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Workshop 3 : when does a purchaser/reseller become a distributor ?

Considerations after the Corman-Collins judgment
of the European Court

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1. WHEN DOES A RESELLER BECOME A DISTRIBUTOR?

- **Three possible situations** in relation to the commercialization of products :
 - **Occasional sales** :
 - Purchasing agreement
 - Protection of the weak party from « significant imbalance »
 - **Regular sales** :
 - Purchasing agreement in a steady commercial relationship
 - Protection from « abrupt termination »
 - **Regular sales** :
 - Distributorship agreement
 - Protective status provided by certain laws

2. TWO QUALIFICATIONS

- **The first one : distributorship agreement** is considered to be a **sale/purchase agreement/contract**.
- But there is **not property transfer** so it is **not a sale agreement**.
- However, according to certain case law, **it could be « assimilated » to such an agreement**.

2. TWO QUALIFICATIONS

- **The second one : distributorship agreement** is a **provision of services contract** due to specific obligations regarding the distribution of products such as exclusive supply from the supplier or from the distributor and obligation to promote the products imposed on the supplier or on the distributor.

- **But what is the core service ?**
 - The **exclusivity** granted by the supplier to the distributor ?

 - The **commercial obligations** undertaken by the distributor for the distribution of supplier's products ?

- **And what about the remuneration** for the supply of services ?
 - May a provision of services contract be **valid without a financial remuneration ?**

 - Could the remuneration for services rendered by the distributor consist in a **competitive advantage** such as :
 - territorial exclusivity granted by the supplier ?
 - or simple limitation of resellers ?
 - or assistance from the supplier to the distributor ?