CONSUMER PROTECTION
IN SWEDEN
LEGISLATION,
INSTITUTIONS
AND PRACTICE
SECOND EDITION

Ulf Bernitz and John Draper
CONSUMER PROTECTION IN SWEDEN

LEGISLATION, INSTITUTIONS AND PRACTICE

ULF BERNITZ

JOHN DRAPER

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PREFACE TO THE FIRST EDITION

The recent consumer legislation in Sweden has sparked international interest. It is the purpose of this book to present for those of other countries who share that interest a description of the main features of consumer law in Sweden today.

The first chapter consists of an overview of the development and main features of Swedish consumer protection legislation. The two following chapters give an in-depth treatment of the two pieces of legislation of greatest international interest, The Marketing Practices Act and the Terms of Contract Act. These are followed by Final Remarks and an Appendix containing the important statutes in English translation.

The book is a result of collaboration between Ulf Bernitz and John Draper. Ulf Bernitz is professor of private law, especially consumer and market law, at the Stockholm University School of Law. John Draper is an attorney in private practice in Santa Fe, New Mexico, USA, Fulbright-Hays grantee, and holder of the Diploma in Graduate Legal Studies "with distinction" from the University of Stockholm. This work was primarily written during the period when John Draper was enrolled in the Diploma Program in Graduate Legal Studies at the University of Stockholm School of Law. Most of the actual writing has been the work of John Draper, incorporating to some extent earlier writings of Ulf Bernitz, especially the first part of Chapter 1. The Final Remarks are primarily the work of Ulf Bernitz. We are jointly responsible for the book's final form and content.
John Draper's work has been supported by research grants from the Swedish Fulbright Commission and the Swedish Board for Consumer Policies, for which we are very grateful. The American-Scandinavian Foundation provided support at an earlier stage, which is also very much appreciated. A warm thanks also to the law firm of Montgomery & Andrews in Santa Fe, New Mexico for typing and correction of the manuscript.

The authors have discussed the major legal developments which took place before the autumn of 1980. It has also been possible to mention certain later developments. The authors intend to explore the possibility of publishing a printed book based on the present work.

Stockholm and Santa Fe, March 1981

Ulf Bernitz  
John Draper
Our book has been well received and has found its way to many libraries and specialists within the field throughout the world. Thus, the book has been able to fulfill its basic purpose to spread information about the Swedish system of consumer protection law.

For more than a year the book has been completely sold out. Unfortunately, it has not been possible for the authors to prepare a new edition in its proper sense, taking new cases and articles into regard. However, since 1981 there have, on the whole, only been minor changes in Swedish consumer law. For that reason, we have found it appropriate to reprint the text of the 1981 edition completed with a Supplement on new developments. In addition, the Appendix: Swedish Legislation in Translation has been revised and brought up to date as of February, 1986. The appendix now includes, among others, the new Competition Act of 1982 and the new Consumer Services Act of 1985. The new edition has been prepared primarily by Ulf Bernitz.

For readers understanding Swedish, Ulf Bernitz' new textbook Svensk marknadsratt (LiberForlag, Stockholm, 1983, 288 pp) should be a valuable complementary source. Since 1981, Ulf Bernitz has written the following articles in English on Swedish market and consumer law:

-VII-
Market and Consumer Law in An
Introduction to Swedish Law 231-256 (S
Stromholm ed., Norstedts forlag,
Stockholm 1981)

The Swedish Marketing Practices Act in
Law and the Weaker Party, An Anglo-
Swedish Comparative Study, Vol. 1., The
Swedish Experience 105-125 (Alan C Neal
ed., Anglo-Swedish Comparative Law Group,

Brand Differentiation Between Identical
Products, An Analysis from a Consumer Law
Viewpoint, 5 Journal of Consumer Policy
21-38 (1981)

Valuation of Legislative Attempts on
Unfair Terms in Consumer Contracts in
Sweden in Unfair Terms in Consumer
Tracts, Legal Treatment, Effective
Implementation and Final Impact on the
Consumer 201-222 (Th. Bourgoignie ed.,
Centre de Droit de la Consommation),
Cabay, Bruylant, Bruxelles 1983)

Swedish Intellectual Property and Market
Legislation, Collection of Statutory
Texts (Publications by the Institute for
Intellectual Property and Market Law at
the Stockholm University, No. 26 (U.
Bernitz ed., LiberForlag, Stockholm 1984,
184 pp.)

Guidelines Issued by the Consumer Board:
The Swedish Experience," 7 Journal of

In German Ulf Bernitz has published Zugaben und andere
kombinierte Angebote im nordischen, insbesondere schwedischen
Recht (on premium offers), in Gewerblicher Rechtsschutz und
Urheberrecht, Internationaler Teil 476-483 (GRUR Int. 1983).
Another publication which should be especially mentioned is Bernadette Demeulenaere, Sweden’s System to Resolve Consumer Disputes, Especially the Public Complaints Board and the Small Claims Procedure. (Publications by the Institute for Intellectual Property and Market Law at the Stockholm University, No 22), (LiberForlag, Stockholm 1983, 98 pp.).

Stockholm and Santa Fe, February, 1986

Ulf Bernitz John Draper
CHAPTER 1

THE DEVELOPMENT OF CONSUMER PROTECTION IN SWEDEN

I. BACKGROUND

The new marketing and consumer legislation is one of the pioneering legal developments of our times. This is true generally in Western countries which are based on the market economy system. As is well known, however, the development of law in this field began earlier in some countries than in others, and differences in political set-up, in economic conditions and in national legislative traditions have meant that the development has not taken the same course in all countries. Nevertheless it is probably no exaggeration to say that in Western Europe the Scandinavian countries, and in particular Sweden, have to some extent taken the lead in the movement towards expanded consumer legislation. The ideas and guiding principles behind Swedish consumer law may therefore be of some interest from a comparative point of view.

The background of the new consumer legislation is much the same in Sweden as in other countries. Its salient features are the increased purchasing power of consumers; the marked expansion in the supply of goods and services, accompanied by a diversification -- both real and artificial -- of products; the ex-
tensive advertising which skillfully exploits various methods of governing the preferences of consumers; the difficulties of consumers in formulating an overall view of the goods and services offered and in evaluating various alternatives in a market where the products tend to be increasingly complicated and diversified in materials and properties; the risks of hazardous products; the widespread use by sellers of unilaterally drafted contract terms which consumers are in reality unable to influence; and the very real difficulties that face consumers in asserting their rights.

If we probe more deeply, we find that the needs which have produced the demands for expanded consumer protection are connected above all with changes in the structure of the economy and in the forms of production and distribution -- namely, the development towards large-scale enterprises and mass selling supported by intensive marketing methods. The weakening of competition in price, performance and quality, which is undoubtedly taking place in industry and commerce as a result of the continuing concentration of enterprise, has compelled governments to adopt not only corrective legislation on prices and restraint of competition, but also corrective legislation providing for direct intervention to protect consumers in other respects.

Social considerations, too, play a part in what is happening. Nowadays, at least in the Nordic countries, it is considered essential to support certain citizens in their capacity as consumers. There exist large groups of consumers who,
owing to low incomes and insufficient education and knowledge of the market, are less well equipped than the average citizen for their role as consumers and are therefore in special need of protection. There is a good deal of truth in the saying that "the poor pay more." They are, for example, often dependent on expensive installment credit, they often lack the means to take advantage of favorable purchase opportunities, they often have less knowledge about the goods offered on the market, and they often are more susceptible to deceptive or suggestive advertising arguments. In addition to this, they often have little or no knowledge of their rights.

Consumer protection is an area of great fascination from a legal point of view. To a large extent it is virgin soil, inasmuch as uncertainty still prevails as to the basic concepts and principles. Thus, the term "consumer" is still developing internationally, and there is no agreement as to the scope of the subject of consumer protection. Legal scholars are being compelled to develop new principles and concepts and to view from new perspectives many contract problems which have long been looked upon as more or less traditional. Frequently, the most suitable solutions are to be found in combinations of measures which tend to cut across the traditional divisions of private law, penal law and public law. It is therefore not surprising that the subject is attracting rapidly increasing attention in Nordic legal writing. It seems likely that within a few years
market and consumer law will develop into an area of jurisprudence just as popular as, for example, labor law. It is our intention in this initial chapter to give an introduction to the background and recent development of Swedish consumer policy. We will deal first with the development of the broader policy determinations, the scope of the consumer concept, the primary tasks of consumer protection and who is to shoulder the primary responsibility of providing that protection. The various means for effecting that protection will then be considered, followed by a review of legislative progress to date. The stage is then set for a discussion of the main types of legislation, the features of the major consumer protection statutes and the institutions and procedures established to implement these statutes. The two chapters which follow concentrate on the substance and operation of the two statutes central to the Swedish scheme of consumer protection, the Marketing Practices Act and the Contract Terms Act.

II. THE DEVELOPMENT IN PERSPECTIVE

Legislation of a kind that in present-day terminology would be called "consumer protection" is no novelty in Sweden. As early as the second decade of this century mandatory contract rules were enacted which were aimed at safeguarding the buyer's interest in installment transactions. These rules were a result
of Nordic legislative cooperation, and the development as a whole was closely associated with the German legislation in this area in the 1890's. Later, mandatory contract rules for the protection of the weaker party were introduced in many other areas, such as landlord-tenant law. Consumer protection legislation regulating medicines, food and poisons has also been in existence for many years. Nevertheless, it is true to say that the conscious endeavor on the part of the Nordic legislative bodies to legislate specifically for consumer protection is a very recent phenomenon, which in the main dates only from the end of the 1960's and the beginning of the 1970's. Earlier, during the 1950's and the greater part of the 1960's, the main interest was directed, in the Nordic region as in other parts of the world, to the type of consumer protection which attacks the problem indirectly through legislation promoting competition and through consumer information, including comparative testing of goods and services.

It is marketing legislation which has played a particularly significant role in the recent development. This subject has attracted considerable attention as an innovation in legal policy, and the radically new concepts adopted in this area have been of importance for consumer protection as a whole. The starting point was the special legislation against unfair competition which all Nordic countries had had for a long time, modelled on the German statute Gesetz gegen den unlauteren
Wettbewerb (UWG), which was adopted in 1909 and is still in force. The Nordic laws had contained rules against misleading advertising and certain combined offers, but they had been concerned mainly with protecting the interests of competing business enterprises; in practice they had essentially formed a framework within which the organizations of the business community could undertake the necessary reform measures themselves. By the end of the 1960's, legislative committees in Denmark, Finland, Norway and Sweden had prepared similar proposals for statutes against unfair competition which represented a further development on the model of the earlier legislation.

It was during the late 1960's, however, that Sweden decided to undertake a radical revision of this draft legislation. Those parts of the draft which concerned marketing were separated out in order to form a special Marketing Practices Act. The main aim of this statute, which was enacted in 1970, is to protect consumers against improper advertising and other improper marketing measures. In order to ensure an efficient administration of the new Act, a special post of commissioner for consumer affairs was created; this official, the Consumer Ombudsman (Konsumentombudsmannen = KO), was to have his own staff. The Market Court was established as a judicial body for trying cases under the Act, which cases were to be instituted as a rule by the Consumer Ombudsman. In addition, the Market Court is a special court of first and last instance, where professional judges and laymen
representing business and consumer interests sit together as judges. Shortly afterwards, the Marketing Practices Act was complemented by another statute, likewise to be implemented by the Consumer Ombudsman and the Market Court, the Act Prohibiting Unreasonable Contract Terms (the Contract Terms Act). This statute makes it possible to issue injunctions directly against the use of improper contract terms by firms dealing with consumers and therefore represents an interesting legal innovation.5

When the Marketing Practices Act was enacted in Sweden in 1970, the other Nordic countries were not ready to follow suit. In Denmark, Finland and Norway there were many who regarded Sweden's action as a defection from the work of Nordic legislative cooperation.6 Indeed, it cannot be denied that the adoption of the Marketing Practices Act marked the beginning of the scaling down during the 1970's of the earlier ambitions of Nordic legislative cooperation to achieve statutes which would have broadly identical texts in all four countries. On the other hand, events have shown that it may also be of value for one of the Nordic countries to take a step before the others on a controversial legislative question and, by embarking on a pioneering course, act as a testing ground. This has been the case in the field of marketing legislation. Marketing practices legislation largely similar to the Swedish version has now been enacted in Norway (1972), Denmark (1974) and Finland (1978).7
Another main feature of the movement to improve consumer protection has been the introduction of mandatory private contract rules with the aim of improving the legal position of the consumer as purchaser of goods, services and credit. In 1973 the Swedish Riksdag (parliament) adopted a special Consumer Sales Act, which contains mandatory rules giving the consumer as a purchaser certain basic rights of which he cannot be deprived by contract. The Act is intended as a complement to the general, wholly non-mandatory Sale of Goods Act of 1905. The principal aim of the Consumer Sales Act is to regulate the rights of the individual consumer in cases involving defective goods and goods not delivered at the time agreed. It is particularly directed against certain types of exemption clauses which earlier were quite common, and in this connection it provides rules on the content and legal effect of warranties. It should also be noted that the Consumer Sales Act was linked with the Marketing Practices Act through rules which prescribe that sellers, and in certain cases also manufacturers, shall be liable to the consumer with respect to deceptive statements, concerning the nature or use of a product, which are made on the packaging or in advertising and which have influenced the consumer in his purchase. In such a case the product is considered to be defective.

Side by side with the Consumer Sales Act is a separate Door-to-Door Sales Act of 1970, the main provision of which is that the consumer shall have a week for reconsideration in the case of
goods bought by him on credit elsewhere than at the seller's normal place of business. In 1976, a new general provision empowering courts to modify or set aside unreasonable contract terms in individual cases was enacted as Section 36 of the Contract Act of 1915. This provision is intended particularly for situations where one of the parties, often a consumer, is in an inferior bargaining position with respect to the other party. The most recent legislation is the Consumer Credit Act, enacted in the fall of 1977 and effective in July 1979. This act establishes rules concerning information which creditors must give consumers, such as the effective interest rate of loans. A minimum down payment of 20 percent of the cash price is prescribed in most cases, and repossession of goods is restricted.

The legislation on consumer sales does not cover services. Legislative commissions in Sweden and Norway have been coordinating the drafting of general statutes on consumer services, the contents of which will be largely mandatory. This statute is in part a parallel measure to the Consumer Sales Act but aims at a more far-reaching statutory regulation. The Act will apply primarily to consumer contracts for repairs and other work on goods, as well as work on real property other than the erection of residential housing. Special legislation on group travel and several other areas within the service sector can be expected to follow. Special mandatory legislation on the building and sale of small
residential houses is also being prepared. In other areas, too, preparatory work is in progress. The Insurance Contracts Act has been scrutinized by a special committee charged with taking into account the protection of consumers in insurance transactions. As a result, the Government submitted a Consumer Insurance Act to the Swedish Riksdag in 1979. Legislation on strict products liability is also being considered.

Although the legislative work has so far gone furthest in Sweden, with Norway close behind, it is clear from a comparative point of view that a Nordic model for consumer protection legislation is in the process of evolving. The supervision of marketing and contract terms through a consumer ombudsman; mandatory private-law legislation on the marketing and sale of goods, services and credit to consumers; as well as the resolution of the bulk of private disputes between businessmen and consumers by relatively informal tribunals of one kind or another -- all these constitute basic features of this common model.

III. THE CONSUMER CONCEPT

Like the term marketing, the term consumer is by origin an economic concept. Until recently it was foreign to legal usage and conceptualization. Indeed, there was earlier a conscious effort to give Nordic private-law legislation, so far as possible, a general scope. Thus, the fundamental Sale of Goods Act
of 1905, which is common to Denmark, Norway and Sweden, applies to all purchases, both commercial (between merchants) and non-commercial. In this respect the new consumer legislation is based on a different approach, namely, that there is a need for special legislation for the protection of consumers, and only consumers. It is therefore necessary to give the term consumer a fixed legal meaning.

From an economic point of view, companies, too, are consumers insofar as their purchasing activities are concerned; but, based on the protective aim of consumer legislation, it has been accepted in Sweden that the legal consumer concept must be confined to private persons who are acquiring goods, services or anything else of value mainly for their own use and not for resale or use in business. In other words, it is a matter of what in German is usually called the Endverbraucher (ultimate consumer). A consumer concept so delimited is nowadays generally accepted internationally; to some extent it can be traced back to the American Uniform Commercial Code (UCC) which defines consumer goods as goods "used or bought for use primarily for personal, family, or household purposes" (§9-109). In individual cases, however, variations are to be found between the definitions used, and development of the term consumer in Swedish law is discernible during the period since the initiation of the recent wave of consumer legislation. Under the Swedish Marketing Practices Act, enacted at the beginning of that period in 1970,
the term was still rather fuzzy and included anyone who acquired goods or services for his own use. It was not limited to private persons and seemed to include businesses also.\textsuperscript{13}

The most sophisticated definition of the term at present is to be found in the Consumer Sales Act of 1973.\textsuperscript{14} This act is applicable "where a consumer buys from a merchant goods which are intended mainly for private use and which are sold in the course of the merchant's professional activities." It makes sense to apply this definition also to consumer services where they are intended for private purposes instead of private use. Consumer purchase is thus a narrower concept than non-commercial purchase and relates only to sales from a merchant to a consumer. Outside this concept are all cases where the purchaser is a businessman, a legal person or a person who mainly intends to use the article in his professional activities. Transactions between private persons also fall outside the definition. Because of the circumstances prevailing \textit{inter alia} in the trade in secondhand cars, the Consumer Sales Act and the Contract Terms Act have, however, been made applicable where a consumer's purchase from a person other than a merchant is mediated by a merchant as a representative of the seller.

A feature that is also of fundamental importance for the scope of consumer protection legislation is the broad and unitary \textit{merchant concept} which has been developed in Swedish law. A merchant is any person, physical or legal, who carries on, by way
of profession, an activity of an economic nature, irrespective of whether the activity is directed towards profit or not. As is shown, above all, by the practice of the Market Court, the merchant concept is a very broad one. It is not necessary that the activity be carried on regularly or be the main occupation of the person concerned. Part-time and off-hours work may qualify. It is an important principle that national and local governmental bodies which carry on business activities are also regarded as merchants and thus come within the scope of the legislation. On the other hand, if in a certain case a merchant acts as a private person, and thus clearly outside the framework of his professional activity, no merchant-consumer relation exists and the Consumer Sales Act and other consumer legislation will then as a rule not be applicable. We will use the terms merchant, businessman, and company interchangeably.

Although a fairly clear consumer concept has thus been developed, doubtful cases may nevertheless arise. The concept laid down in the Consumer Sales Act and in the explanatory statements introducing the legislative history can also prove to be somewhat narrow in certain contexts -- a view which was expressed from various quarters when the proposed legislation was circulated for comment. In practice it may prove difficult for a seller to decide, within the framework of his ordinary rapid sales routines, whether a purchaser is a consumer or not -- a matter which ac-
cording to the Swedish approach depends on the purchaser's intention in buying the goods. Neither Sweden nor the other Nordic countries, however, have seen fit to adopt the English method of limiting the scope of the legislation on the basis of commodity groups, i.e., restricting its application to what can be regarded as typical consumer goods.\(^\text{15}\) Such a limitation would appear to be an unnecessary curtailment of the scope of consumer protection.

In reality, the sale to persons other than consumers of what appear to be typical consumer goods normally takes place on standard conditions which fulfill the requirements of consumer legislation. Such an arrangement is also in harmony with commercial realities. In other words, in practice a professional photographer may buy an ordinary camera on the same conditions as an amateur photographer, and a carpenter may buy an ordinary electric drill on the same terms as a "do-it-yourself" consumer. Thus, the consumer legislation has reflex effects for small businessmen.

IV. THE TASKS OF CONSUMER PROTECTION

As already indicated, even as recently as the mid-1960's the main emphasis was still on supplying consumers directly with information on the quality of goods and services and on prices. However, the consumer information efforts then carried on seem
never to have had the effect on consumers and producers which in some quarters had been expected. Since the mid-1960's, on the other hand, there has been a reorientation towards a more active social consumer policy with broader aims and a broader structure. In Sweden, in connection with the establishment of the Swedish National Board for Consumer Policies in 1972, the Government gave its consideration to guidelines for national consumer policy and in so doing clarified the tasks of consumer protection in a number of respects.16

One of the main questions is what areas should be included in the concepts of consumer policy and consumer protection. Here, we consider consumer policy to be the primarily active, forward-directed policy in the area, whereas the results achieved or intended constitute consumer protection. It is a problem, when trying to define the scope of consumer policy, that the greater part of the community's activity and lawmaking is ultimately aimed at providing the individual citizens, the consumers, with protection and support in various respects. As examples from different fields, we may mention housing, environmental protection, public health, social care and even fire-protection. Some have advocated that consumer policy be given a very wide scope, embracing the total economic situation of individual households. But if the content of the consumer policy concept is stretched too far, so as to comprise, for example, environmental protec-
tion, there is a risk that it will be so weakened as to lose its cohesive function.

The concept of consumer protection should be restricted to protection for private citizens, collectively and individually, whenever they appear on the demand side of the market as buyers or users of goods or services. Given this framework, it is natural that consumer protection should pay special attention to the situation of individual households. A delimitation in accordance with these principles is indeed made in the above-mentioned Swedish guidelines for consumer policy; this, however, as the Government pointed out, does not mean that consumer interests cannot be taken into account in connection with other community issues. Indeed, they should be, for it is quite often that consumer interests come into conflict with other citizen interests. For example, stricter environmental regulation of industry may raise consumer prices, and the restriction of store hours in the interest of the convenience of employees will work to the disadvantage of consumers. In the guidelines it is particularly emphasized that consumer policy should concern itself with various problems associated with the consumer's purchase and use of goods and services that are offered on the private market or on markets which work along similar lines. The distinction between the provision of public services by official agencies, such as through the state educational system, on the one hand, and the provision of goods and services in the market by private, co-
operative or community-owned enterprises, on the other hand, is fundamental for the delimitation of consumer protection legislation. This distinction finds legal expression in the formulation of the merchant concept discussed above.

Within the framework just indicated, consumer protection covers a broad spectrum of goods and services -- everyday goods and consumer capital goods such as domestic appliances, cars and boats, repair and maintenance work, private houses and vacation cottages, travel and insurance -- as well as broader issues such as planning, alternatives and costs for housing, the household and the use of leisure time. If we look at the concerns which are usually part of consumer protection, its scope in Sweden and the other Nordic countries is seen to be close to what has been expressed in the consumer protection charter of the Council of Europe18 and in the consumer policy program adopted by the European Communities in April 1975.19 The Nordic countries, however, have, on the whole, stopped short of proclaiming consumer protective aims to be fundamental rights as has been done in the two European documents referred to. The European approach appears to be somewhat bombastic and to depart somewhat from legal realities.

As central subject areas for consumer protection, mention may be made in particular, apart from the general goal of promoting the supply of satisfactory goods and services through investigatory and informational activities, of the following:
- protection against risks of physical injury to persons or property and against useless products,
- protection against improper marketing measures and inadequate information,
- protection against one-sided contract terms and risks of economic damage, and
- provision of effective and inexpensive dispute resolution procedures for the consumer.

In the practical consumer protection work in these large subject areas, one can distinguish some central priorities, namely, the importance of protection against substantial risks of physical or economic injury and protection for consumer subgroups which are especially weak owing to their inferior economic status, inadequate education, poor health, age or other factors.

Another basic question is the extent to which the ambitions of Swedish consumer policy include altering the economic system. Particularly since the end of the 1960's, critics have emphasized the powerlessness of consumers in today's economic structure and have attacked the manipulation to which consumers are exposed through the product development and marketing techniques of the business community. In its extreme form, this criticism is directed against the market economy system as such. The consumer legislation which is in force or under preparation in Sweden and other Nordic countries and the consumer protection measures which have been taken in other respects in those areas
are not, however, based on such far-reaching ambitions. On the contrary, when, for example, the Swedish Marketing Practices Act was enacted, special care was devoted to ensuring that the Act and its implementation would harmonize with the legislation on competition in general. This was done, for example, by making the Market Court an organ for trying cases on restrictive trade practices as well as improper marketing. On specific questions, such as combined offers in marketing, it may be necessary to weigh the general interest of promoting competition against the more concrete interest in protecting consumers. In the Swedish guidelines for consumer policy referred to above, it is expressly stated that this policy is to be carried on in a market economy system, where decisions concerning products, prices and consumer choice are made by a large number of individuals and under widely varying conditions. Indeed, legislation on prices and restraint of competition has the function of combating excessive price rises and promoting competition of a kind favorable to consumers. As has been explained in another context, there lies behind the legislation on restraint of competition not only a general socioeconomic goal but also a direct consumer protection goal. Consumer policy and competition policy are not opposing forces; rather, these two aspects of social policy actually support each other.

Nevertheless, there are a number of features in the present-day market economy which put the consumer at a
disadvantage. In line with this, the basic task of consumer protection may be said to be that of supporting consumers and strengthening their position in the market both as a group and as individuals. This task is accomplished, above all, through consumer protection legislation, by setting up consumer bodies which act as spokesmen for the consumer interest in relation to producers and distributors, and by providing information to consumers. The greater part of the task consists of rectifying undesirable methods in connection with the marketing and selling of goods and services to consumers. Every effort should, however, be made to ensure that the legislation is made neutral with respect to the method of competition. Here it may be pointed out that it is important that consumer protection legislation should try to prevent less reputable types of businessmen from snatching quick profits or other competitive advantages by resorting to unscrupulous business methods which are not employed by respectable enterprises, such as obviously incorrect statements about products in advertising, use of palpably unreasonable contract terms or disinclination to entertain justified complaints. The removal of such undesirable phenomena will lead to an increased degree of equality in the competitive conditions obtaining among enterprises. Thus, consumer protection exercises a supervisory and corrective function within the framework of the market economy system.
V. THE RESPONSIBILITY FOR CONSUMER PROTECTION

A matter of fundamental importance for one's conception of the tasks of consumer protection is the question, Who bears the main responsibility? If we view the issue from an international perspective, it is characteristic of the development in Sweden and the other Nordic countries that there has been a marked tendency to regard consumer protection as being mainly a task for the state. Thus, behind the marketing practices legislation there is the principle that the government, to quote the Swedish Minister of Justice, should have the primary responsibility for seeing that a good ethical standard is observed in advertising and marketing.24 As a result of this legislation, a governmental system implemented primarily by the Consumer Ombudsman and the Consumer Board has largely replaced the earlier system whereby the business community itself exercised a disciplinary function in the advertising field.25 The weakness of this earlier system was, as is often the case with self-regulation by industry, primarily the difficulty of ensuring that the voluntary commitments would be respected by less reputable businessmen. The assumption by the public sector of the main responsibility for consumer protection has been further evidenced in other recent legislation. One may point, for example, to a decision taken by the Swedish Riksdag in 1975 that the municipalities shall be responsible for local consumer protection activities, directed towards information, counselling and reporting.26
Another feature which is characteristic of Scandinavian conditions is the modest role played by independent interest organizations especially concerned with watching over the interests of citizens as consumers. In other countries one can find examples of relatively important consumer organizations, such as the Consumers Union in the USA and the Consumers' Association in Britain. There is also an international consumer organization, the IOCU (International Organization of Consumers Unions), which arranges conferences and issues publications.²⁷ An example of another type of pressure group lacking in Scandinavia is the organization built up by the American lawyer Ralph Nader -- who first became known for his devastating criticism of the safety of American cars²⁸ -- which operates on a voluntary basis within a broad spectrum of legal questions concerning consumer protection, environmental protection and the individual's need for legal protection.

