

HAMBURG CONGRESS 2008 - LIDC
QUESTION B
UNDER WHICH CIRCUMSTANCES AND TO WHAT EXTENT SHOULD THE
POSITIVE OBLIGATION OF PROVIDING INFORMATION BE IMPOSED BY
REGULATION ON ADVERTISERS?

CONCLUSION

1. The League supports in principle measures enhancing truthful commercial communication, while stressing the need to balance such measures against the principle of free market communication and undistorted competition.

The choice of form, content and medium of commercial communication should essentially rest with advertisers.

2. Positive information obligations on advertisers should only be imposed in carefully selected instances of well-evidenced information asymmetries, where additional information can be effectively comprehended and used by consumers.

3. The League is in favour of the loyal implementation of the Directive's provision on misleading omissions, transposing the flexibilities envisaged by the Directive in determining when a commercial practice constitutes misleading omission, in particular the importance of context, communication medium and the circumstances of the individual case.

4. When ascertaining which information should be considered 'material' in the sense of the Directive findings from economic theory as to the importance of the type, value, frequency of purchase of a product, its reputation and the competition on the relevant market could be taken into account, for example.

It appears unnecessary and impractical that the degree of information duties should be equal for all products and all circumstances.

5. The League considers that the concept of 'invitation to purchase' should not apply to any commercial communications which contain price and product characteristic but only to those also enabling the consumer to make an immediate purchase.

6. The League considers that the information obligations of the EU Directive should be confined to B2C relations.

The League should insist on a better regulative environment where redundancy and overlap of information duties and confusion over applicable rules and regulatory competence are avoided.

The implementation of the Unfair Commercial Practices Directive in national law should be used as an occasion for streamlining and consolidating information duties to match market transparency with regulatory transparency.