

POLITICS

# Justice Department Launches Antitrust Probe Into Four Auto Makers

Government seeks to determine if Ford, Honda, BMW, VW violated competition law



Ford is one of the auto makers being investigated by the Justice Department over an emissions agreement with California.  
PHOTO: JUSTIN SULLIVAN/GETTY IMAGES

*By Timothy Puko and Ben Foldy*

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WASHINGTON—The Justice Department has launched an antitrust investigation into four auto makers that forged a deal with California on vehicle-emissions standards, escalating the conflict between the Trump administration and Sacramento over environmental regulations.

Justice Department lawyers are seeking to determine whether Ford Motor Co. , Honda Motor Co. , BMW AG and Volkswagen AG broke federal competition law by agreeing with California to follow tailpipe-emissions standards beyond those proposed by the Trump administration, according to people familiar with the probe.

California officials, joined by Democratic lawmakers and environmentalists, branded the probe a political hit orchestrated by a White House angry over any attempt to subvert its authority.

“This investigation is nothing but an attempt by the Trump Administration to retaliate against these companies and stoke fear in others,” said U.S. Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee.

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*“The scientific community has spoken at length on this. We need to do all we can to cut emissions. I don’t think they should be punished for trying to make our air less toxic.” — Andy Smith*

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California Gov. Gavin Newsom, a Democrat, said the state would push forward with its plan, saying it “stands up to bullies and will keep fighting for stronger clean car protections that protect the health and safety of our children and families.”

A White House spokesman referred questions to the Justice Department, which declined to comment on the accusations. One of the people familiar with the investigation said the Justice Department’s antitrust division is acting on its own accord and without direction from or coordination with the White House.

The Justice Department investigation is the latest salvo from an administration that is intent on curbing California’s influence on the auto industry. Ford, Honda and BMW all confirmed the inquiry after it was first reported by the Journal and said they plan to cooperate. A Volkswagen spokesman declined to comment.

The four companies and the California Air Resources Board announced the deal in July to signal support for keeping one, nationwide emissions standard. Justice Department officials believe the agreement could effectively restrict competition by potentially limiting the types of cars and trucks the auto companies offer to consumers, according to people familiar with the department’s thinking. Such an impact of the deal—potentially cutting production of sport-utility vehicles and crossovers that burn more gasoline—could cross legal lines, the people said.

Courts have prohibited such deals even if the motivation was for a public good, the people said.

President Trump has sought to roll back Obama-era mandates intended to reduce the auto industry’s contribution to climate change. California regulators have said they are willing to ease mandates, but they don’t want to go as far as the proposals from the Trump administration, which has said it wants to eliminate all upcoming increases in efficiency requirements.

The administration is challenging the legal authority that has given the state de facto control over environmental regulations for roughly a third of the U.S. car market.

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The Justice Department sent letters to each of the companies within the past two weeks to alert them of the department's interest and to request information, according to one of the people familiar with the matter. The department in the letters said no conclusions have been reached, but also said the deal may have antitrust implications, the person said.

On Friday, top lawyers at the Transportation Department and Environmental Protection Agency sent a letter to California's top air regulator, Mary Nichols. It urged her to dissociate the state from the four auto makers, saying the commitment may result in undefined legal

consequences.

"The purpose of this letter is to put California on notice that this framework agreement appears to be inconsistent with Federal law," the letter states. "Congress has squarely vested the authority to set fuel economy standards for new motor vehicles, and nationwide standards for (greenhouse-gas) vehicle emissions, with the Federal government, not with California or any other State."

Auto makers are caught in the middle. They appealed for relief from the Trump administration shortly after the 2016 election. But the administration's proposal from last year to freeze the standards spooked an industry getting pushed by investors and some governments to limit the greenhouse-gas emissions of its cars and trucks.

Uncertainty over the regulations could raise legal costs and hamper car makers' ability to design emissions systems, industry experts say. Even worse for the companies would be two sets of standards—one for California and another for the rest of the nation.

The state had communicated with some other auto makers as well, but not with all of them, according to people familiar with the discussions. General Motors Co., the U.S.'s largest auto maker by sales, wasn't privy to the talks, according to people close to the company.

One person with direct knowledge of negotiations said that Daimler AG's Mercedes-Benz had indicated an interest in joining, but later abstained due to fears of political fallout. Mercedes-

Benz declined to comment.

Some Japanese and European auto makers have avoided joining the California deal because they're still worried the president can levy 25% tariffs on imported cars on national-security grounds, which Mr. Trump has threatened in the past. A decision on those tariffs is due in November.

An antitrust investigation, however, had not been considered as a possible threat. "This was nowhere on our radar screen," said an executive at one foreign auto maker that had not joined the agreement. "This had never been brought up in any conversation."

That may be changing. In recent weeks the four auto makers have limited talks with California because of antitrust concerns, according to one person briefed on the decision.

Some legal experts said the deal could simply equate to a cooperating lobbying effort, a common, legal practice. Whether it goes beyond that depends on whether the companies discussed the deal among themselves, said Doug Melamed, a Stanford University law professor and Justice Department antitrust official during the Clinton administration.

"If they're simply agreeing on a policy position, it's not a violation," Mr. Melamed. "If they're agreeing with each other to do something they're not required to do by law, then it could be an antitrust problem."

The conflict between the Trump administration and California is already starting to play out in court. On Friday, a U.S. Appeals Court in Washington heard the first oral arguments in a case tied to the fight. California's first suit over the issue claims the Trump administration erred in its initial analysis and didn't give a logical rationale for reopening the rule-making process to ease the requirements. The Trump administration has defended its right to revise an EPA determination, and has said the Obama administration misread changing consumer demand in the auto market.

—*Mike Colias contributed to this article.*

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