Office of Competition and Consumer Protection

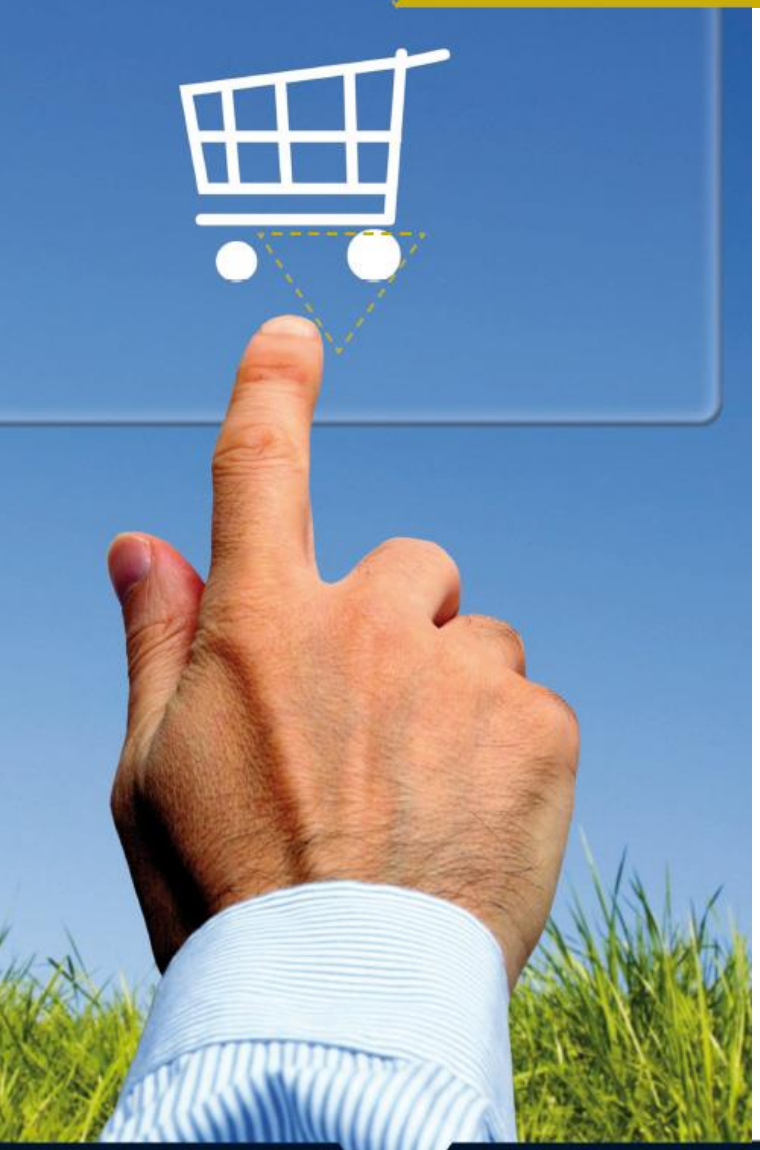
UNFAIR TRADING PRACTICES - what regulation?

Polish UTP Act compared to the UTP directive proposal

BRNO, St Martin's Conference, 15/11/2018

Unfair Trading Practices

in the food supply chain



Is regulation neccessary?

Why harmonise?

What should it be like?

Why regulate? (I)

dozens types of mistreating suppliers

the very sector is especially prone to world economy trends – often based on SMEs, mostly on micro ones

food production and distribution – important for Union's and MS's economies

structure of the market and ownership favorise chain stores, big processors groups

antitrust law usually does not cover it (significant but non-dominant market position)

Why regulate? (II)

