

**By fax and registered letter
with return receipt requested**
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Zürich, 12. Februar 2007
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Dear Mr Nicolella

In the ICC case Nr. 13844/FM

Renault Polska SP. z.o.o.

Claimant

represented by Christian Camboulive
GIDE LOYRETTE NOUEL
26, Cours Albert 1er
F-75008 Paris

against

Info Auto AS

Respondent

represented by Paul Langner
LANGNER STIEGER TRACHSEL & PARTNER
Heuelstrasse 21 / Postfach
CH - 8032 Zürich

Info Auto AS hereby submits its

Response and Counterclaims

Preliminary Remarks

1. In accordance with the provisional timetable established by the arbitrator on February 13, 2006, Info Auto AS (hereinafter “Info Auto” or “Respondent”) hereby submits its Response and Counterclaims against Renault Polska SP z.o.o. (hereinafter “Renault Polska” or “Claimant” and together with the Respondent the “Parties”).
2. Claimant requests that Respondent provides a translation into English of its Exhibits 14 and 15/2. Respondent hereby waives its Exhibit 15/2 and provides a translation into English of its Exhibits 14. For the ease of reference Respondent submits all its exhibits again.
3. Hereinafter the Request for Arbitration is abbreviated as “Request”, the Answer to the Request for Arbitration as “Answer” and the Statement of Claim as “Claim”. Claimant’s exhibits are cited as “Exhibit R” and Respondent’s exhibits as “Exhibit A”.
4. First, the factual background of the present dispute is given (I.). Second, Respondent demonstrates why the Renault Polska’s claim is groundless and should be rejected (II.). Third, Respondent sets out the basis for its counterclaims (III.). Finally, the allegations made in the Claim are commented point by point.

I. Factual Background

A. From Renault France to Renault Polska

1. For almost 10 years Respondent represented the make Renault in Estonia. The cooperation between Respondent and Regie Nationale des Usines Renault SA, France (hereinafter “Renault France”) started in 1992 through Volvo Sweden that acted as importer for Renault cars in Scandinavia. In October 1993 Respondent signed a direct dealer agreement with Renault France. In 1996, Respondent signed an import and distribution agreement with Renault France, where Respondent was designated as importer for Estonia and linked to the Renault export division that is called Ren-

ault DAI and is located in Paris. Neither Renault France nor Respondent ever formally terminated this agreement.

2. Respondent acted in the Estonian market as a pioneer for Renault France and established the make Renault in Estonia. For the further development of the make Renault in Estonia, Respondent's achievements were very significant.
3. In 1998, Renault France restructured its business in Eastern Europe and – economically – forced Respondent to enter into a first agreement with Claimant, a wholly owned subsidiary of Renault France. The Estonian market with its roughly 1,4 million inhabitants was just not big enough for Renault France to deal with it directly from the head offices. Finally, the Parties signed in 1999 the Dealers Contract (**Exhibit R1**). This change from Renault France respectively French driven business culture to Claimant caused – as the present dispute illustrates – a major change in business style and ethics and led to many misunderstandings.
4. Respondent was used to deal with Renault France in an open and constructive way having the common goal in mind. In 1998 Respondent started to deal with Claimant and tried to establish the same open and constructive communication culture. However, as the following illustrates, Claimant did not appreciate this form of communication and constructive criticism. As Respondent had to experience, Claimant preferred a very authoritative command style.
5. As early as on January 22, 1999, the late Mr. Andres Küng, then Chairman of Respondent's supervisory Council, sent a three page memorandum to Claimant's CEO Mr. Dominique Maciet describing the growing problems in delivery and communication (Claimant never answered to Respondent's faxes).
6. In October 1999, the French Embassy contacted Respondent about the situation of Renault in Estonia because they were waiting for embassy cars and a school bus for an Estonian village (based on a State tender). Finally, the school bus was delivered more than six month late (**Exhibit A4/1, A4/2**).

Furthermore, Claimant had major problems with the timely delivery of ordered cars. One reason for the delays was that Claimant allowed the freight forwarder to “run the meter”, i.e. they got paid by the time they effectively used for the delivery (cf. Mr. Jaan Laur **as witness**; witness statement Mr. Jaan Laur **Exhibit A29/1**). Claimant also suggested weird advertising practices, such as stopping drivers by police officers and handing them over advertisement material (Mr. Tiit Lillipuu **as witness**; witness statement Mr. Tiit Lillipuu **Exhibit A29/2**).

These intermezzos illustrate the problems Respondent faced with Claimant at that time.

B. Disputes at the End of 1999

1. The disputes at the end of 1999 originated when Claimant started to use Respondent's prepayments to finance its own stock. In addition, Claimant shipped vehicles to Respondent which were never ordered. Respondent reacted with several letters, stopped its payments and demanded from Claimant to guarantee that their funds will not be used for non-contractual purposes. However, Respondent also stressed that it was willing to continue the cooperation (**Exhibits A4/1, A6, A7**).
2. As reaction to the above mentioned letters, Claimant sent Respondent its **Exhibit R4**. Instead of trying to openly communicate and use Respondent's criticism to make improvements Claimant aggressively ordered Respondent to behave. The basis of Respondents criticism was not discussed.
3. Respondent, however, decided to continue its contractual relationship with Claimant (**Exhibit R18**).

C. Respondent's Agreement with Ford and Claimant's Agreement with Belesta AS

1. At this stage, Respondent was close to terminate the Dealers Contract. The loss resulting from compensations paid to customers (because of late delivery etc.) was substantial. In this situation, Respondent started to enlarge its business in order to reduce its economical dependence from Claimant. Thus, Respondent entered into business talks with the Ford Motor Company. Those talks led in August 2000 to a separate dealership agreement between Respondent and Ford Motor Company, pursuant to which Respondent would represent the make Ford and distribute Ford products within Estonia. Respondent informed Claimant about this project from the very beginning, i.e. already in April 2000 (see Claim p. 21). On August 4, 2000, prior to the signing of this dealership agreement with Ford, Respondent confirmed to Claimant that it will definitively sign the agreement with Ford (**Exhibit R17**).
2. Claimant, on the other hand, started to look for a second non-exclusive dealer in Estonia and did not inform Respondent thereof. Only after Claimant signed the contract with its new dealer in Estonia (Belesta AS) in August 2000 Respondent was informed. Without prior warning, Respondent's situation changed abruptly from one day to another.
3. In particular, Respondent was upset because Claimant dealt with Belesta AS, a company with an unfavourable credit situation and a very bad reputation in Estonia, which is – according to the Estonian press - even connected to the mafia (a competitor of Belesta AS in Tartu, Mr. Jalakas, received physical threats and one day a bomb exploded in front of his home; Mr. Jalakas **as witness**; see also below p. 0). All the good reputation of the make Renault that Respondent was responsible for and that Respondent achieved with hard work during the past eight years, was in peril. However, Respondent did not want to give up all its achievements and decided to continue the difficult relationship between the Parties.
4. In accordance with its open communication culture, Respondent warned Claimant about its choice and predicted that Belesta AS will not exist for a long time. Respondent repeated this view in a meeting in Warsaw in February 2001 (participants: Phil-

ippe Jombard, Piotr Tutak, Viktor Siilats, Andres Küng). In addition, Respondent warned Claimant about the negative impact a collapse of Belesta AS would have on the make Renault in Estonia since Belesta AS called itself Renault Keskus (“Renault Centre”).

