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CASE CARD | 1 March 2022

Nuclear Laser Medicine / Innogenetics (C.05.0290.N)

Exclusive distribution agreements

1. CASE SUMMARY

A. Summary of facts

On 1 January 1991, Innogenetics, a company incorporated under the laws of Belgium, entered into an exclusive distribution agreement with Nuclear Laser Medicine ('NLM'), a company incorporated under the laws of Italy. In accordance with the Agreement, NLM was granted an exclusive right to sell all Innogenetics products in Italy for an indefinite period of time.

The distribution agreement was governed by Belgian laws. No explicit reference to the Belgian mandatory legislation in relation to the unilateral termination of exclusive distribution agreements of an indefinite duration (the 'Law', currently incorporated in Articles X.35-X.40 of the Belgian Code of Economic Law) was included.

On 1 February 1996, Innogenetics partially terminated the distribution agreement in relation to one range of products. The partial termination of the agreement was disputed by Innogenetics. On 23 July 1999, Innogenetics terminated the entire agreement with a six-months' notice period.

NLM challenged the termination before the courts of Ghent (Belgium) (in accordance with the forum clause), claiming compensation on the basis of the Law.

B. Legal analysis

The Court of Cassation confirmed the judgment of the Court of Appeal of Ghent d.d. 28 February 2005 in deciding as follows:

- When an exclusive distribution agreement is executed entirely outside Belgium, the mandatory provisions of the Law do not, in principle, apply in the event of termination of the agreement.
- As an exception, the legal protection of the Law can apply in such event, but only if the agreement between the supplier and the distributor explicitly states that the Law is applicable to the agreement between the parties. A mere reference in the agreement to "Belgian law" as governing law is insufficient for the Law to apply.

2. QUOTES

"*It follows from [the Law] and from the parliamentary preparatory documents of the Law that, if the exclusive distribution agreement is performed entirely outside the Belgian territory, the mandatory provisions of the Law do not, in principle, apply in the event of the termination of the exclusive distribution agreement*" (§2)

"*In this case, the mandatory provisions of the Law are only applicable if the agreement between the supplier and the distributor explicitly states that the Law is applicable to the agreement between the parties. A general reference in the exclusive distribution agreement to Belgian law as the law governing the contract is not sufficient to make the mandatory provisions of the Law applicable.*" (§2)

3. RELEVANT LEGISLATION

- Belgian law on the unilateral termination of exclusive distribution agreements entered into for an indefinite period, currently incorporated in Articles X.35-X.40 of the Belgian Code of Economic Law
- 1980 Rome Convention on the law applicable to contractual obligations

4. PRACTICAL SIGNIFICANCE

This judgment has considerable practical significance:

- The highest Belgian court hereby confirmed for the first time the view held by the majority of (lower) case law and legal doctrine, i.e. that if the exclusive distribution agreement is performed entirely abroad, the legal protection of the Law only applies if the parties explicitly included the Law as part of the governing law.
- The judgment therefore underscores the importance of carefully considering whether the legal protection of the Law should (not) apply to the agreement. If the parties wish for the Law to apply, they must explicitly include a reference thereto into their agreement.
- By confirming the self-limiting nature of the Law, the judgment implicitly supports the theory (and is interpreted as such by Belgian case law and legal doctrine) that, when confronted with a claim for compensation under the Law in relation to an exclusive distribution agreement performed both in Belgium and abroad, a Belgian competent court should apply the legal protection of the Law only to the part of the exclusive distribution agreement affecting the Belgian territory.