mislead them into underestimating the full cost of Class

Vehicles, boosting both overall demand for vehicles and consumers' willingness to pay the prices charged. FCA misrepresents its vehicle-delivery charges as "destination charges" and fails to disclose that the surcharges do not reflect the actual cost of vehicle delivery and instead include additional amounts that FCA adds in to generate additional and hidden profit. The markup of these charges is material to reasonable consumers.

181. FCA's conduct, as described herein, was and is in violation of the CLRA. FCA's conduct violates § 1770(a) of the CLRA for at least the following reasons:

a. FCA advertises goods with intent not to sell them as advertised.

b. FCA represents that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law.

c. FCA makes false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions.

d. FCA represents that goods have been supplied in accordance with a previous representation when they have not.

e. FCA fails to disclose material information.

182. Plaintiff Gunn and the other CLRA Class members have suffered injury in fact and actual damages resulting from FCA's deceptive conduct because they paid inflated prices for the Class Vehicles and destination charges.

183. The markups of the destination charges by FCA are material to reasonable consumers. FCA's conduct proximately causes harm to Plaintiff Gunn and the CLRA Class, including because Plaintiff Gunn and the CLRA Class paid prices they would not otherwise have paid.

184. Given the market share held by FCA and manufacturers' race to the bottom, Plaintiff Gunn, individually and as a member of the CLRA Class, has no adequate remedy at law for the future unlawful acts, methods, or practices as set forth

above absent an injunction. Further, Plaintiff Gunn has an interest in buying vehicles in the future, often sees marketing for FCA vehicles, and will consider purchasing FCA vehicles in the future if possible, but has no way of determining whether destination charges have been inflated and will thus be unable to rely on the information set forth in Monroney Stickers in the future.

185. Moreover, FCA's alleged misconduct is ongoing and therefore damages are not certain or prompt and thus are an inadequate remedy to address the conduct that injunctions are designed to prevent.

186. Pursuant to § 1780(d) of the CLRA, Plaintiff Gunn has provided an affidavit showing that this action has been commenced in the proper forum.

187. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff Gunn sent a notice letter more than thirty days before filing this complaint to Defendant (on behalf of all members of the proposed class) to provide FCA with the opportunity to correct its business practices.

188. Pursuant to California Civil Code § 1780, Plaintiff Gunn seeks all available remuneration, including actual damages; injunctive relief; reasonable attorney's fees and costs; and a declaration that FCA's conduct violates the Consumers Legal Remedies Act.

**Request for Relief**

WHEREFORE, Plaintiffs, individually and on behalf of members of the Class and CLRA Class, respectfully request that the Court enter judgment against FCA and in favor of Plaintiffs, the Class, and the CLRA Class, and award the following relief:

A. Certification of this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as the representatives of the Class and CLRA Class, and appointing Plaintiffs' counsel as Class Counsel;

B. An order awarding declaratory relief and temporarily and/or permanently enjoining FCA from continuing the unlawful, deceptive, and unfair business practices alleged in this Complaint;

C. A declaration that FCA is financially responsible for providing notice to the Class and CLRA Class and for administering relief to the Class and CLRA Class;

D. An order requiring FCA to repay Class members in the amount of all destination charges it received for Class Vehicles exceeding the cost of delivering those vehicles to dealerships for sale;

E. An order requiring FCA to pay restitution to the Class and to disgorge its ill-gotten gains;

F. An order requiring FCA to pay both pre- and post-judgment interest on any amounts awarded;

G. An award of costs, expenses, and attorneys' fees as permitted by law; and

H. Such other or further relief as the Court may deem appropriate, just, and equitable.

**Demand for Jury Trial**

Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: September 12, 2023

Respectfully submitted,

*/s/ David Stein*

Rosemary M. Rivas (SBN 209147)
David Stein (SBN 257465)
Delaney Brooks (SBN 348125)
**GIBBS LAW GROUP LLP**
1111 Broadway, Suite 2100
Oakland, California 94607
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
rmr@classlawgroup.com

ds@classlawgroup.com
db@classlawgroup.com

William H. Anderson (*pro hac vice*)
**HANDLEY FARAH & ANDERSON PLLC**
5353 Manhattan Circle, Suite 204
Boulder, CO 80303
Telephone: (303) 800-9109
Facsimile: (844) 300-1952
wanderson@hajustice.com

Rebecca P. Chang (*pro hac vice*)
**HANDLEY FARAH & ANDERSON PLLC**
33 Irving Street
New York, NY 10003
Telephone: (347) 480-1030
Facsimile: (844) 300-1952
rchang@hfajustice.com

Simon Wiener (*pro hac vice*)
**HANDLEY FARAH & ANDERSON PLLC**
68 Harrison Avenue, Suite 604
Boston, MA 02111
Telephone: (202) 921-4567
Facsimile: (844) 300-1952
swiener@hfajustice.com

Jon M. Herskowitz (*pro hac vice*)
**BARON & HERSKOWITZ**
9100 S. Dadeland Blvd., Suite 1704
Miami, FL 33156
Telephone: (305) 670-0101
Facsimile: (305) 670-2393
jon@bhfloridalaw.com

*Attorneys for Plaintiffs and the Proposed Classes*

# EXHIBIT A

# AUTOMOBILE MARKETING LEGISLATION



# HEARINGS

BEFORE A

## SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH CONGRESS

ON

## H. R. 528

A BILL TO AMEND SECTION 5 (a) OF THE FEDERAL TRADE COMMISSION ACT WITH RESPECT TO CERTAIN UNFAIR METHODS OF COMPETITION IN CONNECTION WITH THE SALE OF MOTOR VEHICLES

## H. R. 2688

A BILL TO AMEND THE FEDERAL TRADE COMMISSION ACT WITH RESPECT TO CERTAIN CONTRACTS, AGREEMENTS, OR FRANCHISES TO ENABLE MANUFACTURERS OF AUTOMOBILES AND TRUCKS, AND THEIR FRANCHISE DEALERS, TO PROTECT THEIR GOODWILL IN THE BUSINESS OF MANUFACTURING AND DISTRIBUTING AUTOMOBILES AND TRUCKS, MADE OR SOLD BY THEM, BY RESTRICTING FRANCHISE DEALERS FROM RESELLING TO CERTAIN UNAUTHORIZED PERSONS

## H. R. 6544

A BILL TO AMEND THE FEDERAL TRADE COMMISSION ACT TO PERMIT CERTAIN CONTRACTS AND AGREEMENTS ESTABLISHING EXCLUSIVE REPRESENTATION BY DISTRIBUTORS IN SPECIFIED GEOGRAPHICAL AREAS AND REQUIRING SUCH DISTRIBUTORS TO SELL ONLY IN THESE AREAS

JULY 6, 1955, APRIL 11, 12, 17, 18, AND MAY 2, 1956

Printed for the use of the Committee on Interstate and Foreign Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
77353 WASHINGTON : 1956

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

J. PERCY PRIEST, Tennessee, *Chairman*

OREN HARRIS, Arkansas
ARTHUR G. KLEIN, New York
WILLIAM T. GRANAHAN, Pennsylvania
F. ERTEL CARLYLE, North Carolina
JOHN BELL WILLIAMS, Mississippi
PETER F. MACK, JR., Illinois
KENNETH A. ROBERTS, Alabama
MORGAN M. MOULDER, Missouri
HARLEY O. STAGGERS, West Virginia
ISIDORE DOLLINGER, New York
WALTER ROGERS, Texas
MARTIN DIES, Texas
SAMUEL N. FRIEDEL, Maryland
JOHN J. FLYNT, JR., Georgia
TORBERT H. MACDONALD, Massachusetts
DON HAYWORTH, Michigan

CHARLES A. WOLVERTON, New Jersey
CARL HINSHAW, California
JOSEPH P. O'HARA, Minnesota
ROBERT HALE, Maine
JAMES I. DOLLIVER, Iowa
JOHN W. HESELTON, Massachusetts
JOHN B. BENNETT, Michigan
RICHARD W. HOFFMAN, Illinois
JOHN V. BEAMER, Indiana
WILLIAM L. SPRINGER, Illinois
ALVIN R. BUSH, Pennsylvania
PAUL F. SCHENCK, Ohio
JOSEPH L. CARRIGG, Pennsylvania
STEVEN B. DEROUNIAN, New York

ELTON J. LAYTON, *Clerk*
KENNETH J. PAINTER, *First Assistant Clerk*
HERMAN CLAY BEASLEY, *Assistant Clerk*

*Professional Staff*

ANDREW STEVENSON
KURT BORCHARDT
SAM G. SPAL
MARTIN W. CUNNINGHAM

---

## SUBCOMMITTEE ON COMMERCE AND FINANCE

ARTHUR G. KLEIN, New York, *Chairman*

WILLIAM T. GRANAHAN, Pennsylvania
MORGAN M. MOULDER, Missouri
HARLEY O. STAGGERS, West Virginia
SAMUEL N. FRIEDEL, Maryland

JOHN B. BENNETT, Michigan
JOHN V. BEAMER, Indiana
ALVIN R. BUSH, Pennsylvania
PAUL F. SCHENCK, Ohio

# AUTOMOBILE MARKETING LEGISLATION

**WEDNESDAY, JULY 6, 1955**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND
FINANCE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
*Washington, D. C.*

The subcommittee met, pursuant to call, at 10:23 a. m., in room 1435, New House Office Building, Hon. Arthur G. Klein (Chairman of the subcommittee) presiding.

Mr. KLEIN. The subcommittee will come to order.

This morning the subcommittee has scheduled for hearing three bills, H. R. 528, by our colleague on this committee, Mr. Hinshaw of California, H. R. 2688, by our colleague, Mr. Williams of Mississippi, and H. R. 6544 by Mr. Steed of Oklahoma.

The stated purpose of H. R. 528 is to amend section 5 (a) of the Federal Trade Commission Act with respect to certain unfair methods of competition in connection with the sale of motor vehicles.

H. R. 2688 proposes to amend the Federal Trade Commission Act with respect to certain contracts, agreements, or franchises to enable manufacturers of automobiles and trucks, and their franchise dealers, to protect their goodwill in the business of manufacturing and distributing automobiles and trucks, made or sold by them, by restricting franchise dealers from reselling to certain unauthorized persons.

H. R. 6544 proposes to amend the Federal Trade Commission Act to permit certain contracts and agreements establishing exclusive representation by distributors in specified geographical areas and requiring such distributors to sell only in those areas.

A copy of these bills and the reports thereon from the Executive Departments and agencies will be made a part of the record at this point.

(The material referred to follows:)

[H. R. 528, 84th Cong., 1st sess.]

**A BILL To amend section 5 (a) of the Federal Trade Commission Act with respect to certain unfair methods of competition in connection with the sale of motor vehicles**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 5 (a) of the Federal Trade Commission Act (15 U. S. C., sec 45 (a)) is amended by adding after the first paragraph thereof a new paragraph as follows:

"For the purposes of this section, it shall be deemed to be an unfair method of competition in commerce, and an unfair or deceptive act or practice in commerce, for the manufacturer of motor vehicles to charge or collect from a person to whom such manufacturer sells any such motor vehicle in commerce any amount represented as or attributed to freight or transportation

tial to the preservation of this great industry of ours. The Nation will be benefited by its passage. I urge your favorable support of these bills.

I should like, Mr. Chairman, to thank you for the privilege of this hearing, sir.

Mr. KLEIN. Any questions?

I might say, Mr. Friedel, that the full statement on behalf of this association will be made by Admiral Bell.

Mr. FRIEDEL. I will wait a while.

Mr. KLEIN. Admiral Bell?

## STATEMENT OF FREDERICK J. BELL, EXECUTIVE VICE PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. BELL. Mr. Chairman and gentlemen, there is one slight correction, if I may, Mr. Chairman. The principal testimony on behalf of the Williams bill will be made by Mr. Cooper of Colorado, who will follow me.

Mr. KLEIN. Yes, but what I meant was that your statement was the general statement on all 3 bills.

Mr. BELL. That is correct.

Mr. Chairman, I am Frederick J. Bell, executive vice president of the National Automobile Dealers Association.

During recent years a great deal has been said and written about the importance to the economy of distribution, as distinguished from production. The "value added by distribution" is a subject that is receiving emphasis wherever groups of businessmen gather together to discuss the conditions of today and tomorrow. One outstanding spokesman, Paul Mazur of Lehman Bros. has said, "It is consumption, not production, that in fact is the master of our economy."

It is a function of distribution—of dynamic, hard-hitting, intelligent, competitive selling—to stimulate the will to buy and the desire to own on the part of consumers. The retail automobile industry, as represented by your witnesses here this morning, is an element of distribution that can add tremendously to our economic well-being, or contribute to economic disaster. Despite its size and its importance it is a delicate mechanism.

Should the relationship between production and distribution become one of unbalance—through the public's lack of ability or lack of desire to buy; through "under selling" on the part of dealers; or through an accelerated production that is not geared to demand—the automobile industry could act as a deterrent to our industrial growth and national prosperity.

Distribution, production and finance must share a correlation that is economically sound and in the public interest. If any one of them is weakened, all will suffer.

The witnesses who will follow me—all but one of whom are automobile dealers—will introduce testimony to show that favorable action on the 3 bills under discussion is in the public interest.

### BOOTLEGGING

The nature of the products which they sell places the authorized new car dealers in a unique position in comparison with retailers of

other hard goods durables. The automobile—so essential to the living habits of Americans—is, after all, a machine which must be controlled with care and operated with caution lest it become a menace on the highway. To permit it to be sold with a "new car guarantee" under conditions that are false and misleading is as harmful to the public as if laws allowed proprietary drugs and medicines to be sold by other than registered pharmacists or druggists.

H. R. 2688 would permit manufacturers to reinstate antibootlegging clauses in their sales agreements with franchised dealers. The wording and the intent of this bill, as the chairman pointed out earlier, are the same as the bill which was voted upon favorably by this committee and subsequently passed by the House in the 83d session of the Congress.

### SALES RESPONSIBILITY

The second bill upon which we are testifying this morning, H. R. 6544, would permit manufacturers to reinstate in their sales agreements another provision which existed for more than 40 years by which definite areas of sales responsibility were assigned to franchised dealers.

It seems to us that this is a fair and reasonable arrangement and one which neither reduces competition nor denies absolute freedom of choice to a purchaser.

The members of retail automobile distribution are not asking for a subsidy, they are not asking for a guaranteed annual profit, they are asking merely for basic ground rules that will give emphasis to the privilege of doing business but prevent the abuse of such privilege.

Zoning restrictions on types of buildings are commonly accepted aspects of business life in any community. If you or I chose to invest in, let us say, a retail perfumery, we would like to have assurances that an abbatoir will not be erected next door.

The authorized new car and truck dealer of America has an average investment of $108,933 in his dealership. The effect of H. R. 6544 would be to permit automobile manufacturers to provide reasonable safeguards for the man who has invested such a sizable amount of money in the business of distribution. As a result of the enactment of this bill we would expect an automobile manufacturer to assign to each of his dealers a specific area of sales responsibility. This would in no way restrict a purchaser but would encourage the dealer to devote his best efforts to developing a high percentage of sales in his assigned area and penalize him if he chose to encroach upon that of his neighbor. And as the technical witnesses, the dealers themselves, will bring out later, there is a difference in consideration of the metropolitan dealerships and the rural dealerships.

### PHANTOM FREIGHT

The third bill which the distributive element of our industry would like to see enacted is H. R. 528, introduced by Mr. Hinshaw and designed to restrict freight charges in our industry to the actual cost to a manufacturer of freight or other transportation charges incurred in making delivery of motor vehicles.

If it seems strange to you gentlemen that the practice has developed among manufacturers of "packing" freight charges; of requiring the

public to pay an inflated and unrealistic fee for freight charges that are not in truth incurred, I can only add that your astonishment is shared by the authorized new car and new truck dealers of America.

Many reasons have been advanced in support of the doctrine that the new car buyer should pay freight based on the cost of shipping an assembled automobile from a factory in Michigan in spite of the fact that the car is assembled at a point much closer to the consumer and the cost of shipping component parts to the assembly point is far less than the cost of shipping a completed vehicle.

Each of the arguments so advanced seems, in our opinion, to voice a disregard for the rights of the individual who digs deep in his pocket to buy a new automobile. It costs a certain amount of money—an easily determinable amount of money—to ship parts to an assembly point. It doesn't seem to make sense when these costs are disregarded, as they are today.

In conclusion, Mr. Chairman, let me repeat that the distribution element of our industry, as represented by the National Automobile Dealers Association and the witnesses whom you have permitted to be present today, seeks to operate in a fashion that will be always in the public interest. We are convinced that the 3 bills which we urge you to act upon favorably are not only in the interest of the public but that their passage will contribute to the orderly conduct of business generally. Those who will appear in opposition to these bills are, of course, in disagreement with our position. We have come to the Congress as a last resort, seeking ways and means to provide reasonable safeguards against practices that are inequitable and restrictive and which impose penalties on adherence to sound business principles.

I thank you for the privilege of appearing before you and urge your early and favorable consideration of H. R. 2688, H. R. 6544 and H. R. 528.

Mr. KLEIN. Just one question, Admiral Bell. As I understand it, the bootlegging bill was passed by this committee and the House in the last session, but it was not passed by the Senate, and therefore did not become law.

Mr. BELL. That is correct, yes.

Mr. KLEIN. And the third of these bills, the Hinshaw bill, was passed by this committee, but I understand did not pass the House. There was not enough time.

Mr. BELL. That is correct, sir.

Mr. KLEIN. How about the Steed bill?

Mr. BELL. No, sir. That had not been introduced by us last year. This is the first time that the Steed bill has been introduced.

Mr. KLEIN. Any questions? Mr. Hinshaw?

Mr. HINSHAW. Mr. Chairman, I would like to inquire whether some witness will present himself who has all of the data upon the matter of freight charges.

Mr. BELL. I don't think we will have a witness who has all of the data, because it is a very complicated thing, but we have witnesses who have some of the data.

Mr. HINSHAW. I would like to ask you, in your considered opinion, whether you believe the best way to cure bootlegging is to enact a law restricting contracts, or whether it is to take the profit out of bootlegging?

Mr. BELL. Obviously, sir, to take the profit out of bootlegging would kill it more quickly than anything.

Mr. HINSHAW. That is correct. That is correct, in my opinion. And therefore I introduced H. R. 528 to take the profit out of bootlegging. And consequently, if the profit is taken out of it, perhaps the other 2 bills would be moot.

I do not want to suggest that, Mr. Chairman, because of course we will hear witnesses. But on the other hand, it is important, and most important, I believe, that we take the profit out of bootlegging.

Now, I would like to ask a question that hinged upon the question of my friend, Mr. Friedel, a little bit ago, concerning the Steed bill. He asked whether, under the Steed bill, if a private person went to, say, Baltimore, from Silver Spring, Md., I believe it was, and purchased a car, because he could get a better deal with the dealer in Baltimore than he could in Silver Spring, what effect that would have or what would happen under the Steed bill.

Mr. BELL. It would have no effect at all, sir, on the absolute and complete right of any purchaser to buy an automobile wherever he chose and under whatever conditions he could arrange with the dealer.

Mr. HINSHAW. But what happens between dealers?

Mr. BELL. If this man lives in Silver Spring and goes to Baltimore to buy the car—historically this has been true—a certain portion of the money paid by the dealer who sold him the car in Baltimore would be transferred to the dealer in Silver Spring.

Mr. HINSHAW. Then that would be an inhibition on the dealer in Baltimore in making the deal, would it not?

Mr. BELL. We hope it would.

Mr. HINSHAW. Therefore, he could not probably get as good a deal in Baltimore as he could in Silver Spring.

Mr. BELL. I don't know that that statement would be correct, sir. It is likely, but I don't know that it would be correct.

Mr. KLEIN. Would the gentleman yield?

Mr. HINSHAW. Yes.

Mr. KLEIN. Obviously, if the dealer in Baltimore is going to sell the car at a lesser price than the dealer in Silver Spring, he would have to take into consideration, if this bill were enacted, the fact that he would have to give part of his profit to the other dealer.

Mr. HINSHAW. Exactly so. So he would not be liable to make as good a deal as the dealer in Silver Spring. I think it would be an inhibition against the dealer in Baltimore selling to the person who lived in Silver Spring, because he would have to share his profit and also give a better deal on the car.

Mr. BELL. I am reminded, Mr. Hinshaw, by our expert witnesses, here, that that penalty—and it is perhaps an unfortunate word—applies to the service charges on the vehicle. For example, it is intended to deter this Baltimore dealer from seeking sales in Silver Spring, selling the car to the consumer who lives in Silver Spring, and then saying, "Now, you go to the dealer in Silver Spring to have the service warranty carried out."

Mr. HINSHAW. At the present time, of course, service warranties are taken care of anywhere in the United States on certificate from the dealer the car was purchased from; is that right?

Mr. BELL. By and large, that is correct, sir. There are some variances in that that will be brought out by the dealer witnesses.

Mr. HINSHAW. All right.

MR. FRIEDEL. Will the gentleman yield?

Mr. HINSHAW. Certainly.

Mr. BELL. Of course, I have heard it mentioned or rumored over and over again that the dealers are stocked with cars and they have to buy certain quotas, and where some dealer might be overloaded he might be willing to make a much better deal. I do not know whether that would hold back a man who wanted to buy a car. He would look and see where he could get the best deal, and he probably would get it even knowing he would have to return some money to the other agency.

Mr. BEAMER. Is it not conceivable, Mr. Bell, that dealers in certain cities probably could operate more economically, and perhaps because of volume business they could give a better price? Is that possible?

Mr. BELL. Of course it is.

Mr. BEAMER. I am just wondering if the man in Baltimore could be deterred from selling outside his district, because he probably could, because of his, shall we say, cheaper operations and larger volume, conceivably——

Mr. BELL. I hope that you will, sir, ask that question of the dealers themselves when they appear. Because they have lived with this all of their lives, and I have not. They can give you the results of your own history on it.

Mr. BEAMER. I am wondering: Do you have the status of the automobile dealers? Do they report to your their financial status? Are they in distress, generally speaking, throughout the country? And if so, is it caused by the lack of the legislation that would be proposed by these 3 bills?

Mr. BELL. We think that the enactment of this legislation would do a tremendous amount to restore a greater degree of stability to the industry. We do get quarterly reports, and of course, the factories get constant reports. I might point out, sir, that the average dealer—and this will be disputed by some factories, but I have not yet been presented with figures that would, in our opinion, refute our figures accurately—made a profit of .6 of one percent on sales after taxes, a profit of 3.1 percent on an average capital investment of $108,933. During the first quarter of 1955, as would be expected, with some fine new models in almost every line, their profit on sales before taxes was 3.1 percent. And we have not yet completed our figures for the second quarter. But there are indications that there is going to be quite a marked drop in their profits for the second quarter.

Mr. BEAMER. I ask the question because I had some of my personal friends in the automobile industry, dealers, who indicated that they were making less money, and many were losing money, despite the fact that they were having larger sales.

Mr. BELL. The concern is general. It is not restricted to metropolitan areas or to rural areas. It is not restricted to the East or the West or the South or the North. The industrial concern is nationwide, and it covers dealers of all makes and all volumes.

Mr. BEAMER. They are not blaming the automobile manufacturers so much, are they, as the lack of enabling legislation? Is that your point?

Mr. BELL. I don't know that they are blaming any one particular thing, or perhaps they are blaming lots of things. But they do feel

that the enactment of these bills would go a long, long way toward removing the things that are bothering them right now and creating this condition.

Mr. HINSHAW. Admiral, in discussing my bill, which has to do with phantom freight, you point out that the packing of freight charges requires the public to pay an inflated and unrealistic fee for freight charges that are not in truth incurred.

Is that charge made to the dealer first and passed on from the dealer to the consumer, or is it made directly to the consumer?

Mr. BELL. It is made first to the dealer, sir, and then to the consumer. The dealer pays cash on the barrel for his automobiles.

Mr. HINSHAW. And he has to pay that phantom freight in conjunction with the purchase of the automobile. And naturally he passes it on to the consumer.

Mr. BELL. That is correct, sir.

Mr. HINSHAW. And you say that subsequent witnesses will introduce testimony concerning the probable amounts of phantom freight that exists in a given transaction.

Mr. BELL. They will, sir.

Mr. KLEIN. Mr. Moulder?

Mr. MOULDER. You made some reference to the areas that would be designated as restricted by each automobile dealer. Who would ascertain or determine the amount of penalty in the event one of the automobile dealers sold to someone outsideof his district, to a customer in some other dealer's district?

Mr. BELL. That would be up to the discretion of the manufacturer, who woud first seek, I would hope, the advice and counsel of his dealers.

Mr. MOULDER. That would depend upon the contract or franchise you had with the manufacturer.

Mr. BELL. That is right.

Mr. MOULDER. And would that restrict him, that is, the dealers in neighboring areas, from having an arrangement or contract as among themselves, if they so desired? I mean, a prearrangement whereby they could, prior to the sale, have an agreement among themselves as to the penalty or as to whoch would be paid in the event they sold to a customed in the other dealer's district?

Mr. BELL. No, sir. First of all, of course, they would have no agreement as to prices. But the agreement or the stipulation in the selling agreement with regard to the penalty would, we would assume, be effective nationwide among the dealers of that line.

