

# Selling Automobile Dealerships to Public Companies Effect of Framework Agreements

By: John Pico, BA, JD

**Article ID:** 315950

**Published:** October 2, 2006

**Category:** Automotive **Article Word**

**Count:** 1635

A framework agreement provides the basis for the business relationship between a factory and a public company. It includes the terms and standards for the public's acquisition and ownership of a new car automobile dealership. Each factory has its own restrictions on a public company's ability to acquire and operate its dealerships.

Most framework agreements are, by their own terms confidential, however, if one is anticipating selling a dealership to a public company, it would be wise to become familiar with framework agreements and how they might affect a potential sale.

When I was negotiating the sale Lexus of Stevens Creek, AutoNation indicated it wanted to purchase the dealership, but it already owned 4 Lexus stores (the maximum allowed at the time). AutoNation told the factory it would sell one if it entered into a buy-sell with my dealer; however, the factory told them it had to sell one before it put a deal together.

The relationship between public companies and the factories has been an interesting cycle to observe. When the publics first came on the scene the factories kicked and screamed. Lawsuits were filed and the concept of public ownership of automobile dealerships was vigorously opposed.

Later, the confrontational attitude subsided and the factories embraced the publics as a way to replace certain dealers and a means to get new facilities built. Thereafter, the glow came off the relationship when a number of the publics did not perform the way the factory wanted: CSI, broken promises, poor sales performance.

For the factories and the publics, the drafting of the original framework agreements was like composing pre-nuptial agreements without ever having been married or divorced. As the factories learned the agreements were massaged and modified.

## Effect of Framework Agreements

By: John Pico, BA, JD

I had a similar personal experience several years ago while helping obtain the first factory approval of an Indian Nation as a dealer. The basic Sales and Service Agreement was not adequate to cover the uniqueness of the tribes and modifications had to be made.

The factory knew how to deal with large dealership groups, both public and private, but how does one transact business with a Sovereign Nation (a Native American tribe) that has immunity from lawsuits and does not have to pay taxes? These were some of the issues that had to be addressed (with the factory, with the state dealer association and with the selling dealer). In hindsight, similar to the publics' framework agreements, some of the anticipated problems were imaginary and some were missed.

Publics are rated daily according to the market value of their stock, which value, when they first began buying dealerships, was affected dramatically by increasing the sales volume of the companies through the acquisition of new dealerships.

Dealers, on the other hand, are rated by how things turn out when the game is over and they sell their stores. Consequently, while it might be good for a public to sell a hypothetical dealership property to a REIT (Real Estate Investment Trust), it may or may not be wise for a private dealer to sell that same property even if given the same terms.

Privates and publics have different rules and different motives and, in my opinion, until recently some publics did not think they had to act very much like dealers. With the slow-down in their acquisitions, however, publics have had to act more like dealers and get the most out of each store. As most dealers would agree, the task of successfully operating an automobile dealership is substantially more difficult than buying one with someone else's money.

In the long-run I believe framework agreements are good because they keep the publics from controlling too great a percentage of the distribution channels of manufacturers, while simultaneously forcing them to operate more like car dealers.

Although framework agreements are redefined at times, at one time

or another the following factories had the following requirements:

## **TOYOTA/LEXUS**

1. There is a limit on the number of Toyota and Lexus dealerships that a public company may own: (a) on a national level; (b) in each Toyota-defined geographic region or distributor area; and (c) in each Toyota or Lexus-defined metropolitan market.
2. Ownership of contiguous dealerships in the same market is prohibited.
3. Nationally, the limitations on dealerships owned are for specific time periods and are based on certain percentages of total Toyota unit sales in the United States.
4. In geographic regions or distributor areas, the limitations on dealerships owned by publics are specified by the applicable Toyota regional limitations policy or distributor's policy in effect at such time.
5. In metropolitan markets, the limitations on dealerships owned by publics are based on Toyota's metro markets limitation policy then in effect, which currently provide a limitation based on the total number of Toyota dealerships in the particular market.

With respect to Lexus, a public company may own no more than one Lexus dealership in any one Lexus-defined metropolitan market and no more than five Lexus dealerships nationally.

## **HONDA**

1. Honda limits the number of Honda and Acura dealerships that a public company may own (a) on a national level; (b) in each Honda and Acura-defined geographic zone; and (c) in each Honda-defined metropolitan market.
2. Nationally, the limitations on Honda dealerships owned by public companies are based on specified percentages of total Honda unit sales in the United States.
3. In Honda-defined geographic zones, the limitations on Honda dealerships owned by public companies are based on specified percentages of total Honda unit sales in each of 10 Honda-defined geographic zones.
4. In Honda-defined metropolitan markets, the limitations on Honda dealerships owned by public companies are specified

## Effect of Framework Agreements

By: John Pico, BA, JD

- numbers of dealerships in each market, which numerical limits vary based mainly on the total number of Honda dealerships in a particular market.
5. With respect to Acura, public companies could own no more than (a) two Acura dealerships in a Honda-defined metropolitan market, (b) three Acura dealerships in any one of six Honda-defined geographic zones and (c) five Acura dealerships nationally.
  6. Honda also prohibited ownership of contiguous dealerships.

