History Repeats Itself – Again

by : Rich Sox

The founder of Myers & Fuller, P.A., Dan Myers, has always said that the factories don't create many new programs, they just recycle old ones. Well, Danny ol' boy, you have been proven right again.

Sometime in mid-2000, Hyundai and Kia came up with the brilliant idea of setting arbitrary volume targets upon which to pay dealers a per car sales incentive bonus (they weren't the first to dream this up). These monthly targets were tiered and began at around 15 cars and ended at upwards of 60 cars. If a dealer hit one of the targets, he or she was paid a per car bonus *retroactive to the first car sold for the month.* At each tier, the per car bonus increased from a low of $250 to a high of approximately $1,000. As many of you know, this type of program absolutely buries the small- to medium-volume dealer who is unfortunate enough to have to compete with a larger volume dealer. That larger volume dealer, by virtue of the size of his or her market alone, will have more money to work with to get a deal done than the smaller volume dealer. As a result, the large volume dealer beats the little guy on price every time.

We had just such a small Kia dealer in Ohio call us back in 2006 complaining that they went from steadily selling 12 to 15 cars a month (consistent with Kia's own planning volume for the dealership) to having that number cut in half. To make matters worse, our client had just completed a new facility, which was projected by Kia to increase their sales to 20-plus a month. For each of those sales, our client was to receive an extra $300 per car as a reward for constructing the new facility. Therefore, not only did this dealer lose out on its customary profits, but lost the additional $300 on all those cars that he would have sold but for the price advantage of his larger Kia competitor.

As most of you know from reading this column, we brought a lawsuit against Kia under federal price discrimination laws on behalf of our client. Within months, Kia changed its program to a dealer-specific sales incentive program. Hyundai reluctantly followed suit beginning in 2007. Both Kia and Hyundai used each dealer's planning volume and created an objective incentive plan that paid dealers a per car bonus for cars sold above that planning volume. In our estimation this incentive program was fair because it focused on each dealer's individual market potential in creating the bonus opportunity and not an arbitrary number of vehicles sold in any given month.

Unfortunately, it appears that with its over exuberant sales projections for 2007 not being close to reality, Hyundai is grasping at straws to find anything that might increase its U.S. sales figures. Hyundai executives have dusted off the multi-tier incentive program as the answer to its woes. On December 31, 2007, Hyundai announced that it was "pleased" to announce its 2007 sales incentive program was being replaced with a "monthly volume-based, stair-step program." The program is described as follows:

0-3 units	**4-29 units**	**30-64 units**	**65+ units**
$0	$250	$500	$750

So you have a dealer whose planning volume is 20 vehicles per month competing against a dealer whose planning volume is 70 per month and Hyundai has created a price advantage to the larger dealer of a minimum of $500 (actually more because the bonus is retroactive to the fourth car sold).

The most troubling part of Hyundai's December 31st announcement is the statement that *"Dealer Council expressed considerable concern about continuing to utilize an objective-based program structure which incorporated ambitious growth targets when faced with the uncertainty of a very challenging business climate in 2008."* I understand and agree that a program that expects increased sales of Hyundai vehicles in 2008 over 2007 is unfair and likely won't generate much in the way of bonus money for any dealer, but don't throw the proverbial baby out with the bath water! Instead, Dealer Council (assuming it has as much influence as the Hyundai memorandum implies) should insist on more realistic sales targets for each dealership, which may in fact amount to less vehicles than sold last year. The statistics are out there to support those reduced targets.

I would not blame small volume dealers for being more than upset with this replay of the pre-2007 tiered price incentive. On its face, Hyundai's new sales incentive program runs headlong into the price discrimination prohibitions of some state and federal law. The dealership-specific target program is, by definition, the fairest program going as long as the targets are appropriately set. Under such a program, large volume dealers can still rake in significant bonus dollars to help with their bottom line, while not arbitrarily destroying the small to medium volume dealer.

The devil is in the details

Smart USA is opening 68 sales outlets in 31 states this month to sell the ForTwo, the tiny, two-seat car built in Europe. Smart USA, a distribution subsidiary of Penske Automotive Group, plans to open six additional sales locations by year-end. Smart USA has been working quickly to get the dealerships online in order to start delivering cars to the more than 30,000 U.S. customers who had placed orders for the car. However, in Florida, and in other states, the dealers have to be licensed by the state for the Smart franchise before they can receive, and sell, the new vehicles. Sometimes it is not easy to get that initial group of dealers licensed.

For licensing purposes, state regulators often require the license name and address to match the name and address supplied by the manufacturer/distributor, and the sales and service agreement. Regulators may require additional information, such as the name and address of the dealer operator and name and address of corporate participants. If the manufacturer/distributor information supplied information does not match, licenses may be held up. Some of the initial list of dealers may be able to get a license and execute their sales and service agreement, but others may get held up and not receive their license with the first group. In the case of the later licensed dealers, the state law may identify them as additional dealers, and grant protest rights to one or more of the initially licensed group. Things can get complicated and delays can mean that cars sitting at the port do not get delivered to all the dealers. Your cars may go to your competitor for delivery to your customers who ordered the car.

The Smart outlets in Florida got off to a fast start with the state. Smart supplied an initial list of the dealers to the state, but the list supplied was not exactly correct. Some dealers in the initial list were misidentified, which kept them from obtaining their license for the Smart linemake and receiving delivery of cars. Additional information came from Smart to the state, and notices of additional dealers were published, causing some confusion, particularly when the published information was still not correct. Fortunately, Smart was able, with some assistance, to negotiate a resolution with the Florida Department of Motor Vehicles. The entire original list was withdrawn, and resubmitted, with the correct information for each dealer.

The lesson here is to make sure you work with your manufacturer/distributor when you first come on board to ensure your basic identifying information is correctly supplied to both the manufacturer distributor and the state regulators. You do not want to be left watching your customers receiving cars from your competitors.

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