

Hyundai Partners with Amazon to Sell Cars; FTC Vehicle Shopping Rule Creates Challenges for Dealers

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In a move that has captured the attention of auto dealers around the country, Amazon and Hyundai announced on November 16 that they had entered a partnership to sell new Hyundai vehicles online over the Amazon sales platform beginning in 2024. The new sales model will allow Hyundai dealers to sell their inventory through the Amazon platform while allowing customers to finance and pay for their cars “within the Amazon experience” to which they have become accustomed when purchasing other retail goods.

Although this new arrangement does not eliminate dealers’ role in the sale process, it will greatly reduce or eliminate the direct contact between the dealer and customer, inserting Amazon as a middleman of sorts that will connect the customer with the inventory of local dealers. This arrangement raises important questions about how existing state franchise laws can be applied to protect dealers as new online sales models take hold.

Hyundai and Amazon will begin testing the program in January 2024 with eighteen dealerships in five states and are expected to expand to other Hyundai dealers throughout the year. Hyundai is currently the only brand partnered with Amazon. Others are expected to follow suit, as Amazon’s President announced that the company’s next step will be to expand within Hyundai Motor Group’s portfolio to Kia and Genesis and then to partner with other brands.

Commentators predict that Amazon will provide the digital aspect of the sales experience while Hyundai dealers will continue to assist customers with financing



and delivery of the vehicle. Hyundai’s Amazon store will highlight its dealers’ inventory and connect them with in-market buyers. Consumers will be able to search for vehicles by trim, model, and color, and dealers will be allowed to set the vehicle price. However, once the price is listed, consumers will lose the ability to haggle or negotiate with the dealer. Amazon executives have stated that Hyundai dealers will be able to adjust their prices at any time.

Amazon customers will have the option to pick up the vehicle at a nearby dealership or have it delivered to their home. It is expected that Amazon will charge a per-unit transaction fee to dealers and/or OEMs for facilitating the transaction. While Amazon has stressed that this new shopping experience will create a way for dealers to build awareness of their selection and offer convenience to their customers, there is serious concern among the dealer body that this arrangement will turn dealers into delivery agents, rather than allowing them to run the sales process as they have for generations.

The Hyundai/Amazon deal has been structured so that it likely will not run afoul of state laws that prohibit direct sales by manufacturers, including the Massachusetts dealer franchise law, MGL

Chapter 93B, at Section 4(c)(10). As the Hyundai/Amazon partnership suggests, dealers would still be responsible for setting the price, helping arrange for the financing of the transaction, and delivering the vehicle, while Amazon will facilitate the digital aspect of the sales experience. By using Amazon to process the transaction rather than taking on that role directly, Hyundai will attempt to evade liability for direct sales to consumers.

Nonetheless, there remains a question as to whether the new Amazon arrangement constitutes such a fundamental change to the relationship between dealers and manufacturers that it alters their franchise agreements. As discussed in our previous article, the Illinois Motor Vehicle Review Board recently found that Ford had materially changed its dealers’ franchise agreements in Illinois through the Model e Program by requiring dealers to use the Ford.com website to sell vehicles. Ford’s program called for online sales to be fulfilled by a local dealer of the customer’s choice, with Ford’s website being the exclusive platform for online sales. After being challenged by Illinois dealers, the Illinois Motor Vehicle Board found that Ford had increased its role in the retail transaction by placing itself in the middle of the sale process and that it had not met the “good cause” standard for altering its franchise agreements as required under Illinois law.

Although Amazon and Hyundai’s partnership avoids some of the issues that caused the Illinois Board to strike down aspects of Ford’s Model e Program, there are parallels between that program and the Hyundai-Amazon partnership that could

allow for a legal challenge. Under both programs, dealers will deliver the vehicle while the transaction is completed through third-party platforms outside of the dealers' control. Additionally, under both programs, consumers will lose the ability to negotiate with dealers over the vehicle price, reducing competition between dealers in ways that negatively affect the consumer. Arguably, these changes constitute fundamental changes to the franchise agreements between Hyundai and its dealers that cannot be imposed unilaterally by Hyundai under various state laws, including Massachusetts's.

