

IN THE MATTER OF
GENERAL MOTORS CORPORATION

DISMISSAL ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 2(d) OF THE CLAYTON ACT AND SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

Docket 9114. Complaint, July 19, 1978—Final Order, June 21, 1984

This order dismisses the Commission's complaint charging a Detroit, Mich. motor vehicle manufacturer with allegedly violating the Robinson-Patman Act and Section 5 of the Federal Trade Commission Act by failing to make promotional allowances available on proportionally equal terms to all competing rental and leasing firms. In its opinion, the Commission noted that "in light of the Commission's public interest mandate" the Commission and the courts must be careful "not to expand the ambit of legislation beyond that set forth by Congress" and the Commission will therefore "eschew efforts to broaden application of the Robinson-Patman Act beyond that established by law."

Appearances

For the Commission: *Renee S. Henning.*

For the respondent: *Frederick Rowe, Kirkland & Ellis, Washington, D.C.,*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent, General Motors Corporation [hereinafter referred to as GM], has violated and is now violating the provisions of Section 2(d) of the Clayton Act, as amended (15 U.S.C. 13), and of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint charging as follows:

PARAGRAPH 1. GM is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business located at 3044 West Grand Boulevard, Detroit, Michigan.

PAR. 2. GM is the largest manufacturer of automobiles in the United States. In 1977, GM sold approximately 6.6 million automobiles, trucks and coaches in the United States. During 1977, GM's net sales exceeded \$54,961,000,000. GM's net income during 1977 exceeded \$3,337,000,000.

PAR. 3. In the course and conduct of its business, GM has been and

is now engaged in commerce, as "commerce" is defined in the Clayton Act, as amended, and GM's methods of competition are and have been in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, as amended. [2]

The acts and practices herein described in connection with GM's offers and grants of advertising allowances and other expenses [hereinafter collectively referred to as agreements] are and have been in commerce, as "commerce" is defined in the Clayton Act, as amended, and are now and have been in or affecting commerce as the term "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. GM sells its automobiles and trucks [hereinafter referred to as vehicles] to dealers which, in turn, sell the vehicles to rental and leasing companies [hereinafter referred to as GM customers]. As more particularly described herein, GM deals directly with GM customers in administering its agreements in connection with the sale of its vehicles.

PAR. 5. In the course and conduct of its business, GM has paid or contracted for the payment of something of value to or for the benefit of some of its GM customers, as compensation or in consideration for services or facilities furnished or agreed to be furnished by or through such GM customers in connection with the distribution of vehicles sold by GM. GM has not made or offered to make such payments for services or facilities available on proportionally equal terms to all of its other GM customers competing with such favored GM customers.

For instance, GM has engaged in agreements with certain GM customers, including but not limited to, National Car Rental System, Inc., whereby payments have been made for advertisements linking vehicles sold by GM with the vehicles offered for rent or lease by GM customers to the value and benefit of said customers. Typical are advertisements placed by National Car Rental System, Inc., which include phrases such as: "We feature General Motor Cars." Payments for these agreements have been made by GM to GM's customers, or their agents. GM has not offered to pay, has not paid or otherwise made payments available on proportionally equal terms to all of its GM customers competing with the favored GM customers. [3]

COUNT I

Alleging violation of Section 2(d) of the Clayton Act, as amended.

PAR. 6. The allegations of Paragraphs One through Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 7. The acts and practices of respondent, as alleged above, are in violation of subsection (d) of Section 2 of the Clayton Act, as amended (15 U.S.C. 13).

COUNT II

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 8. The allegations of Paragraphs One through Five are incorporated by reference herein as if fully set forth verbatim.