As for the consumer organizations which do exist in Sweden and other Nordic countries, the bodies which should be mentioned first are the consumer cooperative movement and the big trade union organizations, both popular movements with activities going far beyond consumer protection. It is primarily people attached to these organizations who represent the consumer side on boards, committees and other bodies which seek to give special representation to consumers. The consumer cooperative movement, however, which is so strong in the Nordic countries, although it has per-
formed salutary works in the past by breaking up producer monopolies in consumer goods, tends to end up in an intermediate position, inasmuch as it carries on extensive retailing activities in competition with privately owned trade and, moreover, has a considerable production of certain consumer goods.

Against this background, it is obvious that the Nordic countries do not provide fertile soil for the development of a private, all-embracing consumer organization independent of other ideological and economic interests. On the other hand, it should, generally speaking, be possible for organizations which represent citizens specifically in their capacities as, for instance, home owners, motorists, boat owners, cyclists or open-air enthusiasts, to play an active part as consumer organizations within their own special fields to a far greater extent than they have in the past. One area in which consumers have successfully banded together to assert their interests is the landlord-tenant area. Following the example of the labor unions, tenant organizations have succeeded in establishing a collective bargaining system. Disputes are now ultimately settled by a court not unlike the Swedish Labor Court and the Market Court.29
VI. LEGISLATION AND OTHER MEANS OF CONSUMER PROTECTION

For a lawyer it is natural to view consumer protection mainly from the point of view of legislation and its implementation. It should be emphasized, however, that consumer protection must be seen in a wider perspective. Consumers can be given valuable support in many other ways than through the making of legal rules, such as through testing, advisory activities and direct contacts between consumer organizations and producers. Nevertheless, the part played by legislation appears to be growing increasingly important, as is shown by the developments of the 1970's in Sweden.

As already indicated, the governmental or semi-governmental consumer bodies were, up to the end of the 1960's, mainly concerned with testing, goods description and other forms of informational and advisory activities addressed directly to consumers. The enactment in Sweden in 1970-71 of the Marketing Practices Act and the Contract Terms Act, as well as the creation of the institution of the Consumer Ombudsman for the implementation of this legislation, constituted the first significant step towards a more active consumer policy. A further step, however, was taken in 1972, when existing bodies for testing, goods description and advisory activities, were merged into a single consumer office, a purely governmental body, the National Swedish Board for Consumer Policies. At the same time, the guidelines for consumer policy
and its implementation referred to earlier were laid down. It is noteworthy that the Board for Consumer Policies was established as an agency entirely independent from the Consumer Ombudsman. Whereas the Consumer Ombudsman was concerned essentially with enforcement, the Board was in the main not an organ for enforcement. This did not, however, mean that the tasks of the Consumer Board were confined to investigatory and informational activities and the like. The guidelines for the activities of the Board, as an important innovation, required that it should actively approach the producer and distributor elements of the market. According to authoritative governmental directives, the Board was to "influence" producers and distributors to adapt their activities to consumers' needs within the framework of informal voluntary cooperation.31 These directives were formulated in such a manner as to indicate a threat of future legislative measures. Such efforts to put pressure on the producers have indeed occurred to a fairly considerable extent, and as a rule have been received in a compliant spirit by the business community.

Toward the end of 1974, however, the Consumer Board presented to the Government a proposal for the introduction of a product safety act which would make the Board an enforcement body and give it necessary means of compulsion with regard to products which are hazardous or unusable for their main purpose.32 Shortly before this, the special legislative commission investigating advertising had put forward a proposal that the Consumer
Board should be charged with applying new legislation on information in advertising and other kinds of marketing, whereby a businessman could be compelled to give essential consumer information on the properties, use and other aspects of goods and services offered by him.33 This proposal was of great interest as a matter of principle, above all because it departed from the traditional concept that there existed a built-in opposition between advertising and consumer information and sought to establish positive requirements concerning the contents of advertising with a view to making it more informative.

In the autumn of 1975 the Government introduced new legislation in response to the above-mentioned proposals. The uncertainties which had existed in the division of jurisdiction between the Consumer Board and the Consumer Ombudsman, as well as the differing opinions of these authorities concerning the most suitable way of formulating new legislation in the area, led to a decision to merge the two authorities as of July 1, 1976 into a single agency in which the administrator (Director General) of the new Consumer Board would at the same time be Consumer Ombudsman. The new substantive rules on product safety and on the duty to give information in marketing were formulated into provisions within the framework of an extended Marketing Practices Act.34

Thus, the Swedish development shows how legislation implemented by government agencies with access to sanctions against refractory businessmen has increasingly become the primary instrument for consumer protection.
VII. LEGISLATION

A. The Major Types of Consumer Legislation

It may be of some interest to point to the characteristic features of this legislation. From a systematic point of view one can clearly distinguish three main types of consumer law, namely, market law, private law and procedural law.

Market law consists of those rules which regulate the carrying on of business activities and the actions of enterprises in the marketplace.35 The rules are of a prohibitory or injunctive type with the purpose of giving directives for the conduct of business enterprises. The basic market-law statutes are the Restrictive Trade Practices Act (Restraint of Trade Act), the Marketing Practices Act and the Contract Terms Act. National price control legislation also falls into this category. Side by side with the general market-law statutes just mentioned, which apply to the market as a whole, there are a number of special market-law statutes directed towards consumer protection, such as the Food Act.

Private-law legislation consists of such purely private contract rules as apply directly to individual transactions in the market, such as sales between businessmen and individual consumers. Examples of private-law statutes are the Consumer Sales Act, the Door-to-Door Sales Act and the forthcoming Consumer Services Act. These statutes are for the most part mandatory in
favor of the consumer. Another technique is represented by the generally worded provision (general clause) which has been enacted as Section 36 of the basic Contracts Act of 1915 and which opens up the possibility of adjusting contract terms which are unreasonable. The private-law consumer protection legislation, directly affecting the rights and duties of individuals, is implemented by the ordinary courts.

The relationship between market-law legislation and private-law legislation can be described by saying that the latter regulates individual transactions which are undertaken within the general framework of rules concerning freedom of contract and competition which are set by the former. There is a great deal of interplay between the two types of rules. For example, the Consumer Ombudsman can, with the aid of the Marketing Practices Act and the Contract Terms Act ensure that companies are observing the Door-to-Door Sales Act. The private-law responsibility for advertising imposed by the Consumer Sales Act is closely associated with the principles of the Marketing Practices Act, and the standards of evaluation which are the foundation for the Contract Terms Act derive from the rules of private law. The recently enacted Consumer Credit Act, which is essentially private-law legislation, embraces certain market-law rules, such as those concerning information about the cost of credit. The forthcoming Consumer Insurance Act has a similar character.
The procedural law consumer protection legislation does not yet have as clear a profile. To this category belongs legisla-
tion intended to make it easier on the procedural plane for con-
sumers to assert their rights. It includes the Act on Simplified
Judicial Procedure, a statute of 1974 on procedure in cases con-
cerning disputes involving small claims (the Small Claims Act),
as well as the Legal Aid Act of 1972. Neither of these, however,
is confined to the consumer area. On the other hand, a special
connection exists inasmuch as the Act on Simplified Procedure is
applicable, even where the value at issue exceeds the normal
limit, if the dispute has previously been brought before the
Public Complaints Board.

The Public Complaints Board examines disputes between con-
sumers and businessmen concerning goods and services. When the
Complaints Board is considering a dispute, the chair is taken by
a judge and the rest of the panel consists of equal numbers of
persons acting as general representatives of business and con-
sumer interests. Its decisions have the character of recom-
mendations, but the Act on Simplified Procedure opens up a way
for consumers to secure an enforceable court judgment on the
basis of such decisions. The form of activities carried on by
the Complaints Board has had, like its legal status, a pro-
visional look, which in the long run scarcely seemed consistent
with the extent and importance of its activities (8,000 cases in
1980), and the Board has now been made a permanent institution.36
At the same time, the number of consumer cases tried in the courts is fairly small. The courts would in many situations appear to offer advantages over the Public Complaints Board, if one takes into account such factors as local connections, oral procedure and enforceability. The advantage of the Complaints Board, on the other hand, is its access to technical expertise, which is especially helpful in disputes where it is necessary to assess the quality of a product or a service.

The fact that so few consumer cases are heard in the courts is striking. Cases where the consumer is the original plaintiff are particularly rare. Thus, in Sweden it is still almost impossible to point to any important case law from the regular courts with regard to the Door-to-Door Sales Act or the Consumer Sales Act. The whole system of consumer-protection legislation based on private law which has already been enacted or is being prepared runs the risk of being stymied unless it is developed further through judicial practice.

It is a disadvantage that Swedish judicial procedure is marked by rigidity when it comes to the handling of cases where many private persons wish to put forward claims against the same respondent, on the basis of similar circumstances. Sweden lacks a system for collective litigation which could be compared to the American class action. One possibility is to give the Consumer Ombudsman parens patriae powers to sue on behalf of consumers in civil cases involving important principles.37
B. Market Law

The Marketing Practices Act and the Contract Terms Act are discussed fully in the following chapters, so we will confine our attention here to the remaining major market-law legislation, the Restrictive Trade Practices Act.38 As indicated earlier, the ultimate purpose of antitrust legislation is to benefit the consumer, primarily in the form of lower prices.

Enacted in 1953, the Restrictive Trade Practices Act represents the current phase of an evolutionary process which began in the first part of this century, by which control of restrictive trade practices and monopolization has been gradually strengthened. The thrust of the Act is directed at restrictive trade practices which have "harmful effects." "Harmful effects" are defined to be those effects caused by restraints on competition which, contrary to the public interest, improperly influence pricing, hamper commerce or obstruct or impede the trade of others (§5). In determining the public interest, special importance is attached to consumer interests.

The enforcement of the Act is laid in the hands of the Antitrust Ombudsman, or NO (Näringsfrihetsombudsmannen), as he is called. Knowledge of restrictive trade practices comes to him primarily by way of complaints from members of the business community or reports from the National Price and Cartel Office, SPK (Statens Pris- och kartellnämnd). The SPK maintains a cartel register and conducts investigations of market conditions and
possible restraints of competition, normally at the request of the NO. The SPK also has monitoring and decisionmaking responsibilities under the national price control legislation.39

The Antitrust Ombudsman is the counterpart of the Consumer Ombudsman in the antitrust field. Once he has identified illegal restraints of competition, he attempts to eliminate them through negotiations with the companies involved. In the few cases in which this approach proves unsuccessful, he may bring the recalcitrant company before the Market Court where, like the KO, he acts as prosecutor.

The primary question for the Court is whether a harmful restraint of trade exists. This issue is tried before the Court by the NO and the lawyers for the company involved. If the Court decides that such a restraint does exist, it initiates negotiations, through its chairman, to eliminate the restraint. In the unlikely event that these negotiations are not successful, the matter may be tendered to the Government for appropriate action. Otherwise, the Court, including its predecessor,40 until relatively recently has had no real sanction under the Restrictive Trade Practices Act.

In almost every case, however, these negotiations have successfully eliminated the restraints of trade in question. This is probably due to the moral authority of the NO and the Market Court, public opinion and the desire of the business community to avoid stricter legislation. The one case in which
negotiations did fail, involving a refusal to sell, led shortly to the enactment of a new provision which empowered the Market Court, in cases of refusal to sell and price discrimination, to issue an injunction against the company involved.

There are two per se violations of the Restrictive Trade Practices Act, to which criminal sanctions apply. These are resale price maintenance (§2) and collusive bidding (§3). If the NO discovers violations of these provisions, he reports them to the public prosecutors for prosecution in the courts of general jurisdiction.

The reform of the Restrictive Trade Practices Act which is in progress will likely lead Sweden away from its unique negotiation approach toward greater use of coercive sanctions. It is also likely that some type of merger control, which is lacking at present, will be adopted.41

C. Private Law
1. The Consumer Sales Act

The most important private-law consumer protection legislation to be enacted to date is the Consumer Sales Act which became effective at the beginning of 1974.42 It applies only to the sale of goods to consumers. This includes the sale of both new and used goods. It does not include consumer services, real estate or leased goods. The seller must be a merchant, as previously defined, except that the Act may also be enforced against
private persons who are not businessmen where they are sellers who have acted through a professional agent or broker. This latter situation will arise in the sale of used goods, and is quite common, for instance, in the sale of used cars.

The Consumer Sales Act is directed at exemption clauses that have been employed frequently by businesses in consumer transactions. Its provisions are mandatory, and the protection thereby afforded the consumer cannot be diminished by agreement of the parties. It was enacted against the backdrop of the Sale of Goods Act of 1905 and the flora of standard contract terms which had grown up and which had abrogated in many respects the consumer's rights under the non-mandatory provisions of the Sale of Goods Act. In most instances, the provisions of the newer act give the buyer less than he continues to have under the prior act, but they constitute fundamental standards and remedies upon which the consumer can always rely.

The main thrust of the Consumer Sales Act is to give the consumer self-help remedies with which he can force the seller to perform his obligations. The self-help remedies consist of withholding payment and cancellation of the contract. The buyer can withhold payment if the goods are not delivered as agreed. He can also do this if the goods are defective, with the exception that he may only withhold twice the cost of repairing the defect if the defect is obviously of little significance to him.

The consumer's other self-help remedy is cancellation (rescission) of the contract, but the conditions under which it
may be invoked are more complex. For the first time in Swedish contract legislation, the Act recognizes the practice whereby the seller, manufacturer or other (e.g., the importer) takes it upon himself to repair defects. With respect to the buyer's right to cancel, this practice is treated differently from the one in which there is no undertaking to repair. Where there is an undertaking to repair (§4) the seller is allowed a reasonable time, after being notified by the buyer, to either repair the product or replace it with a nondefective one. If the seller has not undertaken to repair defects (§5), the seller still has the opportunity, upon being notified of the defect by the buyer, to repair or replace the defective product, but he must do so immediately and without cost or significant inconvenience to the buyer.

If the seller does not perform as required in either of these situations, the buyer may then exercise his right to cancel the purchase. In both situations, in order to cancel, the defect must not be insignificant to the consumer. Also, there is an exception which applies to both situations, namely, where all of the following circumstances exist: (1) the contract limits the buyer's right to cancel; (2) serious damage would be suffered by the seller in the event of cancellation; (3) the seller offers the buyer reasonable compensation for the defect; and (4) it is not obvious that the product, despite the defect, cannot be used for the purpose intended. Under these circumstances, the term limiting the buyer's right to cancel is valid.

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The foregoing provisions are especially rich in terms which are open to interpretation, such as "a reasonable time," "reasonable compensation" and "serious damage." The lawmakers expressly relied on the Consumer Ombudsman and the Market Court to set rules of thumb for the interpretation of these and other flexible concepts under the Act.43

One important innovation in the statute is the creation of rights for the consumer vis-a-vis the manufacturer or importer of the goods who makes a guarantee in the form of a commitment to repair. This has already been alluded to in connection with the duty to repair. The Act also provides for liability for damages on the part of both the seller and the manufacturer who make a commitment to repair. Although these provisions will not be taken up in detail here, it is interesting to note that, because the liability of manufacturers (which includes consequential damages) was greater than that of sellers (which is limited to out-of-pocket expenses), there has resulted a quick and rather general switch from manufacturer guarantees to retailer guarantees. The Act does not provide for compensation for personal injury or damage to other property caused by a product (§19). The prime reason for this was the anticipated legislation on products liability.

The Act, for the most part, does not set minimum standards for quality. The general philosophy of the lawmakers was that seller and buyer should retain the freedom to set the quality of
the product in each transaction. Abuse of this freedom by the
seller is dealt with by means of the Contract Terms Act. Con-
sequently, the Act contains no general definition of what a de-
fect is. However, the lawmakers saw fit to single out certain
instances, described below, in which the product should always be
considered defective.

The Act confirms and clarifies the principle that the seller
is responsible for certain misleading representations and
descriptions of the product. (§7). This includes information
given in all types of advertisements, brochures and operating
instructions if they become part of the basis of the bargain.
The Act defines a product to be defective within the meaning of
this act and the general Sale of Goods Act if the seller, at the
time of the sale, on the packaging or by means of advertising or
otherwise, has given (1) misleading information, (2) which is in-
tended to come to the attention of the public or the particular
buyer, (3) which concerns the nature or the use of the product,
and (4) which can be assumed to have influenced the purchase.
The seller may thus avoid the consequences of misleading infor-
mation by correcting it, but he must do so clearly and speci-
fically. A general exemption clause in a standard contract will
not suffice. Section 7 also applies where it is the manufacturer
or another in the distribution process who has given out the in-
formation and the seller has either referred to it or, where he
knew of its existence and knew or should have known that the
information was misleading, he has failed to clearly correct it.
Where it is the manufacturer, importer, or other in an earlier phase of the marketing process who has negligently or intentionally given misleading information, the injured consumer may sue the responsible party directly (§14). All consequential damages may be recovered.

When the Government enacted a new Section 3 of the Marketing Practices Act (effective July 1, 1976) empowering the Market Court to enjoin sellers to provide information important to consumers as part of their marketing, Section 7 of the Consumer Sales Act was expanded accordingly. A product is now defective under the Consumer Sales Act if a seller, who has been ordered by the Market Court under Section 3 of the Marketing Act to provide information concerning the nature or use of the product (or who has agreed to a consent order to provide information issued by the KO), neglects to do so and this failure can be assumed to have influenced the purchase. Also, where the manufacturer or someone else in the distribution chain was the respondent before the Court and has failed to comply with the order, the product is defective as a matter of law where the seller knew or should have known of the failure to comply, but did not give the buyer the information at the time of purchase, unless it can be shown that the failure to comply did not influence the purchase.

Except when orders under Section 3 of the Marketing Practices Act are applicable, the Consumer Sales Act does not require that any particular information be given. It only requires that
such information as the seller chooses to give be nondeceptive.\textsuperscript{44} Causation is a necessary element throughout, but an intent to deceive need not be proven. The information must be reasonably specific, and the determination whether certain information is misleading will be made with respect to an objective standard; the opinion of the consumer in any individual case is not determinative. Only statements concerning the nature and use of the product come within the purview of Section 7. Statements concerning the favorableness of the price, for instance, do not.\textsuperscript{45}

Section 8 is another section that isolates certain instances in which goods are to be considered defective. It focuses on safety considerations. If the sale of a product has been forbidden by government authorities because of health risks, then the product is defective as a matter of law. The product is also defective if its probable use involves obvious health risks for the buyer or others even if that use is not the intended one. For example, toys which become dangerous if taken apart by a child are considered defective. The seller is not responsible, however, for dangers which arise because children obtain access to products intended for adults. Both new and used products are subject to the provision, and the possibility is not ruled out that even products which are common may be found to involve such health risks.\textsuperscript{46} The Government singled out, as an example of what constitutes a defective product, an automobile which is unable to pass the government vehicle safety inspection.\textsuperscript{47} It is

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conceivable, however, that an unsafe car could be bought for the purpose of renovation or as a source of parts. In such a case the car would not be defective as a matter of law.

Section 8 was broadened in connection with the 1976 expansion of the Marketing Practices Act. Under Section 4 of the new Marketing Practices Act, the Market Court may forbid the sale of products which are dangerous to person or property or which are obviously useless for their primary purpose. If a product is sold contrary to an injunction or consent order under Section 4, the product is defective as a matter of law. This provision cannot be used retroactively, however, so the consumer who buys the product prior to the issuance of the injunction cannot rely on such an injunction to show that the product is defective.48 As a result of Sections 7 and 8, actions taken under the market-law Marketing Practices Act have an impact on the private-law contractual rights of individual consumers.

In Section 9, the Consumer Sales Act also takes aim at the not uncommon practice of selling goods "as is." The section is intended to have an impact in three types of situations.49 First is the one in which the seller, after making express warranties as to the quality of the product, seeks to disclaim these warranties by including the as-is clause in the written contract. The section provides that the product is defective if it is not such as the buyer had reason to expect and the seller must have realized this but failed to correct the buyer's misimpression.
The result of this provision is that it is impossible to disclaim an express warranty by way of an as-is clause. An effective disclaimer must refer specifically to prior representations. In addition, the requirements of Section 7, concerning misleading information, cannot be neutralized by an as-is clause.

The second and third situations involve attempts by the seller to disclaim what might be called implied warranties. Section 9 makes it impossible to use an as-is clause to disclaim such warranties. In the second situation to which the section applies, the seller has a duty to inform the buyer specifically of any respect in which the product does not measure up to what the buyer had reason to expect in view of the price and other circumstances. If the seller fails to make sufficient disclosures, the product is to be considered defective. The test is an objective one and means, for instance, that even in connection with the purchase of used goods at a low price, the buyer should be able to expect that the product can be used for its intended purpose, unless special circumstances indicate otherwise.

In the third situation, a product is considered defective where its poor quality is obviously inconsistent with the price and other circumstances, despite the presence of an as-is clause. The lawmakers had the sale of used cars particularly in mind here. For instance, when a used car is sold at a price which corresponds to what is common for a car of the same model
and year, the seller cannot escape liability for significant divergence from the normal condition of such cars by the use of an as-is clause. And Section 8, concerning safety requirements, is, of course, applicable despite the presence of an as-is clause.

The Act also includes a burden-of-proof rule in Section 10. Where the seller or someone else (e.g., the manufacturer) specifically guarantees a product for a stated period of time, he has the burden of showing that any defect is the result of an accident subsequent to delivery or is the fault of the buyer. This provision largely codifies the general rule of Swedish contract law that the burden is on the one making the guarantee to show that the defect was not present at the time of delivery (or, more precisely, at the time of transfer of the risk of loss to the buyer). It extends it, however, by including within its scope modern guarantees which are not restricted to the condition of the product at the time of delivery but which make a commitment that the product will function for a certain period of time. It remains, of course, for the buyer to show that the product is defective. And, in accordance with the prevailing rule, where neither the seller nor anyone else has made such a guarantee, the buyer must show not only that the defect exists, but also that it existed when the product was delivered to him.

The buyer must give the seller notice of a defect. The law does not set a specific time within which this must be done, but
it does prescribe the generally applicable period of "a reasonable time after [the buyer] noticed or should have noticed" the defect. The time within which the buyer should have noticed a defect is dependent upon his duty to inspect the product. The Government indicated that, while it would not establish a general rule, the consumer's duty to inspect should be set rather low, at least with respect to mass-produced capital goods. In determining what is a "reasonable time," the courts are also directed to give considerable weight to the buyer's personal circumstances. Thus, delays caused by the buyer's illness or his need to seek advice before making a complaint will probably not be counted against him. The lawmakers also pointed out that they were depending on the Consumer Ombudsman and the trade associations to agree on what constitute proper complaint periods in various typical situations. The Act does set a one-year limit, however, on complaint periods (unless the seller has acted fraudulently). This means that contract terms which specify definite periods less than a year are invalid. It is, of course, permissible to contract for a longer period.

The content of the notice of defect was also given careful consideration by the legislators. The rule under the general Sale of Goods Act requires a buyer to specifically declare his intention to rescind the transaction: otherwise, he loses his right to do so. This requirement was rejected in Section 11 of the Consumer Sales Act. It is required only that the buyer "in-
form" the seller of the defect, that is, identify the defect and indicate that it is unacceptable. There is no requirement that he specify the remedy he intends to assert. The form of notice is also left open. Any contract term which requires, for instance, that complaints be in writing is invalid and unenforceable.53

The notice provisions in Section 11 apply not only to remedies the buyer may have under the Consumer Sales Act, but also to any he may have under the 1905 Sale of Goods Act. Where a guarantee has been made by a third party, notice of a defect may be directed either to the seller or to the third party.

Section 18 of the Act provides that the consumer, who has used the mail or telegraph to give notice or otherwise communicate with the seller as required by the Act, shall not lose any of his rights under the Act because the message is delayed or fails to arrive. Once notice has been properly mailed or telegraphed, the seller bears the risk. The buyer is, of course, under no obligation to put his communication in writing.


2. The Door-to-Door Sales Act

The Door-to-Door Sales Act entered into force in 1971,55 six months after the Marketing Practices Act, to counteract the op-
pressive methods that had become prevalent in door-to-door sales. The Act represented an innovation in Swedish contract law by establishing an exception to the venerable maxim of *pacta sunt servanda*, i.e., contracts are binding. Following an Anglo-American initiative, a "repentence" or "cooling off" period of one week was enacted, during which time the consumer might change his mind about a purchase made at home. It is significant to note that the choice was made not to ban door-to-door sales altogether. The lawmakers were of the opinion that door-to-door sales served in some cases as a valuable complement to normal store retail sales. This would be particularly true in sparsely populated areas.

Like the Consumer Sales Act, the Door-to-Door Sales Act applies only to consumer transactions, that is, sales by businessmen to consumers who intend to use the product or service primarily for private purposes. Unlike the Consumer Sales Act, this act is applicable not only to the sale of products, but also to the sale of chattels and ongoing services. This extends its scope to include such things as lottery tickets, periodic maintenance of property and instructional courses, to name a few examples.

The Act is applicable to sales at places other than the seller's, or his representative's, normal place of business. It is thus apparent that it has a scope broader than purely door-to-door sales. It applies to sales at the consumer's place of
employment, to sales at temporarily leased quarters and to so-called home parties. Home parties consist of a private person cooperating with a company by inviting friends and acquaintances to his home for the purpose of selling the company's products. The Act is not applicable to normal retail sales at stores or to permanent or regularly held product exhibitions or fairs. Nor does the Act apply to one-time services, such as group tours or the sale of insurance.

It is immaterial whether it is the consumer or the businessman who takes the initiative for the contact, but it is a requirement that there be a personal meeting between the consumer and the seller or his representative. Thus, the Act does not apply to telephone sales or to mail order sales. It is also a requirement that the contract entered into by the seller and consumer be executory in some respect. Thus, it applies primarily to credit purchases. If the consumer pays the full price at the time of the meeting, and the seller hands over the product at that time, the Act has no application. However, if there is full payment, but delivery at a later time, or if there is delivery but not full payment at that time, the statute is applicable.

The Act has three substantive sections. Section 2 sets out certain formal requirements that must be satisfied in order to create a binding contract. It requires that the consumer be notified of his rights. This must be accomplished by handing over a prescribed form which sets out in layman's terms the con-
sumer's rights under the Act. The government-approved cancellation form must be attached. The consumer must indicate his receipt of these forms by signing a copy which the seller retains. The sanction imposed on the seller for not complying with this section is unenforceability of the contract.

