

Unfair practices in the business-to-business food supply chain (UTP).

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What is the best way to address the UTP? A need for action? Which measures?

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# Introduction

- ❑ **European retail sector – increasing competition - emergence of unfair trading practices – need for new paradigm**
- ❑ **Weaker parties in the chain can be retailers, big producers, small local suppliers, etc.**
- ❑ **Policy problem – if and how to tackle with unfair practices in food supply chain**

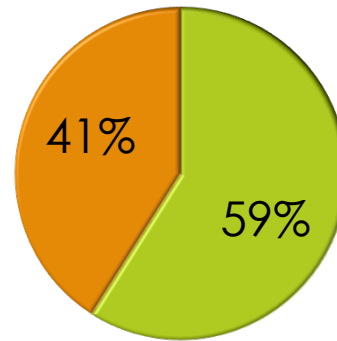
## **Studies:**

- ❑ **“Legal Framework Study covering business-to business unfair trading practices in the retail supply chain”. Final report. 26 February 2014. Prepared for the European Commission, DG Internal Market**
- ❑ **“Changing competition in the food supply chain and unfair trading usages”. Prepared by the Estonian Institute of the Economic Research and Ministry of Agriculture, Nov 2014**

# Food supply chain and UTPs in Estonia

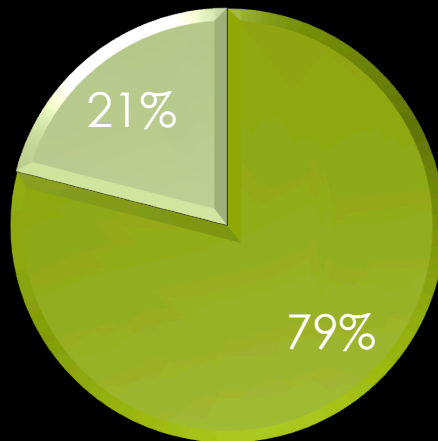
- Study on changing competition in the food supply chain and unfair trading practices, prepared by the Estonian Institute of the Economic Research and Ministry of Agriculture, January 2015:
- Top 5 retailers hold 82 % of market share which is very high in comparison with other EU Member States
- The share of local products in retail chains: 81% of dairy products, 90% of the milk, 90% of curds, 96% of bread and 92% of sausages.
- Survey studied 161 food industry businesses from a total of 324

## 161 food producers 2014 (Estonia)



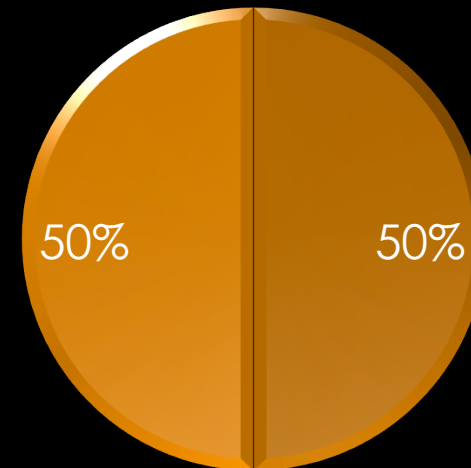
- No experience with UTPs
- Subject to UTPs