D. Conflict about Location and Advertisement at the End of 2000

1. Parallel to this line of facts, Claimant started in December 2000 to attack Respondent’s activities in the city of Tartu. Claimant started to argue that Respondent is not allowed to maintain its premises in the city of Tartu and that Respondent infringes Claimant’s advertisement standards and is not allowed to use its logo. However, Claimant has neither a contractual basis for those claims nor did Respondent contravene Claimant’s advertisement standards:

- When Claimant started to allege in December 2000 that Respondent is not allowed to maintain its business in the city of Tartu, the only contract in force was the Dealers Contract (**Exhibit R1**). The Detailed Terms of Sale were signed on April 30, 2001 (**Exhibit R2**). The Dealers Contract states i.a. in Article 3.1 that Respondent has the right to sell and to organise the sale of the products “throughout the whole duration of this contract and in the territory”. Article 1 defines “Territory” as the territory of Estonia. Thus, no limitation with respect to the location of premises existed. It is obvious that Claimant started its allegations without any reason or legal basis.
- Furthermore, in 1998 Mr. Cieslinsky (representative of Claimant) was present at the opening ceremony of Respondents newly built Volvo and Renault Centre in the city of Tartu. He hold a speech and cut the inauguration ribbon together with a representative from Volvo and the city of Tartu (**Exhibit A3/1, A3/2**).
- The Detailed Terms of Sale signed on April 30, 2001, did not contain any restriction in terms of the territorial scope of the Dealers Contract. As its title says the Detailed Terms of Sale is regarded as an “Agreement concerning margins applied in sales of cars”. To wit, the Detailed Terms of Sale are relevant to determine the

price of each car. They do not contain any provision with regard to a limitation of the territory. If the Parties wanted to change the territory, they would have had to change the Dealers Contract.

This view with regard to the scope of the Detailed Terms of Sale is confirmed by Mr. Jombart who stated in a letter dated May 21, 2001 that the Detailed Terms of Sale contain “the remuneration conditions only” (**Exhibit A25**).

- In addition, in the Detailed Terms of Sale (**Exhibit R2**) respectively its Appendix A Article 1.2 the area of licensed operations is ascertained as “Estonia together with other Renault partners”.
- In the Detailed Terms of Sale for 2002 signed on December 27, 2001, the territory in Appendix A Article 1.2 is ascertained as “Latvia together with other Renault Partners”. This, however, in the context of the whole document has to be regarded as a typing error and the territorial scope of the Dealers Contract did not change.
- It is noteworthy that Claimant alleged in the Request that “Renault Polska **never** authorized Info Auto to sell vehicles on that location” (Request p. 16; emphasis added). In the Claim, however, Claimant alleges that the “sales [in the city of Tartu] were in breach of Info Auto’s obligations resulting from the Detailed Terms of Sale” (Claim p. 29). These statements are contradicting and unfounded.
- Article 3.1 of the Dealers Contract provides that Respondent has the right to use the Renault trademark and logo. Article 11 of the Dealers Contract determines the specifications in terms of advertising. None of the provisions contains a reference to the so-called Renault standards of advertisement. Respondent never received such standards from Claimant. Consequently, Claimant had no legal basis for its allegations.
- The only advertisement standards in connection with Renault Respondent is aware of are the advertisement standards he received in his earlier contracts with

Renault France. These standards are, however, not integrated part of the Dealers Contract with Claimant.

In addition, Respondent followed in its advertisement endeavours the standards once received from Renault France.

- According to Article 11 para. 3 Dealers Contract, Respondent was obliged at Claimant's sole discretion to "stop or have stopped immediately any use of one of Renault's trademarks or any advertisement". Therefore, Respondent – at Claimant's request - took the obviously disturbing flag in the city of Tartu away. When Belesta AS collapsed (see below p. 0) the Parties mutually agreed to set the Renault flag again (in order to show presence vis-à-vis the customers).
- However, Claimant had no legal basis to force Respondent to advertise in a specific manner.

2. To sum up, Respondent did neither breach Claimant's standard with respect to advertisement nor the territorial scope of the Dealers Contract.

E. The End of Belesta AS

1. At the end of 2001, Belesta AS started to have economical difficulties. In February 2002, Belesta AS finally collapsed as predicted by Respondent. In the newspaper article from February 15, 2002 the criminal background of the persons in charge with Belesta AS is illustrated (**Exhibit A26/1, A26/2**).
2. To maintain its business structures in Estonia, Claimant was glad to have Respondent at hand who – despite all the problems Claimant caused – successfully continued to deal with the make Renault in Estonia an in particular, in the city of Tartu.
3. Rumours already arose before the collapse of Belesta AS that Claimant wanted to replace Belesta AS with another dealer.

F. The End of the Dealers Contract

1. Claimant encouraged Respondent to continue its business and invest in the Renault business. In particular, it encouraged Respondent to make preparations and expenses for the Motorex Motorshow 2002 in March 2002. This was confirmed by Claimant in various Emails Claimant sent to Respondent (**Exhibit A16, A17**).
2. Respondent, however, was reluctant to make substantive investments to further improve the Renault business in Estonia in such an unstable business environment. In his Email of September 5, 2001 Mr. Siilats – with his open communication culture – already explained to Claimant the reasons for his reluctance (**Exhibit R9**).
3. On January 10, 2002, Claimant sent to Respondent - as obviously to all other successful car dealers in the Baltic States – a letter congratulating it for the good results (**Exhibit A1**). The dealers that were not successful did not receive this letter (as for example Belesta AS).
4. In addition to the more relaxed relationship with Claimant (see above p. 0, 0) Respondent interpreted this letter as another step towards a more successful cooperation in future. Besides, Respondent in fact achieved an excellent result in 2001. Instead of the sales target of 350 cars in 2001 Respondent sold 428, i.e. 22% more than expected. It is worth noting that the other Renault dealer in Estonia (Belesta AS) sold – with the strong support of Claimant – only about half as many cars.
5. However, Respondent was not aware at this time that Claimant was already preparing the termination of the Dealers Contract. Claimant was in this period already in contact with another company, the Volkswagen dealer in Estonia, that was supposed to inherit Respondent's achievements in positioning the make Renault in the Estonian market. Claimant had preparation talks with the Volkswagen dealer as early as summer 2001 (its new legal entity – see p. 28 – was founded in September 2001). It is to assume that Claimant did not dare to communicate this openly to Respondent because it wanted Respondent as sort of a fallback position in case the negotiations with the Volkswagen dealer were not successful.

6. In mid February 2002, Respondent came to know that Claimant was about to sign a contract with the new dealer in Estonia (the Volkswagen dealer established a new legal entity for the Renault business called Autori AS – the contract between Claimant and Autori AS was presumably signed on February 12, 2002). Again, Respondent was worried about the reputation and business practice of the new dealer and warned Renault France (**Exhibit R22**). This warning was, on the one hand, based on the Respondent's fear that the new competitor was of the same quality as the last one (and that this would again affect Respondent's own business). On the other hand, Respondent was upset because Claimant obviously had two different standards of advertisement and presenting the make Renault (the new dealer was selling cars in a tent etc.; see picture in **Exhibit A27**).

As the future showed, Respondent's fears were not unjustified. On February 18, 2005 the Estonian Press published an article stating that the increase of Renault sales in 2004 was caused inter alia by the fact that Renault cars sold in Estonia (in 2004 223 out of 1264) are not used on Estonian roads but are exported to other (EU-) countries. Significantly, all the exported Renault cars were sold by Autori AS (**Exhibit A18**). This is commonly regarded as an illegal business practice.

