

Medicare RBRVS involves consideration of recommendations from the AMA/Specialty Society RVS Update Committee ("RUC"),<sup>15</sup> which is composed of representatives of major medical societies, including AAOS. The Abt Restudy could be useful to the RUC and ultimately to the Health Care Financing Administration ("HCFA"), which administers the Medicare program, in the review and refinement of Medicare RBRVS.<sup>16</sup> The inability of AAOS under the Order to disseminate the Abt Restudy to members of the RUC appears likely to hinder participation in the process sponsored by HCFA for identifying information relevant to revising Medicare RBRVS and could increase the costs to HCFA in obtaining such information. Such inhibitions resulting from the Order would be inconsistent with federal policy as expressed in the Omnibus Budget Reconciliation Act of 1989 and the implementing regulations. The Order should be modified to permit AAOS to disseminate the Abt Study to other medical professional societies.

Finally, AAOS would like to provide copies of the Abt Restudy to its members, at least for the "limited purpose of furthering the Academy's efforts to persuade government bodies to modify their own physician payment practices." For example, according to AAOS, "in virtually all states, the Academy has no members who have ever seen the [Abt] Restudy, and therefore no one to meet with interested state officials responsible for compensation issues in Medicaid, workers' compensation or other medical programs."<sup>17</sup>

The prohibition on distribution by AAOS of relative value scales to its members is at the core of the Order, because of the alleged effect of maintaining the prices charged by its members.<sup>18</sup> Given the federal policy to rely on RBRVS for Medicare reimbursement and the increasing interest on the part of state governments and third party payers in relative value guides as a basis for physician reimbursement, however, the prohibition in the Order on dissemination by AAOS may inhibit the

contributions of its members to the development of RBRVS and increase the costs of disseminating the information.<sup>19</sup> Allowing AAOS to distribute the Abt Restudy to its members would allow them to participate in an informed manner in lobbying activities before state government agencies. Accordingly, AAOS should be permitted to distribute the Abt Restudy to its members.

The danger that AAOS members will use the Abt Restudy or other relative value guides as a basis for an unlawful agreement to fix the prices for their services has not been eliminated. Although the federal policy to use RBRVS for Medicare reimbursement counsels in favor of setting aside the restriction of the Order on distribution of relative values to AAOS members, AAOS and its members remain subject to the laws against price fixing. Setting aside the restrictions of the Order should not be construed as approval for use by AAOS or its members of a relative value guide as a basis for an unlawful agreement on price.

In some circumstances, preparation and circulation by a medical society of a relative value scale may have anticompetitive consequences. For example, in *American Society of Internal Medicine*, 105 F.T.C. 505 (1985) (advisory opinion), the Commission declined to approve a proposal to circulate a relative guide because of the "substantial danger that ASIM's proposed conduct would involve an agreement in restraint of trade among ASIM and physicians to concertedly adhere to the RVG."<sup>20</sup> The Joint Health Care Policy Statements also caution that "information exchanges among competing providers may facilitate collusion or otherwise reduce competition on prices."<sup>21</sup>

## VI. Conclusion

Accordingly, it is ordered that this matter be, and it hereby is, reopened, and that the modified Order in Docket C-2856 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission, Commissioner Starek concurring in the result only.

**Donald S. Clark,**

*Secretary.*

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<sup>19</sup> As a practical matter, material submitted to the Health Care Financing Administration on the public record presumably is available to members of AAOS on request.

<sup>20</sup> *Id.* at 511.

<sup>21</sup> Health Care Policy Statements at 20,784.

[Dkt. No. 3152]

## General Motors Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Set aside order.

**SUMMARY:** This order reopens a 1942 modified consent order—which prohibited the respondent from coercing or intimidating its automobile retail dealers into purchasing accessories supplied by General Motors or from its designated source—and sets aside the modified consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

**DATES:** Modified consent order issued June 25, 1942. Set aside order issued April 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 326-2526.

**SUPPLEMENTARY INFORMATION:** In the Matter of General Motors Corporation, et al. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 3, 38 Stat. 731; 15 U.S.C. 14)

## Order Reopening Proceeding and Setting Aside Order

Commissioners: Robert Pitofsky, Chairman, Mary L. Azcuenaga, Janet D. Steiger, Roscoe B. Starek, III, and Christine A. Varney.

