



What Happens If and When BYD Comes to California?

By: John J. Pico, JD

California may have just changed the antitrust landscape for the automobile industry—and perhaps created a model other states or even Congress could eventually consider.

Governor Gavin Newsom recently signed AB 1776, the COMPETE Act, adding an express prohibition against monopolization, attempted monopolization, monopsonization, and maintaining monopoly or monopsony power under California law.

Why should automobile dealers & manufacturers care?

Consider BYD.

BYD has become one of the world's largest automobile manufacturers and has demonstrated an ability to compete aggressively on price.

Now suppose a manufacturer with BYD's scale and financial resources enters California, prices vehicles aggressively for a sustained period, controls its distribution, gains substantial market

power, and engages in practices competitors contend are intended to eliminate competition.

At what point does vigorous competition become monopolistic conduct?

AB 1776 gives California prosecutors a new tool for asking that question.

And California did something particularly interesting.

It did not simply copy federal antitrust law.

AB 1776 provides that federal interpretations of **federal antitrust statutes are instructive, but not conclusive**, when California courts interpret the Cartwright Act. It also directs California courts to construe the state's antitrust laws broadly in furtherance of their underlying purposes.

California already has another law worth remembering.

Business & Professions Code §17043 prohibits selling a product below cost when it is done for the purpose of injuring competitors or destroying competition.

That does **not** mean aggressive pricing is illegal.

It does **not** mean selling below cost is automatically predatory pricing.

And it certainly does not mean BYD, or any other manufacturer, has violated California law.

But put these laws together and an interesting question emerges:

What happens when a manufacturer with enormous financial resources decides that the fastest way to capture a market is

to price vehicles at levels its competitors cannot—or will not—match?

And there may be an even larger question.

California has often been willing to experiment with regulation before the rest of the country. If its new approach to monopolization proves consequential, will other states consider similar legislation?

And ultimately:

Could California become a model for changes in federal antitrust law?

If so, AB 1776 may eventually matter far beyond California.

For years, automobile dealers have worried about manufacturers competing with their own franchisees.

Perhaps there is another question the industry should be considering:

What happens when the competition isn't between a manufacturer and its dealers, but between one extraordinarily powerful manufacturer and everybody else?

John Pico is a retired attorney and founder of Advising Automobile Dealers, LLC and has been consulting with automobile dealers for over fifty years. For more articles about the dealerships and dealers, visit our new website at www.advisingdealers.com

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