

## Testimony to FTC on direct sales to consumers by auto manufacturers

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In some states, auto manufacturers are prohibited from selling automobiles to consumers directly, without operating through a franchised dealer.

In cases where manufacturers have no relationships with franchised dealers, this prohibition is clearly in restraint of interstate commerce. The Federal Trade Commission should require that manufacturers who do not operate through franchised dealers be allowed to sell their vehicles directly to consumers in all states.

Manufacturers who sell directly, without a franchised dealership network, do no harm to franchised dealers of other makes. The Massachusetts Supreme Judicial Court, when asked in a suit by auto dealers to rule on the legality of direct sales to consumers ruled instead that the auto dealers' association did not even have standing to sue, because dealers could not show that they were harmed by manufacturers selling a make and model which is not sold by franchised dealers at all.

Manufacturers have legitimate reasons for wishing to sell directly to consumers.

- a. Considerable savings accrue to buyers by skipping the dealership overhead cost.
- b. When a new manufacturer's output is too small to support a franchise exclusively for that make, a franchise requirement effectively means that the manufacturer must share floor space and attention with other, better-known makes. It's difficult for a new company to attract dealers and expand sales under these conditions. Putting new competitors at such an unnecessary disadvantage is clearly in restraint of interstate commerce.
- c. Manufacturers of innovative vehicles are even more restrained by the franchised-dealer requirement because their product requires more training for the salesperson and more time spent with the consumer to complete a sale. This creates a disincentive to the dealership to focus on selling that vehicle. I once visited the largest Nissan dealership in North Carolina and asked to see a Leaf, Nissan's all-electric vehicle. I had to wait thirty minutes until the only salesperson on staff who was trained to sell that vehicle became available. It was clear that the dealer was not interested in investing the resources needed to sell that model effectively. If an innovative car is a company's only product, the chilling effect on sales created by resistance from franchised dealers due to increased costs could mean life or death for the company.

- d. The sales model used by Tesla Motors, which involves selling directly at a non-negotiable price, is a breath of fresh air for consumers who abhor the franchised dealer experience, and that includes pretty much all consumers. Not only is everyone on Tesla's sales staff extensively trained to answer my questions on their innovative vehicle, but the sales representatives aren't on commission, as they are at franchised dealers. The result is a pleasant, pressure-free experience that allows the manufacturer to present the product as it needs to be presented, and allows the consumer all the time needed to learn about its new technology before committing to purchase. This sales model is necessary to growth of this small but promising US auto manufacturer, and it is only fair, and also in the consumer's interest, to allow this sales model to compete.
- e. Currently electric cars are at the center of this discussion, but this sales model should be available to promote the development of any kind of innovative automotive technology which a small manufacturer might develop.

While a case can be made that manufacturers should not be allowed to compete directly with their own franchised dealers, there is no basis at all for outlawing direct sales when the manufacturer has no franchised dealers. It stands to reason that dealers would object. Business people prefer to keep competition down. But if direct sales are found by consumers to be preferable to franchised-dealer sales in the future, dealers have no right outlaw competition from a better way of doing business.