



## An indefinite term distribution agreement may be terminated if the distributor refuses to revise its conditions

*Judgment of the Supreme Court of 30 May 2016*

### Background

In 1996, a beverages manufacturer and a distribution company entered into an exclusive distribution agreement for Spain and Andorra. The conditions of exclusivity applied to both parties, in such a way that the distributor committed to exclusively purchase certain product from the manufacturer for distribution within the referred countries and the manufacturer committed to refrain from selling such product to any third party that operated in those countries. The agreement set out a series of conditions, such as a list of prices, and a marketing plan for the product that had to be paid equally between the parties. Furthermore, the agreement was set to be in effect for an indefinite period, unless early terminated due to a party failing to comply with its obligations.

In 2006, the parties signed an addendum to the agreement, introducing certain new conditions, such as new prices and a limit to the manufacturer's contribution towards product marketing. A couple of years later, the manufacturer served a notice on the distributor communicating the termination of the agreement.

### Amendment or termination

The distributor filed a lawsuit against the manufacturer claiming, amongst other things, that it had been "intimidated" by the manufacturer in order to accept an addendum to the agreement that was clearly detrimental to its interests. Pursuant to the Spanish Civil Code, intimidation is deemed to exist when one of the contracting parties is made to feel a rational, well-founded

fear of suffering an imminent and serious threat to its person or assets. In this judgment, the Supreme Court also offers a reminder that, based on its own case law, the requirements for intimidation to be considered as having occurred are (i) that one of the contracting parties has consented under conditions of rational and well-founded fear; (ii) that this fear derives from the threat of a demonstrated adverse event; (iii) that there is a causal link between said consent and the threat, (iv) that the threat is harmful or reckless, and is unfair, and (v) that it is caused by the other contracting party or a third party.

The Court highlighted that the fact that the manufacturer informed the distributor that it wanted to revise the agreed conditions and warned that, if they were unable to reach an agreement, the distribution of the products would be awarded to a third party with whom manufacturer could agree to better conditions, could not be deemed as intimidation. To rule out the existence of intimidation, the Court considered two issues: the situation of the parties and the indefinite term of the agreement. Concerning the first issue, the Judge asserted that the agreement had been entered into by two companies of significant economic potential, meaning that there was no situation of economic subordination or inequality between the distributor and the manufacturer. With regard to the indefinite duration of the agreement, the Court deemed that the manufacturer was not obliged to maintain the same conditions indefinitely, and that the distributor, as a company involved in trade, could assess the suitability, acceptance or rejection of the terms of addendum. Additionally, if the manufacturer was not permitted to change the distributor of its products, we could be before a situation that may compromise the principles of free competition and freedom of enterprise.