



School of
Management and Law

Big Data: Antitrust challenges in the automobile industry

2-nd Conference “Antimonopoly Policy: Science, Education, Practice”



Building Competence. Crossing Borders.

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Outline

- (1) Big Data**
- (2) Swiss automobile industry
- (3) Dealer and service contracts
- (4) Antitrust challenges
- (5) Summary

(1) Big Data

What is Big Data?

- **Information.** Cost-effective, systematic data collection, processing and analysis
- **Process.** Enhanced insight, decision making, and process automation



(1) Big Data

Perspective: Companies

- Improvements to products or services
- Exploitation of new business opportunities
- More target-oriented business models



- Efficiency
- Sales increase
- Risk reduction



Competitive advantage

(1) Big Data

Perspective: Automobile industry

- **Development.** Automobile industry as leader in the use of data analyses in the field of supply chain optimisation
- **Cars.** Generation smart vehicles. New way to gather data
- **Process.** Optimal product and productivity control for producers
- **Marketing.** Targeted, personal marketing and sales activities

Outline

(1) Big Data

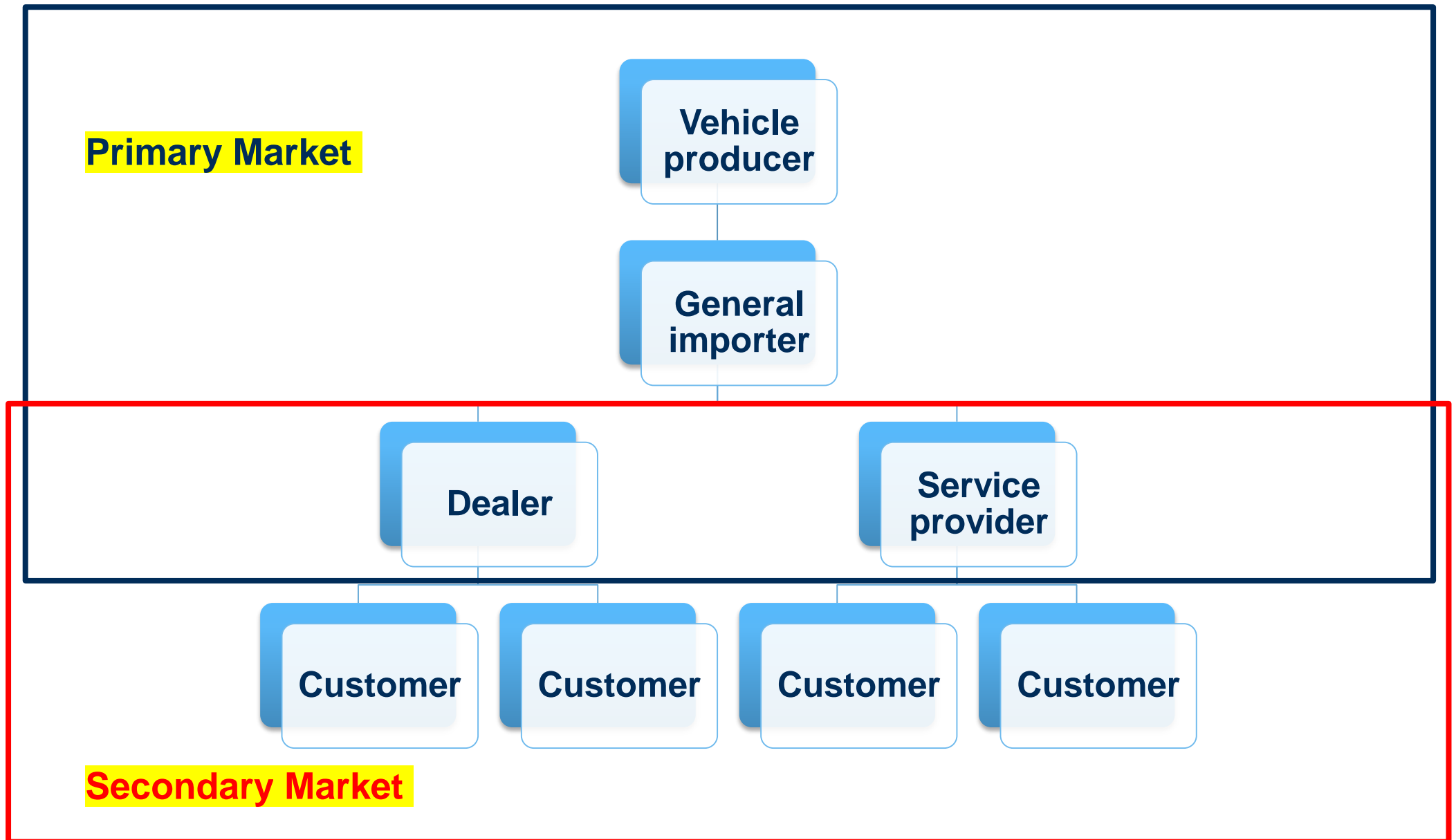
(2) Swiss automobile industry

(3) Dealer and service contracts

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(5) Summary

(2) Swiss automobile industry



(2) Swiss automobile industry

Primary market

- **Automobile producers and importers**
 - Few players (roughly 2 big players)
 - Substantial market power (and assumed dominant position); dealers/service providers are highly dependent on the producers/importers
 - Monopolistic competition
 - Market entry requires immaterial rights and high investments
 - Usually no direct contact with customers

(2) Swiss automobile industry

Secondary market

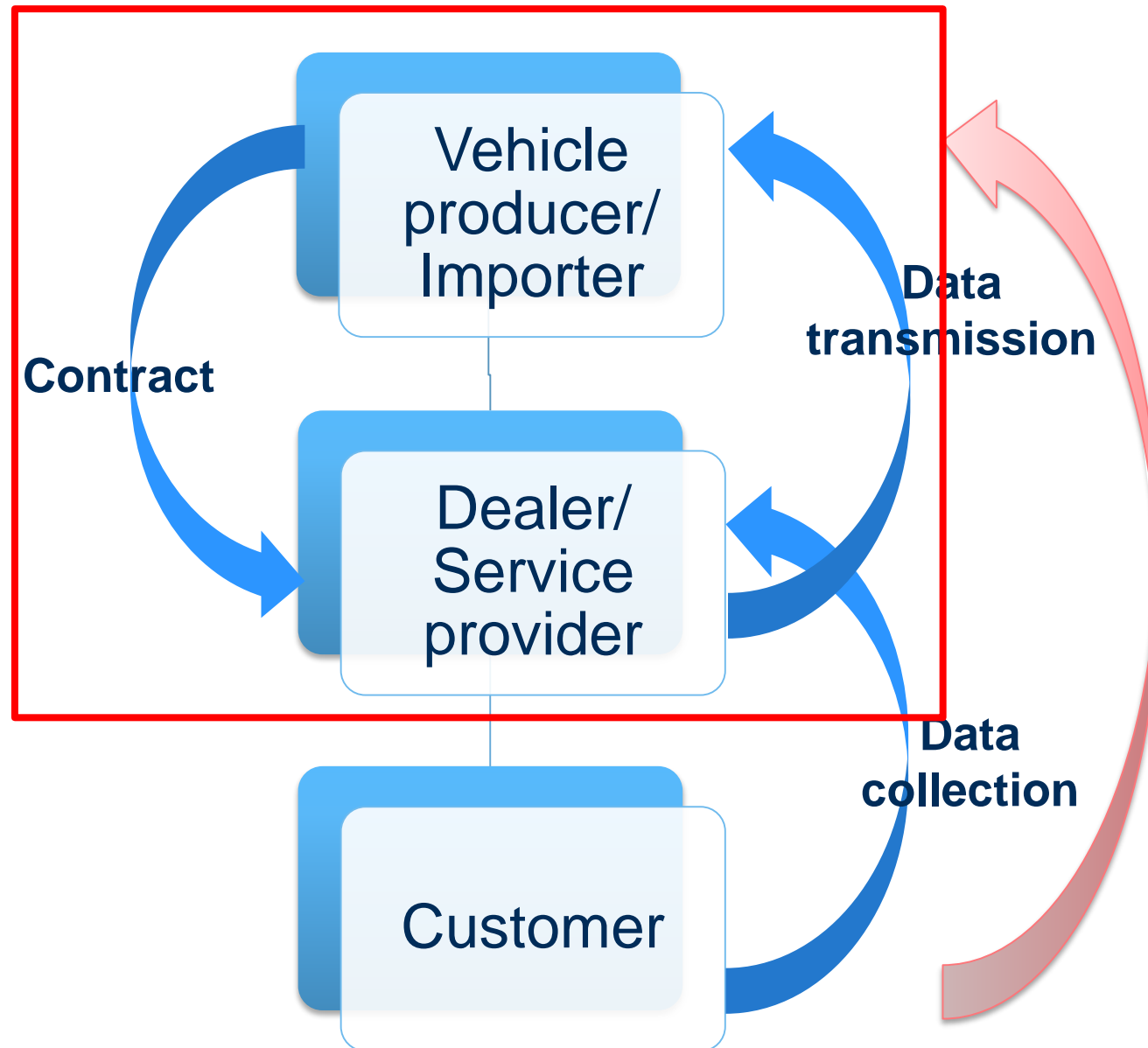
- **Dealers and service providers**
 - Many players (predominantly SME's)
 - Intense competition
 - Customer typically buys vehicle from dealer
 - Data is (still) primarily collected in the secondary market

