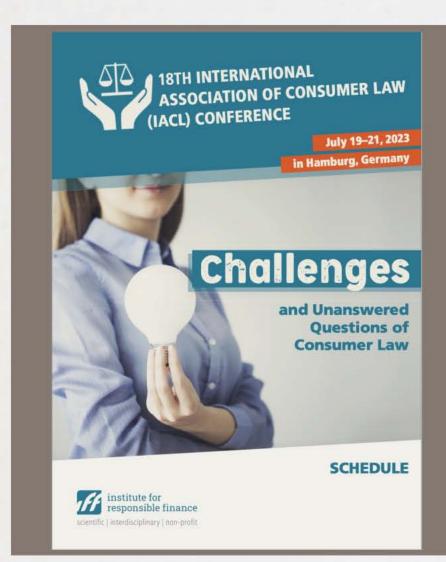


Unfair Practices at the IACL Conference?





The speakers were asked to limit their presentation to 10 minutes if the session has five papers. Is it fair?





Prof. Monika Namysłowska Chair of European Economic Law

As Fair as It Gets.

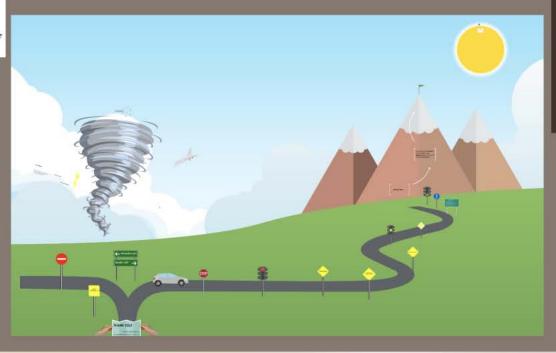
The Black List of Unfair Commercial Practices as the Ultimate B2C Unfairness Test



Amsterdam, 29 June 2015

Part of the project financed by National Science Centre (Narodowe Centrum Nauki), decision No. 2013/11/B/HS5/03633





Today







Prof. Monika Namysłowska Chair of European Economic Law

As Fair as It Gets.

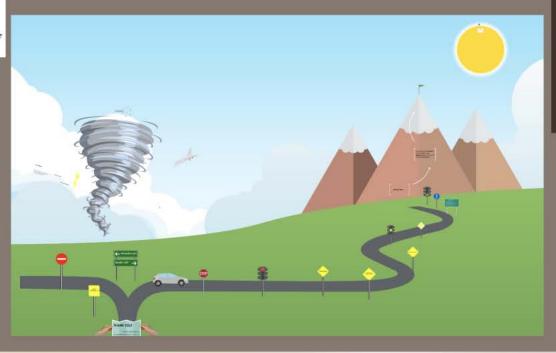
The Black List of Unfair Commercial Practices as the Ultimate B2C Unfairness Test



Amsterdam, 29 June 2015

Part of the project financed by National Science Centre (Narodowe Centrum Nauki), decision No. 2013/11/B/HS5/03633





Today

Prof. Dr. Monika Namysłowska

Department of European Economic Law

To wave the white flag or to apply the black list?

On the challenges of consumer protection against unfair digital commercial practices

IACL, Hamburg, 19 July 2023

The research leading to this presentation was supported by the National Science Centre (Narodowe Centrum Nauki) in Poland (2018/31/B/HS5/01169)







A Star is Born

Annex I to the Unfair Commercial Practices Directive (UCPD) is officially called the black list.

The UCPD was adopted on 11 May 2005.

Annex I aims to prevent the most harmful B2C commercial practices.



Article 5(5) of the UCPD: Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.

5 things to know about the black list:

- 1) Annex I to the UCPD
- 2) Unfair per se
- 3) 35 commercial practices: 27 misleading, 8 aggressive
- 4) Not more, not less
- 5) Modification by the revision of the UCPD

First reviews

"Arbitrary selection."

"Overregulation!"

"Imprecisely formulated."

"Excessively detailed."

"The level of unfairness varies significantly among commercial practices listed in Annex I."

"Decisive criterion for assessing unfairness."

"Focal point."

"Harmonisation by example."

"Best expression of the characteristics of Directive 2005/29/EC."



Climbing the Career Ladder



The black list quickly climbed the career ladder, proving its exceptional role in combating unfair B2C commercial practices.

Like every star, the black list needed a refreshed image over time.

Gaining significance & refreshing the image

Gaining significance:

- 1. *Ex ante* effect
- 2. Judgments of the CJEU
- 3. B2B black list of unfair trading practices

Refreshing the image:

New per se prohibitions:

- 1. Disclosure of **paid-for advertising and ranking** (point 11)
- 2. **Reselling events tickets** acquired by automated means (point 23a)
- 3. Misleading as to the origin of the review (point 23b)
- 4. Submitting false consumer reviews (point 23c)



The Future in the Limelight: Unraveling the Plans

Shoud we expect more blacklisted commercial practices in the digital environment? Is the black list the perfect tool for combating unfair digital commercial practices?



Black list & new technologies

Green Transition

Draft AIA

Why?

Digital Fairness Act

Proposal for a Directive amending the UCPD & the CRD as regards empowering consumers for the green transition

10 new prohibitions *per se*

& EP amendments:

- Giving **more prominence to certain choices** when asking the recipient of an online service for a decision (point 7a (i))
- Making the **procedure of terminating a service significantly more burdensome** than signing up to it (point 7a (ii))

Black list & new technologies

Green Transition

Draft AIA

Why?

Digital Fairness Act

Prohibited Practices (Article 5)

the placing on the market, putting into service or use of an AI system:

- that deploys **subliminal techniques** beyond a person's consciousness
- that **exploits any of the vulnerabilities** of a specific group of persons due to their age, physical or mental disability
- for **social scoring**
- for making **risks assessments** (criminal or administrative offence) based on profiling
- to infer emotions(...)

Black list & new technologies

Green Transition

Draft AIA

Why?

Digital Fairness Act

Digital fairness – fitness check on EU consumer law

- **public consultation** (28 November 2022 20 February 2023)
- targeted consultation: consumer associations and NGOs; business associations; national competent authorities; European Consumer Centres (ECCs) (27 June 2023 25 September 2023)
- new provisions?
- BEUC: Digital Fairness Act

Black list & new technologies

Green Transition

Draft AIA

Why?

Digital Fairness Act

Why?



Thank you for your attention!

mnamyslowska@wpia.uni.lodz.pl

LinkedIn: Monika Namyslowska

