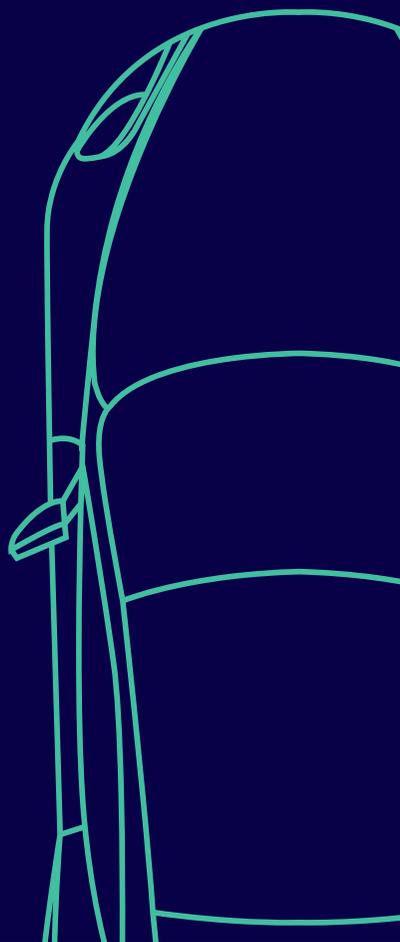


TaylorWessing

# Driving your digital sales

Your legal compass to gear up  
your automotive ecommerce strategy



**Now is the time  
for change**

**We want cars**

**The coronavirus outbreak  
has changed the world as we know it.**

**However, it gives  
us the chance  
to understand  
and adapt.**

In these days even the most hesitant people learnt to use the internet and digital communication tools to organize their private but also their professional life. The longer this extraordinary situation lasts, the more people will appreciate the freedom to move. The desire and need to move from one place to another, be it for personal, professional or commercial reasons, in particular in a manageable radius will not have changed but become even more valuable in the long run. The automobile has always been a symbol of independence, individual freedom and personal control. Now another essential quality increasingly sought by consumers could be added – health safety. Only solitary modes of transportation allow for utmost safety and health security to guard oneself against infectious diseases. A private vehicle is one of the safest ways to travel and commute.

Auto retailers who have not embraced digital commerce yet are now rushing to adopt online sales tools. OEMs need to review and take a holistic approach on how to implement a digital distribution strategy that considers a broader spectrum of sales channels. Digitization is gaining momentum throughout the entire value creation process and enables tailor-made, individually customized development,

sales and maintenance of smart vehicles run on seamless, efficient and continuous data collection and evaluation.

Customers are increasingly looking for products and brands that have values and convey the values in a personalized way. With effective online advertising including the use of social media you can reach customers worldwide by deploying targeted marketing to influence the consumer decision journey. At the end of the day, the customer's decision is based on high service orientation that drive engagement and create trust and reliability.

Our interdisciplinary expert team has profound experience in drawing up pioneering ecommerce solutions for OEMs, including state-of-the-art contracts with dealerships, taking into account the rapidly changing business environment and need to respond fast to disruptive developments. We pursue an integrated analysis and tackle the relevant key issues and aspects pertaining to commercial and distribution law, data protection law, regulatory law and antitrust/competition law.

## Before you get started...

**...check the legal agreements you have with your dealership and pay attention to the antitrust and data privacy implications.**

To decide, who shall sell online, i.e. whether the OEM goes for online direct sales, for "mere" provision of an online platform for the dealer or for distribution via a common platform, the following aspects need to be considered by OEMs with a dealer network in place.

### Can you just go ahead for online direct sales?

For online direct sales of new vehicles to end customers to be permissible, the dealer agreements must explicitly permit direct sales by the OEM. If this is not the case, the dealer agreement must be amended by mutual consent or adapted unilaterally by means of change notices.

### Are there any commercial issues and financial rights and claims on the dealers' side to be observed when choosing online direct sales?

