

Update

Newsflash June 2012

Significant Developments in Swiss Competition Law

ComCo sanctions BMW for impeding direct and parallel imports

On 24 May 2012, the Competition Commission ("ComCo") announced that BMW AG in Munich ("BMW") will be sanctioned with a fine of CHF 156 Mio for impeding direct and parallel imports. This is the highest sanction the ComCo ever imposed for vertical restraints of competition.

In October 2010, the ComCo opened an investigation against BMW following several complaints of Swiss customers in the second half of 2010 who have unsuccessfully tried to purchase cars of the brands BMW or MINI outside of Switzerland. According to these complainants, it was not possible for Swiss customers to purchase new cars of these brands in the EEA.

According to the ComCo, the dealer contracts of BMW contained export bans prohibiting dealers in the EEA from selling new BMW and MINI cars to customers domiciled outside the EEA, including to Swiss customers. Consequently, BMW was held liable to have foreclosed the Swiss market and to have precluded any competitive pressure on retail prices for new cars. Swiss customers, therefore, were not able to benefit from the significant exchange rate advantages.

In its Nikon decision of 15 December 2011, the ComCo had also identified an impediment of parallel imports and

imposed a fine of CHF 12.5 Mio to Nikon. Several (non-Swiss) dealer contracts of the Nikon group contained clauses which impeded respectively prevented purchases from outside the contract area and, accordingly, also from Switzerland. Also in this decision, the ComCo confirmed its willingness to promote and ensure competition in particular by opening the Swiss market and enabling parallel imports.

The ComCo commits to this principle and considers the BMW decision as part of its fight to ensure that currency exchange rate advantages are being passed on to consumers. It stated that it will continue to take actions against measures which are leading to a foreclosure of the Swiss market.

This decision of the ComCo demonstrates that clauses preventing direct or parallel imports (passive sales) are forbidden even if contained in contracts between non-Swiss parties. A restraint of competition having effects in Switzerland can be sanctioned in Switzerland even if it originates from abroad.

In addition to fines of up to 10 per cent of the turnover reported in Switzerland in the three preceding financial years, the ComCo can further require the elimination of the anti-competitive clauses.

Our Contacts

Zurich

Marcel Meinhardt
marcel.meinhardt@lenzstaehelin.com

Astrid Waser
astrid.waser@lenzstaehelin.com

Nicolas Bonassi
nicolas.bonassi@lenzstaehelin.com

Michael Cabalzar
michael.cabalzar@lenzstaehelin.com

Oliver Labhart
oliver.labhart@lenzstaehelin.com

Telephone +41 58 450 80 00

Geneva / Lausanne

Benoît Merkt
benoit.merkt@lenzstaehelin.com

Rayan Houdrouge
rayan.houdrouge@lenzstaehelin.com

Simon Brunschwig
simon.brunschwig@lenzstaehelin.com

Stéphanie Buchheim
stephanie.buchheim@lenzstaehelin.com

Adrien Alberini
adrien.alberini@lenzstaehelin.com

Telephone + 41 58 450 70 00

Our Offices

Zurich

Bleicherweg 58
CH-8027 Zürich
Telephone +41 58 450 80 00
Fax +41 58 450 80 01
zurich@lenzstaehelin.com

Geneva

Route de Chêne 30
CH-1211 Genève 17
Telephone +41 58 450 70 00
Fax +41 58 450 70 01
geneva@lenzstaehelin.com

Lausanne

Avenue du Tribunal-Fédéral 34
CH-1005 Lausanne
Telephone +41 58 450 70 00
Fax +41 58 450 70 01
lausanne@lenzstaehelin.com

www.lenzstaehelin.com