

Act no. 47 of 16 June 1972 relating to Control of Marketing and Contract Terms and Conditions

most recently amended by Act no. 90 of 18 December 1981 (Short title: The Marketing Control Act)

Chapter I. Control of Marketing.

§ 1. General provision.

In the conduct of business no act may be performed which runs counter to good business practice in the relationship between entrepreneurs or which is unreasonable in relation to consumers.

The advertiser and anyone who creates advertising shall ensure that the advertisement does not conflict with the inherent equality between the sexes and that it does not imply any derogatory judgment of either sex or portray a man or a woman in an offensive manner.

§ 2. Misleading business methods.

It is prohibited in the conduct of business to apply an incorrect or otherwise misleading representation which is likely to influence the demand for or supply of goods, services or other performances.

The same applies to any other procedure which may have such influence on the demand or supply, if as a result of its form or other circumstances it is likely to mislead consumers.

Use of the term guarantee or similar expression in the sale of goods and services is regarded as misleading in all cases where such use does not give rights in addition to, or if it limits the rights which the recipient would have had without the guarantee etc.

Publication or any other announcement of seasonal sale, clearance sale or other forms of sale in the retail trade at reduced prices may only be employed where the prices for the goods offered have in actual fact been reduced.

§ 3. Insufficient guidance etc.

It is prohibited in the conduct of business to make use of any representation which is likely to influence the demand for or supply of goods, services or other performances, when the representation does not provide adequate or sufficient guidance or introduces irrelevant matter and therefore should be deemed unreasonable.

The same shall apply to any other procedure which may have such influence on the demand or supply, if it exploits the lack of experience or knowledge of consumers and therefore should be deemed unreasonable.

§ 4. Premiums.

It is prohibited in the conduct of business to seek to promote the sale of one or more goods, services or other performances (the main performance) by offering a premium or letting a premium be offered to the consumer.

A premium shall be understood as any additional performance (article of merchandise, service etc.) which, without there being a natural connection between the performances, is connected with the sale of the main performance. Payment of money shall, however, be considered a premium only where a natural connection with payment for the main performance is lacking, or where stamps, coupons or similar documents are employed which have as their primary function to serve as evidence for the right to the money payment. It shall be considered a premium also where a particularly low price is charged for the additional performance.

The provisions of § 5, final paragraph, shall apply correspondingly.

§ 5. Lotteries.

It is prohibited in the conduct of business to seek to promote the sale or purchase of one or more goods, services or other performances by initiating lotteries or other arrangements where it is decided, wholly or in part, by chance who shall receive benefit (prize, reward, premium or other).

This provision shall not apply to offers of rewards or prizes which publishers of periodicals present in their magazine or paper for solutions of puzzles, participation in competitions or similar achievements by the readers. The value of the prizes and the size of the reward may not exceed limits stipulated by the Ministry*.

§ 6. Gifts etc. to employees.

It is prohibited in the conduct of business to offer or present any gift or similar benefit to someone employed by or acting for another, when this is done without the knowledge of the latter, and the gift or benefit is intended to and likely to mislead the recipient in the performance of his duties or in his position of trust or service into giving the donor or another an unjustified advantage.

This prohibition shall apply correspondingly to any gift or similar benefit which is given after the disloyal act has been committed, if the gift or benefit must be regarded as an unreasonable reward.

§ 7. Business secrets.

A person who has gained knowledge of or possession of a business secret in connection with employment, a trusted position or a business relationship, may not use the secret unlawfully in the conduct of business.

The same shall apply to anyone who has received knowledge of or possession of a business secret through another person's breach of his pledge of secrecy or through some other person's unlawful act otherwise.

§ 8. Technical aids.

A person who has been entrusted with technical drawings, descriptions, formulas, models or similar technical aids in connection with employment, a trusted position or a business relationship, may not use these unlawfully in the conduct of business.

The same shall apply to a person who has obtained possession of technical drawings, descriptions, formulas, models or similar technical aids through the unlawful act of another person.

§ 9. Copy of another's product.

It is prohibited in the conduct of business to make use of copied marks of identification, products, catalogues, advertising material or other production in such a manner and under such circumstances as to make it an unreasonable exploitation of efforts or results of another person and to create a risk of mistakes as to identity.

Chapter II. Supervision of contract terms and conditions.

§ 9a. Unreasonable contract terms and conditions.

Terms and conditions which are used or are meant to be used in the conduct of business with consumers may be prohibited if the terms and conditions are deemed unreasonable in relation to consumers and if general considerations call for such prohibition.

* Ministry of Consumer Affairs and Government Administration.

When evaluating whether a contract's terms and conditions are unreasonable, emphasis shall be placed upon the balance between the parties' rights and obligations, and whether the terms and conditions are clearly defined.

§ 9b. Scope of application.

This chapter does not apply to labour and wage conditions between employer and employee. The King may decide that the rules in this chapter shall not apply to other special contractual obligations.

Chapter III. The Market Council and the Consumer Ombudsman)

§ 10. Administration, organization etc.

The Market Council and the Consumer Ombudsman shall assist in the implementation of the provisions of this Act.

The King may issue further regulations regarding the organization and activity of the Market Council and the Consumer Ombudsman.

§ 11. The Market Council.

The Market Council shall have 9 members with personal deputies, appointed by the King. The period of service for the members is four years, however in such a way that at the first appointment of the Council a shorter period may be stipulated for some of the members. The King shall appoint the chairman and the vice-chairman.

§ 12. Decisions by the Market Council.

The Market Council may prohibit an act which the Council deems a violation of a provision laid down in or pursuant to Chapter I, if it finds that such intervention is necessary in the interests of the consumers or, pursuant to § 1, second paragraph in the interest of equality of the sexes. The Market Council may also forbid the party for the Market Council to use terms and conditions as mentioned in Chapter II or to engage in actions aimed at such use. The Market Council may order such measures as it deems necessary to ensure that the actions come to an end and the prohibition is respected.

The Market Council forms a quorum when the chairman or the vice-chairman and at least 4 other members or deputies are present. Decisions are made by simple majority. In the event of a tie, the chairman shall have the casting vote.

The Market Council shall state reasons when adopting a decision. There is no administrative appeal against the decisions of the Market Council.

§ 13. The Consumer Ombudsman

The Consumer Ombudsman shall in the interest of the consumers seek to prevent market abuses that infringe the provisions prescribed by or pursuant to Chapter I of this Act. Further, the Consumer Ombudsman shall, in the interests of equality between the sexes, with particular emphasis on how women are portrayed, ensure that the provisions in § 1, second paragraph, are not violated. The Consumer Ombudsman shall, acting on own initiative, or on the basis of communications from others, urge all entrepreneurs to conduct their operations in conformity with the provisions of this Act.

The Consumer Ombudsman shall also ensure that such terms and conditions as mentioned in Chapter II are not used in any way injurious to consumers, and through negotiations with the entrepreneurs or their organisations, contribute to this.

In cases where voluntary compliance is not obtained, the Consumer Ombudsman may submit the case to the Market Council for decision in accordance with § 12.



Where the Consumer Ombudsman decides not to submit a case to the Market Council, it may be submitted by an entrepreneur or a consumer who is affected by the act or by the terms and conditions, or by an association of entrepreneurs, consumers or wage-earners.