

Act No. 47 of 16 June 1972 relating to the Control of Marketing and Contract Terms and Conditions (The Marketing Control Act)

Chapter 1. Control of Marketing.

Section 1. General Provision.

In the conduct of business no act may be performed which is in conflict with good business practice in the relationship between business people or which is unfair in relation to consumers or which is otherwise in conflict with good marketing practice.

The advertiser and anybody who creates advertising shall ensure that the advertisement does not conflict with the inherent equality between the sexes and that it does not exploit the body of one sex nor implies any offensive or derogatory judgement of female or male.

An evaluation of whether par. one or two has been offended against may, among other things, place emphasis on whether the advertising for reasons of its design, format, extent or other measures, appears as particularly obtrusive.

Section 2. Misleading Business Methods.

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

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

Use of the term guarantee or similar expression in the sales of goods and/or services is regarded as misleading in all instances where such use does not entail any 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 a sale, clearance sale or any other form of sale in the retail trade at reduced prices may only be made when the prices of the goods offered have in fact been reduced.

Section 3. Insufficient Guidance etc.

It is prohibited in the conduct of business to use 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 must be deemed unfair.

This also applies to any other procedure which may thus influence the demand or supply, if it exploits the lack of experience or knowledge of consumers and therefore must be deemed unfair.

Section 4. Premiums

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

A premium shall be understood to be any additional performance (item of goods, service etc.) which, without a natural connection existing between the performances, has connection to 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 does not exist or where stamps, coupons or similar documents are used which have as their primary function to serve as evidence of the right to the money payment. It shall also be considered to be a premium when a particularly low price is charged for the additional performance.

The provisions of Section 5, final paragraph, shall apply accordingly.

Section 5. Lotteries.

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

These provisions shall not apply to offers of rewards or prizes which publishers of periodicals present in their magazines or papers for the solving of puzzles, participation in competitions or similar achievements by the readers. The value of the prizes and the size of the rewards can not exceed limits stipulated by the Ministry.

Section 6. Gifts etc. to Employees.

It is prohibited in the conduct of business to offer or to present any gift or similar benefit to anybody employed by or acting on behalf of somebody else 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 anybody else 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 unfair reward.

Section 7. Business Secrets.

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

This also applies to anyone who has gained 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.

Section 8. Technical Aids.

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

This also applies to anyone who has obtained possession of technical drawings, descriptions, formulas, models or similar technical aids through the unlawful act of another person.

Section 8a. Copying the Product of somebody else.

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

Section 9. Incorrect geographical descriptions for wine and spirits

It is prohibited in the conduct of business to make use of geographical wine or spirit descriptions for wines or spirits which are not of the origins designated by the descriptions. This applies even when the factual origin is also stated, or when the geographical description has been translated or is followed by expressions such as "kind", "type", "imitation" etc.

Chapter II. Supervision of Contract Terms and Conditions.

Section 9a. Unfair Contract Terms and Conditions.

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

When evaluating whether the terms and conditions of a contract are unfair, emphasis shall be placed upon the balance between the parties' rights and obligations, and on whether the terms and conditions are clearly defined or not.

Section 9b. Scope of Application.

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

Chapter III. The Market Council and the Consumer Ombudsman.

Section 10. Administration, Organisation 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 organisation and activities of the Market Council and of the Consumer Ombudsman.

Section 11. The Market Council.

The Market Council shall have nine members with personal deputies, appointed by the King. The period of office of each member 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.

Section 12. Decisions made by the Market Council

The Market Council may prohibit any act deemed by the Council to be in conflict with any provision contained in or issued pursuant to Chapter I when the Council holds its intervention to be justified in the interests of the consumers, or, as relating to Section 1, subsection two, in the interests of non-discrimination between the sexes. The Market Council may also order a party before the Market Council to refrain from using terms and conditions as stated in Chapter II or to commit any act which is conducive to such use. The Market Council may furthermore prohibit any acts deemed by the Council to be in conflict with any rules the inspection of which has been delegated to the Consumer Ombudsman by Regulations issued pursuant to Section 3-1, par. three, of the Act of 4 December, 1992, No. 127 relating to Broadcasting, if this is warranted by the interests of the consumers or the interests of non-discrimination between the sexes. The Market Council may issue orders concerning any measures deemed by the Council to be requisite to ensure that the prohibition is observed.

