

Modifying Order

96 F.T.C.

IN THE MATTER OF
FORD MOTOR COMPANY, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 9073. Decision, March 29, 1979—Modifying Order, July 3, 1980

This order changes some of the order provisions in an order to cease and desist issued against a Detroit, Mich. manufacturer of motor vehicles March 29, 1979, 93 F.T.C. 402, 44 FR 25630. In an effort to insure evenhandedness in requirements in similar cases issued against competitors, the Commission is modifying the order provisions to meet those in a provisionally accepted order against General Motors Corporation. The Commission has eliminated the references to the State of Louisiana in Paragraphs I.J and II.F; redefined the meaning of "allowable expenses" in Paragraph I.L; and removed the requirement that respondent submit summary reports of certain required audits to the agency. The order now requires simply the preparation and maintenance of such audit summary reports.

ORDER REOPENING AND MODIFYING CONSENT ORDER

On March 29, 1979, the Commission issued a Decision and Order against respondents Ford Motor Company and Ford Motor Credit Company,¹ in connection with the extension and enforcement of motor vehicle retail credit obligations and the disposition of repossessed motor vehicles. There is now before the Commission a Request by the Ford respondents (filed May 30, 1980, and amended June 10, 1980) for reopening and modification of that Order pursuant to Section 2.51 of the Commission's Rules of Practice, 16 C.F.R. 2.51.

The Order required Ford to establish and provide to all dealers, as part of the Ford Manual of Dealer Accounting Procedure (binding on all Ford dealers), a system for determining repossession surpluses and for accounting for such surpluses and for any deficiencies sought on repossessed vehicles. It required also that Ford conduct a series of field audits to verify whether its dealers are in fact adhering to that system.

Order Paragraph I.J defines "disposition" of a repossessed vehicle to include its sale or lease, but not transactions subsequent to judicial sales in Louisiana.² In accordance with the latter aspect,

¹ 93 F.T.C. 402. The Order was modified on February 16, 1980, [45 FR 22020; 95 F.T.C. 349] at the behest of the Ford respondents and without objection by the Commission's staff, in a single subparagraph unaffected by the Request discussed herein.

² The full text of Paragraph I.J is as follows:

J. "Disposition" or "dispose" refers to a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; i.e., it does not include a sale

(Continued)

Paragraph II.F limits the coverage of the repossession accounting system as follows:

F. The accounting system shall not apply to sales of repossessed vehicles subsequent to judicial sales in Louisiana.

The Order further provides, in Paragraph I.L, that the following expenses, among others, may be deducted as "allowable" in dealers' determination of surpluses and of deficiencies upon which collection is attempted:

* * * * *

7. sales commissions paid for actual participation in the sale of the particular vehicle, computed at a rate no higher than for a similar, nonrepossessed vehicle and excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

* * * * *

10. expenses for telephone calls and postage incurred in arranging for the repossession, holding, transportation, reconditioning and resale of the vehicle.

As to the Ford-conducted audits, Paragraph IV.H requires that "[w]ithin sixty days after completion of each audit of a dealership . . . Ford shall:

1. submit to the Federal Trade Commission a summary report of the audit for that dealership, containing . . . [seven specified categories of information and/or documentation]."

The current Ford Request relies on various manifestations of Commission policy in favor of evenhanded treatment of similarly situated business entities. As amended, the Request asks that Paragraphs I.J, II.F, I.L and IV.H.1 of the March 1979 Order be modified to "conform" in certain respects to a consent order agreement with General Motors Corporation, et al., accepted subject to public comment on March 5, 1980 (Docket 9074, 45 FR 14870, March 7, 1980). Specifically, Ford seeks elimination of the "in Louisiana" limitation from Paragraphs I.J and II.F; clarification that expenses incident to any proper disposition (i.e., a sale or lease, rather than just a sale) may be deducted as "allowable" in determining the amount of any surplus or deficiency; and provision that these expenses may include costs of certain fringe benefits

or lease to the financing institution, the dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed vehicle. Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

incurred in connection with payment of sales commissions, certain other certain necessary photocopying and communication expenses, and amounts paid specifically to insure the repossessed vehicle while in the dealer's possession.

Because the audit process incorporated in the *General Motors* consent order requires preparation and maintenance of a summary report of each dealership audit (*GM ¶¶ IV.A.3 and IV.B*) but not their automatic submittal to the Commission, Ford asks that Paragraph IV.H.1 be modified to require only preparation and not routine submission (to the Commission) of its individual dealership audit reports. Ford notes that such reports would still be available for review by Commission representatives upon request, under the general-recordkeeping provision of the Order (Paragraph VIII.A). In addition, Ford undertakes to submit two statistical reports to the Commission during the conduct of each sample audit, to provide Commission staff with interim overviews while the audit process is still ongoing.

