

# Managing Your Dealer Council to Avoid Antitrust Risks

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Dealer groups and dealer councils can serve invaluable pro-competitive purposes but – if not staying within legal bounds – they can create significant antitrust risk. What’s more, that risk may extend beyond the participating dealers and cause the manufacturer that created or facilitated the dealer group to share that antitrust risk. Recognizing and staying within the permissible bounds of activity by dealer groups and dealer councils benefits both the manufacturer and its participating dealers or distributors.

## Benefits of Dealer Councils

For a manufacturer using an independent distribution chain, the dealers not only sell and service the company’s products but also provide invaluable competitive information and feedback to enable the manufacturer to understand what customers value and to compete more effectively in the marketplace. Who better to report on your competitors, market trends, and the market’s perception of the products than the dealer or distributor who interacts directly with customers and hears what they like (and don’t like) about competing products? If the product is not functioning well in certain contexts or if the dealer is losing sales because your competitor’s dealer has a product priced 15% lower than your product, the dealer will let you know.

Dealer councils can provide a more formalized method of collecting this valuable information and exchanging ideas on how best to address a problem or to compete more effectively against the products of competing manufacturers. A dealer council also frequently serves as a focus group to address possible new product offerings or changes in strategy. A manufacturer typically invites some of its most successful dealers to participate in that discussion and to provide feedback and input. An effective dealer council can provide useful insight and information regarding, among other things, market trends, interbrand competitor strategies, product quality, marketing, research and development opportunities, safety issues, supply logistics, and warranty repairs or replacements. Dealers likewise benefit from the exchange of such information and can use this platform to collaborate with the manufacturer to increase sales. All good, all pro-competitive. But without appropriate rules and oversight, a dealer council can quickly transform to place itself (and the manufacturer) in an antitrust bull’s-eye.

## Antitrust Risks of Dealer Councils

The sometimes underappreciated antitrust risk created through a dealer group or dealer council arises due to the different antitrust treatment the law imposes depending on whether entities have a vertical or horizontal relationship. Because a manufacturer has a vertical relationship with each of its dealers, courts typically apply the more relaxed rule of reason approach when evaluating whether a non-price agreement between the manufacturer and its dealers unreasonably restrains trade (*i.e.*, violates the antitrust laws).<sup>1</sup> Manufacturers with relatively small market shares (