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The *Saeima*¹ has adopted
and the President has proclaimed the following Law:

Unfair Commercial Practice Prohibition Law

Chapter I General Provisions

Section 1. Terms used in this Law

(1) The following terms are used in this Law:

1) **performer of commercial practices** – a manufacturer, service provider or a trader, who within the framework of economic or professional activities thereof performs commercial practices, as well as any other person, who acts in the name of or on the behalf of the manufacturer, service provider or trader; and

2) **commercial practice** – an act (course of conduct, representation, commercial communication, marketing) or failure to act (omission) that is directly connected with the promotion of trade, sale of goods (physical or non-physical objects) or provision of a service to a consumer.

(2) Other terms and concepts of this Law are used within the meaning of the Consumer Rights Protection Law.

Section 2. Purpose of this Law

The purpose of this Law is to ensure the protection of the rights and economic interests of the consumers by prohibiting the performers of commercial practices from utilising unfair business-to-consumer commercial practices.

Section 3. Scope of Application of this Law

(1) This Law defines unfair commercial practices, as well as regulates the competence of the monitoring institutions.

(2) The provisions of this Law do not affect such exceptional fields, which have been determined in Article 3 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

¹ The Parliament of the Republic of Latvia

Section 4. Prohibition of Unfair Commercial Practices and Features of Unfair Commercial Practices

- (1) Unfair commercial practices shall be prohibited.
- (2) A commercial practice shall be unfair, if at least one of the following conditions has set in:
 - 1) it does not conform with professional diligence and negatively affects or may negatively affect the economic behaviour of such average consumer or such average consumer group to which such commercial practice is addressed or to whom it concerns;
 - 2) it is misleading; or
 - 3) it is aggressive.

Section 5. Good Practice Code

- (1) In order to promote the protection of the consumer's rights and economic interests and the observance of the conditions of this Law, the performers of economic or professional activity or professional associations established thereof may develop a good practice code.
- (2) A good practice code shall be a voluntary agreement of the performers of an economic or a professional activity or an aggregate of provisions, which is not regulated in the regulatory enactments and shall regulate the behaviour of such performers of commercial practices, who have undertaken to fulfil the commitments specified in the good practice code in one or several types of commercial practices, as well as in one or several fields of economic or professional activity.
- (3) Guidelines of fair commercial practice and professional diligence criteria may be included in the good practice code that conform with generally recognised fair market practice and principle of good faith in the relevant field of economic or professional activity.

Chapter II Commercial Practices Non-complying with Professional Diligence, and Negative Influence on a Consumer's Economic Activity

Section 6. Commercial Practices Non-conforming with Professional Diligence

Commercial practices shall be considered as non-conforming with the professional diligence, if they are not performed with proficiency and diligence of such level, which the consumer may justifiably expect and that conforms to generally recognised goods market practice and principle of good faith of the relevant field of economic or professional activity.

Section 7. Negative Influence on a Consumer's Economic Activity

- (1) Such commercial practices shall be considered as having a negative influence on a consumer's economic activity, which substantially limit the possibility of a consumer to take a decision based on information and in the result of which the consumer may take such decision regarding the entering into a contract, which he or she would not have taken otherwise.
- (2) A decision taken by a consumer regarding the entering into a contract, in any case, shall be considered the decision of the consumer:
 - 1) to purchase a product or to receive a service, or to refrain from such action;
 - 2) in what way and on what conditions to purchase a product or to receive a service;
 - 3) to pay the price of a product or service in parts or in total; and
 - 4) to keep the product, to accept a service or to utilise a possibility to implement the legal consumer rights thereof.

Section 8. Negative Influence on a Consumer Group's Economic Activity

(1) If commercial practices may negatively influence only a specifically definable consumer group's economic activity, which the performer of commercial practices might reasonably expect, taking into account the fact that these consumers are especially unprotected against the relevant practices, product or service due to the mental or physical state thereof, age or unreasonable trust (also due to the lack of experience or knowledge), then such commercial practices shall be assessed from the point of view of an average representative of the relevant consumer group.

(2) What has been specified in Paragraph one of this Section shall not apply to the rights of the performer of commercial practices to utilise in an advertisement exaggerated statements or statements which are not meant to be taken literally.

