

# Can silence in a supplier relationship be construed as a threat and grounds for termination?

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## Summary of the case

The [Higher Regional Court of Dusseldorf ruled on an aspect of a dispute between VW and Prevent](#). The judgment was based on the following circumstances: two members of Prevent Group, an automotive supplier, demanded a 25% price increase for the seat shells they were supplying to VW. VW tried in vain to learn from Prevent which consequences were to be expected should the demand be refused. VW at first agreed to the demand, but then terminated the contractual relationship a few months later. Prevent sought to oppose this termination in court. The Higher Regional Court of Dusseldorf upheld the ruling issued by the trial court (the District Court of Dortmund) and ruled that the terminations are valid.

## Silence may justify termination

The Higher Regional Court of Dusseldorf found that demanding a price increase (without justification) does not in and of itself constitute grounds for termination.

However, such a demand may be legally relevant if the other contracting party can expect the supplier to cease delivery if the price is not adjusted. According to the court's (highly debatable) ruling, that is the case in the matter at hand. The Higher Regional Court of Dusseldorf states that it amounts to "extortion" (!) if the other contracting party is left in the dark as to what the consequences will be should the demand for a price increase be refused. This ruling follows the approach adopted by the Higher Regional Court of Cologne (Judgment of 17 July 2009, Case No. 19 U 20/09), which found that such conduct has the effect of destroying the trust-based relationship which needs to exist between the parties. The court found that VW could not be reasonably expected to adhere to the contractual agreement because its business urgently depends on due and reliable performance of existing agreements by its contracting parties.

## Communication is everything

One can certainly disagree with the grounds of the Higher Regional Court of Dusseldorf's judgment, especially given some of the formulations it uses. However, it will be necessary to heed the court's rulings for the time being (both parties are seeking leave to appeal the judgment from the Federal Supreme Court): regardless of whether the demand for revision of the contractual agreement is justified or not, communication between the parties should remain transparent and should be viewed in the overall context of the business relationship.

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