Mr. MOULDER. But I mean there would be nothing in this bill that would prohibit them from having such an arrangement as between themselves if they so desired.

Mr. BELL. No, sir; that is correct.

Mr. MOULDER. And if the manufacturer so agreed to it.

Mr. BELL. That is correct.

Mr. KLEIN. Thank you very much, Admiral.

Mr. BELL. Thank you, Mr. Chairman.

Mr. KLEIN. I might say to the members of the subcommittee as well as to those who want to testify that it is our desire, in view of the fact that the session is rapidly drawing to a close, to try and get these bills through as expeditiously as possible. I thought we could hold two days of hearings. There is an executive session of the committee

IX. THIS LEGISLATION IS IN THE PUBLIC INTEREST.

The importance of the automobile industry to the economy and life of America is established. Any condition or practice that is undesirable or adversely affects the normal health and growth of this industry is not in the public interest. The charging of "phantom freight" is such a practice. The elimination of the practice of allowing the charging of "phantom freight" by this legislation will be in the public interest.

The passage of this bill will eliminate a deceptive practice from the automotive industry. It will remove one cause of unfair competition from among the dealers. It will remove one form of unfair competition from among the manufacturers. It will contribute materially to the elimination of the practice of "bootlegging" which is not in the public interest.

Mr. HINSHAW. Now, you say that there is another witness coming before the committee dealing with another part of the United States. I shall not ask any more questions of this witness.

Mr. KLEIN. Did you have any questions, Mr. Beamer?

Mr. BEAMER. No, not particularly on "phantom freight," but I fear that since these three bills are thrown together, that we automatically can be thinking about all three of them.

I want to ask this one question: Does the "phantom freight" affect the people who are at a great distance from the source of manufacture, the place of manufacture, shall we say, from Detroit? Would it affect those people that are a greater distance more than those who are not so far away? Is it a problem, for example, in Indiana, where we are probably 150 or 250 miles, as much of a problem for those of you in California?

Mr. WILSON. I do not believe it would, sir, because there is such a small amount of freight involved.

Mr. BEAMER. I am wondering whether we do have the problem at all, or whether that is involved. I have heard the automobile dealers in our area, and in our districts, and our Middle West, complain about other matters, but they have not, to me at least, expressed much concern over the "phantom freight." But I know that we have heard witnesses just as you have indicated today, who are quite concerned about it, because it seems to be quite an item on the cost of automobiles delivered out in the Far West.

Mr. WILSON. I do not have the definite freight in mind that would apply to those areas, but it follows that the freight at the point of origin, Flint, Mich., would be zero, and it would only be a nominal amount in Detroit, and a little bit more in Toledo, and a little bit more in Indianapolis, far less than the case of shipping to the Pacific coast, or the Atlantic coast.

Mr. HINSHAW. Here is an item in Evansville, Ind., that the cost of a knocked-down unit by rail freight from Detroit to Evansville, is $26.46, whereas the factory charge to the dealer at that place is $55.94, and therefore the percentage of "phantom freight" charged in Evansville, Ind., is 111.4. It is not a large amount, but on the other hand, its percentage is great.

Mr. BEAMER. On the percentage basis, it might be the same throughout the country.

Mr. HINSHAW. Mr. Chairman, in response to the gentleman from Indiana, I will say that it is very seldom that the dealer receiving the automobile from the manufacturer, he being a local dealer, more or less, will deal with a nearby dealer on the basis of bootlegging.

In the first place, he has to receive money enough to repay him for the cost of putting the papers through, and that may run as high as

$15 to $20, and absorb any difference in freight that might be involved. But the further away you go, the greater becomes the problem.

Finally, you find the dealers surrounding the immediate vicinity of a manufacturer taking large quantities of cars and bootlegging them to distant places, franchise or nonfranchise dealers. Am I correct in stating that?

Mr. WILSON. That is correct.

Mr. KLEIN. So that it sums up to this, that the manufacturers charge the dealer as freight what it would have cost if the complete car had been shipped from Flint or wherever the car is manufactured to wherever the dealers place of business is, is that correct?

You cannot say that they take a figure out of the air. They take the actual rail transportation charge, regardless of what it costs to ship that particular car. Would you say that is a fair statement of fact?

Mr. WILSON. I would say that prior to this arbitrary freight adjustment of last fall, that the freight on a car shipped from Flint to destination would have been the actual rail-freight, as published in our freight tariffs.

Mr. KLEIN. Regardless of whether that car had actually been shipped from that place to your place?

Mr. WILSON. That is right.

Mr. KLEIN. Now, do you know what basis was used in this adjustment that was made about a year ago? How did they arrive at the adjusted figure?

Mr. WILSON. We have no idea on that, and I do not believe any definite formula was ever developed.

I cite you that the Ford Motor Co. made the first announcement of a freight adjustment. It was followed 5 days later by General Motors, who went a little step further, both as to perimeter and amount. About 4 days following that, Ford made a second adjustment, essentially matching the General Motors's plan, and then over a period of 3 or 4 weeks, other manufacturers likewise fell in line because of competitive reasons.

I do not think that there was any uniform formula, and I believe that for this reason, also, that the adjustment in the price of transportation charge on a Cadillac, which is made only in Detroit, Mich., was also reduced in California. So it became a matter of policy rather than fact.

Mr. KLEIN. It is just like a price cut.

Mr. WILSON. That is right. And the adjustment in freight between Chevrolet adjustment, and a Buick adjustment, and an Oldsmobile adjustment, I am sure in my own mind, has no relationship at all to the difference in the weight of the vehicle. It is more in relation to the selling price.

Mr. KLEIN. Which would serve to prove that these companies consider that so-called freight charge as part of the price structure, and they manipulate it whatever way may be to their advantage.

Mr. WILSON. I would like to give you one more piece of information, if I might. There has been much written, and I believe, something touched on relatively in a minor way, by way of testimony here, about the area in which the automobile population is concentrated in the United States. I would like to tell you that the fact is that 57.4 percent of all of the automobiles in America are in those States which

border the Pacific Ocean, the Gulf of Mexico, and the Atlantic Ocean. The perimeter of the United States is involved, and we got some relief in the freight adjustment last fall, and dealers in the smaller perimeter and closer to Flint, did not get the relief. The end result which is desired is that we all get relief by having nothing but the actual freight charged, as the bill is designed for.

Mr. BEAMER. That brings up a point that you just made, and I think that the gentleman from California has pointed out, for example, that the car delivered in Evansville has 111.4 percent of "phantom freight" over the regular freight. I am wondering whether that charge is all freight or whether it is added by the manufacturer in his effort to equalize, shall we say, between a nearby point, and a far distant point.

Mr. WILSON. I think counsel is acquainted with that study.

Mr. BEAMER. It seems that that is a bit out of proportion.

Mr. KIRKS. The factory does not disclose the reason for it.

Mr. BEAMER. Is there discrimination or a difference at least between the amount of freight that is added by them? You said there were three items included in those charges.

Mr. KIRKS. At least three, sir.

Mr. KLEIN. I might say that Mr. Crumpacker is present and he is the author of the bill that the committee passed last year. I am happy to see that he still retains his interest in this problem.

Mr. BEAMER. I might say for our colleague, that he comes from an automobile town, and they manufacture automobiles in South Bend.

Mr. KLEIN. I come from a town that uses them, and I, too, am very much interested. I would be interested in somebody telling me if anybody in this room knows, how the automobile companies treat this transportation charge in their tax structure. They certainly cannot deduct this entire amount as an item of expense, can they?

Mr. KLEIN. Does anybody know that?

Mr. WILSON. Quite the contrary, I think it is a large contributor to their net profit.

Mr. KLEIN. I do not see how they can justify this as an expense. This is an absolute profit. It is like any other item they might use to mark up the price.

Mr. WILSON. We are going to bill 8 or 9 million units this year and if phantom freight exists at all, multiplied by 8 or 9 million, it is a sizable figure.

Mr. KIRKS. We don't know how the factory does it, sir. We are under the impression that it is a profit device.

Mr. HINSHAW. Mr. Examiner, I was informed by a very substantial person in the automobile business, who did not wish his name to be disclosed, that certainly one large automobile manufacturer claimed that he made between $300 million and $350 million a year on nothing but spurious freight charges.

Mr. MOULDER. Do I understand that, for example, if an automobile is assembled in Los Angeles, where Congressman Hinshaw is from, even though there would be no actual freight charges or freight paid out by the manufacturers, nevertheless, there is a freight charge placed on that automobile, which is delivered in the city of Los Angeles?

Mr. WILSON. The only freight that the manufacturer paid out on the completed automobile would be the freight that he pays to get it from the factory to the dealer's place of business.

[COMMITTEE PRINT]

84TH CONGRESS
1st Session

SENATE

REPORT
No. ——

# THE AUTOMOBILE MARKETING PRACTICES STUDY

## INTERIM REPORT

OF THE

## SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES

OF THE

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

JULY 28, 1955

Printed for the use of the Committee on Interstate and Foreign Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
65952 WASHINGTON : 1955

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

| | |
|---|---|
| JOHN O. PASTORE, Rhode Island | JOHN W. BRICKER, Ohio |
| A. S. MIKE MONRONEY, Oklahoma | ANDREW F. SCHOEPPEL, Kansas |
| GEORGE A. SMATHERS, Florida | JOHN MARSHALL BUTLER, Maryland |
| PRICE DANIEL, Texas | CHARLES E. POTTER, Michigan |
| SAM J. ERVIN, JR., North Carolina | JAMES H. DUFF, Pennsylvania |
| ALAN BIBLE, Nevada | WILLIAM A. PURTELL, Connecticut |
| STROM THURMOND, South Carolina | FREDERICK G. PAYNE, Maine |

EDWARD JARRETT, *Clerk*
BERTRAM WISSMAN, *Assistant Clerk*
FRANK PELLEGRINI, *Chief Counsel*

---

### SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES

A. S. MIKE MONRONEY, Oklahoma, *Chairman*

STROM THURMOND, South Carolina FREDERIC G. PAYNE, Maine

DAVID BUSBY, *Special Counsel*

[COMMITTEE PRINT]

JULY 28, 1955

84TH CONGRESS, 1st Session | SENATE | REPORT No. ——

# INTERIM REPORT OF A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

## THE AUTOMOBILE MARKETING PRACTICES STUDY

Mr. Monroney from the Subcommittee on Automobile Marketing Practices submitted the following interim report.

The Subcommittee on Automobile Marketing Practices of the Senate Committee on Interstate and Foreign Commerce was appointed by Chairman Magnuson on March 9, 1955, to inquire into and make a thorough investigation of "all phases of automobile marketing practices especially considering 'phantom freight' charges and other accessorial charges that influence the price of automobiles to the purchaser, and also, of automobile 'bootlegging.' "

It should be noted that hearings were held on S. 3596 of the 83d Congress, 2d session. This was a bill introduced June 11, 1954, by Senator Dirksen. Its purpose was to amend the Federal Trade Commission Act to allow manufacturers of automobiles to cancel franchises of dealers who knowingly sold new automobiles to unauthorized persons for resale and to permit such manufacturers to provide for such cancellation in these franchises.

In these hearings it appeared that many automobile dealers were in economic difficulties. However, there was considerable variation of opinion as to the cause of these difficulties and as to what should be done legislatively to remedy the situation. Also, the manufacturers of automobiles and consumer interests were not heard from.

In January after complaints had been received from dealers throughout the Nation urging congressional action in the field of automobile distribution, and after the National Automobile Dealers Association had passed various resolutions at their annual convention urging specific legislation be passed, your committee directed that the present study be made.

In view of the fact that the manufacture and distribution of automobiles is probably the most important single industry in the economy of the United States, and also in view of the fact that the problems attending to the distribution of automobiles are technical in nature and tremendous in scope, it was determined that a careful back-

# AUTOMOBILE DEALER FRANCHISES

## HEARINGS

BEFORE THE

## ANTITRUST SUBCOMMITTEE
## (Subcommittee No. 5)

OF THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH CONGRESS

SECOND SESSION

ON

## H. R. 11360 and S. 3879

JULY 2, 3, 9, AND 10, 1956

Printed for the use of the Committee on the Judiciary

**Serial No. 26**

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1956

80753

## COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

FRANCIS E. WALTER, Pennsylvania
THOMAS J. LANE, Massachusetts
MICHAEL A. FEIGHAN, Ohio
FRANK CHELF, Kentucky
EDWARD E. WILLIS, Louisiana
JAMES B. FRAZIER, JR., Tennessee
PETER W. RODINO, JR., New Jersey
WOODROW W. JONES, North Carolina
E. L. FORRESTER, Georgia
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
JACK B. BROOKS, Texas
WILLIAM M. TUCK, Virginia
ROBERT T. ASHMORE, South Carolina
JAMES M. QUIGLEY, Pennsylvania
CHARLES A. BOYLE, Illinois
IRWIN D. DAVIDSON, New York

KENNETH B. KEATING, New York
WILLIAM M. McCULLOCH, Ohio
RUTH THOMPSON, Michigan
PATRICK J. HILLINGS, California
SHEPARD J. CRUMPACKER, JR., Indiana
WILLIAM E. MILLER, New York
DEAN P. TAYLOR, New York
USHER L. BURDICK, North Dakota
LAURENCE CURTIS, Massachusetts
JOHN M. ROBSION, JR., Kentucky
DEWITT S. HYDE, Maryland
RICHARD H. POFF, Virginia
HUGH SCOTT, Pennsylvania
WILLIAM C. CRAMER, Florida

BESS E. DICK, *Staff Director*
WILLIAM R. FOLEY, *General Counsel*
WALTER M. BESTERMAN, *Legislative Assistant*
WALTER R. LEE, *Legislative Assistant*
CHARLES J. ZINN, *Law Revision Counsel*
BESSIE M. ORCUTT, *Administrative Assistant*

---

ANTITRUST SUBCOMMITTEE

SUBCOMMITTEE NO. 5

EMANUEL CELLER, New York, *Chairman*

PETER W. RODINO, JR., New Jersey
BYRON G. ROGERS, Colorado
JAMES M. QUIGLEY, Pennsylvania

KENNETH B. KEATING, New York
WILLIAM M. McCULLOCH, Ohio
HUGH SCOTT, Pennsylvania

HERBERT N. MALETZ, *Chief Counsel*
KENNETH R. HARKINS, *Cocounsel*
SAMUEL R. PIERCE, *Associate Counsel*
THOMAS H. McGRAIL, *Assistant Counsel*
LEONARD APPEL, *Assistant Counsel*
JULIAN H. SINGMAN, *Assistant Counsel*

# AUTOMOBILE DEALER FRANCHISES

**TUESDAY, JULY 10, 1956**

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
*Washington, D. C.*

The subcommittee met, pursuant to recess, at 2:30 p. m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the Judiciary Committee) presiding.

Present: Representatives Celler, Rogers, Rodino, Quigley, McCulloch, Keating, and Scott.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Harkins, cocounsel; and Thomas H. McGrail, assistant counsel.

The CHAIRMAN. The committee will come to order.

The Chair would like to place in the record a communication from the Secretary of Commerce, which counsel will read.

Mr. MALETZ. This is to the Honorable Emanuel Celler, chairman, Committee on the Judiciary.

JULY 9, 1956.

DEAR MR. CHAIRMAN: This is in reply to your request dated May 31, 1956, for the views of the Department of Commerce with respect to H. R. 11360, a bill to supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover twofold damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

The Department of Commerce opposes enactment of this proposed legislation.

If enacted, this bill would state it to be the duty of automobile manufacturers to "act in good faith" in all dealings or transactions with their franchised dealers, and would enable dealers to recover twofold the damages sustained by them by reason of the failure of manufacturers to act in good faith in administering, terminating, canceling or not renewing franchises.

Although in the past there have been complaints from automotive dealers that under the terms of dealer franchise agreements manufacturers could arbitrarily terminate a dealer's franchise without any recourse by the dealer for the loss of the value of the franchise and the capital investment in property and equipment, the automotive industry has in recent months taken substantial steps to provide greater protection for dealer franchise agreements. The normal term of franchise agreements has been extended, and dealer councils have been set up to provide a procedure for handling any problems arising in relation to franchise agreements. These steps, we feel, have gone a long way toward correcting whatever inequities have previously existed.

In view of the above, we do not feel that there is any need at this time for any legislative action imposing any new terms or conditions upon automobile manufacturers or dealers in their franchise relationships. The situation is now well in hand, and the industry can, we are sure, work out its own problems without Federal intervention. Further, the proposed legislation would raise numerous problems of interpretation and would undoubtedly create confusion in franchise relationships between automobile manufacturers and dealers. Rather than solve

They have asked me, through their elected directors, to most respectfully and earnestly urge the prompt reporting out and enactment of this bill, with the suggested amendments proposed in this committee. And I want to thank you again for your patience and your kindness.

Mr. ROGERS. Thank you.

This is the final witness, and this closes the hearings. I hope we act on the legislation soon.

(The article from the Atlantic Monthly, entitled "Nothing Down And A Trip To Bermuda," by Hartley Howe, previously referred to, is as follows:)

NOTHING DOWN AND A TRIP TO BERMUDA

By Hartley Howe

With the advent of the 1957 models only a few months distant, automobile dealers are once again scrambling to find customers for the remaining 1956 cars. New or used, the cars must be moved. Some of the inducements through which the dealer sets out to woo the buyer and at the same time protect his own margin of profit are analyzed in the article that follows. Hartley Howe has written extensively in the scientific field, and this is his first article to appear in the Atlantic.

1. Last September in Detroit, Chevrolet dealer Saul Rose felt that customers for his remaining 1955's expected something more exciting than just a plain brand-new automobile. As a bonus, therefore, he offered buyers a prospector's outfit, complete with Geiger counter, sleeping bag, hammer, ax, boots, compass, maps of likely areas, a booklet on how to stake a claim, and—in case the buyer failed to turn up any uranium of his own—100 shares of uranium stock.

Plump Detroiters, on the other hand, uninterested in the carefree life of a miner, may have preferred the proposition of one of Mr. Rose's rivals. He discounted Plymouths $1 a pound for the weight of the buyer and his wife, raising the offer to $1.50 a pound on Chryslers.

These were no isolated phenomena. For nearly a year the great American automobile industry has been hawking its wares with all the restraint and understatement of a runner for a Cairo rug merchant. Proclaiming abandonment of the profit motive, dealers have competed fiercely for customers. Some, for example, proposed vacation trips as lagniappe for coy buyers. Prospects in Denver, Colorado; and Portland, Oregon, were offered trips to Hawaii. Bostonians got their choice of vacations in Paris or Hollywood. A round trip to Bermuda for two was the bait for Cleveland Pontiac buyers.

Prospects with rainy days rather than sunshine on their minds have been offered bonuses in stock: three shares of Ford stock with each 1956 Mercury; uranium shares in Birmingham; Alcoa stock in Marysville, Tenn.; GM stock in Miami.

In Cleveland, buyers were tempted by an offer of two new cars for $2,999 but they had to get there fast, for there were just two available at this price. Houston prospects were lured with an offer of 10 gallons of gas just for coming in to look, while in conservative Providence, R. I., this past February, Chevrolet buyers were offered a bonus of 1,000 gallons. In Los Angeles, items of optional equipment have been advertised for $1 apiece. From New York to Portland, new cars have been offered for "10 cents down," "10 cents a day," or "at a one cent profit."

The most baffling proposition of all has been described by Frank H. Yarnall, past president of the National Automobile Dealers Association: buy a used car for $595 cash, then turn it back to the dealer as down payment on a new car and drive away with $1,105 "change" in cash.

The dealers haven't depended on advertising alone to bring in the customers. An Atlanta salesman stationed himself by a traffic light on a main boulevard. As cars halted for a red light, he'd stick his head in the nearest window and deliver his sales pitch. According to Automotive News: "A few of his 'captive' prospects were so annoyed at this approach that they complained to the Better Business Bureau. Before he was forced back in the showroom, however, he reportedly sold nine cars at the traffic light."

Nor do dealers limit their aggressiveness to their own prospects. It was also in Atlanta that a young man was discovered on a roof with a pair of binoculars, watching cars being appraised at a rival dealer's lot. The license numbers he

copied down were used by his employer to obtain the owners' names and addresses from the State license bureau. They were then telephoned and offered a better deal—which many of them readily accepted.

Known as "wheel and deal" or "blitz selling," these practices reached epidemic proportions in June 1955, after dealers had stocked up against an auto workers' strike that never came off. While the blitz reached a peak in early fall when dealers rushed to shed their remaining 1955's, it has continued grimly if somewhat less noisily to the present. The 1956 models have been discounted from the day of their arrival in the showrooms—an almost unheard-of phenomenon. Today some of the manufacturers themselves are advertising bonuses on a national scale. Where State insurance authorities permit, American Motors and Studebaker-Packard give a free accidental death insurance policy covering owner and spouse for the first year of ownership of their 1956 cars. Dodge started its 1956 model year with a nationwide lottery that anyone could enter merely by filling out an entry blank at a Dodge dealer's showroom, without obligation to buy: a new Dodge every year for the winner's lifetime.

2. The big auto sales blitz has been accompanied by a little blitz of complaints from buyers, who have found themselves the victims of as weird a collection of sales practices as were ever developed by the sharp horse traders of the David Harum era. Better business bureaus recorded last year alone more than 75,000 "public contacts"—complaints and inquiries—about new- and used-car advertising and selling practices. Public authorities have been similarly deluged. In Chicago, according to the Chicago Daily News, nearly 4,000 auto buyers filed complaints with the State attorney's office in 1955.

For on closer examination some alluring offers are far from alluring. In Columbus, Ohio, a man complained to the Better Business Bureau that his new car ran out of gas before he got home, after he answered an add offering 500 gallons of free gas with each car. The common "no downpayment" come-on often turns out to mean no downpayment only if the trade-in car equals the downpayment or if the customer signs a note for a supplementary loan—usually secured by a chattel mortgage on furniture or other possessions—equivalent to the downpayment.

Some "bargains" vanish entirely when a customer asks for them—they are just bait. Sometimes what sounds like a new car in the ad turns out to be secondhand. Other ads turn out to be ingenious combinations of one car's price, another car's picture, and a model name that may belong to either or neither.

In piling up this unenviable record, the unethical segment of the automobile dealers has enriched the American language. A rogue's dictionary of the trade includes some vivid cant:

*The switch.*—Advertising a notable bargain, then telling customers it has been sold and persuading them to switch to another car—and a less attractive deal.

*Bushing.*—Luring a buyer by offering a bargain price, then hiking the price. The original offer is made by a salesman "subject to the manager's approval." The manager later indignantly disclaims it and persuades the buyer, by this time emotionally committed, to accept the higher price. In some cases bushing is cruder—the buyer is given a price, persuaded to sign a blank sales agreement. Later he finds it has been filled in for much more than he expected to pay.

*Lowball.*—Sometimes the same as bushing—a low price given verbally, later repudiated—but also used to describe the practice of giving an unsophisticated customer much less than the going trade-in value of his car.

*Highball.*—A very high offer made verbally on a trade-in just to get the customer inside the salesroom, where he will be pressured to take less.

*Would you take?*—Cards are tucked under your windshield wiper in a parking lot asking "would you take" a fantastically high price for your car because the dealer "has a buyer." If the prospect goes around to try to collect, he gets the full highball treatment.

*Unhorsing.*—Lending a prospect a car while his own car is taken and held for sale in an allegedly rising used-car market. It turns out after a month or so that the market has inconveniently fallen and his car has been sold for considerably less than he expected—leaving the customer with no car and under obligation to the dealer.

*The pack.*—A simple method of luring buyers with nonexistent bargains. A group of dealers—sometimes only one—raise their list price for a new car by several hundred dollars. This permits all sorts of alleged bargain offers from "$1 profits" to "double book value" trade-ins. In at least one case it recently enabled a dealer to offer customers more than they paid for their 1955 cars if they would trade them in on 1956 models. The pack is facilitated by the fact that

there is no real local list price; manufacturers' prices are quoted f. o. b., Detroit. This practice is sometimes called the top pack in contrast to a plain pack, in which various charges for mysterious accessories and services are packed onto the sales price.

*The finance pack.*—A maneuver to increase the profit on financing of car purchases. Here the dealer can sometimes recoup profits that have been squeezed out of a sale. Using a rate chart supplied by the finance company, the dealer can set the rates so high that he can sell the time contract to the finance company at a discount and still receive an extra profit for himself. This "commission" to the dealer is of course paid by the buyer in his installments to the finance company. Sometimes overcharges for insurance are included. Where these charges are lumped together into a single monthly payment, as they often are despite a Federal Trade Commission order that they be itemized, the buyer has no real way of knowing what he is paying for.

*Ballooning.*—Drawing up a time contract with low monthly payments except for the last installment, which in some cases is so big the buyer has to refinance his note.

3. The dealers themselves have become alarmed by the flood of complaints about these practices. The National Automobile Dealers Association, with the Association of Better Business Bureaus, has drawn up a code of recommended advertising and selling practices, which local dealers' associations are being urged to adopt. At the same time, however, even ethical dealers are inclined to blame the public itself for many sales abuses.

Looking out the showroom window, the dealer sees the average customer as a thoroughly unreliable character out to skin him of his last nickel or profit. Price and trade-in are this citizen's only concern; it is useless to tell him about car features or explain service facilities. This customer, say the dealers, traipses from showroom to showroom, telling salesmen highly imaginative stories of offers made at the last place and urging them to cut off another $50. One New York dealer reports: "We can tell the minute a customer walks in if he's really interested in buying a car or just shopping around. I know one place where the salesman won't even answer a question about the car. He just says: 'Did you come in here to get an education or did you come in to buy a car?'"

