



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition
Bureau of Economics

March 26, 2014

The Honorable James Oberweis
Senator, 25th District
105 A State House
Springfield, IL 62706

Re: Request for Comment on Senate Bill 2629

Dear Senator Oberweis:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics¹ appreciate this opportunity

a range of related services. Collectively, these effects may lead to higher prices and reduced output for sales of new and used automobiles and related automobile services than would otherwise be the case.

I. Interest and Experience of the Federal Trade Commission in Competition Advocacy

The FTC is an independent administrative agency charged with protecting consumers by preventing anticompetitive, deceptive, and unfair business practices, enhancing informed consumer choice and public understanding of the competitive process, and accomplishing this without unduly burdening legitimate business activity.⁴ To secure these goals, since its creation, the FTC has played a significant role in promoting competition and consumer protection law and policy through both law enforcement and the study of industries and business practices. The FTC's enabling statute confers a range of research, education, and outreach tools to support the FTC's policy and scholarship function, in addition to its enforcement authority.⁵

To further the agency's mission to protect consumers by supporting competitive markets, and to share our learning with other policymakers, the FTC and its staff regularly engage in various forms of competition and consumer protection advocacy. One important type of advocacy is the submission of staff comments on proposed state legislation or regulation. When a state legislator requests a comment regarding a bill under active consideration by a state legislature, or when an open public comment opportunity exists with respect to a proposed regulation, FTC staff may respond with a comment that evaluates the potential competition and consumer protection issues raised by the pending bill or proposed regulation.

Competition is at the core of America's economy, and vigorous competition among sellers in an open marketplace gives consumers the benefits of lower prices, higher quality products and services, and greater innovation.⁶ The goal of our advocacy program is to enhance understanding of the competitive process and provide a framework for thinking about public policy issues from competition and consumer protection perspectives. We urge decision makers to consider the likely competitive impact of proposed legislation or regulations; how they might affect consumers; what justifications might exist for any restrictions on competition; and whether less restrictive alternatives would adequately protect consumers and fulfill other public policy goals.⁷

⁴ See generally Federal Trade Commission Act, 15 U.S.C. § 45.

⁵ Sections 6(a) and (f) of the FTC Act authorize the FTC “[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce,” and “[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest . . .” 15 U.S.C. §§ 46(a), (f).

⁶ See Nat'l Soc'y of Prof'l Eng'rs v. United States, 435 U.S. 679, 695 (1978) (“The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”); Standard Oil Co. v. FTC, 340 U.S. 231, 248 (1951) (“The heart of our national economic policy long has been faith in the value of competition.”).

⁷ FTC and staff advocacies take many forms, including letters or comments addressing specific policy issues, Commission or staff testimony before legislative or regulatory bodies, and amicus briefs. See, e.g., FTC Staff Comments Before the District of Columbia Taxicab Commission Concerning Proposed Rulemakings on

II. Past Federal Trade Commission Involvement in Automobile Distribution Issues

The FTC has a longstanding interest in the automobile industry and FTC staff have specifically examined and opposed limits on hours of operation by automobile dealers, whether imposed by state law or through agreement among dealers. This includes prior experience with Sunday closing laws in Illinois. In 1988, FTC staff submitted an advocacy letter to the Governor of Illinois opposing a bill that would have amended the Illinois Vehicle Code to extend the already existing prohibition of buying or selling new and used motor vehicles on Sunday⁸ to include a ban on long-term leasing.⁹ Earlier, in 1985, staff of the FTC's Chicago Regional Office testified in favor of repealing the Illinois Sunday closing laws for automobile dealers.¹⁰ Staff testified that mandated Sunday closing made it more difficult for consumers to comparison shop and thus might lead to increased prices and less favorable terms of sale. FTC staff took the position that prohibiting long-term leasing of automobiles would have similar adverse effects on consumers and therefore should not be added to the existing Code provisions. The FTC staff's position that Sunday closing laws are harmful to consumers, as stated in the previous letter and testimony, has been consistent over time and remains the same today.