7. Although the tensions grew again, Respondent still had good expectations for the future because the economic situation improved rapidly. Respondent had some good month in selling Renault cars and it successfully participated in the Motorex Motorshow in March 2002. At this show Respondent presented in a separate stand Renault vehicles (**Exhibit A28**).
8. In March 2002 Respondent suggested to Claimant a new long-term strategy (**Exhibit R10**). First, this strategy aimed to solve the personal problems the persons in charge of Claimant had with the owners of Respondent and vice versa. Second, the assets (material and personal) invested by Respondent should be conserved. In short, Respondent suggested to incorporate a new legal entity (Renest AS) in which all Renault activities should be transferred. In a second step, Renest AS should have been sold to Claimant or a person who suits Claimant.

However, Claimant preferred to destroy Respondent's Renault business and profit from its achievements for free. This is exactly the behaviour prohibited by law (as will be shown below under p. 0 et seqq.).

9. Furthermore, on May 21, 2002, Mr. Tutak visited Estonia. At the same day on 4 pm and the next morning, he had a meeting with the persons in charge of Respondent (Mr. Siilats, Mr. Lilliput, Mr Puidak, Mr. Kangro and Mrs Liiva). At this meeting, Mr. Tutak stated that the rumours about the termination of the Dealers Contract were not true. Moreover, although some emotional tension existed between the parties, Claimant wanted to continue doing business with Respondent because Respondent had good sales results. Respondent confirmed its willingness to continue its cooperation as well.
10. Based on the positive outcome of these meetings, Respondent agreed to purchase remaining items from the Motorex Motorshow 2002 as marketing tools (such as the futuristic car (Avantime), reception desk etc.). In addition, Respondent released the already opened and amended irrevocable letter of credit in favour of Claimant (**Exhibit A30/1, A30/2**).
11. On May 27, 2002 at around 1 pm, Mr Tutak phoned Mr. Siilats and told him that Claimant would terminate the Dealers Contract. Claimant faxed to Respondent on the very same day the termination letter. Claimant also sent the termination letter with ordinary mail.
12. Respondent immediately called a press conference that took place on May 28, 2002. Respondent informed the public that the contractual relationship between Claimant and Respondent was terminated and that Respondent had to stop all Renault activities at once and that - due to practical and logistical reasons - the showroom doors will close within three weeks (**Exhibit A19, A20**).
13. The Dealers Contract ended without notice on May 27, 2002. At this stage, Respondent had already ordered cars that were delivered in June and July 2002. In order to maintain its obligations towards its clients, it could not cancel those orders.

II. Renault's Claim

1. Claimant alleges that its claim of EUR 285'094.78 bases on the Dealers Contract (**Exhibit R1**; cf. Request for Arbitration p.24; Statement of Claim p. 54 et seqq.; Terms of Reference 5.1.5.). Respondent, however, requested from the very beginning the rejection of this claim.
2. Based on the present allegations it is to assume that the claim bases rather on the Detailed Terms of Sale signed between the Parties on April 30, 2001 (**Exhibit R2**) and on December 27, 2001 (**Exhibit R3**) than on the Dealers Contract.
3. This is of relevance, because the detailed Terms of Sale provide in each case in its Article XI 5 that "disputes related to the performance of this agreement shall be resolved by the court with jurisdiction over the Exporter's head office" and furthermore that "this agreement is subject to the Polish law". Therefore, if the legal basis for the claim is - contrary to Claimants allegations - the Detailed Terms of Sale the present Court has neither jurisdiction nor is Swiss law applicable.

In a letter dated May 21, 2001, Claimant stresses the relevance of the choice of law clause (**Exhibit A25**).

4. Responsible for this incongruency between the Dealers Contract and the Detailed Terms of Sale is Claimant who drafted both documents.
5. From the present allegations of the Claimant it is not possible to fully analyse the origin of its claim. Respondent requests that Claimant substantiates the factual as well as the legal background of its claim more detailed. Especially, it is requested that Claimant outlines on which provisions of the Dealers Contract its claim is based.

III. Counterclaims

A. **Validity of Claimant's Termination of the Dealers Contract**

1. Pursuant to Article 16 of the Dealers Contract, the letter of termination has to be sent "to the other Party by registered letter with acknowledgment of receipt" (**Exhibit R1**).
2. Claimant asserts that it sent the letter of termination via DHL Worldwide Express on May 29, 2005 (Claim p.62 et seqq.). This assertion is ill founded.

The following reasons indicate that Claimant's allegations do not correspond with the facts:

- Claimant used to send the documents for the shipped cars (i.e. the EU-certificates of conformity) and the invoices via DHL to its car dealers. The DHL shipment from May 29, 2002 contained nothing else but this kind of documents (**Exhibit A21**; this is one example of the documents shipped on May 29, 2002; Respondent does not have the originals anymore because they were forwarded on the same day either to the car register or to the customs in accordance with Estonian law).
- On May 29, 2002, cars were shipped from Claimant to Respondent. The DHL shipment contained exactly their documents.
- According to the DHL Shipment Airway Bill (**Exhibit R25**) the shipment was sent by Mrs. Sadowska. Mrs. Sadowska was working for Claimant as a sales assistant responsible for delivery and logistics. The shipment was addressed to Mrs. Ethel-Maria Liiva, Respondent's sales assistant for Renault cars in Tallinn, responsible for delivery and logistics.

If the said DHL shipment contained the termination notice it would have been sent to Mr. Siilats or Mr. Küng and not to Mrs. Sadowska.

- According to the DHL Shipment Airway Bill the shipment contained "DOX". This is the abbreviation of documents. Thus, the shipment contained more than just a single page.

Furthermore, the shipment weighted "0,5" kg. This is much more than the weight of a single page.

3. According to a letter Claimant sent to Respondent on May 30, 2003 Claimant states that „[t]he termination notice dated 27.05.2002 was delivered to Info Auto on **27.05.2002** by DHL courier service" (emphasis added; **Exhibit A21a**). This contradicts what Claimant alleges in his Claim where he assures that the document was sent on May **29**, 2002, to Mrs. Sadowska.
4. To sum up, the DHL shipment from May 29, 2002 contained the documents for the cars that were shipped the very same day. There is also no reason why a termination letter dated May 27, 2002 would or should be sent two days later on May 29, 2002.
5. Claimant did not comply with the contract requirements and hence did not validly terminate the Dealers Contract. However, Claimant factually terminated the Dealers Contract and stopped performing its duties. Hence, Claimant is liable for the damage Respondent suffered.

B. Termination Without Notice

1. Respondent understood the termination letter as a termination without notice, i.e. that the Dealers Contract is terminated immediately.
2. The termination letter stated: "we hereby terminate the contract" (**Exhibit R12**). Respondent interpreted this as an immediate termination of the Dealers Contract, which was not justified because there were no reasons. Therefore, Respondent stated in its answer to the termination letter that Claimant was not allowed to terminate the Dealers Contract immediately without reason (**Exhibit R13**).

At the end of this letter, Respondent indicated that it would only accept Claimant's choice [of a termination without notice] if Claimant would compensate Respondent for it (**Exhibit R13**).

3. Such comments would not make sense if Respondent interpreted the termination as an ordinary termination with a six months notice period.
4. Also the forthcoming reactions indicate that Respondent interpreted the termination letter as a termination without notice.

