

# Legal Alert

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## Dutch Supreme Court: Far-reaching protection for official dealers

14 January 2010

The Dutch Supreme Court, on last Friday, 8 January 2010, rendered an interesting and very favourable decision for companies using a system of selective distribution.



In *Alfa Romeo Nederland/Multicar et al.*<sup>1</sup>, the question was whether Multicar was acting unlawfully by obtaining Alfa Romeo cars from official Alfa Romeo dealers in the Netherlands who were – by doing so – acting in breach of their contractual obligations under the distribution network agreement.

The Supreme Court ruled that dealing with someone, while knowing that their contract partner

is infringing an agreement, is not unlawful per se, but may be under specific circumstances.

If a non-official dealer:

- a) sells products that are obtained by inducing a dealer belonging to a selective distribution network to breach a contractual obligation under this selective distribution system;
- b) competes with dealers that are bound to the same (contractual obligations under the) selective distribution network; and
- c) profits from the fact that the official dealers are in a less favourable position due to the fact that they will have to comply with the contractual obligations from the selective distribution system (and will have to incur the associated costs),

the acts of the non-official dealer may be unlawful towards the dealers bound by the distribution network. In that case the acts of the non-official dealer are qualified as unfair competition.

Moreover, these acts of unfair competition may be unlawful towards the distributor if they undermine the (selective) distribution system. This is, for instance, the case when official dealers evade

<sup>1</sup> [Alfa Romeo Nederland/Multicar et al judgment \(in Dutch\)](#)

their obligations under the selective distribution system or terminate their distribution contract, or when it becomes less attractive for third parties to enter into the selective distribution network due to the acts of unfair competition of the non-official dealer.

Contrary to the decision of the District Court and the Court of Appeal, the Supreme Court ruled that in this case Multicar was (possibly) acting unlawfully.

The decision provides strong support for selective distribution systems in their struggle to fight non-official dealers soliciting sales from official dealers.

Obviously, we would be more than pleased to discuss the practical consequences this decision may have for your company.

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