

# THE WANADA BULLETIN

NEWS AND INFORMATION FOR AND ABOUT FRANCHISED NEW CAR DEALERS IN THE WASHINGTON AREA

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## Auto dealers and franchise system attacked at FTC forum



NADA described a recent workshop by the Federal Trade Commission on auto distribution in the U.S. and the state laws that regulate it as hostile and imbalanced.

“Many of the FTC speakers, as well as the supposedly neutral academics and economists invited by the Commission to participate, brought preconceived attitudes that were hostile toward the franchise system and counterproductive to the dialogue,” NADA wrote. “The panel quickly revealed an imbalanced agenda that resulted in an exceedingly one-sided discussion.”

NADA President Peter Welch spoke during the last of the day’s four panels, on “Future Trends,” alongside speakers from the AAA, Uber and Securing America’s Future Energy and professors from Yale and the University of South Carolina. Other panels covered state regulation of dealer networks, warranty reimbursement regulation and direct distribution.

In the “Future Trends” panel, speakers discussed the effect that autonomous vehicles might have on personal ownership of cars. Professor Fiona Scott Morton of Yale University sketched a future where a corporation could buy autonomous cars in bulk directly from a manufacturer. “The local dealer would have less value-added in that world,” Morton said.

NADA’s Welch objected. “I think it’s actually a pretty big leap to go from autonomy to all of a sudden, people are going to abandon personal ownership of vehicles.... The predominant trend is still going to be, that individuals are going to want to own them and use them, even if these vehicles become 100% autonomous.”

During the panel on state regulation of dealer networks, Professor Henry Schneider of Cornell University said that regulations make it much harder for automakers to restructure dealer networks to match long-run changes in demand, consolidate dealers to achieve economies of scale or limit dealer market power. Later, Professor Morton said, “the laws surrounding auto distribution in the United States are largely frozen and prohibit innovation.”

In the panel on direct distribution, auto analyst Maryann Keller of Maryann Keller & Associates cited evidence showing that intrabrand competition significantly lowers new-car prices. Her remarks rebutted claims that direct sales would benefit consumers. Keller also explained the importance of franchise laws to the preservation of intrabrand competition.

The FTC received more than 450 written comments on the subject of the workshop. NADA President Jeff Carlson said in a statement, “We will continue to work closely with ATAE dealer associations, dealer lawyers, dealer accountants and other third parties to ensure that the record is both balanced and reflective of the reality of the retail auto industry.”

## Car sales up 6.8% for best February SAAR since 2000

February sales rose 6.8 percent from a year ago, for the best seasonally adjusted annual rated February in 15 years, 17.4 million, thanks to continuing pent-up demand, low gas prices, easy credit, Presidents Day sales and the added bonus of a 2016 *Leap Day*. Strong incentives and increasing fleet sales played a role for some manufacturers. Light trucks once again outsold cars as gas prices kept falling.

NADA is sticking with its “robust” 2016 forecast of 17.7 million light vehicle sales, as LMC Automotive predicts 17.8 million.

“The U.S. economy continues to grow, and the equity markets have probably oversold concerns about China,” said NADA Chief Economist Steve Szakaly. “Wage growth also has been tracking higher, and low interest rates will continue this year.”



Toyota Camry was the best-selling car in February.

Added Jeff Schuster, LMC’s senior vice president of forecasting, “Consumers seem to be shrugging off the volatility in the stock market and higher interest rates. Very low fuel prices and many new vehicles in showrooms should help drive another strong year for auto sales.”

Ford sales jumped 20 percent; 36 percent of its sales was to fleets. Fiat/Chrysler, up 12 percent, saw its 71<sup>st</sup> straight month of sales increases. General Motors, which cut back on fleets, slipped by 1.5 percent.

“Our strategy is simple: Grow profitable retail share while maintaining discipline with inventory levels and incentive spending, while reducing rental deliveries,” said Kurt McNeil, GM’s US vice president of sales operations.

Average transaction prices rose to \$33,789. NADA predicts they will keep rising this year.

## Used car prices hit record high in 2015

Retail used car prices hit a record high of \$18,500, according to Edmunds.com’s 2015 *Used Vehicle Market Report*. Certified pre-owned (CPO) vehicles accounted for a record 22.4% of franchised dealers’ used sales, an increase of 9.1% from 2014.

The reasons for last year's record high used retail prices: More than half of used cars sold are three years old or less, and cars six years old or older have seen big price increases. Low fuel costs have increased demand – and prices – for used SUVs and trucks, Edmunds says.

Looking at CPO buyer demographics, Edmunds found that CPO buyers rely more heavily on research than other used buyers. CPO shoppers also tend to be older, are more likely to be desktop users and have the highest female share of car buyers, at 38%.

“The key factor driving all of the trends in used-car sales today is the popularity of leasing, which is bringing younger and higher quality used cars back to the market,” said Jessica Caldwell, Edmunds.com director of industry analysis.

## Wholesale used car prices flat in January, expected to rise



Wholesale used vehicle prices were flat in January, edging down just 0.1 percent from December. But that's slightly worse than the 0.3% increase averaged in the past five years. Analysis is from the NADA Used Car Guide.