Respondent called immediately a press conference that took place two days after it received the termination letter. At this press conference Respondent informed the public that it will no longer represent Renault in Estonia (see above p. 0).

5. Since May 27, 2002, Respondent stopped signing new contracts with customers. All business activities, except service activities, were stopped at once. If this were an ordinary termination, i.e. per November 27, 2002, Respondent would have been obliged to fulfil its contractual duties (advertisement, selling cars etc.) until November 27, 2002. However, it stopped its activities immediately. Significantly, Claimant never gave Respondent a warning that it was in breach of the Dealers Contract. Thus, Claimant itself interpreted the termination as a termination without notice.
6. Respondent, however, was obliged under Estonian law as well as under the contracts it had already concluded with customers before May 27, 2002, to deliver the ordered cars and to provide guarantee services. Therefore, some contacts respectively some activities between the Parties were necessary even after the termination without notice of May 27, 2002.

For example, Claimant still had to deliver the cars ordered before May 27, 2002. Those existing contracts were not affected by the termination. As Claimant exactly knows - if a customer orders a specific car - it takes about two months until the cars are manufactured by Renault France and delivered from Claimant to its dealer.

Thus, all the invoices Claimant produces (**Exhibit R26**) originate from cars that Respondent ordered before May 27, 2002 (see **Exhibit A31, A32** as one example: the order for the Renault Megane Scenic dated from May 7, 2002 and the corresponding invoice dated from July 2, 2002; if need be Respondent will produce the other orders).

7. Claimant on the other hand never indicated to Respondent that it misinterpreted their termination. Neither Mr. Tutak nor Mr. Jombart ever clarified their position towards Respondent, respectively towards Mr. Siilats or Mr. KÜng.

If Claimant indeed intended to terminate the Dealers Contract with a six month notice period, they would have been obliged to warn Respondent that it understood its termination incorrectly. Otherwise, they would act against bona fide.

Because Claimant never clarified its view Respondent had no reason to doubt that its interpretation of the termination as a termination without notice was correct.

Moreover, Claimant even refused to deliver the following cars to Respondent that were ordered before the termination of the Dealers Contract.

Client	Hull nr.	Model	Version	Profit EEK	Profit EUR
TSEBIUS OÜ		TRN	F1AD1	3'498.05	223.57
Sevike OÜ	VF1JAA50E26555573	MGJ	E49P	20'000.00	1'278.23
Ly Oja		Trafic 9-k bsss	100 hj.	30'000.00	1'917.35
Pärnu Kalur Holding AS	VF1BG0A0527437175	LG2	AU16 00	5'900.00	377.08
Pärnu Kalur Holding AS	VF1BG0A0527437155	LG2	AU16 00	5'900.00	377.08
Pärnu Kalur Holding AS	VF1BG0A0527437162	LG2	AU16 00	5'900.00	377.08
TOTAL lost profit				71'198.05	4'550.38

In addition, Claimant did not pay the marketing expenses anymore that it used to pay in the previous years (approx. EEK 500'000.–).

This indicates that Claimant itself thought that it was not contractually bound anymore after May 27, 2002.

C. Termination and Behaviour Against Bona Fide

1. Claimant encouraged Respondent to make certain investments in the Renault business. For example, Claimant encouraged Respondent to make investments in the Motorex Motorshow 2002 (see above p. 0, 0). Just one month before the Motorex Motorshow 2002 took place, Claimant informed Respondent on February 21, 2002, that it will not use the space Respondent reserved and paid for Claimant (on their request!; **Exhibit A22**). Thus, all investments were made in vain.
2. Even four days before the termination of the contract, Claimant assured Respondent that it will not terminate the Dealers Contract and that it should make investments (p. 0). Respondent made the requested investments. Nevertheless, Claimant terminated the Dealers Contract.
3. Claimant already decided well before May 22/23, 2002, to terminate the Dealers Contract. Nevertheless, it assured Respondent that it would not terminate the Dealers Contract.
4. Furthermore, Claimant had – from a business perspective - no reason to terminate the Dealers Contract. Respondent's results were outstanding (Claimant even congratulated it for its results in 2001; above p. 0) and it was by far the best car dealer in Estonia. The leading Estonian business Newspaper even awarded Respondent with the "Best car dealer of Estonia in 2001" award (**Exhibit A34**).
5. Claimant's conduct leads to a liability based on Art. 2 CC (Swiss Civil Code). Thus, it has to compensate Respondent for the damage it caused (i.e. futile investments as well as loss of profits).

D. Consequences of Termination Without Notice and Against Bona Fide

1. As a consequence to the termination without notice and to the termination and behaviour against bona fide Claimant has to compensate Respondent the damage that was caused by this behaviour.

- Expenses related to the Motorex Motorshow 2002 and other marketing expenses:

Claimant encouraged Respondent to make all necessary expenses for the Motorex Motorshow 2002 (see above p. 0, 0). As soon as Claimant had Respondent's successor contractually bound, the situation changed. Claimant cancelled the space at the Motorex Motorshow 2002 because it could use the space that the owners of its new car dealer Autori AS had originally reserved for Volkswagen (**Exhibit A23**). Therefore, all the expenses Respondent made for the preparation of the Motorex Motorshow 2002 were made in vain.

In addition, all marketing expenses for the first two Quarters 2002 were in vain. These expenses were made to advertise for the make Renault and consequently increase the number of sale of Renault cars. By terminating the contract without notice Respondent could not profit any more from these expenses. The only person that profited thereof was Claimant through its new dealer Autori AS.

In detail Respondent made the following expenses therefore (**Exhibit A14/1**):

Exhibit 14/1/	date of issuing of invoice	Vendor	contents of invoice	total sum in EEK (excl VAT) on invoice	Renault's share in %	Renault's share in EEK
1	Jan 29, 2002	AS SL Õhtuleht	4-col 1/3 pg ad, inner page, 23.01, Renault	4'080.84	60%	2'448.50
2	Jan 31, 2002	Eesti Päevalehe AS	4-col ad, 29.01, Renault	4'056.00	60%	2'433.60
3	Jan 24, 2002	Eesti Ekpressi Kirjastuse AS	4-col ad 4 modules in Block A, Car special in EE 24.01.02	5'395.00	60%	3'237.00
4	Jan 31, 2002	Äripäeva Kirjastuse AS	Car available for immediate delivery! 4-col 1/3 pg ad, 11.01;18.01; 25.01.2002	15'933.54	20%	3'186.71
5	Jan 24, 2002	First Media OÜ	Advertising in Radio Sky Plus and Russkoje Radio	24'927.03	100%	24'927.03

