Understanding FTC's Proposed Auto Rule and Ways to Improve It

The Federal Trade Commission's (FTC) proposed rule addresses a multitude of unfair and deceptive practices in car sales, including problems with 1) finality of the deal; 2) add-on products; 3) advertising and price disclosures; and 4) financing/monthly payments. Below are brief descriptions of key aspects of the proposal as well as important ways to enhance it for the benefit of consumers.

Yo-Yo Financing

The problem: Dealers lead car buyers to believe a sale is final when the contract is signed and the consumer drives home with their car, but subsequently summon car buyers back to the dealership, even multiple times, claiming that the agreed-upon financing has "fallen through" or other terms needed to be amended. This practice pressures buyers into worse contract terms (e.g. higher APR, different car) and often occurs when dealers sell the credit contract and try to get a better deal for themselves. Even worse: fine print hidden in the dense paperwork often states that the sale is conditional on circumstances beyond the consumer's control, essentially permitting some of this dealer "yo-yo" conduct.

FTC's proposed solution: Prohibited misrepresentations. Dealers would be prohibited from:

- Making misrepresentations about when a sale is final; and
- Making misrepresentations about the consequences for consumers of not agreeing to or finalizing a transaction (e.g. not returning a down payment or trade-in vehicle)

Deception and misrepresentations are already inherent in yo-yo practices. Merely prohibiting related misrepresentations will not stop this abuse.

The FTC should: (a) Issue a bright-line rule stating that a consumer must be fully approved for the credit terms before signing the contract, and that, once signed, the credit contract is final whether or not it is assigned to a third party; (b) Require a clause in sales contracts stating that the signed contract with credit terms is final and binding, notwithstanding any other agreements in the paperwork. This approach would remove ambiguity about when a sale is complete.

Add-On Products

The problem: Car buyers are frequently pressured and deceived into buying unnecessary add-on products like window tinting, extended warranties, and service contracts. Dealers may hide add-ons in the complex paperwork, lie about whether add-ons are optional, and misrepresent the benefits of add-ons, causing consumers to unknowingly purchase or overpay for these products.

FTC's proposed solution: A combination of prohibitions and disclosures. Dealers would be:

- Banned from misrepresenting any material aspect of an add-on product;
- Required to provide an "Add-on List" in connection with advertising vehicles;
- Banned from selling "worthless" add-ons that provide no benefit to consumers;

- Required to tell consumers whether an add-on product is actually optional; and
- Banned from selling an add-on without a consumer's explicit consent.

The FTC should also: (a) Ensure that car buyers can cancel or remove add-ons product within a reasonable time after the sale; (b) Prevent dealers from making all add-ons required instead of optional. Car buyers must be able to choose whether to purchase add-ons, and the FTC should ensure that dealers do not simply 'require' add-ons to evade the rule.

Advertising and Pricing

The problem: Some dealers will lure consumers in by advertising favorable prices, financing terms and discounts. After hours of negotiation, consumers discover that these advertisements were false and end up paying much more than what was advertised.

FTC's proposed solution: Disclosures. Dealers would be required to disclose:

- The vehicle's Offering Price in advertisements;
- The vehicle's Cash Price without Optional Add-Ons (the Offering Price + any charges or consideration specific to that consumer).

The FTC should also: (a) Change the definition of the Offering Price to include government fees, assuming an in-state purchase with no trade-in, so that a consumer could arrive at the dealership with a cash or check in hand at that exact price and purchase the vehicle.

Financing and Monthly Payments

The problem: Experts often advise car buyers not to disclose their monthly payment preference to a dealer when purchasing a car. Dealers can manipulate monthly payments to hide fees and derail conversation about the total purchase price. Lower monthly payments usually mean less favorable terms and ultimately increase the cost. Dealers can also hide the charges of add-on products by focusing on monthly payments. Car buyers deserve to understand the full picture of their financing terms.

FTC's proposed solution: Disclosures. Dealers would be required to provide:

- The total cost, when quoting monthly payment amounts to a buyer or lessee. Dealers must calculate and disclose the total amount a car buyer will pay over time;
- A separate disclosure calculating the consideration amount the consumer will pay (i.e., trade-in or down payment), if this is included in the total cost above; and
- A statement that a lower monthly payment will increase the total cost, if this is true.

The FTC should also: (a) Require dealers to present the required disclosures in writing, (b) Require dealers to provide a set of uniform financing disclosures which assumes a standard set of variables (interest rate, credit score, contract term, etc.) and provides a monthly payment for a particular vehicle.