Chapter III Misleading Commercial Practices

Section 9. Misleading Actions

(1) Commercial practices shall be regarded as misleading if, taking into account all the circumstances, the consumer, under the influence thereof, takes or may take a decision regarding the entering into a contract, which he or she would not have taken otherwise. Commercial practices shall be regarded as misleading in the following cases:

1) misleading information is provided within the framework thereof or this information in any manner, including general presentation, misleads or may mislead the average consumer, even if it in fact is correct;

2) the performer of commercial practices unfairly utilises the promotion measures of the trade of goods or services, including comparative advertising that causes confusion regarding the trademark of goods or a service, the trade name, the name (company) of the manufacturer of goods or the provider of the service or other distinguishing mark; and

3) the performer of commercial practices does not observe the obligations provided for in the good practice code, even though he or she has undertaken to fulfil them and has indicated that he or she is bound by the good practice code.

(2) The following shall be observed when assessing the conformity of information:

1) the existence and main features of goods or a service, as well as, for example, the accessibility of the goods or service; the benefits of the goods or service; the risks related to the goods or service; the activity, composition, accessories, after-sale customer assistance and the procedures for the complaint handling; the method and date of manufacture and delivery; the conditions of delivery of the goods or service; the intention, utilisation, quantity, specification, geographical or commercial origin of the goods or service; the results to be expected from the utilisation of the goods or service; the results of tests or checks of the goods or service;

2) the extent of the commitments of the performer of commercial practices, the motives for the relevant commercial practice and the nature of the sales process of the goods or service, any statement or symbol in relation to direct or indirect sponsorship or approval of the performer of commercial practices or of the goods or service;

3) the price or the manner in which the price is calculated, or the existence of discounts;

4) the need for a service, part replacement or repair;

5) the identity and good qualities, qualification, status, reputation, membership of some association, intellectual property rights or awards of the performer of commercial practices; and

6) the consumer's rights, including the right to claim in relation to the provisions of the contract or goods or a service non-conforming with the safety requirements.

Section 10. Misleading Omissions

(1) Commercial practices shall be regarded as misleading if, taking into account its features and circumstances, as well as the limitations of the communication medium, the following may be concluded:

1) significant information is being omitted, which is necessary for an average consumer in order to take a decision, based on the information, and under the influence of commercial practices the consumer takes or may take such decision regarding the entering into a contract, which he or she would not have taken otherwise; or

2) the performer of commercial practices hides significant information or provides it in an unclear, unintelligible, ambiguous or untimely manner, or fails to identify the commercial intent of the commercial practice, if not already apparent from the context, and as a result of it an average consumer takes or may take such decision regarding the entering into a contract, which he or she would not have taken otherwise.

(2) If the communication medium utilised in the commercial practices imposes limitations of space or time, then the measures, carried out by the performer of commercial practices, for the informing of consumers with other means shall be taken into account when assessing whether the information has been omitted.

(3) If the performer of commercial practices offers a consumer in a manner appropriate for the utilised commercial communication medium to purchase goods or to receive a service and specifies the features and price of the goods or service, the following information shall be considered as significant:

1) the main characteristics of a product or a service, to an extent it is possible to be done for the specific product or service, taking into account the utilised communication medium;

2) the address and identity of the performer of commercial practices and, if the performer of commercial practices acts on behalf of another performer – then also the address and identity of this other performer of commercial practices;

3) the price (inclusive of taxes) or (where the nature of the product or service means that the price cannot reasonably be calculated in advance) the manner in which the price is calculated, as well as all additional charges (freight, delivery or postal), if any, or, (where these charges cannot reasonably be calculated in advance) the fact that such additional charges may be charged by the performer of commercial practices;

4) the arrangements for payment, delivery, performance of the contract and the complaint handling policy, if they depart from the requirements of professional diligence; and

5) the right of refusal.

(4) The requirements, which have been specified for the provision of information in other regulatory enactments regulating the protection of consumer rights or the sale of goods and the provision of services, especially the information regarding the distance contract, distance financial service contract, contract regarding the temporary acquisition of the utilisation rights of a building intended for residential purposes or a part of a building, contract regarding consumer credit, regarding package tourist services, regarding the indicators of the prices of goods and services, regarding medicinal products, regarding information society services to be

provided, regarding private pension funds and regarding the insurance contract shall be also regarded as significant information.