Exhibit 14/1/	date of issuing of invoice	Vendor	contents of invoice	total sum in EEK (excl VAT) on invoice	Renault's share in %	Renault's share in EEK
6	Jan 24, 2002	OÜ Levicom Broadband	Advertising in www-portal Delfi, whole environment 3 days	12'784.02	100%	12'784.02
7	Feb 28, 2002	OÜ Mootorite Maailmas	Renault Laguna Car of the Year 2002 (paid interview in TV broadcast)	9'000.00	100%	9'000.00
8	Feb 26, 2002	Northern Broadcasting Network OÜ	Advertising interview in TV broadcast "Rooli Võim", 24.02.2002	9'900.00	100%	9'900.00
9	Feb 28, 2002	Eesti Televisioon	Airtime in TV broadcast "Liikspeegel"	9'800.00	100%	9'800.00
10	Mar 18, 2002	Presshouse OÜ	4-col 1/1 pg ad Autoleht no.6/2002, Renault	9'500.00	100%	9'500.00
11	Mar 19, 2002	Ühisliisingu AS	Advertising in Motorex ABC catalogue	43'500.00	30%	13'050.00
12	Mar 19, 2002	Europrint AS	Printing Volvo range folder 10000 pieces, 1,96 ppc; printing Renault range folder 10000 pieces, 1,96 ppc; films 1 piece 1920,00	41'260.00	30%	12'378.00
13	Mar 27, 2002	OÜ Mootorite Maailmas	Renault Velsatis introduction in TV broadcast "Rooli Võim"	9'900.00	100%	9'900.00
14	Mar 27, 2002	OÜ Mootorite Maailmas	Renault Avantime introduction in TV broadcast "Rooli Võim"	9'900.00	100%	9'900.00
15	Mar 31, 2002	OÜ Ideal	Renault advertising leaflets, direct mailing	15'763.00	100%	15'763.00
16	Apr 04, 2002	Eesti Näituste AS	Rent of electrical appliances 6910.-, cleaning services 400.- (Renault stand)	7'310.00	100%	7'310.00
17	Mar 27, 2002	Näituse Baari OÜ	Exhibition Motorex 2002 catering March 15-27, 2002 (Renault stand staff)	15'868.64	100%	15'868.64
18	Mar 14, 2002	AS Proflin	Blazer "Angela" women (6 pieces); blazer "Agnes" women (2 pieces); skirt "Dana" (5 pieces);trousers "Annabella" (8 pieces); women's blouse "Kätty" (12 pieces); dress "Ketter" (13 pieces) (Renault exhibition stand personnel clothing)	18'665.00	100%	18'665.00
19	Mar 12, 2002	USB Repro OÜ	Printing on Chromapress (preparation 4 pieces, 1 piece 100,00);Printing on Chromapress (personalizing 2489 pieces, 1 piece 2,8);Printing on Chromapress (1112 pieces, 1 piece 1,80)	9'370.85	100%	9'370.85
20	Mar 22, 2002	OÜ E & T	rent of lighting equipment at Motorex exhibition (Renault stand)	20'000.00	100%	20'000.00
21	Mar 12, 2002	AS Prisma Print	Printing-invitation	8'190.00	100%	8'190.00
22	Mar 18, 2002	E-Catering OÜ	Catering 21.-22-03.2002 (Motorex VIP reception in Renault stand)	149'364.41	100%	149'364.41
23	Mar 15, 2002	AS Baltman	Jacket (11 pieces, 1 piece 1499.00); jacket (8 pieces, 1 piece 1999.00); jacket (1 piece 1399.00); jacket (5 pieces, piece 1799.00); trousers (15 pieces, 1 piece 599.00/8 pieces, 1 piece 799.00/3 pieces, 1 piece 699.00); shirt (23 pieces, 1 piece 399.00); tie (23 pieces, 1 piece 199);tailor service (2 pieces, 1 piece 50.00/ 4 pieces, 1 piece 30.00) (Renault exhibition stand personnel clothing)	50'425.76	100%	50'425.76
24	Mar 19, 2002	OÜ Järsi	A3 banners framing /10 pieces, 1 piece 165.50	1'489.50	100%	1'489.50

Exhibit 14/1/	date of issuing of invoice	Vendor	contents of invoice	total sum in EEK (excl VAT) on invoice	Renault's share in %	Renault's share in EEK
25	Mar 19, 2002	OÜ Lunester	Balloons with logo (1000 pieces, 1 piece 2.6); bases (1000 pieces, 1 piece 1.-); compressor's rent (5 days, 1 day 100.-)	4'100.00	100%	4'100.00
26	Mar 19, 2002	Ühisliisingu AS	Advertising in Motorex ABC catalogue	43'500.00	100%	43'500.00
27	Mar 22, 2002	OÜ Blue Group	Banner two-sided (1 piece 7312,50); banner (1piece 4500,00); layout of banners (1 piece 800,00)	12'612.50	100%	12'612.50
28	Mar 25, 2002	OÜ Konvor	Accommodation- hotel Kristiine 19.-24.03.2002 / single room (1 room, 5 days, 1 night 381,36)/ twin (3 rooms, 5 days, 1 night 474,58) (Renault exhibition stand's personnel, outside Tallinn, accommodation costs.	9'025.50	100%	9'025.50
29	Apr 22, 2002	Avision AS	Audio-visual services for 20.-24.03 Motorex 2002	20'000.00	100%	20'000.00
30	Apr 24, 2002	Internal	Renault "Free technical inspection"-campaign labour costs	6'650.00	100%	6'650.00
31	Mar 22, 2002	AS Rakman	Production and attaching of ad-stickers at Motorex 2002 1200.-; change of car spec at the exhibition 400.-	1'600.00	100%	1'600.00
32	Mar 20, 2002	AS Rakman	Renault specification stickers' production for Motorex 2002 (17 pieces, 350.00 apiece)	5'950.00	100%	5'950.00
33	Mar 19, 2002	OÜ Lunester	Balloons with logo (1000 pieces, 1 piece 2.6); balloon handles (1000 pieces, 1 piece 1.-), kompressori rent (5 days, 1 day 100.-)	4'100.00	100%	4'100.00
34	Mar 11, 2002	AS Promotek	Keyholder crystal (300 pieces, 1 piece 7.50); preparation for production (3 pieces, 1 piece 100.00); additional colcou print (300 pieces, 1 piece 1.00)	2'850.00	60%	1'710.00
35	Mar 28, 2002	Värvifoorum OÜ	Preparation, cleaning and maintenance of cars before exhibition. Renault preparation 2450.-; renault 4-days maintenance 5600 Ford preparation 3675.-; Ford 4-days maintenance 8400; Volvo preparation 2205.-; renault 4-days maintenance 5040.-	27'370.40	30%	8'211.12
36	May 07, 2002	Adograaf OÜ	1. Businesscards Renault (400 pieces, 1 piece 1.55); 2. Businesscards Info-Auto (500 pieces, 1 piece 1.48); 3. Businesscards Volvo (100 pieces, 1 piece 2.60); 4. Businesscards Ford (600 pieces, 1 piece 1.43)	2'480.00	25%	620.00
37	May 17, 2002	OÜ Lunester	Balloons with logo (1000 pieces, 1 piece 2.6); bases (1000 pieces, 1 piece 1.-)	3'600.00	100%	3'600.00
38	May 23, 2002	AS Promotek	Keyholder crystal (600 pieces, 1 piece 7.20); preparation (3 pieces, 1 piece 100.00); additional colour (600 pieces, 1 piece 1.00)	5'220.00	100%	5'220.00
39	May 23, 2002	OÜ Blue Group	Textile banner Renault (quadrangular 2x1.5 m) 5400.-; Aluminium pipes 864.- ; Textile banner Info-Auto 8100.- ; PVC textile banner (3 pieces, 1 piece 1261.80) 3785.-	18'149.40	35%	6'352.29
40	May 21, 2002	AS SL Öhtuleht	4-col ad 1/4 pg Renault 21.05.2002	2'760.00	100%	2'760.00
41	May 28, 2002	AS SL Öhtuleht	4-col ad 1/4 pg Renault 28.05.2002	2'760.00	100%	2'760.00
42	May 28, 2002	Eesti Päevalehe AS	272x96 mm 4-col ad Renault 14.05.2002; 21.05.2002	5'912.00	100%	5'912.00

