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TRANSLATED FROM THE ICELANDIC

Act No. 57/2005 on the surveillance of commercial practices and marketing, as amended by Acts No. 34/2007, 57/2007 and 50/2008

Chapter I, General Provisions

Article 1

This Act shall apply to any business activity, including the manufacturing industry and trade in goods and services, irrespective of whether such operation is conducted by individuals, companies, public entities or others.

This Act shall not apply to wages or other employment terms of wage earners pursuant to collective wage bargaining agreements.

Article 2

This Act shall apply to agreements, terms and actions with effect, or intended effect, in Iceland.

This Act shall not apply to agreements, terms and actions with effect, or intended effect, outside Iceland.

Article 3

The following definitions shall apply in this Act:

1. *Business activity* shall mean any commercial activity, irrespective of form of ownership and irrespective of the nature of the goods, services or rights exchanged or managed for a consideration.

2. *Undertaking* shall mean any individual, company, public entity or other party engaged in business activity.

3. *Consumer* shall mean any individual person purchasing goods or services for a consideration, provided the purchase is not made for the purpose of business operation.

4. *Goods* shall in this Act mean any real or personal property, including vessels, aircraft, gaseous substances, electricity or other energy sources.

5. *Price* shall mean the return provided by goods or services, including value-added tax and other public levies where applicable, i.e. any consideration

irrespective of the term used, such as remuneration, wages, commission, freight, shipping charge, tariff, rent or the like.

6. *Commercial practices* consist of the marketing of firms or another activity, inactivity or conduct in connection with the introduction of goods or services or trading in goods and services.

7. *Service* shall mean any facilitation, work or service rendered for a consideration, excluding salaried work in the service of another.

Article 4

The Consumer Agency is responsible for surveillance pursuant to this Act under the authority of the Minister for Commerce, who is responsible for the implementation of this Act.

The role of the Consumer Agency pursuant to this Act is

- a. to enforce the stipulations and prohibitions of the Act;
- b. to decide on measures against unfair commercial practices;
- c. to promote enhanced market transparency.

In processing cases pursuant to this Act the Consumer Agency is authorised to prioritise.

Decisions of the Consumer Agency taken on the basis of this Act can be appealed to the Appeals Committee for Consumer Affairs, which acts on the basis of Article 4 of the Act on the Consumer Agency and Consumer Spokesman.

Chapter II, Prohibition of unfair commercial practices

Article 5

Unfair commercial practices are forbidden. This prohibition applies prior to, while and after business in goods is undertaken or service is rendered. In Chapters III – V it is further specified as to what is considered to be unfair commercial practices.

Article 6

Advertisements shall be prepared in such a manner as to preclude any doubt concerning their nature as advertisements. These shall be clearly separated from other subjects of the media.

Advertisements and other business methods shall not be unreasonable vis-à-vis competitors or consumers due to their form or because of references to extraneous matters.

Advertisements intended to appeal to Icelandic consumers shall be in Icelandic.

A firm shall be able to submit evidence of assertions presented in advertisements.

Article 7

Advertisements shall be presented on the assumption that these will be seen and heard by children and shall in no way be offensive to them.

Special care must be shown in advertisements by reason of the credulity of children and young persons and their susceptibility.

If children are shown in advertisements care shall be taken not to depict or describe dangerous acts or situations that may lead them or other children into hazardous situations or prohibited conduct.

Chapter III, Protection of consumers' financial interests

Article 8

Commercial practices are unfair if these violate good commercial practices vis-à-vis consumers and considerably upset or are likely to upset considerably the financial conduct of consumers. Commercial practices violating the provisions of the present Chapter are at all times unfair.

The Minister will stipulate in Regulations the commercial practices which are considered unfair in all circumstances.

Article 9

Commercial practices are misleading if these are likely to deceive consumers or are of such a nature that consumers are granted incorrect information for the purpose of influencing their decision concerning trade. This refers to incorrect information concerning:-

a. the nature of goods or services and as to whether the goods be available or the services at hand,

b. the principal characteristics of goods or services, e.g. the use, composition or results which may be expected of the use thereof,

c. services to customers, handling of complaints, date of production or method of production,

d. the price of goods or services or the method of calculation of price as to whether there be a case of a special offer or another price adjustment and whether this be subject to conditions,

e. the need for service, spare parts, change of parts and repairs,

f. the rights, qualification and other factors pertaining to the vendor's circumstances or those of his representative, his position in the market, duties trademarks and other software rights,

g. the consumer's legal rights.