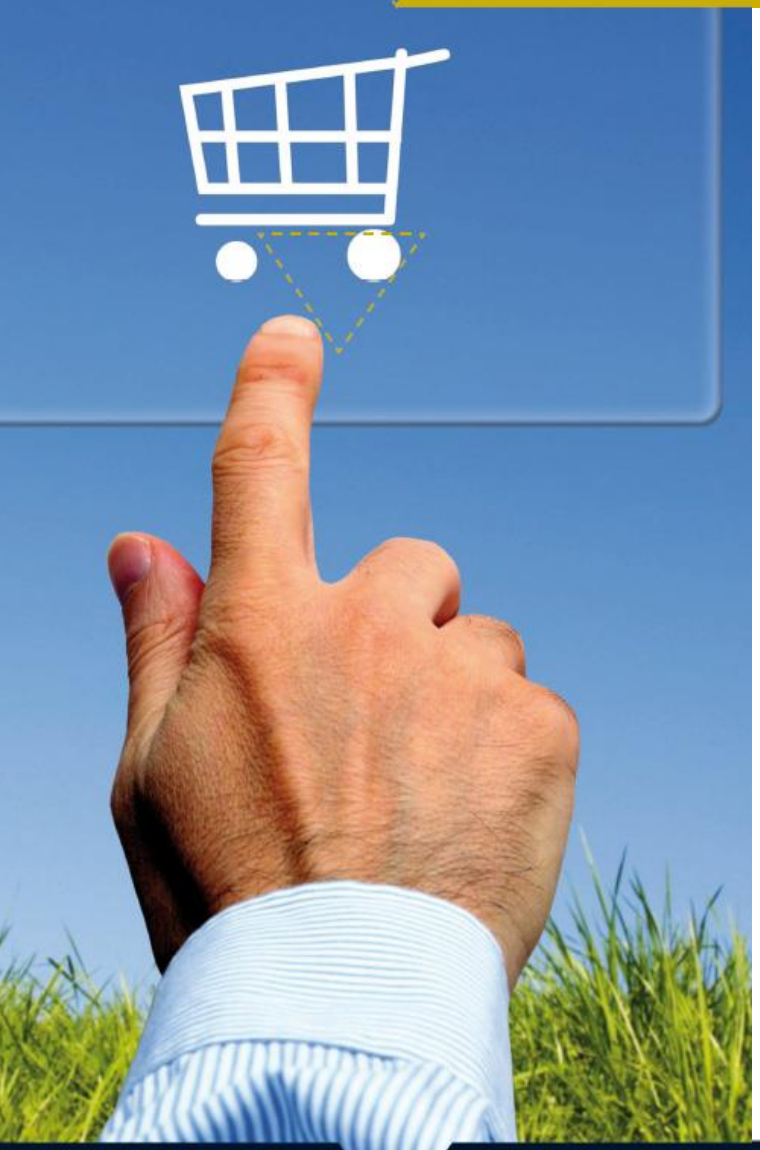
'Civil law protection would be enough'

Often false statement due to:

- fear factor [vs. protection of complainant's identity]
- no power to collect adequate and convincing evidence [vs. public body entitled to request information and carry out inspections]

Reason for administrative (quasi-penal) regime protection

Why harmonise? (I)



- ✓ approx. 20 various regimes in EU
- ✓ no exchange of experiences, discussion on direction of regulation and enforcement
- ✓ inconsistency – regulatory uncertainty

Why harmonise?
(II)