Section 3 of the Act is directed at a prevalent tactic in door-to-door selling which consists of the salesman making promises or representations to the consumer to which the selling company does not want to be bound. The usual practice has been to include, in the order form which the consumer signs, a clause stating: "Oral agreements not incorporated in the written contract are not binding." Thus, before the Door-to-Door Sales Act, significant representations by the salesman could not be enforced against his employer, unless it could be shown that the employer was aware of his salesman's tactics. For instance, an oral statement of the price of a set of encyclopedias, which was completely inconsistent with the price stated in the written order form signed by the consumer, could not be enforced against the company in the face of such a contract term.

The effect of Section 3 is to make the salesman the authorized agent of the seller for the purpose of accepting offers from consumers. This seemingly backward approach to the transaction, by which the consumer is the offeror and the company is the offeree, is a technique adopted by door-to-door sales companies to bind the consumer while allowing the company a certain
period of time in which to accept or reject the contract. This is a result of the rule in Swedish contract law that no consideration is required in order to hold an offer open. Unless an offer limits the time to accept, once it is made, the offeree has a reasonable time to consider the offer and communicate his acceptance or rejection to the offeror.57 Under Section 3, a seller who accepts a buyer's offer, usually in connection with the placement of an order, accepts the total contract with the consumer, that is, any written contract plus any oral agreements made between the consumer and the salesman.58 This is true if the seller accepts unqualifiedly. The section contains a proviso for express rejections or clearly contrary implications from the circumstances, however. It is assumed that the courts will interpret that proviso very narrowly. Certainly, it would seem to be contrary to the intentions of the Act if general disclaimers in the acceptance by the seller could be enforced in the courts. The Market Court, the primary interpreter of the Act to date, appears to be so inclined.59

The central provision of the Door-to-Door Sales Act is Section 4, which provides for the one-week cooling-off period. As set out in the form which is to be handed over to the consumer, notice of the cancellation of a purchase subject to the Act must be in writing and mailed or delivered to the seller within one week from the meeting with the salesman. The one-week period is applied whether or not the goods are delivered at the
time of the meeting between the buyer and seller. The Act provides that the risk of loss or damage to the goods while in the consumer's possession is on the seller throughout the one-week cooling off period. This is true regardless of when during the week the buyer cancels the purchase. In general, the placement of the risk on the seller has resulted in the seller withholding delivery of the goods until the end of the one-week period. This in turn diminishes the benefit of the buyer's right to cancel, since he is unable to inspect the goods until after his right to cancel has terminated. Of course, if there are defects in the goods, the consumer enjoys all of his rights under the Consumer Sales Act.

The risk which the seller bears for damage to the goods applies only to damage caused by accidents or otherwise not the fault of the buyer. The buyer is under a duty to return the goods in essentially unchanged condition if he elects to cancel. The buyer must also make the goods available for pickup by the seller. If the seller fails to pick up the goods within three months, they become the property of the consumer. The seller also has the duty to return all payments made under the contract up to the time of cancellation, including those paid with respect to contracts for services which have already been partly performed. The buyer may withhold any goods in his possession until the seller returns all such payments.

All the other major consumer protection statutes apply to door-to-door sales. Thus, the Marketing Practices Act has been
invoked on a number of occasions to enforce the formal requirements of Section 2 of the Door-to-Door Sales Act. In addition, the Market Court has required door-to-door salesmen to clearly inform consumers of their sales purposes at the beginning of their meeting with the consumer at his home,60 or in connection with home parties.61 Also, the Market Court can be asked to invoke the newly enacted Section 3 of the Marketing Practices Act to require the giving of certain information in connection with oral sales argumentation in the home.

The Market Court has invoked the Contract Terms Act to strike down contract terms which violate the provisions of the Door-to-Door Sales Act concerning the authority of the salesman and the right of the consumer to cancel his purchase within one week. These cases are discussed in more detail in Chapter 3.

The newly enacted Section 36 of the Contracts Act can be invoked in suits between seller and consumer to invalidate or adjust contract terms comparable to those forbidden by the Door-to-Door Sales Act. The Consumer Credit Act is also applicable. For instance, the minimum down payment provision of that act, normally 20% of the product's cash price, is applicable to door-to-door sales. And as pointed out previously, the Consumer Sales Act is applicable to all sales of goods to consumers, including door-to-door sales.

The legislative commission appointed by the government to review the Door-to-Door Sales Act of 1971 has released its report
and recommendations. The commission found that the Door-to-Door Sales Act in its present form does not provide the consumer with adequate protection. As a result, the commission drew up an entirely new version of the Act, which it recommends as a replacement for the existing act.

Under the commission's proposal, a merchant who wishes to visit consumers, in person or through an agent, in their own homes for the purpose of selling a product shall first notify the consumer by telephone or mail that he wishes to come and see him. Sales visits may be made only to consumers who have given their consent. An exception is made where the merchant has reason to believe that the total price the consumer will have to pay will be less than 100 Swedish crowns. Visits made without advance notice and consent will be considered improper marketing under Section 2 of the Marketing Practices Act. In addition, a contract entered into during an unannounced visit will not be binding on the consumer.

The scope of the cooling-off provision of the Act would also be adjusted if the commission's proposal is adopted. The provision would be broadened to cover telephone sales, that is, agreements entered into during telephone conversations initiated by the company as part of its telephone sales operations. Also, the cooling-off period would apply to straight cash purchases, transactions which are not presently subject to the Act, as mentioned above.
The scope of the cooling-off period provision would be narrowed so as not to apply to goods purchased for an amount less than 100 Swedish crowns. The scope has also been limited to agreements entered into "during a meeting at the home of the consumer, at his place of work or at any other place where the seller visits the consumer, irrespective of who has taken the initiative." Thus, agreements entered into at trade fairs, exhibitions and other temporary retail outlets would be excluded, removing some confusion which has developed concerning the applicability of the existing act. Additionally, food and second hand cars are specifically excluded.64

An important modification of the calculation of the cooling-off period was also recommended. The main rule is, as under the existing act, that the seven day cooling-off period runs from the day on which the documents informing the consumer of his rights under the statute have been made accessible to him. However, if at the time of entering into the contract, the consumer has not had an opportunity to examine the goods he has agreed to buy, or similar goods, the cooling-off period runs from the day on which he receives the goods or a substantial portion thereof.

Another important change which the commission recommended concerns the effect of oral agreements between the consumer and the seller's representative. The technical difficulties with the existing provision are eliminated by making the seller's representative the full agent of the seller for purposes of
entering into contracts with consumers. The seller will therefore be bound by agreements between his representative and the consumer, and if the salesman has made promises to the consumer which the company does not wish to honor, the company is nevertheless bound, and any dissatisfaction on the part of the company is a problem to be resolved with its own salesman, not the consumer.

3. The Consumer Credit Act

The Consumer Credit Act was enacted in 1977.\textsuperscript{65} The purpose of the lawmakers was to retain the advantages of the existing consumer credit system while minimizing its disadvantages. The advantages of consumer credit were considered to be those of making goods available when they are most needed, increasing the consumer's freedom of choice and diminishing the differences between consumers of different means. The disadvantages were considered to be the tying up of future income, the difficulty created for consumers in times of economic hardship, the large cost of credit and the difficulty of ascertaining that cost accurately.\textsuperscript{66}

The first modern Swedish consumer protection legislation was the Installment Sales Act of 1915. This act had become obsolete, however, in many ways and was applicable only to secured transactions. The new Consumer Credit Act has replaced the older Installment Sales Act to the extent that the prior act applied to
The purpose of the new act is to strengthen the position of the consumer in various respects with regard to credit transactions. The Act is a combination of market-law, private-law and criminal-law rules. The corresponding sanctions available are injunctions issued by the Market Court, refusal of the regular courts to enforce illegal contract terms, and fines. The old Installment Sales Act, in contrast, consisted of mandatory private contract rules, the main purpose of which was to limit creditors' remedies.

For the most part, the Consumer Credit Act applies to standard contract terms used in consumer credit transactions in connection with the purchase of goods. A broader scope is allowed, however, for the rules regulating the marketing of credit. These rules apply to the marketing of any kind of consumer credit, including credit connected with the sale of services and anything else of value. The basic rule is that the "effective interest rate" be included in any marketing (§5). The effective interest rate is the sum of all interest, surcharges and other credit costs that the consumer must pay, as a percentage of the amount borrowed. In addition, if a specific item or service is involved, the item's cash price and the absolute money amount of all interest, surcharges and other costs must be given. It is also required that this information be given to the individual consumer in writing before the transaction is consummated (§6).

The sanction for violating the informational requirements is an injunction issued by the Market Court under either Section 2
(improper marketing) or Section 3 (duty to supply information) of the Marketing Practices Act. There is no counterpart to Section 2 of the Door-to-Door Sales Act which would deprive the creditor of the right to enforce a contract entered into without handing over to the consumer the written information required by Section 6. The Act does provide, however, that summary repossession procedures cannot be employed unless there is a written agreement between the parties specifying that the goods may be repossessed, the cash price, the amount loaned, all credit charges, the pay-out period, the total due from the consumer and the date on which payments are due (§20). The Act continues the general rule under the former Installment Sales Act that it is illegal for the creditor to repossess goods without resort to judicial process.\(^68\)

During the preparation of the Act, the possibility of setting a maximum effective interest rate (usury limit) was considered. The idea was rejected, however, because of the widely varying circumstances accompanying credit transactions and because it was feared that setting a maximum value might encourage those creditors who were charging less to increase their rates up to the maximum. Instead, it was agreed that the general clause in Section 36 of the Contracts Act could be resorted to for the purpose of adjusting unreasonably high rates in individual cases. It was also the belief of the lawmakers that an incidental effect of increased consumer knowledge of credit terms, resulting from better information, would be increased
competition among creditors, which in turn should lead to lower rates.69

One of the more controversial provisions of the Act is the requirement of a downpayment of at least 20% of the cash price of the goods involved in a credit transaction (§8). Even this constituted a rejection of the recommendation by the legislative commission that it be set at 25%. The purpose was to prevent ill-considered credit purchases. The rule applies to all forms of credit transactions involving the purchase of goods, except credit card transactions. The Government rejected another proposal with the same purpose by the legislative commission, namely, to set a maximum repayment period of two years. As the result of special legislation in 1959, retail car sales are subject to the requirement that the downpayment be at least 40% of the price and the repayment period be no longer than two years.70

The requirement of the Consumer Credit Act regarding downpayments is enforced by the Consumer Board and the Market Court in accordance with Section 2 of the Marketing Practices Act. The requirement is that the downpayment be set in accordance with good practice in the market, and, in any event, not below 20%, unless special circumstances require otherwise. Pursuant to its legislative mandate, the Consumer Board has promulgated guidelines specifying the "special circumstances" which may justify divergence from the 20% figure.71

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Another innovative part of the Act places limitations on the right of the seller to retain a security interest. It was the opinion of the lawmakers that the security interest served in many cases, not so much as security for the debt, but as a means by which the creditor could force further payments out of the consumer. There is often a large discrepancy between the value of the goods to the creditor and the usefulness which they have for the consumer. Consequently, Section 15 of the Act sets out the requirement that the seller may not retain a security interest unless the goods are suitable as security. A product suitable as security will normally have three characteristics: (1) it does not depreciate in value significantly during the repayment period; (2) it has a value of at least 1000 Swedish crowns; and (3) there exists a functioning secondhand market for the product. Whether a product it typically suitable as security according to the three foregoing criteria is a question to be considered by the Consumer Board and the Market Court in accordance with the Contract Terms Act. A businessman may be forbidden under that act to use contract terms which grant him a security interest in articles which are not typically suitable as security.

Section 21 also excludes from repossession goods otherwise exempt from judgment executions, such as furniture and other articles necessary for a home and its care and equipment necessary for the practice of one's profession. Thus, cars and boats
used for leisure purposes will normally be subject to repossession, while clothing, furniture and household appliances will be either unsuitable or ineligible for repossession. Of course, according to the circumstances of each case, cars and boats may be necessary for the care of a home or practice of a profession, and therefore be ineligible as security.

The Act also includes provisions giving the consumer the right to prepayment, to redemption of the goods and to protection from repossession where the default is insignificant. Deficiency judgments, that is, judgments against the debtor for amounts still owing after allowance for the value of the repossessed goods, are not allowed under the Act ($18).

In addition, the Act includes important provisions protecting the consumer's right to assert against third-party creditors all claims he has against his seller. These provisions were formerly in the Consumer Sales Act. Cut-off clauses in installment sales contracts, by which the seller seeks to cut off the buyer's right to assert claims and defenses against assignees of the contract, are specifically declared invalid. Criminal penalties are imposed on any seller or creditor who accepts a negotiable instrument other than a personal check from a consumer.

In the process of transferring these provisions from the Consumer Sales Act to the Consumer Credit Act, they have been broadened to cover any kind of credit purchase of goods, and the rights of the consumer vis-a-vis creditors other than the seller have been ex-
panded beyond the right to assert defenses to include the right of the consumer to demand return of moneys paid by him to the creditor (§§10 & 11).

4. Section 36 of The Contracts Act

A fundamental principle of private contract law in Sweden, as elsewhere, is that contracts are binding. This principle is a consequence of another fundamental principle, freedom of contract. There do exist exceptions, however, to the general principle that contracts will be enforced in accordance with their terms. We have already seen the exceptions provided for in the Door-to-Door Sales Act, and there have existed other exceptions for many years, both in the statutes and in judicial doctrine. Thus, the courts have refused to enforce contracts the performance of which would require violation of the criminal laws or which were the result of unilateral or mutual mistake. In 1936, Section 8 of the Promissory Notes Act was enacted which, by its terms, allowed the courts to reform or refuse to enforce terms in promissory notes which since the formation of the contract had become manifestly inconsistent with good business practices or otherwise manifestly improper. By the 1950's, the Supreme Judicial Court had declared this provision to be applicable to all contracts.

Although the foregoing provisions for reforming or invalidating "unconscionable" contract terms existed during a substan-
tial portion of the 20th century, they were applied quite restrictively by the Swedish courts. Part of the problem was that decisions were tied closely to the peculiar facts of each case. And the most significant provision, Section 8 of the Promissory Notes Act, applied only to terms which became improper because of circumstances arising after the formation of the contract. Also, it was required that the term be *manifestly improper*.74

Shortly after the enactment of the Contract Terms Act, the purpose of which is to protect consumers by forbidding the use of one-sided contract terms by businessmen, the Swedish government began the legislative process of accomplishing the same reform in the area of private contract law. The legislative commission presented its report in 1974,75 and in 1976 the Riksdag enacted the following language as Section 36 of the Contracts Act:76

A contract term may be adjusted or held unenforceable if the term is unreasonable with respect to the contract's contents, circumstances at the formation of the contract, subsequent events or other circumstances. If the term is of such significance for the contract that it cannot be reasonably demanded that the contract shall otherwise be enforceable in accordance with its original terms, the contract may also be adjusted in other respects or held unenforceable in its entirety.

With respect to the application of the first paragraph, special consideration shall be given to the need for protection of consumers and others who assume an inferior position in the contract relationship.
The first and second paragraphs shall be given similar application to terms in other legal relationships than that of contract.

Incidentally, it was not a foregone conclusion that the provision would be directed primarily at individual contract terms. This approach was adopted only after giving careful consideration to the alternative of focusing primarily on the contract as a whole. Sweden's neighbor, Denmark, has, in fact, taken the alternative approach.77

As is apparent from its wording, the scope of Section 36 is extremely broad. It covers both standard contracts and individually negotiated agreements of all kinds, and it applies to oral as well as written contracts and to executory as well as to partially executed contracts. Unlike most of the other statutes we have discussed, Section 36 is not limited to consumer transactions. It extends to contracts between businessmen, between private persons and between individuals and the government (government contracts). Even within the consumer area, it covers more than, for instance, the Contract Terms Act, in that it is not excluded from those areas subject to the supervision of the national insurance and banking boards. It applies to the sale and leasing of personal and real property and to the purchase of credit. Other examples of documents and actions it encompasses are service contracts, articles of incorporation, bylaws, copyrights, patents, collective bargaining labor agreements, agency
agreements and gifts. In addition, Section 36 may be applied analogously in other areas such as family law.\textsuperscript{78}

Clearly, Section 36 represents a new day in the enforcement of contracts by the courts of general jurisdiction. They are to be as unfettered in their application of Section 36 as the Market Court is in its interpretation of the Contract Terms Act. When the Council on Legislation, the committee of Supreme Court Justices which reviews legislation prior to enactment, suggested that Section 36 was to be resorted to only as an exception to the general principle that contracts are binding, the Minister of Justice took issue with the Council and emphasized that the section was not to be given a restrictive interpretation and that it represented a new attitude toward the role of the courts in this area.\textsuperscript{79} One sign of this new attitude which can be seen in the statutory language is the absence of the requirement that the unreasonableness of the contract term be manifest or obvious.

There are two remedies which may be invoked with respect to violations of Section 36. They are adjustment (reformation) of the contract and invalidation of the contract. This gives the courts a good deal of flexibility with which to bring about a just and practical result. And these remedies are not limited to the specific term under scrutiny. If appropriate, other terms in the contract may be adjusted or held unenforceable and, if necessary, the whole contract can be thrown out. The determination will have to be made based upon the circumstances in each case,
and the court will be limited to the remedies sought by the parties. 80

Section 36 is the counterpart in the area of private contract law to the Contract Terms Act in the area of market law. Although there is no direct binding effect between the two, precedents under one will be highly persuasive in cases under the other. They both, for instance, have as one of their purposes the prevention of circumvention of mandatory rules of contract law. 81 The starting point for analysis under both acts is the same, namely, non-mandatory and mandatory statutory rules. Also, decisions under both laws are to be clause-oriented rather than oriented to the peculiar circumstances of each case, although it is clear that the decisions under Section 36 will have to be considerably more sensitive to the precise circumstances presented to the court in each case. Another parallel with the Contract Terms Act is the requirement that the courts of general jurisdiction, in determining whether a particular term is unreasonable under Section 36, take into account other terms in the contract which might offset the effect of the term under consideration.

It will be noted that the section is applicable not only to terms which are unreasonable at the time of the formation of the contract, but also to terms which subsequently become unreasonable, assimilating the notion of commercial impracticability. It is meant to be applied primarily to contracts of adhesion and one-sided terms which are the result of an imbalance in the bar-
gaining positions of the parties. It is not only consumers, but also smaller entrepreneurs who often find themselves in such an inferior position. For instance, a small retailer who has agreed to rescind a sale to a consumer because a product was defective may find himself pitted against a manufacturer or wholesaler which, because of its superior bargaining power, has brought about a contract under which it is not liable to reimburse the retailer. The retailer could probably successfully invoke Section 36 in such a situation.

An important innovation is that the reasonableness of the contract term will be considered in the context of the sales methods which contributed to its adoption.\textsuperscript{82} It will thus be relevant that surprise or other oppressive techniques such as the exploitation of a foreigner's language difficulties, were used to persuade the other party to enter the contract.

It is also well to point out that Section 36 may be relied upon even where the contract in question was entered into by equals, although its application here will be much less frequent. Oversight, change of circumstances and standard terms which are not suitable to the particular situation are reasons that Section 36 might be invoked to modify contracts in such situations. Moreover, even parties in superior bargaining positions may invoke Section 36 where peculiar circumstances make it appropriate.\textsuperscript{83}

Some of the types of contract terms that will be particularly susceptible to modification under Section 36 are set out in
the legislative history. These include terms which give one party the unilateral power to decide certain questions, such as whether a price increase is required or whether a force majeure situation has arisen. A term of this type which arose under the Contract Terms Act was one which provided that the seller alone could decide whether the product in question was defective. Another example of this type of term provides that the superior party may exercise his unbridled discretion as to the timing or quality of performance.

A contract term which creates a disproportionate relation between the magnitude of a breach of the contract and the consequent remedy will also be rendered unenforceable under Section 36. Thus, it is unreasonable to provide for cancellation of a contract on the basis of an insignificant breach. Also, it will be held unreasonable if a contracting party suddenly changes from lax enforcement of a contract term to strict enforcement. Businessmen, in other words, are bound by their own practice and cannot suddenly enforce an onerous term which is usually ignored. Discrimination in contracts on the basis of sex, age, nationality, race, membership in certain organizations and so on, will also serve as a basis for invoking Section 36.

D. Institutions and Procedural Law

1. The Consumer Ombudsman and the National Consumer Board

The office of the Consumer Ombudsman (KO) was established at the beginning of 1971 on the effective date of the Marketing
The creation of the office especially for the purpose of implementing the Act represented a clear break with previous consumer policy. The KO was assigned the functions of monitoring marketing practices, identifying violations of the Act, negotiating with violators to eliminate violations and petitioning the Market Court for injunctions against those violators who would not cooperate. In addition, the KO was empowered to bring precedent-setting cases to the Market Court even if the businessman was agreeable to the KO's demands.

Six months after the Marketing Practices Act became effective, the Consumer Ombudsman was assigned the additional responsibility of enforcing the Contract Terms Act. The procedure by which that act is enforced is essentially the same as that employed in the enforcement of the Marketing Practices Act.

In 1973, after much investigation and discussion, a separate national consumer agency was created to replace various and disparate consumer agencies which had gradually developed since the 1950's. This agency was designated Konsumentverket, and was given the rather ponderous official name in English of the National Swedish Board For Consumer Policies. The job of the Consumer Board was to act as the central governmental authority to support consumers and improve their position in the marketplace. The agency was directed to attempt to persuade manufacturers, distributors and retailers to adapt their activities to the needs of consumers. The agency lacked,
however, any means by which to force uncooperative members of the business community to comply with its views.

Konsumentverket was also to undertake to research consumer problems, monitor the assortment of goods and services available on the market, perform product testing, inform consumers on important issues, support consumer education and research and support municipal and regional consumer protection activities. The Public Complaints Board (ARN) was appended to the agency, as well.

During the first years of the agency's existence, it became apparent that the duties of the agency and those of the Consumer Ombudsman overlapped in a number of areas. This overlap gave rise to inconsistent policies and duplication of work. In conjunction with consideration of the expansion of the Marketing Practices Act in 1975, the Government recognized these problems and found that they would be exacerbated by the legislation contemplated. The solution chosen was to merge the Consumer Ombudsman and the National Consumer Board into one super agency with the KO retaining his separate identity as the prosecuting authority under the Marketing Practices Act and the Contract Terms Act. The KO was, at the same time, made Director General of the new super agency, designated Konsumentverket/KO.89

There were other reasons for the merger of the two agencies. The KO was already relying on the facilities of the Consumer Board to perform tests on products involved in cases
under investigation in his office. In addition, he had been obtaining from the agency and the Public Complaints Board information on the existence of acute or persistent consumer problems. Now these separate functions are joined under one roof and one leadership. However, as a practical matter, the KO has lost a good deal of his identity and force as a result of the merger. The current organization of the combined agency is shown in the accompanying diagram.

The agency's board of directors is composed of ten members. The Director General of the agency is the chairman of the board. Three members are representatives of consumer and labor interests. Two members are representatives of the business community. Two are members of Parliament, and there is one representative of the municipalities. The Director General of the National Food Administration makes the tenth member. In addition, two representatives of the agency staff serve in an advisory capacity. The agency's Director General is appointed for six years and the board's other members for three years. It is the duty of the board to set general policy for the agency, including the allocation of resources among the various functions performed within the agency. This means setting the budget for taking cases to the Market Court under the Marketing Practices Act and the Contract Terms Act by the Director General in his capacity as Consumer Ombudsman. However, the Government explicitly prohibited the board from exercising any review over the
KO's selection and handling of cases to be brought to the Market Court. The Government pointed out that business interests were represented in the membership of the Market Court and that, therefore, the board of the agency, which also included business interests, should not be allowed to affect Market Court cases before they are presented to the Court for determination.  

As indicated in the accompanying diagram, the duties of the Director General in his capacity as Consumer Ombudsman have been largely delegated to the **KO Secretariat**. This department is headed by the Deputy Ombudsman and is responsible for the performance of the prosecutorial functions before the Market Court under the Marketing Practices Act (**MFL**) and the Contract Terms Act (**AVL**), including the Consumer Credit Act (**KKrL**). The Secretariat is responsible for preparing and arguing cases under those acts before the Market Court. In cases of particular importance, it is not unusual that the Consumer Ombudsman himself will argue the case before the Market Court. Cases are submitted to the Court only if attempts to negotiate compliance with the particular businessman have failed or if the decision in the case will serve as a useful precedent. The **KO's** duties of monitoring and negotiation under the acts have been delegated to Divisions I and II of the agency.

**Preliminary injunctions** may be sought in the Market Court by the Consumer Ombudsman when it is necessary to bring the practice in question to an immediate halt. He has this power under both
This power is particularly useful when it is necessary to protect the safety of consumers quickly, but a preliminary injunction will be granted only if it appears very likely that a permanent injunction will ultimately issue. A decision can usually be obtained from the Court within a few days or a week. The normal rule is that the respondent must be allowed to be heard before the Market Court takes any action.

The KO is empowered to subpoena documents, information, product samples, and the like necessary to carry out investigations. Subpoenas are issued when companies refuse to supply requested materials, and the subpoenas, like the decisions of the Market Court, are complemented by specific fines, in this instance of up to 10,000 Swedish crowns, that will be imposed if the subpoenas are not obeyed. No appeal is allowed from the decisions of the Consumer Ombudsman with respect to subpoenas for information. Subpoenas for documents and product samples can be appealed through the administrative court system.

Consent orders are provided for under the Marketing Practices Act and the Contract Terms Act. Violations which clearly fall within existing precedents of the Market Court may be dealt with by this method. Once the businessman has agreed to a consent order proposed by the KO, the order has the same force and effect as an injunction of the Market Court. Like the injunctions of the Market Court, the consent orders are complemented with penalty fines, normally 10,000 to 25,000 Swedish crowns, to
be imposed if the consent order should be violated. The consent order procedure is useful when the Consumer Ombudsman needs assurance that the offending businessman will comply with the negotiated agreement. It should be noted, however, that the Consumer Ombudsman does not have the unilateral power to impose sanctions on offending companies for violations of the general clauses of either the Marketing Practices Act or the Contract Terms Act.

The KO Secretariat is also responsible for notifying the public prosecutors that violations of Market Court injunctions or consent orders have occurred, so that these violations may be prosecuted and the penalties imposed in the courts of general jurisdiction. If the petitioner before the Market Court was someone other than the Consumer Ombudsman, as is provided for under the Marketing Practices Act, the KO's agreement is not required before a violation of such an injunction can be acted upon by the public prosecutors.

The Consumer Ombudsman is not allowed to involve himself in individual disputes. If consumers approach him with hopes of obtaining a resolution to a specific problem, they are referred to the Public Complaints Board. The KO is empowered only to seek prospective relief in the Market Court. He may not appear in the courts of regular jurisdiction. In this connection it is interesting to note that he has submitted a recommendation to the Government that he be allowed to bring private suits in the
courts of regular jurisdiction against particular businessmen for damages and other relief in specific disputes. The ability to bring parens patriae suits would fill the gap that exists because of the lack of class actions in Sweden and would supplement the functions of the Small Claims Act and the Public Complaints Board. This proposal is currently being studied by the Government on the basis of a favorable recommendation submitted by a legislative commission.