Commercial practices are misleading if no account is given of information which may be considered to be of general interest for consumers or if this is kept secret and is liable to influence a consumer's determination to engage in business.

Article 10

If a firm contemplates advertising or applying other such business methods on account of specific goods or services it shall, as applicable and having regard for the advertising medium utilized, grant information about the following:-

a. the principal properties of the goods or services,

b. the name and address of the firm,

c. the arrangement of payment, delivery and implementation of an agreement if these items deviate from the practices in the branch of business,

d. the handling of complaint affairs on the firm if the handling deviates from that which is customary in the branch of business,

e. the right to cancel purchase, withdrawal of order or the right to return if consumers hold such right in case the handling deviate from that which is customary in the branch of business,

f. the final price, including Value Added Tax and other official dues.

In case goods or services have properties to the effect that it be not possible to quote a price in advance in a simple manner it must be revealed how the price is established. Wherever applicable all information shall be granted about cost of

freight, delivery or transportation charge, but in case this be not possible in a simple manner advice must be given to the effect that these costs could be added to the price.

Article 11

Clearance sales or other sales at reduced prices may only be advertised or announced if prices are actually reduced. Care shall be taken that price markings clearly show what was the original price of the goods.

Article 12

Commercial practices are considered to be aggressive if the consumer's freedom of choice or action upon deciding on business or goods is restricted in an improper manner, e.g. by pressure or threats and apt to influence his decision which he would else not have made.

Chapter IV, Protection of consumers' interests other than financial ones

Article 13

It is forbidden to engage in any activity contrary to good commercial practices in business activity as practised or some act which is improper toward the interests of consumers.

Chapter V, Conduct between firms

Article 14

It is forbidden to grant incorrect, incomplete or misleading information in advertisements or in another manner or to apply other such commercial practices likewise described vis-à-vis competitors, provided this information and commercial methods are apt to influence demand or the offer of goods, real estate, services or other items offered for sale in business activities to which the present Act extends.

Article 15

Comparative advertisements are all those which directly or indirectly refer to a competitor or goods or services offered by a competitor.

Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:-

- a. the advertising is not misleading;

b. the advertising compares goods or services meeting the same needs or intended for the same purpose;

c. the advertising compares one or more material, verifiable and representative features of those goods or services, which may include price;

d. the advertiser cannot be mistaken in the marketplace for a competitor and the advertiser's trade marks or trade names, other distinguishing marks, goods or services cannot be mistaken in the marketplace for those of a competitor's;

e. the advertising does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;

f. for products with designation of origin, the advertising relates in each case to products with the same designation;

g. the advertising does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of original of competing products;

h. the advertising does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;

Any comparison referring to a special offer shall indicate in a clear and unequivocal manner the date on which the offer ends or, where appropriate, that the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply.

The present provision also applies to other similar business methods and advertisements.

Article 15 (a)

It is forbidden to use in business operations the name of a firm, business designation or the like to which the user is not entitled or to operate a business in a name granting misleading information about an operator's property right or responsibility. Anyone is also forbidden to use a designation to which he is entitled in such a manner as may lead to confusion thereof and another designation which another firm uses with full right.

Chapter VI, Declarations of warranty, confidentiality et al.

Article 16

In case goods, services or other items delivered and to which the present Act applies be of such nature that guidance be required upon assessment of characteristics thereof, e.g. the utility and durability as well as handling and hazard which may result from goods or other factors there shall be granted satisfactory guidance in writing when an offer is made, a contract is prepared or, as the case may be, upon delivery.

The directions shall be in Icelandic or another Scandinavian language, yet not Finnish, or English and based on the type and make of the goods, services or other items delivered.

General terms of service parties offering consumers their services in this Country shall be in Icelandic.

Article 16 (a)

A declaration of warranty may be given only provided it grant the receiving party more extensive right than he holds according to Laws in force.

A declaration of warranty is legally binding for the guarantor on the basis of the conditions revealed in the warranty terms and his advertisements.

