

March 30 2022

The Honorable Lina Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Chair Khan:

I'm writing you today regarding my concerns about widespread predatory pricing and deceptive practices by automobile dealers, and the role these practices play in driving up customer costs for new cars. As we emerge from two years of the coronavirus pandemic, American efforts to return to normal are being stymied by inflation, driven in part by corporate profiteering and price-gouging. Automobile dealers have long been plagued by accusations of deceptive advertising practices and consumer fraud, and dealerships may be violating consumer protection law to drive up prices and fatten their own profit margins, harming consumers at an individual level and contributing to inflation in the entire economy.

Americans have long accepted that they will face a complex buying environment when they purchase a new car, viewing advertised Manufacturers' Suggested Retail Prices (MSRP) as merely a suggestion and negotiating to pay as much below MSRP as possible – all while navigating high-pressure sales tactics, mysterious fees, confusing offers for their used cars, and financing proposals that put them at risk of scams.<sup>1</sup>

But rip-offs have become endemic in the last year, when the new car shortage hit buyers, dealers, and manufacturers and resulted in “consumers routinely paying hundreds, often thousands, more than the listed price.”<sup>2</sup> While it used to be “practically unheard of” for consumers to pay above MSRP, “more than 80 percent of U.S. car buyers paid above MSRP in January, according to auto market research firm Edmunds,”<sup>3</sup> – begging the question of whether this widely advertised term

---

<sup>1</sup> Federal Trade Commission, “Auto Loan Refinancing Scams,” May 2021, <https://consumer.ftc.gov/articles/auto-loan-refinancing-scams>.

<sup>2</sup> Washington Post, “Car dealers are raising prices. Automakers are pushing back. Consumers are stuck in between.” Jacob Bogage and Aaron Gregg, February 12, 2022, <https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/>.

<sup>3</sup> *Id.*

has any meaning at all. “The premium set consumers back \$728 on average, though industry experts say four-figure markups are common on popular sedans and compacts, including Hyundai and Honda. Some car shoppers reported that the extra cost can run \$10,000 or more for sought-after electric vehicles and hybrids.”<sup>4</sup>

What once was viewed as the gamesmanship required to buy a new car now appears to be a clear case of deceptive advertising, with the vast majority of consumers paying hundreds or thousands of dollars more than the listed and advertised MSRP – a practice that even automobile manufacturers “strongly discourage” and call “unethical.”<sup>5</sup> While auto dealer profiteering has reached new levels in the last year, it is not a new problem. In May 2020, Federal Trade Commission (FTC) Commissioner Rebecca Kelly Slaughter warned of “tricks and traps” that were prevalent in the “profoundly broken” automobile-financing industry.<sup>6</sup> In a public comment submitted in 2012, Attorneys General from 32 states outlined common predatory practices in the industry and requested that the FTC crack down on widespread fraud in the industry.<sup>7</sup> These practices included “yo-yo sales,” in which dealerships forced consumers to return cars they’d bought over incomplete financing, payment packing, in which dealers included optional items in their pricing plans without the consumers’ consent, and deceptive advertising and sales practices.<sup>8</sup>

Deceptive advertising takes many forms in the automobile industry, including car dealerships’ refusal to honor online prices, or even prices agreed on months earlier, or adding on dealer markups and unnecessary market fees.<sup>9</sup> Many dealer advertisements that offer financing incentives are frequently withheld from consumers who find out “belatedly that they did not qualify for these offers,” or that the offers could not be used in tandem with each other.<sup>10</sup> In addition, “add-on” products are frequently used to deceive customers into paying higher prices. Following a 2017 investigation, the Federal Trade Commission published a report finding that car dealerships frequently sold optional products as necessary, and either hid their costs or revealed it late in the process to pressure buyers to pay higher prices.<sup>11</sup> The fees, which can include dealer markups, extended warranties, preparation fees, and documentation fees,<sup>12</sup>

---

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Federal Trade Commission, “Statement of Commissioner Rebecca Kelly Slaughter,” May 27, 2020, [https://www.ftc.gov/system/files/documents/public\\_statements/1576006/bronx\\_honda\\_2020-5-27\\_bx\\_honda\\_rks\\_concurrence\\_for\\_publication.pdf](https://www.ftc.gov/system/files/documents/public_statements/1576006/bronx_honda_2020-5-27_bx_honda_rks_concurrence_for_publication.pdf).

<sup>7</sup> Federal Trade Commission, “The FTC’s Increased Role in Regulating Auto Advertising, Sales and Lease Practices,” Public Comment, 2012, [https://www.ftc.gov/sites/default/files/documents/public\\_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00112/00112-82927.pdf](https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00112/00112-82927.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> CBS Boston, “I-Team: Consumers Report Car Dealers For Using Deceptive Advertising Tactics,” Cheryl Fiandaca, September 27, 2021, <https://boston.cbslocal.com/2021/09/27/massachusetts-deceptive-advertising-car-sales/>.

<sup>10</sup> Federal Trade Commission, “Buckle Up: Navigating Auto Sales and Financing,” Carole L. Reynolds and Stephanie E. Cox, July 2020, <https://www.ftc.gov/reports/buckle-navigating-auto-sales-financing>.