Franchised dealers blame what they call "bootleggers" for turning the public into shoppers. The bootlegger is an independent dealer who quietly picks up his cars from overstocked franchised dealers. Even though he pays slightly more than wholesale for his cars, the independent dealer still sells them below list price—sometimes as "used: 200 miles" sometimes as new. He usually has no salesroom or elaborate sales organization, both required of regular dealers by the manufacturers. And, as his franchised rivals point out, the bootlegger is under no obligation to either manufacturer or customer to provide service facilities, keep a stock of spare parts, or build neighborhood good will.

On the other hand, the nonfranchised dealer will tell you that he succeeds simply because the normal markup on automobiles is so great that he can shave it and still make money. Both positions are basically true. The independent is the discount house of the automobile trade, he is subject to the same criticisms, and he flourishes—when he does—for the same reasons.

In recent months the so-called bootleggers have faded into the background. The reason is simple: the regular dealers have been cutting prices just as noisily. One dealer replied to a questionnaire sent out by a Senate subcommittee: "We live in a town that is 50 miles from a large city and the metropolitan newspapers are widely distributed in our city. The unethical and untrue advertising in these papers does more to affect our business than bootlegging."

For this situation the organized dealers put the blame on the factories. They charge that the manufacturer's desire for more and more sales and his determination to be Detroit's top banana result in the dealer's being so deluged with cars that he goes to extremes to get rid of them.

Last winter the National Automobile Dealers Association presented a stream of witnesses on dealer-manufacturer relations to subcommittees of the Senate Judiciary and Commerce Committees. While the dealers told only their side of the story, an aura of desperation hangs over much of their testimony even in cold print. A dealer's whole business career and often a large monetary investment in plant depend on his having a franchise from a manufacturer to sell a specific make of car.

In the auto industry, these franchises have been until very recently 1-year contracts—and the company has had the option not to renew if dissatisfied with the dealer. The manufacturer's view of the dealer's performance is based on

85th Congress
1st Session

COMMITTEE PRINT

# DIGEST OF TESTIMONY

RELATIVE TO

## HEARINGS

ON

## AUTOMOBILE MARKETING PRACTICES

BEFORE A

## SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

PURSUANT TO

## S. Res. 13 and S. Res. 163

(84th Congress)

PREPARED BY THE

LEGISLATIVE REFERENCE SERVICE
LIBRARY OF CONGRESS

AUGUST 15, 1957

Printed for the use of the Committee on
Interstate and Foreign Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
95502 WASHINGTON : 1957

S0233

*Page 761*

9, 10, 15. No officer or zone or district sales employee is known by General Motors to have any legal or beneficial interest in any dealership enfranchised by General Motors. Members of the immediate families of some such officers and sales employees have such an interest. Dealerships in which such interests are held by members of the immediate families of such officers and sales employees have received no preferential treatment by General Motors. All such interests are reported under the corporation's policy.

(A list of interests in dealerships held by members of the immediate families of officers and sales employees is contained on pages 888–892, General Motors Exhibit No. 6.)

*Page 761*

11 and 12. No officer, zone or district sales employee is known to have ever encouraged or knowingly allowed the use of his name in connection with solicitation of political contributions from enfranchised dealers. Mr. William F. Hufstader, several years active in support of the Republican Party in Michigan, called six General Motors dealers in Detroit on the telephone in 1952 and asked if they would be willing to solicit political contributions for the Republican Party in Wayne County from other automobile dealers in the Detroit area. No suggestion was made as to how this was to be done or the amount or amounts to be collected, nor was any suggestion made as to the use of Mr. Hufstader's name. The suggestion was from an individual to an individual. Five dealers said they would solicit contributions and one declined. They were advised to send the contributions directly to the Wayne County Republican Finance Committee.

(Mr. Hufstader thought that only automobile dealers in Wayne County had been contacted as a result of his calls to the six dealers.)

*Pages 763, 764*

A staff note exhibit on pages 907–911, concerns charges that certain southern dealers were required to purchase costumes at a cost of about $125 each.

FRIDAY, MARCH 9, 1956

*Frederic G. Donner, vice president of General Motors in charge of financial staff*

(Mr. Donner's prepared statement is on pp. 893–907, General Motors exhibit No. 14.)

SUMMARY

Destination charges are those made to the dealer by the manufacturer for transporting the car to the dealer. The determination of these charges stems from the original method of charging the dealer the actual cost of rail transportation from the home plant.

The growth of outlying assembly plants effected reductions in transportation costs for the finished product. At the same time, increased costs were required to move parts and components to the assembly plant. In addition, there were added costs of packing, loading, and

transporting the component parts, as well as operating costs and higher fixed costs. The net realized savings were applied to the list price of cars rather than to transportation charges.

In the fall of 1954 General Motors modified its method of determining destination charges following a similar change by a competitor. It established a maximum destination charge for all points more than 1,200 miles distant from the home plant. This reduced destination charges up to a maximum of $139 for Chevrolet cars. The figure was somewhat higher for other models.

To offset the reduction in revenues, list prices were increased $20 per car for Chevrolet and somewhat more for the other models.

A further modification on February 27, 1956, again followed action by a competitor. A new maximum destination charge was determined for all points more than 1,600 miles from the home plant. This reduced maximum charges about $20 for Chevrolet. Destination charges were also reduced for all customers located outside the home-plant area and less than 1,600 miles away from the home plant. The new charges for Chevrolet were established at $40 (the maximum transportation charge in the home-plant area), plus 50 percent of the amount by which the actual rail transportation cost them from home plant to customer location. List prices were increased $30 per car for Chevrolet, and somewhat more for the other models, to make up for reduced transportation revenues.

The reduction in destination charges for points distant from the home plant should help limit bootlegging by making it less profitable for nonenfranchised dealers to use the driveaway and tow-barring methods. These had previously been widely used to transport new cars.

In the aggregate, economic benefits derived from the operation of outlying assembly plants are now being shared only by customers being served by these plants, and so-called phantom freight has been eliminated.

## PAGE-BY-PAGE DIGEST

*Page 765*

Transportation has always been an important factor in the delivered cost of automobiles, as contrasted with many other products having a single price, or a national delivered price, throughout the country.

*Pages 766–768*

Destination charges are those made to the dealer by the manufacturer for transporting the car to the dealer. The determination of these charges stems from the original method of charging the dealer the actual cost of rail transportation from the home plant.

Around 1910–17 outlying assembly plants began to grow up. (Chevrolet now has 9, and Buick, Oldsmobile, and Pontiac have 7.) These assembly plants have effected reductions in unit cost. The resulting question is whether these reductions should be in the form of lower selling prices or in lowered transportation charges.

"While the assembly plant system makes it possible to effect savings on transportation costs on the finished car, increased costs are required to move the parts and components to the assembly plant. This is termed 'excess inbound freight.'

*Page 767*

"There are also other added costs represented by the cost of packing, loading, and transporting component parts * * *, as well as added operating costs and higher fixed costs directly related to the higher investment required to establish outlying assembly operations. * * * Experience indicates that these added costs over the assembly plant system run at least $10 to $15 per car, on the average, and offset transportation savings to that extent."

*Page 768*

Mr. Donner thought that 57 percent of Chevrolet component parts used at the Pacific-coast assembly plant were from the Pacific-coast area. Traced back to their origin, however, he believed the parts and components, which originated on the west coast, were nearer 10 or 15 percent. The latter figure is more indicative of the freight problem.

"Until 1954, the automobile industry followed the practice of applying these savings (from the assembly-plant operations) in the form of lowered selling prices * * *.

*Page 769*

"While many cost savings can be allocated to specific models, other cost savings cannot be allocated specifically and are generally spread over all related products, so that all customers benefit."

*Page 770*

Mr. Donner agreed with Senator Monroney that products of General Motors frigidaire division have a national delivered price.

Mr. Donner believes fewer dealers would favor a national delivered price on cars if they realized how taking the transportation charges out of a separate billing, would raise list prices.

*Page 771*

Two recent modifications in determination of destination charges, followed changes made by a competitor. "In the fall of 1954 General Motors established a maximum destination charge for all points more than 1,200 miles distant from the home plant [Flint, Mich.]. Using the Chevrolet as an example, destination charges were reduced up to a maximum of $139 per car for all customers located beyond this line. This affected about 18 percent of all Chevrolet customers.

"In order to offset the reduction in revenues list prices were increased. The Chevrolet increase * * * was $20 per car, of which General Motors received $15 to offset the reduction in destination charges and the dealer $5, representing his normal discount." (Exhibit 5, p. 771 is a chart showing the "effect upon Chevrolet price of 1954 modification in destination charges.")

*Page 772*

A further modification in determining destination charges to all customers outside the home plant area, was effected February 27, 1956. "A new maximum destination charge was determined for all points more than 1,600 miles distant from the home plant. The area beyond this line corresponds closely to that served by our west-coast assembly plants. The new maximum charge in this area in the case of Chevrolet is $120, or about $20 lower than that made effective in 1954.

This maximum destination charge will apply to about 10 percent of all Chevrolet customers * * *.

"Destination charges were also reduced for all customers located outside the home plant area (which extends about 200 miles from Flint in the case of Chevrolet), and for those who are less than 1,600 miles distant from Flint. The new charges were established at $40 (the maximum transportation charge in the home plant area), plus 50 percent of the amount by which the actual rail transportation cost, then in effect from home plant to customer location, exceeded the maximum $40 transportation cost required for cities within the home plant area."

*Page 773*

Destination charges continue to be based on actual transportation costs in the home plant area, which is a little larger for Buick, Oldsmobile, and Pontiac than it is for Chevrolet.

*Page 774*

Testifying against a law to require a manufacturer to charge actual freight on each car, Mr. Donner referred to the inability of a single assembly plant to produce enough of each model to meet the customer demand during the high-volume year. To offset this, large numbers of cars may have to be shipped in or out of an assembly-plant area. Under such circumstances, a figure to cover transportation costs requires a "terrific amount of averaging." The percentage of customers in the home-plant area as compared with more distant ones, is also a factor. For example, current statistics indicate that 14 percent of all Chevrolet customers are located within 200 miles of an assembly plant. Accordingly, a recent change in pricing "resulted in all Chevrolet buyers paying a list-price increase of $30 per car, while 86 percent—that is, customers living outside the home-plant area—received reductions in destination charges ranging up to $54."

*Page 775*

The minimum destination charge, not subject to reduction, is now $40 on Chevrolet, $50 on Buick, Oldsmobile, and Pontiac, and $58 on Cadillac. The maximum destination charge is $120 on Chevrolet, $135 on Pontiac, $150 on Buick and Oldsmobile, and $160 on Cadillac. The maximum reduction in destination charges as a result of the February 1956 change is $54 on Chevrolet, $58 on Pontiac, $67 on Oldsmobile, $70 on Buick, and $72 on Cadillac. Exhibit 6, p. 775, is a table showing the "effect on General Motors car divisions of February 1956 modifications in destination charges."

Although Cadillac has only 1 assembly plant it also adjusted its destination charges on shipments beyond 200 miles from its plant in order to be competitive. "This is an illustration of what a company must do to meet the competition." Cadillac has reduced transportation costs below their actual cost and the difference is being made up in higher list prices.

*Pages 776, 777*

The 6-percent increase in rail freight rates, effective March 7, 1956, was anticipated in the February modification, and will therefore effect no change in destination charges. All component parts are being moved by rail so costs are substantially affected by the rate increase.

The use of railway rates as a factor in determining destination charges reflects the distance from the home plant. Under the present system the average destination charge equals the cost of moving the product into the assembly plant and the actual outbound freight rates from the assembly plant to the dealer.

"The economic benefits derived from the operation of outlying asembly plants are now being shared only by the customers being served by these plants. So-called phantom freight is eliminated for these customers, taken as a whole." Exhibit 7, p. 901, is a table and a chart showing the "effect upon Chevrolet price of 1956 modifications in destination charges."

*Page 778*

Exhibit 8, is a table and chart entitled the "Effect Upon Chevrolet Price of Combined 1954 and 1956 Modifications in Destination Charges."

*Page 779*

Taking the 1954 and 1956 modifications together, destination charges on Chevrolet have been reduced up to $161. Figuring in the $50 increase in list price, the net effect on price to the customer ranges from an increase of $50 for the 14 percent of Chevrolet customers in the home plant area to a price decrease of $111 for approximately 9 percent of Chevrolet customers, including all on the west coast.

"One effect of these reductions [in destination charges] is that driveaway and tow-barring methods of transportation that had been widely used by nonenfranchised dealers, particularly on the west coast and in the Southwest and Southeast, no longer offer the degree of transportation cost savings formerly available to those using these methods." Exhibit 9, p. 770, is a table and a chart entitled "Present Chevrolet List Price (Including Destination Charges) 1956 4-Door Sedan of 210–V8 Series."

*Page 780*

"The current basis of pricing preserves the historic single national list price determined at each producer's home plant." It also maintains previously existing competitive relationships among the single-plant producers and the multiple-plant producers, including those with outlying assembly plants.

*Pages 780, 781*

Basic cost elements involved in destination charges are the same for Buick, Oldsmobile and Pontiac as for Chevrolet, "but the amounts differ because of differences in weight and because the Buick-Oldsmobile-Pontiac assembly operations are less extensive." Assembly-plant volume accounts for 63 percent of total number of Buick, Oldsmobile, and Pontiac cars sold. Exhibit 10, page 781, is a table entitled "Analysis of transportation elements in assembly-plant operations, 1956 Chevrolet passenger cars, 2- and 4-door sedans."

Full rail transportation rates for a Chevrolet car from Flint would now average about $103 per unit. The 1954 modification reduced this by an average of about $15 per unit, and the 1956 change reduced it an additional $23, thus reducing the present destination charge per unit to an average of $65. The $65 average is itself an average of the destination charge of $23 per car in the home plant area and of $71 per car in the assembly-plant areas. The cost allocated for load-

# AUTOMOBILE PRICE LABELING



## HEARINGS

BEFORE THE

## AUTOMOBILE MARKETING SUBCOMMITTEE

OF THE

## COMMITTEE ON
## INTERSTATE AND FOREIGN COMMERCE
## UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

SECOND SESSION

ON

## S. 3500

A BILL TO REQUIRE THE FULL AND FAIR DISCLOSURE OF CERTAIN INFORMATION IN CONNECTION WITH THE DISTRIBUTION OF NEW AUTOMOBILES IN COMMERCE, AND FOR OTHER PURPOSES

APRIL 21, 23, AND 24, 1958

Printed for the use of the Committee on Interstate and Foreign Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
24776 WASHINGTON : 1958

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

WARREN G. MAGNUSON, Washington, *Chairman*

JOHN O. PASTORE, Rhode Island
A. S. MIKE MONRONEY, Oklahoma
GEORGE A. SMATHERS, Florida
ALAN BIBLE, Nevada
STROM THURMOND, South Carolina
FRANK J. LAUSCHE, Ohio
RALPH YARBOROUGH, Texas

JOHN W. BRICKER, Ohio
ANDREW F. SCHOEPPEL, Kansas
JOHN MARSHALL BUTLER, Maryland
CHARLES E. POTTER, Michigan
WILLIAM A. PURTELL, Connecticut
FREDERICK G. PAYNE, Maine
NORRIS COTTON, New Hampshire

EDWARD JARRETT, *Chief Clerk*
BERTRAM O. WISSMAN, *Assistant Chief Clerk*
HAROLD I. BAYNTON, *Chief Counsel*
JAMES E. BAILEY, *Assistant Chief Counsel*

### AUTOMOBILE MARKETING INQUIRY SUBCOMMITTEE

A. S. MIKE MONRONEY, Oklahoma, *Chairman*

STROM THURMOND, South Carolina
FREDERICK G. PAYNE, Maine

DAVID BUSBY, *Counsel*

# AUTOMOBILE PRICE LABELING

MONDAY, APRIL 21, 1958

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON AUTOMOBILE MARKETING,
*Washington, D. C.*

The subcommittee met at 10:10 a. m., Senator A. S. Mike Monroney presiding.

Senator MONRONEY. The Subcommittee on Automobile Marketing of the Interstate and Foreign Commerce Committee will be in session.

This subcommittee was appointed by Chairman Magnuson in February 1955. Its members are Senator Payne, Senator Thurmond, and myself. It has made the most exhaustive study of automobile marketing practices ever undertaken by Congress, having taken nearly 2,000 pages of printed testimony and having concluded extensive background studies—most notably the compilation and codification of some 20,000 questionnaire replies from automobile dealers.

During the spring session in 1956 the subcommittee held hearings on factory-dealer relationships. Some 49 major reforms were voluntarily entered into by the automobile manufacturers as a result of the spotlight which the subcommittee put upon this problem. Included among these reforms was the breakdown of the old "phantom freight" basing-point system, whereby all automobiles were charged with freight from Detroit regardless of where they were made. This made a difference to the American public—outside the Detroit area—of some $212 million a year. Also, major contractual reforms—especially with regard to cancellation of dealers' contracts—were effectuated during 1956.

Last year the subcommittee turned its attention to finance and insurance practices in the sale of automobiles. With the aid of the Association of Better Business Bureaus and the National Better Business Bureau, the subcommittee exposed the multi-million-dollar overcharges which certain insurance companies, through their parent automobile finance companies, had taken from the American public. These companies have assured the subcommittee that they are doing everything they can to repay the money overcharged. We intend to complete our hearings at a later date with regard to automobile finance and insurance.

I would now like to emphasize the importance of the history of automobile production and marketing.

There is no segment of our economy that is more important than the automobile business. Ten percent of the national income is spent for the purchase and operation of automobiles. There is about 1 car

Staff member assigned to this hearing: David Busby.

for every 3 persons in the United States. In the world at large, including the United States, there is only about 1 car for every 40 persons.

One out of every seven persons in the United States is employed in the highway transport industries such as motor vehicle parts, car manufacturing, crude and refined petroleum products, sales and servicing of automobiles, and so forth.

Furthermore, the effect of automobiles on other industries is tremendous. One ton of steel out of every five produced in the United States goes into the manufacture of automobiles. More than one-third of all radios go into automobiles. Over 134 million pounds of cotton were used in automobiles in 1954.

With the increase in suburban living, the use of automobiles is becoming more and more essential for the citizens of the United States. Eighty-five percent of workers living 10 or more miles from their jobs now depend on automobiles to get to their work. The amazing thing about all of this is that it has all been done—it has all come about—in my lifetime. The rate of present expansion staggers the imagination. This makes us realize the industry is still in its infancy.

In 1956 auto retail sales amounted to $50 billion. In that year it used: Sheet steel, 42 percent of the Nation's consumption; bar steel, 24 percent of the Nation's consumption; strip steel, 23 percent of the Nation's consumption; natural rubber, 65 percent of the Nation's consumption; synthetic rubber, 61 percent of Nation's consumption; copper, 7.1 percent of the Nation's consumption; lead, 42.4 percent of the Nation's consumption; zinc, 28.2 percent of the Nation's consumption; upholstery leather, 71.5 percent of the Nation's consumption; nickel, 13.6 percent of the Nation's consumption; enough glass for 5 million homes; insurance premiums amounted to nearly $5 billion.

States receive about 30 percent of total revenue from auto taxes.

Estimated total employees—all new-car dealers—750,000.

Estimated total retail sales by all new-car dealers in 1957—$32 billion.

Estimated vehicles registered in the United States, December 31, 1957—67,200,000.

Estimated total number of licensed drivers in 1957—80 million.

One business in six is automotive.

You can see from this brief sketch of the economics of the automotive industry, there is no industry that has a greater bearing on America's prosperity or on America's recession than does the automobile industry. When the automotive industry is sick, the Nation's economy is sick. It is for this reason that the Congress is properly concerned with the things that go on in the automotive industry.

Now the subcommittee turns to another phase of automobile marketing.

It is customary that an opening statement be made regarding the scope of the hearings. Today I am not going to do that, except to say that we are going to hold hearings on S. 3500. This is a bill, introduced by myself and Senator Thurmond as authors, which would require automobile manufacturers to put a sticker on the windshield of every new car disclosing the following information: its description, the final assembly point, the name of the dealer to whom it is first delivered, the method of transportation used in making the delivery, the retail deliv-

Senator MONRONEY. Also an editorial from the Tulsa Tribune. I would like to have this incorporated.

(The editorial is as follows:)

PINNING DOWN THE AUTO PRICE

United States Senator Mike Monroney, of Oklahoma, is a near and dear friend of the automobile dealers. His defense of their interests in more than one clash with the car manufacturers over territorial franchises and other disputed points has brought this about.

Therefore some astonishment was occasioned yesterday when Monroney proposed that the Government arm auto buyers with the precise information at the dealers' showrooms about the manufacturer's suggested list price of all makes and models sold there, the location of the final assembly point and the exact transportation cost to the dealer by the method used for delivery. This appeared to be arming the buyer against the dealer.

A quick check around dealers in Tulsa found them generally still with Senator Monroney, and approving the proposal. As one said, anything that will create confidence in the automobile trade will help purchaser and dealer alike. Now, he admitted, there is far too much mystery about the price of a new automobile. Under those circumstances we can't imagine Congress turning anything down that will be good for both buyers and sellers and still not be compulsory price fixing in any degree.

Car labeling would give the buyer an additional reference point. He already has one, the so-called black book generally recognized in the financing industry as fixing the fair, average price of used cars. Most buyers turn in their old cars on the new ones. Of course the black book is not infallible; it does not give enough value to the car that has been treated like a member of the family, and it adds somewhat to the worth of the vehicle that has been on the taxi line until rheumatism has set in, but the careful buyer and dealer both know how to determine which car is which.

Automobile trading does spread over a rubbery range, but so does most buying and selling. Efforts to make prices rigid by law have usually failed, as they should. Monroney's proposal, apparently, is not another of these. There will still be elasticity in the transactions, because the trading space is not interfered with but only identified for both parties.

The automobile dealer usually buys cars from the factory for 24 or 25 percent less than the suggested price, and within that range he trades, always with an eye on what he can get for the used car he takes in on trade. The car is the dealer's when he takes delivery from the factory and he usually must be responsible for the financing arrangement he makes with the ultimate buyer as well as servicing the machine for a period. He's in an exciting business and has to be nimble to stay in the competition.

The buyer is not helpless without a labeling law if he has made out a list of new cars satisfactory to him, has offered his trade-in car for evaluation and has obtained a clear statement of the difference in dollars that will be required of him in each case if he trades. But buyers are not always businesslike and doubtless some do give up when they can find out everything about a new car but its accurate list price.

It is becoming increasingly habitual in this paternalistic economy to protect us all, and we see no particular reason why this shouldn't be extended to the automobile trade if it is done without so-called fair-trade features. After all, the automobile is the second largest purchase most families make.

Senator MONRONEY. Next is an editorial from the East St. Louis Messenger, April 4, 1958.

(The above-mentioned editorial is as follows:)

THE BACKDROP—JUNGLE PRICING ON CARS

(By John C. O'Brien)

Senator A. S. Mike Monroney, of Oklahoma, has worked himself into a state of indignation—shared by millions of purchasers of automobiles—about the chaotic pricing policies of many automotbile dealers.

As every one knows who has had occasion to buy a new car in the last few years, many dealers conduct their business in the atmosphere of a Middle East

bazaar. The would-be purchaser hasn't the slightest idea what he should pay for any given model, and what he does pay depends in many instances upon his skill as a "horsepower" trader.

There is probably more than one reason for the current sharp slump in automobile sales, which is playing so important a part in depressing the economy. But Senator Monroney believes—and most ethical dealers agree with him—that thousands of prospective buyers are holding off because they are tired of shopping around for the "big deal," the "No. 1 trade."

There was a time when the automobile industry had a nationally advertised uniform delivered price for its products. A buyer could close a deal with a dealer without worrying about whether he might have got a better deal from a dealer on the other side of town.

But today, it is almost impossible to find out what an automobile costs a dealer or what the fair delivered price should be. Unscrupulous dealers, as Monroney points out, can exploit a purchaser by leading him to believe that a car with factory cost of $3,000 is actually a $4,500 car and that by giving a $1,000 allowance on his old jalopy, he is getting a bargain because a more ethical dealer had offered him only $350 on the trade-in.

By marking up the list price of an automobile to an unrealistic figure, the unscrupulous dealer is able to outdo, on paper at least, the scrupulous dealer who would like to sell his wares at an honest mark-up. Under the prevailing oriental bazaar system of misleading pricing and fancy allowances, the legitimate dealer is penalized and the purchaser subjected to deceit and fraud.

Another source of confusion to the purchaser is the difference between the price of the "stripped" and the "equipped car." As a come-on, many dealers advertise a car at the "stripped" price, with a notation in fine print that the accessories most purchasers would want are extra. By the time the price of the accessories, which include such essentials as an automatic starter, has been added to the "stripped price," the buyer discovers that the car may cost him many hundreds of dollars more than the advertised price.

For many years accessories were practically unknown in the industry. The advertised price included all the attachments to the car. But today no one knows what equipment and gadgets belong to an automobile, what items are included in the cost and what items are available at extra cost. Moreover, the purchaser has no way of finding out what he should pay for the accessories he desires.