A decision under par. one, its first, second or fourth sentence, may also be issued against activities and individuals having contributed to the act being carried out, or to the terms and conditions being used. Section 17, par. three, shall apply accordingly.

The Market Council forms a quorum when its chairman or vice chairman and no fewer than four additional members or deputy members are present. Decisions are reached by simple majority. In the event of a tie, the chairman shall have the casting vote.

The grounds for a decision shall be stated at the time when it is made. No appeal may be filed against a decision from the Market Council.

Section 13. The Consumer Ombudsman.

The Consumer Ombudsman shall, in the interests of the consumers, seek to prevent market abuses infringing upon the provisions prescribed in or pursuant to Chapter I of this Act. Furthermore, the Consumer Ombudsman shall, in the interest of non-discrimination between the sexes, with particular emphasis on the portrayal of females, ensure that the provisions of Section 1, second paragraph, are not breached. The Consumer Ombudsman shall, acting on his own initiative, or on the basis of communications from others, urge all members of the business community to conduct their operations in accordance 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 which may harm the consumers, and through negotiations with members of the business community or their organisations contribute to this end.

The Consumer Ombudsman shall also inspect all advertising according to Regulations issued pursuant to Section 3-1, par. three, of the Act of 4 December, 1992, No. 127 relating to Broadcasting, when this is called for respectively in the interests of consumers and in the interest of non-discrimination between the sexes.

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

With the consent of the chairman of the Market Council, the Consumer Ombudsman may place before the Market Council cases of principle concerning non-observance of Sections 1-5 or to non-observance of the Regulations issued pursuant to Section 3-1, par. three, of the Act No. 127 of 4 December 1992 relating to Broadcasting. This applies irrespective of whether an amicable settlement has been reached or the person conducting the business declares that the marketing considered has been discontinued.

The Market Council may refrain from dealing with a case submitted according to paragraph five if it finds that it has insufficient information on the matter to reach a decision.

When the Consumer Ombudsman resolves not to submit a case to the Market Council, the case may be submitted by a member of the business community or a consumer who is affected by the act or by the terms and conditions, or by an association of business people, consumers or employees.

Section 14. Decisions made by the Consumer Ombudsman

The Consumer Ombudsman may make a decision for a prohibition as stated in Section 12, par. one, its first, second and third sentences, if no voluntary arrangement has been reached and the Consumer Ombudsman assumes that inconvenience or harm will result from awaiting a decision made by the Market Council. A decision which the Consumer Ombudsman may make concerning prohibition as stated in Section 12, par. one, first and second sentences, may also be directed against anybody having contributed, cf. Section 12, par. two.

The Consumer Ombudsman may also make a decision as stated in par. one when the Ombudsman deems the marketing or the contract term or condition substantially identical to marketing or to terms or conditions against which the Market Council has previously issued a prohibition.

The Consumer Ombudsman shall state the grounds for his decision at the time when it is made. The Ombudsman shall notify the Market Council about the decision.

An appeal against the decision may be lodged with the Market Council.

The Market Council may require the Consumer Ombudsman to submit matters as further specified to the Market Council.

Chapter IV. Obligations of Disclosure and Secrecy.

Section 15. Disclosure.

Everybody is obliged to furnish the Market Council or the Consumer Ombudsman with the information which these authorities may require in order to be able to perform their legally prescribed duties, including information necessary in evaluating whether a representation is incorrect or misleading. The information may be requested to be given in writing or orally within a stipulated time limit.

The authorities mentioned above may conduct such examination and inspection, including requesting to have handed over any documents, objects, samples of goods etc. which they deem necessary in order to perform their legally prescribed duties. If necessary, assistance may be requested from the police.

The Market Council or the Consumer Ombudsman may request that information shall be given to or examination shall be undertaken by other authorities specifically charged with the duty to assist in the implementation of this Act.

Chapter V. Sanctions

Section 16. Enforcement Charge.

