

## Case Details

### Case Details

National ID	A420588512
Member State	Latvia
Common Name	link
Decision type	Court decision in appeal
Decision date	10/03/2015
Court	Regional Court of Administrative Cases
Subject	
Plaintiff	AS „Air Baltic Corporation”
Defendant	Consumer Rights Protection Centre
Keywords	Air Services Regulation, good faith, imbalance between the rights of the parties, unfair terms, unwanted solicitations

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(k\)](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2](#). Unfair Contract Terms Directive, [Article 3, 1](#). Consumer Rights Directive, [Chapter 4, Article 22](#)

### Headnote

A contractual term in online purchase contract is unfair, if a pre-selected choice of services is made on behalf of consumers.

### Facts

The plaintiff was selling airline tickets on its website. During the online purchasing steps several additional services /choices were automatically chosen/made for consumers via pre-ticked boxes. For example, the option “Luggage”, which enabled consumers to take on board additional luggage for the price of EUR 20 was already pre-ticked and billable to consumers unless specifically un-ticked by them. Among other findings, the defendant found such practice to infringe price indication requirements for air services (laid out in Regulation 1008/2008/EC).The defendant also held the particular contractual terms to be unfair according to Article 6(3) of the Consumer Rights Protection law (which implements Article 3(1) of Directive 93/13/EEC). Thus, the defendant adopted a decision requesting the plaintiff to pay a fine and to cease the unfair commercial practices.

The plaintiff brought a claim before the court, requesting to revoke the defendant’s decision in the part that ordered to cease the unfair commercial practice regarding the pre-selected “Luggage” option.

### Legal issue

The court stated that by automatically making a choice on behalf of consumers, a situation may arise where a consumer accepts a pre-selected service without evaluating if he/she actually needs the particular service. As a result, a consumer would not have clearly expressed his/her will to purchase the particular service.

The court considered such contractual terms to be contrary to good faith and to cause a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of consumers. Accordingly, the court found such contractual terms to be unfair. The court also found the inclusion of such terms to constitute unfair commercial practice, because it was contrary to the requirements of professional diligence and was likely to distort the economic behaviour of the consumer.


## Decision

Is a contractual term in online purchase contract unfair, if a pre-selected choice of services is made on behalf of consumers?

URL: <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/206129.pdf>

Full Text: [Full Text](#)

## Related Cases

Member State	National ID 	Common Name	Directive Articles	Decision Date
Latvia	Consumer Rights Protection Centre Decision No. E03-PTU-K115-39	<a href="#">link</a>	Unfair Commercial Practices Directive, <a href="#">Chapter 1, Article 2, (b)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 1, Article 2, (d)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 1, Article 2, (e)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 1, Article 2, (h)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 1, Article 2, (k)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 2, Article 5, 1.</a> Unfair Commercial Practices Directive, <a href="#">Chapter 2, Article 5, 2., (b)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 2, Article 5, 4., (b)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 2, Section 2, Article 8</a> Unfair Commercial Practices Directive, <a href="#">Chapter 2, Section 2, Article 9, (a)</a> Unfair Commercial Practices Directive, <a href="#">Chapter 2, Section 2, Article 9, (d)</a>	23/10/2012

## Legal Literature

No results available

## Result

The court dismissed the plaintiff's request to revoke the defendant's decision in the part that ordered to cease the unfair commercial practice regarding the pre-selected "Luggage" option.