### **MERCEDES-BENZ**

1. Mercedes restricted any company from owning Mercedes dealerships with sales of more than 3% of total sales of Mercedes vehicles in the U.S. during the previous calendar year.

### **FORD MOTOR COMPANY**

1. 80% of the public's Ford dealerships had to meet Ford's performance criteria.
2. Could not make an acquisition that would result in owning Ford or Lincoln Mercury dealerships with sales exceeding 5% of the total Ford or total Lincoln Mercury retail sales of new vehicles in the United States for the preceding calendar year.
3. Could not acquire additional Ford or Lincoln Mercury dealerships in a particular state if such an acquisition would result in the public company owning Ford or Lincoln Mercury dealerships with sales exceeding 5% of the total Ford or total Lincoln Mercury retail sales of new vehicles in that state for the preceding calendar year.
4. Could not acquire additional Ford dealerships in a Ford-defined market area if such an acquisition would result in the public owning more than one Ford dealership in a market having a total of three or less Ford dealerships or owning more than 25% of the Ford dealerships in a market having a total of four or more Ford dealerships. An identical market area restriction applies for Lincoln Mercury dealerships.
5. The factory could impose conditions, such as requiring facilities improvements at the acquired dealership.

## **GENERAL MOTORS**

1. General Motors limited the maximum number of General Motors dealerships that a public could acquire to 50% of the General Motors dealerships, by brand line, in a General Motors-defined geographic market area having multiple General Motors dealers.

## **SUBARU**

1. Subaru limited public companies to (a) no more than two Subaru dealerships within certain designated market areas; (b) four Subaru dealerships within its Mid-America region; and (c) 12 dealerships within Subaru's entire area of distribution.

## **BMW**

1. BMW prohibited publicly held companies from owning BMW dealerships representing (a) more than 10% of all BMW sales in the U.S. or (b) more than 50% of BMW dealerships in a given metropolitan market.

Other manufacturers may impose different restrictions and conditions which may or may not be more stringent.

As a condition to granting their consent to acquisitions, a number of manufacturers required additional restrictions or conditions, such as prohibiting:

1. Material changes in the public company, or extraordinary corporate transactions such as a merger, sale of a material amount of assets or change in the public's board of directors or management that could have a material adverse effect on the manufacturer's image or reputation or could be materially incompatible with the manufacturer's interests.
2. The removal of a dealership general manager without the consent of the manufacturer.
3. Dualing with another brand without the factory's consent.

If a buyer does cannot comply with the restrictions of its framework

## Effect of Framework Agreements

By: John Pico, BA, JD

agreement with the factory, it will not be approved. Consequently, if one intends to sell a dealership to a public company it would be wise to know the requirements to of its framework agreement before investing a substantial amount of time and energy into negotiating with the public company.

---

Starting in 1972, Pico entered the automobile business by representing dealership groups such as Tasha Corporation (once the 17th largest dealer group in the country before it sold to AutoNation), and handling sales such as Lucy DiGulio's sale of her deceased husband's share of Prospect Motors (currently the largest General Motors dealership in the nation) to Skip Halverson.

Before retiring from the active practice of law in 1980 Mr. Pico and his law firm represented numerous automotive dealers in the reorganizations, purchases, and sales of dealerships. He both tried cases as the attorney for the dealerships and arbitrated and mediated dealer related cases.

Mr. Pico built upon his experiences and became a student of the industry by receiving training and attending seminars with respect to the various departments in new car dealerships, participating in National Automobile Dealer Association (NADA) Management Education Program, having "hands-on" experience" operating a store by filling in as General Manager on an "interim" bases. In 1986, after five years of research and two years of writing, Mr. Pico authored and National Legal Publishing Company published the nation's first book on Buying and Selling Automobile Dealerships.

Mr. Pico is recognized as an expert in the field of buying, selling and investing in automobile dealerships. In addition, both State and Federal Courts have also recognized Mr. Pico's expertise and in various legal proceedings he has been:

- Approved by the U.S. Bankruptcy Court, 10th Circuit, District of Colorado, pursuant to Rule 202 of the Bankruptcy Code, as "Consultant to Debtor" in sale of a new car automobile dealership;
- Approved by the U.S. Bankruptcy Court, 9th Circuit, Northern District of California, pursuant to Rule 202 of the

## Effect of Framework Agreements

By: John Pico, BA, JD

Bankruptcy Code, as "Consultant to Debtor" in sale of a new car automobile dealership;

- Approved by the U.S. District Court, 8th Circuit, Wisconsin, as Arbitrator/ Appraiser in new car Dealership litigation;
- Approved by the District Court of Colorado as expert in dealership valuation litigation;
- Approved by the Superior Court of California as:(a) "Consultant to Court Appointed Receiver" in check-kiting case,(b) "Expert Witness", with respect to dealership valuations, and(c) Superior Court Mediator in dealership/lender litigation.

### © Advising Automobile Dealers LLC

The one place to go for advice when investing in an automobile dealership is

**Advising Automobile Dealers LLC.**

[www.AdvisingDealers.com](http://www.AdvisingDealers.com)

Advising Automobile Dealers LLC