Section 11. Misleading Commercial Practices in all Circumstances

Commercial practices shall be considered as misleading in all circumstances, if the performer of commercial practices:

- 1) claims to be the signatory of the good practice code, but it is not true;
- 2) utilises the trust marks, quality marks or equivalent marks without having obtained the necessary authorisation;
- 3) provides false information regarding the fact that the good practice code has been approved by the State administrative institution or by a private legal entity;
- 4) provides false information regarding the fact that conformity assessment procedures have been carried out in relation to his or her activity in a specific field or in relation to a product or service; that such activity, product or service has been recommended or allowed by the State administrative institution or by a private legal entity, or when providing such information, does not observe the conditions on which the conformity assessment has been carried out, the specific recommendation has been given or the utilisation authorisation has been assigned;
- 5) makes an invitation to purchase goods or receive services at a specified price being aware of the fact that such or equivalent goods or services might not be offered, supplied or procured from the supplier at that price for a period that is, and in quantities that are, reasonable having regard to the product or service, the scale of advertising and the price offered. This condition shall not apply to the cases when the performer of commercial practices informs regarding the fact that the product or service shall be accessible only in a limited period of time and in a limited amount;
- 6) makes an invitation to purchase goods or to receive services at a definite price, but refuses to show the offered item to consumers or refuses to take orders for it or deliver it within a reasonable time, or demonstrates goods or items with defects in order to promote the sale of another goods or service;
- 7) falsely states that a product or service shall only be available for a very limited time, or that it shall only be available on particular terms for a very limited time, thereby stimulating the consumer to take a decision immediately regarding the entering into a contract and without providing him or her with a possibility or sufficient period of time to take a decision based on the information;
- 8) undertakes to provide an after-sale service to consumers with whom he or she has communicated prior to a transaction in a different language from the one that is the official language of the State and then making such services available only in another language, without clearly disclosing this to the consumer before the entering into a contract;
- 9) states or otherwise creates the impression that the product can be sold legally or the service may be provided when it is not true;
- 10) presents the legal rights given to a consumer as a distinctive feature of the offer of the performer of commercial practices;
- 11) provides information by means of the media in order to promote the sale of a product or the provision of a service, without making clear in the content or by images or sounds clearly identifiable by the consumer that the provision of this information has been paid for;
- 12) falsely claims that the personal security of a consumer or his or her family shall be at risk or provides false information regarding the degree of the possible risk in such case, if the consumer does not purchase the relevant product or does not use the relevant service;

13) for the purpose of selling a product or service that is similar to the product of another trader or to the service provided by another service provider, intentionally implements measures for the promotion of the trade in order to create thereby a misleading impression to the consumer that the relevant product has been manufactured by himself or herself or he or she provides the relevant service;

14) establishes or supports a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or utilisation of the goods or the provision of services;

15) provides false information regarding the fact that it is planned to cease trading or move to other premises;

16) claims that a product or service is able to facilitate winning in games of chance, raffles or lotteries;

17) provides false information regarding the fact that a product or service is able to cure illnesses, prevent dysfunction or physical malformations;

18) provides false information of significance regarding the situation in the market or the possibilities to purchase a product or to receive a service, thereby stimulating the consumer to purchase the product or to receive the service on such conditions that are less favourable than normal market conditions;

19) offers a competition and claims to provide prizes, but without awarding the prizes described or a reasonable equivalent;

20) describes a product or service as 'gratis', 'free', 'without charge' or similar, but the consumer has to pay more than the unavoidable costs that occur when responding to the offer and receiving the delivered product or service;

21) includes in the marketing material an invoice or similar document seeking payment which gives the consumer a false impression that he or she has already ordered the marketed product when he or she has not;

22) provides false information or creates a false impression regarding the fact that he or she is acting with one's own trade or economic activity interests, position or for purposes not related to the professional duties, or representing oneself as a consumer; and

23) creates a false impression that after-sale service of a product or service is available only in another European Economic Area Member State other than the one in which the good is sold or the service is provided.

Chapter IV. Aggressive Commercial Practices

Section 12. Aggressive and Persistent Deeds, Coercion and Use of Undue Influence

(1) A commercial practice shall be regarded as aggressive if, taking into account all its features and circumstances, it may be concluded that by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product and thereby the consumer takes or may take a decision regarding the entering into a contract, which he or she would not have taken otherwise.

