Big Data: Antitrust challenges in the automobile industry
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(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
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
(1) Big Data

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(5) Summary
(2) Swiss automobile industry

Primary Market

Vehicle producer

General importer

Secondary Market

Dealer

Service provider

Customer Customer Customer Customer
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
Outline

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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.
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
Outline

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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**.
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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