

# Unfair Trading Practices in the B2B Food Supply Chain - The legal framework -

Workshop prepared for Internal Market  
and Consumer Protection Committee



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT  
ECONOMIC AND SCIENTIFIC POLICY **A**

Brussels, 24 March 2014

Prof. Dr. Hans Schulte-Nölke  
European Legal Studies Institute Osnabrück

# Unfair trading practices in the B2B supply chain

## *Background:*

- Green Paper on unfair trading practices in the business-to-business **food and non-food** supply chain in Europe (COM (2013) 37)
- Communication on unfair trading practices (UTPs) in the business-to-business **food** supply chain (COM (2014) 472)

**=>Commission focuses on UTP in the food supply chain**

## Mapping the problem

- Examples of UTP in the B2B (food) supply chain
- Effects of UTP
  - Internal market
  - Consumer welfare
- The legal framework

## The legal framework

- No specific regulation for the B2B food supply chain
- General regulation of UTP in the B2B supply chain
  - EU level
  - Member State level

## EU level

- **Competition law (art. 102, 101 TFEU)**
  - Abuse of a dominant position
  - Anticompetitive practices
  - “Relative market strength“ left to Member States (cf. art. 3 II 2 Reg. 1/2003)
- **Unfair commercial practices law**
  - Misleading and comparative advertising (Dir. 2006/114/EC)
  - Unfair business-to-consumer commercial practices (Dir. 2005/29/EC): just B2C! – B2B left to Member States
- **General contract law: B2B (mainly) left to Member States**



## Member State level

- **Competition law** (e.g. provisions on “relative market strength“)
  - Discrimination within the supply chain
  - Obstruction of competitors
- **Unfair commercial practices law**
  - Specific regulation also applicable to B2B relations
  - Tort law
- **Contract law**
  - Good faith
  - Regulation of standard terms in B2B relations

## Enforcement issues

- Weaker party may not enforce its rights on own initiative
- Confidentiality clauses
- Freedom of contract / choice of the law of a non Member State
- Not only judicial, but also administrative enforcement?
- Role of self-regulation?
- No food-specific regulatory environment

Prof. Dr. Hans Schulte-Nölke  
European Legal Studies Institute Osnabrück  
[schulte-noelke@uni-osnabrueck.de](mailto:schulte-noelke@uni-osnabrueck.de)