It must be contractually ensured that, in the event of a demonstrable impairment, dealers receive appropriate compensation for the disadvantage inherent in the OEM's direct distribution right. Such compensation may take the form of a reasonable lump sum to be paid to the dealer affected by the concrete direct sale, the amount of which is either fixed or left to the "reasonable discretion" of the OEM.

In addition, online direct sales by the OEM generally require dealers to be involved at various points in the individual sales processes. Depending on which specific tasks the dealers are to take on, agreements with the dealers on topics such as test drives, delivery, approval and after-sales service (e.g. with regard to maintenance, warranty and guarantee) may be necessary.

### What do you have to consider regarding your pricing strategy when going for direct B2C online sales?

If the OEM decides on direct online sales to end customers, he will change from a potential to an active competitor of his dealers: It must therefore be ensured under antitrust law that the OEM sets sales prices independently and, in particular, does not agree or coordinate sales prices with dealers.

### What are the legal implications for directly or indirectly accessing and collecting customer and car data?

In the dealer agreements, especially in connection with connected cars and new mobility offers, dealers are obliged to transmit a wide range of data to the OEM. From an antitrust point of view, when exchanging information between competitors, it must be ensured that no competition-sensitive data is exchanged, to the extent that this is not necessary. If necessary, safeguards (e.g. Chinese walls) must be introduced.

From an OEM point of view, direct sales means that the direct sales force has a direct contractual relationship with the customer. This gives them direct access to customer data without the need for the dealer's assistance. At the same time, this triggers full responsibility under data protection law, which must be observed, for example, when setting up the CRM system and using customer data for sales purposes.

# Ready, Set, Go!

Setting up and filling the online platform

## The Set-up

The set-up of an ecommerce platform for direct sales is, depending on the desired functionalities, an ambitious IT project that requires good planning right from the start to ensure its success.

### What key criteria should be obeyed finding the right IT solution for the ecommerce platform?

It starts with question whether an **"off-the-shelf solution"**, which may need to be customized, will meet your requirements or whether you need to build your **own individual ecommerce platform**. Off-the-shelf solutions will often be hosted in the "cloud" by the IT service provider and not installed on premise. This has numerous advantages, whereby the issue of data sovereignty and data access, especially when the cooperation with the IT service provider is terminated, should always be taken into consideration when deciding on such a solution and should be contractually secured accordingly. Further, it is important to deal with the project methodology for implementation (**agile vs. classic**) at an early stage in order to be able to allocate one's own capacities, but also to formulate requirements for the IT service provider and mitigate your legal risks.

### Which (third party) applications have to be integrated?

An ecommerce platform always communicates with other applications such as internal ERP or CRM systems but also with third party applications such as payment providers. Not every payment provider can be integrated as easily as others. There will also be special automotive applications such as software for configuring the vehicles. If this is not already available, it would also have to be licensed or created and considered during the planning phase.

## The Content

Against the background that OEMs so far are often only familiar with offline and B2B sales, the content design of the online platform reserves for some special features for the OEM, especially in the area of consumer protection law.

In addition, anyone wishing to expand their online platform with add-on products must create the appropriate contractual and technical structures and also observe the respective product-specific requirements for online sales.

### What specific consumer protection law must be obeyed on the platform?

In all areas of the platform, the specific and far reaching consumer protection law has to be obeyed. This does not only affect the conditions of sale, but above all triggers numerous information obligations that have to be integrated into the sales process. This begins with the design of the sales process, in which the Distance Selling Act, mandatory law on the sale of consumer goods and on standard business terms and the mandatory energy consumption labelling for passenger cars in accordance with the PkwEnVKV must be observed. A revision of the existing energy consumption regulation has been announced for mid-2020 to reflect the WLTP values.

### Can I restrict my offer to national customers?

Everyone who is selling online has to obey the EU Geo-Blocking Regulation. Geo-blocking refers to practices used by online sellers that result in the denial of access to websites from other EU Member States. This is no longer permitted. Discrimination between EU customers to segment markets along national borders and to increase profits to the detriment of foreign customers is considered as unjustified geo-blocking.