PAR. 9. The aforesaid acts and practices of respondent GM violate the policy of Section 2(d) of the Clayton Act, as amended; all to the prejudice of the public; have the tendency and effect of preventing and hindering competition and may tend to create a monopoly in the vehicle rental or leasing businesses; and constitute unfair methods of competition in commerce and unfair acts or practices in or affecting commerce, within the intent and meaning and in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

INITIAL DECISION BY

JAMES P. TIMONY, ADMINISTRATIVE LAW JUDGE

SEPTEMBER 29, 1983

PRELIMINARY STATEMENT

By Complaint issued on July 19, 1978, respondent General Motors ("GM") is charged with violation of Section 2(d) of the Robinson-Patman amendment to the Clayton Act, 15 U.S.C. 13(d), and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The Complaint alleges that GM sells automobiles and trucks to dealers which, in turn, sell the vehicles to rental and leasing companies, and that GM deals directly with rental and leasing companies in administering its advertising agreements in connection with the sale of its vehicles. (Complaint, ¶ 4)

The Complaint also alleges that GM has paid some rental and leasing companies for advertising furnished by such companies in connection with the distribution of vehicles sold by GM, and that GM has not made such payments available on proportionally equal terms to all other competing rental and leasing companies. (*Id.*, ¶ 5) As an example, the Complaint alleges that GM has entered into advertising agreements with National Car Rental System, Inc., whereby GM pays for advertisements placed by that firm which include phrases such as: "We Feature General Motors cars." (*Id.*)

In Count I, the Complaint alleges that GM's acts and practices violate Section 2(d) of the Clayton Act. In Count II, the Complaint alleges that the same acts and practices violate Section 5 of the FTC

Act, in that they allegedly (a) violate the policy of Section 2(d) of the Clayton Act, to the prejudice of the public; (b) have the tendency and effect of preventing and hindering competition and may tend to create a monopoly in the vehicle rental or leasing businesses; and (c) constitute unfair methods of competition in commerce and unfair acts or practices in or affecting commerce. (*Id.*, Count II)

In its Answer filed on August 17, 1978, GM generally denies the various allegations of the Complaint. The Answer affirmatively alleges that: (a) to support the retail sales efforts of GM dealers in offering GM vehicles to the new car consuming public, GM purchases advertising from many sources and media, occasionally including rental and leasing companies or systems which promote and feature GM products in their advertising, (b) GM does not purchase, nor is it obligated to purchase, advertising from all media or other potential suppliers of advertising, (c) rental and leasing firms are engaged in the business of offering a service to their customers which includes the opportunity for potential new car customers to "test drive" GM products, (d) there is no connection between GM's purchases of advertising and the rental and leasing [2] companies' purchase of GM or other vehicles from independent franchised GM dealers, and (e) GM's purchases of advertising are a lawful, procompetitive activity. (Answer, ¶ 5)

The Answer affirmatively alleges that GM's purchases of advertising have benefited competition within the automobile industry and within the rental and leasing industry and have benefited consumers of both new cars sold by dealers and of services offered by rental and leasing companies. (*Id.*, ¶ 9) The Answer also affirmatively alleges that the Complaint fails to state a claim upon which relief can be granted because, *inter alia*, (a) rental and leasing companies are not customers of General Motors, (b) the advertising purchased by General Motors is not purchased in connection with the sale or resale of any product or commodity, and (c) rental and leasing companies do not resell any products or commodities, but rather provide a service to their customers. (*Id.*, ¶ 10)¹

On April 28, 1980, the parties signed a consent agreement proposing to settle the proceedings. By order dated May 23, 1980, the consent agreement was certified to the Commission, which in turn withdrew the matter from adjudication pending its consideration of the proposed settlement. The consent agreement was ultimately not approved, and by Commission order dated March 12, 1982, the matter was returned to adjudication. By order dated March 17, 1982, the

¹ The Answer asserts additional two affirmative defenses: discriminatory enforcement and violation of the terms of a protective order entered in *In re Hertz Corp.*, Docket No. 9033. (Answer ¶ 11) GM elected to waive its protective order violation defense at hearing. (tr. 1519-21) The other affirmative defense will be dismissed as a matter of law. *FTC v. Universal-Rundle Corp.*, 387 U.S. 244 (1967); *Moog Indus. v. FTC*, 355 U.S. 411, 413 (1958).

proceeding was assigned to me for hearing because of my predecessor's retirement.