<sup>11</sup> *Id.*

<sup>12</sup> Carvana, “8 hidden dealer fees to watch out for,” Chris Courtney, November 4, 2020, <https://blog.carvana.com/2020/12/8-hidden-dealer-fees-to-watch-out-for/amp/>.

constitute “drip pricing,” slowly revealing information and additional fees throughout a long and convoluted process. Drip pricing sees sellers “advertise a deceptively low price that lures in consumers, revealing the full cost... only once the consumer is on the verge of completing the transaction,” and it has “no legitimate business purpose” other than deception.<sup>13</sup>

These practices disproportionately impact vulnerable groups, including targeting first-time car buyers. First-time car buyers described being “taken advantage of and cheated out of my hard-earned money” by unscrupulous car dealerships, often put through opaque, lengthy, and misleading processes only to be charged thousands more than expected.<sup>14</sup> Many car dealerships have also faced allegations of racial discrimination, targeting people of color with additional fees and higher markups. In 2020, an auto dealership in New York was accused of charging higher financing markups and fees to Black and Hispanic customers, resulting in a \$1.5 million fine from the FTC.<sup>15</sup>

In the wake of the coronavirus pandemic, these practices appear to be spiking across the country. Car dealership markups are increasingly exorbitant, including average markups of \$4,048 for GM’s luxury Cadillac line and \$2,289 on Hyundai’s Kia vehicles, on top of the manufacturer’s suggested retail price (MSRP).<sup>16</sup> State Attorneys General across the country have reported increases of complaints against car dealerships for deceptive practices, “bait and switch” tactics, and outright fraud.<sup>17</sup>

In Massachusetts, Attorney General Maura Healey warned of a nationwide jump in “deceptive sales” tactics, citing a “surge in complaints” in 2021.<sup>18</sup> On March 3, Pennsylvania Attorney General Josh Shapiro’s office reported receiving 590 complaints so far in 2022, far outpacing the past two years.<sup>19</sup> Attorney General Shapiro, issued an advisory warning car dealerships against

---

<sup>13</sup> New York Times, “Stop the Hidden-Fee Rip-Off,” Max Sarinsky, August 2, 2021, <https://www.nytimes.com/2021/08/02/opinion/consumers-drip-pricing.html>.

<sup>14</sup> New York City Consumer and Work Protection, “Department of Consumer and Worker Protection Files Cases Against Multiple Predatory Used Car Dealerships,” press release, November 3, 2021, <https://www1.nyc.gov/site/dca/media/pr110321-DCWP-Files-Cases-Against-Multiple-Predatory-Used-Car-Dealerships.page>.

<sup>15</sup> Federal Trade Commission, “Auto Dealership Bronx Honda, General Manager to Pay \$1.5 Million to Settle FTC Charges They Discriminated Against African-American, Hispanic Car Buyers,” press release, May 27, 2020, <https://www.ftc.gov/news-events/press-releases/2020/05/bronx-honda-to-pay-over-1-million-to-settle-charges>.

<sup>16</sup> Washington Post, “Car dealers are raising prices. Automakers are pushing back. Consumers are stuck in between.” Jacob Bogage and Aaron Gregg, February 12, 2022, <https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/>.

<sup>17</sup> Boston Globe, “AG advises it’s illegal to advertise one price for a vehicle and then charge another,” Sean P. Murphy, September 28, 2021, <https://www.bostonglobe.com/2021/09/28/business/ag-advises-its-illegal-advertise-one-price-vehicle-then-charge-another/?event=event12>.

<sup>18</sup> *Id.*

<sup>19</sup> PennLive, “AG issues advisory to car dealerships warning them of unfair and deceptive practices that violate the law,” Daniel Urie, March 4, 2022, <https://www.pennlive.com/news/2022/03/ag-issues-advisory-to-car-dealerships-warning-them-of-unfair-and-deceptive-practices-that-violate-the-law.html>.

engaging in “unfair and deceptive practices,”<sup>20</sup> noting that as demand increased for new and used cars, “bad practices” rose as well, and he called on dealerships to “shift gears and be sure that you are following the law and treating consumers fairly.”<sup>21</sup> Rhode Island Attorney General Peter Neronha filed lawsuits against two car dealerships earlier this month for deceptive practices after it was revealed that the dealerships had added a \$5,000 “addendum fee” to their advertised prices.<sup>22</sup> Tennessee’s Department of Commerce & Insurance and the Tennessee Motor Vehicle Commission have also acted in the past year to curb deceptive practices in the automobile sales industry, issuing an advisory for consumers regarding “misleading vehicle advertisements.”<sup>23</sup>

It is clear that this is a nationwide problem, and this spike of deceptive advertising and predatory pricing causes harm that reverberates throughout the economy. The Consumer Price Index (CPI) showed that used and new vehicles, with prices that rose 41.2% and 12.4% respectively from February 2021 through February 2022, together accounted for more than 8% of the total CPI increase.<sup>24</sup> Increased dealer markups are driving costs higher, and even automobile manufacturers are pushing back on the ways in which dealerships “unethical” practices can drive prices increases.<sup>25</sup> Ford and General Motors have warned dealers against markups, with Ford’s Vice President of Sales Andrew Frick sending letters to dealers warning that the inflated costs are “negatively impacting customer satisfaction and damaging to the Ford Motor Company brand and Dealer Body reputation.”<sup>26</sup>