New FTC Rule and Proposed Mass. Regs Challenges for Dealers

Regulators at the local and national levels are taking action to address pricing transparency and so-called "junk fees". On November 30, 2023, Massachusetts Attorney General Andrea Joy Campbell announced new proposed regulations (540 CMR 38.00) that define certain practices in the sale and marketing of goods, services, and programs as "unfair and deceptive practices" under our state's Consumer Protection Law, MGL Chapter 93A. This law imposes extremely harsh penalties for violations, including the possibility of multiple damages and an award of attorneys' fees to affected consumers.

If enacted, the AG's regulations would require businesses across various industries to clearly disclose the total price of goods, services, and programs (all defined as "Products") when the price is first presented to consumers and to provide clear information concerning associated fees. Specifically, Section 38:04 of the proposed regulations would define the following practices to be unfair or deceptive: (1) misrepresenting or failing to disclose the total price of a Product when the price is first disclosed to the consumer; (2) misrepresenting or failing to disclose (a) the existence and purpose of any fees, interest, charges, or other expenses to be imposed on the consumer, and (b) whether such fees are optional, required, or refundable; (3) failing to disclose the total price of any product prior to re-

quiring a consumer to provide any personal information; (4) misrepresenting that any fees or other expenses are required by law when they are not; and (5) failing to display the total price more prominently than any other pricing information.

The proposed regulations also address recurring fees and trial offers. Under Section 38:05 of the regulations, it would be considered an unfair and deceptive act to: (1) fail to provide information such as a phone number or address for cancellation for a continuous service contract or trial offer; (2) fail to allow a consumer who entered into an automatic renewal or continuous service contract online to terminate it online; (3) fail to clearly disclose certain terms of any trial offer; and (4) fail to provide the consumer additional notice within no fewer than five calendar days prior to the date upon which they must cancel in order to avoid incurring an additional financial obligation.

If passed, these regulations will likely have a significant impact on the operations of Massachusetts auto dealers. First, the additional disclosures will likely add time to the car buying process, which will frustrate many who already find the process cumbersome. Further, as the automotive industry has been leaning into technology and offering services that require monthly and annual subscriptions, Massachusetts dealers will be burdened with the opt-out and disclosure provisions of Section 38:05 referenced above, which are not imposed on competing dealers from other states. The AG's Office will be holding public hearings and taking comments concerning the proposed regulations as the implementation process moves forward.

Meanwhile, national regulators looking to address pricing practices have been taking aim squarely at the automotive industry. On December 12, the Federal Trade Commission (FTC) enacted its Vehicle Shopping Rule, first proposed in June 2022 and now pejoratively renamed the Combating Auto Retail Scams (CARS) Rule, which targets junk fees and bait-and-switch tactics and attempts to provide more transparency in the car buying and leasing

process. Among other things, the CARS Rule will require dealers to (i) obtain their customers' consent before charging any fees; (ii) provide clear disclosure of the vehicle's total offering price; (iii) disclose that all add-ons are optional and prohibit dealers from offering add-ons that provide no benefit; and (iv) include the total payment amount when walking the buyer through financing. The CARS Rule also adds certain protections for military service members and seniors, who the FTC says have been targeted with unnecessary add-on products. The FTC commissioners unanimously passed the CARS Rule, and it will take effect on July 30, 2024.

While the FTC has said that nothing should change for "honest dealers," critics of the CARS Rule, including the National Automobile Dealers Association (NADA), say it will add confusion and complexity to the car buying transaction with numerous additional forms and disclosures for customers to sign. A study released by NADA found that the Rule would add an additional two-hours to the car buying process and a median of \$46,950 in upfront compliance costs for dealers for updated training, investment in IT systems, planning, and preparation.

While there is little doubt that the FTC's CARS Rule and the proposed regulations of the Massachusetts AG, if passed, will have a significant impact on dealer operations, the best way for dealers to stay out of trouble is to embrace the culture of transparency that the rules attempt to address. As shopping habits have changed across industries, consumers have been signaling that they want a straightforward buying experience without being surprised with hidden fees and costs. Dealers should foster a transparent sales process and begin preparing for these changes so they are ready to hit the ground running when the CARS Rule goes into effect in July 2024.

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