What's Next for Accepted GM and Chrysler Dealers?

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Competition for receipt of franchises from wind-down and rejected dealers

The fight is not over. The next battle for GM and Chrysler dealers is the fight over which of you will receive the franchises being wound-down, in the case of GM, or rejected, in the case of Chrysler, within your market.

The attorneys of Myers & Fuller have already begun to work with dealers to prepare formal proposals to obtain the GM and Chrysler franchises they do not currently possess. It would appear that Chrysler is much more likely to provide its dealers with all missing brands in order to make each store a "Genesis" dealership. It appears less certain that a Cadillac dealer, as an example, will receive the Chevrolet dealership being wound-down in his or her market. GM has more franchises to go around than Chrysler.

Whether you are a GM or Chrysler dealer, we strongly recommend putting together a formal proposal to your manufacturer touting the strengths of your dealership and the reasons why you are the best candidate to receive the subject franchise(s). Areas that should be covered include:

- Financial strength (working capital)
- Stable floor plan lender relationship
- Facility
- Location and market demographics
- Sales and CSI performance
- Strength of management

One of the key points which we recommend dealers emphasize is that you are willing to expand your dealership facility, if necessary, to accommodate the new franchise(s) and that you are willing to bring your facility up to GM and Chrysler's latest image requirements. Even though most dealers are in no position to expend much needed capital on their facility at this time, we expect that GM and Chrysler will at least want to hear that you are willing to upgrade your facility. The timing of that upgrade can be the subject of further discussion.

Expect to have your area of responsibility significantly expanded

The second major challenge we expect GM and Chrysler dealers to face is the inevitable need both Chrysler and GM will have to "reassign" dealership areas of responsibility. For purposes of this column, we will call these assigned boundaries your "market areas."

With the significant number of GM and Chrysler dealerships eliminated across the United States, both manufacturers will be forced to redraw dealership market areas in order to reassign territories from rejected or wind-down dealers to those dealers that are going forward with GM and Chrysler. As you would expect, the going-forward GM and Chrysler dealer will almost all have their market areas expanded and, in some cases, dramatically expanded. An increase in a dealership's market area has serious ramifications for the dealer.

More demanding sales performance requirements

The first ramification resulting from having your market area expanded is that the dealer will be expected to sell more vehicles. The dealer is now responsible for registering a sufficient number of vehicles in the newly expanded market area such that the dealer is meeting state, regional or national average. Remember, the fallacy with market areas is that customers don’t ever receive notice from the manufacturer as to which dealership they are “supposed” to purchase a vehicle. Therefore, the only thing that has changed in your market that could drive new customers to you is the loss of a nearby GM or Chrysler store. Dealers need to hope that GM and Chrysler’s “right-sizing” in their respective dealer networks is going to translate into a significant increase in customer traffic at your store.

As an aside, these GM and Chrysler analysts are the same people that have testified in depositions taken by Myers & Fuller, P.A. attorneys that the addition of a dealership to a market has the effect of “increasing customer awareness of the product, which results in increased sales for all dealers in the market.” In the past, they consistently made this statement with a straight face. I tend to believe that the opposite is true and, therefore, remaining dealers should enjoy increased sales with the loss of same linemake competition in their market. The question is will the sales increase be enough to meet GM’s state, regional or national average standard?

Increased planning volume

The second ramification to an increase in a dealer’s assigned market area is that the dealer’s “planning volume” is likely to change. An increase in the dealership’s planning volume means the potential for an increase in facility space requirements. We have seen that manufacturers typically associate planning volume with the amount of showroom space, display space and service bays required to serve the supposed increase in product demand in your market.

GM’s Participation Agreement with going-forward dealers does in fact require dealers to provide the size and image facility as determined at GM’s sole discretion. The dealership’s planning volume will have a huge effect upon what GM asks the dealer to provide in terms of a facility and, in turn, the financial investment required of the dealer.

Planning volume also has a direct impact on allocation of new vehicles to the dealership. Generally speaking, the greater the planning volume, the greater the dealership’s vehicle allocation. Indeed, GM’s Participation Agreement states that dealers will purchase the number and mix of vehicles as determined at GM’s sole discretion. Like the facility requirement, an unwarranted increase in vehicle allocation will cause a dealer potentially significant increased inventory carrying costs that will be most unwelcome at a time when dealers are trying to get back on their feet.

Challenge any unwarranted increase in market area

Manufacturers typically assign territory by “census tracts.” Census tracts are assigned to a dealer’s market area by looking at which dealership is the closest to the center-point of the census tract. We have repeatedly seen that where the computer is assigning territory to a dealer's market area based strictly upon proximity (in air miles), market areas are not always drawn fairly. We have seen a dealer assigned territory that by air miles is closest to the dealership but is, for example, across a river from the dealership, yet the nearest bridge is miles away from the dealership. Likewise, we have seen where the territory may be closest to the dealership by air miles but not by drive time. Dealers should literally overlay a roadmap on to the manufacturer's map of your new market area to determine if all the customers in your newly assigned territory can get to your dealership as easily as the next closest same linemake dealer. Even if the center of a census tract is closest to your dealership, if the bulk of the consumers in that census tract live on one side of the census tract that is not closest to your dealership then that is not a fair assignment of territory. The bottom-line question that must be asked is which dealership is the most "convenient" to the consumers living in the reassigned territory.

Because the boundaries of your assigned market area directly relate to the dealership's sales performance and planning volume, it is imperative that dealers request and study the maps that show the dealership's new market area. Dealers should request maps that show not only their own market area, but also the market area for the next closest same line-make dealers to your dealership. Dealers must put any questions and concerns they have with the new market area in writing to the manufacturer.

In addition to responding in writing to the manufacturer with any questions or objections to a newly assigned market area, a dealer may have the right under state franchise laws to challenge the newly assigned market area as a modification of the dealer agreement. Some states provide that if there is any adverse modification to a dealer's franchise agreement, the dealer may protest that change. In such a protest, the burden will be on the manufacturer to demonstrate that the modification is fair and reasonable. Dealers with this statutory right should consider utilizing the protest right in challenging an improper market area as that is certainly an "adverse modification."

Richard Sox is a lawyer with the firm of Myers & Fuller PA, with offices in Tallahassee, Florida and Raleigh, North Carolina. The firm's sole practice is the representation of automobile dealers in their quest to establish a level playing field when they deal with automobile manufacturers.