### How do you want to use the customer data collected during visits and purchases via the web shop?

The operation of an ecommerce platform necessarily involves the processing of customer data. In addition to the classic purchase processing, however, there are also numerous opportunities to exchange information with (potential) customers. The direct customer relationship enables the OEM to collect extensive customer data without having to go via the dealer. This begins with the initiation of the purchase via the platform, but continues during the maintenance and use of connectivity services. This data enables the OEM to understand its customers, their needs and wishes. Products and services can be personalized and individually addressed to customers. The findings can be taken into account for future product developments. To enable a legally compliant use of the data we recommend an early consideration of data privacy issues and design the setting in a data protection friendly manner.

### Marketing and social media

Online sales of course also means advertising products and services and this increasingly in connection with social media. New and existing customers can be addressed via Facebook, Instagram & Co while the ecommerce platform can be linked to the social media channels and vice versa in order to bind the customer to oneself. The customer data collected during visits of the social media channels and purchases via the ecommerce platform as well as during the provision of maintenance and connectivity services may be used for behavioural advertising. In addition to the classic Act against Unfair Competition (UWG) and data protection topics, the special issues of social media have to be taken into account as currently discussed for influencer marketing.

## Additional Services and Products

In addition to the classic online car sales, the ecommerce platforms offer the possibility of including a wide range of other services and products which customers are interested in buying online and which complete the online sales experience. At the same time, the integration of such add-on services and products can trigger complex additional legal issues.

### Integration of Financing/Leasing & Insurance Products?

When incorporating financing, leasing and insurance products, special banking or insurance law requirements must be considered and contractual co-operations with the individual service providers such as banks, leasing companies and insurers must be carefully setup and implemented to minimize compliance risks for the OEM. Distance selling of financing and insurance products to end customers and consumers in particular, also triggers additional, product specific obligations regarding the online sales process.

### Integration of Connectivity Services?

The range of connectivity services is increasingly expanding and is often based on the processing of user data (e.g. digital logbook, analysis of vehicle data for maintenance purposes, evaluation via smartphones) or they require the integration of third parties such as content providers for entertainment offers. In order to offer an integrated service, the connectivity services can be integrated into the platform so that the customer can also manage them via the platform. This gives the OEM further access to customer data that were "offboarded". Whether and for what purposes he may process this data must be checked in each individual case from a data protection perspective. European data protection supervisory authorities have already discussed the requirements for lawful data processing inside and outside the connected car what should be considered when implementing such an integrated service.

### Integration of Alternative Mobility Services?

The integration of alternative mobility services such as subscription models or car or ride sharing offers into the online platform can be an important instrument for reaching customer groups for whom mobility is no longer primarily associated with the ownership or permanent possession of a vehicle. If the OEM does not set up the corresponding structures itself, co-operations with suitable mobility service providers must be set up or solutions via the dealer network must be worked out and implemented contractually. In addition, the booking processes via the OEM's online platform must also be designed in compliance with legal requirements, in particular consumer and data protection law.

### For further questions and support please contact



**Dr. Marco  
Hartmann-Rüppel**

Partner, Hamburg  
**Competition,  
EU and Trade**

+49 40 36803 127  
m.hartmann-ruempel  
@taylorwessing.com



**Dr. Peter  
Hofbauer**

Partner, Munich  
**Commercial Agreements  
and Distribution**

+49 89 21038 134  
p.hofbauer@taylorwessing.com



**Dr. Nicolai  
Wiegand**

Partner, Munich  
**IT / Ecommerce and  
Data Protection**

+49 89 21038 237  
n.wiegand@taylorwessing.com



**Dr. Sonja Ackermann  
M. Jur. (Oxford)**

Salary Partner, Munich  
**Commercial Agreements  
and Distribution**

+49 89 21038 129  
s.ackermann@taylorwessing.com



**Dr. Michael  
Kieffer**

Salary Partner, Munich  
**Commercial Agreements  
and Distribution**

+49 89 21038 241  
m.kieffer@taylorwessing.com

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**300+ partners**  
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