On February 6, 1995, General Motors Corporation ("GM") as respondent and successor to General Motors Sales Corporation,<sup>1</sup> filed its Petition to Reopen and Vacate Modified Order ("Petition") in this matter. GM requests that the Commission set aside the 1942 modified consent order in this matter pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, and the Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders, issued on July 22, 1994, and published at 59 FR 45,286-92 (Sept. 1, 1994) ("Sunset Policy Statement"). In the Petition, GM affirmatively states that it has not engaged in any conduct violating the

<sup>1</sup> Since the Commission issued the order in this matter General Motors Sales Corporation, a named respondent in the order, was dissolved and its assets now reside within respondent General Motors Corporation.

<sup>15</sup> Petition at 13, citing 59 Fed. Reg. 32,754 & 32,760 (1994).

<sup>16</sup> See Petition at 18-19.

<sup>17</sup> Petition at 26.

<sup>18</sup> See also Advisory Opinion in *American Society of Internal Medicine*, 105 F.T.C. 505, 510 (1985) ("[A]lthough the Commission cannot \* \* \* predict that widespread concerted conformance to the RVG would necessarily result from its dissemination \* \* \* the available information on this specific RVG proposal indicates that this type of agreement in restraint of trade is a substantial danger.').

terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on March 27, 1995. No comments were received.

The Commission in its Sunset Policy Statement said, in relevant part, that "effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years."<sup>2</sup> The Commission's modified consent order in Docket No. 3152 was issued on June 25, 1942, and has been in effect for more than fifty years. Consistent with the Commission's Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. 3152.

Accordingly, it is ordered that this matter be, and it hereby is, reopened;

It is further ordered that the Commission's order in Docket No. 3152 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

**Donald S. Clark,**  
Secretary.

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[File No. 932-3340]

**Jerry's Ford Sales, Inc., et al.;  
Proposed Consent Agreement With  
Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair and deceptive acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, three corporations in Annandale, Virginia and Leesburg, Virginia and their President and CEO, individually and as an officer of the three corporations, in any advertisement to promote any extension of consumer credit, to cease and desist from misrepresenting the terms of financing the purchase of a vehicle, including whether there may be a balloon payment and the amount of any balloon payment. The order would also require the respondents, in any advertisement to promote any extension of consumer credit, to cease and desist

from failing to state all terms required by Sections 226.24(b) and 226.24(c) of Regulation Z. The order would also require the respondents, in any advertisement to aid, promote or assist any consumer lease, to cease and desist from failing to state all terms required by Section 213.5(c) of Regulation M.

**DATES:** Comments must be received on or before August 8, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Carole Reynolds, FTC/S-4429, Washington, D.C. 20580. (202) 326-3230.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying of its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

In The Matter of Jerry's Ford Sales, Inc.; John's Ford Inc. dba Jerry's Leesburg Ford; Jerry's Chevrolet Geo Oldsmobile, Inc.; corporations, and Jerry C. Cohen, individually and as an officer of the corporations.

[Docket No. 932-3340]

The agreement herein, by and between Jerry's Ford Sales, Inc., John's Ford, Inc. dba Jerry's Leesburg Ford, and Jerry's Chevrolet Geo Oldsmobile, Inc., corporations, by their duly authorized officer, and Jerry C. Cohen, individually and as an officer of the corporations (hereinafter sometimes referred to as "proposed respondents" or "respondents"), and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Jerry's Ford Sales, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 6510 Little River Turnpike,

Annandale, Virginia 22003. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

2. John's Ford, Inc. dba Jerry's Leesburg Ford is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 847 East Market Street, Leesburg, Virginia 22075. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

3. Jerry's Chevrolet Geo Oldsmobile, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 325 East Market Street, Leesburg, Virginia 22075. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

4. Jerry C. Cohen is an individual and an officer and director of the aforementioned corporate respondents. He formulates, directs and controls the acts and practices of the aforementioned corporate respondents, including the acts and practices hereinafter set forth. His business address is 6510 Little River Turnpike, Annandale, Virginia 22003. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.

5. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute

<sup>2</sup> See Sunset Policy Statement, 59 FR at 45,289.