

# Automotive Market: Federal Council makes ComCo's practice in the Motor Vehicle Trade legally binding for the Courts

On 29 November 2023, the Federal Council adopted the Ordinance on the competition law assessment of vertical agreements in the motor vehicle sector ("Motor Vehicle Ordinance"), which will enter into force on 1 January 2024. Following the Pfister motion, the Ordinance will replace the Competition Commission's ("ComCo") Notice on the competition law assessment of vertical agreements in the motor vehicle sector ("Motor Vehicle Notice").

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AUTHORS	Marcel Meinhardt	Partner, Head of Competition
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Similar to the Motor Vehicle Notice, the new Motor Vehicle Ordinance aims to prevent unlawful agreements affecting competition and the isolation of the Swiss automotive market. It applies to vertical agreements regarding the distribution of new motor vehicles and spare parts as well as the provision of repair and maintenance services. The new Motor Vehicle Ordinance specifies the types of conduct that constitute qualitatively significant restrictions of competition in automotive distribution, which were previously recognised as such by the ComCo. These conducts have been adopted from the Motor Vehicle Notice without any significant changes in substance. Only a few minor adjustments have been made to take account of technical developments in the automotive industry.

Unlike the previously applicable Motor Vehicle Notice, the new Motor Vehicle Ordinance is now legally binding for both the ComCo and the Swiss courts. On December 4, 2023, ComCo published the explanatory notes to the Motor Vehicle Ordinance, which will also enter into force on January 1, 2024. In principle, the explanatory notes follow those of the EU. ComCo comments on the restriction of parallel imports, access to spare parts and technical information for independent garages, multibrand distribution by garages and cancellation modalities. The explanatory notes are for guidance only and are not legally binding for the Swiss courts.



Companies active in the automotive sector are advised to review their dealer contracts in the light of these changes. All the more so as the requirements go beyond those of EU antitrust law.

Please do not hesitate to contact us if you have any further questions on this subject.

**Legal Note:** The information contained in this Smart Insight newsletter is of general nature and does not constitute legal advice.

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Marcel Meinhardt	Partner, Head of Competition, Zurich marcel.meinhardt@lenzstaehelin.com Tel: +41 58 450 80 00
Astrid Waser	Partner, Head of ESG, Zurich astrid.waser@lenzstaehelin.com Tel: +41 58 450 80 00
Benoît Merkt	Managing Partner, Head of Competition, Geneva benoit.merkt@lenzstaehelin.com Tel: +41 58 450 70 00

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