Exhibit 14/1/	date of issuing of invoice	Vendor	contents of invoice	total sum in EEK (excl VAT) on invoice	Renault's share in %	Renault's share in EEK
43	May 16, 2002	Eesti Ekspressi Kirjastuse AS	4-col ad 1 pg, pg 5, 16.05.02 (1 piece 26250.00) ; 4-col ad 4 modules in Car special, 16.05.02 (1 piece 5785.00); 4-col ad 4 module in car special (1 piece 16.05.02)	36'845.45	15%	5'526.82
44	May 24, 2002	Äripäeva Kirjastuse AS	4-col 1/3 pg ad in newspaper Äripäev 14.05.2002	5'560.14	100%	5'560.14
45	Jun 06, 2002	AS Maaleht	4-col 1/4 pg ad Renault Laguna 23.05.2002 (1 piece 6835.00) ; 4-col ad Ford 6.06.2002 (1 piece 6806.00)	11'249.00	50%	5'624.50
46	May 23,2002	AS Pärnu Postimees	1. 4-col ad 17.05.2002 4-col module (Renault Laguna); 2. 4-col ad 23.05.2002 (Volvo S60)	5'682.56	50%	2'841.28
47	May 21,2002	AS Postimees	4-col ad 20.05.2002 Renault	3'360.00	100%	3'360.00
48	May 31, 2002	Äripäeva Kirjastuse AS	4-col 1/3 pg ad in newspaper Delovõje Vedomosti 22.05; 29.05.2002	13'219.20	33%	4'401.99
49	May 20, 2002	AS Rukon-Info	4-col ad, inner pg 17.05 Volvo; 4-col inner pg 17.05. Renault Laguna	6'000.00	40%	2'400.00
50	Jun 01, 2002	Presshouse OÜ	4-col 1/4 pg ad in Autoleht no 11/2002	3'185.00	100%	3'185.00
51	May 13, 2002	Laura Prääts FIE	1. Design of Renault ads May 2002 4500.- ; 2. design of internet-banner Renault May 2002 500.-	5'000.00	100%	5'000.00
52	May 17, 2002	Goodwill Marketing OÜ	Creation of Renault brand's marketing concept and visual identity of dealership on period May-Aug 2002	88'706.21	100%	88'706.21
53	May 20, 2002	First Media OÜ	Advertising in Radio Sky Plus and in Russkoje Radio	15'892.56	100%	88'706.21
54	Feb 04, 2002	E-Catering OÜ	Catering service (Tartu Rallye Renault VIP tent)	11'440.68	50%	5'720.34
55	May 27, 2002	OÜ Blue Group	Flag Info-Auto (1piece 2628.00) ; Flag (2 pieces, 1 piece 1215.00)	5'058.00	100%	5'058.00
56	May 31, 2002	Äripäeva Kirjastuse AS	4-col 1/6 pg ad in newspaper Äripäev 24.05.2002	2'804.67	100%	2'804.67
57	Mar. 20, 2002	Laura Prääts FIE	Design of ads, Renault	5'000.00	25%	1'250.00
						803'720.59

The expenses amount to a total of EEK 803'720.59 corresponding EUR 51'520.55.

- Expenses for Renovation:

In May 2002 Respondent made investments in its Renault showroom in Tallinn. Mr. Tutak agreed with these investments at the meeting of May 22, 2002. Because of the termination the investments were made in vain.

In detail Respondent made the following expenses therefore (**Exhibit A14/2**):

Renovation expenses

Exhibit Nr.	inv date	Supplier/explanation	Amount EEK
14/2/1	13.05.2002	Parmeron / renovation	62'184.00
14/2/2	13.05.2002	Parmeron / renovation	13'316.00
14/2/3	02.05.2002	Celero / Furniture	128'320.80
14/2/4	02.05.2002	Bjumest OÜ / dividing wall	60'000.00
14/2/5	16.10.2002	Bjumest OÜ / dividing wall	60'000.00
14/2/6	25.05.2002	1st Companion / renovation	49'900.00
TOTAL			373'720.80

The expenses amount to a total of EEK 373'720.80 corresponding EUR 23'956.46.

- Expenses for Car:

In May 2002, Respondent bought – on Claimant's pressure respectively wishes (Mr. Tutak) – the Renault Avantime as a test-drive/demo car. The car was registered after Mr. Tutak's visit on May 22, 2002, on Mr. Tutak's request and showed Respondent's positive attitude towards a further cooperation (**Exhibit A33**).

The price paid for the Renault Avantime was EEK 493'485.– (**Exhibit A14/3/1a,b**). Approximately one and a half year after the termination of the contract, Respondent could sell this car for EEK 300'000.– (**Exhibit A14/3/2**). The difference is the damage Respondent suffered.

The expenses amount to a total of EEK 193'485.– corresponding EUR 12'402.88.

- Labour Costs:

After the immediate termination of the contract Respondent could not use its employees anymore that were formerly working for Respondent's Renault depart-

ment. Respondent could not terminate the work contracts of the employees of the Renault division until December 31, 2002, and it had to pay compensations and carry out the recruitment procedures. Thus, because of Claimant's immediate termination, Respondent had to pay salaries but could not use its employees anymore.

Today, most of the Respondent's former employees (after having received the compensations from Respondent) work for Claimant's two new car dealers in Estonia. Thus, Claimant still profits from Respondent's investment in human resources.

The expenses amount to a total of EEK 1'106'844.09 corresponding EUR 70'951.54 (**Exhibit A14/4**).

- Lost Profit:

According to Respondent's budget, its Renault department should have made a profit of EEK 4'159'000.– in 2002 (rounded; **Exhibit A14/5**). Because of the termination without notice of the Dealers Contract and the termination and behaviour against bona fide Respondent's Renault division achieved a profit of only EEK 1'876'000.– (rounded; **Exhibit A14/5**).

Hence, Respondent lost profit in the amount of EEK 2'283'000.– corresponding EUR 146'371.60.

- Other costs:

In May 2002 Respondent ordered leather binder with the Renault logo on it (as a marketing tool). It is needless to say, that because of the termination these expenses were made in vain. The amount of this expense is EEK 11'029.87 (**Exhibit A14/6/1**).

Due to the Termination without notice Respondent had costs related to the liquidation of its Renault business in the amount of EEK 9'485.12 (**Exhibit A14/6/2**).

2. In total, Respondent suffered damages in the amount of:

Marketing	EEK	803'720.59	EUR	51'520.55
Renovation	EEK	373'720.80	EUR	23'956.46
Car	EEK	193'485.00	EUR	12'402.88
Labour	EEK	1'106'844.09	EUR	70'951.54
Lost Profit	EEK	2'283'397.00	EUR	146'371.60
Other costs	EEK	20'514.99	EUR	1'315.06
Total			EUR	306'518.09

The difference to the amount in the Answer results from the fact that the costs for the Renault Avantime was not included in the Answer (calculation error).

3. Should the Arbitrator – contrary to Respondent's expectations - grant Claimant's request, this amount of EUR 306'518.09 is to be set-off with Claimant's claim. Consequently, Claimant's request has to be rejected in any case.

