

Dear Mr. Delacourt:

Thank you for inviting me to participate in the Federal Trade Commission (FTC) Workshop on e-commerce scheduled for Wednesday, October 9 from 11:00 a. m. 12:30 p. m. I look forward to presenting my views as part of the panel which will focus on automobile sales.

In response to your request for a summary of what I plan to say at the workshop, I will provide you with my initial thoughts. Between now and the workshop, I will further consider the issues, do some research, and more fully prepare my comments for the automotive industry panel discussion.

One thing I bring to the panel is my background in the automotive industry at the retail level. I have been the owner-operator of Lust Chevrolet-Buick Company in Aberdeen, South Dakota since 1962. The dealership was started by my Father in 1937. It began as a family-owned and operated business and remains so today. It is now in its third generation. In addition to the dealership in Aberdeen, I have also been the President of four other dealerships in three states. I have spent much of my life operating businesses dedicated to selling, leasing, and servicing new and used motor vehicles. My first hand knowledge about what is required to sell and service motor vehicles should assist the panel and the FTC in understanding the industry. I will also present one dealer's views about the "sale" of motor vehicle over the Internet.

I have been active in the South Dakota Automobile Dealers Association, serving on its Board of Directors for three terms. I represented South Dakota on the Board of Directors for the National Automobile Dealers Association (NADA) for 12 years. In 1993, I served as President of NADA. I continue to be actively involved with both associations.

I believe that my knowledge and experience will prove useful in the panel's discussion about the automotive industry and e-commerce. I have read several of the studies cited by the FTC in its notice about the workshop, as well as several recent papers by other groups. Quite frankly, based on what I have read to date, much of what has been written does not match up with my hands on experience in the automobile industry or my experience to date with e-commerce. We have had only a short period of exposure to e-commerce and its application to the automobile industry. Particularly disturbing to me is a theme which runs through much of the materials which suggests that dealers are opposed to e-commerce or the Internet. I hope to be able to dispel this contention as a member of the panel.

Another area I plan to focus on is the franchise system. I believe that consumers and others do not have an accurate understanding of what dealers do. There also does not seem to be an appreciation of how the franchise system has changed over the years. In my view, it has evolved into a distribution system that works extremely well. My experience as a franchised dealer convinces me that the current method of distribution is very efficient and cost effective. In addition, dealers add value as a result of the many functions they perform as part of the distribution process.

The claim that consumers could save billions of dollars if direct sales by manufacturers or sales arranged by or through third parties were allowed appears to be a gross overstatement. It is particularly misleading to suggest that consumers would continue to receive the same high level of service as is presently provided by independent

franchised dealers if such direct sales became prevalent. Franchised dealers are dependent on the revenue generated by the sale of new motor vehicles. The profit that a dealer makes on the sale of ancillary items such as parts and service are crucial to financial viability. Without new motor vehicles sales, I do not believe that the franchise system can exist.

Dealers also have a legitimate concern about the impact of so-called “free-riders.” As with the third party buying services or “brokers” who have been around for decades, some e-commerce business models were premised on being able to sell or arrange for the sale of new motor vehicles (usually through dealers) without having to make the sizeable investment that franchised new motor vehicles have made. Such activity raises “free rider” concerns on the part of the heavily invested dealers. While I cannot speak for the manufacturers, I do believe that they have no desire to lose control over their distribution system. Brokers are not accountable to the manufacturers. Direct sales by manufacturers present similar concerns for dealers. While cost savings are claimed, it must be recognized that if such savings were actually realized, it would be accomplished by effectively appropriating the assets and income of existing dealers. Some manufacturers have expressed concern about “brokers” or sales by those who are not franchised by the manufacturers to sell their products.

The strict regulation of who can sell a motor vehicle is not, as some suggest. Explained solely by self interest on the part of franchised dealers. We sell a product that is typically the second most expensive purchase a consumer makes. It can be a dangerous product. Safety recalls are sometimes necessary, for example. The sale of a new motor vehicle is a complicated transaction. Dealers are required to perform many functions as part of the transaction, some of which may surprise people. We are responsible for reporting certain cash transactions to the government in order to reveal possible criminal activity. We must fill out an odometer statement to help combat fraud. We are required to comply with a myriad of laws and regulations which touch on virtually every aspect associated with the sale of a motor vehicle. From the promotion of vehicles to the public (advertising rules at the state and federal levels), to disclosures of the terms of sale and financing, dealers must abide by regulations designed to protect the public interest. In many states, dealers assist the state in titling vehicles and collecting sales and other taxes.

Consumers, dealers, and manufacturers of motor vehicles are already realizing great benefits from e-commerce. While some of the early business models have fallen away, there is no question that consumers are the big winners. Never have consumers had such easy access to so much information about motor vehicles and related products. In a rural state like South Dakota, consumers have easy access to dealers across the state, all from the comfort of their home. In urban areas, consumers can avoid the traffic and save valuable time when they “shop” by surfing the Internet which often includes the inventory of their local dealers.

The regulation of e-commerce and its impact on competition is an intriguing topic. In my view, there is no question that some regulation is justified. The benefits that consumers receive by virtue of having access to independent franchised dealers to meet their transportation needs far exceed the cost of existing regulation. My contribution to the panel discussion will primarily focus on the critical value and services dealers provide to the public.

It is also important to realize that dealers, consumers, and manufacturers are currently operating under agreements, laws, and a distribution system which predate e-commerce or the Internet. There are many practical and legal issues that need to be addressed as we gain experience operating in this new environment. For example, if a person buys a vehicle direct over the Internet from a manufacturer located in Detroit what laws apply? Can a consumer invoke his or her state's lemon law? Direct sales of vehicles and such related items as financing and insurance products via the Internet cannot be done without regulation. The potential for fraud is enormous. It is one thing to try and buy a relatively low price item such as a CD or book and be victimized. It is quite another to place a large deposit toward the purchase of a big ticket item like a motor vehicle and be victimized. Some early indications of the business ethics of some of those engaged in e-commerce is not encouraging. Enforcement of existing laws designed to protect the public is already difficult. E-commerce transactions present new issues, and I expect this will be discussed by the panels during the three days of the workshop. One thing is certain. It will be consumers who ultimately decide what role e-commerce will play in the sale of new motor vehicles.

I hope this gives you some idea about what I hope to bring to the panel. If you have any questions or suggestions, please contact me.

Sincerely,

James K. Lust