

Update

Newsflash March 2015

Termination of a service contract – no obligation to contract

Jaguar Land Rover Schweiz AG ("Land Rover") terminated a service contract with an authorized garage ("authorized garage"). The authorized garage filed for preliminary relief with the Commercial Court of Zurich (Handelsgericht Zürich), requesting the Court to order Land Rover to continue the service contract after termination. The Commercial Court rejected the authorized garage's request for interim relief.

The service contract entitled the authorized garage to provide repair and after sales services and to sell spare parts for Land Rover branded motor vehicles. According to the allegations of the authorized garage, Land Rover infringed Swiss competition law when it ordinarily terminated the service contract. The authorized garage requested the Commercial Court to order Land Rover to continue the service contract after termination.

The Commercial Court rejected preliminary relief. It came to the conclusion that the sale of new motor vehicles and downstream sales of spare parts and services were part of one system market. In this system market, Land Rover's market share was less than 5% of the SUV premium segment. According to the Commercial Court, a single brand (such as Land Rover) could not constitute the relevant market. Accordingly, Land Rover did not have a dominant position at the after sales level. Consequently, the Commercial Court ruled that Land Rover was not obliged to enter into a contract (Article 7 of the Swiss Cartel Act (CartA)). In addition, the Commercial Court *prima facie* did not find an infringement of Article 5 CartA on unlawful agreements restricting competition because Land Rover's refusal to supply the authorized garage was a unilateral decision. Further, neither the Motor Vehicle Communication of the Swiss Competition Commission nor the fact that Land Rover maintains a selective distribution system required Land Rover to enter into contract with garages. It remains to be seen what impact this decision will have on the revised Motor Vehicle Communication which the Swiss Competition Commission is currently drafting.

Please do not hesitate to contact us with questions.

Legal Note: The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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