(2) The utilisation of compulsory measures against the consumer and putting pressure upon the consumer even in such conditions when physical force has not been utilised and the utilisation thereof has not been threatened, however, the possibility of the consumer to take a decision based on the information is significantly limited shall be considered as undue influence.

(3) The following shall be taken into account in order to determine whether persistent deeds, coercion or undue influence is utilised in the commercial practices:

- 1) the time, place, character or duration of the event;
- 2) whether threats or offences with words or by action have been permitted;
- 3) whether the performer of commercial practices has intentionally utilised a specific misfortune or such serious circumstances that impair the consumer's ability to reason in order to influence the decision of the consumer regarding the entering into a contract;
- 4) any onerous or disproportionate non-contractual barriers imposed by the performer of commercial practices where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another trader of a product or service provider; and
- 5) any threat to take any action that cannot legally be taken.

Section 13. Aggressive Commercial Practices in any Circumstances

A commercial practice shall be regarded as aggressive in any circumstances if the performer of commercial practices:

- 1) creates an impression that the consumer shall not be able to leave the relevant room before he or she has entered into a contract;
- 2) arrives at the consumer's home, ignoring his request not to come, except the case when the performer of commercial practices arrives in order to fulfil his or her contractual obligations in accordance with regulatory enactments;
- 3) delivers persistent and undesirable solicitations to the consumer, which have been expressed with the help of a telephone, fax, e-mail or other communication medium, except the case when the performer of commercial practices carries out the latter in order to fulfil his or her contractual obligations in accordance with regulatory enactments and observes the restrictions of the utilisation of a distance communication medium specified in other regulatory enactments;
- 4) requires from the consumer, who wishes to submit an application regarding the receipt of insurance reimbursement in accordance with the entered into insurance contract, to submit the documents that judiciously may not be recognised as such that would justify such request or systematically evades from the answer in order to prevent the consumer from the utilisation of the contractual rights;
- 5) includes in an advertisement a direct invitation to children to purchase a product or to receive a service, or to persuade the parents or other adults to purchase the product or to receive the service;
- 6) requests an immediate or deferred payment for the supplied goods or for the provided services that have not been ordered by the consumer, or requests to give such product or item back or to store it, except the case when an equivalent good has been supplied or a service has been provided in accordance with the regulatory enactments regarding the distance contract;
- 7) informs the consumer that in case he or she does not purchase a product or does not utilise a service, the job or livelihood of the performer of commercial practices shall be in jeopardy; or
- 8) creates a false impression that the consumer has already won, shall win, or shall on doing a particular act win, a prize or other equivalent benefit, when in fact there is no prize or other equivalent benefit or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Chapter V. Monitoring

Section 14. Monitoring Institutions

(1) The compliance with this Law in conformity with the competence thereof shall be monitored by the Consumer Rights Protection Centre, in the field of medicinal products – Health Inspectorate, in the field of veterinary medicinal products – the Food and Veterinary Service (hereinafter – Monitoring institution).

(2) The Monitoring institution is entitled to request that the State administrative institutions, which are responsible for State control and monitoring in relation to certain goods or services, examine the conformity of a specific product or service with the information utilised in the commercial practices or that they perform other activities that are necessary for the assessment of commercial practices.

Section 15. Monitoring Institution Rights

(1) The Monitoring institution, on the basis of a submission of a person, on the basis of the information provided by another institution or on its own initiative, shall evaluate the conformity of commercial practices with the requirements of the regulatory enactments regulating the protection of consumer rights and other regulatory enactments, as well as of this Law.

(2) The Monitoring institution, evaluating the conformity of commercial practices with the requirements of this Law, is entitled to request and to receive from the performer of commercial practices all information, documents and other evidence regarding the veracity of the utilised information, the conformity of the activity with the requirements of this Law, as well as to determine the time period for the submission of the documents and evidence necessary for the clarification of the case.

(3) If the performer of commercial practices does not provide the requested information in accordance with Paragraph two of this Section or if it is incomplete, the Monitoring institution is entitled to consider that the information utilised in the commercial practices is imprecise or false.

(4) The Monitoring institution, observing the character and nature of a commercial practice, as well as other aspects, is entitled to propose that the performer of commercial practices:

- 1) within a specified time period would ensure the conformity of commercial practices with the requirements of regulatory enactments; and
- 2) would undertake in writing to eliminate the determined breach within a specified time period.