On April 21, 1982, I adopted a stipulation by which, complaint counsel abandoned any claim that GM's acts and practices in issue caused any injury to competition. In the Stipulation, complaint counsel agreed that "they will not pursue the third of their general theories of violation of Section 5, *i.e.*, the Section 5 injury theory." (Stip., ¶ 7) Specifically, the abandoned theory was that the GM acts and practices covered by the Complaint allegedly "constitute a violation of Section 5 because of their effect on competition." (Stip., ¶ 1(c)) Based on complaint counsel's decision to drop their Section 5 injury theory, the parties agreed that "[n]either the effects on competition nor the lack of effects on competition of the GM acts and practices covered by the [3] complaint are in issue in this case" and that "[e]vidence regarding the competitive effects, as well as evidence regarding the lack of competitive effects, of these GM acts and practices is irrelevant and inadmissible and, therefore, will not be offered in this case by complaint counsel or GM." (*Id.*, ¶¶ 5, 6)

With the adoption of the Stipulation, complaint counsel's theories of violation of Section 5 of the FTC Act are as follows:

(a) That the GM acts and practices covered by the complaint violate Section 5 of the Federal Trade Commission Act because they constitute a violation of Section 2(d) of the Clayton Act.

(b) That these GM acts and practices also violate the spirit of Section 2(d) and, thereby, violate Section 5. Under this theory, Section 5 would fill gaps, if any, in the proof of the Section 2(d) violation. (Stip., ¶ 1)

On September 14, 1982, less than three weeks before the trial was scheduled to commence, complaint counsel filed a motion for summary decision. By order dated October 4, 1982, complaint counsel's motion was denied as tardy. As required by Rule 3.24(a)(5) of the Commission's Rules of Practice, an order specifying facts that appear without substantial controversy was entered on October 8, 1982.

Trial commenced on October 5, 1982 in Washington, D.C. and concluded there on November 15, 1982. Complaint counsel called 13 witnesses; GM called three. Additional testimony was received from four other Commission witnesses by deposition, affidavit and interrogatories. The record includes 3,177 transcript pages and 485 exhibits, many multi-paged. On April 18, 1983, the parties filed proposed findings and post-hearing briefs. On June 24, 1983, the parties filed reply findings and briefs.

The parties were directed to prepare document lists in accordance with the Commission's guidelines in *General Motors Corp.*, 99 F.T.C.

464, 555 n. 1 (1982). The parties complied and those lists were admitted as exhibits CX 1A-Z-30, CX 2A-R, and RX 144A-O, and the record was closed on August 15, 1983.

Any motions not specifically ruled upon, either directly or by the necessary effect of the conclusions in this decision, are hereby denied. The findings of facts made herein are based on a review of the entire record and upon consideration of the demeanor of the witnesses who gave testimony in the proceeding. [4]

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding.

Abbreviations

The following abbreviations are used in references to the record of this proceeding:

- tr. - Transcript page and line number, sometimes preceded by witness' name
- CX - Complaint counsel's exhibit, followed by its number and in some cases pages
- RX - Respondent's exhibit, followed by its number and in some cases pages
- f. - Finding, followed by its number
- ff. - Findings
- RAD-Supp- Respondent's response to request for admissions, dated August 23, 1982, followed by a reference to a numbered paragraph.
- GM - General Motors Corporation
- GMAC - General Motors Acceptance Corporation
- car - automobile and/or truck
- Avis - Avis Rent-A-Car System, Inc.
- Budget - Budget Rent-A-Car Corporation
- Hertz - Hertz Corporation
- National - National Car Rental System, Inc.

Definitions

a. *Fleet* is a new car customer registering at least ten new vehicles annually, and includes commercial companies, political subdivisions, and rental and leasing firms. (Vader tr. 3018, Vader CX 7780Z-10; McClintock tr. 1138, 1242) [5]

b. *Leasing transaction* is the lease of a car to a customer for a period of six months or longer, normally ranging from twenty-one to thirty-

six months for automobiles to over five years for trucks. (CX 7777-11, Z-38; Oshry tr. 1903-14; CX 7743D)

c. *Rental transaction* is the rental of a car to a customer for a period ranging from one day to six months. (CX 7777Z-11, Z-38; Nevel tr. 1032-33; CX 7743D)

d. *Favored* rental and leasing firms use GM cars and receive more advertising payments per car from GM pursuant to an advertising agreement than their competitors.

