

EFLA workshop on the EU legal framework governing the relationship between retailers and producers

Summary

Introduction

This document is a summary of the European Food Law Association's (EFLA) workshop on the EU legal framework governing the relationship between retailers and producers. The workshop was held on February 21, 2011 in Brussels. Mr. Jean Bergevin, Head of Unit E2 - Free movement of services and establishment II: retail and information service at the European Commission was the guest speaker and updated the participants on the framework in place and current issues.

It was explained that this issue is an issue for the internal market service in the Commission but also a competition issue. Mr. Bergevin explained that the area changes so quickly that it is difficult to provide a straight overview.

Summary of workshop discussions

- It was explained that this issue is complex as it deals with unfair practices that affect and that in the EU there is no *acquis* on this area but Regulation focusing on unfair practices on consumers.
- Mr. Bergevin went through some of the key legislation in place in the EU that has been disputed could cover B2B relationships:
 - It has been discussed that the Directive on Unfair Commercial Practices can be used as a tool against the unfair practices B2B; however, Mr. Bergevin said that this is still up for debate.
 - The EU legislation for misleading advertising does cover B2B relationships but not unfair practices but elements within this legislation could be built upon.
 - The Directive on Commercial agents regulates suppliers and commercial agents but this forms part of the consumer rights package.
 - In addition EU Competition rules are not designed to protect individual companies, the important question is whether the imbalance of relationship between B2B leads to abuse.
 - DG Competition is currently taking stock of how far national legislation protects the B2B relationships.
- The question is whether there is a EU problem? There appears to be a EU problem
- There are a number of issues why it is difficult for the EU to intervene:
 - The problems stem from contracts that are governed by national laws.
 - The contracts are confidential and it is difficult to prove that there has been an abuse of position.

- The cost to 'whistle blow' usually exceeds the benefit and so many companies do not go to court to resolve the issue.
- Mr. Bergevin co-chairs the High Level Forum on food, which looks at the unfair practices in the food trade and has found the following:
 - No one in the EC has looked into the national rules governing the B2B relationships
 - Code of conducts that have been set up, such as in the UK, seem not to have worked
 - Any EU framework would have to be very broad as the problem is not isolated to the food chain.
- What needs to be done? Need to look into the legal situation in all the 27 EU Member States, through questionnaires.
- Explore the idea of a EU self-regulation, although it is questionable whether this would work in practice. Need to get an agreement on what unfair practices are through platform on foods.
- The Commission sees this issue to be very important as they realize the affect this is having on innovation/growth and trade within the Internal Market. They are working on a number of initiatives with the Parliament to try and find a solution.
- Mr. Bergevin explained that the Commission would like to work with lawyers on this and called for any information that could be provided to help to this aim.