(5) The rights referred to in Paragraph four of this Section shall not forbid the Monitoring institution to take the decisions referred to in Paragraph eight of this Section.

(6) If within the time period specified according to Paragraph four, Clause 1 of this Section, the conformity of commercial practices with the requirements of regulatory enactments is not ensured, the Monitoring institution shall take one or several of the decisions referred to in Paragraph eight of this Section.

(7) If, in accordance with Paragraph four, Clause 2 of this Section, the performer of commercial practices undertakes in writing to eliminate the breach within a specified time period, the Monitoring institution shall not take the decisions referred to in Paragraph eight of this Section. Upon signing the undertaking in writing, the performer of commercial practices has acknowledged his or her guilt in the determined breach. If the undertaking has not been fulfilled, the Monitoring institution shall be entitled to take one or several of the decisions

referred to in Paragraph eight of this Section and the performer of commercial practices shall be held liable in accordance with regulatory enactments.

(8) If the Monitoring institution acknowledges commercial practices as illegal, it shall be entitled to take one or several decisions with which:

1) the performer of commercial practices has to fulfil the duty to provide in a conforming manner additional information that is necessary in order to ensure the conformity of commercial practices with the requirements of this Law;

2) the performer of commercial practices has to fulfil the duty to terminate the unfair commercial practice;

3) the unfair commercial practice is prohibited, if it has not been commenced yet, but is expected;

4) the performer of commercial practices has the duty to publish a notice in the media conforming with the relevant commercial practices, in which the corrected information shall be specified by withdrawing the unfair commercial practices; or

5) the administrative sanctions are applied according to the procedures specified in the Law.

(9) The Monitoring institution is entitled to take the decisions referred to in Paragraph eight of this Section also if it has no evidence regarding the losses caused by the performer of commercial activities.

(10) The Monitoring institution shall not commence the evaluation of the conformity of commercial practices with the requirements of regulatory enactments or shall suspend the evaluation, if a decision regarding the termination of the investigation of the case has been taken or, if one of the following decisions regarding the prohibition of the specific unfair commercial practice breach has been already taken:

1) one of the decisions referred to in Paragraph eight of this Section; or

2) one of the decisions referred to in Section 15, Paragraph four of the Advertising Law.

(11) In order to reduce the negative consequences caused as a result of the non-observance of the prohibition of an unfair commercial practice, the Monitoring institution is entitled to place the information regarding the undertaking referred to in Section 15, Paragraph four, Clause 2 of this Law on its home page, but the decision – to place it partly or completely on its home page and to publish it in the newspaper *Latvijas Vēstnesis* [the official Gazette of the Government of the Republic of Latvia] (the expenses related to the publishing shall be covered by the performer of commercial practices).

Section 16. Appeal of a Decision of the Monitoring Institution

The decision of the Monitoring institution may be appealed to a court according to the procedures specified in regulatory enactments. The appeal of a decision shall not suspend the application thereof.

Section 17. Decision of the Monitoring Institution regarding Provisional Regulation

(1) If the Monitoring institution has grounds for considering that the prohibition of an unfair commercial activity has been breached and it may cause an immediate and significant harm to the economic interests of the specific consumer group, it is entitled to take a decision referred to in Section 15, Paragraph eight, Clause 2 or 3 of this Law as a provisional regulation.

(2) The decision regarding the provisional regulation shall be in force from the moment of the announcement thereof until the moment when it is revoked with a decision of the Monitoring

institution or is changed, or when the final decision of the Monitoring institution comes into force.

(3) The decision of the Monitoring institution regarding the provisional regulation may be appealed to an administrative district court within a period of 10 days from the day of the coming into force thereof. The appeal of the decision shall not suspend the application thereof.

(4) The court shall adjudicate by written procedure the application regarding the decision of the Monitoring institution regarding the provisional regulation within a period of 14 days.

(5) The decision by a court regarding the decision referred to in Paragraph four of this Section may not be appealed and shall come into force at the moment of taking thereof.

Informative Reference to European Union Directive

The Law contains legal norms arising from Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council.

This Law shall come into force on 1 January 2008.

This Law has been adopted by the *Saeima* on 22 November 2007.

President

V. Zatlers

Riga, 12 December 2007