Most dealers, Monroney has concluded, disapprove of the current jungle pricing methods of the aggressive, unethical dealer. Of 257 polled by the New Jersey Automobile Dealers' Association, for example, 245 said they would favor a return to the nationally advertised delivered price, listing what is included in the price, as well as such cost items as Federal tax, freight, and so on.

This would indicate that most of the dealers would support a bill which Monroney has introduced to require the manufacturers to make available to prospective buyers all the price information they need to determine how much they should pay for any model of the manufacturers' products.

Monroney's bill would require the manufacturer to affix a label to the windshield, showing the name, make, model, and serial number of the car, the dealer to whom it was consigned, and the method of transporting it from the factory. The label also would carry the advertised price suggested by the factory, including the freight charges and the retail price of the attached accessories.

Armed with such information, the prospective buyer could meet an unscrupulous dealer on something like equal terms. He could buy without fear of being "taken for a ride" even before he got a chance to drive his new acquisition off the showroom floor.

Senator MONRONEY. And then the article from U. S. News & World Report, April 11, 1958.

(The article is as follows:)

FACTORY PRICE TAG ON EVERY CAR?

Congress has a plan to guide the buyer.

How do you find out the manufacturer's suggested retail price on a new car? Many say it's nearly impossible now.

Congress may pass a price-tag law, as a result.

Both Congress and the United States Department of Justice are taking an interest now in the retail prices of new cars.

Congress has before it a plan that, if accepted, will require auto makers to paste on the windshield of each new car a label showing the exact suggested retail price set by the manufacturer.

The Department of Justice, at the same time, is presenting evidence to a grand jury in Washington, D. C., in an attempt to show that some auto dealers around Washington are violating antitrust laws by agreeing to fix prices several hundred dollars higher than the manufacturers' suggested list prices. Investigations are under way in other cities, too.

The idea gaining ground in Washington—and in the auto industry as well—is that some action is needed to lessen confusion over car prices.

In recent years, price confusion has grown rapidly. Auto buyers have been bombarded and bewildered with claims and counterclaims concerning "gimmick advertising," "price packs," "discounts," "overallowances," "bootlegged cars," and other things.

Many have the impression that car prices are higher than they actually are. The uncertainty has contributed to the slump in auto sales, dealers say.

What's proposed.

Senator A. S. Mike Monroney (Democrat), of Oklahoma, author of the price-tag plan, states the case for a new approach as follows:

"At the present time, the suggested retail prices of cars and accessories are furnished to every automobile dealer by the factory. But the dealer cannot afford to make them public or he loses out in the competitive swim—he could not then pretend to "overallow" on the customer's used car * * *.

"If the car buyer has the facts, we will have less cause to worry about whether prices are too high or too low. The processes of competition would help to determine that. But there can be no competition in prices unless the purchaser can find out what the prices are."

Senator Monroney says many dealers favor his plan. Auto manufacturers are quietly looking into it.

The chart below shows you a sample price tag. It's an idea you'll be hearing more about in weeks ahead.

To take the mystery out of new-car prices, this kind of price tag would be required on all new cars and trucks, under a plan being studied in Congress:

Name of car: "Family 8."
Make: XYZ Co.
Model: 4-door sedan.
Serial Number: 12345678.
Assembly plant: Detroit, Mich.
Dealer who first gets car: ABC Auto Co., Midtown, USA.
Method of transporting car: Truck transport.
Freight charges: $90 (average freight charge).
Retail price of accessories: $550 ($125, radio; $100, heater; $100, power steering; $185, automatic transmission; power brakes, $40).
Suggested retail price of car: $3,000.

One illustration is rather interesting, a letter we received from Clarence R. Carpentier, St. Louis, Mo. Mr. Carpentier writes:

Reading about your inquiry on car "price pack" which I endorse 100 percent, I am enclosing correspondence I have had with Genral Motors Corp. in which I tried to get their factory list price, but as you can see, I was unable to get it.

I thought possibly this would be of interest to you.

This series of correspondence began on January 8, 1958, when Mr. Carpentier wrote General Motors Corp., Detroit, Mich.:

GENTLEMEN: Will you please send me the retail price f. o. b. St. Louis on the following; also what the freight is on this car to St. Louis:

Chevrolet, Biscayne, 4-door, 1 color, 6 cylinder.

Also the retail price on the following extras: Powerglide transmission; push-button radio; airflo heater; oil filter.

It seems impossible to get this information from the dealer and would appreciate it very much if you would send me the retail price on the above.

That was on January 8. On January 21 he received this letter:

DEAR MR. CARPENTIER: This is in reply to your correspondence in which you express your desire for information regarding automobile pricing policies.

He wasn't asking for automobile pricing policies. He was asking for the price of a very definite car.

The type of service into which Chevrolet vehicles are placed throughout the United States varies tremendously and, accordingly, the options and accessories that are desired likewise vary. For this reason Chevrolet desires that each prospective owner receive individual attention and accordingly rely upon the dealer organization to perform all phases of retail sales transactions.

Chevrolet dealers are independent merchants who operate their own business on their own capital, their contractual relations with Chevrolet being limited to the purchase of new cars, new trucks, parts and accessories at wholesale for resale at retail. Accordingly, the prices that are quoted by dealers may vary somewhat as they are established in line with the pricing policies of the individual dealership.

We know that Chevrolet dealers desire to be of every assistance possible to Chevrolet owners and prospective owners and, therefore, we suggest that you contact the Chevrolet dealer of your choice and make your request regarding pricing information known to him. We are certain that he and his personnel will welcome this opportunity to discuss this with you and render every assistance possible.

J. E. SOMERS,
*Customer Relations Department.*

Mr. Carpentier wrote back on February 11:

DEAR MR. SOMERS: In your reply of January 21 you failed to give me the information requested in my letter of January 8. Certainly you have an established retail list price and this is what I would like to get.

I realize that the dealer can make his own price, but I can never get them to give me the factory list price, and I would appreciate it very much if you would please give me this information.

Very truly yours,

CLARENCE R. CARPENTIER.

That was February 11. On March 21 he received another letter from his pen pal, Mr. J. E. Somers, customer relations department, Detroit, Mich.

DEAR MR. CARPENTIER: This is in reply to your February 11 letter. We regret the delay in answering your correspondence but for an unexplainable reason, your correspondence has just reached the writer.

Chevrolet prepares a suggested retail list price for the purpose of having a basis on which to establish Chevrolet's charges for vehicles when sold to the dealer. The dealer establishes the selling price of the vehicle in line with the policies of the individual dealership and in accordance with the options, accessories, and services that are being purchased since the dealer is an independent merchant as was previously pointed out in our correspondence.

We, again, suggest that you contact the Chevrolet dealer of your choice requesting of him further information regarding prices. We are certain that he desires to be of assistance.

Very truly yours,

J. E. SOMERS,
*Customer Relations Department.*

End of this bit of correspondence.

Incidentally, this man Somers would make an excellent senatorial correspondence secretary. He can say much without saying anything very definite.

We have a carbon copy of a letter that recites the experience, evidently of a wealthy man, Mr. Jess Primmer, who is trying to buy a new Lincoln to replace his 1-year-old Lincoln that has only 7,200 miles on it. The original letter was adddressed to the Department of Justice. He tells of his experience with six dealers, from none of whom he was able to get the list price of even such a deluxe job as a Lincoln automobile.

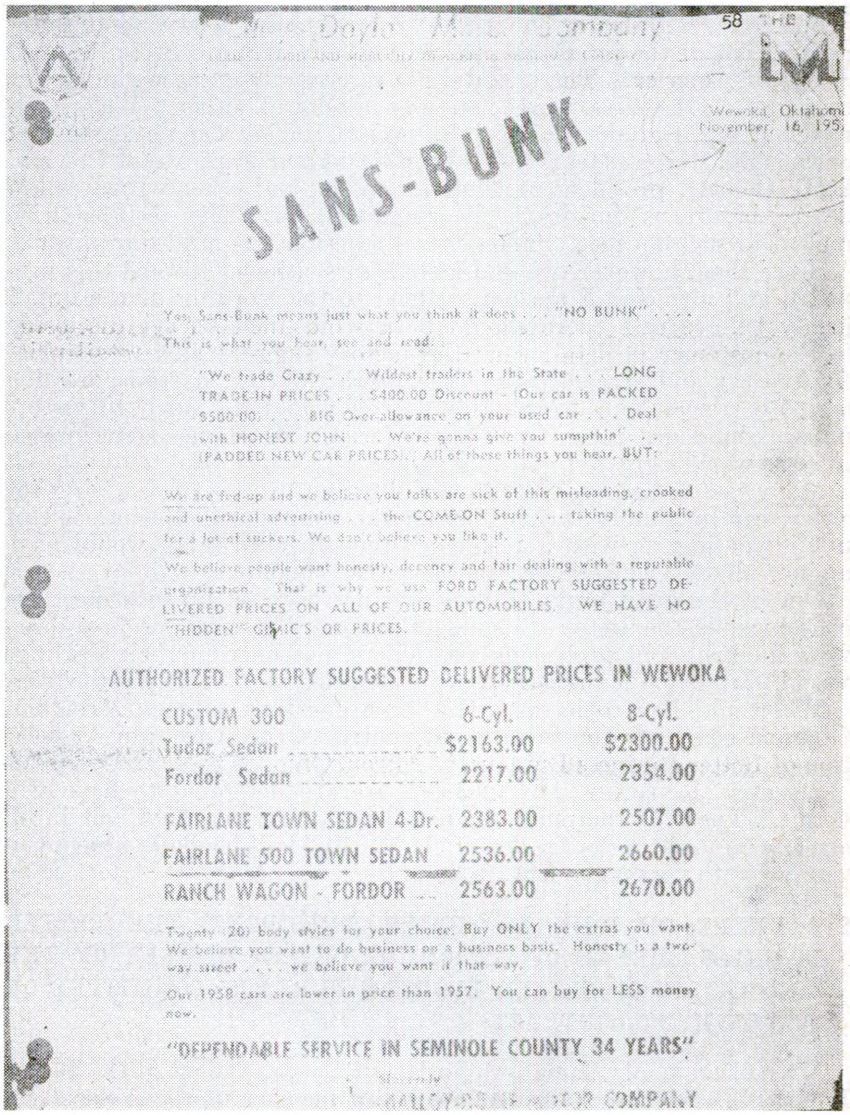
panies have repeatedly denied any responsibility for the pricing of their product by the dealers.

Sincerely yours,

J. L. PRIMMER, *Arcanum, Ohio.*

Senator MONRONEY. I am rather proud of the next thing I am putting in the record from Buster Doyle, head of the Malloy-Doyle Motor Co. at Wewoka, Okla. Mr. Doyle is former president of the Oklahoma Automobile Dealers Association.

It is quite a nice ad. It starts out "Sans bunk."



SANS-BUNK

Yes, Sans-Bunk means just what you think it does . . . "NO BUNK" . . . .
This is what you hear, see and read.

"We trade Crazy . . . Wildest trades in the State . . . LONG TRADE-IN PRICES . . . $400.00 Discount - Our car is PACKED $500.00 . . . . BIG Overallowance on your used car . . . Deal with HONEST JOHN . . . We're gonna give you sumpthin' . . . PADDED NEW CAR PRICES . . . All of these things you hear, BUT:

We are fed-up and we believe you folks are sick of this misleading, crooked and unethical advertising . . . the COME-ON Stuff . . . taking the public for a lot of suckers. We don't believe you like it.

We believe people want honesty, decency and fair dealing with a reputable organization. That is why we use FORD FACTORY SUGGESTED DELIVERED PRICES ON ALL OF OUR AUTOMOBILES. WE HAVE NO "HIDDEN" CLAUSES OR PRICES.

AUTHORIZED FACTORY SUGGESTED DELIVERED PRICES IN WEWOKA

| CUSTOM 300 | 6-Cyl. | 8-Cyl. |
|---|---|---|
| Tudor Sedan | $2163.00 | $2300.00 |
| Fordor Sedan | 2217.00 | 2354.00 |
| FAIRLANE TOWN SEDAN 4-Dr. | 2383.00 | 2507.00 |
| FAIRLANE 500 TOWN SEDAN | 2536.00 | 2660.00 |
| RANCH WAGON - FORDOR | 2563.00 | 2670.00 |

Twenty (20) body styles for your choice. Buy ONLY the extras you want. We believe you want to do business on a business basis. Honesty is a two-way street . . . we believe you want it that way.

Our 1958 cars are lower in price than 1957. You can buy for LESS money now.

"DEPENDABLE SERVICE IN SEMINOLE COUNTY 34 YEARS"

Senator MONRONEY. This is important news because I think it is the first time Washington, D. C., has had the quoted prices on what Ford

models are. Oh, how wonderful the automobile business would be if we could have some advertising such as that appearing in our metropolitan papers here; but having seen the New York Times, Washington Post, Washington Star, I still see that automobiles are advertised on "Thousand dollar discount" and "Bring your old car if it runs and we will give you $500 for it."

Finally, let me say this: This is not a brand new idea. As a matter of fact, 3 years ago, when we first began to make our study of the automobile business, there was some feeling that such a label would give responsibility to the automobile business. In fact, I publicly proposed such a plan as one method of taking the marketing of automobiles out of the jungle and putting it back on Main Street, United States of America. The idea did not receive any great acceptance at that time. Of course, it was not fully developed, either. We considered putting it in an omnibus bill. When Harlow Curtice, president of General Motors, Henry Ford II, president of Ford Motor Co., and L. L. Colbert, president of Chrysler Corp., and other witnesses appeared before us during the hearings that year they testified with regard to such an idea. The general reaction was mild disapproval.

Since then, however, we find a shift of sentiment toward this proposal, and although I am not wedded to the wording of the bill, I firmly believe that there should be a windshield sticker disclosing to the customer in detail what the factory suggests as a retail price for the car and accessories together with the cost of transportation and other pertinent information. This would do much to restore public confidence in automobile marketing, which has deteriorated into the world's greatest guessing game.

Many people are avoiding the frightening process of shopping for a new car by simply staying out of the showroom. Restoration of public confidence, with a resulting spurt in auto sales, would have an immediate beneficial effect on the entire economy.

One of the great organizations that has been set up to protect the consumers is the Better Business Bureau. These people have been very interested in protecting consumers, not only in their dealings with the automobile industry, but in their dealings with all industries.

We would like to have at this time our first witness, Mr. John O'Brien, committee on installment contracts, the American Association of Better Business Bureaus, of Akron, Ohio.

Senator MONRONEY. Mr. O'Brien, we are delighted to have you here. I know of the many years of work that you have put in on attempting to bring order out of chaos. We will be glad to have you proceed with your statement.

## STATEMENT OF JOHN L. O'BRIEN, PRESIDENT, THE BETTER BUSINESS BUREAU OF AKRON, OHIO, AND MEMBER OF THE ASSOCIATION OF BETTER BUSINESS BUREAUS' COMMITTEE ON INSTALLMENT CONTRACTS

Mr. O'BRIEN. My name is John L. O'Brien, president of the Better Business Bureau of Akron, Ohio, and a member of the Association of Better Business Bureaus' committee on installment contracts. I am also chairman of that association's committee on bait advertising, and I am here to report to you that the attention of both of these

It is rather interesting to note that since the Justice Department has taken such a tack—which was about 1949—that the number of automobile manufacturers has been cut just about in half. So whatever action the Justice Department Antitrust Division is taking to prohibit certain consumer services has not resulted in less combinations of big business but in more combinations of big business—perhaps by weakening the ability of factories to suggest the retail price so that they would have a way of advertising and presenting their product.

I understand, although I haven't read it, that the Justice Department, under the Republican administration, while they refuse on request or invitation to defend their position, has again come up with this same old cliche—that letting the American people know what the suggested retail price of an automobile is is apt to affect the antitrust laws.

If it is not a firm price but merely a suggested retail price—as the signpost of value, to give them someplace to begin finding out, even to help determine what the proper price for their used car is—it cannot, by any stretch of my nonlegal mind, be compelling.

Certainly the results in the overcombinations of big business under this administration, and under our own, would give lie to the idea that consumer aids necessarily create a condition and restraint of trade.

Mr. BUSBY. Senator, for the purpose of the record, we have not yet received a report that Justice promised us last Friday.

Senator MONRONEY. How many weeks ago did we ask for it?

Mr. BUSBY. We asked for it many weeks ago, April 18th, I believe.

Senator MONRONEY. They have declined to appear before this committee, have they not?

Mr. BUSBY. They declined our invitation as of Friday. They said they did not wish to appear.

Senator MONRONEY. Your purpose is largely to protect the consumers?

Mr. O'BRIEN. Yes, sir.

Senator MONRONEY. Can you conceive that the suggested retail price being made known to the public would in any way foster monopoly or combination of big business?

Mr. O'BRIEN. I have not a legal mind either so I cannot give you a legalistic answer. I can see no possible way in which that would imply what you indicated there. Coming clean with the price seems to us in the better business bureau a basic normal kind of way to open a business transaction.

Senator MONRONEY. And would not it also be perhaps the reverse of "combination in restraint of trade"? Many well-informed people have alleged that there is competition in every field of the automobile business—except in price. There is a close uniformity of price—part for part and equipment for equipment of the popular models now, and almost identical prices on particular models—even though the rampant competition goes forward with the new types of gimmicks and gadgets and decorated tail ends and things of that knd.

Mr. O'BRIEN. I think observing that thing, Senator, that the price levels are very closely related not necessarily through conspiracy.

Senator MONRONEY. I don't think it is conspiracy.

of business competition as we Americans know it. Competition is the cornerstone of our democratic way of life and the medium which has endowed us with the high standard of living we enjoy.

I believe the average small dealer feels that S. 3500 will tend to provide for the equality of competitive opportunity and will not penalize any segment of the industry. It will also alleviate some of the criticism to which we have been subjected because of the sharp and unethical practices of a comparatively small group of dealers.

S. 3500 can be beneficial in many other ways. I can visualize an accelerated quality selling program on the part of the dealers, and the almost mandatory edict to the manufacturer to produce a car of greater quality. The factory will have to keep abreast of styling, safety improvements, economy of operation, and comfort. The dealer will have to deliver the car in tiptop condition and provide the quality service to keep the car in operation and satisfy his customer.

The American talent for devising new and unique methods of advertising will always, I presume, give expression to the desires of merchants to entice customers to deal with them. But as to the problem at hand, it is the unqualified opinion of the franchised automobile dealers that the enactment of S. 3500 will, in large measure, extinguish the foolishness engaged in by the disruptive minority who persist in false and misleading claims in their advertising.

Thank you for your courtesy in providing us with the opportunity to testify here today.

Senator MONRONEY. Thank you very much, Mr. Hughes. I have had the pleasure of appearing before your wonderful Arkansas Automobile Dealers Association. I enjoyed its fine hospitality and the splendid introduction by my colleague in the House, Brooks Hays. It is a fine illustration of what an industry can do through your association.

Mr. ABBOTT. Mr. McCune will be our next witness.

Senator MONRONEY. Mr. McCune, we are delighted to have you here.

## STATEMENT OF WILLIAM M. McCUNE, FORD DEALER, KITTANNING, PA.

Mr. MCCUNE. Mr. Chairman and gentlemen of the committee, I am William M. McCune, Ford dealer in Kittanning, Pa., a city of 7,500 people, situated 45 miles north of Pittsburgh.

This year I have the honor of representing the State of Pennsylvania on the board of directors of the National Automobile Dealers Association and serving as a member of its national affairs committee. It is a personal privilege to be permitted to appear before you on behalf of the dealers of Pennsylvania as well as in my representative capacity as a spokesman for all of our members throughout the United States. We respectfully urge the immediate enactment of S. 3500 with the suggested changes which have been presented to you by Mr. Abbott.

Before developing in detail my views with respect to the practice of "packing" as it exists within our industry, I would like to call attention to the precarious plight of the automobile industry today. Both the general public and the automobile industry need immediate relief

from the current depressed condition of our economy and I cannot be too emphatic in voicing our desires that your committee and, in turn, the entire Congress act without delay.

As is always the case when only a handful of members of an organized group engage in an unsavory practice acquiring notoriety, such conduct is universally applied to all the members of the group. The good are victims of condemnation by association. This is equally true with respect to the practice known as packing in the retail automobile industry.

Packing can be defined as the practice of marking up or adding charges over and above the normal recognized markup from the wholesale price at which a dealer acquires an automobile from a manufacturer—and let me interject here that the dealer pays cash on the barrelhead before he receives the car from the manufacturer, or he has it on credit with the finance company. But he is responsible for payment of the obligation.

The "pack" in the new-car price was offset, of course, by overallowance on the trade-in value of the customer's used car. Much of the trouble caused by the pack has been the misconception created in the minds of the public as to the value of the used car in today's market, as well as the uncertainty of knowing what the new one is worth. This practice is neither new nor illegal.

However, the byproducts of packing have been confusing to the public and extremely damaging to our industry.

You will recall that as early as 1939 the Federal Trade Commission discussed the practice (FTC Rept., p. 1065). The practice struck with a vengeance in 1954 when certain manufacturers suggested that it be engaged in by their dealers. In testifying before the Subcommittee on Antitrust and Monopoly, of the Committee on the Judiciary, of the United States Senate in 1955, Mr. M. H. Yager, Pontiac dealer of Albany, N. Y., said that packing was condoned and encouraged by General Motors (report of the hearings, p. 3457). Subsequent to this hearing the late Mr. J. A. Hinote, a Lincoln-Mercury dealer from Reno, Nev., testified extensively to like effect on this subject before your committee during the months of January, February, and March 1956, as did James P. Mayo, a dealer from Nashua, N. H.

The resurgence of packing has been accounted for in several ways. The "big three" set production records in 1955 and an unbridled production race for first place was launched. The industry swung from a seller's market very definitely into a buyer's market. With a race for industry position and pressure upon the dealers to market volume, the vice of packing was resorted to in an effort to stimulate customer interest and to indicate that a "good deal" or "bargain" was available to him. It permitted the dealer to make an overallowance on the used car to be traded, which provided the customer with the required downpayment he could not have produced otherwise. This was the vehicle designed to assist the manufacturer to gain position in the production race and to enable the dealer to sell more cars at a profit to the manufacturer although not necessarily to himself. It must be remembered there was no Public Law 1026 on our statute books at that time.

Senator MONRONEY. You are referring to the dealer's "day in court bill."

Mr. MCCUNE. That is the dealer's "good faith" bill; yes, sir.

# AUTOMOBILE PRICE LABELING

THURSDAY, APRIL 24, 1958

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON AUTOMOBILE MARKETING,
*Washington, D. C.*

The subcommittee met, pursuant to adjournment, at 1 p. m., in room G–16, United States Capitol, Hon. A. S. Mike Monroney (chairman of the subcommittee) presiding.

Senator MONRONEY. The Subcommittee on Automobile Marketing will again be in session.

We appreciate the opportunity today of having the representatives of two of the great industrial firms of the Nation here to testify.

I would like to read into the record a letter from Harry A. Seim, 1508 Robeson, Bettendorf, Iowa. It is dated April 20.

DEAR SENATOR: I read of your bill, "to take the mystery out of the price of new cars," and think you really have something there.

I wrote to a certain manufacturer and asked for the suggested price of three of their models. I was going to buy 1 of the 3, but found the dealers had packed the prices from $150 to $700. I went to see a model of another manufacturer and it had been packed $700. You can bet I decided to buy no car at all.

Yes, I know they will tell you that they will give more for your trade-in, but I bought my present car in 1955 for $3,364. A friend of mine bought a cheaper model of the same make with less accessories for $3,400. Some time after, the manufacturers were told to stop certain practices. They are pikers compared to the dealers.

Anything you can do to get a fair deal for the buyers, I am sure will be appreciated.

Sincerely,

HARRY A. SEIM, *Bettendorf, Iowa.*

This is the original letter here. I have another letter from Mr. Earl Burkhard, 165 Broadway, New York, N. Y., dated March 20, 1958:

DEAR SENATOR: I just finished reading in the Congressional Record of March 17 what you had to say about the retail pricing of automobiles.

I hope your views will prevail and your bill pass; and commend you for your interest. Believe me, the subject is one that many, many people discuss—and cuss.

Myself, for instance. I trade my car every year, but am keeping my 1956 Olds and seriously considering disposing of it and renting a car when I need one, because of the flimflamming I got when I bought it.

I take violent issue with Mr. Wilson's "What's good for General Motors is good for the country."

Very sincerely,

EARL BURKHARD.

Another from Denver, Colo., signed by Mrs. John F. van Zulear Dunn:

DEAR SENATOR: It is indeed a delight to read that someone in Washington is at last doing something concrete about the price of automobiles. More power

to you and may you meet with every success in your campaign to abolish, or at least limit, price fixing on cars. I am frankly looking forward to the day I can walk into a showroom, and have something besides the salesman's polished assurances to let me know how much of my money I must part with to purchase a chrome-encrusted vehicle.

Perhaps it is not too much to hope that the automakers will take the hint and turn out a moderately priced car, mechanically sound, at a price that does not leave us bewildered, broke, and bound to a finance company for 60 months.

Sincerely,

MILDA VAN ZUYLEAR DUNN
Mr. John F. van Zuylear Dunn.