Article 16 (b)

If a declaration of warranty is granted the seller of goods or services shall advise a consumer in a clear and informative manner of the sphere of validity of the warranty and which conditions are laid down for the consumer to plead the warranty. The seller shall also advise the consumer in a clear manner about the invariable rights which he enjoys in accordance with the provisions of Laws and on which the declaration of warranty has no effect. If a consumer so requests the seller shall deliver to him the terms of the declaration of warranty written on paper or another durable media accessible for the consumer. Declarations of warranty in writing shall be in Icelandic.

Article 16 (c)

It is forbidden in business activities to which the present Act applies to acquire or attempt to acquire in an improper manner information or control of professional secrets of the activities.

A person having obtained knowledge or control of professional secrets in a correct manner in the course of his work for another or in association with another, cf. para. 1, may not without permission grant information about or exploit such secrets. This prohibition remains valid for three years as of the time work is ceased or a contract is invalidated.

A person having on account of his work or position in another respect been entrusted with plans, descriptions, recipes, models or the like is forbidden to utilize for himself or grant others use of such matters without special authority.

In case information about or control of a professional secret has been acquired in a manner violating the provisions of para. 1 – 3 the party committing the offence or those having obtained information from him are forbidden to utilize it.

Article 16 (d)

It is forbidden to sell or offer goods marked, labelled or on packing material with corresponding titles, international symbols of nursing and humanitarian activities or other similar markings and also to use such symbols, markings or names without permission in advertising placards, advertisements, invoices, lists of goods or other commercial documents.

Upon offering goods, services or other items furnished and to which the present Act extends it is forbidden to use the Icelandic State's Coat of Arms and it is also forbidden to use without permission Icelandic regional symbols as well as foreign State or regional symbols.

Chapter VIII, Surveillance of market transparency

Article 17

An undertaking selling goods or providing services to consumers shall label the goods or services with the price or display the price at the point of sale in such a prominent manner as to be easily visible to consumers. The Consumer Agency may, by public announcement, issue further provisions with respect to price labelling.

Article 18

The Consumer Agency may instruct undertakings to take specific measures to facilitate the assessment of prices and quality by customers. Such instructions may consist in an obligation to state prices, trade terms, quality or other characteristics, and the methods of measuring, weighing or classifying goods. The Consumer Agency may issue such instructions by public announcement.

Article 19

For the purpose of informing consumers and strengthening their price awareness the Consumer Agency shall collect information on prices, price formation and other trade terms, and publish its findings as appropriate. The Consumer Agency shall issue rules of procedure concerning the collection, handling and publication of such information.

Chapter IX, Obligation to provide information

Article 20

The Consumer Agency may require from the parties covered by this Act any information considered necessary for the investigation of individual cases. Information may be requested in oral or written form, and shall be provided within a reasonable time limit set by the Agency.

The Consumer Agency may, with the same conditions as those laid down in Paragraph 1, require the surrender of documents for inspection. Such documents shall be delivered within a reasonable time limit established by the Agency.

In the course of its functions the Consumer Agency may request information and documents from other government authorities, including the tax and customs authorities, irrespective of their obligation to maintain confidentiality.

The Consumer Agency may also impose on the parties referred to in Paragraph 1 the obligation to provide the Agency with regular reports concerning matters relevant to the implementation of this Act. The Consumer Agency may issue such instructions by public announcement.

[Article 20(a)]

The Consumer Agency may, in the course of the investigation of a case, carry out the necessary inspections on the premises of parties falling within the scope of this Act and seize documents and other evidence when there are compelling reasons to believe that this Act or the decisions of the Consumer Agency have been violated. ¹⁾

1) Act No. 57/2007

The provisions of the Code of Criminal Procedure concerning search and seizure of property shall apply to the procedure of such actions.

Article 21

Persons acting on behalf of government authorities in implementing this Act are prohibited from disclosing information on confidential matters obtained by them in the course of their functions. The confidentiality shall be maintained following the end of employment.

