



STOCKHOLM GÖTEBORG BORÅS JÖNKÖPING HELSINGBORG

## GWA ARTICLES

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<b>Titel:</b>	Reasonable notice for ending a working relationship that has continued after contract termination?
<b>Law area:</b>	Commercial Contract Law
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*Q: Companies A and B were for a long time parties to a contract under which A supplied goods to B. The contract was terminated in accordance with its terms and ceased to apply with effect from 30 June 2007. However, A continued to supply and B to make payments in accordance with the provisions of their earlier contract. When, later in the autumn, B wanted to end this co-operation, A claimed that the contract had in fact been extended for an indefinite period and was therefore an 'ongoing contract', in respect of which A was entitled to a reasonable time for notice of termination. Is it really correct that A is entitled to such 'reasonable notice of termination' even though the contract had been properly terminated?*

*Mattias*

A: A preliminary issue to consider here before answering this question is whether A actually had an independent right to supply under the original contract, or whether the contract simply gave B the right to purchase from A as and when needed. If the latter, then the 'contract' is in fact no more



than an offer from A inviting B to make purchases. As is always the case with a contractual offer, it is binding only on the offeror, whilst the offeree – B – is entitled, but not obliged, to accept it. If that were the case B could already have ‘terminated’ the original contract merely by not ordering any further supplies. I will therefore assume for the remaining discussion that A was given the right under the original contract to supply a certain quantity or a certain percentage of B’s requirements.

There are two ways of considering the situation where the original contract was terminated and ceased to have effect but the supplies continued: either the original contract was extended, for a specific or indefinite period, or otherwise each individual supply after 30 June amounted to a one-off transaction with no connection to the earlier ones. The reasonable notice of termination referred to would in practice only be relevant if the contract had been prolonged for an indefinite period of time.

**The question of how to treat** the new relationship and whether the contract has been extended depends amongst other things on the parties’ conduct and not least how often and at which intervals the supplies have taken place since 30 June. If they have occurred several times and in the same manner as prior to 30 June, it is very likely that the relationship can be interpreted – in our case after the passing of a certain amount of time – as having extended the contract for an indefinite period. The more the situation since 30 June has differed from what took place earlier, however, the more likely it is that there has not been such an extension, and that we are now merely looking at individual – albeit recurring – purchases.

**A contract which runs for** an indefinite time ceases to have effect within a reasonable period following notice of termination. In many cases this



notice period can be very short, and it is often reasonable for there not to be any notice period at all. This is the case for most types of services which do not require any particular advance planning or investment. Most consultancy services can, for example, be terminated with immediate effect.

**However, not least in cases** where the contract requires investment or where the purchaser is aware that it will take time for the supplier to attract new customers to cover its interim losses, it is likely to be considered that the supplier is entitled to receive proper notice of termination. The question of what is a reasonable period will vary from case to case.

A starting point, however, is that it should not be longer than necessary. It can furthermore hardly be suggested that a reasonable notice period for an indefinite contract could be longer than that which the parties had previously agreed when the contract was for a specified time.

As is so often the case, the problem here has arisen because the parties did not realise that it could become an issue, or did not take the trouble to deal with it in time. In order to avoid the uncertainty that led to this question, and which can certainly arise in other similar situations, when parties allow their relationship to continue even after contract termination they need to make sure they address, amongst other things, how that relationship can later be ended.

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