I will ask that after the oral testimony that several other typical letters be printed in the record. The mail response favoring the bill has been unusually heavy. The public has seemingly become more fed up on the mystery in pricing cars than I believe anyone in the automobile industry believes.

The response from the dealers has been tremendous, too. They feel that unless something can be done to revolutionize the bad habits of the oriental bazaar, of the unknown price, that the dealers will continue to have empty showrooms, empty of customers, I mean—they are not empty of cars by any means—and that this might be just the one little thing that might be needed to break the logjam that is holding back, I think, our Nation's economic recovery.

I don't think there is a thing wrong with our economy that a good automobile year won't cure. We repeatedly read into the records the impact that this great industry which your company and the Ford Co., and Chrysler and American Motors and others have that makes its impact of its health felt throughout the entire economy.

When we are talking about antirecession measures, I cannot escape the firm belief that this, if it should work—I don't think it is as much of a panacea as a lot of people have testified it was—if it should work to create a new climate in merchandising of America's No. 1 product, it will have the greatest effect on arresting recession and unemployment than any legislation that this Congress will pass.

For that reason we are delighted to have the vice president of General Motors, Mr. Hufstader, the gentleman now in charge of dealer relations, as well as his many other duties in that great organization.

Before you testify—we were favored by a letter from Mr. Harlow Curtice, president of General Motors Corp., dated April 21, 1958, reading:

DEAR SENATOR MONRONEY: I have your letter of April 14, 1958, advising me that the hearing on Senate bill 3500 (the automobile labeling bill which you have introduced) will begin on Monday, April 21.

I favor the principle of the bill which calls for a disclosure of certain information for the benefit of the customer. It is my feeling that dealers generally should approve this type of legislation which, in addition to being in the public interest, should be beneficial to the automobile industry.

Mr. W. F. Hufstader is making arrangements to appear before the committee on Thursday, April 24, at 2 p. m.

We have discussed with Mr. Busby today some points in the bill which we think require clarification to avoid practical operating complications and difficulties.

Thank you again for writing to me.

Sincerely,

H. H. CURTICE.

That is actually the purpose of these hearings. We have ascertained support for the bill but wish to have operating difficulties removed.

As you know, we don't set our ideas in concrete. We try to be flexible so that what we do will have a workable and practical effect, and without creating too great expense on the industry or to cause any economic dislocation in the flow of commerce.

We appreciate very much your appearing in person, Mr. Hufstader. You represent your industry. I wish you would proceed in your own way.

**STATEMENT OF W. F. HUFSTADER, VICE PRESIDENT IN CHARGE OF THE DISTRIBUTION STAFF AND DEALER RELATIONS SECTION OF GENERAL MOTORS CORP., ACCOMPANIED BY A. F. POWER, ASSISTANT COUNSEL FOR GENERAL MOTORS, AND L. H. BRIDENSTINE, ATTORNEY**

Mr. HUFSTADER. Thank you. May I suggest that I go right straight through this statement and then come back for any questions you might care to ask.

Senator MONRONEY. Yes. Let me thank you for moving up the time to 1 o'clock. I am 1 of the 3 members of the Senate conference on the Post Office rate bill. While automobiles are extremely important, the question of the price of a postage stamp is also pretty important.

Mr. HUFSTADER. It adds up.

I am William F. Hufstader. I am vice president in charge of the distribution staff and dealer relations section of General Motors Corp.

I am appearing before this committee to present the position of General Motors Corp. with respect to Senate bill 3500.

At the outset, I should like to make it clear that we are opposed to Government regulation of prices in a competitive market. However, we are convinced that this legislation, which involves the disclosure of price information to the public, but still leaves the dealer free to establish his price and to negotiate and determine any trade-in allowance on a used car, can make a real contribution to the reestablishment of sound business practices in our industry.

We are all aware of the conditions which have developed in the industry in the last few years as a result of price packing. These conditions have become progressively worse. Today the customer, who desires to purchase a new motor vehicle, is confused as to the true asking retail price for a motor vehicle, the aggregate price of which may be made up of many items.

In March of 1956, Mr. Curtice, president of General Motors Corp., urged that the industry abandon price packing. He characterized it as the slight-of-hand practice of making an overallowance on the used car taken in trade and, at the same time, increasing the true or real asking price for the new car by the amount of the overallowance. He likened it to misleading and deceptive advertising.

The elimination of price confusion cannot be accomplished by the manufacturer alone. However, this legislation which provides for the disclosure of price information to the public without restricting price competition among dealers would either result in the elimination of the price pack or in a disclosure of sufficient information to enable the customer to determine the amount of the price pack and consequently the true cost of the motor vehicle to him.

Senate bill 3,500, as introduced on March 17, 1958, contains several provisions or clauses which we feel should be discussed in an effort to avoid a number of practical operating problems which will arise in the normal business operations of both the manufacturers and the dealers under the bill as proposed. We believe that changes can be made which will meet these problems without material effect upon the proposed legislation or the accomplishment of its intent and purpose.

Considering the specific provisions of the bill, section 2 (c) defines the term "automobile" as including any passenger car, station wagon, bus, truck, trailer and semitrailer, and a chassis and body for any of the above vehicles when they are delivered as separate units.

We believe that this definition of the term "automobile" should be amended to eliminate buses, trucks, trailers and semitrailers, as well as chassis and bodies for such vehicles when they are delivered as separate units. Such an amendment would limit the definition of the term "automobile" to passenger cars and station wagons.

With respect to trucks, the display on a label, of pricing information, particularly with respect to options, would be impractical. Since trucks are purchased to meet specified performance requirements, the manufacturer makes available a substantial number of regular production options covering such basic items as axles, brakes, frames, transmissions, generators, shock absorbers, wheels and tires, as well as a number of special options to meet particular requirements.

Furthermore, such information would be of little value to the truck purchaser who may have already placed a signed order with the dealer including an agreed-upon price, before the vehicle is delivered by the manufacturer to the dealer. As to trucks purchased by a dealer for display and inventory, and not against specific retail orders, options may be substituted and changes made in the original vehicles to accommodate the specific requirements of individual purchasers.

With respect to interstate and transit buses, these units are not sold to dealers but rather are sold by the manufacturers directly to users. Bus operators know exactly what they want and negotiate directly with the manufacturer on the purchase price. Such being the case, the requirement of a label showing the basic price of the vehicle would serve no useful purpose.

Schoolbuses as such are normally not carried in inventory by dealers. When the dealer has a need for a schoolbus, or buses, he generally purchases a chassis from the motor vehicle manufacturer and has it delivered to a schoolbus body builder for installation of the body. Thus the schoolbus is ordered by the dealer after negotiations with the purchaser as to the purchaser's needs, the availability of the right kind of equipment, and after the establisment of the purchase price.

Trailers and semitrailers, in certain respects, fall into the same category as trucks and buses.

Finally, in our opinion, in connection with the sale of trucks, buses, trailers and semitrailers, including the chassis and body thereof, delivered as separate units, the customers do not have the same problems in determining the actual prices being paid, as the customers purchasing passenger cars—certainly not to the same extent or in the same degree. Furthermore, customers for these products are generally knowledgeable buyers who have sufficient experience and information

about the business to determine quite accurately the real prices being paid.

Section 2 (d) of Senate bill 3500 defines the term "new automobile" as meaning an automobile the title to which has never been registered under the laws of any State, Territory, or possession of the United States or of the District of Columbia, or under the laws of any foreign country or political subdivision thereof, by any person other than the manufacturer of such automobile in his capacity as the manufacturer, the importer of such automobile in his capacity as the importer, or a dealer in his capacity as a dealer. It would therefore appear that the determination as to whether an automobile is used is predicated upon the title of the vehicle having been registered or not having been registered under the title laws of any State, Territory, or possession of the United States or the District of Columbia or under the laws of any foreign country or political subdivision thereof. Since several States do not have so-called title laws, and never issue certificates of title, motor vehicles acutally sold at retail and registered for use and operation in such States, might not be considered "used" motor vehicles under a technical interpretation of this provision.

While there are undoubtedly several possible definitions, we offer for your consideration the following:

**The term "new automobile" means an automobile, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to any purchaser for purposes other than resale, or which has never been registered or licensed under the laws of any State, Territory, or possession of the United States, or of the District of Columbia, or under the laws of any foreign country or political subdivision thereof by a manufacturer, distributor, or dealer.**

Under such a definition, if a manufacturer registers or licenses a motor vehicle under the laws of any State, then the vehicle becomes a "used vehicle" rather than a "new automobile." Furthermore, under this definition a person could not register a motor vehicle in his own name or in the name of a third party solely for the purpose of having the the motor vehicle classed as a "used vehicle"—and thus remove the label and then sell the motor vehicle at retail, representing it as a new motor vehicle.

Section 2 (e) defines the term "dealer." We believe that this definition should be broadened to include distributors. This can be accomplished by substituting the words "dealer or distributor" wherever the word "dealer" appears in the bill. From the point of view of General Motors Corp., such a change is desirable since its Cadillac motor car division sells motor vehicles to both distributors and dealers. The former sell such motor vehicles at wholesale to dealers and also at retail.

Section 2 (f) defines the term "final assembly point." Inasmuch as we are recommending a change in section 3 (e) (3) to eliminate the phrase "from the final assembly point," as I will explain later, we recommend that this paragraph (f) of section 2 be deleted entirely.

Several questions are presented by the provisions of section 3. It is to be noted that the first paragraph of this section requires the manufacturer to—

**firmly affix to the windshield of such automobile a label on which such manufacturer shall endorse indelibly true and correct entries disclosing the following information—**

It is our recommendation that the manufacturer be authorized to affix the label either to the windshield or to a side window of the automobile. This suggestion is intended to accommodate those instances where State laws regulate the pasting of stickers on windshields. It would also eliminate any possible hazard which might arise out of a windshield label affecting the driver's visibility while a car is being driven.

We also question the use of the term "endorse indelibly" and would suggest in substitution therefor a phrase such as "clearly, distinctly, and legibly" so there will be no question as to the type used and the method of putting the information on the label.

With these changes, the first paragraph of section 3 should read as follows:

**Every manufacturer and importer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, securely affix to the windshield or side window of such automobile a label on which such manufacturer or importer shall endorse clearly, distinctly, and legibly true and correct entries disclosing the following information.**

In reviewing the information which is to be endorsed on the proposed label, we note in paragraph (a) of section 3 the requirement that the label include "the name, make, model, and serial number of such automobile." Because the words "name" and "make" are synonymous, we suggest that the word "name" be eliminated. We also recommend that this paragraph provide for the inclusion of the serial number or motor vehicle identification number.

We also suggest that paragraph (b) of section 3 be eliminated entirely. This paragraph requires that the label show the "final assembly point" of the automobile. There does not appear to be any purpose served by showing the "final assembly point" of each automobile and it could be confusing if, as happens on occasions, delivery of a motor vehicle or motor vehicles is made to a dealer from an assembly plant other than the one located nearest to him. Also, in considering transportation costs, namely, destination charges, the "final assembly point" is not important since destination charges are established with the home plant as the f. o. b. point.

Paragraph (c) of section 3 requires that the label include the "name of the location of the place of business of the dealer to whom such automobile is delivered." It is our suggestion that this section be changed to read as follows:

**The name of the dealer to whom such automobile is to be delivered and the name of the city or town at which it is delivered to such dealer.**

Some cars are delivered to distributors who will sell them to dealers operating under the distributor. If, as happens on many occasions, automobiles are delivered directly to a dealer under a distributor at the distributor's request, the label would then show the vehicle as being delivered to the distributor at the city or town where the dealer is located. Moreover, this modification would accommodate those instances where dealers take delivery of vehicles at warehouses operated by several divisions of General Motors Corp. in different locations throughout the United States.

The divisions of General Motors Corp. deliver their passenger cars and station wagons to distributors and dealers either by motor carrier, rail, or boat. We see no advantage in disclosing which method of

transportation is used, as required by paragraph (d) of section 3, particularly, since the destination charges are not based on the method of transportation used.

With respect to the information set out in subparagraphs (1), (2), and (3) under paragraph (e) of section 3, we wish to make the following comment:

The price to be shown under subparagraph (1) should be the retail price of such automobile "suggested by the manufacturer or importer" rather than the retail delivered price of such automobile suggested by the manufacturer. The bill as written does not contemplate that freight shall be included in the retail price suggested by the manufacturer as is quite apparent from the provisions of subparagraph (3) of paragraph (e) of section 3 which provides that the transportation charge be set out separately. We, however, believe that the retail price of the automobile suggested by the manufacturer should include the list price, a charge for reimbursement of Federal excise tax, and the manufacturer's suggested dealer delivery and handling charge. This would mean that the label should have an endorsement that the retail price of the automobile suggested by the manufacturer "includes reimbursement for Federal excise tax and suggested dealer delivery and handling charge."

The provisions of subparagraph (2) of paragraph (e) of section 3 include the phrase "accessory or appliance." The word "appliance" is not commonly used in referring to motor vehicle equipment. We suggest that the word "option" be substituted for "appliance."

Subparagraph (3) of paragraph (e) of section 3 provides that the label shall include 'the amount charged to such dealer for the transportation of such automobile from the final assembly point to the place of business of such dealer."

On deliveries from outlying assembly plants General Motors Corp. does not charge its dealers the freight from the plant to the dealer's place of business. General Motors charges the dealer a "destination charge" which represents a charge to the dealer made by General Motors for transporting the car to the dealer's place of business. Under this method the total amount received by General Motors from dealers in assembly plant areas is no more than the excess cost of assembly plant operations, including the cost of transporting the necessary component parts to outlying locations for assembly, and the cost of shipping the finished cars from outlying assembly plants, to the dealers, by whatever method used. The home plant areas do not derive any benefit from the net cost savings resulting from assembly plant operations. Mr. Frederic G. Donner, executive vice president of General Motors Corp., during his appearance before this Senate Subcommittee on Automobile Marketing Practices on Friday, March 9, 1956, explained "destination charges" as used by General Motors Corp., and we direct this committee's attention to that presentation if there is any question regarding the matter.

In view of this practice of charging dealers a "destination charge," it is our recommendation that subparagraph (3) of paragraph (e) of section 3 be rewritten as follows:

**The amount charged to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer.**

Section 4 (c) of Senate bill 3500 should be broadened to cover the situation wherein the manufacturer repurchases an automobile from

Mr. HUFSTADER. Precisely.

Senator MONRONEY. On the matter of endorsing and the method of printing, I rather like your suggestion that we modify that to read "clearly, distinctly, and legibly," but I think we still would need some language to provide not subject to alteration, because we have gone through——

Mr. HUFSTADER. That would be all right.

Senator MONRONEY. Gone through testimony that the "smiling Slobovian" brings out a "factory invoice" to prove to the customer that the invoice price really is a thousand dollars more. We are dealing in an area that is going to be quite important to avoid falling into any entrapment that would lead to the continued abuses of these things.

Mr. HUFSTADER. That was more or less a technical detail, Senator.

Senator MONRONEY. Yes. And I think perhaps you are absolutely right about running afoul of State laws on windshield stickers. Some of these cars, if they are transported 50, 75, or 100 miles, even driven by the dealer from the final assembly point to the place of delivery, might be in violation of State laws in certain areas.

Our main purpose in putting it on the windshield is we wanted it where everybody would have to see it and not put it under the frame—some place that would escape the attention; so, identification on the side window could perhaps do that.

One thing that worries me about your testimony a little bit is on the matter of the method of delivery: The purpose of this goes back, as you well know, to when this disclosure idea came into being some 3 years ago as a method of preventing bootlegging of driven and towed cars. For that reason we were trying to look ahead to that gay time when the automobile business might again be so prosperous as to find bootlegging a problem.

You do not have much bootlegging when they are difficult, indeed, for even the dealer to sell.

We will try to work out, as best we can, the language.

We are not interested in the actual freight. We are interested in the delivery charge being clearly shown, and we are not too interested in the final assembly point. But we do want to clearly provide that a car that is driven from the factory to the destination has to be identified to avoid this difficulty that we ran into with the low freight in Detroit being a source of bootlegging cars, even as far west as Los Angeles.

Mr. HUFSTADER. Isn't it the fundamental purpose, though, Senator Monroney, a price disclosure and with the tag visibly displayed, so that identification of it would give the customer enough information for him to know how the car came to the dealer or to know whether he is buying from an authorized dealer or not?

Senator MONRONEY. This is a different safeguard and a different step. I mean, if he bought a car in Los Angeles that was sold originally to a dealer in New England, he probably would be alerted. But I still feel that perhaps it might be better to maybe lump under a common title your convoy, railroad, or ship into some type of public transportation to avoid trying to complicate the legislation by requiring you to say whether it went by convoy or by train. You probably do not know from day to day how these cars are going to be transported.

Mr. HUFSTADER. It varies by zone.

Senator MONRONEY. We are not trying to add complications; we would like to remove them. I still hope we can find some way in the bill to separate the new car from the used car, because the car that has been driven across the country and a towed one is not a new car.

The matter of the Federal excise—your proposal, as I understood it, would be that the factory list price would include the excise tax to the dealer. I would say factory list price includes Federal excise tax; is that correct?

Mr. HUFSTADER. Federal excise tax, dealer delivery and handling.

Senator MONRONEY. The dealers are the ones, however, that have been rather insistent on setting out how much his automobile cost and how much is Uncle Sam's taxload. As an automobile purchaser, I would welcome that.

I mean, all the cars must bear the same excise tax, if there is one—we hope there will not be one with the new model year.

Mr. HUFSTADER. We share your hope.

(Laughter.)

Senator MONRONEY. Because I feel that it is an undue sales tax burden, since we tax gasoline and tires and all the other things that go into the car after it is in the consumer's hand. Perhaps it would be one of the great recession-arresting things that we could do if we suspended this tax for 12 months and see what would be the result.

We think maybe by 12 months' suspension more people will rush in, because it might be 10 percent higher if Congress decides to allow it to go back into effect at the end of 12 months. In that way, maybe we can stimulate the 12 months' sale, and if it works out well, why, we could continue that. I have had that suggested by some of the automobile dealers; in fact, they suggested that is the way they would prefer it.

I just feel that for the benefit of the public, setting out the tax makes the buyer conscious of perhaps overcharges in taxes, and if we are going to try and clean up bad practices or misrepresentation in the automobile industry, maybe we ought to do it in our own industry, which is the industry of taxation. That is one of our functions. And perhaps by setting clearly out what the excise tax is, you would have a better chance then to let the public know what they are paying for the automobile and what they are paying to Uncle Sam.

Mr. HUFSTADER. The problem it creates, Senator Monroney, is one of practical operation. The Internal Revenue Code states that whenever you use the word "excise," you have to use the precise tax on each individual automobile. To accomplish that is a gigantic technical problem, because of all the variations and combinations that go into making up an automobile, and also the fact that with the excise tax is figured the tire weight tax and, so, the excise tax is computed by us on an average basis as closely as we can follow it.

For example, the inbound freight is involved in that and we do not know what that is actually until the end of the month. So, we average it on experience.

We, in General Motors, have used mostly the term "EOH," which is purely a piece of nomenclature—and don't laugh.

Senator MONRONEY. What does that translate to?

Mr. HUFSTADER. Excise overage haverage. Yes, haverage is an old English insurance expression, and as I said at the outset, it is a piece of nomenclature to represent the reimbursement for excise tax. That is purely our point on it.

Senator MONRONEY. That all refers to the overage on the tax?

Mr. HUFSTADER. It all refers to the reimbursements for excise tax. The tire weight tax is involved in that calculation.

Mr. POWER. It is an average, not specific. It is not exact to the penny.

Senator MONRONEY. Does that include, however, any other charge other than the tax account? Is there any overage that results? I was told on rather reliable authority that the EOH charge, as practiced by most manufacturers, includes not just the simple coverage of the excise tax, but under the general inherited customs that has grown up in the automobile industry when largely automobiles were loaded into freight cars and you had to build in the wooden structures to double deck them and to rack them in the car—that that was also a figure that was included in this EOH charge and that today under present shipping conditions that charge is not a real charge but is just one that has been carried over through the years.

Mr. HUFSTADER. I do not think that that pertains, Senator.

Senator MONRONEY. It does not pertain in General Motors?

Mr. HUFSTADER. No, sir.

Senator MONRONEY. That your EOH charge is strictly a——

Mr. HUFSTADER. It is as close an average as can be worked out, very carefully calculated, and a very complicated problem.

Senator MONRONEY. If the committee would decide—I think we would like to identify the amount of dollars that do not go into the automobile; in other words, we are trying to get an honest price of the car.

Mr. HUFSTADER. Yes.

Senator MONRONEY. And to lump that excise tax in, we are packing that with a tax bill. I mean you are part tax collector for Uncle Sam and you are part automobile manufacturer.

Mr. HUFSTADER. That is right. If you can work out and give us the proper language——

Senator MONRONEY. So you will have the latitude that you do not have to hit the split penny.

Mr. HUFSTADER. Right.

Senator MONRONEY. But it is the average on that particular type model or something. That would be——

Mr. HUFSTADER. If you don't like this EOH, maybe you could get a better one.

Senator MONRONEY. I could not figure that one out. I do think the principle setting out the tax thing—it has been raised by the dealers and I think the consumers would like to know how much is tax and how much is automobile. Then, we come more to an honesty in advertising that this is the factory list price and that United States tax is extra.

Now, we cannot, as someone suggested, put in the local taxes, because they vary in the 48 States and would make the thing too complicated.

Mr. HUFSTADER. If your hope is fulfilled, however, this point is academic.

Senator MONRONEY. We would like, if you have any suggestions, we would welcome them on how we could write language.

Mr. HUFSTADER. Well, if that nomenclature is not adequate, maybe they can work on something. As I have said, the Internal Revenue Code dictates that when you use the expression "excise tax," you have got to be right to the penny.

Senator MONRONEY. We could say approximate taxes.

Mr. HUFSTADER. Approximate reimbursements. In the case of Chevrolet division alone, it is estimated that to do this and calculate it on each individual automobile, it would cost us a million dollars a year.

Senator MONRONEY. We would not want to do that, but we do feel that the general approximation of the tax would be valuable to the customers.

Mr. POWER. Even if you calculated the exact tax, if the dealer, as frequently happens, gets the car from two different assembly points, your excise tax will be different. So, the customer would see a different excise tax on two cars that are identical, the point being the place of shipment. That enters into the calculation of excise tax, the destination charge does.

Senator MONRONEY. As I understand this bill, Mr. Hufstader, we would have the factory suggested list price, f. o. b. Detroit, f. o. b. basing point.

Mr. POWER. The home plant.

Senator MONRONEY. The home plant would be X dollars, approximate taxes withheld.

Mr. POWER. Approximate reimbursement for taxes.

Senator MONRONEY. That would be shown there. The itemized list of the accessories added——

Mr. POWER. There is one more point in there, the dealer delivery and handling allowance.

Senator MONRONEY. The dealers are pretty anxious to show that separately.

Mr. POWER. That is all right.

Senator MONRONEY. Various factories have various different handling costs.

Mr. POWER. That is right; varied by different series within a line of car, within a make of car.

Senator MONRONEY. That is right. Cadillac would probably be more than Chevrolet and for that reason——

Mr. POWER. That is right.

Senator MONRONEY (continuing). Since we have had some testimony, we would like to set out the dealers' handling charges and delivery charges separately. The list of accessories would be listed, and then with the price of that with the approximate tax on the block of accesories mounted on the car.

Mr. BUSBY. Sir, I think in the bill that is together, the accessory tax is in with it, is it not?

Senator MONRONEY. Is it included?

Mr. BUSBY. Yes.

Senator MONRONEY. If you are going to be a purist on it, you should perhaps set it out, because you can hang a thousand dollars worth of accessories on a car pretty easily these days.

Mr. BUSBY. You have a retail delivered price suggested by the factory for each accessory physically attached to the automobile at the time of its delivery to such dealer.

Senator MONRONEY. It did not include the tax. Then, we could, by another line, Mr. Busby, add the total approximate tax on the accessories. You have got them all listed.

Mr. BUSBY. Well, let's get Mr. Hufstader's suggestions on that.

Mr. HUFSTADER. We have here this. The first item would be manufacturers' list price; the second item, EOH.

Mr. POWER. Or whatever you call it.

Mr. HUFSTADER. Whatever nomenclature. The third item is suggested dealer delivery and handling, D&H. That would be totaled to be "the manufacturer's suggested price." Then, your accessories that you are speaking about now would come after that, and if you wanted to delineate the reimbursement for tax, do it on the accessories the same as you do on this.

Mr. BUSBY. Do you think that is wise, sir?

Mr. HUFSTADER. It is only an added complication.

Mr. BUSBY. Would it be a very difficult thing for a company——

Mr. HUFSTADER. Yes; it would be very complicated.

Mr. BUSBY. More so than the other?

Mr. HUFSTADER. You are involved in the same process of operation. You see, adding this tag on would be a cost, too, and they are important these days as always; so, what we are trying to get at, Senator, is to try and satisfy the purpose of the bill.

Senator MONRONEY. That is right.

Mr. HUFSTADER. To which we thoroughly agree as practically as we can.

Senator MONRONEY. That is the desire, to make a bill workable and to not increase the number of operations necessary to carry this into effect.

It would seem to me—if we do show the approximate tax on the car—then we ought to go forward and show the approximate tax on the list of accessories. If you list those accessories, which you do under this bill, individually and then you total them, as I understand it, then it would be easy to take 10 percent of that as the approximate tax because they all carry a 10 percent——

Mr. BUSBY. There would be a shipping tax on the accessories, too, that would have to go into excise tax.

