

# The biggest challenges – the fear factor? Assuring effectiveness of the future measures

Dr Dominik Wolski  
Legal Adviser  
Lecturer



# The biggest challenges – the fear factor?

- **The fear factor against the background of UTPs**
  - The question - where is the problem with UTPs located?
  - The answer – **complexity!**
  - Why is this so complicated? – convergence of many factors: market practice, legal frames, economy, business relationships, consumer welfare, etc.
  - „The fear factor” – the best example as the sign of complexity



## What does the fear factor mean?

*„The weaker party often fears that the commercial relationship could be terminated in the event of a complaint on its part“ (EC GP on UTPs)*





# The biggest challenges – the fear factor?

## ➤ **The main fear factor generators**

- Scale of business partner – bargaining power, value of current (or potential) co-operation, etc.
- Dominant (or significant) position in the market
- The dependency – one receiver of all deliveries (lack of alternative options for supplier)
- The lack of differentiation of the offer (one type of product in the whole offer)
- The lack of attractive supplier's offer (lack of innovations, no competitive advantage)



# The biggest challenges – the fear factor?

## ➤ Questions addressed to fear factor

- Fundamental question - is this possible to eliminate it in every business relation in supply chain?
- How to measure it as the sign of UTPs?
- How to avoid it in supply chain relationships?
- If not possible to avoid it – how to protect against it (what kind of legal measure should be used)?

# The biggest challenges – the fear factor?

## ➤ **How to eliminate the fear factor**

- There is no simple, universal, forceful legal measure leading to removal of fear factor in all supply chain relations – the fear factor is the matter of fact caused by model of business, market power and model of relations built up by business partners, but ...
- The potential consequences of pushing the fear factor must be taken into consideration in every case being analyzed

# The biggest challenges – the fear factor?

- **The consequences – when analyzing UTPs in the context of fear factor should be taken into consideration**
  - The size of undertakings involved in co-operation
  - The value of co-operation (turnovers)
  - The length of co-operation (close business linkages)
  - The economy – the benefits taken by each party involved
  - The profitability of co-operation

# The biggest challenges – the fear factor?

## ➤ The final conclusion

- There is no possibility to remove the fear factor from business relations in a legal way
- The law to this extent will be ineffective („just a piece of paper”), but ...
- The fear factor should be taken into consideration case by case when every occurrence of presumed UTPs will be analyzed





Thank you very much!