Divisions I and II, shown on the accompanying diagram, each consisting of two bureaus, are the center of activity for implementing the nonprosecutorial provisions of the Marketing Practices Act, the Contract Terms Act, and the Consumer Credit Act. It is in these two divisions that most matters under these acts are first treated by the agency, and it is also here that most matters are concluded. Less than one percent of the files which are begun in these divisions become cases before the Market Court.

The four bureaus which make up Divisions I and II are divided roughly according to types of consumer products and services, as shown in more detail in the diagram. It is within these four bureaus that investigations based on the agency's own initiatives and upon complaints received from consumers begin. Files opened as a result of outside complaints form a considerably larger proportion of the cases under the Marketing Practices Act than they do under the Contract Terms Act. This is probably
a result of the more esoteric nature of issues arising under the Contract Terms Act.

If it appears after investigation that a violation of one of the statutes exists, the bureau involved attempts to negotiate voluntary compliance by the businessman. Sometimes the problem involved is of such a pervasive nature that similar businesses and relevant trade associations are asked to take part in the negotiations. This is particularly common under the Contract Terms Act. Trade associations play a vital role in these negotiations, and without them the effectiveness of the Consumer Board would be considerably reduced. The negotiations under the Contract Terms Act are described in more detail in the chapter on that act.

Negotiations pursuant to the Marketing Practices Act and the Consumer Credit Act may result in agency guidelines. Although the Consumer Ombudsman and Konsumentverket had issued guidelines prior to the Marketing Practices Act amendments of 1976, it was in conjunction with those amendments that formal authority was given by the Government to the new super agency to issue guidelines. As a result, it has become a major objective of the agency to promulgate guidelines in the designated areas, that is, pursuant to the general clauses on improper marketing, information and product safety in the Marketing Practices Act. The agency was assigned additional areas with the coming of the Consumer Credit Act. Thus, guidelines on the duty to provide
information in the course of marketing credit are now mandated. The same is true of the rule of Section 8 of the Consumer Credit Act which sets the normal minimum downpayment at 20% of the cash price of the product and the requirement of Section 15 that merchants not take a security interest in products which, because of their nature or worth or circumstances in the marketplace, are not suited to serve as security. These rules do admit of some exceptions and of some need for clarification, and it is the purpose of the guidelines to deal with these detailed issues.99

The purpose of guidelines is to reduce uncertainty for merchants who must comply with the general terms of the various consumer protection statutes. They are also beneficial for the guidance of the staff of the consumer agency, and they will be of particular help in areas where there is otherwise little guidance, such as with respect to the duty to provide information in the course of marketing under Section 3 of the Marketing Practices Act and the duty not to sell dangerous products under Section 4 of the same act.

Konsumentverket is not necessarily limited to the areas encompassed by the relevant provisions of the Marketing Practices Act, the Contract Terms Act and the Consumer Credit Act. The administrative regulations which apply to Konsumentverket authorize guidelines not only for marketing but also for product design. Certainly, guidelines regulating product safety will, as a necessary consequence regulate product design to a certain ex-
tent. However, there is much product design which has no bearing on safety. This raises the question of the extent to which guidelines are enforceable. There are certainly no legal sanctions for violating guidelines outside the scope of the acts for which they are authorized. However, the Consumer Board has considerable powers to publish the names of companies who do not conform to the agency's guidelines, regardless of whether the guideline in question is authorized by law.

Even guidelines issued within the authorized areas are not binding. That is, they are not binding on the Market Court in cases brought before it in which they have been violated. Rather, they represent the position of one of the parties before the Court. Nevertheless, they should carry considerable weight as representing the position of the public authority charged with the duty of protecting consumers and, as will often be the case, as representing the position of the relevant trade association or otherwise expressing what is considered to be good commercial practice in the relevant sector of the business community. Guidelines are thus expected to assume a significant role in cases brought before the Market Court, but they are, in the end, nonbinding recommendations. One result of the nonbinding character of the guidelines is that their promulgation by Konsumentverket is not appealable to the administrative courts as is the case with binding administrative regulations. The initial uncertainty on this question was settled by statements of the

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Council on Legislation and the Minister of Justice in connection with the passage of the Consumer Credit Act.101

Guidelines will normally be promulgated by the Director General, or in some cases, the Board of Directors, after the conclusion of negotiations with business representatives. The agency is not limited, however, by the agreements which can be reached with business representatives, but may unilaterally issue guidelines, and it will probably not even undertake negotiations where the trade association's positions on the issues are known or where no trade association exists in the relevant line of business.102

The agency has divided the types of guidelines into two groups, the "shall" group and the "should" group.103 Violation of the "shall" group will cause the agency to take action, consisting normally of contacting the violator and seeking to negotiate his compliance with the guideline. If this is not possible, the case will be taken to the Market Court. The "should" rules may also cause the agency to take action against the merchant involved, but the agency will not be as confident in these cases that the guideline can be legally enforced in the Market Court. Also in this group will be found rules which, even though they may constitute violations of the acts, are of less importance from a consumer protection standpoint.

The Minister of Justice, in his comments on the Consumer Credit Act, directed that the nonlegal sanction of negative
publicity be used sparingly by the agency. He indicated that its use should be limited to those cases in which there is a decision of the Market Court on point or where the guideline enjoys broad support in the relevant sector of the business community.104

In addition to the four bureaus contained within Divisions I and II, there is a General Bureau composed of three subdivisions assigned to (1) distribution and home economics, (2) education and research, and (3) county and regional protection activities. There is also an Information Bureau which is responsible for publication of a magazine corresponding to the American "Consumer Reports"105 and a periodical devoted to current consumer law and economics106 which includes coverage of the activities of Konsumentverket and the Consumer Ombudsman. In addition, the Information Bureau is responsible for relations with the press and for consumer information campaigns, including the publication of reports and handbooks in various consumer areas. Another bureau, the Technical Bureau, does product testing and performs other laboratory services needed by other parts of the agency. This bureau will perform product tests for other government agencies and even for private companies for a specified fee. The fourth bureau is the Administrative Bureau which handles the internal affairs of the agency. Finally, there is a Rural Services Council attached to the agency whose duty is to assist with questions concerning government support for consumer services in rural areas.
Matters taken up by the Consumer Board are the result of (1) consumer complaints, (2) cases coming before the Public Complaints Consumer Board, statistics of which are continuously compiled and reported to the Consumer Board, (3) random checks for compliance and (4) initiatives taken by members of the agency staff. During the first eight and one-half years of operation under the Marketing Practices Act and the first eight years under the Contract Terms Act (which became effective six months after the Marketing Practices Act), 39,031 files were opened, representing an average rate of approximately 4600 files per year. Of these, an average of about 9.4% were opened on the initiative of the staff, and the remainder on the basis of complaints from consumers, consumer organizations, businesses, trade associations and other government agencies.

In 1981, Konsumentverket had a staff of approximately 274 people, of which about 8 were assigned to the KO Secretariat. In addition, the Public Complaints Board had a staff of approximately 40. The budget for Konsumentverket during fiscal year 1980/81 was 38.2 million Swedish crowns plus 1.05 million crowns for research, and for the 1981/82 fiscal year, 7.1 million crowns were budgeted for the Public Complaints Board.

An average of about 200 files were opened per year under the Contract Terms Act, constituting 4.6% of the yearly total average of files opened. Only 75 criminal prosecutions were initiated during the first nine years, representing an average of between eight and nine per year. During the first nine years of
operation, 34,541 files were closed. During the same period, the number of decisions handed down by the Market Court in which the Consumer Ombudsman acted as prosecutor was 244, representing just over 27 decisions per year. The number of decisions of the Market Court during this period (244) indicate that on the average about 0.7% of all files opened finally reached the Market Court for decision.
2. The Market Court

The Market Court was created simultaneously with the office of the Consumer Ombudsman. Its function is to serve as the precedent-setting authority for the interpretation of the Marketing Practices Act and the Contract Terms Act. It is the first and last instance for the Consumer Ombudsman to settle disputes with businessmen arising under these acts. It also has exclusive nationwide jurisdiction under the Restraint of Trade Act (KBL).

The Market Court did not, however, spring fullgrown from the head of Zeus as Athena is said to have done. With respect to issues arising under the Restraint of Trade Act, the Market Court succeeded a body known as the Freedom of Commerce Board. The Board was charged with essentially the same duties the Market Court now has under KBL, described earlier under the heading of Market Law, and the functions and powers of the Freedom of Commerce Board were carried forward in 1971 when it was replaced by the Market Court. As far as the Restraint of Trade Act was concerned, the change was in name only. The NO was thenceforth to bring his petitions to the Market Court in accordance with the procedures previously adhered to before the Freedom of Commerce Board.
More significantly, the Consumer Ombudsman was created as a counterpart to the Freedom of Commerce Ombudsman for the purpose of bringing matters arising under the Marketing Practices Act and the Contract Terms Act to the Market Court. The business community had developed a voluntary National Council on Business Practice for the purpose of evaluating doubtful marketing practices, which was, in many ways, the precursor of the Market Court in its duties under Section 2 of the Marketing Practices Act. The Council on Business Practice lacked, however, any sanctions, and the membership was not equally divided between business and consumer representatives as it is in the Market Court. 108

The Market Court is composed of a president or chairman, a vice-chairman and six lay members representing in equal numbers business interests and consumer/labor interests. In addition, two economic experts are members of the Court, one having a special knowledge of trade and industry and sitting on cases under KBL, and the other having special knowledge of consumer problems and sitting on cases arising under MFL and AVL. The chairman and vice-chairman are to be learned in the law and have judicial experience. The practice is that the chairman of the
Court be chosen from among the justices of one of the supreme courts. The vice-chairman will normally have had experience as a court of appeals judge. The chairman serves for six years, and the other members for three years each. Alternates are appointed for each of the members other than the chairman.

It is not entirely without precedent in Sweden that professional judges and lay persons be joined as judges in a judicial body. The leading prototype of this approach is the Swedish Labor Court, created in 1928. The business representatives on the one hand and the consumer/labor representatives on the other are to act as judges, and not as biased representatives of particular interests. Each takes the judicial oath. Each is to bring to the Court experience and knowledge which will assist the Court in fulfilling its function. The first five years of operation have shown that the members are able to function well as impartial judges.

When the Market Court was first created, it was not called the Market Court (Marknadsdomstolen), but rather the Market Board (Marknadsrådet). Although the Market Board was to handle matters under the new Marketing Practices Act and the Contract Terms Act in a "court-like" manner, the name "Board" was an indication of the fact that the new body was taking over the duties of the Freedom of Commerce Board, which had involved, as a major component of its work, negotiating with companies under KBL, a function not normally associated with courts.
Courts and Prosecutors: Enforcement of Market Law Legislation*

Supreme Judicial Court

"Resing"

MARTY COURT

Petitions for injunctions under MFL & AVL

Petitions under MFL, AVL & KBL

Petitions for negotiations & injunctions under KBL

Associations of consumers or wage earners, trade associations & affected businessmen, when the KO or NO, respectively, has decided against bringing a petition

KO

Requests for, or consent to, criminal prosecutions under MFL & imposition of fines under MFL & AVL

Criminal prosecutions & suits to impose fines

Trial Courts

Courts of Appeals

Suits for damages against violators of injunctions under MFL

Appeal of Right

Appeal by Permission

Competing businessmen

NO

Request for, or consent to, criminal prosecution & imposition of fines under KBL

PUBLIC PROSECUTORS

* Marketing Practices Act (MFL), Contract Terms Act (AVL) and Restraint of Trade Act (KBL)
Ten and a half months after its creation, the Market Board recommended to the Ministry of Commerce, to which it was attached for administrative purposes, that its name be changed to the Market Court. This was approved by the Government for the reason that the name "Board" had contributed to a popular misunderstanding of its function and its relationship to the Consumer Ombudsman and for the reason that it was considered to share more similarities with a court than with an administrative agency or board. As a result, its name became Market Court on January 1, 1973, the second anniversary of its creation.

The accompanying diagram indicates the relationship of the Market Court to the rest of the judicial court system. Not indicated on this diagram is the administrative court system which is quite similar to the judicial court system, except that it has exclusive jurisdiction over administrative cases and is headed by the Supreme Administrative Court. The two supreme courts are equal in their stature and authority within their respective jurisdictions.

As indicated before, there is no appeal from the Market Court. At the time of the enactment of the Marketing Practices Act, it was generally anticipated that any transgression of the constitutionally protected freedom of the press and any other overstepping of authority by the Market Court would be subject to review, not directly, but in conjunction with suits by the public prosecutors in the courts of general jurisdiction to impose the
fines set by the Market Court for violation of its injunctions. Thus, if a businessman believed that his protected right to freedom of expression had been infringed by an injunction imposed upon him by the Market Court, his remedy was simply to violate the injunction and raise the constitutional argument as a defense to the imposition of the fine in the regular judicial courts. This process has the obvious disadvantage of placing the businessman in peril of being subjected to heavy fines. As a rule of thumb, the Market Court sets the penalty fine at 100,000 Swedish crowns.

Faced with these alternatives, three respondents in the Market Court have sought direct review in the Supreme Judicial Court by an extraordinary remedy known as resning, and two have succeeded. The first and third petitions for resning objected to decisions of the Market Court on the grounds that they were in obvious conflict with the constitutionally protected freedom of the press. The second resning petition was a challenge by the Scientology Church to the power of the Market Court to require production of its so-called E-Meter. The Supreme Judicial Court granted the first two petitions and vacated the judgments of the Market Court, and it rejected the third petition.

In retrospect, it should not have been any surprise that direct review of Market Court decisions could be had by the extraordinary remedy of resning. The remedy is provided for in the Constitution. The same method had earlier been used to obtain
direct review of decisions of the Labor Court, whose decisions are also nonappealable.

Resning is available, however, in only four limited situations, and there are few cases which fall into any of the four categories, as befits an extraordinary remedy. The basis for resning in each of the three aforementioned cases was the assertion that the decision of the Market Court was in obvious conflict with governing law. One should hasten to point out that the interpretation of the statutes subject to Market Court jurisdiction is the sole responsibility of that Court, and its interpretation cannot be reviewed even in the Supreme Judicial Court, except to the extent that the interpretation conflicts with the Constitution or exceeds the power of the Market Court determined by Parliament.

The celebrated case which arose between the cooperatively owned chain of retail stores (Konsum) and a chain of privately owned retail stores (Vivo-Favör) illustrates graphically the limitations associated with review by way of resning. Vivo-Favör started the fight by including in its advertisements the statement "Don't lose money through reduced refunds. Shop in private stores." Konsum answered by setting out, in conjunction with its advertisements of specific products, a summary of the ownership interest in the Vivo-Favör chain of stores. Vivo-Favör complained to the Consumer Ombudsman that the advertisement by Konsum was misleading. The Ombudsman refused to pursue the com-
plaint, however, because he believed that the interchange
concerning ownership between the two chains was a part of public
debate, not having a purely commercial objective, and therefore,
protected by the Freedom of the Press Act.

Exercising its right to subsidiary standing before the
Market Court, Vivo-Favor petitioned for an injunction against the
Konsum advertisement. The Market Court found that the advertise-
ment had a purely commercial purpose and that it was concerned
with business circumstances. It therefore concluded that there
was no hindrance presented by the Freedom of the Press Act to
hearing the case and proceeded to enjoin the advertisement as
misleading under Section 2 of the Marketing Practices Act.

Konsum then sought resning in the Supreme Judicial Court.
The Supreme Court found that the advertisement could be inter-
preted in two different ways, one which came under the Freedom of
the Press Act and the other which did not. It then looked to the
scope of review applicable in resning cases, namely, whether the
decision of the Market Court was clearly inconsistent with ap-
plicable law. The Court held that since two different interpre-
tations were possible, the decision of the Market Court could not
be "clearly inconsistent with applicable law."

The "applicable law" was, of course, the Swedish Con-
stitution. Thus, the Supreme Court refused to decide the ques-
tion whether the decision of the Market Court conflicted with the
freedom of the press guaranteed by the Constitution. Presumably,
the only way to obtain full review of this question would be to utilize the formal review process expressly contemplated by the Market Practices Act, namely, to violate the injunction, suffer being brought into the district courts of general jurisdiction, from which an appeal will lie to the appropriate Court of Appeals and thence, if review is granted, to the Supreme Judicial Court. In effect, the Supreme Court refused to make any special allowance for the fact that it was not a mere statute, but the National Constitution which was invoked, and a critical part of the Constitution, as well. Whether this was a wise resolution is questionable.

In retrospect, the only real question with respect to resning in Market Court cases was: To which of the two supreme courts should the application be made? The Constitution provides that the application shall be made to the Supreme Administrative Court in cases for which the Cabinet, an administrative court or an administrative agency is the highest body to which an appeal may be made. The application should be made to the Supreme Judicial Court in all other instances. This reduces the question to whether the Market Court is a special judicial court or an administrative court. The litigants in the resning cases decided on their own that resning would lie in the Supreme Judicial Court. The Supreme Judicial Court accepted the applications, thereby impliedly affirming that the Market Court is a special judicial court. It is a matter for conjecture what would have
happened if the applications had been made to the Supreme Administrative Court. If that had happened, that court might have held that resining lay in its jurisdiction and, by way of implication, that the Market Court was an administrative court. Although the Supreme Administrative Court is not bound by the decision of the Supreme Judicial Court, it is highly unlikely that it would now hold to the contrary.¹¹⁵

There is no strict "case or controversy" requirement with respect to cases brought before the Market Court. Thus, there is no bar to the Court considering the KO's petition in a case where the company has ceased the marketing practice in question. Also, under the Contract Terms Act, there is no requirement that the term in question actually have been incorporated in an existing contract, but only that the businessman involved have proposed the inclusion of the term in a contract to be entered into by a consumer. The purpose of relaxing the standards for adversity and mootness is to facilitate the fulfillment of the Market Court's function as the precedent-setting organ.¹¹⁶

As is indicated by the accompanying diagram, it is the Consumer Ombudsman who is the normal prosecutor before the Market Court under the Marketing Practices Act and the Contract Terms Act. It was the Government's intention that the Consumer Ombudsman have control of the enforcement policies under the two acts. Thus, it is only after the KO has decided not to bring a petition before the Market Court that certain other parties are allowed to
do so (subsidiary standing), and it is only with the concurrence of the KO that criminal prosecutions may be initiated under Sections 6, 7 and 8 of the Marketing Practices Act by the public prosecutors. Consumer and labor groups are afforded this "subsidiary standing" under all the general clauses of the Marketing Practices Act, the Contract Terms Act and the Restraint of Trade Act. Trade associations also enjoy subsidiary standing under all the general clauses of the Marketing Practices Act and the Contract Terms Act. Individual businessmen are allowed to bring petitions to the Market Court under Section 2 of the Marketing Practices Act and under the Restraint of Trade Act when the KO or NO, respectively, have decided against bringing such a petition. Significantly, the individual consumer has no subsidiary standing under any of the general clauses. Although the Market Court has suggested to the Government that standing be granted to the individual consumer, this has been rejected for the time being. This is considered by the Government to be consistent with the policies of the three statutes, namely, to protect consumers as a group. During the first five and one-half years, approximately twelve percent (12%) of the cases brought under these acts were brought by parties other than the two ombudsmen.

As mentioned previously, the procedures followed by the Market Court when hearing cases arising under the Marketing Practices Act and the Contract Terms Act, and when determining
whether a harmful restraint of trade exists under the Restraint of Trade Act, are much like those of trial courts of general jurisdiction. Although the Code of Judicial Procedure is not generally directly applicable to proceedings before the Market Court, the principles underlying the Code are. In order to allow the Market Court the flexibility to develop procedures best adapted to rapid and effective handling of cases before it, no detailed rules were laid down by the Government.  

Briefly stated, the procedure before the Market Court in a case under the Marketing Practices Act is as follows. The Consumer Ombudsman submits a written petition setting out the activity complained of and the reasons for which it should be enjoined by the Court. The Court then forwards the petition to the respondent who must answer within 21 days. A reply is usually filed by the Consumer Ombudsman. The Court, if it wishes, may ask for amicus briefs, although this is seldom done. Statistically, the respondent is represented by a lawyer in a little more than half of the cases. A pretrial conference is often held with the chairman of the Court, although this process is accomplished in writing in a number of cases. Almost half of the cases under the Marketing Practices Act are then decided without a hearing before the Court. In cases which do go to hearing, the Court will take evidence and hear argument by the parties or their lawyers. A quorum of the Court is constituted by the chairman and four other members representing equally consumer and business interests.
A reversed burden of proof is applied in cases under Section 2 of the Marketing Practices Act where the truthfulness of marketing claims is at issue. The policy behind reversing the burden of proof on this very important factual issue is that the evidence necessary to support product claims is often much more accessible to the advertiser than to the Consumer Ombudsman. The reversed burden of proof is not applicable to the general clause in Section 3 of the Act concerning the duty of advertisers to provide information of importance to consumers, and under the general clause in Section 4 of the Act, concerning unsafe and un-serviceable products, the Consumer Ombudsman has the full burden of proving his case. The differences in the burden-of-proof rules arise from the differences in the central issues under the various general clauses.

Relevant evidence is freely admissible except where privileged, as is the case in the courts of general jurisdiction. Free admissibility of evidence is largely the result of the lack of a general jury system. The standard of proof required of advertisers to justify product claims probably varies inversely with the critical abilities of the group to which they are directed -- inversely with respect to the opportunity afforded the consumer to inspect the product before purchase -- and directly with the extent to which the claims may create safety risks for the consumer.

The Market Court has the power to subpoena parties and witnesses upon pain of being fined. Such fines are imposed by the
Court itself, in contrast to the fines under the general clauses, which must be imposed by the courts of general jurisdiction. The Market Court also has the power to subpoena documents, product samples, and the like which can be of importance to the case, upon penalty of a fine. The power to subpoena product samples was provided by Parliament in 1975, after the Supreme Judicial Court, as already mentioned, ruled by way of resning that the previous statutory language did not encompass the power to require production of the Scientology Church's E-Meter.119

The Court will, when appropriate, consolidate similar cases for decision simultaneously. Its decisions are accompanied by a written opinion setting forth the underlying facts, the arguments of the parties and the Court's reasoning. The relief afforded by the Court is limited to the relief requested in the petition. The Court is free, however, within the limits of the petition, to fashion the relief as it sees fit.

The injunction was found to be the most expedient remedy for the Market Court, it being possible to impose injunctions even where actual intent to violate the general clauses is not shown. The injunction is also consistent with the general wording of the statutory provisions since it is necessary to be much more specific when imposing criminal liability in Sweden. Under the Marketing Practices Act, the respondent may be the offending company or its employees or others, such as advertising agencies, acting on its behalf. Upon its determination that a marketing measure
before it is improper, the Court will normally forbid the specific practice along with "any similar action." The Court normally sets the penalty fine at 100,000 Swedish crowns, even in cases where the Consumer Ombudsman has not asked for that great a fine. However, in a few cases of minor importance in recent years, the Court has set the penalty fine at only 25,000 or 50,000 Swedish crowns, and in a case involving product safety with a substantial respondent the amount was set at 500,000 Swedish crowns.

As mentioned previously, no criminal penalties can be imposed by the Market Court. Criminal prosecutions under Sections 6, 7 and 8 of the Marketing Practices Act and Sections 2 and 3 of the Restraint of Trade Act may be brought in the courts of general jurisdiction by the public prosecutors after a request or consent from the KO or NO that they do so. If the prosecutor, despite the admonitions of the Minister of Justice, refuses to honor the request of the Ombudsman, the Ombudsman may appeal that decision through normal administrative channels. If the public prosecutor decides not to prosecute, either because the Ombudsman chooses not to request prosecution or for some other reason, the victim of the criminal act may himself file a criminal complaint. 120

It is the courts of general jurisdiction which impose the fine set by the Market Court. In the process of imposing the fines, it is the responsibility of the regular courts to enter-
tain any objections to the injunction on the grounds that the Market Court has overstepped its authority or that a fine set by the Market Court is unreasonable under the circumstances. In the first case in the regular courts to impose fines for transgression of a Market Court injunction, the penalty of 100,000 Swedish crowns set by the Market Court was reduced to 1,000 crowns on the grounds that the amount set by the Market Court was unreasonable in view of the size of the business involved.121

In 1978, the regular courts refused to impose a penalty fine set by the Market Court in a 1976 case involving a chain-letter promotion.122 The promoter in that case was forbidden to continue with his chain-letter promotion or to "take any similar action." Two years afterward, the KO became aware that the same person was running a similar promotion under a different name, according to slightly different rules and for which he made somewhat lower claims of what one could expect to win. The public prosecutors, at the behest of the KO, sought in the regular courts to have the 100,000 crown fine imposed. The district court adjusted the amount downward from 100,000 to 10,000 crowns. Both parties appealed the judgment, and the court of appeals vacated the imposition of even the 10,000 crowns on the basis that the second chain-letter promotion, in view of the differences noted above, was not covered by the Market Court injunction.123

This turn of events has raised the question of the proper scope for injunctions. Admittedly, the phrase "or other similar
"action" is indefinite. If the Market Court makes its injunctions more specific, however, the chances that they can be circumvented increase dramatically, reducing to a similar extent the effectiveness of the primary remedy available to the Market Court to protect consumers. On the other hand, there are important due process considerations which forbid giving the injunctions such broad scope that the respondent is unable to continue to legally practice his trade.\textsuperscript{124}

The decisions of the Market Court are summarized in the periodical "Konsumenträtt och Ekonomi" published by Konsumentverket. Slip decisions are also sent to interested institutions, libraries and individuals and to the press. The decisions are subsequently published in hardbound volumes covering two or three years of decisions from the Court in each volume.\textsuperscript{125}

3. The Public Complaints Board

The great majority of consumer disputes in Sweden are referred to the Public Complaints Board (\textit{Allmänta reklamationsnämnden}=ARN) which was established in its present form in 1968 and has been attached to the Consumer Board.\textsuperscript{126} The Public Complaints Board is headed by a chairman and seven vice-chairmen who are learned in the law and who have judicial experience. ARN has approximately seventy-four members chosen in equal numbers from industry and consumer entities, roughly similar to the makeup of the Market Court. The industry members are chosen from
among trade associations and companies, and the consumer representatives are chosen from trade unions, the consumer cooperative movement and the Consumer Board staff.

The Complaints Board is divided into ten divisions: travel, motor vehicles, electrical appliances, boats, textiles, laundry and cleaning, footwear, furs, insurance and miscellaneous. Six to ten members serve in each of these divisions. The Board also has a staff which advises consumers and prepares disputes for resolution by the appropriate divisions.