Senator MONRONEY. That comes in shipping, that goes as the car.

Mr. HUFSTADER. Mr. Bridenstine points out we have the EOH that is calculated on each accessory. Once that is calculated they would add—what we are saying is, if you have got a group of accessories—let's assume for the purpose of the point you have a half-dozen accessories. You have a heater——

Senator MONRONEY. Radio.

Mr. HUFSTADER (continuing). Radio, and so forth and so on. Their price is such and such and their EOH adds up to such and such.

Senator MONRONEY. It wouldn't be too difficult, if you are going to list the accessories separately, to put the approximate tax on it.

Mr. HUFSTADER. Not while you are at it. Again I underscore, give us the flexibility of proper nomenclature so we don't have to deal right down to the last penny, and we can average close enough.

Senator MONRONEY. I would like it to be an identifiable term rather than EOH.

Mr. HUFSTADER. Reimbursement.

Senator MONRONEY. Excess, overage; people in Oklahoma would say, "He sure has gone fancy."

Mr. HUFSTADER. Senator, last night the driver that drove us over I think made a statement that will fit this perfectly. He says every now and then somebody has to be wrong to prove the Bible right.

[Laughter.]

Senator MONRONEY. I like your suggestion to change "appliance," because you would have to start putting washing machines and refrigerators in the car to make the accessory optional. I believe that would be a little more definite.

Mr. HUFSTADER. Yes; that encroached on sovereignty, I bet.

Senator MONRONEY. The "destination charge" that you mention—that is, the 'transportation charge" that is averaged out so that this thing you do to save the customer millions of dollars in abandoning phantom freight, would be the averaged-out "transportation charge." I think this would be better or more easily identifiable than to call it a "destination charge," although the "destination charge" may be clear to the people who make the cars.

I think to the customer they are still a little bit confused if you refer to it as a "destination charge."

Mr. HUFSTADER. Well, our suggestion there, Senator, covered the amount charged to such dealer for the transportation of such automobile.

Senator MONRONEY. I think that would probably suffice.

I think in section 4 (*c*), which you suggest might make difficult what you now do in relieving a dealer of overstocked merchandise and take it back in and give it to a dealer who needs that type of car. I think this has been a very salutary improvement over the past years.

I believe that could be taken care of easily in the report. If not, we would be glad to include that in the bill because, whenever the car goes back to the manufacturer and is resold to a customer, he should have the right to affix a new factory price to it. I see no chance of evasion.

I agree a thousand percent with you that we ought to have this ready, if we can, by the new 1959 model year, and I believe it would make for less confusion, if we could have a date such as you have suggested. We were relying on the 6 months to be sure we didn't overly crowd the automobile manufacturers on this, but the quicker we can reach it, and most of the dealers who testified estimated that, if it was ready by the 1959 model year, it would be the ideal place for a changeover.

We are hopeful that this might be one of the things that will aid greatly in the recovery of the No. 1 business. I am always amazed at the statistics showing the impact on dozens of American basic industries such as lead, synthetic rubber, sheet steel, copper, and all the things that go into an automobile. If we could manage in some way to put the Amercan buyer back into the showroom, shopping on a basis that he could understand—and not in the stratosphere of imagined or alleged prices—we might be able to make a small contribution through this. The support of General Motors and the sup-

port of the dealers for this legislation is indeed heartening, and better than that, and beyond that, is the overwhelming support we have received on this from the customers.

Again, let me assure you that in the minds of the committee this is not, by the longest stretch of the imagination, a price-fixing bill; it is merely a list-price-disclosure bill. The bargaining begins when the customer walks in, and he at least has some point from which he can start bargaining on what the price of his used car is worth.

I believe this disruptive practice of price packing has led to the loss of character, respectability, reliability, and responsibility in the automobile industry. There has grown up under a situation that has concealed the most important thing about an automobile from the buyer, and that is what the darn thing is worth, or what the manufacturer says it is worth in his list price.

Do you have any further questions?

Mr. BUSBY. No, sir.

Senator MONRONEY. Again we are appreciative——

Mr. POWER. May I?

Senator MONRONEY. Yes, sir.

Mr. POWER. May I ask if we could think over, over the weekend, and perhaps get a letter or a statement in the first of the week, on these points that you have raised just to be sure. We would like to check with our people on the excise tax on accessories, to see just how well it can be handled in line with your suggestion.

Senator MONRONEY. Yes.

Mr. POWER. The second thing is I am a little afraid of using the word "transportation charge." The public might think it was the actual charge. That has been one of the reasons why we went to the term "destination charge" before. Maybe that is the one to use now, but we want to make it clear that they wouldn't expect that it is the actual freight.

Senator MONRONEY. You mean that this paragraph should be rewritten, and I am in agreement with you. The amount charged the dealer for the transportation of such automobile to the location to which it is delivered to such dealer. And I think the transportation charge, or any other language, but I think the word "transportation" rather than destination is more clearly identifiable to the average buyer.

Mr. POWER. That is all right, as long as it reads "the amount charged for transportation." If it says transportation charge, it could be misleading.

Senator MONRONEY. We understand. I don't know how many of the buyers know this is an average transportation charge and the result of a lot of work by this committee of getting the abandonment of the old phantom freight that bore no relationship whatever to the distance from the factory and a lot of other things.

Mr. BUSBY. We understand that the charge now, transportation, destination charge, is within a few dollars of what it costs to go from the assembly plant to any given area. Is that still true?

Mr. POWER. On the overall average, not specifically on each one. You will find that in Mr. Donner's statement, as to how that was accomplished to establish that purpose.

Mr. HUFSTADER. That was the statement he made before.

Mr. BUSBY. It still applies.

We have some recent letters from dealers on this very thing.

Mr. POWER. That has been due to increases in freight, not to any change in the policy or price. We wrote you a letter on that.

Mr. BUSBY. May I insert that letter?

Senator MONRONEY. Yes.

Mr. BUSBY. We had a letter placed in the record regarding this, and this is an answer from Mr. Curtice, who is president of General Motors Corp., explaining why freight has gone up in some areas. It might be good to have that.

Senator MONRONEY. Yes; put it in the record at this point.

(The letter referred to is as follows:)

FEBRUARY 26, 1958.

Mr. HARLOW E. CURTICE,
*President, General Motors Corp.,*
*Detroit, Mich.*

DEAR MR. CURTICE: The Subcommittee on Automobile Marketing Practices has received several inquiries in the last 6 months regarding freight charges on automobiles being increased by your corporation. Typical of these comments is the following: "After the 1955 subcommittee of the Senate concluded their investigation into the practices of General Motors Corp., and other automobile factories, they immediately reduced our freight on new cars from the phantom rate to the proper destination charge. This reduced our freight on an average of from $144 to $96. However, since that time which was about February 1956, we have had 2 freight increases and the freight is now back up to about $113.50. In other words, they keep slipping up gradually until we will be right back up where we were before."

In order to get the full story on this matter I would appreciate your comments.

Very truly yours,

A. S. MIKE MONRONEY,
*Chairman, Automobile Marketing Practices Subcommittee.*

---

GENERAL MOTORS CORP.,
OFFICE OF THE PRESIDENT,
*Detroit, Mich., March 13, 1958.*

Hon. A. S. MIKE MONRONEY,
*Chairman, Subcommittee on Automobile Marketing Practice,*
*Committee on Interstate and Foreign Commerce,*
*United States Senate, Washington, D. C.*

SIR: Your letter of February 26, 1958, requested our comments regarding the changes in destination charges that have occurred since we appeared before the Subcommittee on Automobile Marketing Practices on March 8 and 9, 1956, at which time we stated that: "The total amount received by General Motors from customers in assembly plant areas is no more than the excess cost of assembly-plant operation, including the cost of transporting the necessary component parts to outlying locations for assembly, and the cost of shipping the finished cars from the outlying assembly plants to the dealers. Thus, the economic benefits derived from the operation of outlying assembly plants are now being shared only by the customers served by these plants. So-called phantom freight is eliminated for these customers, taken as a whole. By the same token, the home-plant areas no longer derive any benefit from the net cost savings resulting from assembly plant operations."

In line with this policy, destination charges were established by formula which provided for charging customers actual transportation costs in the home plant areas and a maximum destination charge beyond a line about 1,600 miles from the home plants. Intermediate area charges were based on the charge at the home plant boundary, plus a percentage of the intermediate area rail freight cost. The policy, which was explained to your committee at that time, continues in effect, and the foregoing statement is still applicable.

Since February 27, 1956, when this policy was put into effect, actual freight rates and vehicles weights have increased, with resulting increases in transportation costs. As an example, in the case of Chevrolet the transportation costs have increased approximately 18 percent. The destination charges for Chevrolet

have been increased to give effect only to actual increases in rail- and truck-freight rates (filed by the carriers with regulatory bodies) and car weights. A location which required a $95 destination charge in 1956 would require about $112 today.

The comment contained in your letter does not provide sufficient information to permit identification as to the dealer location. However, you will note that the increase cited is in line with the changes in freight rates and weights as shown in the above example.

Very truly yours,

H. E. CURTICE.

Senator MONRONEY. We had testimony yesterday from 8 Oklahoma dealers that since 1955 there has been a mortality of over 600 in the State of Oklahoma. Could you give us a breakdown to show the attrition that has taken place during this period of jungle-type merchandising? I think it would be helpful. We are not trying to spell out how many GM or Chrysler or Ford or American Motors dealers have gone out—that will not be included as an itemized list of dealerships.

Mr. HUFSTADER. What period would you want that for, Senator?

Senator MONRONEY. I would say about 1955 if we could.

Mr. HUFSTADER. Say we get the number of dealers in the State of Oklahoma at the end of——

Senator MONRONEY. No; not Oklahoma. I have the Oklahoma figure, but for the Nation. We pledge you it will not be revealed between companies—I mean, as to where it would be a matter of advertising or circulation within the trade. We would like this figure assembled as to the total dealer mortality, liquidation—most of them have been liquidations rather than bankruptcies where a man has become not only discouraged at his lack of profit margin, which, as you know, is down to seven-tenths of 1 percent, but also with the merchandizing methods.

In talking to the dealers all over the country, I find that the loss of respectability in being forced to pack prices has led to a great disgust on their part to continue on in an industry that has had to adopt the practices of the lowest common denominator in order to move automobiles.

Mr. HUFSTADER. You say the dealer count at the end of 1955 and at the end of 1957. We can only give you that as far as we are concerned for General Motors.

Senator MONRONEY. That is all we expect. It will be kept in strictest confidence as to the various factories. We would like to have, however, not the total, because the total may not be reflective, but the ones who have gone in and out of business, you see, if that would be possible. We don't want to add an undue burden. But we have been trying to get that. We asked for it from the NADA and they find it rather difficult because there has been so much turnover, but no factual records.

Mr. HUFSTADER. If you want it classified by termination——

Mr. POWER. The reason for termination. That is the only way you can find out the ones that went out. Some go out for death or other reasons. So you would really have to have——

Mr. HUFSTADER. In direct answer to the statement that was made why the dealers go broke and go out——

Mr. POWER. Or give up.

Senator MONRONEY. Or give up, that is the thing we are after, the bankruptcies and those who give up.

Mr. HUFSTADER. We will endeavor to do that for those two periods.

Senator MONRONEY. It will be kept confidential between the various lines. We are not after anything except an aggregate figure which, if it discloses, as this figure did yesterday, that 600 little businesses have started, and have had to throw in the sponge, and have been the victims of this, it might help us to convince some of the people in Washington that they have been straining at a gnat and swallowing the camel in regard to denying very small aids in orderly merchandising under the guise of antitrust laws—while they have done absolutely nothing to prevent the bigger and bigger concentration of business under the very laws that they are stretching so much to knock out small measures that would provide for orderly marketing.

If we could have that figure it would be appreciated, and it will be held in strictest confidence.

Mr. HUFSTADER. We will endeavor to get it for you.

Senator MONRONEY. We would appreciate it. Thank you again for the courtesy of coming down here. The fact that the vice presidents of the three great automobile companies have felt this bill is important enough to the industry and to the recovery of the industry to come in person instead of mailing a statement is very heartening, indeed.

Mr. HUFSTADER. We very definitely feel that way and we are very happy to be here and endeavor to be helpful.

Senator MONRONEY. Thank you very much, Mr. Hufstader.

Our next witness is Mr. Walker A. Williams, a vice president and vice chairman of the dealer policy board of Ford Motor Co.

Mr. WILLIAMS. May we have a 5-minute recess, Senator.

Senator MONRONEY. Yes.

(A brief recess was taken.)

Senator MONRONEY. The Subcommittee on Automobile Marketing will resume its sitting.

We are glad to have representing the great Ford Motor Co., Mr. Walker A. Williams, vice president and vice chairman of the dealer policy board of the Ford Motor Co.

We appreciate very much your coming in person, because the testimony and the reaction to this price disclosure bill has aroused a great deal of public interest, and in some quarters, at least, the impression got out that the manufacturers, were less than enthusiastic about the disclosure of the list pricing, so the presence of yourself and Mr. Hufstader and the vice president, Mr. Jacobson, of Chrysler, here has been very heartening to the committee.

You may proceed in your own way, Mr. Williams.

## STATEMENT OF WALKER A. WILLIAMS, A VICE PRESIDENT AND VICE CHAIRMAN OF THE DEALER POLICY BOARD OF FORD MOTOR CO., ACCOMPANIED BY RICHARD B. DARRAGH, ASSOCIATE COUNSEL, FORD MOTOR CO.

Mr. WILLIAMS. Thank you, Senator.

This is Mr. Richard Darragh, associate counsel of the company.

My name is Walker A. Williams. I am a vice president and vice chairman of the dealer policy board of Ford Motor Co. I appreciate

the opportunity to appear before this committee to express our views on Senate bill 3500.

We at Ford Motor Co. share the concern of the members of this subcommittee about the increasing uncertainty and confusion in the distribution of automobile engendered by the abuses associated with price packing, false and misleading advertising, and new car bootlegging, among other things. We constantly have been and are seeking ways and means to eliminate them.

As we understand Senate bill 3500, it represents primarily an effort to assure that every automobile customer has a ready means of ascertaining the manufacturer's suggested retail delivered price of the particular car that he is interested in buying. By the labeling requirements of the proposed legislation, it is hoped to dispel confusion and lack of knowledge on the part of the consumer and to minimize, if not eliminate, the advertising extravagances indulged in by some automobile dealers.

May I say at the outset that we are in full accord with these objectives. In our opinion, lack of knowledge and confusion as to prices, and extravagance and deception in advertising claims, detract from the informed and orderly marketing of automobiles. We think that informed and orderly marketing of automobiles is important not only to the buying public, but to the dealer and the manufacturer as well. More importantly, we believe that it also contributes to the maintenance of a high volume of automobile sales, which is essential to the health of the economy as a whole.

Before offering our general views with respect to Senate bill 3500 and its probable effects on our industry as we see them, I should like to comment on specific features of the bill. Certain of my comments in this respect are tendered only in the interests of clarification; others are of a more substantive nature.

First, with respect to the information that would be required to be included on the proposed windshield label under section 3 of the bill, the language employed in subdivision (2) of subsection (e) would pose, for our company at least, some technical difficulties. We do not use the term "appliance physically attached" to an automobile, as is found in this part of the bill. We do use the term "optional equipment," however, which refers to such items as automatic transmissions, power steering, tinted glass, and many other features which are substitutes for standard equipment in our cars. These may be distinguished from what we call "accessories," which are additional items such as radios, heaters, and outside rear-vision mirrors, installed either at the factory or by the dealers, but which are not substitutes for equipment otherwise standard in our cars. Possibly, that which we term "optional equipment" is what the draftsman of the bill had in mind when he used the term "appliance" in subdivision (2) of subsection (e). If such is the case, appropriate clarification of the language could readily be accomplished.

Subdivision (3) of subsection (e) would require the proposed windshield label to set forth "the charge to such dealer for the transportation of such automobile from the final assembly point to the place of business of such dealer." Read literally, this provision would not apply to us, nor could it be complied with by our company, for we make no such charge. Instead, we make what we call a

"destination charge"—a charge with which we believe the members of this subcommittee and its counsel are familiar. Here again, we assume that appropriate clarification of the language of the provision would present no difficulty if it actually is intended that what we call our "destination charge" is to be included on the proposed label.

Turning now to questions of substance, the first is raised by the definition of the word "automobile," contained in subsection (c) of section 2 of the bill. By virtue of the broad meaning there given to the word "automobile," the bill, if enacted into law, would apply not only to passenger cars and station wagons, but also to buses, trucks, trailers, semitrailers, chassis, bodies, and so forth. As to this all-encompassing aspect of the bill, we doubt seriously not only the need, but the wisdom and the practicality, of applying the proposed legislation to any vehicles other than those which are generally regarded as private passenger cars, including station wagons. Most vehicles other than private passenger cars and station wagons ordinarily are sold to informed buyers who know the market, who are expected to—and do—bargain hard, and who often desire such changes and variations in standard models so that, for all practical purposes, the vehicles become custom products. Thus, in our view, there is no need for a labeling law with respect to such vehicles; and because so many of them are of a custom nature, a requirement that they be price labeled would be burdensome to the manufacturers, the bodymakers and the dealers without conferring any real benefit on the buyers involved.

The second question of substance stems from the proposed requirements in subsection (c) of section 3 of the bill that there be included on the label "the name, and the location of the place of business of the dealer to whom such automobile is to be delivered." Presumably, this provision is intended to discourage new car "bootlegging" by disclosing to the retail customer of a "bootlegged" car the name and location of the original authorized dealer to whom the car was delivered, which would put him on his guard if the original dealer were located many miles away from the lot of the used-car dealer with whom he is negotiating. In addition to this salutary effect of the provision, it is not unlikely that revealing the name of the original receiving leader on the windshield label would have an inhibiting effect on any tendency that he might otherwise have to "bootleg" the car in the first instance.

The problem raised by the provision is the repressive effect that it might have on sales of cars transferred among authorized dealers. As those familiar with our industry are aware, many cars are transferred back and forth among authorized dealers as a matter of accommodation to the dealers and their customers. With the increasing numbers of series, models, options, and accessories offered by the various manufacturers, it is not uncommon for a dealer to have an ample stock of cars in inventory, but still not have on hand the precise car that a customer wants. In such cases the customer frequently cannot, or will not, wait for delivery of a car built especially to his order. When this occurs, the dealer usually canvasses his brother dealers in the vicinity for such a car and offers to buy or trade a car he has on hand for it in order to make early delivery to the customer. Indeed, in many metropolitan centers dealers have established formal ex-

changes, where current lists of each dealer member's car inventories are kept in order to facilitate dealer transfers. In addition to transfers made for the purpose of filling current retail orders, other transfers are made among dealers for the purpose of balancing their new car stocks.

The problem created by the labeling provision in view of this dealer transfer practice is that questions may be raised in the minds of customers who are not aware of the practice and who might suspect—incorrectly—that there is something wrong with the car, or else the dealer who first received it would have sold it to one of his customers. In other words, the salability of the car might be diminished because of transfers among dealers made purely for accommodation purposes. In our opinion, this should not prove to be a serious problem, however, because most dealer transfers occur between dealers located in close proximity to each other. Thus, in most cases, no extended movement of the car is involved, and the customer has an opportunity to ascertain from the original receiving dealer the reasons, if any, why he did not sell the car to one of his customers.

The proposed requirement of the bill that the name of the original receiving dealer be shown on the label might have a more serious effect, however, on the ability of the manufacturer to reroute cars, the delivery of which the dealer, for any reason, has failed to accept, and upon the salability of new cars reacquired by the factory from terminating dealers. In the case of rerouted cars, if the manufacturer were not permitted to relabel them, the label would show the name of the dealer to whom the car was first destined rather than the name of the dealer who first received the car. In the case of terminating dealers, the manufacturer often repurchases all or a part of his new car inventory and resells the cars to other authorized dealers. The second dealer, in the case of such sales, sometimes is located far away from the original dealer. Since all of these cars are, in fact, new and unused vehicles, and since the manufacturer stands fully behind them as to warranty and otherwise, the manufacturer should be permitted in such cases to relabel the cars and show only the name of the second dealer to whom the car is shipped.

A further question of substance springs from the requirement of the bill—perhaps inadvertent—that cars manufactured for or shipped to dealers for export bear the necessary windshield label. We doubt seriously that there is any need for the price labeling of cars destined for export, and considerable confusion might be engendered if the proposed legislation were to apply to cars intended for shipment and sale abroad. Economic conditions peculiar to the countries of destination and the pricing practices of many foreign dealers, in our opinion, would render inappropriate any attempt to convey to the ultimate purchasers the type of price and other information contemplated by the bill in its present form.

There remain for consideration the possible effects that enactment of Senate bill 3500, appropriately clarified and amended, might have upon various segments of our industry, the public, and the economy as a whole.

Unquestionably, one of the beneficial effects of the bill would be to minimize the abuses associated with price packing. The position of our company on this subject was stated by our president, Mr. Henry Ford II, in hearings before this subcommittee 2 years ago, and was

repeated by him in a series of meetings later held with all of our dealers throughout the country. In these meetings, Mr. Ford said:

> We are opposed to price packing. We believe that price packing lowers the value of the product, saps the confidence of the customer and brings the self-respect of the dealer eventually to the point of no return. When these things happen, that dealer no longer is among the most valuable assets of this company. We recognize that automobile merchandising is a trading business.
>
> We know that the price pack has long been considered a prime trading requirement. Today, its abuses and extravagant proportions demand correction and we are earnestly seeking ways and means to make corrective measures effective. I recognize that the Ford Motor Co. and its dealers can't clean this situation up fully without the cooperation of the rest of the industry.

Now, we have not changed our views on this subject since they were so expressed by Mr. Ford. We believe that legislation along the lines of Senate bill 3500 not only would go far toward correcting the abuses associated with price packing, but also would tend to minimize the deceptive sales techniques and the dishonest and misleading advertising that so frequently accompanies the practice.

We would not knowingly endorse or support a legislative proposal that we regarded as contrary to the best interests of our dealers. Senate bill 3500 does not, we think, embody such a proposal.

We realize, of course, that the risks and implications of such legislation are broader than its specific objectives; that it may constitute a forerunner of broad regulatory legislation that would be contrary to the best interests of the industry and of the public. We are aware that provisions of S. 3500 would tend to inhibit the freedom of automobile dealers to quote initial prices as the circumstances might dictate, which many dealers regard as a fundamental right in view of their investment and the risks of the business, and which they believe would be desirable on occasions as a stimulant to trading, and hence to new-car sales. Finally, we know that the bill makes no provision for correcting the windshield labels in case of a price change effective after shipment of a vehicle to a dealer.

On the other hand, the legislation is directed at practices, imposed upon the industry by a relatively few dealers, that are completely offensive to the great majority of the dealers and are contrary to the public welfare and the best interests of the industry. We think it is essential that these practices be correct, if the industry is to progress and continue to serve the public interest. Neither the dealers nor the manufacturers have been able to devise measures to eliminate these practices.

I am authorized to say, therefore, that after considerable study of the bill, and discussion of it with a number of our dealers in various parts of the country, we have concluded that, on balance, the proposed legislation is desirable and in the public interest, provided that it is amended so as to eliminate the ambiguities and the technical objections that I have discussed, and meet any other valid suggestions that may come to the attention of the committee.

Thank you, Senator.

Senator MONRONEY. Thank you very much, Mr. Williams, for that splendid statement in endorsement of the purposes of the bill. We hope that through these hearings we can work out language that will accomplish the purposes of the bill, without being disruptive to normal trade practices and plans. And it is our hope that these pur-

poses can be accomplished with a minimum of dislocation in the trafficking of automobiles.

We have a very distinguished member of our committee here, the distinguished junior Senator from Maine, former Governor of that State, Senator Payne. I would like to have him take over.

He has more actual experience in the automobile field than any of us.

Senator PAYNE. I don't know, Mr. Chairman, whether that helps much or not.

I think you have gained probably more practical experience in the automobile field than some who have served on "the line."

It so happens that I am personally acquainted with the present witness. He was previously the branch manager of the Ford Motor Co. in Somerville, Mass., that used to supply automobiles to the companies in which I had the privilege of working.

Walker, I just want to ask one question. Other than the suggestions you have made with reference to wording that would fit into the particular definitions as Ford Motor Co. uses in its descriptive material, do you see anything that is objectionable in the bill, in any way, shape, or manner?

Mr. WILLIAMS. No, Senator, other than these amendments that we have suggested such as the buying back of cars. We think it would be well for the committee to consider allowing the manufacturer to relabel cars that we take back from a dealer. We think that ought to be very much in order and except for those things that we have mentioned here; no.

In fact, as you can see we are highly in favor of it, Senator.

Senator PAYNE. I think you have made a very fine statement. I agree with it.

There is one point on which I might slightly disagree with you and yet I can understand your position. You say in the next to the last paragraph, that the legislation is directed at practices imposed upon the industry by relatively few dealers who are offensive to the great majority of the dealers.

Of course, as you know, this goes back to some of the things that we worked on previously in connection with the automobile marketing practices, under the leadership of Senator Monroney. I don't think it was all actually the dealers. I think there was a lot to be said on both sides of the question, and I think there were some instances shown where perhaps the great haste and wish of the producers, perhaps to reach No. 1 position in the sale of cars throughout the country, may have had a little influence in driving some of the dealers into an awkward position.