Given the alarming increase in deceptive practices and predatory pricing in the automobile sales industry, the Federal Trade Commission should open a broad review into how widespread these practices are, and whether a rule regulating drip pricing and other unfair and deceptive practices in the automobile industry is necessary. In May 2020, FTC Commissioner Rebecca Kelly Slaughter stated that “far-reaching structural reform to the automobile-financing and –sales markets is long overdue and urgently needed,” and the questionable practices of these industries

---

<sup>20</sup> WGAL 8, “Pennsylvania attorney general warns car dealers against deceptive practices,” Brian Roche, March 7, 2022, <https://www.wgal.com/article/pennsylvania-attorney-general-car-dealership-warning-deceptive-practices/39354531#>.

<sup>21</sup> Office of Attorney General Josh Shapiro, “AG Shapiro Puts Auto Dealerships on Notice for Unfair and Deceptive Practices,” press release, March 3, 2022, <https://www.attorneygeneral.gov/taking-action/ag-shapiro-puts-auto-dealerships-on-notice-for-unfair-and-deceptive-practices/>.

<sup>22</sup> Providence Journal, “Attorney general sues 2 Rhode Island car dealers, alleging deceptive pricing,” Paul Edward Parker, March 8, 2022, <https://www.providencejournal.com/story/news/local/2022/03/08/ri-attorney-general-sues-grieco-honda-grieco-toyota/9426491002/>.

<sup>23</sup> Tennessee Department of Commerce & Insurance, “Tennessee Motor Vehicle Commission Urges Consumers to Avoid and Report Deceptive Car Ads,” press release, March 22, 2021, <https://www.tn.gov/commerce/news/2021/3/22/tennessee-motor-vehicle-commission-urges-consumers-to-avoid-and-report-deceptive-car-ads.html>.

<sup>24</sup> U.S. Bureau of Labor Statistics, “Economic News Release,” March 10, 2022, <https://www.bls.gov/news.release/cpi.t01.htm>.

<sup>25</sup> Washington Post, “Car dealers are raising prices. Automakers are pushing back. Consumers are stuck in between.” Jacob Bogage and Aaron Gregg, February 12, 2022, <https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/>.

<sup>26</sup> MotorBiscuit, “Ford Threatens to Cut Dealer Inventories to Demolish Price Markups,” Joe Santos, February 9, 2022, <https://www.motorbiscuit.com/ford-threatens-cut-dealer-inventories-demolish-price-markups/>.

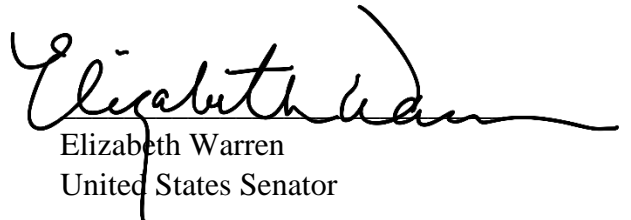
have only spread since then.<sup>27</sup> Additionally, in December 2021, the Federal Trade Commission opened up public comments on a petition from the Institute for Public Integrity that would ban drip pricing, garnering support from the Consumer Reports and U.S. PIRG.<sup>28</sup> The FTC should immediately begin a review of the laws regulating automobile sales, and begin the rulemaking process to improve consumer protections and pricing practices in this industry.

Specifically, I ask that you review and provide a briefing on:

- 1) The scope and extent of hidden fees on new cars, and the ways in which they are presented to potential buyers;
- 2) The simplicity and length of the car-buying process, and whether unnecessary extensions to the process constitute drip pricing;
- 3) The degree to which these hidden fees and drip pricing have increased in the last several years;
- 4) Whether these hidden fees and pricing methods may represent deceptive practices;
- 5) The authority of the Federal Trade Commission to cap or eliminate hidden fees or to otherwise address their impact on consumers;
- 6) The timeline of a rulemaking process designed to crack down on deceptive practices in the automobile sales industry.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren  
United States Senator

---

<sup>27</sup> Federal Trade Commission, “Statement of Commissioner Rebecca Kelly Slaughter,” May 27, 2020, [https://www.ftc.gov/system/files/documents/public\\_statements/1576006/bronx\\_honda\\_2020-5-27\\_bx\\_honda\\_rks\\_concurrence\\_for\\_publication.pdf](https://www.ftc.gov/system/files/documents/public_statements/1576006/bronx_honda_2020-5-27_bx_honda_rks_concurrence_for_publication.pdf).

<sup>28</sup> Federal Trade Commission, “R207006 - PETITION FOR RULEMAKING BY INSTITUTE FOR POLICY INTEGRITY,” December 27, 2021, <https://www.regulations.gov/document/FTC-2021-0074-0002>.