Any decision under Sections 12 and 14 against marketing contrary to Sections 1-5 or against unfair contract terms and conditions as stated in Section 9a, shall specify an enforcement charge payable by whoever the decision is directed against in the event that the party concerned fails to observe the decision or contributes to a third party's committing the act against which the decision is directed. In the event that the party against whom the decision is directed has to withdraw advertising campaigns or such like, the party concerned shall be granted a period of time for doing so. Specification of the enforcement charge may be omitted if so warranted by special circumstances.

In the event that the party against whom the decision is directed, or anybody acting on behalf of the said party, fails to observe the decision, or contributes to a third party's committing the act against which the decision is directed, the Consumer Ombudsman shall issue an order for an enforcement charge unless special circumstances warrant differently. An order may not be issued pursuant to a decision which was made more than 3 years ago. Nor may an order be issued for non-observance which has ceased more than 2 years ago.

The party concerned shall be given a period of time not exceeding 3 weeks to declare whether the order is accepted. Upon acceptance of an order it becomes valid as basis for enforcement of restraint. Upon non-acceptance of the order, the Consumer Ombudsman shall bring an action for the purpose of establishing the liability for payment of the enforcement charge. The Consumer Ombudsman may refrain from bringing an action if so warranted by special circumstances. In addition to trying the legal validity of the order, the Court may, within the outlines of the submissions by the parties, try the aspects in terms of assessment when the enforcement charge is determined. Conciliatory proceedings before the Conciliation Board are not required.

No appeal may be lodged against orders being issued by the Consumer Ombudsman and the decision to bring an action.

By means of Regulations, the King may issue rules concerning the size of the enforcement charges and concerning the duty to pay interest on unpaid enforcement charges etc

Section 17. Punishment.

Anyone who intentionally fails to observe Sections 2-9 of this Act or any decision made pursuant to this Act, shall be punishable by fines or imprisonment of up to three months. Having contributed herein is punishable in the same manner.

Negligent non-observance of Sections 2 and 3 and of decisions made pursuant to this Act is punishable by fines. Having contributed herein is punishable in the same manner.

Punishment shall not be imposed on a shop assistant, office assistant or similar junior employee for non-observance which resulted primarily from his dependent relationship to the principal.

Punishment shall not be imposed in the event of non-observance of Section 7 when knowledge of or possession of the business secret has been acquired in a position of service or of trust or through breach of duty in a position of this kind if more than two years have lapsed since the position ceased to exist.

Section 18. Rules of Penal Procedure.

No step will be taken by the public prosecutor against non-observance of Sections 7, 8 or 8a of this Act unless so requested by the injured party. This also applies to non-observance of Sections 2 or 3 when the act committed is to have made injurious statements about another member of the business

community or about circumstances which concern him specifically.

The public prosecutor may in connection with the criminal proceedings move for an injunction to ensure that the unlawful act shall cease and to prevent its being repeated.

Chapter VI Definitions. Delimitation against the Acts relating to Competition and to Price Measures. Entry into Force.

Section 19. Definitions.

Under this Act, an act shall be considered to have been performed in the conduct of business whether it was performed by the businessman himself or by someone acting on his behalf. All business enterprises are subject to the Act even if the entity (a company, an institution, establishment, etc.) which conducts the operation is a non-profit organisation.

Under this Act a representation shall be understood to be any announcement or statement made orally, in writing or otherwise, including descriptions, pictures, demonstrations, the shape and form, size or lay-out of the packaging etc.

Section 20. Delimitation against the Acts relating to Competition and to Price Control Measures.

The provision in Section 1 of this Act shall not apply to the substance of offers, demands or agreements concerning prices and business terms and conditions of members of the business community. Nor does the provision apply to the establishment or implementation of agreements to restrain competition or to a refusal to maintain business connections.

The provision in Section 9a of this Act shall not apply to the substance of terms and conditions concerning prices, discounts, bonuses and profits.

The provisions of this Act do not restrict the powers prescribed in or pursuant to the Act relating to Competition in Business (the Competition Act) and the Act relating to Price Control Measures.

If a business operation which is subject to this Act also comes under provisions concerning regulation and control contained in other Acts, the King may issue further rules concerning the mutual delimitation of the areas of responsibility of the authorities concerned and concerning the cooperation between them.

Section 21. Entry into Force etc.

This Act shall come into force as from the date stipulated by the King *).