Luxury large cars saw prices drop the most, by 3.2 percent – common for January. Among mainstream vehicles, subcompact car prices were the weakest, falling 0.8% for the month.

NADA expects used car prices to rise by an average 2% to 2.5% in March, thanks to the effect of the winter snowstorms.

## Dealer regulatory trends for 2016, Part 3

This is the last in a series of articles on regulatory trends to watch out for in 2016.

### Franchise Relations

1. *Insist on proper labor and service reimbursement for warranty and recall work.* Repairs to remedy recalls have increased dramatically. If state law requires retail reimbursement for labor and/or parts, be sure to insist on it.
2. *Protect the dealership's rights in audits.* If audited, dealers should fight for their money. They should challenge the auditor's findings and use the franchisor's internal appeal process. The dealer should use his rights under state law to challenge a chargeback that he feels is improper.
3. *Protect against chargebacks for exports.* Manufacturers continue to impose chargebacks for sales of vehicles that wind up being exported. The dealer should know his customers and do what is necessary to prevent exports. He can also use the manufacturer's known exporter list. If the manufacturer has issued due diligence recommendations, the dealer should use them.

### Administrative Issues

1. *What is the dealership's policy on doc fees?* A recent case in South Carolina has brought prominence to doc fees (which may be called processing fees or some similar term under the state law). Plaintiffs' lawyers are looking for reasons to challenge doc fees. Follow the state law carefully. If the state does not have such a law, the dealer should determine and charge a reasonable price for the items for which the doc fee is designed to compensate him.

2. *Comply with the Fair Labor Standards Act.* The Obama administration has made FLSA enforcement a priority.
  - a. The government assumes that everyone who works in the dealership should be an employee. The dealer should make sure those who are treated as independent contractors are truly in business for themselves.
  - b. Every nonexempt employee must earn minimum wage for all hours worked.
  - c. Every employee entitled to premium overtime must earn that.

*Thanks to attorney and WANADA Kindred-line member Michael Charapp, Charapp & Weiss, LLP, for providing this information.*

## Autonomous vehicles will disrupt market starting in 2027



Car sharing services such as Lyft will have minimal impact on new car sales.

Car sharing services such as Lyft and Uber will reduce new-vehicle sales worldwide by only 1% by 2021, according to a new report from the Boston Consulting Group (BCG). But autonomous vehicles (AVs) “will change the game, erasing the distinction between car sharing and ride sharing and offering users a significant edge in the total cost of ownership,” BCG says. Still, AVs will not arrive in significant numbers until 2027, so all parties have time to prepare.

North America is currently the third largest market for car sharing worldwide, after Asia-Pacific and Europe. It is less prevalent in North America because car sharing makes more sense in densely populated urban areas. Still, about 6 million North Americans are likely to be registered with a car sharing service by 2021.

At that point, “AVs’ low operating costs will enable operators of mobility services to provide adequate coverage in smaller cities, resulting in an upsurge of registered users, an influx of car sharing fleets in smaller cities, and *increasing forgone car sales*,” says BCG (emphasis added).

## 75% of Americans afraid to ride in autonomous vehicle

A new study from the American Automobile Association reminds us that consultants’ studies are one thing, but consumer acceptance is quite another. The survey reports that three out of four U.S. drivers feel “afraid” to ride in a self-driving car. AAA also found that drivers who own vehicles equipped with semi-autonomous features are more likely to trust the technology, suggesting that gradual experience with these advanced features can ease consumer fears.

“What Americans may not realize is that the building blocks towards self-driving cars are already in today’s vehicles and the technology is constantly improving and well-trusted by those who have experienced it,” said John Nielsen, AAA’s managing director of automotive engineering and repair.

In fact, consumer demand for semi-autonomous vehicle technology is high. Nearly two-thirds of American drivers say they want one of these features on their next vehicle: automatic emergency braking; adaptive cruise control; self-parking technology, or lane-keeping assist. Their primary motivations are, in descending order, safety, convenience, reducing stress and wanting the latest technology. Baby boomers are more likely to cite safety as a reason; millennials are more likely to cite convenience and wanting the latest technology, and women are more likely to cite reducing stress.

## Google admits some responsibility as its car hits bus

It may be the first accident where the owner of an autonomous vehicle admitted responsibility for an accident. When Google's self-driving Lexus RX450h hit a municipal bus at 2 mph hour in Mountain View, CA, recently, Google said, "we clearly bear some responsibility, because if our car hadn't moved, there wouldn't have been a collision. That said, our test driver believed the bus was going to slow or stop to allow us to merge into the traffic, and that there would be sufficient space to do that."

The bus had minor damage, and no one was injured. Although the incident received a lot of press, an article in the *Atlantic* pointed out that the first real test of autonomous vehicles would come when a fatal crash occurred – as it inevitably will.

### Staying Ahead...

I think most Americans -- and maybe people in this room -- take for granted what an incredible private and personal transportation system we have here in the United States, which makes us very different than many other people. And many people in other parts of the world envy us.

--NADA President Peter Welch, speaking at the recent  
FTC workshop on auto distribution in the U.S.

**WASHINGTON AREA NEW AUTOMOBILE DEALERS ASSOCIATION**