E. Compensation Based on Article 418u CO

1. Applicable is only Art. 418u CO; the EU Regulation (**Exhibit A15**) was only mentioned as an example to show how the relation between dealer and manufacturer is regulated in the EU. However, the EU-Regulation is not irrelevant for the interpretation of Art. 418u CO (compensation for the increase in the number of customers) because it has the same legal origin (Austrian/German) as the provision in the CO. The EU-Regulation on compensation of a dealer after the termination of the contract is only one example of the application of the principle stated in Art. 418u CO. Therefore, it is no surprise that in Swiss Commentaries on Art. 418u CO, the EU-Regulation is analysed in detail (3 pages cf. Zurich Commentary (Zürcher Kommentar), Obligationenrecht, Der Agenturvertrag, Zurich 2000, Art. 418u N 4-11).
2. It is recognised that Art. 418u CO is not only applicable on agency agreements but also on other distribution contracts when one party increases the customer base by its activities and the other party still profits after the contract has ended. However,

whereby in an agency agreement Art. 418u CO is regarded as compulsory, the parties are free to waive this provisions in other distribution contracts (e.g. Baudenbacher Carl, Die Behandlung des Franchisingvertrages im schweizerischen Recht ('The Legal Qualification of Franchising in Swiss Law'), in: Kramer, Ernst A. (Hrsg.): Neue Vertragsformen der Wirtschaft: Leasing, Factoring, Franchising, Bern/Stuttgart/Wien, 1984, 205–226; France Motors Sarl v Chrysler International SA in: Semaine Judiciaire 1970, p. 33-43).

3. The reason for the applicability of the provision Art. 418u CO on other distribution contracts and in particular on the present Dealers Agreement lies in the fact that the dealer advertises primarily for the make and not for itself. This fact has special significance if the advertised make is such a well known make as Renault (Hartmann/Egli/ Meyer-Hauser, Der Alleinvertriebsvertrag, St. Gallen 1995, p. 30). A car dealer advertising and enlarging the numbers of customers for a make like Renault cannot profit – after the termination of the dealers contract – of the work it has done. The customer will in any case follow the make. The only person profiting is - as in the present case - the car manufacturer respectively its new representative. That is the reason why in such situations the law provides a remedy for the weaker party.
4. In the present case, this fact has even more importance because Respondent was the first car dealer in Estonia selling Renault cars. Up until 1999, Respondent was the only dealer in Estonia selling Renault cars and from the end of 1999 on until the date of termination of the Dealers Contract, Respondent was far the most important and biggest (in terms of sold cars) car dealer for Renault cars in Estonia and the Baltic states. Thus, in reality Respondent was exclusively responsible for the increase of the customer base for Renault in Estonia.
5. It is noteworthy that Claimant respectively its new dealers not only profit from Respondents achievements in enlarging the customer base but also profit from other investments Respondent made. From the Renault department Respondent built up, almost all employees such as Vello Tamm (General Manager), Marek Puidak (General Manager), Peeter Kangro (Renault Project Manager), Mrs Ethel Maria Liiva (Sales Assistant), Mr. Vello Roosimaa (Salesman), Mr. Roman Lipovskihh (Renault Mechanic), Mrs Merje Salla (Renault Marketing Assistant), Mr. Tõnu Siirus (After-

sales Manager) and Mr. Koit Piiraja changed to the new dealers and followed the make Renault (as the customers do). From all investments Respondent made in educating and training its employees only Claimant respectively its new dealers profit.

6. To sum up, according to Swiss law Claimant is obliged to compensate Respondent for his achievements in increasing the customer base.
7. Based on misunderstandings and translation errors, Respondent requested “two annual turnovers”. Correctly and in accordance with the mentioned legal basis of the counterclaim (Art. 418u CO) Respondent requests the annual net benefit obtained from the Dealers Contract.
8. The law provides that the annual net benefit is calculated on the basis of the last five years (Art. 418u para. 2 CO). In the present case, the Dealers Contract between the Parties lasted only three and a half years. Thus, the annual net benefit of the last three and a half years is the basis for the calculation of the annual net benefit due according to Art. 418u CO.
9. In 1999, Respondent had a net benefit from the Dealers Contract of EUR 186'800.–, in 2000 EUR 332'900.–, in 2001 EUR 344'500.– and in 2002 EUR 119'890.–. It is to mention that in 2002 – because of the termination of the Dealers Contract without notice - only the first five months were relevant for the calculation. The calculation is as follows (**Exhibit A24**):

1999	EUR	186'800.00
2000	EUR	332'900.00
2001	EUR	344'500.00
2002 (5 months)	EUR	119'890.00
Av. annual net benefit	EUR	288'026.35
(total divided by 41 times 12)		

IV. Comments to the Claim

1. to p. 1-5

No comments.

2. to p. 6 - 16

Article 3.1 Dealers Contract explicitly states that the mentioned rights are granted “during the whole duration of this Contract and in the Territory”. The Territory is defined by the Dealers Contract as Estonia (without limitations).

Although the Parties explicitly provided that the Dealers Contract is no agency agreement, the Dealers Contract contains many provisions that are typically for an agency agreement. Also, the aim of an agency agreement and a dealer’s contract are the same. Both aim to increase the sale of a make and to enlarge the customer base. The only difference is that in an agency agreement, Respondent would have signed contracts on behalf of Claimant.

However, Claimant itself refers to Respondent as an Agent (it refers to Respondent in connection with Appendix A Article 6 of the Detailed Terms of Sale (**Exhibit R2**) where the locations of the **Agents** are discussed).

As already mentioned above (see p. 0) Claimant never sent, handed out or made available to the Respondent the “Renault Polska methods and standards”.

The Parties never agreed on a limitation of the contractually agreed territory of the Dealers Contract. In particular, the Parties never discussed such a limitation.

The Detailed Terms of Sale executed on April 31, 2001 do not “reflect those new contractual arrangements”. The Detailed Terms of Sale regulate only the detail of the sale (such as margins, discounts etc.). It is very unlikely and against common sense that the Parties would have regulated such an important limitation of the territorial scope implicitly in the Annexe 2 of the Detailed Terms of Sale and in its Ap-

pendix A Article VI. Moreover, Appendix A Article VI refers only to the Agents location (see above p. 0).

3. to p. 17 - 25

Claimant's assertions do not correspond with the reality. Respondent always fulfilled its contractual obligations. However, it was not willing to invest even more without clear statement from Claimant how it will organise its business in Estonia (e.g. **Exhibit R9**). For investments it is crucial to know whether there is one, two or even three dealers for the make Renault in Estonia (plans and strategies, size of showroom, coverage of territory etc. depend on the amount of dealers).

Moreover, Respondent was - until the termination of the Dealers Contract - by far the best and most successful Renault Dealer in Estonia and one of the best in the Baltic States (in terms of sold Renault cars).

Significantly, Claimant never sent Respondent a letter claiming that Respondent lacked of commitment. There were no oral warnings either.

In the meeting proposed in January 2001 and finally held in February 2001 in Warsaw the Parties discussed the issue that without contractual basis, Claimant started to demand that Respondent should stop its sale activities in the city of Tartu. This is the basis for **Exhibit R6**.

Respondent always expressed its willingness to continue the contractual relationship with Claimant even when Claimant itself did not fulfil its contractual obligations and treated Respondent rather as an opponent than as a partner.

4. to p. 27 - 32

Respondent did not breach Claimant's standard with respect to advertisement. On the one hand, Claimant never handed over such a standard to Respondent. On the other hand, whenever Claimant complained about an alleged breach of its "stan-

dards”, Respondent changed its advertisement accordingly (e.g. **Exhibit R20**; the flags are removed as requested).

