



The hinge factor

IBA case study

Madrid, 6 October 2009



Distribution agreement with Los Buscadores

- Sale of business to DPSL
 - assets vs. shares
 - change of control as a reason to terminate
 - transfer of assignment of contract (written instrument and co-operation)
 - sometimes change of control is an event of default
- Increase of prices and cut back on sales force
 - contract is to contain service levels or undertakings in relation to personnel or sales capability
 - decrease of sales beyond a certain threshold may trigger termination by principal
 - a clause to follow principal's commercial guidelines is rarely effective to impose change

Distribution agreement with Los Buscadores - continued

- Appointment of another distributor
 - exclusivity prohibits such an appointment
 - HH will have to terminate the agreement
 - non performance (change of control, breach of undertaking or failure to follow instructions) may justify termination
 - notice of default, opportunity to remedy, default and termination notice
 - goodwill compensation



Distribution agreement with Los Buscadores - continued

- Continuing performance agreement
 - unlimited period of time with premature termination clause
 - previously, not subject to termination other than for cause
 - case law allows for termination provided that appropriate notice period has been observed
 - specific circumstances (dramatic decrease in sales) may justify shorter notice period
 - the length of the notice period depends on the number of years that the contract has lasted
 - goodwill compensation

Contact



Roman Tarlavski **Partner**

CMS Derks Star Busmann

Mondriaantoren
Amstelplein 8A
1096 BC Amsterdam
The Netherlands

Direct line: +31 (0)20 - 3016 312
Secretary: +31 (0)20 - 3016 450
Fax: +31 (0)20 - 3016 335
Email: roman.tarlavski@cms-dsb.com

www.cms-dsb.com