The chairman supervises the staff, fosters uniformity among the practices of the various divisions and supervises the vice-chairmen. He is also responsible for general policies of the Board consistent with the bylaws. At present, the Public Complaints Board does not accept cases in which more than twelve months have elapsed from the alleged breach or where more than six months have elapsed since the company notified the consumer that it would not cure the alleged breach. Professional services, such as those provided by doctors, dentists and lawyers, are not reviewed. Another limitation which has been observed in the Board's activity is that it will not consider disputes over the reasonableness of the price charged for goods or services.

If a dispute cannot be settled with the help of the staff, the consumer may file a complaint on a simplified pre-printed form, and an answer then is requested from the company. Most of the disputes involve defects in products, the quality of services
rendered or delay in performance. The quasi-adjudicatory process is completely written. No oral testimony is allowed, so that disputes involving controverted questions of historical fact cannot be entertained. This has not proven to be a serious limitation, however. Only two percent of the cases filed have been dismissed for this reason.

The meetings of each division are presided over by the chairman or one of the vice-chairmen. Technical expert opinions may be requested, but this is rarely necessary because the members of the division normally possess sufficient technical expertise to determine whether goods are defective or whether a service has been performed in a workmanlike manner.

After making its decision, a division will issue a formal written opinion setting out its analysis of the controversy. Although a judgment in favor of the consumer will state the amount of damages to which the division determines the consumer is entitled, the decision is not enforceable as a matter of law. It is merely a recommendation and may be disregarded by the merchant. There are practical sanctions, however, primarily the negative publicity resulting from the publication of a "blacklist" of uncooperative companies in newspapers and in the publications of the Consumer Board.\(^{127}\) Approximately 85% of the decisions adverse to businessmen are complied with. In cases where compliance is not forthcoming, the consumer may pursue the matter in the small claims courts even if the amount involved ex-
ceeds the jurisdictional limitations of those courts. The decisions of the Board are transmitted to the Consumer Board for purposes of developing statistics and informing the agency and the Consumer Ombudsman of areas where consumers are particularly in need of protection. The more important decisions are summarized in the periodical "Konsumenträtt & Ekonomi."

There is no appeal from a decision of the ARN to the Consumer Board or to any other body. Nevertheless, the Complaints Board and the Consumer Board have been administratively connected. The Consumer Board has not exercised any direct influence over the decisions of the Complaints Board, but it has been responsible, not only for the bylaws, but also the selection of the chairman, vice-chairmen and the members of the Complaint Board's staff.

The administrative connection with the Consumer Board will be severed beginning in 1981 as the result of a Government bill based on the 1978 report by a legislative commission of its investigation of the activities of the Public Complaints Board. The commission reported that the experiences with the Public Complaints Board had been good. It recommended that the Board be made permanent so that its activities might continue in the future. It recommended no major change in the procedure before the Board for the current limitation of the Jurisdiction of the Board to transactions between entrepreneurs and consumers wherein it must be the consumer who initiates the matter before the Board.
As before, transactions relating to both new and secondhand goods may be considered. The most significant change recommended by the commission is to extend the jurisdiction of the Public Complaints Board to cases concerning both the purchase of real property and services performed with respect to real property. Governmental and municipal authorities will be subject to the jurisdiction of the Board where these authorities act as suppliers of goods or services. The legislative commission rejected a suggestion that regional complaint boards be set up and recommended that the exclusion of physician, dental and legal services and the non-binding nature of the Board's decisions be continued.

The recommendations of the commission were generally accepted by the Government, but the extension of the jurisdiction of the Complaints Board was limited to certain work performed upon real property, such as housepainting, and does not include the purchase of real property. The Complaints Board will continue as a permanent, independent agency.

4. The Small Claims Act and Legal Aid

The Small Claims Act, or the Act on Simplified Legal Procedure, allows the courts of general jurisdiction to act as small claims courts in cases in which the amount in controversy does not exceed one-half of a reference amount set each October under the National Insurance Act. The Small Claims Act was passed in 1974 to facilitate the assertion of claims by consumers.
under the recent consumer legislation and to circumvent shortcomings of the procedures of the Public Complaints Board. Oral testimony is not admissible in proceedings before the Public Complaints Board, so there is no point in seeking a determination by the Board in cases where oral testimony will be required, such as in cases arising under the Door-to-Door Sales Act where the commitments by the salesman in the consumer's home will be at issue. Also, in contrast to proceedings before the Public Complaints Board, proceedings before the small claims courts result in an enforceable judgment.

Another major difference between proceedings in the small claims courts and before the Public Complaints Board is that anyone, not just a consumer, may initiate an action in the small claims courts. In 1980, out of 16,449 cases which came before the small claims courts, slightly more than one quarter were consumer disputes. However, many of these were brought by merchants, not consumers. These statistics also serve to illustrate another aspect of the use of the Small Claims Act, namely, that many of these actions begin in the form of a summary collection procedure initiated by companies to collect on debts owed by consumers. If the consumer has a defense, such as the existence of a defect, he may answer and demand that the case be transferred to the small claims jurisdiction of the courts for consideration on the merits.

Another contrast between the Public Complaints Board and the small claims court lies in the fact that before the Board there
is no lower or upper limit on the amount that can be in controversy. Before the small claims courts there is the aforementioned upper limit, which in 1978 was approximately 6,000 Swedish crowns. This limit does not apply, however, if the matter has already been heard by the Public Complaints Board and the party refers to the Board's decision in conjunction with his request that the case be tried according to the simplified procedures under the Small Claims Act. However, the Board's decision is not res judicata in the small claims court.

The Act is also applicable regardless of the amount in controversy if the parties agree to proceed under the Act. As pointed out elsewhere, the right of the consumer to bring his complaint to the small claims court cannot be impaired by a contract term providing for arbitration, at least where the controversy is within the jurisdictional amount set by the Small Claims Act.

It was the specific intention of the lawmakers, by means of the Small Claims Act, to simplify procedures and reduce expenses for consumers wishing to prosecute their claims in the courts. Consequently, the procedures were set out with the expectation that lawyers would be unnecessary. Consequently, the lawmakers thrust upon the courts the responsibility of advising the parties. Each court must employ a legally trained person to advise the public on how to initiate a claim under the Small Claims Act. This person supplies the parties with prescribed
forms for their pleadings and advises them on the procedure at the hearing before the judge. The general rule in Sweden is that controversies cannot be decided until two hearings have been held. Under this act the norm is that cases should be decided after at most one hearing. At that hearing, the judge takes a much more active part than normal. Although he is to retain strict neutrality, he is permitted to inform the parties of their failure, for instance, to bring before the court essential evidence. This would also presumably include pointing out a failure to plead the statute of limitations as a defense. The judge is also instructed to make greater efforts than usual toward settlement of the dispute.

There are several other provisions of the Act which serve to cut down expenses for the consumer and expedite the resolution of the case. The normal venue for a suit against a merchant by a consumer is the home district of the merchant. The Act allows the consumer to sue the merchant in the consumer's home district, which will be a significant advantage to the consumer in many cases. Normally there is an absolute right to appeal the district court's decision to the regional court of appeals. However, the Act provides that appeals may only be taken with the consent of the appellate court. Thus, a case may come to a final resolution much sooner than is generally the case. Indeed, the average time between the filing of the complaint and the court's decision has been about two months, even shorter than the time for cases before the Public Complaints Board.

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If the court considers an expert opinion necessary for a decision it may call for one, at the government's expense, either from an independent expert or from the Public Complaints Board. It should be pointed out in connection with costs, that although lawyers are not normally needed to prosecute an action under the Small Claims Act, there is no prohibition on the employment of a lawyer. The employment of a lawyer is discouraged, however, by further restrictions of the normal rules of procedure. The normal rules call for the losing party in a civil action to pay the costs and attorney's fees of the winning party as well as his own. Under the Small Claims Act, the losing party's responsibility for payment of attorney's fees is limited to the fee for legal advice under the Legal Aid Act, presently less than 100 Swedish crowns. Certain other small costs may be charged against the losing party, but the total will normally not greatly exceed 200 Swedish crowns at the present time.

The scope of legal aid was significantly expanded in 1972. As a result, a half hour of legal advice may be had, regardless of one's income, for a set fee which at present is less than 100 Swedish crowns. In extenuating circumstances, this fee can be waived. This advice may be obtained either at public legal aid offices or at cooperating private law firms. For serious legal problems which are more complicated, the government will pay legal expenses above a deductible amount which varies according to income, but only for people who fall within the
income guidelines. The legal fees paid by the government do not include, however, expert witness fees or the costs and attorney's fees of the opposing party which are due if the suit is unsuccessful.

In addition to government legal aid, many consumers have legal expense insurance under their homeowner's insurance. This coverage usually applies to more types of legal problems than the state legal aid and usually requires that the lawyer be a member of the non-integrated Swedish bar. The normal coverage provides for a deductible amount of 200 Swedish crowns, with the insured being responsible for ten percent of the expenses above that amount.

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NOTES


3 See note 35, infra.

4 See Chapter 2.

5 See Chapter 3.

6 Aulin, Konsumenten bortglömd, K&E 1979/1, at 3 (Lidbom interview).

7 Bernitz, KO-modellen röd tråd 1 Norden, K&E 1977/2, at 6; Sevon, Finland får konsumentskydd, K&E 1978/2, at 4.

8 The Swedish commission was chaired by Ulf Bernitz. Its 586 page report, representing 7 years of work by the commission, was published in June 1979 as Konsumenttjänstlag, SOU 1979:36. The next step in the legislative process is for the report of the commission to be commented upon by all the concerned government authorities and private organizations in Sweden (remiss). The Government will then prepare final draft legislation based upon the statute proposed by the commission and the criticism of the proposal received from the various government authorities and private organizations. Prior to submitting the final draft legislation and official commentary (Proposition) to the Parliament (Riksdag), it will be presented by the Government.
(Regeringen) to the Council on Legislation (Lagrådet). The Council on Legislation is a body composed of three members of the Supreme Judicial Court (Högsta Domstolen) and one member of the Supreme Administrative Court (Regeringsrätten). The Council reviews the final draft for compatibility with existing legislation and any other drafting problems which it may still contain. The draft legislation is then submitted to Parliament and is normally approved as submitted. See, e.g., Schmidt, Construction of Statutes, 2 Sc.St.L. 157, 168 (1957). See also N. Andren, Modern Swedish Government (rev.ed. Stockholm 1968) and J. Board, The Government and Politics of Sweden (Boston 1970).

The proposed Consumer Services Act applies to contracts between merchants and consumers for work to be performed on moveable goods and real property. The Act contains rules which are largely mandatory, but freedom of contract has been maintained in many respects, such as the manner of performance and, normally, the price. Excluded from the scope of the Act are residential home construction (additions to existing homes and other work on structures are covered, however), the manufacture of moveable goods where the merchant has supplied the raw materials, the installation of moveable goods in connection with their purchase, and warranty work on moveable goods. The Act is designed so that additional chapters may be added at a later date to cover such services as storage, instruction courses and the treatment of persons and animals. The commission recommended that legislation on group travel and leasing of moveable goods be treated separately.

The draft Act states that information furnished by the provider of the service or by the manufacturer of the goods used in the performance of the service may create warranties for which he will be held liable, if the information proves to be untrue. The merchant is required to perform the service agreed upon in a professionally satisfactory manner, taking due regard of the interests of the consumer. Thus, the merchant has a duty to notify the consumer if he discovers in the course of his performance that further work on his part will be of little value to the consumer. Compensation is provided for the merchant in the event that the consumer cancels his order.

If the price has not been agreed upon, as is often the case with services, the price shall be the currently prevailing price for the service in question at the time of contracting. Even if the price has been agreed to, there is special provision for it to be adjusted if it appears unreasonable with regard to current prices of corresponding services at the time of contracting and other circumstances.

The draft Consumer Services Act also contains provisions on the passing of the risk of loss, the effect of guarantees, the time in which the consumer must give notice with respect to defects or delays, the right of the consumer to cancel the contract (the defect or delay must be fundamental), the right of the entrepreneur to cure defects, and the right of the consumer to
damages independent of the right of cancellation. The commission also recommends that Section 4 of the Marketing Practices Act be broadened to cover the services covered by the proposed Consumer Services Act. For a more thorough discussion of the proposal, see Bernitz, Services and Consumer Protection: The Proposed Swedish Consumer Services, Act, 4 J. Consumer Policy 44 (Stuttgart 1980).

9 See J. Hellner in Festgabe für Hans Möller 283 (Karlsruhe 1972).


12 Cf. von Hippel, supra, note 1, at 1.

13 A consumer concept which appears surprising is to be found in the Consumer Protection Charter adopted by the Council of Europe in 1973 as a recommendation; according to this "a consumer is a physical or legal (!) person to whom goods are supplied and services provided for private use. On the Consumer Protection Charter, see Wasserman, Council of Europe—Consumer Protection, 8 World Trade L. 112 (1974).


15 See the Danish committee report, Forbrugerkommissionens betaenknings III (no. 738) 11 (Copenhagen 1975).


Resolution no. 543 (1973); see, inter alia, Wasserman, supra note 13.


However, this hardly applies to the most observed critic, the American economist J.K. Galbraith; see, in particular, The New Industrial State (Boston 1967).

The Swedish system, with its coordination of antitrust and marketing control, combined with administrative implementation, has to some extent been inspired by the American Federal Trade Commission Act. See also the double functions of the British Director General of Fair Trading.

Prop. 1972:33, at 60.


Self-regulation of marketing methods by the business community was exercised primarily through the Swedish Council on Business Practice. It was established in 1957, replacing four earlier committees that had been operating since approximately 1935, and continued to function until the arrival of the Marketing Practices Act in 1970. At its highest stage of development, the Council was supported and manned by numerous business, consumer and employee associations and was headed by members of the judiciary. See U. Bernitz, J. Modig & A. Mallmen, Otillbörlig Marknadsföring 43-47 (Nyköping 1970); Strömholm, supra, note 24, at 277; Tengelin in Swedish National Reports to the VIII International Congress of Comparative Law, Acta Instituti Upsaliensis Jurisprudentiae Comparativae XII (Uppsala 1970).

Prop. 1975:40.

There is at present no Swedish member of the IOCU, nor are the Swedish authorities apparently inclined to appoint one. See K&E 1978/6, at 11.

The well-known book, Unsafe at Any Speed (USA 1965).


32 Konsumentverkets rapport 1974 no. 12 (Stockholm 1974).


34 On the new Marketing Act, see particularly Prop. 1975/76:34; Bernitz, Den nya marknadsföringslagen (Stockholm 1976). The Act is discussed in Chapter 2, and a translation of it appears in the Appendix.


36 A Swedish legislative commission was appointed in 1976, to study the future organization of the consumer complaints procedure. The commission report was published in 1978 as Tvistlösning på konsumentområdet, SOU 1978:40, and a Government bill based thereon is expected in 1980. See text accompanying footnotes 125-127, infra.

37 The commission on the future of the consumer complaints procedure has recommended that the Consumer Ombudsman be authorized to bring parens patriae actions on behalf of consumers where the outcome will be of special important to consumers as a whole.

38 Lagen (1953:603) om motverkande i vissa fall av konkurrensbegränsning inom näringslivet. An English translation of the Act is found in the Appendix.


40 The Freedom of Commerce Board (Näringsfrihetsrådet).


The Government rejected the suggestion of the legislative commission, concurred in by the KO(I), that this section be limited to incorrect information. Prop. 1973:138, at 214-216. The criminal provision in Section 6 of the Marketing Practices Act, for instance, applies to misleading (deceptive) information.


Id., at 226-231.

Id., at 231.


Id., at 245-47.


Id., at 251.

Id., at 251-52.


Lagen (1971:238) om hemförståeljning, m.m; Prop. 1971:86. In English, see Council of Europe: Door-to-Door Sales, Exchange of Information on Legislation and Legislative Activity in the Field of Door-to-Door Selling and House Canvassing (Strasbourg 1973). An English translation of the Act is found in the Appendix.
NJA 1968 s. 303, a decision of the Supreme Judicial Court prior to enactment of the Door-to-Door Sales Act, was just such a case, except that the Supreme Court ultimately reversed the two lower courts and held for the consumer because it had been established that the company was aware of the salesman's methods. The contract term was held invalid under Section 33 of the Contracts Act of 1915 as being "in violation of faith and honor."


There is no counterpart to the parol evidence rule in Sweden which would otherwise limit the binding effect of concurrent oral agreements. The concurrent oral agreements are known as "side runners" in Swedish.

See discussion of Market Court decisions on terms in conflict with mandatory law in Chapter 3.

KO ./.. Bertmarks Förlag AB, MD 1976:1. This full form of citation of decisions of the Market Court, showing the KO (Consumer Ombudsman) a petitioner and, here, Bertmarks förlag AB, as respondent, followed by the number of the decision in the Market Court Reports (Marknadsdomstolens avgöranden), will hereinafter be shortened by dropping the reference to the KO as petitioner.


Ny hemförspårlingslag, SOU 1979:76 (English Summary at 17-22). The business community has strongly criticized the commission report, particularly the proposed necessity of obtaining the consumer's consent to a home visit, for lack of adequate research and investigation. The Consumer Board supports the proposal. Delade meningar om aviseringsplikten, K&E 1980/3, at 18-19.

In the event of a dispute, the company has the burden of proving that the consumer gave his consent to the sales visit and that he was properly informed of his legal rights, as required by the statute.

The same commission has recommended to the Government that a cooling-off period be enacted separately for all secondhand car sales. Konsumentskydd vid köp av begagnad personbil, SOU 1977:32.

Konsumentkreditlagen (1977:981). The Act went into effect July 1, 1979. A detailed discussion of the terms and implementation of the Act is found in Johnsson, Konsumentkreditlagen: Regierna förklaras, K&E 1979/2, at 23. In English, see
Westerlind, Sweden, in Consumer Credit (United Kingdom Comparative Law Series, Vol. 3), ch. 21 (R. Goode ed. 1978). Justice Westerlind was Chairman of the legislative commission on consumer credit and first president of the Market Court. An English translation of the Act is found in the Appendix.


67 The provisions of the 1915 Act which applied to credit transactions between merchants has been replaced by Lag om avbetalningsköp mellan näringsidkare, m.fl. (1978:599), also in effect since July 1, 1979.


69 Prop. 1976/77:123, at 78.


71 Riktlinger för tillämpning av konsumentkreditlagen (KOVFS 1979:1). With respect to some goods, the downpayment requirement has been eliminated entirely. With respect to others, it has been reduced to 10%. The reasons cited are encouragement of dissemination of culture (printed materials, musical instruments) and lack of rapid decrease in value of the product (sewing machines) which would otherwise create a discrepancy between the value of the product and the amount of the debt owing. See Johnsson, supra, note 65, at 25-26. Also exempt are credit transactions where the repayment period is less than 30 days.


73 The provisions of the guidelines promulgated by the Consumer Board, note 71, supra, which apply to the right of repossession, are the first guidelines to be adopted under the Contract Terms Act. According to the guidelines, the price of the product must be at least a tenth of the current base amount applicable pursuant to the National Insurance Act: in 1979 the price had to be at least 1260 crowns. A list of functioning secondhand markets is included, naming such products as cars, boats, dishwashers, washing machines, televisions, books and musical instruments.

74 For a more detailed treatment of the historical background to Section 36, see U. Bernltz, Standardavtalsrätt 50-54 (3d rev.ed. Stockholm 1978); Prop. 1975/76:81, at 100-105.
Generalklausul i förmögenhetsrätten, SOU 1974:83.

Lag (1976:185) om ändring i lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område.

Prop. 1975/76:81, at 106.

Id., at 112-114; 135-136; Bernitz, supra note 74, at 54-55.

See Prop. 1975/76:81, at 164-166, 173. In actuality, of course, Section 36 is still an exception to the main rule that contracts are binding in accordance with their terms.

Id., at 136.

See id., at 131-133; Bernitz, supra note 74, at 71, 83-85; Bernitz, Utvecklingen mot en standardavtalsrätt. II. Avtalsvillkorslagen, SvJT 1974, at 123-129. The relation between the two statutes is discussed further at the end of Chapter 3. The courts have been directed to send copies of all decisions under Section 36 to the Consumer Board where they are collected in a register. Important decisions appearing in the register are then summarized and reviewed in the periodical Konsumenträtt och Ekonomi. K&E 1978/5, at 21.

Prop. 1975/76:81, at 125; Bernitz, supra note 74, at 55. Indeed, the Supreme Judicial Court has invoked Section 36, in a transaction between businessmen, to hold invalid an arbitration clause, citing as part of its justification that the arbitration clause appeared only on the back side of the standard contract form among other uniform terms and that the term had not been discussed by the parties. The primary basis for the decision was the uneven bargaining position of the parties, however, HD:s beslut nr SÖ 2016/79; K&E 1980/2, at 52.

A court of appeals has affirmed the decision of a district court also refusing to enforce a term used by a real estate broker whereby the consumer lost his full downpayment if the consumer failed to complete the transaction. K&E 1980/3, at 48.

Prop. 1975/76:81, at 105.

Id., at 118, 137-147. Arbitration clauses are one type mentioned. Section 36 has been subsequently relied upon by the regular courts to refuse enforcement of any arbitration clause in a consumer real estate purchase contract. See K&E 1979/4, at 48.

P L Bilar i Göteborg AB, MD 1973:13. The clause was held to be unreasonable by the Market Court.
86 Prop. 1975/76:81, at 120; Bernitz, supra note 74, at 58.
87 Prop. 1975/76:81, at 121; Bernitz, supra note 74, at 59.

88 The word "ombudsman" does not have the same special significance in Swedish that it does in English. "Ombudsman" is a common word in Swedish meaning "representative" and is used in many different contexts. The special significance attached to the word in English is reserved in Swedish for the Parliamentary Ombudsman (Justitieombudsmannen = JO). The JO was created in the early 19th century to serve the Parliament by monitoring the executive bureaucracy and prosecuting officials found to be neglecting their duties or performing them illegally. The JO performs his monitoring duties by responding to complaints from citizens concerning improper treatment at the hands of the bureaucracy and by performing regular inspections of various state agencies, including the prisons.

The KO is similar to the JO in that he is directed to protect individuals and to act as a special prosecutor when necessary. He is also expected to take initiatives of his own and to respond to complaints from the public. However, the KO is appointed by the Government, not the Parliament, and he is to police the business community, not the government bureaucracy. He also differs in his duties significantly from the JO in that he does not intercede in specific disputes. He is directed to protect consumers as a group by way of negotiation and petitions to the Market Court. Until recently, on the other hand, the JO was empowered to prosecute offending government officials in criminal actions in the courts of general jurisdiction. See generally W. Gellhorn, Ombudsmen and Others (Boston 1966); Bexelius, The Ombudsman for Civil Affairs, in The Ombudsman (D. Rowat ed. Stockholm 1968).

89 Prop. 1975/76:34, at 96-97, 114-117.
90 Id., at 116.

91 The Consumer Credit Act specifies violations of MFL or AVL in the consumer credit area. It will therefore often not be mentioned specifically in the text although it is partially implemented by Konsumentverket/KO by means of AVL and MFL. See Johnsson, supra, note 65.

92 MFL §13; AVL §5.
94 MFL §§11 & 22; AVL §3a (information only); KKrl §§26 & 29. The businessman or company is not completely without protection, however, in the unlikely event that the KO were to abuse his
power to subpoena information under MFL, AVL and KKrL and make inspections under KKrL, actions which are not appealable. First, the penalty fine for violating an order must be imposed by the regular courts, and the illegality of an order can be asserted in that context. Second, the Swedish Constitution provides for the extraordinary remedy of resning by which review could be obtained in the Supreme Administrative Court. Regeringsformen 11:11. Cf. discussion of resning with respect to Market Court decisions, infra.

95 MFL §§14 & 15; AVL §6.

96 For instance, where it comes to the attention of the KO that a commitment of voluntary compliance in accordance with previous negotiations is not being honored, agreement to a formal consent order will be demanded. See, e.g., K&E 1977/2, at 38. Consent orders will also be resorted to where the merchant ignores inquiries from the staff of the Consumer Board. See K&E 1977/6, at 30.

97 MFL §17.

98 Twistlösning på konsumentområdet, Betänkande av reklamationsutredningen, SOU 1978:40, at 181, 18 (English Summary). See note 37, supra.

99 See notes 71 & 73, supra.


101 Id. A Government commission is investigating the institution of guidelines, with an eye to improving their effectiveness.

102 As to agency guidelines generally, see Konsumentverket, Riktlinjer (June 1977) reprinted in Vigtigaste instrumentet för producentpåverkan, K&E 1977/3, at 6.

103 This approach was suggested by the Council on Legislation. Prop. 1976/77:123, at 350.


105 "Råd och Rön" (literally, "Advice and Observations").

106 Konsumenträtt och Ekonomi (K&E).
Personal communication with Konsumentverket, Information Bureau, April, 1981.

For a fuller discussion, see, note 25, supra, and references cited therein.


KO ./. Malmberg & Hedström Förlags AB, MD 1974:23 (Helg-Extra); Supreme Judicial Court decision reported in NJA 1975 s 589. Vivo-Favr Service & Intresse AB ./. Konsument föreningen Stockholm, MD 1977:1; Supreme Judicial Court decision reported in NJA 1977 s 751.

KO ./. Scientologikyrkan i Sverige, MD 1976:6; Supreme Judicial Court decision reported in NJA 1975 s 461.

See KO 1976:3, at 33; K&E 1978/1, at 20,42. The first petition, Helg-Extra, is described in the following Chapter on the Marketing Practices Act.

Regeringsformen 11:11.

These are (1) when criminal conduct on the part of a member of the court, a civil servant employed at the court, or a counsel or legal representative of the party appears to have affected the outcome of the case; (2) when false proof, including forged documentary evidence and false written or oral statements, appears to have affected the outcome; (3) when a new fact or new evidence is asserted that probably would have led the court to reach a different result, provided that the applicant shows good cause for his failure to raise the matter prior to the entry of the challenged judgment or on direct appeal therefrom; (4) when the judgment or decision rests upon an application of law that is clearly inconsistent with governing law. See R. Ginsburg & A. Bruzelius, Civil Procedure in Sweden 333-335 (The Netherlands 1965). See also Ragnemalm, Administrative Appeal and Extraordinary Remedies in Sweden, 20 Sc.St.L. 205, 220-228 (1976).

The question is discussed in Ragnemalm, Regeringsformen 11:11. Några reflexioner i anledning av ett flsrskt HD-avgörande, Förrättningsrättslig Tidskrift 1976, at 78. It would appear that rening would lie in the Supreme Administrative Court for non-appealable decisions of Konsumentverket/KO. See note 94, supra.

In the case of Jonny Emerich, MD 1973:31, the Market Court did dismiss a case brought by the KO for lack of a case or controversy. The Court found that the case presented no new legal questions when compared with an earlier decision. In addition,
the respondents had not engaged in their illegal activities since the earlier decisions.


119 NJA 1975 s 461.


121 See Bernitz, Sätt inte vitesbeloppen för högt, K&E 1978/6, at 20-22, wherein it is suggested that the fines be set in each case on the basis of the nature of the offense and on the size of the firm and its willingness to comply with the order. The current President of the Market Court has said that to vary the amount of the penalty fine would require an investigation of the economic circumstances of the company in each case by the Court Bahrke, supra note 100, at 13. It thus appears that the Court will rely on the respondent company to come forward with any reasons that the usual 100,000 crown amount should be adjusted. In one case, at least, the full 100,000 crown fine has been imposed by the district court. Stockholms Tingsrätt 1979 DB 2367. See K&E 1979/3, at 46.