The pictures (**Exhibit R20, R36 and R37**) show demo-cars and a service car. The cars are not on the sidewalk as alleged but on Respondent’s property. Presenting the demo-cars and the service car in this manner is not against Renault standards. Contrary, Claimant asked Respondent to show the service car all over Estonia to give customers the impression that the Renault service network is well organised.

Respondent had the right to sell cars in the city of Tartu (see above p. 0, 0). The contractual territory was Estonia. Thus, it is not Respondent’s fault and does not affect Respondent’s rights if Claimant enters into contracts with other car dealers and promises them exclusive rights for certain parts of Estonia.

Moreover, according to Article 11 of the Dealers Contract, Claimant had only the right to stop and interdict advertisement and the use of the Renault trademark and logo (“at Claimant’s opinion alone”, i.e. without reason). However, it had no right to prohibit the sale of cars. Thus, Claimant’s allegations are ill founded.

5. to p. 28 - 36

The sales result has not only to be analysed in the context of an expanding market but also in the context of the quality of the models Renault produced. Renault launched some very attractive models in recent years that helped increase the sales level in 2004 as well (e.g. Megane II in 2002/2003; Scenic II in 2003; Grand Scenic in 2003; Espace IV in 2004).

The comparison of the numbers of the year 2002 with the numbers of the year 2001 does not make any sense because Respondent sold Renault cars only in the first 5 months of the year 2002. If Claimant did not terminate the Dealers Contract Respondent would have been able to achieve an annualised number of registrations that would have corresponded to a market share of at least 6%. Thus, it is Claimant’s fault that these numbers were not achieved.

Between 2000 and 2001, Renault's market share in Estonia increased from 3.1% to 4.3%, i.e. around 38%. The number of sold and registered cars increased by 66% (**Exhibit R39**). This figure has to be compared with the growth of the general market. The general market grew only by 20% in this period (from 12'375 to 14'861 registered cars). Thus, Renault grew three times faster than the general market.

For the reasons of Renault's "success" in 2004 it is referred to the newspaper article describing Renault's new dealers practices (**Exhibit A18**; see above p. 0).

At the time Claimant wrote that 3% market share is a real disaster, Renault had in fact a market share of 4,3%. Thus, these allegations were ill founded.

6. to p. 37 - 40

The allegations of Claimant are disputed. Unfortunately, the reality proved that Respondent's allegations against Belesta AS and Autori AS were true (see above p. 0, 0).

Respondent's statements in Exhibit R10 ("It will not harm us much.") are no sign of indifference but correspond to the reality. From Respondent's total annual turn over the Renault department was responsible for only 1/4. Furthermore, it was not as profitable as the other departments (Volvo and Ford).

7. to p. 41 - 60

The termination was not in accordance with the contractual provisions. Neither the contractually required form nor the notice period were respected (see above p. 0 et seq.).

Claimant takes the statement ("forthcoming termination of our agreement"; **Exhibit R28**) out of its context. Within its context it reads:

"Knowing about the forthcoming termination of our agreement you let us carry out expenses for Avantage, for renovation of our showroom, for marketing [...]"

This refers clearly to the situation as it was before the actual termination on May 27, 2002. As Respondent claims, Claimant already knew by the end of 2001 that it will terminate the Dealers Contract. Nevertheless, it encouraged Respondent to make certain investments (see above p. 0 et seqq.).

To mitigate the damages (to be born by Claimant) Respondent tried to clear as much stock as possible (**Exhibit R30**) and to deliver the cars ordered by customers.

The allegations with regard to warranty issues are disputed (see above p. 0).

That Claimant's request has no legal basis and is disputed see above p. 0 et seqq.

8. To p. 61 – 115

Claimant's allegations are disputed and it is referred to p. 0 et seqq. above.

With regard to the "forthcoming termination" see p. 0 above.

Claimant alleges that Exhibit R26 proves that the Dealers Contract was still in force. The said invoices, however, refer to contracts Respondent concluded with customers before the termination of the Dealers Contract on May 27, 2002.

V. Respondent's Request

1. For the foregoing reasons, Respondent requests that the honourable Arbitrator renders an award in favour of the Respondent:

- Ordering Claimant to pay Respondent the amount of EUR 288'026.35, plus interest of 5% since May 27, 2002.
- Rejecting all of Claimant's requests.

- Ordering Claimant to bear all arbitration costs and pay Respondent all Respondent's legal costs and fees in participating in the arbitration.
- Ordering the award, which will be rendered, to be immediately enforceable.

On behalf of the Respondent

Paul Langner

List of Exhibits

Exhibit A1	Letter Claimant to Respondent dated January 10, 2002
Exhibit A2/1	Email Respondent to Claimant dated February 26, 2002
Exhibit A2/2	Email Respondent to Claimant dated February 26, 2002
Exhibit A3/1-2	Photos with Mr. Cieslinsky
Exhibit A4/1	Letter Respondent to Claimant dated November 22, 1999
Exhibit A4/2	Letter Respondent to Claimant dated November 24, 1999
Exhibit A5	Fax Claimant to Respondent dated October 27, 1999
Exhibit A6	Letter Respondent to Claimant dated November 20, 1999
Exhibit A7	List of cars from Claimant
Exhibit A8	Renault Sales in Estonia by Dealers
Exhibit A9	Renault Sales in Baltics by Dealers
Exhibit A10	Renault Sales in Baltics by Dealers
Exhibit A11	Renault Sales in Estonia by Dealers
Exhibit A12	Renault Sales 2001-2002 Baltic Dealers
Exhibit A13	Map Estonia
Exhibit A14/1	Invoices for Marketing Expenses
Exhibit A14/2	Invoices for Construction Expenses
Exhibit A14/3	Invoices for Renault Avantime
Exhibit A14/4	List Labour Costs July – December 2002
Exhibit A14/5	Account Statement Lost Profit
Exhibit A14/6	Invoices Other Expenses
Exhibit A15	EC-Regulation No 1475/95 of June 28, 1995
Exhibit A16	Email Claimant to Respondent dated November 12, 2001
Exhibit A17	Email Claimant to Respondent dated December 21, 2001
Exhibit A18	Newspaper Article incl. Translation
Exhibit A19	Newspaper Article dated May 29, 2002 incl. Translation
Exhibit A20	Newspaper Article dated June 4, 2002 incl. Translation
Exhibit A21	EU-Certificate of Conformity
Exhibit A21a	Letter Claimant to Respondent dated May 30, 2003
Exhibit A22	Email Claimant to Respondent dated February 21, 2002
Exhibit A23	Email Respondent to Claimant dated February 19, 2002
Exhibit A24	List Profit Renault Project 1999-2002

Exhibit A25	Email Claimant to Respondent dated May 21, 2001
Exhibit A26/1	Newspaper Article dated February 15, 2002
Exhibit A26/2	Translation Exhibit 26/1
Exhibit A27	Picture Tent
Exhibit A28	Site Map Motorex 2002
Exhibit A29/1	Witness Statement Jaan Laur
Exhibit A29/2	Witness Statement Tiit Lillipuu
Exhibit A30/1-2	Letter of Credit dated May 9, 2002
Exhibit A31	Sales Agreement with Customer dated May 7, 2002
Exhibit A32	Invoice issued by Claimant dated July 2, 2002
Exhibit A33	Registration Certificate Renault Avantage
Exhibit A34	Email Claimant to Respondent dated October 15, 2002