e. *Disfavored* rental and leasing firms use GM cars but receive either no advertising payments from GM or less than their competitors pursuant to an advertising agreement. [6]

I. FINDINGS OF FACT

A. General Motors

1. General Motors ("GM") is a Delaware corporation, with its principal office and place of business located at 3044 West Grand Boulevard, Detroit, Michigan. (Complaint, ¶ 1; Answer, ¶ 1)

2. GM is the largest manufacturer of cars in the United States. During 1977, GM sold 6.7 million cars and trucks in the United States, and had net sales of \$54.9 billion and net income of \$3.3 billion. (Complaint, ¶ 2, Answer, ¶ 2)

3. GM sells its new cars and trucks to franchised dealers who sell them to consumers, including rental and leasing firms. (Complaint, ¶ 4, Answer, ¶ 4)

4. GM is engaged in interstate commerce and is acting in the course of such commerce. (Order Specifying Facts, dated October 8, 1982)

B. GM and Franchised Dealers

5. GM has franchise contracts with new car retail dealers. These franchise contracts are called sales and service agreements. (McClintock tr. 1209)

6. In 1983, GM has franchise sales and service agreements with about 12,000 dealers. (McClintock tr. 1199)

7. GM has five car divisions: Chevrolet, Buick, Oldsmobile, Pontiac and Cadillac. (CX 7741B; CX 7758C) Some dealers have franchise agreements with a single GM division. Others have franchise agreements with two or more divisions. (McClintock tr. 1201-03, 1206-07, Quick tr. 1455)

8. The sales and service agreement permits a dealer to purchase and resell to consumers the products of a GM division at a particular location, and to use that division's mark. (McClintock tr. 1210) In return, the agreement requires the dealer to sell new cars manufac-

tured by the division, to carry and sell replacement parts for those cars, and to operate a service department for repair and maintenance of those cars. (McClintock tr. 1213, 1216-17; Quick tr. 1405-06, 1457)

9. GM franchised dealers are independent businessmen. (Quick tr. 1462; McClintock tr. 1213, 1221; Uliano tr. 2450) They are not owned or controlled by GM. (Quick tr. 1408) [7]

10. Other lines of business in which a franchised dealer may become involved commonly include the rental and leasing of cars, as well as sales of competing makes of new cars (*e.g.*, Datsun or Saab), operation of a used car lot, operation of a body shop for the repair of wreck damage, financing or insurance. (McClintock tr. 1213-16; Quick tr. 1406-07, 1409).

11. Franchised dealers may participate in car rental and leasing businesses through common ownership, a separate subsidiary, or a department or division of the dealership. (*E.g.*, McDougal CX 3244Z-16 - separately incorporated rental and leasing operations; Avery CX 2219A-C, RX 1E - one-third ownership interest in a rental business run as a division of the dealership as well as a leasing business owned by the dealership and run as a division; Quick tr. 1370-73, 1406-07 - rental and leasing division or department)

12. Most franchised dealers who operate a car rental business restrict their operation to "shop or service rentals," providing substitute transportation to a person whose own car is being repaired in the dealership's service department. (Vader tr. 3015-16; Vader CX 7780Z-11; Avery RX 1C)

13. In 1979, of 10,369 GM dealers, there were 6,912 leasing cars. There were 4,957 GM dealers who ran their leasing operation as a department of the dealership rather than as a separate business entity. (CX 7778M, F)

14. In 1979, there were 4,995 GM dealers renting cars. There were 4,194 dealers who ran their rental operation as a department of the dealership. There were 3,081 GM dealers engaged in shop rentals only, 267 in public rentals only and 1,647 in both shop and public rentals. There were 578 GM dealers who were members of a daily rental system such as National, Avis, Hertz or Budget. (CX 7778F)

