



## Compensation for the sudden termination of an indefinite term exclusive distribution contract

*Judgment of the Supreme Court of 19 July 2016*

### Background

GP Acustics, a German company dedicated to the production of speakers, notified Ear, S.A., its exclusive distributor in Spain, of its unilateral decision to end the 30-year distribution relationship between the parties with just two months' notice.

Said decision was not based on any breach committed by Ear, rather the wish of GP Acustics to recover the distribution rights for its products in Spain. The contract was entered into for an indefinite term and did not contain any clause regulating the notice that should be given in the event that either party decided to terminate it.

In its belief that providing just two months' notice of the termination was untimely and contrary to the principle of good faith, Ear filed a lawsuit against GP claiming damages caused by said situation.

### Right to terminate a contract and notice

The courts handling the case confirmed the criteria, well established in our case law, that the right to terminate a contract may be exercised at any time; however, they added that the exercise of this right must comply with the principle of good faith that must prevail in all contractual relationships.

On that basis, the courts ruled that terminating a 30-year relationship with just two months'

notice was in breach of the defendant's duty to maintain a diligent, non-abusive and reasonable conduct. Therefore, the courts, analogously applying the regulations governing Agency Agreements, ruled that one year's notice would have been reasonable. According to the Agency Agreement Law, the notice that must be given in the absence of a clause in the agreement is one month for each year in which the agreement remained in force, up to a maximum of 6 months.

### Severance amount

In this case, the distributor's right to receive compensation was recognised both in terms of consequential damages and loss of profits. Concerning consequential damages, the Supreme Court deemed that these included structural staff and social security costs that had been incurred by the distributor legitimately believing that the termination of the agreement would never be sudden and that such damages would not have been incurred had one year's notice been provided.

In terms of loss of profits, the Supreme Court did not analogously apply the concept of compensation for customers established in the Agency Agreement Law and only recognised the distributor's right to compensation calculated on the basis of the profits that it would have obtained during the year considered as the reasonable notice period, deducting those corresponding to the two months that were effectively granted.