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(3) Dealer and service contracts

- **Contract.** Contract between importer and dealer/service provider.
- **Data transmission.** Contract requires data transfer.
- **Data collection.** Dealer/service provider collects data from customers.



(3) Dealer and service contracts

Common data clauses in dealer and service contracts

- Unlimited rights of use for producer/importer
- Refusal of data transmission can lead to termination of contract
- Collection of area specific data. Data is saved to a central database
- Usually no compensation for the data

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(4) Antitrust challenges

Swiss competition law

- **General**
 - Elimination of effective competition or significant restriction on competition.
- **Vertical agreements**
 - Presumption of elimination of competition regarding fixed or minimum prices or allocation of territories.
- **Abuse of dominant position**
 - Prevention of beginning or continuing to compete, or disadvantage trading partners.

(4) Antitrust challenges

Risks of data clauses

- **Territorial agreement:** Producers/importers can use the data to refer customers to a certain local dealer.
- **Fixed prices:** Detailed knowledge of prices enables price analysis and may be used to influence the pricing of the dealers.

Detailed knowledge of customer preferences, prices and services can lead to infringement **of Art. 5 CartA.**

(4) Antitrust challenges

Risks of data clauses

- **Customer information:** Clauses, that allow producers/importers to inform the dealer's/service provider's customers may be considered imposing unfair trading conditions.
- **Termination of contract:** Clauses, that allow producers/importers to terminate the contract, if the dealer/service provider does not agree to provide data may constitute several competition law infringements.

High market power of importer and dependence of dealer/service provider can lead to infringement of **Art. 7 CartA.**

(4) Antitrust challenges

Legal consequences

- **Nullity.** A contract is invalid in whole or partially if its terms are unlawful (Art. 20 CO). Data clauses which violate CartA are invalid.
- **Fine.** Up to 10% of the turnover in Switzerland in the preceding three financial years.
- **Compensation.** Is a compensation for gathered information/data owed?

(4) Antitrust challenges

Economic consequences

- **Value of customer information?**
 - Amount of compensation for the customer's consent to data collection?
 - Value of customer data under competitive conditions?
- **Costs for data collection?**
 - Database?
 - Data maintenance?
- **Lost of profit?**
 - Dealers/service providers exclusive position?

Thank you for your attention!

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