C. *Distribution of GM Cars*

1. Orders for Cars

15. GM franchised dealers submit orders to GM for new GM cars on an ongoing basis. (McClintock tr. 1221-22) New GM cars are only built to a dealer's order, with the exception of cars that GM uses itself or sells to the federal government or the Red Cross. (Brazill tr. 2763)

16. Dealer orders for new GM cars are either "stock orders" or "sold

orders." A stock order is one where the dealer is purchasing the car for his new car inventory for subsequent retail sale. A sold order is one where the dealer is buying the car for resale to a consumer with whom he has negotiated a contract of sale. (McClintock tr. 1221-22) [8]

17. Upon receipt of a dealer order, GM forwards it to the assembly plant for production. (McClintock tr. 1222) Once built, a new GM car is shipped to the ordering dealer's premises or to a location he designates. (McClintock tr. 1226)

18. At the time of shipment, GM receives payment from the dealer for the new car, and ownership and title to the car is transferred from GM to the dealer, either by certificate of origin or bill of sale. (McClintock tr. 1227-31)

2. Prices of New Cars

19. The "dealer invoice price" is the amount a franchised dealer pays GM for the new car upon shipment. (McClintock tr. 1253; Ashbaugh tr. 999-1000; Brazill tr. 2725) The dealer invoice price is the same for all dealers for the same make, model and equipment at any given time. (McClintock tr. 1254; Brazill tr. 2732; Uliano tr. 2463)

20. Included in the dealer invoice price is a small amount (from 1% to 3%), called a "holdback," that is later paid to the dealer on a periodic basis that he selects. This amount is "held back" and credited to the dealer's account with GM so as to provide the dealer with a contingency reserve fund in the event of an unexpected financial emergency. (Brazill tr. 2725-26; Ashbaugh tr. 999-1000)

21. Federal law, 15 U.S.C. 1231-1233, requires all automobile manufacturers to post a manufacturer's suggested retail price ("MSRP") on the window of a new car. (McClintock tr. 1254; CX 7751W, Vader CX 7780Z-17-18) The dealer and the consumer frequently agree on a price different from the MSRP. (McClintock tr. 1254-55)

22. On occasion, GM offers "price protection," agreeing that the price of a car to the dealer will not be increased between the time the dealer enters into the contract of sale with his customer and the time the car is delivered to the dealer. (Vader tr. 3047; Vader CX 7780Z-114-15; Ashbaugh tr. 991)

23. State law in some jurisdictions requires that automobile manufacturers offer price protection to their franchised dealers. (*E.g.*, Cal. Veh. Code Section 11713.3(h) (West 1982); Mich. Stat. Ann. Section 19.856(34)(d) (Callaghan 1982); Minn. Stat. Ann. Section 80E.13(d) (West 1983))

24. On occasion, GM also offers "price assurance," agreeing that, as to a new model car, the price to the dealer will not exceed the price

for the prior year's model plus a certain percentage. (Vader tr. 3048-51) [9]

25. The price and other terms at which a consumer purchases a new GM car from a franchised dealer are negotiated between the consumer and the selling franchised dealer. (McClintock tr. 1221; Quick tr. 1410-11; CX 7735F)

3. Delivery of Cars

26. Upon its arrival from the factory at the dealership or other dealer-designated location, a new GM car is inspected and conditioned by the dealer or his authorized representative. Thereafter, delivery of the car is made to the consumer. (McClintock tr. 1261-62; Brazill tr. 2711)

27. GM usually delivers new cars ordered by its franchised dealers to their dealership premises. (McClintock tr. 1226; Brazill tr. 2724-25; Uliano tr. 2455) However, at a franchised dealer's request, a new car may be delivered to another location designated by the dealer pursuant to GM's drop shipment policy. (McClintock tr. 1226, 1260-67)

28. GM franchised dealers may request drop shipment of new cars from GM where the dealer has agreed to deliver the cars directly to the fleet user. Either the selling dealer or another franchised dealer receives the cars and completes the inspection and conditioning at the fleet user's location. (CX 7774A-B, G, I)

D. Dealers Rent and Lease Cars

1. GM Encouragement

29. The GM Dealer Sales and Service Agreement has a standard agreement for all five GM car divisions providing that it is the responsibility of the dealer to:

Fulfill the transportation needs of customers on an active, effective and competitive basis, by Dealer's direct sales of new Motor Vehicles and the rental and leasing of Motor Vehicles through rental and leasing operations conducted by Dealer pursuant to the provisions of . . . this Section. . . .