[Article 21(a)]

The Consumer Agency is authorised to disclose to the authorities of other states information and data as necessary for law enforcement in accordance with Iceland's obligations under international agreements. The disclosure of information and data shall be subject to the conditions that:

1. the recipients will treat the information and data as confidential;
2. the information and data will only be used for the purposes provided for in the international agreement in question; and
3. the information and data will only be disclosed to other parties with the consent of the Consumer Agency and only for the purpose stated in the consent. ²⁾

2) Act No. 57/2007

Chapter X, Penalties et al.

Article 21(b)

The Consumer Agency may lay down further rules in order to prevent information from being misleading or unsuitable vis-à-vis consumers and also general rules on the application of the provisions of Chapters II – V. The Consumer Agency shall as far as possible consult the parties concerned or their associations prior to such rules being laid down.

The Consumer Agency may resort to action against commercial practices violating the provisions of Chapters II – VI and the provisions of Chapters VII – VIII as may be applicable. The Consumer Agency's acts may consist of prohibition, instructions or authority subject to specific condition.

Article 22

The Consumer Agency may apply administration fines to firms violating:-

- a. the provisions of the present Act and rules laid down in accordance therewith on prohibition of unfair commercial practices, cf. Chapters II – V,
- b. administrative rules and decisions by the Consumer Agency on prohibition of unfair commercial practices violating the provisions of Chapter II – VIII and instructions by the Consumer Agency, cf. Art. 21b,
- c. rules and instructions by the Consumer Agency on arrangements to facilitate customers' assessment of price and quality, cf. Art. 18.

Fines pursuant to Paragraph 1 can be as high as ISK 10 million.

Article 23

In the event of non-compliance with a decision taken in accordance with this Act the Consumer Agency may decide to impose periodic penalty payments on the party or parties at which the decision is directed until the decision is complied with. The party in question shall be notified of a decision to impose periodic penalty payments by letter in a verifiable manner.

Article 24

A decision to impose periodic penalty payments may be appealed to the Appeals Committee for Consumer Affairs within fourteen days from the date of notification of the party affected by the decision. Periodic penalty payments shall not accrue prior to that deadline. In the event that a decision is appealed to the Appeals Committee for Consumer Affairs periodic penalty payments shall not accrue until the Committee returns a conclusion.

Article 25

The decision of the Consumer Agency can not be referred to the courts until the conclusion of the Appeals Committee for Consumer Affairs has been made available. [A party that is unwilling to accept the conclusion of the Appeals Committee for Consumer Affairs may instigate legal action for annulment before the courts of law. Such action shall be brought within six months from the time that the party was informed of the conclusion of the Appeal Committee. Legal action does not suspend the entry into force of the Committee's conclusion, nor does it preclude enforcement proceedings.³⁾]

3) Act No. 37/2007

Article 26

Violations of the provisions of this Act, rules or instructions laid down according to this Act are punishable by fines or imprisonment for up to two years in the event of serious violations. Suspensions of licences in accordance with Article 68 of the Penal Code may be adjudged, and fines may be adjudged concurrently with imprisonment, if the conditions set in Article 49 of the General Penal Code are met.

False statements to parties entrusted with the implementation of this Act are subject to criminal sanctions pursuant to Chapter XV of the Penal Code.

Fines pursuant to this Act may be imposed on legal as well as natural persons. A legal person may be fined without regard to whether an employee of the legal person can be proven guilty. If an employee of a legal person has violated this Act or rules issued pursuant to this Act the legal person may also be fined and subjected to suspension of licence, provided the violation has been committed for

the benefit of the legal person, or the legal person has profited by the violation. A legal person shall be liable for the payment of any fine imposed on such legal person's employee by a court, provided the violation is related to the latter's work for the legal person.

Suspension of licence pursuant to Article 68 of the Penal Code, and confiscation of assets pursuant to Article 69 of the Code, may be adjudged in proceedings originating in a violation of this Act or rules issued in accordance with this Act.

Article 27

Decisions by the Consumer Agency to impose administrative fines or periodic penalty payments are enforceable, as are any costs of any legal proceedings.

An appeal to the Appeals Committee for Consumer Affairs will postpone enforcement.

In the event of enforcement procedures relating to decisions of the Consumer Agency, the respondent shall be summoned before the District Court and proceedings shall be conducted in accordance with Chapter 13 of the Enforcement Act.

Article 28

This Act shall enter into force on 1 July 2005.