### Big enterprises (turnover more than 5 million)



- No experience with UTPs
- Subject to UTPs

### Enterprises with turnover less than 5 million

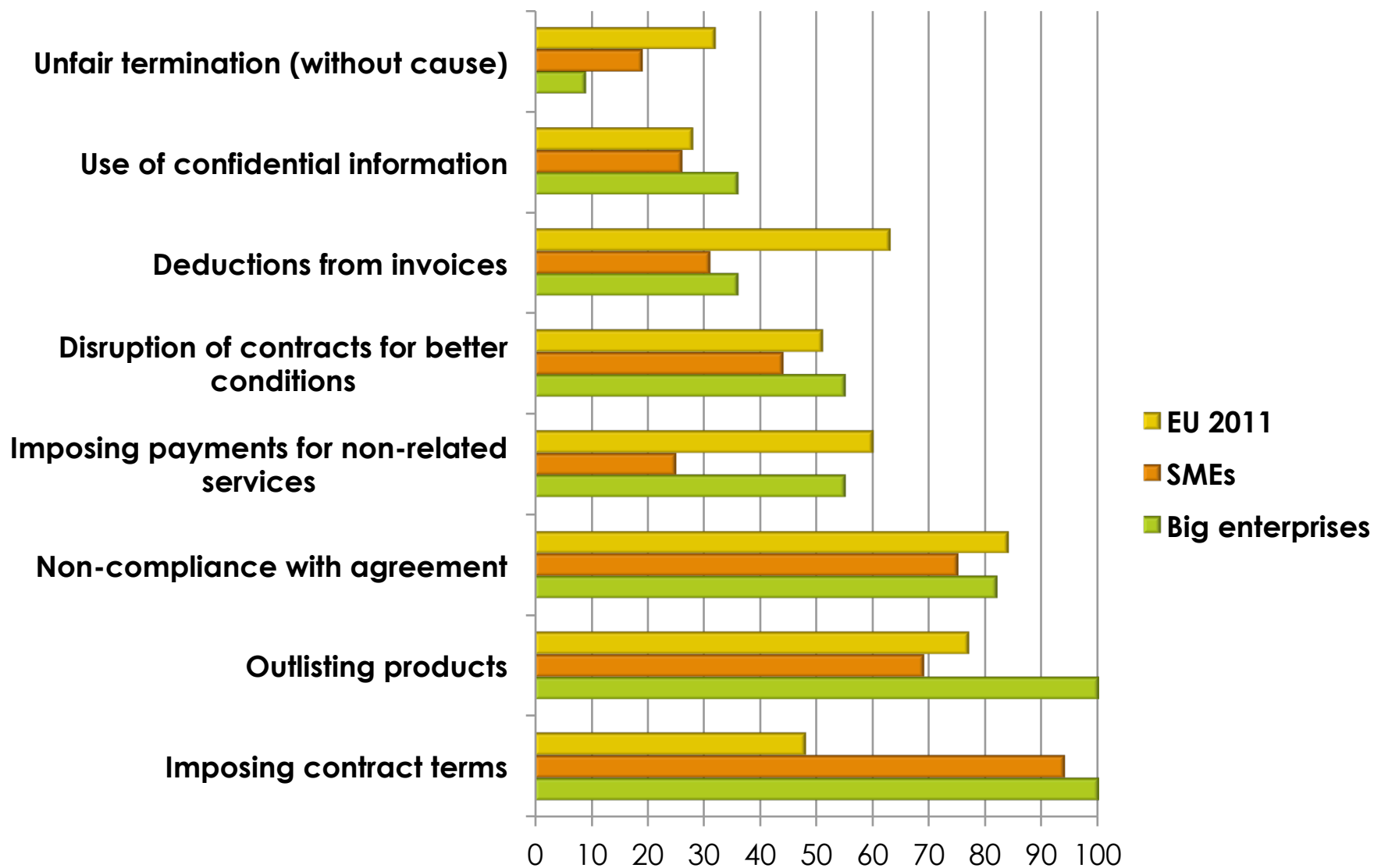


- No experience with UTPs
- Subject to UTPs

# Legal framework

- ❑ UTPs are not covered by specific public legislation
- ❑ Private regulation – mainly the Fair Trade Practices adapted by Estonian Traders Association in 2008
- ❑ Law of Obligations Act (2002):
  - unfair contract terms e.g. gray list of 34 terms presumed as unfair in B2B contracts
  - general provisions on pre-contractual obligations (refusal to negotiate, unfair use of confidential information)
  - general obligation to act in good faith
- ❑ No special administrative supervisory or enforcement body (strong “fear factor” preventing complaints)
- ❑ Competition law - insufficient

# Types of unfair trading practices (Estonia)



# Differences in using UTPs: EU and Estonia

	Big businesses 2014	Small businesses 2014	EU 2011
<b>Experienced UTPs</b>	<b>79 %</b>	<b>59 %</b>	<b>96.4%</b>
<b>Imposing contract terms</b>	100 %	94 %	48 %
Outlisting products	100 %	69 %	77 %
Payment for services not used	82 %	38 %	60 %
<b>Non-compliance with contract terms</b>	<b>82 %</b>	<b>75 %</b>	<b>84 %</b>
Disruption of contracts to get better contract terms	55 %	44 %	51 %
Payment for services not connected to sold products	55 %	25 %	60 %

# UTPs in food supply chain (Estonia)

- Differences in comparison to EU food industry
  - the producers experience UTPs less than in EU in general: EU - 96.4%
  - Estonia - 59% (79% for large companies).
  - non-compliance with contract terms: EU - 84% , Estonia 77% (the most common in EU),
  - imposing contract terms EU - 48%, Estonia - 96%.



# Conclusions (1)

- ❑ Abuse of contracting power in food supply chains will damage free competition and in long terms interests of the consumers
- ❑ EU competition law is insufficient to tackle the problem
- ❑ UTPs are used more frequently on companies producing products with relatively short preservation time and in highly competitive markets
- ❑ Use of UTPs is less intensive or lacking on micro and small businesses, who have their own niche in the market.

# Conclusions (2)

- Estonian practice does not convince that private regulation is the best solution to tackle with problem
- Representatives of traders and practicing lawyers are against to any intervention into contractual freedom by legislation on EU level
- Study: there is a need for legal regulation and efficient administrative enforcement mechanism
- Different strategies might be required depending on the sector, the degree of market concentration and internationalization of supply chains
- SMEs do not need special protection (weaker parties), decisive factors are economic dependence and market specific factors

## Possible actions on EU level:

- **Recommendations: combinations between legislation and private regulations, mechanisms for the administrative supervision and enforcement of rules**
- **Common definitions, standard contracts**
- **Clear understanding how competition, contract and tort law rules are related; changes in underlying principles of competition law**