I know that is open to argument, but——

Mr. WILLIAMS. Senator, in any event neither the manufacturers nor the dealers have been able to get together to work out these problems.

Senator PAYNE. Right.

Mr. WILLIAMS. I think this bill will go a long way——

Senator PAYNE. In other words, you would say that this subcommittee that Senator Monroney heads up and I have the pleasure of working with is serving a very useful purpose in attempting to bring together some coordination between the dealerships and the manufacturers that otherwise would not be possible to bring about?

Mr. WILLIAMS. Yes, Senator, I think our very statement in here would indicate that, because we haven't been able to do that.

Senator PAYNE. Would you believe, Mr. Williams, that it might be a very sound piece of business for the Congress of the United States to keep in constant maintenance—regardless of the membership of the present members but just as a committee—a committee of this type?

Mr. WILLIAMS. I don't know, maybe you are getting me out of my depth here, Senator. [Laughter.]

Senator PAYNE. You know me well enough, so if the question is at all embarrassing, Mr. Williams, I wouldn't want you to answer it.

Mr. WILLIAMS. I don't think it is embarrassing, necessarily. I think that probably it is human nature not to have somebody looking over your shoulder. Ordinarily, when a good bill comes along which is what we think this is, why, fine. We heartily embrace it with these amendments and changes that I have suggested here.

Senator PAYNE. I won't pursue the question any further, sir.

That is all I have, Mr. Chairman, except to say that I think it is a very good statement.

Senator MONRONEY. Off the record.

(Discussion off the record.)

Senator MONRONEY. On the record.

Certainly no member has given more faithful service and more effective contribution than the Senator from Maine has in this matter.

I appreciate the concern, naturally, of any element of our free enterprise system over governmental regulation. Certainly this committee, I think, has demonstrated, in our activities in the investigation, that we have perhaps accomplished more without legislation, than any committee in Congress in recent years has done. For that reason all three of us are in favor of the very minimal amount of governmental regulation.

But, as you have to have traffic lights to see that the traffic can move through a crowded city. This legislation, I think, is in the element of well-defined protection of the public. By advising the public of the current suggested factor price they will have a point at which the bargaining can begin.

In the old days, the price of the model T Ford, for example was as well known as the price of the dress of every housewife. The customer knew exactly—$595.

Senator PAYNE. Something like that.

Mr. WILLIAMS. $360 at one time.

Senator PAYNE. I used to carry a spare end in the back seat that you could change yourself.

Senator MONRONEY. You could pay extra for the bumper or for a windshield. In today's age, with people not knowing whether they want power steering or "seat adjustments with a memory" or all of the myriad things that go into the 1958 category of transportation, it confounds even an atomic scientist to figure out what is the price. Then to be harassed by the claims and the strident advertising makes grounds rules necessary. You can't play a football game without having some order rules of play.

It doesn't lessen the competition, it merely says that everybody is going to play according to certain fundamental rules.

It seems to me, as you have stated so well, that the three things this bill would help would be: (1) to restore the confidence of the public in America's No. 1 industry. They have lost confidence be-

cause of the strident, fictitious claims that scream at them from headlines in every newspaper and from every television and from every radio. They have said quite frankly, "to hell with it," I am going to wait and find out a few things before I am going to be able to buy a car. There is no one in the automobile market the public trusts. Restoration of confidence is needed for the consumer. It is needed for the automobile dealer.

I am afraid the dealers have developed an inferiority complex over finding themselves in an oriental bazaar type of business that they can't square with their code of ethics. And if they don't do that they can't square it with their creditors. The dealers are compelled, therefore, to do that which is objectionable to them. When a businessman, faced with promoting sales, is laboring under that kind of a complex it is going to be difficult to have a recovery in this No. 1 industry.

I think you will find that the respectability the bill will bring will have great influence on aggressive merchandising.

No. 2, I think your salesmen have long felt they couldn't sell the car—they couldn't sell the machinery, although it is mechanical perfection—as all that anybody was interested in was in two prices: 1, the dreamed up price with the pack on the new car and 2, the dreamed up price placed on the used car that was being traded in. So your salesmen have actually been flying blind without a horizon. This bill will at least restore a horizon for the pilot to keep his eyes on.

No. 3 involves advertising and the millions of dollars spent upon it. Could you tell us how many millions Ford spends on advertising each year?

Mr. WILLIAMS. Senator, I can't; I am sorry.

Senator MONRONEY. But the automobile industry spends——

Mr. WILLIAMS. Spends a lot——

Senator MONRONEY. The automobile industry spends hundreds of millions of dollars, I believe, on advertising. I am one who believes in advertising, but having written it for a long period of time I know that the thing most essential in making an advertisement pull is to answer the question of the buyer who is reading that ad: How much does the darn thing cost? And yet, it has been a number of years since I have seen the beautiful colored magazine ads for such terrific cars as the four-seated Thunderbird, which even enticed our committee counsel to buy one, but nowhere in that——

Mr. WILLIAMS. Congratulations.

Mr. BUSBY. Thank you, sir.

Senator MONRONEY. Nowhere in this beautiful presentation could you find the price of the car.

Mr. WILLIAMS. That is right, there was no price on it.

Senator MONRONEY. It seems to me you are missing the fundamental point of contact with the customer. You have either gone underneath him or over him, but you haven't hit him. Until you do, you are going to have difficulty in selling.

Mr. WILLIAMS. Senator, we want people to be familiar with these suggested delivery prices.

In regard to that particular Thunderbird ad, though, we didn't put a price in there. I have it here. That was a matter of the business judgment. Now, rightly or wrongly we decided to put in a beautiful picture of a good looking automobile, hoping that it would pique the public interest and they would come into the dealerships then.

Senator, I am delighted to tell you they came in and we haven't been able to produce enough to meet the demand right now.

Senator MONRONEY. Congratulations to you on that.

This job has caused me to watch automobile advertising to see what is the latest gimmick. One dealer has sent two people as far as Florida for a winter vacation. I am waiting now until they have a trip for two people around the world.

The list price will almost eradicate, I think, the phony, gyp advertising that has become such a part of automobile advertising and will take us back to the good old fundamentals that made the industry great. By operating under a list price, you will restore public confidence for hundreds of people walking into the showroom who will know the price of the car is going plainly labeled.

I went to the great automobile show here in Washington. It was a terrific display of the finest cars I have ever seen. I was interested in buying a car at that point. Yet I couldn't tell out of the dozens of models, what was the actual price of any car shown. I would find a salesman who was always so harassed that if you finally got his ear, he would snap something at you. It was impossible to walk from model to model and tell the cost of each.

I left the automobile show completely bewildered as to what car was the best value or what the comparability of Chevrolet or Ford or Plymouth was on the automobile show salesroom floor.

Now, there were thousands of dollars spent to produce that show. I just wonder if a lot of other people were like me—almost embarrassed to go up to the harassed salesmen, with a whole crowd around them, and tug at his coat tail and say, "Could you please tell me what this car costs?" The cost wasn't shown on the models. I think it is time for a good old Billy Graham revival in the automobile industry—perhaps all the branches of the automobile industry coming in and speaking in behalf of turning over a new page, a new policy, and the public strongly in favor of this bill, as evidenced by the editorials, maybe it will really do more in a recession arresting way than we know.

In going through your specific criticisms, I think you are absolutely right that we have gone far too far on our definition of automobiles, and certainly we want to confine this to those cars that move freely into the customer's hands for ordinary transportation and not specialized transportation. I think we can do that easily.

I still feel that we are going to have to have some word that will show not in the words of "destination charge" but the transportation charge. We can arrive at that, I think, with proper language.

We know that Ford was the first to abandon phantom freight, although they denied there was such a thing, they led the path that got this thing out of the automobile picture. Saved $212 million before it was through by the buyers——

Mr. DARRAGH. No; they saved some and put it on the others. So it was even.

Senator MONRONEY. Mr. Henry Ford, that day in the hearings, when we were asking about the transfers.

Mr. DARRAGH. He didn't agree with that.

Senator MONRONEY. Finally, when we asked him if there had been any transfers out of the freight in the surplus——

Calendar No. 1580

85TH CONGRESS, 2d Session | SENATE | REPORT No. 1555

# THE AUTOMOBILE LABELING BILL

MAY 13 (legislative day, MAY 12), 1958.—Ordered to be printed

Mr. MONRONEY, from the Committee on Interstate and Foreign Commerce, submitted the following

## REPORT

[To accompany S. 3500]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3500) to require the full and fair disclosure of certain information in connection with the distribution of new automobiles in commerce, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

This bill, introduced by Senator Monroney for himself, Senator Thurmond, Senator Payne, and Senator Purtell, would require manufacturers of automobiles to affix a label to the windshield or window of each new automobile containing the following information: the make, model, and serial or identification number, final assembly point, the name and location of the dealer and the place to which it is to be delivered to him, the method of transporting the automobile if driven or towed, and the total manufacturer's suggested retail price specifying separately the basic price of the car, the price of each item of optional equipment, and the transportation charged to the dealer.

Hearings have been held. Representatives of public consumer groups, Government agencies, and all segments of the industry have testified. There has been no objection to the legislation as a whole by any witness and it has been possible to incorporate almost all suggestions for technical improvements into the amended bill. Representatives of the used car dealers did object to the disclosure of the name of the first dealer to whom the car was shipped, but otherwise no opposition was voiced.

25532—58

## I. General Purpose of the Bill

The purpose of S. 3500 is disclosure. It is directed toward the restoration of the confidence of the American automobile buyer who has become completely bewildered and unable to find his way through the marketing jungle in which the industry has become involved.

Alone among commodities on the American market the automobile purchaser finds himself without that most essential single bit of consumer information—the price of the product. S. 3500 would simply require the manufacturer to place a price tag on the windshield or window of the car in the form of a label. The label would set forth separately the basic retail price of the car suggested—but not fixed—by the manufacturer, the suggested retail price of each accessory, the amount charged to the dealer for getting the car to him, and other valuable consumer information. Although the label may not give the car purchaser all the information which he needs, it will at least give him sufficient information to make intelligent inquiry.

Manufacturers—who are the only persons required to do anything positive under the bill—may wish to put further information on the label or place the information in a different order than that suggested in the bill. With this in mind, the following represents the committee's suggestion of how the label would look, without intending to require that this specific form be used by the manufacturer:

Make: Stanley. Model: 4-door sedan.
Serial number: SA–12345678. Final assembly point: Oklahoma City.
Dealer to whom delivered: Taylor Motors, Midtown, Kans.
Delivered to dealer: Kansas City, Kans.
Not driven or towed prior to delivery to dealer.

| | | |
|---|---|---|
| Manufacturer's suggested retail price | | $2,310.00 |
| Accessories: | | |
| Radio | $75.00 | |
| Heater | 60.00 | |
| Power steering | 80.00 | |
| Power brakes | 30.00 | |
| Automatic transmission | 125.00 | |
| | | 370.00 |
| Total transportation charged | | 30.00 |
| Suggested retail price of car [1] | | 2,710.00 |

[1] State and local taxes and license fees to be added.

Probably the most important feature of S. 3500 is that it would in no way infringe upon the freedom of the manufacturer to price his product; that it in no way would infringe upon the car purchaser's freedom to bargain over the price of the car, while at the same time the dealer would be free to sell the new car for any price he desired, or pay anything he wanted to for the trade-in allowance. The label would simply assure that the purchaser would start the negotiations with the minimum necessary information.

Your committee believes this bill would free the automobile dealer from the increasing tempo of the kind of competition which has required him either to become more and more misleading or else lose out to the unscrupulous operator whom present marketing practices reward. No dealer, as some advertisements indicate, can actually give away fur coats, trips to Bermuda, or "$1,000 for anything you can drive in" without packing prices. The packing of new car prices was

defined in the hearings as the boosting of the manufacturer's suggested retail price in order to mislead the purchaser into believing he received a larger allowance or trade-in.

Testimony indicated that dealers who would like to sell on a clean, competitive basis have been forced to use such tactics to stay in business.

Your committee believes that S. 3500, in a simple and direct way, would require the making public of facts now hidden from the consumer by the automobile industry—facts which are usually public knowledge in other industries. The suggested retail price of the car and of each accessory—along with the transportation charge, identification numbers, assembly plant, name of the dealer, and destination—are presently set forth by the manufacturers on the invoice or other papers transmitted to the dealer either by the shipping agent or by mail. Making this information public, therefore, would cause no dislocation of industry practices, but would lend integrity to the marketing of automobiles.

Manufacturer representatives testified that the cost of labeling would be "very small." Disclosure as contemplated in the bill would allow car purchasers to compare prices between companies and between lines of cars, thus helping to restore price competition to the manufacturing segment of the industry.

## II. Background and Need for the Bill

### A. History of the Study

The Subcommittee on Automobile Marketing was appointed over 3 years ago by Chairman Magnuson of the Interstate and Foreign Commerce Committee. It has made the most extensive study of automobile marketing practices ever undertaken by Congress. The need for more information being made available to the consumer early became apparent. The idea of placing on the automobile a label setting forth basic facts necessary for intelligent consumer choice was advanced nearly 2 years ago during the subcommittee's extensive hearings in 1956. When questioned at that time by the chairman of the subcommittee, the presidents of the major companies manufacturing automobiles registered mild disapproval of the idea and dealer representatives showed no enthusiasm for it.

The subcommittee ultimately determined that it was necessary to first deal with the relationship between automobile manufacturers and dealers before the relationship between industry and the consumer could be considered. Although no legislation resulted, the focus of public attention upon factory-dealer relationships and the abuses thereof by the manufacturers brought about some 49 major reforms in the manufacturer-dealer relationship. The number of complaints received by Congress from automobile dealers concerning abuses of factory economic power has now dropped markedly, and dealers from all over the United States have informed the subcommittee that their relationship with their manufacturers has improved materially.

Your committee now believes the time to improve the relationship between the industry and the public has arrived. That is what this bill attempts to do.

*Comment.*—This definition comprehends all persons who are in the business of selling automobiles—both new car dealers and used car dealers—within the continental limits of the United States or any Territory or the District of Columbia.

Paragraph (f): "The term 'final assembly point' means—

"(1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and

"(2) in the case of a new automobile imported into the United States, the port of importation."

*Comment.*—This section is self-explanatory.

Paragraph (g): "The term 'ultimate purchaser' means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale."

*Comment.*—This section read in conjunction with paragraph (d) would set up the standard of "intent" with regard to the question of whether or not a car is a "new automobile." See comment in paragraph 2 (d).

Paragraph (h): "The term 'commerce' shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

*Comment.*—This is a standard definition of the term "commerce" in the Federal statutes (as set forth in sec. 4 of the Federal Trade Commission Act, 15 U. S. C. 44).

LABEL AND ENTRIES REQUIRED

*Section 3*

"Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly, and legibly true and correct entries disclosing the following information concerning such automobile—"

*Comment.*—This paragraph requires that the manufacturer affix a label to any new car before it is delivered to any dealer. The one exception is in the event new models are delivered to a dealer prior to the "introduction date" of the model. The manufacturer may wait until such date to place the label upon the car. This exception is made because of the industry practice of delaying the pricing until the latest possible time in order to gather market information for use in pricing of new models at their introduction.

Paragraph (a): "the make, model, and serial or identification number or numbers;"

*Comment.*—The primary purpose of this section is to insure that the label be placed on the corresponding automobile. Also it is convenient to the purchaser. The reason for the words "identification number or numbers" is that if different numbers are placed upon different components of the automobile, these will be shown.

Paragraph (b): "the final assembly point;"

*Comment.*—The primary reason for including this information is to allow the purchaser to know the distance which such automobile has been driven or towed, if such is the case, from the final assembly point or port of importation to the place at which it is delivered to the dealer.

Paragraph (c): "the name, and the location of the place of business, of the dealer to whom it is to be delivered;"

*Comment.*—The reason for including this information is that the prospective purchaser will be put on notice if the car has originally been assigned to a dealer in a far distant location, and he will be led to inquire as to the means of transportation used in delivery. It is the intent of the committee that, although no restriction be placed on the "bootlegging" of new automobiles, the purchaser will be put on notice of such practices.

Paragraph (d): "the name of the city or town at which it is to be delivered to such dealer;"

*Comment.*—Dealers often take delivery of automobiles from the manufacturer at factory warehouses or assembly plants at some distance from the dealer's place of business. This would put the purchaser on notice with regard to such sales, and he would know how far the car had traveled in the hands of such dealer.

Paragraph (e): "the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery; and"

*Comment.*—This section requires the manufacturer to disclose whether the car has been towed or driven while it is in the manufacturer's hands. If it is not driven or towed, no entry is required. It does not apply to the car while in the hands of the dealer.

Paragraph (f): "the following information:

"(1) the retail price of such automobile suggested by the factory;

"(2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);

"(3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer;

"(4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3)."

*Comment.*—Subparagraphs (1), (2), (3), and (4) make up the "price tag" elements of the bill.

It is not the purpose of S. 3500 to restrict the freedom of the manufacturer to establish and announce a suggested retail delivered price for the automobile, its optional equipment, and any services to be

performed by the dealer in acquiring and making ready the vehicle for sale to the purchaser.

On the contrary, it is the purpose of the bill to require that the total of the elements that enter into the total suggested retail price for which the car may be purchased be set forth on the label, with the exception of State and local taxes and license fees. Compliance with the requirements of this bill will eliminate the necessity of the dealer's adding any charge whatsoever to the total shown on the label with the exception of (1) State and local taxes and license fees and (2) the cost of accessories, if any, added by the dealer.

It is not the purpose in paragraph (f) (3) to either approve or disapprove the methods by which transportation charges are made. It simply requires that, whatever amount is charged to the dealer, that amount be disclosed.

PENALTIES

*Section 4*

Paragraph (a): "Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required by section 3 shall be fined not more than $1,000. Such failure with respect to each automobile shall constitute a separate offense."

Paragraph (b): "Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly, and legibly any label as required by section 3, or who makes a false endorsement of any such label, shall be fined not more than $1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense."

Paragraph (c): "Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile pursuant to section 3, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than $1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense."

*Comment.*—This section is largely self-explanatory, and the only change made from the original subcommittee draft of the bill were the words "except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile." This section allows the manufacturer to change labels for the specified purposes without being subject to criminal penalty.

EFFECTIVE DATE

*Section 5*

"This Act shall take effect on the first day of October 1958 or on the first day of the introduction of any new model of automobile in any line of automobile beginning after the date of enactment of this Act, whichever date shall last occur."

*Comment.*—This section was amended in the final committee draft to fit into the seasonal pattern of the industry. These changes were made at the request of the manufacturers in their oral testimony so

UNITED STATES OF AMERICA

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 85th CONGRESS
SECOND SESSION

## VOLUME 104—PART 7

MAY 12, 1958, TO MAY 28, 1958
(PAGES 8365 TO 9780)

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1958

Cooperation Administration supply me with a listing, by States, of individual American firms which had received orders which were financed by foreign-aid funds. I also requested the dollar volume of those orders.

The ICA has now sent to me a listing, by States, of these individual firms, their locations, and the dollar volume of foreign-aid-financed business which each had received. The report is 151 pages long. The report reveals that over $2 billion worth of orders for nonmilitary commodities alone were filled by American busines. and exporting firms under the United States foreign-aid program during the 3½-year period which ended in June 1957. Almost $78 million of this total was spent in Illinois. These facts should end, once and for all, the cry of "giveaway," for domestic firms in virtually every corner of the United States have benefited from the program. The report does not include expenditures for direct military assistance.

Direct military assistance, which accounts for at least half of all mutual security outlays, is separately administered by the Department of Defense. The report also does not include funds spent for technical assistance, since the point 4 portion of the mutual security program involves only minor expenditures for procurement.

The manufacturers and merchant exporters in the city of Chicago supplied nearly $60 million worth of the Illinois commodities which were financed by foreign-aid funds. Although the report does not specify the kinds of supplies purchased from these sources, examination of the company names indicates that the items range from seed and farm products to agricultural and industrial machinery. Since Chicago is a port and a railways terminal city, dozens of concerns listed in the Chicago area are, in fact, shipping goods which are produced, at least in part, in inland cities and towns.

Contracts for the remaining $18 million spent in Illinois went to firms located in some 40 different cities throughout the State. Those cities outside Chicago in which foreign-aid-contract orders were filled include: Augusta, Aurora, Barrington, Brookfield, Champaign, Freeport, Danville, Decatur, Des Plaines, Evanston, East Moline, Elgin, Franklin Park, Greenville, Hamilton, Harvey, Joliet, Kenilworth, Kewanee, La Salle, Maywood, Melrose Park, Mendota, Moline, Mount Carmel, O'Fallon, Oregon, Peoria, Quincy, Roanoke, Rockford, St. Charles, Skokie, South Beloit, Springfield, Sycamore, Urbana, Villa Park, Waukegan, Wheaton, and Wilmette.

The detailed information for other States and cities may be obtained from ICA.

## AGREEMENT BY CONFEREES ON THE POSTAL PAY AND RATE BILL

Mr. JOHNSTON of South Carolina. Mr. President, I wish to report to the Senate that the conferees on the postal rate and pay bill (H. R. 5836) have today completed their work, and we hope to have the report drafted and submitted to the Senate by Monday.

## AUTOMOBILE LABELING

The Senate resumed the consideration of the bill (S. 3500) to require the full and fair disclosure of certain information in connection with the distribution of new automobiles in commerce, and for other purposes.

Mr. SMATHERS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MONRONEY in the chair). The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MONRONEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMATHERS in the chair). Without objection, it is so ordered.

Mr. MONRONEY. Mr. President, I wish to submit an explanation of Senate bill 3500, which was introduced by me, on behalf of myself, the Senator from South Carolina [Mr. THURMOND], the Senator from Maine [Mr. PAYNE], and the Senator from Connecticut [Mr. PURTELL].

The bill requires full and fair disclosure of certain information in regard to the distribution of new automobiles in interstate commerce, including the manufacturer's suggested retail price.

Mr. President, I ask unanimous consent that the committee amendments to the bill, as set forth in the print of the bill which now is before the Senate, be considered en bloc.

The PRESIDING OFFICER. Is there objection? Without objection, the committee amendments, which have heretofore been stated, are agreed to en bloc.

Mr. KNOWLAND. Mr. President, will the Senator from Oklahoma yield to me?

Mr. MONRONEY. I am happy to yield to my distinguished colleague, the minority leader.

Mr. KNOWLAND. I ask unanimous consent to have printed at this point in the body of the RECORD a copy of a letter which was written by the Secretary of Commerce to the senior Senator from Washington [Mr. MAGNUSON], the chairman of the Committee on Interstate and Foreign Commerce. In the letter the Secretary of Commerce states the views of the Department of Commerce, which is favorably disposed toward the bill.

Mr. MONRONEY. Mr. President, I thank the distinguished Senator from California for placing the letter in the RECORD. The letter was received after the hearings were completed, although the letter is included in the printed volume of the hearings and in the report.

The PRESIDING OFFICER. Is there objection to the request of the Senator from California?

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF COMMERCE,
*Washington, D. C., May 8, 1958.*

Hon. WARREN G. MAGNUSON,
*Chairman, Committee on Interstate and Foreign Commerce, United States Senate, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in further reference to S. 3500, a bill to require the full and fair disclosure of certain information in connection with the distribution of new automobiles in commerce, and for other purposes. We also refer to our previous letter of April 18, 1958, wherein we expressed the view that the bill should not be acted on favorably at this time.

After further study of this and various other proposals which have been advanced to encourage widespread revival and recovery of the automobile industry, which we recognize as a vital segment of our economy, we are now prepared to withdraw our former objection and to support favorable action on S. 3500. We are aware that the Department of Justice is currently engaged in a roughly parallel program under the antitrust laws to eliminate objectionable practices. Nevertheless, we now feel that S. 3500 appears to offer possibilities of more immediate restoration of the necessary confidence on the part of buyers in the integrity of the prices at which cars are offered. In particular the bill should operate not only to expose and thereby to eliminate the much-discussed practice of price packing, but should also afford to buyers a better basis on which to judge the values offered them.

This is the opinion of the Department of Commerce and has not as yet been approved by the Bureau of the Budget. In view of the time element involved, we are simply sending it for the additional information it contains which may be helpful to the committee.

Sincerely yours,

SINCLAIR WEEKS,
*Secretary of Commerce.*

Mr. THURMOND. Mr. President, will the Senator from Oklahoma yield to me?

Mr. MONRONEY. I am happy to yield to my distinguished colleague, the junior Senator from South Carolina, who is one of the authors of the bill, and who, together with the Senator from Maine [Mr. PAYNE], served on the Automobile Marketing Subcommittee which conducted the hearings so ably and diligently and studied the automobile industry and its problems. Let me say that I appreciate the great work the Senator from South Carolina has done in helping to achieve all the gains which have been made for the small-business element of the automobile industry.

Mr. THURMOND. Mr. President, I thank the distinguished Senator from Oklahoma for his kind remarks.

As a member of the Subcommittee on Automobile Marketing Practices, and as a coauthor of the bill, I wish to point out that the basic philosophy of S. 3500 is to free the industry from so-called sharp marketing practices, without in any way interfering with the rights of businessmen or the rights of the public.

