

13th EU-China Competition Week

Application of competition law to the Automotive Sector

Case Examples from Germany



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Application of Competition Law to the Automotive Sector

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- I. Introduction
- II. Case concerning cooperation with internet intermediaries
- III. The Porsche Tuner case and others

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I. Introduction:

- cases predominantly dealt with in recent time: merger cases
 - some lessons to be learned from merger cases
- one recent non-merger cases dealt with in 2015
- several cases dealt with by civil courts
 - involve interpretation of competition law

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II. Bundeskartellamt case: cooperation with internet intermediaries

in 2015 opening of administrative proceedings against:
Ford, Opel and Peugeot

background: introduction of Internet-standards by
manufacturers

suspicion: internet-standards are tool to give brand
retailers instructions for the sale of new cars via Internet

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Functioning of internet based new car portals:

final customers can configure the car according to his own ideas

afterwards customer receives an indication of the price

if final customer agrees, he contacts the portal as an intermediary

portal finds a retailer, contract is concluded between retailer and final customer, portal receives a commission

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- consequence of portal activities:
 - greater market transparency
 - more competition between different car brands
 - more competition between brand retailers of the same manufacturer
 - spill over effect for „offline“ sales

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- Internet standards included several conditions for getting bonus payments or sales assistance
- no explicit prohibition for retailers to cooperate with intermediary portals
- but could be interpreted in such a way in practice
- following the introduction a wide majority of brand retailers refused to deal with portals

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- infringement of German and European competition law
- not covered by the vertical block exemption regulation
- no individual exemption applicable (was not even claimed to be applicable)
- manufacturers clarified, that standards do not apply for intermediary portals
- after respective communication: case was closed
- no more complaints received since

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III. The Porsche Tuner Case and others

plaintiff: company which specializes in the tuning of Porsche cars (only)

defendant: Porsche company

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immediate termination of all business agreements between defendant and plaintiff on short notice, including:

Porsche Integrated Workshop

Information System (diagnose- and information-system for Porsche cars)

termination of the delivery with new cars for the tuning business + OME parts /notice to Porsche retailers to stop delivery

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- ruling of the court:
- plaintiff is dependent on Porsche, she is more than a simple sales agent
- she cannot simply switch to other brands
- in principal, a manufacturer can choose freely how to distribute his goods
- but plaintiff only requests delivery of new cars for his business + OME parts, not to be part of an authorized distribution system

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Porsche can use its market position to foreclose competition on the market for Porsche tuned cars

Porsche is not obliged to deliver OME parts but may not hinder authorized dealers from delivering OME spare parts

as for the diagnose/information tool: Porsche has a monopoly and plaintiff must get access

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thank you for your attention



Bundeskartellamt

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