The FTC also has used its enforcement authority to oppose anticompetitive restrictions on hours of operation. In the late 1980s, the FTC investigated and issued a complaint against several automobile dealerships in the Detroit area and the Detroit Auto Dealers Association ("DADA") for imposing similar restrictions on hours of operation. These dealers had reached an agreement, orchestrated by the DADA, to limit the number of hours that they would be open for business. The FTC concluded that the agreement was anticompetitive, a conclusion that was later affirmed by the U.S. Court of Appeals for the Sixth Circuit.¹¹

In addition to specific consideration of regulations and agreements relating to hours of operation, the FTC has more broadly been concerned with state-level regulations that limit the scope of competition for automobile sales. In 1986, for example, the FTC's Bureau of Economics issued a report on the effect on retail automobile markets of state regulation that restricts the establishment of new automobile dealerships in the vicinity of present dealers selling

Passenger Motor Vehicle Transportation Services (June 7, 2013), *available at* http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comments-district-columbia-taxicab-commission-concerning-proposed-rulemakings-passenger/130612dctaxicab.pdf; FTC Staff Comments to The Electronic Payment Association Concerning Proposed Revisions to the NACHA Operating Rules (Jan. 13,

cars of the same make.¹² The report found that these state laws caused automobile prices to rise, and therefore harmed consumers. In 2001, then-Commissioner Thomas Leary expressed concern about decades-old state laws that insulate automobile dealers from competition from automotive manufacturers. While dealers at one time tended to be small businesses, he observed, in 2001 they were frequently much larger entities; meanwhile, the once highly concentrated automobile manufacturing industry had become far more competitive. Commissioner Leary questioned, therefore, whether continued regulatory protections for dealers could still be justified, especially because they tended to interfere with the development of new and potentially more efficient methods of motor vehicle distribution, such as e-commerce.¹³

III. Discussion and Analysis of the Likely Effects of S.B. 2629

In almost all other industries, suppliers independently decide how and when to promote and sell their products or services, based on competition and their interaction with consumers. In states where automobile sellers are not subject to Sunday closing laws, the competitive process determines automobile dealers' hours of operation – just as competition also determines prices, inventory of available automobiles, showroom appearance and facilities, availability of trained salespeople, and perceived quality of service. Under current Illinois law, in contrast, auto dealers are deprived of the discretion to determine their own hours of operation on Sunday. In considering repeal of the current Sunday closing laws, we urge the Illinois legislature to consider the likely effects on competition of the current Sunday sales restrictions, the probable effects of repeal, and any legitimate justifications for retaining the Sunday closing laws.

A. Anticompetitive Effects of Sunday Closing Laws

As explained above and in the FTC's prior advocacy efforts related to Illinois' Sunday closing laws, such laws reduce competition among automobile dealers. Indeed, an agreement among automobile dealers not to open on Sunday would be a clear antitrust violation. FTC staff recognize that Sunday automobile dealer closings in Illinois appear to be a function of state law, and we are currently unaware of any allegations of private agreements among competing dealers in Illinois to limit their hours of operation. Still, the case law on unlawful agreements to limit hours is instructive, because the anticompetitive effects are identical, whether the restriction is imposed by legislative command or by agreement.

It is well established that an agreement among competitors to limit their hours of operation is anticompetitive. Both courts and commentators have concluded that such a restriction is a form of output reduction that violates federal antitrust laws. In discussing the FTC's case against the Detroit automobile dealerships, a leading antitrust treatise explains why:

[A]n agreement among automobile dealers to restrict showroom hours was an 'output' reduction warranting presumptive condemnation. As the FTC had noted,

respect to such services. Consumers will not be able to comparison shop as easily for these services, which may reduce competition and lead to higher prices.

In sum, Sunday closing laws directly interfere with the interaction of supply and demand between automobile dealers and consumers. They impede the ability of dealers to compete in response to perceived consumer demand and prevent the competitive process from determining hours of operation, along with related sales and service activities.

salespeople.¹⁸ These arguments directly challenge the value of competition and the competitive process.¹⁹ At best, they may constitute reasons an individual dealership might choose not to open on Sunday, but they are not arguments for why