123 See Kedjebrevsarrangör slapp böta, K&E 1978/4, at 51.

124 For an article discussing this case and suggesting that injunctions can and should be formulated more concretely, see Bernitz, Förbud, K&E 1978/5, at 22.

125 E.g., Marknadsdomstolens avgöranden 1971-1973 (Stockholm 1974). Bound volumes are presently available for decisions through 1979.


127 The Market Court has rejected a petition by the KO under §3 of the Marketing Practices Act to require sellers who consistently flout ARN recommendations to reveal that fact to buyers. Sören Egermark och Christer Larsson med uppgiven firma Bilgaraget, MD 1978:13.

128 Tvistlösning på konsumentområdet, SOU 1978:40.

129 K&E 1980/4, at 2; Svanlund, Verksamheten bromsas av bristande resurser, K&E 1980/2, at 8.


131 Chapter 3, infra, text accompanying notes 80-85.

132 The Supreme Court has held that it is improper to decide a case pursuant to the Small Claims Act without a hearing unless the facts are undisputed. HD:S beslut 28 November 1978.

133 Rättshjälpslagen (1972:429).
CHAPTER 2

THE MARKETING PRACTICES ACT

I. PURPOSE AND STRUCTURE

The purpose of the Marketing Practices Act is to promote consumers' interests in connection with marketing by businessmen and to counteract improper marketing which adversely affects consumers or other businessmen. The intention of the Swedish Parliament was to steer the marketing of consumer goods toward greater objectivity whereby attention would be focused on price and quality. This would allow consumers to make more rational choices in the marketplace and thereby obtain better products and services on as good terms as possible.

It is not the purpose of the Act to solve disputes between consumers and businessmen in individual cases. Rather, the purpose is to protect consumers as a group from being subjected to unacceptable marketing methods. It was also the legislators' intent not to unnecessarily favor any particular marketing methods, media, methods of distribution or economic structures.

The businessman, though not the primary beneficiary of the Act, is intended to receive some protection. This results mainly from the fact that his interests in the use by his competitors of fair marketing methods will very often coincide with the interest
consumers have in proper marketing techniques. In addition to this, the law provides protection from improper marketing methods for the businessman even when there is no significant adverse impact on consumers.

The heart of the Marketing Practices Act is composed of three generally worded sections which prohibit marketing which affects consumers adversely (§2), require businessmen to supply information of particular significance to consumers, as part of their marketing (§3), and prohibit the sale of dangerous products and products manifestly unfit for their main purpose (§4). These "general clauses" carry the sanction of injunction and are implemented by the Consumer Ombudsman and the Market Court.

The Act also contains criminal provisions which outlaw intentionally misleading advertising (§6), trading stamps (§7), and certain other types of combination offers (§8). Upon the request or with the consent of the Consumer Ombudsman these provisions are prosecuted in the regular court system by the public prosecutors. Additionally, the Act provides for a cause of action in damages in favor of the competing businessman injured by violation of any of the criminal sections or violation of an injunction of the Market Court under Section 2. Originally enacted in 1970, the Act was broadened and strengthened in 1975.
II. IMPROPER MARKETING: SECTION 2

A. Scope

Section 2 was the heart of the original Marketing Practices Act enacted in 1970, and it retains a central position in the expanded Act. The operative language reads as follows:

If a merchant, in the marketing of a product, service or anything else of value, advertises or takes other action which, by conflicting with good commercial standards or otherwise, adversely affects consumers or merchants, the Market Court may enjoin him from continuing therewith or undertaking any similar action.

The subject of the provision is clearly marketing. By marketing is understood all measures intended to further the sale of products, services or other things of value. It does not cover the procurement of products, services or other things of value or the recruitment of employees. Contrary to earlier legislation, there is no minimum size on the audience to which the marketing is directed, so the section is applicable even to sales arguments made to individual consumers in stores or, for example, at the consumer's home. It covers all types of selling, including trade fairs and auctions. All means of communication are included. Indeed, the authorities cannot prescribe under the Marketing Practices Act the advertiser's choice of medium. Advertising is perhaps the most common type of marketing, and it is covered by Section 2 in all its forms. In addition to adver-
tising in periodicals and newspapers, advertisements mailed directly home to consumers, outdoor billboards, and product packaging are common marketing mediums. In principle, marketing at all stages of the distribution process, including, for example, wholesaler advertising directed to retailers, comes within the purview of Section 2.5

Promotional schemes, such as trading stamps, combination offers, discounts, sales and prize contests, are also marketing. Special selling techniques such as mail-order sales, installment purchases and the delivery of unordered merchandise constitute marketing, as well. In addition to goods and services, the marketing of anything else of value, such as real property, electric power, corporate shares, commercial paper and choses in action also fall within the reach of Section 2.

Although the breadth of Section 2 is quite great, its limitations are important. The activities which can be regulated by means of the general clause must not only be undertaken by the merchant with the purpose of furthering sales, but also must be likely to affect consumer demand.6 In other words, the marketing action in question must be likely to divert consumer purchases from other merchants to the merchant in question. It is noteworthy that there is no requirement that consumers be likely to suffer any economic injury. It is thus impossible to defend against a Section 2 suit by showing that the defendant's product is as good a buy as the one from which he has diverted consumers. The extent to which consumers may suffer economic injury
is a relevant consideration, however, when it comes to setting priorities for the Consumer Ombudsman's work and determining whether information is of "particular significance to consumers" under Section 3.

The line of demarcation between conduct which may be regulated under the Marketing Practices Act and conduct which is protected by the freedom of expression provisions of the Swedish Constitution is important. Until recently the constitutional protection for freedom of expression has been limited to printed material, thus excluding photocopied material, speeches, radio, TV, theater, film, exhibitions and demonstrations from its protection. There is now a generally worded constitutional protection for the freedom to express one's ideas and convey information, although the most detailed and thorough protection is still reserved for printed material in that part of the Constitution known as the Freedom of the Press Act. In addition to guaranteeing freedom of the press, it enumerates abuses of that freedom, such as libel, high treason and racial persecution. Special procedures for prosecuting these abuses are provided for in the Act. If certain printed matter falls within the ambit of the Freedom of the Press Act, its distribution may not be hindered or punished except as provided in the Act.

At the time of the passage of the Marketing Practices Act, care was taken to lay down instructions so that its implementation would not come into conflict with the Freedom of the Press
Act. This was accomplished by looking to the purpose of the constitutional provision, which is to insure the free exchange of ideas and information from all sides. Messages with such purposes are protected. On the other hand, messages whose purposes are purely commercial, that is, those which are meant solely to promote the sale of "goods, services or anything else of value," fall outside the Constitution and are subject to the Marketing Practices Act.

As a practical matter, the purpose of a message must be determined from its content. It is most important to note that the form of the message is irrelevant. The line of demarcation does not run between paid advertising and editorial or news text; a paid political advertisement enjoys full constitutional protection, and by the same token, textual advertising which appears to be news, but is in reality no more than a purely commercial public relations scheme for a company or its products, falls outside the constitutionally protected area. The difficulties of making the foregoing distinction should not be underestimated, as is illustrated by the following case in which a decision of the Market Court was set aside by the Supreme Judicial Court.

The subject of the controversy was a newsbill purporting to headline the news contained in the current issue of a holiday newspaper that came out only when the regular newspapers were not publishing. The boldest headline at the top read "Scandal of the
Year". Immediately below, encompassed by a heavy block border was the headline "100,000 Savers Swindled." Although the layout made it likely that the two headlines would be read together as referring to current events, they actually related to different articles and different periods. The "Scandal of the Year" turned out to be the way in which the Swedish representatives to the European Championship Car Rally for Policemen were chosen. The second headline referred to an article on the failure of a Swedish bank in 1929. The Market Court found that the headlines in the newsbill had the purpose of increasing the sales of the newspaper and were part of the commercial marketing of the product involved and therefore fell wholly within the purview of the Marketing Practices Act. It went on to hold that the publisher had, by means of the newsbill, grossly misled buyers as to the contents of the newspaper.9

Upon review by the Supreme Judicial Court the decision was vacated.10 According to the high court the newsbill was protected by the Constitution. It said that newsbills are typically part of the communication of news and viewpoints which the Constitution was meant to protect. The fact that the newsbill constitutes an important part of the marketing process for the sale of newspapers will normally not affect its protected position under the Constitution. Only in exceptional cases, where the newsbill has the features of an advertisement, can it be said to concern itself solely with commercial matters. The Market Court
itself has held for the same reason that the covers of magazines which misrepresent their content are unassailable under the Marketing Practices Act.\textsuperscript{11}

Another case dismissed on constitutional grounds involved the magazine published by the cooperative movement, which carried out an advertising campaign by reproducing articles from the magazine. The article in question discussed teabags of different brands, content and construction. One of the companies whose teabags were criticized in the article sued the magazine for damages under the Marketing Practices Act in the regular courts, on the grounds that the advertisement violated the criminal provision in Section 6 of the Act prohibiting intentionally misleading advertising. Whether the complaint was subject to a motion to dismiss for failure to state a claim was not reached because the district court held that the article was constitutionally protected, even when used in the advertisement.\textsuperscript{12} The court held that the article was consumer information and thus outside the scope of the Marketing Practices Act. In its affirmance, the Svea Court of Appeals articulated the further ground that the article did not have the purpose of influencing demand for the different types of tea discussed.\textsuperscript{13} The article was not of a purely commercial nature. Although the newsbill decision of the Supreme Court was apparently not discussed by the courts, the case fell clearly within the doctrine of that decision, as both cases involved an advertisement for a publication.
In contrast, in another case, a company had placed a magazine, open to a laudatory article concerning one of its products, next to the product in a display window. Not disputing that the article itself was constitutionally protected, the Market Court held that its use in this instance was for the purpose of furthering the sale of the product. There consequently existed no constitutional hindrance to subjecting it to scrutiny under the Marketing Practices Act. The Court concluded by enjoining the company's use of the claims made in the article for the product since the respondent had failed to carry its burden of showing that the claims were true.14

The difficult cases are those where the advertisement has both a constitutionally protected purpose and a commercial purpose. Newsbills exemplify this problem. Since the Marketing Practices Act is limited to those messages which are solely of a commercial nature, such two-purpose advertisements are subject to it only if and to the extent that the purely commercial element can be separated out. This will often not be possible, and the advertisement will have to be tolerated in the interest of freedom of expression.

Reform of the Freedom of the Press Act is under way to widen its scope to include nonprinted forms of expression. As part of this reform it has been recommended that express exceptions be made for the regulation of commercial advertising in order to avoid the necessity of analyzing the purposes of the Freedom of
the Press Act in each case. It would seem, however, that such analysis cannot be avoided so easily. It will still be necessary to determine in each case whether the message is an advertisement, that is, whether it is of a purely commercial nature. This in turn requires an analysis of whether it contributes in any way to the free exchange of ideas and information which the Constitution is meant to protect.

In contrast to merchants and consumers, third parties enjoy no independent protection under the Act. A good illustration of this limitation is a case in which the Consumer Ombudsman sought to have an advertisement banned because it insulted women in general. The Court agreed that the advertisement was sexually discriminatory. It refused to issue an injunction, however, because to do so would not protect women as businessmen or consumers, but as women, something which is not authorized under the Marketing Practices Act.

The sex discrimination case involved third parties as a group. The Consumer Ombudsman has also received a number of complaints about the use of the names and pictures of individuals without permission in commercial advertising. This phenomenon is also outside the scope of the Marketing Practices Act in its present form. Indeed, Sweden has lacked a general tort principle protecting the personal integrity of individuals, sometimes referred to as the right of privacy. In 1978, however, new legislation was enacted prohibiting advertisers from using the
name or picture of a person in marketing activities without his consent. The new legislation provides for both criminal penalties and civil damages.

Despite the foregoing, third parties do receive protection under Section 2 when their interests coincide with those of consumers. That is, it is possible to forbid advertisements which are offensive to third parties if they are also misleading to consumers. An example of this is an advertisement which falsely gives the impression that a certain individual uses or recommends the advertised product.

B. The General Standard: What is Improper?

Section 2 is directed against improper marketing, and it is this standard of impropriety which is the key to its interpretation. "Improper" is perhaps the best rendering possible of the Swedish word otillbörlig because, like its Swedish counterpart, it carries moral overtones which correctly imply that it is an ethical judgment which is called for. Economic, distributional and structural considerations are not supposed to enter in, although in practice they must do so to the extent necessary to avoid conflict with the antitrust legislation. In addition, the practical difficulties facing the businessman will often be taken into account in the formulation of injunctions.

This standard is expressly tied to the norm of good commercial practices which in turn is tied to the International Code of Advertising Practice adopted by the International Chamber of
Commerce. These rather specific standards have constituted the basis over the years for the decisions of the Council on Business Practice.\(^{21}\) The Council was a voluntary organ of the business community which disappeared when the government took over its primary functions upon the enactment of the Marketing Practices Act in 1970. The International Code of Advertising, as interpreted by the Council on Business Practice, is the authority to which the Market Court turned, especially during the initial period of the Act, to give concrete meaning to the general clause against improper marketing. As the Market Court builds up its own body of precedents it will become less and less necessary to rely specifically on the Code.

It was also this pre-existing body of precedent which allayed the fears of the Government at the time of enactment that a generally worded provision would shift the legislative power to the bodies charged with administration of the Act and would create great uncertainty in the business community as to what practices were illegal. The use of a general clause makes possible a continuously developing system of norms which can keep pace with developments in marketing methods and avoids the problem of loopholes which inevitably appear in connection with rigid legal rules. In order to express this policy of developing norms, Section 2 is applicable to measures "conflicting with good commercial standards, or otherwise" adversely affecting consumers and merchants. These words indicate that the standard of what
is improper toward consumers is not tied to the norms at the time of enactment or to values that may later prevail in authoritative circles of the business community.

C. The Requirement of Truthfulness

When it comes to determining whether specific marketing measures are improper under Section 2, the most important standard is that of truthfulness. Consumers are most often adversely affected by marketing because it is deceptive in some way.

Before discussing the substantive nature of this norm, it is important to mention a striking procedural rule which governs its application. Before the Market Court, as mentioned earlier, the burden of proof is reversed: it is up to the seller to show that his statements are true, and he has the same responsibility for testimonials and endorsements by others to which he refers in his marketing. This rule is the result of both practical and policy considerations. The advertiser will almost always have better access to documentation for his claims than others, for obvious reasons. The effect of the rule in situations where the advertiser does not naturally have access to documentation is to force him to obtain it before launching his advertising campaign. The rule also has the effect of taking an unnecessary burden off the authorities and avoiding unnecessary procedural delay that would otherwise accompany the task of gaining access to documentation. It obviates completely the necessity of
proving that statements are not true. It thus changes the outcome of all those cases in which it is impossible for practical or other reasons either to prove or to disprove a claim. In short, it is illegal under Section 2 for an advertiser to make statements which cannot be verified.

Another feature of Section 2 which facilitates its application is that neither intent nor negligence on the part of the advertiser need be shown. This is related to the fact that an injunction is the only remedy possible for violations of the section. There is no possibility of criminal or civil liability based on a holding by the Market Court that Section 2 has been violated. As pointed out earlier, the situation is otherwise with respect to violations of the Act's criminal sections and injunctions.

The initial requirement inherent in the standard of truthfulness is that representations be correct. This is as far as previous legislation in the field went, but the Marketing Practices Act goes further by encompassing the all-important concept of the misleading representation. An advertisement, for instance, can be fully correct and yet misleading because important information has been left out or because its layout is such as to cause the consumer to misunderstand what is really being said. It is actually the concept of deception and not falsity which is essential here. Thus, obvious inaccuracies which are unlikely to mislead consumers, and insignificant or irrelevant
falsehoods, are not to be prosecuted under Section 2. Such inaccuracies do not affect consumers, or to put it differently, they do not influence the demand for consumer goods or services. The consumer-demand test correctly implies also that a seller's marketing claims must be reliable, not only with regard to his own products and services, but also with regard to others, normally his competitors, as in the case of comparative advertising.

It is not necessary that anyone actually have been deceived by a marketing method. The Consumer Ombudsman need not engage in empirical studies to show that a certain campaign is adversely affecting consumers. Rather, it is a hypothetical judgment that the Market Court is called upon to make. An essential element of that judgment is a determination of the type of consumer who will be affected. In most cases it will be the general public, the average consumer, who is involved. It is assumed in such cases that advertisements are read hastily, so it is the overall impression given that forms the basis for the Court's judgment.

Analysis of the consumer target group is made necessary by the Act's coverage of misleading misrepresentations. If the Act were limited to incorrect representations, there would be no need to estimate the state of mind of the consumer. It would be a purely objective analysis. But what is misleading to one person will in some cases not be misleading to others. Whether an advertisement which omits important information is misleading, for instance, depends on whether the consumer already has knowledge of the missing facts.
The standard based on the average consumer is relaxed for advertisements to professionals who can be expected to have more specialized knowledge, and it is stiffened for those consumer groups which are likely to be less critical than consumers in general, such as the sick and children. Consumers who won't have a chance to inspect the goods or services beforehand also constitute a special group with respect to which a higher standard is applied. This group includes those subjected to advertising for mail-order purchases and for group tours. Comparative advertising is also subjected to a somewhat higher standard because it is likely to give a particularly strong impression of objectivity.

An advertisement must be nondeceptive in and of itself. The advertiser cannot depend on corrections or supplemental information from other sources. Exaggerated claims are no longer allowed. General statements such as "world's finest" must meet the same standard of reliability required of others, and the reversed burden of proof requires the maker of the statement to show that it is literally true. The reason for this strict treatment of exaggerations is that it is assumed that most consumers take these statements literally. In the interest of encouraging price competition this rule may not be applied so strictly when the exaggerations relate to prices in special low-price promotional campaigns.
Another exception to the requirement that marketing statements must be specifically verified by the merchant arises with respect to statements of taste and opinion. Value judgments, such as references to "a beautiful dress" or "our good cakes," are not objectively verifiable and proof of their truth will not normally be required. However, verification will be required where the statement, by its layout or by being tied to factual statements about ingredients, and the like, is made to appear as an objectively verifiable claim.

Marketing methods other than those which are misleading may be improper under Section 2. These include sales promotions which violate other consumer protection legislation, such as the Door-to-Door Sales Act and the Consumer Credit Act, or which encourage unsafe or illegal conduct.

D. Common Types of Improper Advertising

1. Misleading Product Claims

The most common violations of Section 2 are misleading product claims, that is, deceptive descriptions of the nature of the product, service or other thing of value being marketed. It is here that the rule on reversed burden of proof has its greatest significance. Such claims include representations as to the composition, construction, uses, quality and other characteristics of products. With regard to services, they also include claims as to the education and experience of the provider of the service, its quality, its suitability and the end result to be
achieved. Thus, group travel companies cannot allow their travel brochures to go to print containing descriptions of accommodations which are not available as part of the tours offered.22 Nor may a household cleaner be given a name suggesting that it is not harmful to the environment when it can be shown that it poisons fish.23 A manufacturer which could not prove that the use of its kitchen disposal was beneficial to the environment was forbidden to continue with technical arguments to that effect.24 These cases illustrate the fact that the Market Court tends to apply stricter standards to statements which are not easily verifiable by the average consumer. Product claims will often give rise to warranties with respect to individual purchasers, but that happens on the basis of the Consumer Sales Act and not the Marketing Practices Act. Improper use of the words "warranty" or "guarantee," however, is an issue which can be dealt with under Section 2 as improper terminology, a subject to which we now turn.

2. Improper Terminology

Use of improper terminology is the use of a word or expression which in common usage means something other than what it actually stands for in the advertisement. An example of this is the misuse of legally protected terms such as "lawyer," "doctor," "insurance," and food names. Misuse of these terms is often directly punishable under special legislation.

Scientific terms are particularly susceptible to misuse. The same is true of the words "approved," "inspected" and "test-
ed." One company which had been brought to the Market Court previously by the Consumer Ombudsman and which had successfully defended its marketing methods, added to the advertisements of its "figure forming method" the following claims: "Checked by KO," "Approved by the Market Court" and "Tested by Swedish Doctors." All of these expressions were subsequently forbidden by the Court.25 The first two were found to give the impression that the figure forming method had been the subject of testing by the Consumer Ombudsman and the Market Court and that the method had passed the tests. The Court found this grossly misleading since the case had not considered the method as such, but, rather, only the marketing of it. In addition, the fact that the Court had earlier found no basis upon which to grant an injunction could in no way be considered an approval of the advertising. Also, the Consumer Ombudsman had never taken anything but a critical position toward the method. The Court also disapproved the expression "Tested by Swedish Doctors" because it indicated that a number of doctors had tested the method with positive results. The company was unable to show that this was true.

"Guarantee" and "free" are words often misused also. The word "free" and similar words cannot be used if any performance, no matter how insignificant, is required of the consumer in order to benefit from the "free" offer.26

The use of the word "guarantee" has been litigated in several cases before the Market Court, an indication of the use-
fulness of guarantees as a competitive tool in the marketing process. In the leading case, the Court held that the word "guarantee" could not be used unless the buyer were thereby given a special benefit which otherwise would not be his. It is clear, however, from the same case, that the special benefit does not have to be particularly substantial. Nor is it improper to use the term if substantial performance is required of the buyer in order to enjoy the benefits of the guarantee. In the case referred to, the buyer was given a rust protection guarantee on the condition that the car be given three rust protection treatments during the three-year period covered by the guarantee. The cost of these three treatments, which in 1974 ranged between 600 and 900 Swedish crowns, was to be paid by the buyer. In that case, the Market Court found that the use of the word "guarantee" was not misleading despite the lack of a statement of the costs of the rust protection treatments to the consumer. The Court was of the opinion that the approximate cost of such treatments was generally known by consumers.

It may be that under Section 3 of the Marketing Practices Act it will be possible to set a higher standard for the information which can be required of merchants in the advertising of guarantees. Particularly valuable would be information concerning (1) the value of the guarantee (in the case referred to, the Court assumed that most cars do not suffer rust damage within the first three years), and (2) the costs which the
consumer will have to incur as a prerequisite to enjoying the benefits of the guarantee. It has been suggested that the legislative commission reviewing the Consumer Sales Act may propose that the seller be required to cure faults in purchased goods. If this were to come to pass, many of the advertising references to guarantees used at present would disappear, since it is an essential characteristic of a guarantee that it grant to the buyer a special benefit which he would not otherwise have.

3. Deceptive Packaging, Commercial Origin and Trademarks

The packaging of a product is very often used as a promotional medium, and it is therefore understandable that many complaints have been made to the Consumer Ombudsman concerning packaging. It is important here to distinguish between the design of the packaging -- its size and form -- and packaging decor or dress -- the words and pictures printed on it. Packaging may be deceptive in either respect. Package design, however, is not considered to be a representation, so the rule on reversed burden of proof and the criminal prohibition in Section 6 against intentionally misleading advertising do not apply to package design.

It is impermissible under the general clause of Section 2 to give packaging a size or shape which is likely to mislead consumers as to the amount or nature of the contents. Thus, the Market Court held in one of its first decisions that a package which was 65% longer than the sausage it contained was misleading.
with respect to quantity. Technical and economic factors will often enter into the judgment, however. The packaging must protect the product and be as cheap and convenient for the consumer as possible. When technical considerations require packaging of a size which would, in and of itself, be misleading, that effect must be counteracted by clearly marking the package with a line to show the volume of the contents, making the package transparent, stating boldly the amount of the contents or taking other similar measures. Special legislation enacted in 1971 on the measurement of weight and volume makes it a finable offense to intentionally or by reason of gross negligence offer for sale packaged goods with incorrect weight or volume information.

Packaging decor is essentially a type of product claim and is judged accordingly. Standards are set quite high for food products. Thus, it is impermissible to suggest by word or picture that a packaged food product consists of natural ingredients if it is primarily made up of a synthetic substance. Labels must also not deceive the public as to geographical origin, as discussed in the following section.

Commercial origin, the identity of the producer or distributor of a product, is often indicated on packaging or on the product itself. This can be done by way of trademark, trade name, or packaging or product design which has become associated in the public mind with a particular producer or distributor. Section 2 cannot be used to forbid the imitation of products,
packaging, names or advertising in and of themselves, but it can forbid the use of such imitations in situations where the buyer is likely to be confused and thereby misled as to the product's commercial origin.33

Trademarks present a major category here. There is special legislation on trademarks, the Trademark Act of 1960,34 which provides for the protection of trademarks registered under the Act or which are generally established among those to whom they are directed as indicating the user's products. Sanctions which may be imposed by the regular courts against infringement include criminal penalties, damages and injunctions.

Despite the wide range of remedies available under the Trademark Act, the Marketing Practices Act, as enforced by the Market Court, has begun to emerge as an important tool by which the trademark user can protect his exclusive rights. The Trademark Act can be invoked to forbid the use of deceptive trademarks, but the deception must be obvious.35 Under the Marketing Practices Act, there must be deception, but the deception need not be obvious. The Marketing Practices Act can also be employed to stop the use of trademarks which are deceptive because the characteristics of the product have been altered. The Trademark Act is not applicable in such cases unless the deception is a result of the transfer or licensing of the trademark.36 The Trademark Act is also inapplicable to the use of different trademarks for the same product.
One case which led to the issuance of an injunction by the Market Court was brought by an importer of windbreaker jackets. The respondent company had started manufacturing jackets which were physically almost identical to the petitioner's and which contained a trademark in the lining very similar to the registered and generally known trademark of the petitioner. The Court found the use of the mark obviously misleading to consumers with respect to the commercial origin of the jackets.

Another interesting case involved the imitation of the packaging of liquid plant food. The respondent firm packaged its plant food, as did the petitioner, in a plastic bottle shaped like an old apothecary bottle with the same size, color and decor as the petitioner's, and with a label with the same placement and coloring. The text on the label was clearly different, but the Court found that differences, which made it relatively easy to distinguish the bottles when compared side by side, could be, and in this case were, insignificant in comparison with the overall impression of the package which would remain in the mind of the normal consumer who was assumed not to have the opportunity to compare them side by side. The Court also found that the original packaging was rather well known in the Swedish market. Consequently, the Court held the respondent's use of the packaging improper because it would mislead consumers as to the product's commercial origin.

It is evident from other Market Court cases that the principle stated here is applicable also to services. In one of
those cases, for instance, a private law firm was forbidden to call itself by a name which implied that it was associated with the public legal aid offices.39

The use of different trademarks for the same product, sometimes called trademark differentiation, was brought to the Market Court for review by the Consumer Ombudsman on the ground that consumers were being led to believe that there were actually two different products with different characteristics.40 This question clearly fell within the ambit of Section 2 of the Marketing Practices Act.

