

## Less is more, more or less...

**Recent developments concerning the length of the exclusive distributorship as criterion for the reasonable notice period under the Belgian Act of July 27, 1961 on the termination of exclusive distributorship agreements**

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1. Under Belgian law, certain categories of indeterminate exclusive distributorship agreements are protected by the Act of July 27, 1961. Article 2 of the Act states that if the exclusive distributorship agreement is terminated by either party other than in case of a serious breach of contract, a reasonable notice period should be given or an adequate compensation has to be paid in lieu.

2. If parties do not find an agreement on the reasonable notice period (which is only possible as from the moment when notice of termination is served), the Courts will rule equitably on the length of the reasonable notice period. In general, there are several items the Courts can take into consideration (such as *f.e.* turnover, extent of the territory, renown of the products, ...). One of these items also concerns the length of the terminated exclusive distributorship.

3. For more than 45 years, Belgian case-law almost unanimously accepted the longer the length of the exclusive distributorship was, the longer the length of the reasonable notice period should be. The preparatory works on the Act of July 27, 1961, stated that the goal of the reasonable notice period was to provide the distributor enough time to find a new, equal exclusive distributorship. The Courts reasoned that the longer the terminated exclusive distributorship, the more difficult it would be to find a new, equal distributorship and thus the more time should be given to the distributor.

4. Meanwhile in 2005, the Belgian Supreme Court altered its vision concerning the goal of the reasonable notice period and ruled that this notice period should provide the distributor reasonable time to find equal revenues, but not necessarily out of an equal exclusive distributorship<sup>1</sup>.

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<sup>1</sup> Cass. 10 February 2005, n° C.03.0418.F, [www.juridat.be](http://www.juridat.be).

5. Unmistakably inspired by the new view of the Belgian Supreme Court, several Courts of Appeal developed a new approach to the relation between the length of the exclusive distributorship and the length of the reasonable notice period.

6. On several occasions after 2005, the Court of Appeal of Brussels<sup>2</sup> decided that a longer distributorship does not automatically entitle a distributor to a longer reasonable notice period, reasoning that a longer distributorship does not necessarily mean that the distributor will need more time to find equal revenues or needs more time to depreciate his costs of the terminated distributorship. Meanwhile, also the Court of Appeal of Ghent<sup>3</sup> and the Court of Commerce of Antwerp<sup>4</sup> have questioned the aforementioned automatism.

7. One can see now the Courts even move into the opposite direction where some Courts of Appeal<sup>5</sup> rule that a long-lasting distributorship agreement provides the distributor enough time to depreciate all his costs and gain profit and thus justifies a shorter reasonable notice period.

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<sup>2</sup> Court of Appeal Brussels 24 March 2009, n° 2005/AR/1624, [www.juridat.be](http://www.juridat.be); Court of Appeal Brussels 15 February 2008, n° 1999/AR/2437, [www.juridat.be](http://www.juridat.be) and Court of Appeal Brussels 18 October 2007, *DAOR* 2008, 129.

<sup>3</sup> Court of Appeal Ghent 24 June 2009, n° 2007/AR/3054, [www.juridat.be](http://www.juridat.be).

<sup>4</sup> Court of Commerce Antwerp 7 September 2009, n° AR/08/453, *not published*, referred to by BALIE BRUSSEL VIA-NOAB, *Distributiecontracten*, Herentals, Knops Publishing, 2011, 203.

<sup>5</sup> Court of Appeal Mons 10 September 2007, *T.B.H.* 2010, 500 and Court of Appeal Brussels 12 June 2007, *JLMB* 2008, 32.

8. This change of view has not been welcomed by all authors. Certain Belgian authors believe a longer notice period is still needed<sup>6</sup>. A long-lasting distributorship creates the expectation that the commercial relation is stable and will continue. A sudden termination of such long-lasting distributorship is therefore even more disturbing for the distributor. These authors believe that according a shorter notice period to a long-lasting distributorship undervalues the years of loyalty of the distributor.

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<sup>6</sup> J.-P. FIERENS, A. MOTTET HAUGAARD, T. FAELLI and S. GRIESS, *La loi du 27 juillet 1961 relative à la résiliation des concessions de vente exclusive à durée indéterminée. Chronique de jurisprudence (1997-2007)*, Brussels, Larcier, 2008, p. 61-62)