(CX 7781Q, E; McClintock tr. 1209; *see also* CX 7777Z-19, CX 7781S-T)

30. In 1975, there were more than 300 GM dealers that were National licensees. (CX 4062-I; Uliano, tr. 2366-67; CX 4037A, F-G, Q; CX 4035D) [10]

31. Some Avis licensees are GM dealers. (CX 2065-I - Brad Smith Chevrolet serving Crested Butte, Gunnison, Montrose, and Telluride, Colorado, tr. 826-27; CX 7778M)

32. In 1972, sixty-three Budget licensees were GM dealers. (CX 2211T; CX 2220Z-97 - Belzberg)

33. Some Dollar Rent-A-Car outlets are GM dealers. (CX 2715, pp. 3-4, 14, 1)

2. Genway Corporation

34. The Dealer Division of Genway Corporation ("Genway") provides financial and insurance services to GM dealers. It has about 500 GM dealers licensed, with at least one dealer in every state and about half of them in the northeast quadrant of the country. (CX 3244N, P)

35. Genway buys cars from a GM dealer and leases the cars back to the same dealer, who then rents or leases the cars to the public. (CX 3244T)

36. As of June 30, 1982, there were 13,540 vehicles leased under the Genway logo. (CX 3244V)

37. Genway provides GM dealers with financing for the cars, insurance, financial management and control information, and with experienced field personnel to help the dealer in the rental and leasing business. (CX 3244S)

38. GM dealers pay \$1250 for a Genway lease and rental license. (CX 3244W)

39. Genway finances the purchase of vehicles from GM dealers with money borrowed from GMAC. (CX 3244Z-43)

40. The GM dealers in the Genway network purchase cars directly from GM. (CX 3244Z, Z-41; McClintock tr. 1153-54, 1211-12) For financing purposes, the Genway GM dealers later transfer title to some of the cars already being used in their rental and lease fleets to Genway. They lease these cars back immediately for their rental and lease fleets, without ever giving Genway physical possession of the cars. Typically, by the time Genway purchases the car for immediate leaseback, the car has already been leased out by the dealer to a customer and is in the customer's hands. (CX 3244Z-40-43, Z-32 - McDougal; CX 3238K)

41. Genway and its Chevway Division had advertising agreements with GM during the period 1973 to 1980. Under these agreements, GM reimbursed, among other things, 50% of the cost [11] of local yellow page telephone directory listings appearing under the name "CHEVWAY" and including the names of local Chevrolet dealers. (CX 3243A)

E. GM's Connection with Fleet Sales

1. Prices

42. GM provides its dealers with price lists showing the dealer invoice price, the MSRP, and the price of optional equipment. (McClintock tr. 1257-58)

43. Rental and leasing firms sometimes receive these current price sheets for GM cars from a GM division. (Ashbaugh tr. 869-70; Uliano tr. 2407-08)

44. GM representatives sometimes discuss with rental and leasing firms prices at which they can get cars from GM dealers. (Uliano tr. 2407-08; Kieffer 2265-69)

45. GM representatives sometimes suggest to a rental and leasing firm a dealer to buy cars from. (Kieffer 2265-69)

46. A GM factory representative has advised Trans Rent-A-Car of potential price increases. (Furman tr. 1613-14)

47. GM fleet representatives tell rental and leasing firms when GM is offering free air-conditioners to its dealers that will reduce the price. (Korn tr. 2120-21; Kieffer tr. 2261-62)

48. In 1982, GM mailed fleet buyers an itemized list of the MSRP of various options, such as tilt steering wheels and tinted windows. GM wrote these fleet buyers that their "savings" per car under the program would be \$200. (CX 5227Y; CX 7510-I ("400 savings"))

49. In 1981, GM notified Colonial Car Lease Inc., that guaranteed interest rate financing will be offered for fleet orders on certain GM models, if the orders are received prior to that model's announcement date. (CX 7510C)

