STUDY TO SUPPORT THE FITNESS CHECK OF EU CONSUMER AND MARKETING LAW

Interim results – UCPD Art. 7(4) and PID

European Consumer Summit 2016, 17.10.2016

Workshop 1- Simplifying consumer information requirements

For the European Commission – Directorate-General Justice and Consumers (DG JUST)

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Study methodology

- Desk research and legal analysis in 28 MS
- Stakeholder interviews in 28 MS
- Business interviews in 28 MS
- Survey of qualified entities
- Econometric analysis & compliance cost analysis
- Cross-cutting analysis
- Other sources that feed into the study
  - Consumer survey (June 2016, 23.500 responses)
  - Commission's online public consultation (May – September 2016, 436 responses)

Study conclusions so far regarding Article 7(4) UCPD /1

- Article 7(4) – information requirements applicable to "invitation to purchase"
- Note that in C-122/10 *Ving Sverige* the CJEU endorsed a wide interpretation of this provision
- Pre-contractual information now regulated by the CRD, in particular Articles 5 and 6
- Parallel existence of both provisions sometimes leads to overlap and confusion

Study conclusions so far regarding Article 7(4) UCPD /2

- Different levels of awareness of traders regarding the information requirements of Art. 7(4) UCPD. Reportedly traders are less aware of requirements from Art. 7(4) UCPD than requirements of CRD
- In country research, stakeholders divided on usefulness of this provision and the problems of overlap with the CRD
- More precise coordination between Art. 7(4) UCPD and CRD recommended by several stakeholders
- But: number of information requirements often considered to be overwhelming

Study conclusions so far regarding the PID /1

- Recent case law of the CJEU related to PID (C-476/14 *Citroën Commerce*): the selling price should also include extra costs to be paid by the consumer
- Price per unit information is used by consumers and considered beneficial:
  - In 2010, 48% of surveyed consumers consulted unit price 'always' or 'often' when comparing goods
  - In 2016, 58% of surveyed consumers indicated they benefited at least 'moderately' from the right to see prices per unit, which was more than from any other of the rights considered

Study conclusions so far regarding the PID /2

- According to country research, in most MS consumers are reported to be effectively informed and aware about unit selling price or at least stakeholders consider there are no major problems in this respect
- The (temporary) optional derogation for small businesses is used in several MS, but this does not seem to cause significant problems, according to a large majority the country stakeholders interviewed
- Price per performance unit (e.g. wash-load) is indicated in some MS. Opinions divided (performance depends also on hardness in example of detergents; if several unit prices: information overload)

Study conclusions so far regarding the PID /3

- Studies in DE and the UK with supermarkets show breaches of unit pricing rules
- In 2016, 30% of surveyed consumers had encountered problems with unit price at least "sometimes" in the last year (mostly related to food products/drinks)
- Specific problems with price indication reported in country research range from small letter size of unit price to misleading price indication on websites (hidden surcharges). Also new pricing practices (e.g. dynamic pricing), which are outside the scope of PID, mostly considered to fall within UCPD framework

Stakeholder views /1

- 92% of respondents to the full questionnaire of the consultation think that the right to get adequate information on goods/services offered is beneficial to consumers
- 80% of respondents think that the right to obtain information about the unit price of goods is beneficial
- 68% of respondents think that EU consumer and marketing law has had a positive impact on the amount and relevance of information available to consumers to compare and make informed purchasing choices

Stakeholder views /2

Business stakeholders were strongly in favour of simplifying and streamlining information requirements in their submissions to the consultation :

- Presenting too much information overwhelms consumers and distracts them from the most essential points
- A stronger distinction should be made between the advertising stage (simpler information) and pre-contractual stage (more detailed information)
- Information requirements should be streamlined and consolidated, rather than fragmented in separate Directives
- Price indication requirements in particular should be consolidated and better harmonised across the EU

Stakeholder views /3

Consumer organisations and *public authorities* in their submissions to the consultation were also in favour of simplifying information requirements, as long as a high level of protection was maintained:

- Consumers should be presented with the right information at the right time in the transaction, without being overwhelmed
- The European Commission should look into ways of simplifying information requirements, without losing quality
- Information requirements for online platforms and price comparison tools (e.g. with respect to liability and ranking criteria) should be clarified
- Price indication requirements need to be better enforced and made more consistent across the EU

Initial thoughts on the way forward /1

- The number of requirements in Art. 7(4) UCPD could be reduced, in light of overlap with the CRD requirements
- PID could be integrated in Art. 5 & 6 CRD
- The price indication would be required "before the consumer is bound", i.e. it would not necessarily apply to advertising; but in practice that would not change the present situation ("products offered by traders to consumers")

Initial thoughts on the way forward /2

- The integration of the PID into the CRD would lead to one instrument containing pre-contractual information duties
- Information overload to be examined, including in the context of results of behavioural research
- New pricing practices to be monitored carefully, in light of their importance for informed choice