The Commission's staff concurs in all of the modifications proposed in Ford's Request, as amended.³ However, with the exception of the changes to Paragraph I.L the staff does not agree with Ford's contention that the modifications are within the scope of Paragraph VII.B (which confers upon Ford a right to have any provision conformed, as necessary and appropriate, to a corresponding provision of any final order in Dockets 9072-74 which prescribes a less restrictive standard on certain enumerated subjects). Because the Commission has decided to grant all aspects of Ford's amended Request,⁴ as an exercise of sound discretion—in the interest of prompt evenhandedness rather than contingent on finality of the *General Motors* order—it is unnecessary to make a determination as to whether the requested modifications of Paragraphs I.J, II.F and IV.H.1 fall within the scope and operation of Paragraph VII.B.

Therefore, the Commission being of the opinion that the public interest will be served by modifying the Order as requested, at this time,

It is ordered, That Docket 9073 be, and it hereby is, reopened for the limited purpose of effecting the following changes.

It is further ordered, That Paragraphs I.J and II.F of the Order be modified by eliminating references to Louisiana, so that the last sentence of Paragraph I.J will read:

³ The Commission notes that no comments were filed on these aspects of the *General Motors* consent order during its sixty days on the public record, and that none have been filed on Ford's Request.

⁴ In implementation of its proposed modifications to Paragraph I.L, Ford has submitted detailed revisions of certain portions of its Manual of Dealer Accounting Procedure. Pending staff review of these materials, the Commission expresses no view at this time as to their compliance with the modified provisions.

Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale.

and Paragraph II.F will read:

F. The accounting system shall not apply to sales of repossessed vehicles subsequent to judicial sales.

It is further ordered, That Paragraph I.L of the Order be modified in its preamble and in certain indicated subparagraphs, and by addition of a new subparagraph 11, to read as follows:

L. "Allowable expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for disposition and disposing of the vehicle, and not otherwise reimbursed to the dealership. They are limited to the following charges (if allowable under applicable state law):

* * * * *

5. labor and associated parts and supplies furnished by the dealership for the repair, reconditioning or maintenance of the vehicle in preparation for disposition, computed at dealer cost (as defined in the Initial Compliance Report) with appropriate adjustments for any insurance or warranty recovery;

6. amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the vehicle in preparation for disposition;

7. cost of sales commissions paid for actual participation in the disposition of the particular vehicle, computed at a rate no higher than for the sale or lease, as applicable, of a similar, nonrepossessed vehicle in similar circumstances, but excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing, or insurance;

* * * * *

10. expenses paid to others for communication (including telephone calls, postage, and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning, or disposition of the vehicle; and

11. amounts paid to insure the particular vehicle while holding it.

It is further ordered, That Paragraph IV.H.1 of the Order be modified to eliminate the following language:

1. submit to the Federal Trade Commission a summary report of the audit for that dealership, containing . . .

and substitute therefor the following:

1. prepare a summary report of the audit for that dealership, containing . . .

Decision and Order

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9074. Complaint* Feb. 10, 1976—Decision, July 7, 1980*

This consent order requires, among other things, Chuck Olson Chevrolet, Inc. (Olson), an Oregon Motor vehicle dealer with its principal place of business located in Seattle, Wash., to adopt and adhere to "Repossession Accounting Procedures" maintained by General Motors Corporation; furnish all appropriate supervisory personnel with a copy of the procedures; and establish to the reasonable satisfaction of the Commission that it has paid all surpluses realized on repossessed vehicles returned by financing institutions other than General Motors Acceptance Corporation (GMAC) since February 10, 1973. (Surpluses generated from Olson vehicles which have been repossessed by GMAC must be paid by GMAC.)

Appearances

For the Commission: *Randall H. Brook, Ivan L. Orton and Dean A. Fournier.*

For the respondents: *Robert C. St. Louis, Aiken, St. Louis & Siljeg, Seattle, Wash.*

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint together with a proposed form of order; and

Respondent Chuck Olson Chevrolet, Inc., its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by said respondent as to the Commission's jurisdiction, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint, and waivers and other provisions in accordance with the Commission's Rules; and

The Secretary of the Commission having thereafter, in accordance

* Complaint previously published at 95 F.T.C. 825.