It gives the car buyer information affixed to a label on the windshield of each new car, about automobile prices and methods of delivery without interfering with the right of the manufacturer to price or deliver the car in any way it wants to. At the same time, the bargaining between the car buyer and the automobile dealer is completely unrestricted.

S. 3500 simply gives the car buyer the minimum facts he needs in order to make an intelligent choice on the biggest purchase he ever makes—except for his home. It will allow him to have some protection against the price-packing automobile dealer who is able to entice the public into his showroom with offers of impossible large allowances, which turn out to be just the amount the new-car price was boosted in the first place.

Most automobile dealers want to sell their product—the most desirable product this country makes—in an ethical, straightforward way so that they can hold their heads up among the other retailers along Mainstreet, U. S. A. But they have been forced to resort to these bad-sales tactics in order to meet competition from the wheel-and-deal operators.

S. 3500 puts an end to this destructive race to see who can make the wildest claims and mislead the public the most. By making the manufacturer's suggested list price available, no dealer can long survive if he tries to mislead the public.

I strongly believe that it will do much to restore public confidence in the industry, and will help materially the sales of cars, thus stimulating the entire economy.

It has been a great pleasure for me to serve as a member of the Automobile Market Practices Subcommittee, of which the able and distinguished Senator from Oklahoma [Mr. MONRONEY] is chairman.

We have learned a great deal about the automobile industry and about automobiles during our various hearings. I desire to take this opportunity to express my appreciation to the distinguished Senator from Oklahoma for his fine work and for the magnificent service which he has rendered to the American people as chairman of the Automobile Marketing Practices Subcommittee of the Committee on Interstate and Foreign Commerce. I feel he has done a very fine job and deserves the commendation of the American people.

Mr. MONRONEY. I thank my colleague for his very wonderful remarks, but I feel the entire subcommittee, including the Senator from Maine [Mr. PAYNE] and the Senator from South Carolina [Mr. THURMOND], did a trojan job in trying to diagnose and find ways to ameliorate the dislocations which often occur in that segment of small business, the automotive distribution business.

I should also like to take this occasion to thank the chief counsel of the committee, Mr. David Busby, who has consistently been able, over the years, to assist the committee in research and in learning about problems which have beset America's No. 1 problem industry.

Mr. President, in order to understand the importance of the bill, I think we must first recognize and realize that when the condition of the automobile industry is good, when customers are buying the products which come off the assembly lines of the automotive factories, there is prosperity throughout this Nation. This industry is the largest single consumer of the quantities of raw material produced throughout the United States.

I should like to mention the fact that of the $50 billion of sales in the year 1956, there was enough glass used in the manufacture of automobiles to place windows in about 5 million homes.

Payments for insurance premiums on automobiles amounted approximately to $5 billion.

I should like to give the Senate an idea of the impact of the industry on other industries and on employment.

In the year 1956 the automobile industry used approximately 42 percent of the United States sheet steel production.

It used 24 percent of bar steel production.

It used 24 percent of strip steel production.

It used 65 percent of natural rubber production.

It used 61 percent of synthetic rubber production.

It used 7 percent of copper production.

It used 42 percent of lead production.

It used 38 percent of zinc production.

It used 71 percent of upholstery leather production.

It used 13 percent of nickel production.

The States received about 30 percent of their total revenues from automobile taxes.

The estimated number of employees of all new car dealers is about 750,000, representing about one-tenth of the total retail employment in the United States.

Estimated retail sales of new car dealers in 1957 were $32 billion.

The estimated number of vehicles registered in the United States as of December 31, 1957, was 67,200,000.

These figures will give the Senate some idea of the vital role the automobile industry plays in the economic health of this Nation.

When we find, as we do today, the Nation's unemployment figure exceeding the 5 million mark, when we find small businesses being liquidated, when we find steel production below 60 percent of capacity, when we find associated industries without adequate production to provide full-time employment, we see what happens in America when the automobile industry is in a slump.

As of the end of the first quarter of this year, only 1,238,710 automobiles were produced, as compared with 1,790,597 produced during the same period in 1957, or the 1,995,543 automobiles which were produced in the first quarter of 1955, a banner year.

It can be seen, when a comparison is made with that recordbreaking production year, that automobile production is down nearly 40 percent.

Even with this reduced production, stocks of unsold new automobiles in the hands of dealers are close to an alltime high—the number having jumped to 869,000. Moreover, the used-car stocks are at a 4 year high.

It, therefore, can be seen that a drop in automobile sales has a great deal to do with the health of all the other businesses affected by the automobile industry.

As the distinguished Senator from South Carolina [Mr. THURMOND] said a moment ago, an automobile is the largest purchase the average American makes in his lifetime except for the purchase of his home. Unfortunately, during the past few years, some of the practices of the automobile industry have fallen on evil ways. A few—I should like to repeat, a very, very few—unethical and unscrupulous dealers led the industry into a helter-skelter race with "wheel and deal" tactics, wild promises, and gyp practices of all kinds. This minority of dealers was and is making use of spectacular, exaggerated offers of huge trade-ins for the old family buggy or free round trips for winter vacations in Florida for a man and his wife, or an offer of a mink stole, or other fantastic, wild-eyed offers. That type of merchandising led the industry down the primrose path. Now it has reaped the whirlwind. The majority of American car buyers who are asked to spend $3,000 or $4,000 for an automobile, have been so completely bewildered by misleading and unethical advertising and merchandising methods that they are literally staying out of the showrooms in droves.

Obviously something needs to be done to restore reliability, responsibility, and accountability to an industry so great as is this industry—especially since the purchase of an automobile represents such a large part of the average person's budget.

Mr. President, we have studied the problem. We held extensive hearings. We came to the conclusion that one of the principal reasons for the disastrous period the automobile dealers are experiencing is the fact that the customers have lost confidence in the pricing system. This was a result of the price-packing practices which grew slowly, starting with a few dealers. Finally nearly all dealers felt they had to meet the exaggerated trade-in offers and thus pack prices by $300, $500, or as much as $1,000, in order to bait sales to meet the fictitious claims of their competitors down the street.

The introduction of this bill came about because of the desire of the public to find out the suggested retail price of a car.

Every single thing about a new car—including hydramatic drive, power steering, power braking, automatic windshield wipers, seats that automatically adjust, cubic inches of displacement, and horsepower—could be determined. But none could find out the one most important thing which the customer had a right to know, namely, what the darned thing cost. The committee looked at dozens and hundreds of ads from which the buyer could not ascertain the honest, legitimate, manufacturer's suggested retail price of the car.

The bill was introduced to correct this situation—to give the car buyers some idea of value. The bill is not a price-control or price-fixing measure. It will not require the manufacturer to meet any Government standards or requirements as to the amount of the suggested price of the automobile.

The disclosure list price of the automobile at the factory has been in the past a matter of standard operating procedure in the automobile industry. That price was once blazoned on every advertisement. It once was flashed a million times a day to prospective automobile buyers, so that a person had an idea, within a few dollars, as to what the suggested factory retail price was for any make of automobile. However, that practice disappeared, and the price became almost an unknown quantity. In

recent years customers found they could not ascertain the real price.

Testimony before the committee indicated that in many cases dealers would show customers false factory list prices or even fictitious invoice prices, and that the new car price could be jacked up or lowered depending on the kind of car the customer had to trade in or even on some completely imaginary value of the trade-in.

The most imaginary thing in the automobile business has become the price finally quoted to the new automobile buyer in order to take care of the pack, and therefore give a fictitious allowance on the trade-in.

This bill, Mr. President, will not compel the manufacturer to do anything except to show the suggested retail price of the car, plus the price of each factory installed accessory and the delivery cost, if any, which was charged to the dealer for the transportation of the car from the factory. This will be the delivered price with accessories in a plain honest-to-goodness figure on the windshield or window of the car, where every buyer can see it.

We think this procedure will simplify a great deal the shopping around for cars. It will not fix the price, but it will merely give the buyer the information he needs the most—the factory suggested price.

Unless the car buyer has an itemized list of factory prices of accessories, there is simply no place to begin bargaining. The prices of cars nowadays vary as much as $1,000 on cars which look almost identical, simply because of the added equipment and accessories which have been installed at the factory.

We think passage of the bill will lead to honesty in merchandising and will give protection to the public. I think the confidence in the honest pricing of automobiles which the American people have lost will be restored.

I feel the bill would not have had almost unanimous support if it were not a step in the right direction.

It is a bill to protect the consumer and to add stability to the merchandising of America's No. 1 product.

The bill received testimony of strong support in the Better Business Bureau, which is one of the greatest agencies protecting the general public against misleading or fallacious advertising and against bad merchandising practices.

We had testimony from the American Automobile Association, the great Triple A, which I imagine represents more automobile owners than does any other organization in the world.

Mr. President, the bill was also supported by representatives of all the major factories in the United States who testified before the committee. The bill was supported by the National Automobile Dealers' Association, and by dozens, if not hundreds, of automobile dealers who wrote letters to endorse the idea, telling us they were tired of being listed as disreputable merchandisers or "slick" traders and wanted to get back to an honest pricing policy, but that in many cases they had been forced to abandon the policy because of shyster tactics practiced by others down the street.

We had some testimony against one paragraph of the bill from the former National Association of Used Car Dealers, which now has another name, the National Independent Automobile Dealers. They protested against the requirement that the name of the dealer originally buying the car from the factory be shown on the windshield stickers.

I think the Ford dealers of Detroit objected to the same thing.

Mr. President, if the testimony of automobile dealers and others is to be taken seriously, I feel that passage of the bill may do more to start the wheels of our free American industry rolling again at a faster speed than many of the other antirecession measures which have been talked about or proposed.

I should like to invite attention to the pictogram from the New York Times of May 4. It is found on page 7 of the report. It clearly indicates that sales in all the more important sectors of our American economy are in relatively good shape—except the automobile industry, which has fallen off some 25 percent.

Food sales are higher. Clothing sales are about the same. Housing sales are higher. Transportation is about the same. Sales of household goods have slipped only a few percent. Automobile sales are off 25 percent. I think it will be clear from this that a great part of the recession we are now in has been occasioned by the loss of automobile sales. So many of our Nation's businesses and producers depend upon the great automobile industry, which uses so much of the raw materials and processed products of factories throughout the Nation.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. MONRONEY. I am happy to yield to the Senator from South Carolina.

Mr THURMOND. I should like to join in the remarks of the Senator commending Mr. David Busby, staff member of the Automobile Practices Subcommittee. I have been deeply impressed by Mr. Busby. I believe he is an able man and he has relatives back in South Carolina. He has proved to be capable, conscientious, energetic, and dedicated. He has done a very fine job for the subcommittee.

Mr. MONRONEY. I deeply appreciate what the Senator has said. I know that many of those in the automobile industry have been amazed that we have operated during most of the life of the subcommittee with a committee staff numbering one, namely, Mr. Busby. He has furnished an example of how much one man can accomplish.

Mr. PAYNE. Mr. President, will the Senator yield?

Mr. MONRONEY. I am happy to yield to the distinguished Senator from Maine.

Mr. PAYNE. I desire to join in a word of commendation of the chairman of this subcommittee, on which I have had the privilege of serving. I believe it is doing a remarkable job in connection with the problems confronting the automobile industry.

As the Senator knows, I am in full support of the measure now under consideration. I could not let the opportunity pass, however, without also commending the very competent and able counsel of our staff. I will not allow the entire credit to go either to the Southwest or to the South, because this particular gentleman happened to marry a girl from New England, which shows that he is a man of remarkable intelligence. [Laughter.]

Mr. MONRONEY. I thank the Senator. A large part of the success of the subcommittee in connection with many of these difficult problems has been due to the experience which the distinguished Senator from Maine has had as an automobile dealer and as a certified public accountant. He is a man of extremely fine business experience, and he has helped us to find many of the answers which we needed in our investigation of automotive-marketing practices.

Mr. MUNDT. Mr. President, will the Senator yield?

Mr. MONRONEY. I yield.

Mr. MUNDT. I hesitate to intrude upon the atmosphere of felicity which prevails in the Chamber this afternoon, but I should like to raise certain questions about the bill.

Let me begin by saying that I congratulate the chairman of the subcommittee for the diligence with which he has pursued this problem, and the fact that he has come forward with a proposed answer. For many years I have observed, both in the House and in the Senate, the constructive thinking and the positive approaches made by my distinguished friend from Oklahoma.

I should like to raise one or two questions with respect to the bill. I am impelled to do so by a feeling of sorrow that the economy of the country, and particularly the automobile industry, has reached such a condition that it seems necessary for the Congress to legislate price publicizing arrangements for the industry. I would be much happier—and I believe the chairman of the subcommittee would be much happier—if the automotive industry, under our competitive economy, had not permitted the situation which now confronts us to develop.

I am wondering what the reasons are for certain provisions in the bill. I am sure they are good and valid reasons, but I should like to establish them for the record.

As has been indicated, the committee feels that it is necessary to remove the sale of automobiles from the realm of hucksterism and barter, and to give the potential purchaser some idea of the approximate cost of the car. Why would it not have been simpler, and equally effective, to provide, in the labels which each manufacturer is required to affix to his new product, for the listing of the cost of the car "f. o. b. Detroit"? That was formerly the selling practice of the automobile industry, when the Senator from Oklahoma and I were young.

Mr. MONRONEY. I think that is a very good question; and it is one which the subcommittee considered at great length.

One of the difficulties today is the fact that many factories are no longer located in Detroit, but have branches throughout

# AUTOMOBILE LABELING



## HEARING

BEFORE A

## SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

SECOND SESSION

ON

## S. 3500

AN ACT TO REQUIRE THE FULL AND FAIR DISCLOSURE OF CERTAIN INFORMATION IN CONNECTION WITH THE DISTRIBUTION OF NEW AUTOMOBILES IN COMMERCE, AND FOR OTHER PURPOSES

MAY 28, 1958

Printed for the use of the Committee on Interstate and Foreign Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
28211 WASHINGTON : 1958

## COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OREN HARRIS, Arkansas, *Chairman*

JOHN BELL WILLIAMS, Mississippi
PETER F. MACK, JR., Illinois
KENNETH A. ROBERTS, Alabama
MORGAN M. MOULDER, Missouri
HARLEY O. STAGGERS, West Virginia
ISIDORE DOLLINGER, New York
WALTER ROGERS, Texas
MARTIN DIES, Texas
SAMUEL N. FRIEDEL, Maryland
JOHN J. FLYNT, JR., Georgia
TORBERT MACDONALD, Massachusetts
GEORGE M. RHODES, Pennsylvania
JOHN JARMAN, Oklahoma
LEO W. O'BRIEN, New York
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
J. CARLTON LOSER, Tennessee
CHARLES A. WOLVERTON, New Jersey
JOSEPH P. O'HARA, Minnesota
ROBERT HALE, Maine
JOHN W. HESELTON, Massachusetts
JOHN B. BENNETT, Michigan
JOHN V. BEAMER, Indiana
WILLIAM L. SPRINGER, Illinois
ALVIN R. BUSH, Pennsylvania
PAUL F. SCHENCK, Ohio
JOSEPH L. CARRIGG, Pennsylvania
STEVEN B. DEROUNIAN, New York
J. ARTHUR YOUNGER, California
WILLIAM H. AVERY, Kansas
BRUCE ALGER, Texas
WILL E. NEAL, West Virginia

W. E. WILLIAMSON, *Clerk*
KENNETH J. PAINTER, *Assistant Clerk*

*Professional Staff*

ANDREW STEVENSON
KURT BORCHARDT
SAM G. SPAL
MARTIN W. CUNNINGHAM

---

### SUBCOMMITTEE ON COMMERCE AND FINANCE

PETER F. MACK, JR., Illinois, *Chairman*

MORGAN M. MOULDER, Missouri
ISIDORE DOLLINGER, New York
JOHN JARMAN, Oklahoma
JOHN E. MOSS, California
JOHN B. BENNETT, Michigan
JOHN V. BEAMER, Indiana
WILLIAM H. AVERY, Kansas
BRUCE ALGER, Texas

# AUTOMOBILE LABELING

WEDNESDAY, MAY 28, 1958

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE AND FINANCE OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
*Washington, D. C.*

The subcommittee met at 10:30 a. m., pursuant to notice, in room 1334, New House Office Building, Hon. Peter F. Mack, Jr. (chairman of the subcommittee), presiding.

Mr. MACK. The committee will come to order.

The Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce is meeting this morning to hold hearings on S. 3500, a bill to require full and fair disclosure of certain information in connection with the distribution of new automobiles in interstate commerce.

This bill passed the Senate on May 14, 1958. It would require the manufacturer to affix a label to the windshield of every new automobile, disclosing certain information, including the retail price suggested by the manufacturer, the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the automobile at the time of its delivery to the dealer, and the amount charged to the dealer for the transportation of the automobile. Penalties are provided for willful failure to affix such a label containing the required information or for willful removal or alteration of the label prior to the time the automobile is delivered to the ultimate purchaser.

This act would take effect on October 1, 1958, or the first day of the introduction of any new model of automobile beginning after the date of enactment of this act, whichever date occurs last.

A copy of S. 3500, together with the agency reports thereon, will be made part of the record at this point.

(The documents referred to follow:)

[S. 3500, 85th Cong., 2d sess.]

AN ACT To require the full and fair disclosure of certain information in connection with the distribution of new automobiles in commerce, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Automobile Information Disclosure Act".

DEFINITIONS

SEC. 2. For purposes of this Act—

(a) The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

Maybe I am wrong, but at this moment it would seem to me that they have a better weapon than we have if they want to use it.

Mr. BUSBY. Yes, if they want to cancel the dealer for doing what other dealers are doing. I do not mean to say that they could not possibly do this. I think Chrysler could have done it under its own franchise, quite obviously. But it could not do it and have its dealers compete with other dealers.

Mr. DOLLINGER. By legislation, they can compete with other dealers?

Mr. BUSBY. This puts a base under the bad practices, or a ceiling, whichever you want to say—which would mean that everybody would play by the same ground rules.

Mr. DOLLINGER. Exactly, and that is what the manufacturers can do. They can take this bill, S. 3500, and say, "This is our code of ethics and we want to subscribe to this code of ethics or else we will take your franchise away."

Mr. BUSBY. Certainly they could not prevent the used-car dealer from falsifying the label, and certainly they could not too well——

Mr. DOLLINGER. We are not dealing with used cars now. We are dealing with new cars.

Mr. BUSBY. No, sir, not entirely. We are dealing with cars until they are sold to the consumer.

Mr. DOLLINGER. Exactly.

The independent dealer or the used car fellow who gets the car gets it from an authorized dealer.

Mr. BUSBY. Yes, but he must leave the tag on.

Mr. DOLLINGER. That is right. Once he gives it to the used-car dealer, if he wants to by some means circumvent the law, he does it and subjects himself to it.

The dealer who sells to an independent dealer will lose his franchise if he does not protect the consumer. So he will not under those circumstances sell to a used car man or an independent dealer because his franchise is at stake.

Mr. BUSBY. This is not the practice now, Mr. Dollinger.

Mr. DOLLINGER. I agree it is not the practice.

I am trying to find out why we cannot do the very same thing without legislation. I do not mean to infer I am against it. I am trying to look at what the equities are both ways.

I have no further questions.

The committee will stand in recess, subject to the call of the Chair. We might be back this afternoon, depending on what happens on the floor.

Mr. BUSBY. I will remain with the hearings all the way through, and if there is anyway I can help, I will be very glad to do so.

Mr. DOLLINGER. Thank you very much.

(Thereupon, at 12:35 p. m., the committee recessed, to reconvene at 2:30 p. m.)

AFTERNOON SESSION

The hearing was resumed at 2:45 p. m., pursuant to the recess.

Mr. MACK. The committee will come to order.

Our first witness this afternoon will be Mr. Ross D. Netherton, legislative counsel of the American Automobile Association.

You are accompanied by Mr. LeVerne Johnson and Mr. Lloyd Tuttle?

**STATEMENTS OF ROSS D. NETHERTON, LEGISLATIVE COUNSEL; LeVERNE JOHNSON, MANAGER, DISTRICT OF COLUMBIA DIVISION; AND LLOYD TUTTLE, SALES MANAGER, DISTRICT OF COLUMBIA DIVISION, AMERICAN AUTOMOBILE ASSOCIATION**

Mr. NETHERTON. That is correct, sir.

Mr. MACK. They are not going to testify?

Mr. NETHERTON. They are here and I would like to have them testify in this way, sir. I have a prepared statement speaking for the American Automobile Association. However, they have had a good deal of interesting and, I suspect from the committee's standpoint, valuable experience in the program that they have developed and put into use in this metropolitan Washington area.

I would like to make my statement and then turn the floor over to them to tell in their own words the story of this program to amplify the comments that I will make and then, with respect to one particular problem in connection with the technical aspects of the bill, I would like to resume my testimony and in connection with that I have a document here which is cast in the form of a letter to the chairman of the subcommittee which I would like to read into the record and explain and comment on.

If I may proceed in that way, I think that we will cover the story that we have to tell in the most orderly fashion.

Mr. MACK. You may proceed. You prefer to have the other witnesses testify and then continue your own testimony?

Mr. NETHERTON. I think so, because, as I said, sir, they will amplify on the general situation on which I will be commenting in my prepared statement.

Mr. MACK. They are technicians in the particular area?

Mr. NETHERTON. They represent the District of Columbia division of the American Automobile. Association, which is the local motor club, so to speak.

Mr. MACK. Do you have a prepared statement, Mr. Netherton?

Mr. NETHERTON. Yes, I do.

Mr. MACK. Mr. Netherton, you may read your statement or submit it for the record, whichever you desire.

You may proceed.

Mr. NETHERTON. Mr. Chairman, I think this would probably take me from 8 to 10 minutes to read, and it would provide a background, I believe.

Mr. MACK. The Chair will state that it does not take quite as long when they do read their statements as when they do not.

Mr. NETHERTON. Having in mind that there is a problem of time for the committee and having in mind that the technical matter that I am going to wind up my testimony with may lead to some colloquy between us, let me submit this statement for the record.

Mr. MACK. The statement will be included in the record at this point.

(The statement referred to follows:)

STATEMENT ON BEHALF OF THE AMERICAN AUTOMOBILE ASSOCIATION

I am Ross D. Netherton, legislative counsel for the American Automobile Association. I am accompanied today by Mr. LeVerne Johnson, manager of the District of Columbia division of the American Automobile Association.

The American Automobile Association sincerely appreciates the opportunity to appear at these hearings on the proposals contained in S. 3500 to require disclosure of certain information relating to the distribution of new automobiles. The AAA is composed of 740 automobile clubs and their branch offices, affiliated in a nationwide organization for service to its motorist members and the motoring public. In the course of serving approximately 6 million motorists who are their members, and through their daily contact with the motoring public generally, the AAA clubs have come to know the motorist's habits and problems. For many years the cost of car operation has been high on the list of problems which have concerned the motoring public. Over the years, the AAA has called attention to various aspects of this overall problem. Currently the policies of the AAA express its concern regarding the cost of car operation generally, as follows:

"The AAA strongly urges the automotive industry and the motoring public to recognize the dangers of the rising cost of operation of automobiles, and to explore ways and means of reducing the high cost of operation, maintenance and repair wherever possible. It is the belief of the AAA that efforts to reduce such costs should be carried on in all areas of activity connected with motoring, including automobile design, automobile financing, automotive mechanic skills and standards of service, and automotive fuels, lubricants, chemical compounds and parts."

The pending bill, S. 3500, affects a very basic interest of the motoring public in that it seeks to eliminate from automobile marketing some of those practices which now appear to have confused, concealed and complicated the pricing of automobiles to the point where it is difficult, or indeed impossible, for the motorist to purchase a car with complete and accurate information as to what he is buying, how much he is paying for it, and why it costs that much.

Buying a new car today, in this era when the public taste in most commodities of daily use is served by national brands and standardized materials and workmanship, might seem like a simple matter. Yet, even under the most favorable conditions, it is not. In its very nature, the marketing of automobiles cannot be as completely standardized as in the case of most other commodities because individual tastes as to style and accessories vary greatly, and automobile manufacturers have produced cars in response to this great variety of desires.

Consider, for example, some of the buying habits of the motorist. Three out of four motorists will be looking for a 2- or 4-door sedan, probably of the same make as they currently own. They will also want certain special features, for which, they realize they will have to pay extra.

Nine out of ten will want radio and heater.

Three out of four will want automatic transmission.

One out of three will want power brakes and steering.

One out of eight will want air conditioning.

One out of twenty will want seat belts installed.

Most buyers today will have had no experience in purchasing these items, since they bought their present car from 2 to 6 years ago when these features had much less widespread acceptance.

In almost 9 out of 10 cases, motorists will rely on the trade-in or sale of their present car to pay for part of the cost of their new car. As to the remainder, approximately 2 out of 3 will use installment credit or some other form of borrowing to finance the difference; 1 out of 3 will pay the remainder in cash.

In a general way, the typical motorist will realize that taxes figure into the cost of purchasing a new car. He probably does not realize, however, that 24 cents out of every automotive sales dollar is accounted for by taxes which the manufacturer or dealer has paid in the process of making and bringing his new car to the showroom where it is sold.

As to delivery and handling charges, he recognizes that these costs must be reflected to some extent in the final cost of his purchase, but he will have no idea of what is reasonable for such charges.