50. GM provides cash bonuses to fleets for fleet orders received by a certain date. GM writes rental and leasing firms directly to notify them of this fleet order program and tells them to contact its GM fleet account personnel if they have any questions. (CX 4109F; CX 7510B)

51. When GM offers a price assurance program for all orders received prior to official announcement of the prices on the new cars, GM notifies rental and leasing firms by letter. For example, in 1982, GM promised Colonial Car Lease in a letter that 1983 prices of certain GM models would be no higher than [12] they were on June 14, 1982, for orders received prior to the official price announcement date, and no higher than June 14 prices plus 2% on other models. (CX 7510-I)

2. Advertising

52. GM advertises its cars in national publications such as *Newsweek* and *People* using MSRP. (CX 7766D-F; CX 7751Z-6)

53. GM sometimes advertises price comparisons based on dealer invoice prices. In a 1982 GM *Business Week* advertisement aimed at fleets, GM stated that "with Chevrolet Celebrity based on dealer invoice costs of higher priced nameplate versions of similar fleet-equipped front-wheel-drive cars, the price is up to \$504 less." The advertisement asks: "Why should Celebrity be on your selector list? Multiply \$500 times your number of fleet cars." (CX 7766C)

54. *Automotive Fleet* magazine is aimed at rental and leasing firms

and other fleet operators. (McClintock tr. 1241-42; CX 7734A, Q, Z53-54) GM advertises its prices in *Automotive Fleet*. (CX 7734K-L) ("Consider the advantages of a low-cost, low scheduled maintenance fleet car: Chevette . . . Chevy Chevette 4-door is the lowest priced 4-door hatch-back in America!") (CX 7734L)

55. GM advertises its cash bonuses to consumers publicly through advertisements in *The Wall Street Journal*, *Time*, *Business Week*, and other publications. (CX 7728E-F, CX 7766A-B)

3. Sales Contacts

56. GM's new model year begins in September or later. (CX 4109B, E; CX 7510C, I; Brazill tr. 2666-67) During the summer preceding the model year, GM contacts fleets directly, encouraging them to place their orders. (CX 2220Z84 - Belzberg; CX 5701; CX 4109)

57. In April or May, GM dealers begin placing their own orders with GM for cars with a September introduction date. In June, the dealers begin taking orders from fleets and other accounts and submitting them to GM. (Brazill tr. 2666-68, 2721-22)

58. Rental and leasing firms such as Colonial Car Rental, Budget, and Sun Auto Rentals typically order new model GM cars months in advance of delivery. (Uliano tr. 2460-62; Korn tr. 2134; CX 2220Z-80-81 - Belzberg)

59. When rental and leasing firms such as National and Thrifty Rent-A-Car System go to purchase GM cars, the starting point for discussion is the GM factory invoice price. (Uliano tr. 2369-71; CX 5300Z-67-68Z-10 - Stemmons; Vader tr. 3047-49) [13]

60. Rental and leasing firms such as National, Thrifty Rent-A-Car System, and Sun Auto Rentals frequently buy GM cars at a price based on an agreed amount above the dealer's invoice price, without knowing what the invoice price is. (Korn tr. 2134, 2130-31; CX 5300Z-67-68 - Stemmons; CX 2220Z-80-81 - Belzberg; Uliano tr. 2369-71)

61. In purchasing a GM car, most rental and leasing firms agree to pay the factory invoice price plus a markup which usually is \$50 or less. (Furman tr. 1638-39, 1625; CX 5300Z-11 - Stemmons)

62. Under the Price Protection Program, GM notifies rental and leasing firms, as well as GM dealers, that there will be price protection for all cars ordered and delivered by specified dates. GM tells the rental and leasing firms that when they take delivery of the car six months later, they will pay the price at which they ordered the car. (CX 2220Z-84-85; Uliano tr. 2460-61; Brazill tr. 2775-76) GM "want [s] to make sure that all customers are aware of those programs." (Brazill tr. 2775-76)

63. GM's announcement of price assurance is sent both to the dealer

