Who invented unfair practices?

- Not an English law concept
- Roy Goode makes no mention in his Commercial Law tome
- Unfair competition widely understood in other EU regimes
- UK has passing-off
- Otherwise, contract law
B2C - B2B

- Unfair business to consumer practices
  - UCPD 2005
  - Principle of unfair dealing
  - UK regulations (Consumer Protection from Unfair Trading Regs 2008)

- Initiative to extend to B2B practices
- Misleading advertising – BP Regs 2008

Legal basis for B2B laws

- Not competition law (except unilateral/dominant behaviour)
- Not consumer protection
- Not contract law (principle of freedom to contract)
- Not tort law
- What is it?
Unfair competition laws

- French law: article 1382 of Code Napoleon/Civil and Code Commercial L444-6 – concurrence deloyal
- German law: 1896/1909 laws – Wettbewerbbeschränkungen
- See also other EU countries
- Paris Convention art. 10bis – IPR only
- UK - nothing

National developments – retail sector

- UK groceries inquiries 2000 and 2006-8
- Czech law on significant market power (SMP)
- Hungary – act on unfair distributor behaviour
- Ireland – retail grocery inquiry
- Norway – supermarket inquiry
- Romania – food retail sector inquiry
- Spain – study on abuses by retailers
EU developments

- Concern about commodity prices (2007/8)
- And consumer retail prices
- Commission Communication on food prices 2008
- Package of proposals October 2009
- Roadmap of key initiatives – forum to address unfair commercial practices (Recommendation no. 15)

What legal basis?

- DGComp makes it clear there is no mandate under art.101/102
- ‘Protecting’ small businesses is not a Treaty obligation
- Stretch concept of consumer protection
- Legal basis could be single market harmonisation
- Or Article 116 – distorted conditions
Type of remedy

• Code of conduct
  – Different legal/commercial traditions
  – Voluntary or mandatory (how?)
  – Monitoring/enforcement mechanism
  – Extent of application (vertically through the supply chain and horizontally across sectors)
• Soft law – guidelines; recommendation etc
• EU Directive
• EU Contract Law ‘toolbox’