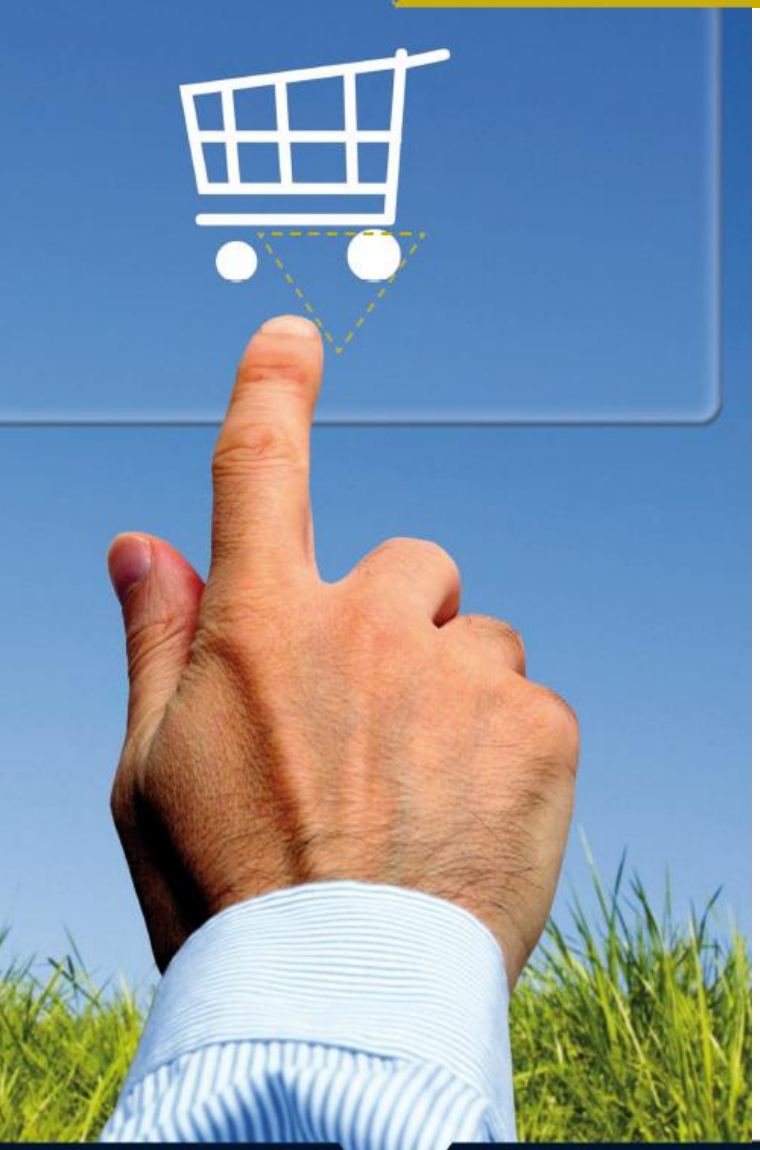
Harmonisation

Better understanding of new law

Better quality of enforcement

Better protection

What regulation? (I)



Directive proposal

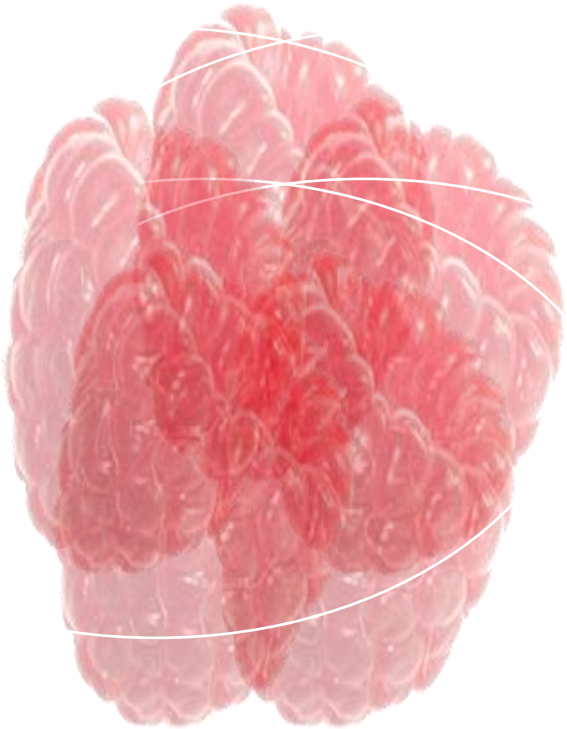
- ✓ SMEs protected
- ✓ Minimum harmonisation
- ✓ Black list of practices prohibitted in any case
- ✓ Grey list of conditionally prohibitted practices

What regulation? (II)

Directive proposal – continued:

jurisdiction – seat of the buyer

financial penalties – to be precised by MS



coordination – yearly meetings, reports

enforcement authority [designed on NCA model

What regulation? (III)

Polish UTP act basics:

Act of 15 December 2016 on counteracting the unfair use of contractual advantage in the trade in agricultural and food products (in force since 12 July 2017)

50 k. PLN of turnover and 100 m of turnover – to be crossed out

Definition of contractual advantage:

... where the supplier does not have sufficient and actual opportunities to sell agricultural or food products to other purchasers and - to be crossed out

where there is a significant disparity in economic potential between the two entities which puts the purchaser at an advantage (or *vice versa*)

What regulation? (III)

Polish UTP act basics:

Act of 15 December 2016 on counteracting the unfair use of contractual advantage in the trade in agricultural and food products (in force since 12 July 2017)

Definition of contractual advantage:

where there is a significant disparity in economic potential between the two entities which puts the purchaser at an advantage (or *vice versa*)

What regulation? (IV)

Polish UTP act basics - continued:

Abuse of contractual advantage

*'Use of a contractual advantage shall be considered unfair where it is **contrary to good practices** and poses a **threat to the vital interests of the other parties or infringes upon such interests**'*

What regulation? (V)

Open list of unfair practices (Polish UTP act):

- unreasonable termination or threatened termination of a contract;
- arrangements whereby only one of the parties is entitled to terminate or withdraw from a contract or to rescind such contract;
- making the conclusion of a contract contingent upon the acceptance or fulfilment by the other party of other consideration, having neither substantive nor customary relation with the subject of such contract;
- unreasonable extension of payment periods for the agricultural or food products supplied.