The case involved the sale of the same varnish as (1) a boat varnish, marketed as being particularly suitable for boats, and (2) a wood varnish, marketed as being a general-purpose varnish for wood. The KO argued that this type of marketing made it more difficult for consumers to orient themselves in the marketplace and to make rational choices between products. The Market Court decided, however, 5 to 4, that the marketing method in question was not improper under Section 2. The majority rejected out of hand the Consumer Ombudsman's request that the company be forbidden to market the same product under two different names, stating that an injunction of such broad scope was more than was necessary to stop the marketing practice in question and was therefore not authorized under the Marketing Practices Act.

The Consumer Ombudsman had requested, in the alternative, that the company be required to inform consumers that the higher
priced boat varnish was also sold under the designation of clear wood varnish. This alternative relief was also denied. The Court's reasoning was that (1) there would be no harm to consumers if the two products were sold for the same price, and (2) the company had shown that the higher price on the boat varnish was justified by higher marketing costs in the boat varnish market. The Court made the general statement that trademark differentiation, in and of itself, was not misleading, but that it could be improper under Section 2 of the Marketing Practices Act if it were combined with other measures, such as an unjustified pricing policy. The Court also objected to arguments that the practice was confusing to consumers, pointing out that the differentiation served the purpose of alerting consumers to the existence of another alternative in the market and allowing the use of specialized instructions.

The dissenters, which included the president of the Court, disagreed with the majority's ruling on the Consumer Ombudsman's alternative request, namely, that consumers be informed that the same product was being sold under a different name. The minority asserted that trademark differentiation serves the need of the manufacturer and not consumers, and the sale of the same product under different names would undoubtedly make it harder for consumers to make a rational choice.

The decision in this case resulted in quite a bit of commentary.41 The Consumer Ombudsman has said that the decision is
clearly unsatisfactory. He intends to bring a similar case, this time with respect to household capital goods, under Section 3 of the Marketing Practices Act.42 This section should increase the power of the Court to require information concerning trademark differentiation. That section was not available in the varnish case because it had not been enacted when the case was filed. The Consumer Ombudsman has said that if the Market Court does not hold the other way under Section 3, he will seek appropriate legislation.

4. Geographical Origin

Deception as to geographical origin is improper under Section 2. Before the enactment of the Marketing Practices Act in 1970 special legislation existed in this field, but those earlier statutes were repealed in connection with the enactment of the new marketing legislation. Section 2 of the Marketing Practices Act is to be applied in such a manner that Sweden fulfills its international treaty obligations to prohibit false or misleading use of indications of source. Here, Sweden is bound by Article 10 of the Paris Convention on Industrial Property (Lisbon Text of 1958) and has also ratified the Madrid Agreement of 1891 for the Repression of False or Deceptive Indications of Source on Goods (Lisbon Text of 1958). Sweden is not a member of the Lisbon Agreement of 1958 for the Protection of Appellations of Origin. Indeed, the very concept of appellation of origin (appellation d'origine) is foreign to Swedish law. The reason for this
probably being that Sweden produces very little in the way of agricultural products whose characteristics are essentially the result of the environment at the point of their geographical origin.

Full responsibility for eliminating misleading designations of geographical origin now lies with the Consumer Ombudsman under the Marketing Practices Act. The KO has entered into an agreement with the customs authorities according to which they report to him any imported foreign goods marked with incorrect statements of origin.

It is improper under Section 2 to mislead the public as to the country or locality from which a product comes. This is true, however, only if consumer demand is affected. The lawmakers were of the opinion that the geographical origin of a product will often be of no interest to consumers. The Market Court has come to the conclusion, however, that many consumers do accord the place of manufacture considerable significance. The Court has pointed out, for instance, that domestic honey is preferred to honey from other countries. This preference is sufficient to invoke an injunction from the Court even if the products involved are of equal quality. As a practical matter, the Consumer Ombudsman normally chooses not to prosecute cases where there is little difference in quality involved.

Contrary to the earlier special legislation, there is no general requirement that the product be marked with its place of origin. Most problems arise where positive statements of origin,
such as "Made in Sweden," turn out to be untrue. Also, contrary to earlier legislation, the importation of foreign goods under a Swedish trademark will normally be allowed under Section 2 because the trademark is now considered by consumers, in the opinion of the lawmakers, to indicate the commercial origin of the goods rather than their geographical origin. Again, this rule will not hold if consumers as a practical matter consider the trademark to be a sign of geographical origin and are thereby misled. Section 6, which forbids intentionally misleading representations, is applicable. In one case, low-quality Indian rugs were sold as "Swedish Handmade Rugs" and "Homewoven Tapestry Rugs." The KO handed the case over the police, and the seller was subsequently sentenced to a fine in the district court.46

5. Deceptive Pricing

Incorrect or deceptive price information will normally affect consumer demand and therefore be illegal under Section 2. This is true of statements concerning another's prices, as well as one's own, and applies to both buying and selling prices.

All prices, no matter how communicated, must include the value-added tax if the offer is directed to consumers.47 Offers directed exclusively to businessmen do not need to include tax. The rule with respect to consumers was established in order to facilitate comparisons and to avoid the need for consumers to determine in each case whether tax is included, determine the applicable percentage and calculate the amount of tax in order to
arrive at the total price. This is essentially part of the broader rule that price information must be complete. The Market Court issued, for instance, an injunction against a travel agency for failing to include certain obligatory fees in a price list. It was insufficient that the fees were stated in small print at the back of the brochure as part of the terms of contract.48 The Consumer Ombudsman has reached agreement with representatives of the business community that consumers will be informed ahead of time of all extra fees. Deceptive pricing has also been common in the marketing of credit sales.49 This problem has been specifically dealt with in the Consumer Credit Act, which became effective in 1979 and is discussed in Chapter 1.

With some prodding from the Government, the grocery retailers have agreed to provide unit prices along with their regular shelf prices. Unit pricing gives the price per unit of weight or volume and thereby greatly facilitates comparative shopping. A working group composed of representatives from Konsumentverket, the National Price and Cartel Office and the grocery retailers have agreed on the methods by which the unit prices are to be calculated. In addition, it now appears possible to require unit pricing under Section 3 of the Marketing Practices Act if that should prove necessary.

6. Comparative Advertising

Direct product and price comparisons are fully permissible under the Marketing Practices Act. Earlier, such comparisons were strongly disapproved of by the Swedish business community.
It is now generally accepted, however, that, when correctly carried out, they can be of great value to consumers by facilitating choices among products and services and by stimulating competition.

Because of the strong impression of objectivity comparative advertising is likely to give, the standard of truthfulness is set somewhat higher than normal. Consequently, demands for documentation tend to be stricter, and exaggerated claims meet with less indulgence. As mentioned earlier, the requirement of truthfulness applies to statements concerning not only one's own, but also others', commercial activity. The heightened standard of truthfulness places demands on marketers which are often difficult to satisfy, but the legislators were careful to make the point that the standard should not be set so high as to make such advertising impossible as a practical matter. To do so would bring the Marketing Practices Act into conflict with the policy in favor of vigorous competition expressed in the Restrictive Trade Practices Act. The most common deficiency with comparative advertisements is that they compare only one feature of the product or service involved, such as price, and do not mention other features, such as quality. This approach is often necessary for practical reasons since it will normally be quite burdensome to compare products or services from all points of view. Section 2 therefore permits comparative advertising which covers only one feature of the products or services being compared as long as it is made clear that there are other features of importance which have been omitted.
For instance, the Consumer Board apparently succeeded through negotiations in eliminating the misleading characteristics of an advertisement comparing the features of a food processor with those of two others sold by competitors. The agency staff pointed out that the products were simply not comparable. The advertiser had failed to point out that the products were in different price ranges. And, even as to some features covered in the advertisement, such as the availability of extra accessories, the features of the advertiser's food processor were treated more favorably.50

Price level comparisons give rise to the most difficult problems. In the 1975 Scandinavian Touring case,51 the Market Court expressly weighed the demand for truthfulness against the public interest in furthering price competition. The tour organizer in this case had made such claims as "Sweden's Lowest Prices to All Destinations" and "You can't travel cheaper with anyone other than Scandinavian Touring, no matter what destination you choose." The court based its judgment on its determination that the advertisement gave the impression that the company offered the lowest prices at every point during the season to every destination. It rejected as irrelevant the company's attempt to document the statements by way of average prices, even though this was the only practical approach according to the company. The company's grouping of price categories according to the standard of accommodations was judged to be subjective and one-sided,
and the evidence showed a competitor to be technically cheaper twenty-five percent of the time. An attempt by the company to rely on prices not in existence at the time of the advertisement was also rejected. In entering an order against the company, the Court said that "the requirements of truthfulness in advertising in this context cannot be set so low that the interest in competition is allowed to justify a marketing method which appears to be clearly unreliable."

7. Inadequate Identification of Advertising

The general clause of Section 2 requires that advertising be easy to identify as advertising. Thus, advertisements in newspapers and periodicals that appear at first glance to be editorial text must be clearly marked as advertisements.52 This requires, at times, a careful determination of what advertising is and what is protected under the freedom of the press, especially when publications and other businesses coordinate their marketing campaigns.

Advertisements sent directly to consumers must be easily identifiable as such from the envelopes. The normal problem here is that the envelopes are made to look as if they come from government authorities.53 The principle involved, that the marketer must make his purpose known immediately to consumers, has been applied to door-to-door sales54 and home parties,55 as well.

A closely related requirement is that the advertiser identify himself. In a case involving the temporary sale of clothes
in leased quarters, the Market Court required that the leaflet
distributed by the seller contain not only his name and full
address, but also his telephone number.56

All the foregoing cases arose under what is now Section 2.
Under the expanded Act, cases in this area will be dealt with
most naturally under Section 3 and its requirement that business-
men provide information of particular significance to
consumers.57

8. Dangerous Products

Instructions designed to prevent the dangerous use of prod-
ucts can be required under Section 3. If this is insufficient,
their sale can be forbidden under Section 4. Under Section 2, if
certain products or services entail health risks, higher stan-
dards can be demanded of their marketing. Such products include
medicines, health products, liquor and tobacco. The government
emphasized, in its authoritative comments, that particular atten-
tion should be paid to the marketing of medicines and health
products to consumers and that very high standards of reliability
should be applied. This strong directive was motivated by the
persuasive impact medical argumentation can have and the fact
that sick persons are less critical than consumers in general.58

These products include cosmetics, hair products, vitamins,
weight reducing methods and aids, health foods and the like.59
Strict scrutiny is also given to advertising claims for food.60

Special legislation is often applicable alongside the
Marketing Practices Act. For instance, legislation in 1975
enabled the Government to require the packages of cigarettes and other tobacco products to carry health warnings and a declaration of contents. And new special legislation on tobacco and liquor advertising was enacted in 1978. Prior to the new legislation, the KO and the Market Court had been quite active in both product areas. Cigarette advertisers had been forbidden by the Market Court to use pictures of people, the outdoors or other attractive environments. This applied not only to advertisements but also to cigarette packages. The Court's purpose in these cases was to eliminate the impression given by such advertising that cigarette smoking is something positive and is connected with health and freshness. In its judgment, such an impression was totally at odds with the proven harmful effects of smoking.

The Market Court's restrictions on cigarette advertising were subsequently applied to the advertising of alcohol. The weaker grades of beer were allowed to be advertised with the aid of human models and attractive settings as long as the advertising was "characterized both in word and picture by sobriety and a sense of responsibility." This meant that such advertising could not be directed to youth or appear at sporting events or outdoor activities. The size of the advertisement was held to be irrelevant to a determination of impropriety under Section 2. Limitations on size were set for the stronger grades of alcohol, however, by agreement between the industry and the Consumer Ombudsman.
The foregoing actions with respect to tobacco and alcohol were superseded by the Tobacco Products Marketing Act of 1978, and the Alcoholic Beverages Marketing Act of 1978. The two acts fall short of a complete ban on all advertising, but not by much. In both cases, advertising which encourages use of the products is forbidden. In the case of tobacco, the warning text required to be printed on the packaging is required to be included in the advertisement as well. With respect to alcoholic beverages, all consumer advertising in publications is forbidden.

The Consumer Board simultaneously adopted similar guidelines pursuant to the new statutes. Advertising was forbidden in publications directed to youth and the sports pages of the daily newspapers and in sports publications. Also, limitations on the quantity of advertising in single issues of publications were adopted. With respect to both alcohol and tobacco, hand bills and other direct advertising, outdoor advertising and advertising at theatres and by loudspeaker were forbidden. Also, no such advertising is to be introduced into hospitals or other care institutions, educational institutions or facilities intended for or visited by youth under twenty years of age. In line with the earlier Market Court decisions, very strict limitations were adopted with respect to the content of the advertising. Additionally, personal testimonials and blatant value judgments were banned. Certain advertising is permitted at the place of
sale. However, distribution of samples, demonstrations, the giving away of presents, prize contests and rebate offers were generally forbidden. The Market Court has specifically forbidden free giveaways of cigarettes.73

9. Other Types

Only the most important types of improper advertising methods have been discussed. Other forms include misleading presentation of the terms of sale, testimonials, advertising which urges or encourages illegal conduct74 and advertising which encourages unsafe behavior by picturing situations where normal safety precautions are disregarded. It can be expected that new forms of improper advertising will appear as time goes on. Also, in the present discussion certain types of advertising which are improper primarily toward other businessmen under Section 2 have been omitted. These include the exploitation of goodwill, commercial defamation and disparagement.

E. Intentionally Misleading Advertising: Section 6

The Act contains three criminal provisions. The most important of these is Section 6 which outlaws intentionally deceptive representations:

A merchant who, in the marketing of a product, service or anything else of value, intentionally makes use of a misleading representation which concerns his own or another's commercial activities and is likely to affect demand for the item in question, shall be sentenced to a fine or imprisonment not to exceed one year. The first
paragraph is applicable also to employees of the merchant and others who act on behalf of the merchant.

Violations are prosecuted in the regular courts by the public prosecutors upon the request or with the permission of the Consumer Ombudsman. Section 6 and two other criminal provisions fall within the area in which the general clause against improper marketing is applicable. It is up to the Consumer Ombudsman in each case to decide whether to seek an injunction from the Market Court himself or to ask the public prosecutors to investigate and prosecute in the regular courts. The normal choice will be the Market Court because of the central position occupied by the Court and Section 2 in the legislative scheme. The purpose of Section 6 is to frighten off, and if necessary, deal with, businessmen who might be tempted to undertake clearly illegal marketing measures on the assumption that they won't be found out or that their marketing campaign will be finished before the Market Court can issue an injunction. It is the hard edge of the law which can be applied to those who purposefully flout it. For example, it is available for use against the company which attempts to use a method which the Market Court has already forbidden a competitor from using.

Section 6 naturally has many characteristics in common with the general clause. No actual deception need be shown, only that the representation is deceptive. Cases of actual deception are dealt with under the Criminal Code provisions on fraud, dishonest
conduct and "swindle." Section 6 is also strictly limited to purely commercial activity, which should avoid conflicts with the Freedom of the Press Act. And like the general clause, it is not limited to incorrect statements, but extends also to those which are deceptive. For instance, in a newspaper advertisement the following appeared: "Tibro Furniture's BANKRUPTCY premises ... Take a look! Furniture of enormous value is being thrown out ..." It turned out that the advertisement had been put in by Mark's Furniture, Inc. which had taken over the premises of the bankrupt Tibro Furniture Co. None of the furniture involved in the bankruptcy was for sale at the time, however, because it was still in the hands of the trustee. Although the advertisement was arguably correct in stating that the bankrupt's premises were involved, it was undoubtedly deceptive in implying that it was a bankruptcy sale. As a result, a member of the advertiser's board of directors was prosecuted and sentenced to a fine. Imprisonment is also possible but will be used only in extreme cases where a fine would be inadequate. During the first ten years in which the provision was in force no sentence of imprisonment has been imposed.

Again like Section 2, Section 6 is applicable not only to big advertising campaigns, but also to sales pitches to individual consumers. Thus, a hi-fi shop owner was fined for stating to individual customers that the loudspeakers he was selling were a certain well-respected brand, whereas he had actually made them
himself from a kit. The district court found that his false statement was likely to affect the demand for the loudspeakers, as required by Section 6.77

There are certain important differences between Section 6 and the general clause against improper marketing. Section 6 applies only to representations made in the course of marketing. Thus, it is applicable to packaging decor but not to the package's size and shape. Both are considered marketing actions subject to Section 2, but the latter is not a representation subject to Section 6.

The burden of proof lies with the public prosecutor. He must show both that the representation was misleading and that the businessman acted intentionally. Of the three grades of intent recognized in Swedish criminal law, even the weakest will support a judgment under Section 6.78 That is, Section 6 is violated even where the defendant believed that the representation was only possibly misleading, if it can be presumed from the circumstances that he wouldn't have abstained even if he had been sure that it was misleading. Negligent misrepresentation, however, where it can be shown that he should have known, but didn't, that the representation was misleading, is not punishable. Another difference from Section 2 is that only physical persons may be subjected to criminal prosecutions.

In one case, a district court held an advertiser to a stricter standard under Section 6 than the Market Court did under
Section 2.79 In the district court case, travel agency #1 had entered into an exclusive contract with certain resort hotels. A competitor, travel agency #2, nevertheless advertised trips which listed the same hotels. Travel agency #1 complained to the KO, who then requested a criminal investigation. The investigation revealed that travel agency #2 had learned of the impossibility of using the hotels in question after its travel brochures had been printed, but continued to distribute them with no correction. On the basis of the investigation, the KO requested that the public prosecutors undertake to prosecute the president of travel agency #2. The district court found the advertisements clearly misleading and likely to affect demand for the services of travel agency #2. The court also found that the travel agency must have realized the misleading nature of the advertisement. The sentence imposed was a mild fine.

This decision came at a time when the Market Court was considering the same practice by the same travel agency under Section 2 of the Marketing Practices Act. In that case, the Market Court held that the same practice was permissible under Section 2.80 It held that it was sufficient if the information in the travel brochures was correct as of the date of publication. The travel agency was not required to update them thereafter. Of the two decisions, the one from the district court will probably set the standard of conduct, at least within its venue, since it is the stricter of the two.
F. Promotional Schemes and Certain Selling Methods

1. Combined Offers

A combined offer is the marketing and sale of two or more products together. The offer may involve products of roughly the same value, such as a set of tools, or it may involve a primary product with a "bonus" product added on. All products involved may be received at the same time, or a proof-of-purchase may be used to acquire a second product at a later time, as is the case with trading stamp systems. The concept is not limited to products, however. Services or other things of value may be involved in any of these combinations.

The Swedish lawmakers decided that strong steps were necessary against certain combined offers because they can have the disadvantage of making it difficult for the consumer to orient himself in the marketplace. Bonus offers can often lead the consumer's attention away from the price, quality and usefulness of the primary product. He may be persuaded to make his purchase on the basis of irrational factors and even acquire products in which he has no real interest. However, because such offers also serve useful purposes, such as facilitating the marketing of new products and the distribution of products or services useful to the consumer, only certain types of combination offers were made illegal. These proscriptions were given the form of criminal provisions supplementary to the general clause of Section 2. They are essentially per se rules within the ambit of the general clause.
Section 7 outlaws trading stamp systems and all other combined offers by which the purchaser receives a proof-of-purchase entitling him to a benefit other than money:

7. A merchant who, in return for a stamp or other certificate supplied in connection with the sale of goods, services or anything else of value, offers to a consumer a consideration other than money, shall be sentenced to a fine or to imprisonment not to exceed one year. This shall not apply, however, if the certificate confers the right merely of overhaul, repair, or the like, with respect to the item sold.

The proof-of-purchase may consist of boxtops, receipts or coupons. The section is limited to consumer purchases: combination offers involving proofs-of-purchase in connection with sales to businessmen, distribution of free samples to consumers, and the inclusion of coupons in advertisements, are not affected.

Section 7 applies whether the proof-of-purchase can be exchanged directly for another product or merely entitles the consumer to a discount on another product. The use of a proof-of-purchase is permissible, however, if it can be exchanged only for money. But schemes which allow the consumer to choose between money and a product are not allowed because such offers can easily be used to circumvent Section 7 by making the cash alternative clearly worth less than the product. Because of its value to consumers, an express exception is made for the
proof-of-purchase which entitles the purchaser to maintenance or repair of a purchased product. The coupons that are often received in connection with the purchase of a car and that entitle the purchaser to regular check-ups and service are thereby permitted. The exception for repair work also excludes warranties of the seller committing him to replace defective or missing parts or to otherwise repair the product.

Two major types of combined offers cannot be found in Swedish marketing as a result of Section 7. One is the trading stamp system where stamps given out at, for example, grocery stores or gas stations are collected and later traded directly for other consumer goods. The other is the former practice of sending in box tops and the like for other goods. This latter type is illustrated by the very first Market Court decision, in which the offer on the back of a cake mix box, to send the consumer three forks in exchange for eight Swedish crowns and the flaps from three packages of the cake mix, was held to violate Section 7.83

In the cake mix case the company was forbidden to continue with its offer on the basis of the general clause in Section 2. This illustrates the use of the criminal provisions against combined offers as per se rules within the general clause against improper marketing. Indeed, no one has so far been prosecuted in the regular courts under either of the criminal sections against combined offers. The regular courts, which are to try the

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criminal cases (should they ever arise), will presumably pay close attention to the decisions of the Market Court.

Section 8 applies to combined offers which do not employ a proof-of-purchase:

A merchant who, in a case other than referred to in Section 7, offers to a consumer two or more products at an all-inclusive price, or offers to a consumer who purchases a product the acquisition of another product without payment or at a particularly low price, shall, if the products manifestly lack any natural connection and such action makes it difficult for the consumer to judge the value of the offer, be sentenced to a fine or to imprisonment not to exceed one year. The provisions of this section concerning products apply also to services and other things of value.

A combined offer violates Section 8 only if two prerequisites are simultaneously satisfied: (1) the goods or other things of value offered manifestly lack any natural connection, and (2) the offer makes it difficult for the consumer to judge its value.

The first prerequisite is a significant limitation on the scope of the section. According to the 1970 comments of the Minister of Justice, the word "manifestly" indicates that the goods must totally lack any natural connection. The determination of the relation between the products is to be made from the consumer's point of view, not the merchant's. Accessories to a main product may be sold with it, and in general, any products with a common area of use may be sold together. Products which are of interest to the same group of customers also have a sufficient connection to escape prosecution under Section 8. Even
different household articles are sufficiently related to pass muster under this test.\textsuperscript{84} The limit to how far these statements can be stretched was indicated to some extent by an early case in the Market Court involving the combined offer of a subscription to a weekly magazine and a bottle of Eau de Cologne.\textsuperscript{85} The Court rejected the publisher's contention that there was a natural connection since women constituted a majority of the readers of the magazine (62\%) and women constituted all the consumers of cologne. It noted that the magazine was not devoted completely to beauty care but also covered other areas. The Court stated that, if the only argument that could be made for a connection between the two products was that they both appealed to women, then they must be held to manifestly lack any connection.

The second prerequisite for a violation of Section 8 is that the offer make more difficult the consumer's determination of its value. This is essentially a more specific formulation of the requirement of truthfulness imposed by the general clause. The purpose of the prerequisite here is to exclude offers where the value is clearly given or where an extra product of insignificant value is involved. This requirement was not satisfied in the magazine-perfume case. In so holding, the Court noted the following deficiencies: the volume of the perfume was not given and the perfume was not available on the market in the size offered, nor were the relevant pricing practices known to consumers. Also, the subscription period was not the normal one for the magazine and the normal subscription price was not given.
Since Sections 7 and 8 are criminal provisions, the question may arise as to what intent is required. Nothing is said about it in the Act or by the Minister of Justice, but the Council on Legislation has said that "the businessman must have shown some, be it mild, carelessness."86 No intent is required, however, if the case is brought to the Market Court under Section 2, and this is the way all the cases to date have been handled.

When the Marketing Practices Act was revised in 1975, the Government rejected the Consumer Ombudsman's request that both of these limitations on Section 8 be reduced, but at the same time it called for a more stringent treatment of combined offers under the general clause. Thus, in Section 2 cases, a showing that the same consumers use both products should not constitute a sufficient relation between the products. Rather, it should be necessary for the products to be functionally related, that is, the consumer needs to use them at the same time and it is practical for the consumer to buy the two together. The decisive factor, according to the Minister of Justice, is whether the offer makes it more difficult to judge the value of the bargain, and this will normally be the case where the products lack the required relationship.87 In other words, it was his opinion that it should no longer be possible in most Section 2 cases to successfully defend a combined offer solely on the basis that its value has been stated clearly.88 The Government also made the point that even supplementary offers of little value are improper if
they serve to distract the consumer's attention from the essential factors concerning the primary product. Thus, plastic toys in cereal boxes which tend to divert children's and consequently parents' attention from the qualities and price of the cereal were said to be improper. However, as the statutory text of Section 8 was not changed, it is doubtful that the remarks of the Minister of Justice will change the practice of the Market Court.

The first decision of the Market Court with respect to Section 8 subsequent to the 1975 amendment is illustrative of the approach which the Consumer Ombudsman and Market Court presently take.

In that case, the KO challenged a company which sold encyclopedias. The company had offered to give a world globe to buyers of the set of encyclopedias. The Consumer Ombudsman sought to have the combined offer of the encyclopedias and the globe enjoined under Section 2. He asserted that Section 2 was violated for two reasons: (1) the combined offer was a violation of Section 8 of the Act; (2) in the alternative, the offer was so similar to the criminally forbidden types of combined offers under Section 8 that it should be enjoined as an improper marketing method under Section 2.

Looking to the first prerequisite under Section 8, the Court formulated the test to be whether there existed a fairly obvious connection between the areas of use of the respective products.
It held that a globe could serve as a useful complement to certain uses of the encyclopedia, namely, those relating to geography. This was sufficient to satisfy the Court that there could be no violation of Section 8.

The Court then inquired whether the offer in question lay so close to the criminally prohibited practices that it should be forbidden under the general clause of Section 2. Citing its previous decisions, it stated that the primary test here is whether the combined nature of the offer made it more difficult for the consumer to assess its value. The Court then looked at the two products individually and held that under current market conditions, the values of both were relatively easy to ascertain. Consequently, the petition of the Consumer Ombudsman was denied in its entirety.91

In addition to what has been said before, the general clause of Section 2 requires that combined offers be presented clearly and correctly. This includes avoiding calling a supplementary offer a "gift," "present," something given out "free," or the like. These are considered improper whenever the purchase of the main product is a prerequisite to obtaining the "free" supplementary offer.

