Biden’s power-mad Big Government wants to screw uphow you buy a car

Federal Trade Commission is compounding its problems with new car-buying rules that will hurt dealers and consumers.

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By John Graham

The Federal Trade Commission (FTC) and its chair, Lina Khan, have had a tough run. Among Washington’s less likely agencies to create headlines, the FTC has lately made a lot of news, even if not of its own volition.

A 2022 survey found that only 49% of surveyed FTC staff felt that senior agency officials maintain high standards of honesty and integrity – a drop from 87% in 2020 under the previous chair. In February came the highly public resignation of its sole Republican commissioner, who charged Khan with "dishonesty and subterfuge" in pursuit of the commission’s agenda.

Problems at federal agencies often arise from a failure to adhere to proper administrative process, and the FTC under Khan appears to have eschewed sound fundamentals of rulemaking in favor of a press release-driven agenda that may ultimately harm the very consumers it aims to protect.

FTC’s proposed "Motor Vehicle Dealers Trade Regulation Rule" offers a good illustration of the problem.

Each year, almost 42 million Americans purchase a new or used vehicle from a franchised new car dealership or an independent used car dealership. The process of buying a car at a dealership involves a lot more than spotting a shiny new vehicle and pulling out a credit card. There are a variety of models, different trims, added features to consider, options to guard against costly repairs down the line, trade-in discussions, and different ways to finance a vehicle depending upon one’s creditworthiness and personal preferences.

Due to the complexity and significant financial commitment involved, dealership transactions fall under federal "Truth in Lending" laws that ensure consumers have the facts with which to make rational and informed credit judgments. Yet the FTC wants to force all dealers and consumers to proceed through a one-size-fits-all process that amounts to a redundant and contradictory set of "truth in car buying" laws.

Their proposal claims to provide "key protections against dealers" who allegedly engage in price gouging, false advertising, and other illegal financial trickery. It starts with a slew of new mandatory disclosure requirements, many of which duplicate or complicate prohibitions and disclosures already present in federal law. It then contains a peculiar requirement covering when dealers and consumers are allowed to discuss optional upgrades.

In the real world of car buying, of course, consumers vary enormously in what issues are important to them and when they want to discuss them. Dealers need flexibility to respond differently depending on the consumer’s needs and preferences.

The rule then adds provisions making it easier for dissatisfied consumers to sue dealers, though no case is made that the current legal process is ineffective in protecting consumers.

Given that this rule could fundamentally change how consumers buy cars, one would have expected a rulemaking undertaken with exceptional clarity, transparency and openness to public comment. Yet the FTC failed to mention the rule on its official agenda before making it public and denied suggestions to start off with an advance notice of proposed rulemaking to build consensus on the need for change before proceeding.

The agency also neglected to undertake any real-world consumer testing of its new sequential sales format or confusing disclosures, and despite all its missed homework assignments, denied requests to extend the public comment period on the complex initiative, a highly unusual decision that hints of the impatience and arrogance of its leadership.

Especially disappointing is the superficiality of the agency's benefit-cost analysis. The FTC has fabulous economists, but they were clearly not influential in this rulemaking. Rather than estimating and weighing the benefits and costs of the rule's many provisions, the agency provides just one unsubstantiated benefit estimate for the entire rule.

Stepping into the void, the Center for Automotive Research analyzed the rule's potential impacts using FTC's own methodology, concluding that the proposal would extend the vehicle purchasing process by two hours and, instead of generating nearly $30 billion in net consumer benefits over 10 years as the FTC claimed, would cost consumers $38 billion over the same period.

Process is important in regulatory undertakings because it keeps the government from acting rashly. The lack of visible legwork on the part of the FTC creates little room for optimism that its final rule will be well-grounded. Indeed, its proposal was rolled out with no fewer than 49 open-ended questions, many that should already be resolved at this stage.

In its press release touting the initiative, the FTC claimed a desire to "eliminate tricks and traps" supposedly lurking within the automotive purchasing process. The agency's undertaking might be more welcome if it didn't appear to view the government's own processes for public input, analysis and administrative guardrails with such cynicism. Of course, consumers ultimately will pay for this misguided policy.

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