What regulation? (VI)

Directive proposal - **black list** of unfair practices :

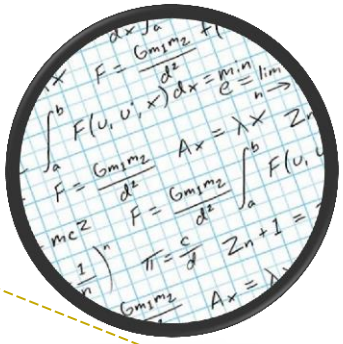
- (a) payment for perishable food products later than 30 days after delivery/invoice receipt
- (b) cancelling orders of perishable food products at short notice [supplier cannot reasonably be expected to find an alternative to commercialise or use these products]
- (c) unilateral and retroactive change of the the supply agreement therms [on the frequency, timing or volume of the supply or delivery, the quality standards or the prices of the food products];
- (d) transfering food products wastage cost on a supplier [wastage occurs on the buyer's premises and is not caused by the negligence or fault of the former]

What regulation? (VII)

Directive proposal - **grey list** of unfair practices [prohibitted if ambiguous or unclear] :

- (a) returns of unsold food products
- (b) paid stocking, displaying or listing of food products
- (c) promotion of food products financed by the supplier [buyer must specify promotion period and expected order volume]
- (d) buyer's marketing financed by the supplier.

Estimation of expected payments and costs (and the latter's basis) need to be communicated to the supplier.



What regulation? (VIII)

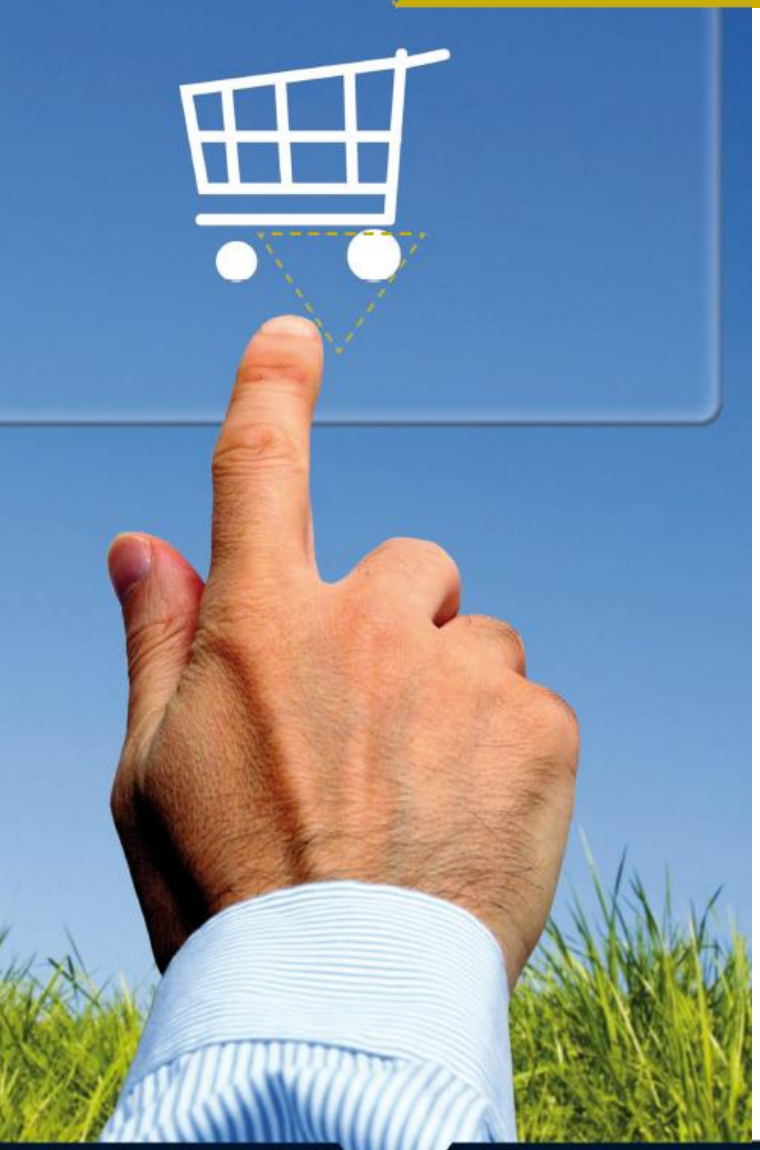
Polish UTP enforcement experiences

Would it fit the forthcoming EU framework?

- Carrot supplies – *Cykoria case*
- Sugar production - *Sudzucker case*
- Fruit processing – *Dohler case, Real case, TB Fruit case*

Overall of 64 complaints, 21 preliminary proceedings, 38 requests for information or explanations, **5 investigations**

What regulation? (IX)



Polish UTP enforcement experiences – charges:

- contractual payment periods – more than 60 days and up to half-a-year long
- delays in payments
- opaque price calculations or no terms on price at all
- non-transparent and discriminatory schedule of supplies

Thank you

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