2. Discounts, Bargain Offers and Sales

Discounts and bargain offers that are not tied to the purchase of other goods or services are permissible under the Marketing Practices Act. They further the policy of the Restrictive
Trade Practices Act in favor of vigorous price competition. Examples include introductory discounts, discount coupons distributed door-to-door or included in advertisements, weekly specials and other price reductions. The presentation of the offer must, however, be correct. Here, the primary rule is that prices which are actually normal prices cannot be touted as discounts. Thus, a furniture company was forbidden by the Market Court to advertise the prices of certain furniture sets as "Now 1195:-" and "Now 795:-", when those prices had already applied for seven and two months respectively.92

It is also clearly improper to invent fictitious normal or list prices to make the actual price appear to be a better buy. A particularly low price on just one product should not be represented to be indicative of the general price level in a store. And the amount of the discount should not be printed so large that it can easily be mistaken for the total price.93

"Bait and switch" advertising is not allowed. This consists of advertising a product or service at a low price, not with the purpose of selling at that price, but with the purpose of luring customers in who can then be convinced to purchase more expensive items. In a 1977 case the Market Court forbade a tour organizer to advertise tours with departure dates within three weeks at a certain price unless, at the time the advertisement is placed, there are at least ten places available or the number of places available is clearly given in the advertisement.94
Deceptive presentation of a sale violates Section 2. Advertisement of a sale creates great expectations of good bargains and must therefore be undertaken with care. A common problem that arises here is the "permanent sale" which is not limited in time and during the course of which the stock is replenished. Close-out sales are often deceptively represented so that it appears that the seller is being forced to sell. A purported bankruptcy sale which led to a criminal prosecution has already been given as an example of intentionally misleading advertising under Section 6 of the Act.

3. Lotteries and Prize Contests

All public lotteries are subject to the Lottery Act of 1939 which requires that a permit be obtained from the government in each case. As a practical matter, however, permits are not issued for commercial promotional lotteries. A lottery is defined as a game where the winner is chosen in one way or another by chance. Giving a prize to the first correct solution to a crossword puzzle drawn from among all the solutions sent in is an example of a lottery. There is an exception to the permit requirement in the case of newspaper games whose purpose is not to market the newspaper but to entertain readers, and where the prize amounts are quite small. The KO's job in this area is to monitor obedience to the Lottery Act and to see that violations are prosecuted in the regular courts or as improper marketing in the Market Court. Surprisingly, he has found it necessary to
reprimand government agencies responsible for exaggerating the changes of winning in certain national raffles and lotteries.99

Prize contests differ from lotteries by virtue of the fact that the winner is selected on the basis of individual performance rather than on the basis of chance. Prize contests are not subject to the Lottery Act and they are permissible, in principle, under Section 2 of the Marketing Practices Act. They were criticized by the lawmakers at the time of enactment, however, because they tend to divert attention from price and quality to factors that should normally be irrelevant. Examples of contests which are common include choosing a name for a new product and inventing a slogan that can be used in a company's advertising. Section 2 requires that the contest's rules be given clearly and that they actually be followed. The contestant must not be treated arbitrarily.100 An important point here is that there can be no requirement that contestants purchase something in order to be able to participate. This would violate the policy against combined offers inherent in Sections 7 and 8 and the general clause of Section 2.101 Combinations of lotteries and prize contests will be subject to the Lottery Act whenever the element of chance is significant.

4. Unsolicited Goods

The delivery of unsolicited goods was declared by the legislators to be a clearly improper selling method that should be attacked vigorously under Section 2. Its fault lies in the fact
that it exploits the ignorance of the general public concerning the private law of contract because it often gives the consumer the impression that he must do something in order not to become obligated. According to Swedish contract law, a person who receives unordered merchandise, such as a book, normally need neither send the merchandise back nor notify the seller in order to avoid becoming bound. The consumer is also under no duty to take care of the merchandise and can even throw it away, at least if it is an article of rather low value distributed on a mass basis. In one case local telephone catalogues were sent to people with telephones. On the accompanying bill was printed "Voluntary Subscription." The Market Court nevertheless held the procedure a violation of Section 2. It stated that many of the recipients were likely to form the impression that they had a duty to pay the bill. Others would be unsure of the extent to which they could use the catalog without becoming bound. And still others would feel a moral obligation either to pay or to return the catalog. The marketing method was therefore incompatible with good commercial practices and Section 2.102

Quite a different situation exists between businessmen who deal with each other on a regular basis. There, it is possible for the failure to decline an offer to lead to the formation of a contract. Whether there is an existing contractual relationship between the parties is a factor that can also be of importance in consumer contexts. In the case of certain continuing contracts,
such as insurance and newspaper subscriptions, it will often be in the consumer's own interest that the contract be renewed automatically, without the necessity of positive action on his part. The Consumer Ombudsman has entered into an agreement with the newspapers which allows automatic subscription renewal. An agreement with the subscriber that the subscription will be renewed automatically must be entered into at the very beginning, and the subscriber must be regularly informed of how and when he may cancel the subscription.\textsuperscript{103}

As with the discussion of the major types of advertising, not all types of promotional schemes and selling methods have been discussed, mail order sales, home parties and telephone sales having been excluded.\textsuperscript{104} The treatment of door-to-door sales under Section 2 is discussed in conjunction with the Door-to-Door Sales Act. Likewise, installment sales are treated under the Consumer Credit Act.

III. INADEQUATE INFORMATION: SECTION 3

Inherent in the general clause against improper marketing is the duty of the businessman to provide the information necessary to prevent his marketing measures from being misleading. This is apparent in the many cases in the Market Court which have
resulted in conditional injunctions. Thus, a company was forbidden to use oversize packaging unless the quantity of the contents was clearly stated on it. Another was forbidden to state its prices without including tax. Still another was required to state the total price of a mail order installment purchase in its marketing.

However, until the passage of the present Section 3 of the Marketing Practices Act, there was no means to require the inclusion of information where the marketing was not misleading in and of itself. Thus, the Consumer Ombudsman's attempt to have the Market Court require health warnings on cigarette packages was rejected. Another example is the refusal of the Court to require disclosure that the same product was being sold under two different names. The KO has now brought a similar case under Section 3 in hopes of obtaining a different result.

Swedish consumer policy is more far-reaching than the prevention of deception, however. It seeks to facilitate rational consumer purchases, and that requires that certain essential information be readily available to the consumer. In order to fully carry out this policy, Section 3 of the Marketing Practices Act of 1975 was adopted. In the process, the traditional dichotomy between advertising and consumer information was modified. The Government concluded that effective consumer information activities on its part would be far too expensive, and that advertising was often the most important source of information.
for consumers and thus the most effective method of reaching them. It therefore took the truly innovative action of imposing upon sellers the duty of providing this essential information by enacting Section 3:

Information

Section 3. If a merchant, in the marketing of products, services or anything else of value, fails to give information of particular significance to consumers, the Market Court may order him to give such information. Such an order may also be issued to an employee of the merchant and to any other person acting on behalf of the merchant.

An order such as referred to in the first paragraph may stipulate that the information shall

1. be given through labeling of goods or be furnished in other forms at the place of sale,
2. be given in advertisements or other representations used by the merchant for marketing purposes,
3. be given in a certain form to a consumer who so requests.

By means of this "general clause," positive demands can be made on the informational content of the seller's marketing. A general clause was chosen for many of the reasons that a general clause was adopted for Section 2 and because it would fit better with Sections 2 and 4, to which it is closely related. Special legislation requiring information exists with respect to a number of specific products, including foods, pharmaceutical products and dangerous chemical substances. These areas are not excluded from the scope of Section 3, but the special legislation will normally be applied to the extent that it is applicable.
A primary objective of Section 3 is the safe use of products. It is to be used to require warnings and safety instructions for dangerous products. Only if Section 3 proves inadequate is resort to be had to Section 4. This is the approach which the Consumer Board has taken with respect to guidelines for skateboards. The Market Court has ruled pursuant to Section 3 that advertising for skateboards must state that skateboards are unsafe for children less than 12 years old.

The information that can be required under Section 3 is only that which is "of particular significance to consumers." In contrast to Section 2, the analysis mandated is not an ethical one. The authoritative comments on the section say that information can be required "as soon as there is not a wholly insignificant" consumer need for it. Accordingly, Section 3 is not to be reserved for only particularly serious cases. It is also clear from the statutory text that it is only consumers who are to benefit from this section, and not, as with Section 2, also businessmen.

There are basically three types of information which are likely to be of particular significance to the consumer. These concern (1) the nature of the product or service, including type, composition, dimensions, weight, useful life and instructions for its use and maintenance (Section 3 has the same coverage as Section 2, applying also to the marketing of "other things of value" such as real property and credit); (2) the terms of contract between buyer and seller, including method of payment and war-
ranties; and (3) the commercial origin of the product or service, such as the identity of the manufacturer, importer, seller and the one responsible for any servicing commitments.

The provision indicates three ways in which the information can be required. First is product labeling or information in other forms at the place of sale. This would include information located on the product itself, its packaging and on signs and fact sheets. An important possibility is the posting of prices, including unit pricing. Second is advertising and other representations. "Other representations" would comprise billboards, mail advertising and oral sales argumentation. Certain information can thus be required in connection with door-to-door sales and telephone sales. The duty to provide information by means of advertisements or other representations is a "relative" duty in the sense that the businessman cannot be required to advertise or make other representations. He may choose to abstain from making any representation at all, in which case an information order would have no further effect.

To the extent that advertising takes place in printed periodicals, an absolute duty to provide information would run into difficulties emanating from the Freedom of the Press Act. Under that Act, which forms part of the Swedish Constitution, each publication must have a legally responsible publisher (ansvarig utgivare). This person has the responsibility of assuring that the publication does not transgress the prohibitions contained in the Freedom of the Press Act, and he therefore
has absolute authority to exclude any item from the publication. He does not have to state his reasons for excluding material, nor is he even required to have a reason. Therefore, the Market Court would be without power, under the Constitution, to issue an injunction ordering that a particular item be published independently, since it might conflict with the protected choice of the legally responsible publisher. This constitutional limitation on the power of the Market Court under Section 3 is of little practical importance, however. Abstention from advertising will rarely be a practical alternative to complying with the order of the Market Court.

If the representation falls under the first or third subsections, however, the seller can be directly required to provide the information since those subsections do not involve constitutionally protected printed matter. The first subsection has been mentioned already. The third allows the Court to require that the seller supply information in a certain form, such as by way of a fact sheet or price list, upon request, for which a reasonable fee may be charged.

It is noteworthy in this context that Sweden rejected the suggestion that the Market Court be empowered to require corrective advertising. The Government made it clear, however, that misinformation previously given out on a product will be relevant to a determination of what information is of particular significance to consumers. It also pointed out that an information
order can be coupled with a prohibition against improper marketing.

Unlike Section 2, Section 3 places the burden of proof on the KO. It was thought likely at first that the opinion of the Consumer Ombudsman and the National Board for Consumer Policies as to what information the consumer needs would weigh heavily with the Court, and that it would often be quite difficult to prove the contrary. However, in a number of cases, the Market Court has demonstrated that it has a mind of its own and is not inclined to make assumptions in the KO's favor when he has the burden of proof.116

The first petition submitted to the Market Court by the Consumer Ombudsman under Section 3 was a novel one.117 In that petition, the KO requested that the Market Court require the respondent to reveal in its advertising and personal sales argumentation that the company does not follow the recommendations of the Public Complaints Board whenever that Board holds against it in a dispute with a consumer. This particular company had been taken before the Public Complaints Board seven times, had refused to appear or answer in any of the seven cases, had been ruled against in all seven cases and had refused to comply with the recommendation of the Board in all seven cases.

The Market Court refused to grant the KO's petition. Borrowing language from freedom-of-the-press analysis, the Court stated that Section 3 applies only to information of a purely
commercial nature. It went on to say that it would not exclude the possibility that the contents of a decision by a court of law might be of such a character that the Court would require its inclusion in advertising. It would not require inclusion of the requested information, however, because the Public Complaints Board is not a court of law and its rulings are merely unenforceable recommendations.

The apparent distinction drawn by the Court is questionable. Under Section 3, the test is whether the information is "of particular significance to consumers." The information involved in the case related to the terms of contract or warranties that the seller would recognize. The Court impliedly so held. The Court hinted that if it had been a question of the judgments of a court of law, rather than of the Public Complaints Board, it would have granted the petition in the appropriate case. If this is true, under the test whether the information is of "particular significance to consumers," one might ask whether it is any less important to consumers that the seller refuses to obey the recommendations of the Public Complaints Board than that the seller refuses to observe his warranties unless forced to do so by a court of law. The information would appear to be as important to consumers in the former case as in the latter.

The alternative analysis would seem to be that the decisions of the Public Complaints Board are not sufficiently reliable to
require that they be cited to consumers. In view of the impartiality and technical expertise of the Public Complaints Board, such a position would seem unwarranted. In this case, it would appear that the fact, that a seller is a repeated and uncooperative offender against the rights of consumers as determined by another governmental body, would be "of particular significance to consumers."118

Other information required by the Market Court to be supplied to consumers includes identification of which of many standard contract terms are incorporated in the transaction with the consumer,119 and identification of the advertiser.120 Because of the general lack of precedent for the application of Section 3, this is an area where agency guidelines are particularly useful.

IV. DANGEROUS PRODUCTS: SECTION 4

Until the enactment of Section 4 of the Marketing Practices Act of 1975, Sweden lacked general consumer product safety legislation. Again, there has been special legislation in such fields as food, pharmaceutical products and dangerous chemical substances, each applied by a special authority. Section 4, like the two preceding sections of the Act, is a "general clause" which is meant to complement the existing special legislation. Although the special legislation is given priority where it is sufficient, Section 4 differs from these special laws in that it
does not aim at product ingredients as such, but rather at whole, composite, finished products. The power of the Market Court to issue preliminary injunctions can be particularly significant in product safety cases, and this power has not gone unused.\textsuperscript{121} The section reads as follows:

If a merchant offers for sale to a consumer for personal use a product which, on the basis of its properties, involves a special risk of personal injury or of damage to property, the Market Court may enjoin him from continuing therewith. The same applies if the product is manifestly unfit for its main purpose. An injunction may also be issued to an employee of the merchant and to any other person acting on behalf of the merchant.

The first paragraph shall likewise be applicable if the consumer is given the opportunity, for consideration, to lease goods for personal use.

An injunction under this section may not be issued insofar as a statute or a resolution of a public authority contains special regulations concerning the product, with the same purpose as the injunction would serve.

This provision applies to consumer products, including used products. Contrary to Sections 2 and 3, however, services were not included, pending the results of the work of the legislative commission on consumer services and the accumulation of experience in the product area. The commission on consumer services has now recommended to the Government that Section 4 be broadened to cover the services subject to the proposed Consumer Services Act.\textsuperscript{122} Goods sold to non-consumers are also excluded. This has
two questionable effects. First, the Market Court cannot forbid the producer or wholesaler from selling a dangerous product for resale, even if the product will subsequently be sold to consumers. Second, institutional purchasers of consumer goods, such as day care centers and hospitals, are not protected, even though it will be private persons who will ultimately be subjected to the dangers of the products. The Consumer Board has recommended to the Government that the section be broadened to include sales other than to consumers, which would correct both of these shortcomings.\textsuperscript{123} Section 4 is also inapplicable to real property and to sales from one consumer to another.

Three main types of injury-causing defects are often distinguished in the products liability field.\textsuperscript{124} They form a useful framework for discussing Section 4. \textit{Design defects} are the primary interest here and consist of problems occurring in all members of a product line. \textit{Instructional defects} exist when the instructions accompanying the product fail to warn sufficiently of dangers that may arise or when they are otherwise inadequate in describing how the product can safely be used. \textit{Quality control defects} arise in occasional individual products as a result of machine defects or human error on the part of the workers and inspectors in the manufacturing process.

Quality control defects lie generally outside the scope of the Marketing Act because of the Act's goal of prevention rather than of resolution of individual disputes. The consumer who has
been injured must turn to the private law remedies provided by the Consumer Sales Act and the rules of products liability and negligence. However, if there is a consistent problem in the manufacturing process which allows considerable numbers of defective products to appear on the market, the sale of the product may be forbidden under Section 4.

Instructional defects are not dealt with at all under Section 4, but are to be corrected by means of information orders under Section 3. Indeed, it is only when it has become apparent that a safety problem cannot be solved by requiring a warning or other instructions, that the Market Court is to consider banning the product. The avoidance of safety risks is considered to be one of the most important purposes of Section 3.

It is, consequently, design defects with which Section 4 is primarily concerned. Intervention is triggered by the existence of a "special risk" of injury. No actual injury need be shown. The Minister of Justice stated that an injunction may issue when the risk of injury is great enough that the banning of the product is not obviously too extreme a measure. In the first case brought to the Market Court under Section 4, involving a child's car seat which was shown to come loose in the event of an accident, the Court stated that it was with regard to the primary purpose of the seat, namely, to protect children in the event of an accident, that it found that an injunction against its sale would not obviously be too extreme a measure.
When safety devices are involved the provision against unsafe products in Section 4 overlaps the provision in the same section against products which are unfit for their primary purpose. In other words, a safety device which creates a safety risk for consumers is unfit for its primary purpose, namely, safety. In the child's car seat case, the Court found that the child would be safer sitting unrestrained in the back seat of a car than in the child's seat. The first two cases brought to the Market Court under the product safety provisions involved safety devices, the child's car seat and a bicycle light.\textsuperscript{127} Also, the guidelines which have been issued by the Consumer Board pursuant to Section 4 have frequently involved safety devices, e.g., safety reflectors, smoke alarms, life vests and helmets.\textsuperscript{128}

The question of the scope of the product safety provision is sometimes a subtle one. The Minister of Justice stated that an injunction under this provision would be inappropriate if the product, despite its dangers, had been generally accepted by society.\textsuperscript{129} Examples of such products might be automobiles, cigarettes and knives. The difficulty of articulating the principle involved is illustrated by two cases decided by the Market Court. In one case, the Market Court enjoined the sale of some particularly effective slingshots.\textsuperscript{130} On the basis of expert testimony, the Court found that these slingshots created a significant risk of serious eye injury. In the other case, the Market Court refused to enjoin the sale of a picklock pistol on the
basis that to do so would exceed the authority of the Market Court under the product safety provision.131

The Court began its analysis in the picklock pistol case by stating that the exclusive purpose of the product safety provision was to strengthen the consumer's legal position. This statement is questionable inasmuch as the purpose of the provision would seem to be to protect consumers from unsafe products, and nothing more. It is Section 8 of the Consumer Sales Act which strengthens the legal position of individual consumers with regard to unsafe products. The Court then went on to say that the product safety provision was meant only to protect consumers from acquiring products which are disadvantageous from their own viewpoint, namely, involving particular risks to them or to others in their sphere of interest. The Court pointed out that the picklock pistol functioned as it was supposed to, and became a threat to the property of other consumers only when it was used illegally in the course of an independent and separate act.

One wonders whether, according to the principles enunciated by the Court, there was any real difference between the slingshot and the picklock pistol. Each product performed as it was supposed to, and there was no suggestion that the consumer purchaser would be anything less than fully satisfied in each case. It is therefore hard to imagine how the Court could characterize either product as being a disadvantage from the point of view of the purchaser. In addition, no injury could arise without the intervention of an independent act by the consumer. The only dif-

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ference appears to be that with respect to the picklock pistol the choice to use it to the detriment of property must be intentional, while with respect to the slingshot, the act which injures persons may be either intentional or negligent.

The principle actually being applied by the Market Court may be a delicate balancing between the risks involved and the useful function which the product serves. Slingshots do not serve any recognizable purpose in society, whereas picklock pistols do. Thus, when the positive aspects of the products are weighed against the risks, the risks outweigh the benefits of slingshot, whereas the opposite is true of the picklock pistol.

The Consumer Ombudsman has taken the position that the product safety provisions of Section 4 apply not only to physical harm to persons, but also to psychological harm. Several groups demanded that the sale of toy guns and other war toys be enjoined under this provision. The Consumer Ombudsman said he would be glad to take up the matter if the groups could prove that such toys were either physically or psychologically harmful. A decision by the Market Court on this issue would involve a determination whether psychological harm is within the scope of Section 4 and, if so, a determination of what psychological harm is. Answers to these obscure questions will apparently not be required, however. At the request of the Parliament, the Consumer Board reached an agreement with the industry that such products would no longer be sold in Sweden.
The burden of proof under Section 4 is not reversed, but is squarely on the shoulders of the Consumer Ombudsman. In some cases, the danger will be obvious, but in most the Consumer Ombudsman's case will be proven on the basis of expert investigation or consumer experiences. It seems clear from the decision of the Market Court in the bicycle light case, that the Court will be strict in its requirement that the burden of proof be met, and it will not indulge in any presumptions. In that case the Consumer Ombudsman was rebuffed for his reliance on the fact that all such lights were required by the National Traffic Safety Commission to be approved and that this particular type of light had not been approved. The Court held that failure to meet the administrative requirements did not, in and of itself, show that the product was unsafe.

V. USELESS PRODUCTS: SECTION 4

Section 4 of the Act also empowers the Market Court to enjoin the sale or lease of any product "manifestly unfit for its main purpose." This provision is bound by the same limitations put on the power to enjoin unsafe products. Thus, sales to merchants are not affected, nor are sales of useless consumer services.

It is clear that the provision is meant to be used only in exceptional cases. The National Board for Consumer Policies will
continue its practice of negotiating with businesses for the purpose of dealing with problems in this area. In most cases this will suffice. Of those cases in which it does not, it is anticipated that most can be dealt with under Sections 2 and 3. Experience has shown that it is very difficult for a firm to market a useless product without violating Section 2. In addition, Section 3 is now available to require the inclusion of basic factual information on the label and in any advertising. If a product is to be used only in special situations, the seller can be forced to indicate that fact.

Section 4 will be invoked against useless products only when none of the foregoing approaches succeeds. It does not apply to products which are considered unsuitable in a general sense, but only to those which can objectively be shown to be unusable for their primary purpose. The burden of proof lies with the Consumer Ombudsman, and this will normally be met on the basis of product tests or actual consumer experiences. The guiding principle is that the product must be useless for its main purpose before an injunction is appropriate. The main purpose of a product is its normal or natural use. Where this is not obvious, reference can be made to the instructions and descriptions given by the seller. The fact that a product does not have secondary properties that are claimed for it is irrelevant. Section 2 on improper marketing practices is the proper remedy for such claims. It is only when the product is unusable as a result of
its construction or design, independent of any marketing, that the provision is applicable. Also, low-priced, used and recycled goods are expressly permissible as long as they can be of some value to the consumer.137

The only case decided under this provision during the first three years after its enactment illustrates the heavy burden which the Consumer Ombudsman is required to carry before the Market Court. This, in turn, suggests that such cases will be few and far between.

In the case referred to, the KO sought to have enjoined the sale of a "washing ball."138 This product was a hand-powered washing machine consisting of a metal sphere, with a port through which clothes are inserted, and a handle by which the sphere is turned. This product had been singled out by the Consumer Board in its report to the Government which led to the enactment of this very section of the Act.

The Market Court entered a preliminary injunction against the sale of the product to consumers. Although all indications pointed toward a permanent injunction, the decision of the Court was surprisingly close. The Court voted 5 to 4, with its president in the minority, to enjoin the sale of the washing ball.

All members of the Court were apparently in agreement that the product could not perform its main function when operated according to the directions of the manufacturer. They also apparently agreed that such a finding was insufficient, in and of
itself, to support an injunction. The KO must go further in presenting evidence of product tests or consumer experiences to show that the product is incapable of performing its primary function not only when used as directed, but also when used in any other reasonable manner. In the washing ball case, the Court inquired whether the product might function at a minimum level if smaller amounts of clothes or longer periods of hand rotation were employed. The KO did not present test results for use of the product in such a manner, and here is where the majority and minority parted ways. The minority would have rejected the KO's petition on that ground. The majority recognized the question, but held that such uses of the machine were impractical. The principle established by the Court would appear to be that the KO will not succeed in having a product enjoined as being manifestly unfit for its primary purpose unless he not only shows by tests or consumer experiences that such is the case for the product if used as directed, but also that it is true for all practical alternatives for using the product to accomplish its primary purpose. The case illustrates the rather strict interpretation given Section 4 by the Market Court.
NOTES


2 In the Market Court case of ASBA Import AB, MD 1977:17, a trade association complained to the KO of a marketing scheme used by a large number of competitors. The scheme consisted of offering retailers special gifts in connection with sales pitches from wholesalers or importers. In that case, the basic product was candy and the special gift was liquor and glasses. The association stated that if the practice could not be forbidden, its own members would have to engage in the same practice in order to be competitive. The KO brought the case to the Market Court because he believed that the consumer interest would also be furthered by stopping it. The Court did not accept the argument of the Ombudsman that the offer was improper because the advantages of the offer could not be transmitted on to consumers, but the Court did hold that the combination offer created a risk that retailers would buy products for their assortment that they otherwise would not, particularly since there was no natural relationship between the gift and the products being sold. The Court also cited the bribe-like nature of the gifts and the national liquor policies as reasons for its decision enjoining the practice under Section 2 of the Marketing Practices Act.

In a subsequent case, a tire manufacturer was forbidden to engage in an "incentive" program whereby retailers and their employees were offered prizes for selling certain quantities of tires from a new line that was being introduced. Dismissing the argument that the program should be allowed in the interest of
improved competition, the Court held it to be in conflict with good business practices and a violation of the ethical norms of the Marketing Practices Act that a hidden motive should lie behind a salesman's vigorous recommendation of a particular product. The Court found an obvious risk associated with the program that consumers would not receive objective and adequate product information. The decision was 5 to 4, with the dissenting members of the Court emphasizing the competitive benefits of the program and refusing to accept the assumption that retailers would disregard the need for truthful and adequate information. Goodyear Gummi Fabriks AB, MD 1980:5.

3 Whether an actual court judgment under these sections must exist before the competitor is entitled to damages is still an open question. See Nordh, Krav på skadestånd med stöd av MFL avvisades av hovrätt, K&E 1978/4, at 34 and text accompanying note 12, infra.

4 No commercial advertising is allowed in TV or radio, pursuant to an agreement between Sveriges Radio and the Swedish government.

5 See, e.g., note 2, supra.


7 Regeringsformen, 2 Kap., 1§.

8 Tryckfrihetsförordningen. In addition, the Swedish Constitution includes three other components: Regeringsformen (Instrument of Government), Riksdagsordningen (The Parliament Act), and Successionsordningen (The Act of Royal Succession). The broadening of protection for non print forms of expression has been under study by a Government commission. See Påhlman, Skyddet av det fria ordet skapar spelrum för reklam, K&E 1980/2, at 4.

9 Malmborg & Hedström Förlags AB (Helg-Extra), MD 1974:23.

10 NJA 1975 s. 589. Although direct appeal of Market Court decisions is not allowed, the defendant successfully sought review by way of the extraordinary remedy of resning. See Chapter 1, text accompanying notes 110-115.

11 Damernas Värld, MD 1975:22.

12 See note 3, supra.

13 SvJT 1978, at 37 (report of the Court of Appeals decision).

14 I Michaelssons Hälsolivs AB, MD 1976: . The respondent did not seek resning.
The case involved an advertisement for a mechanical lubricating spray which showed the naked back of a woman upon which the letters "CRC" had been sprayed.

The KO has since proposed to the Government that the Marketing Practices Act be widened to protect against discriminatory advertising. Utterström, Sex Discrimination in Advertising - a Summary of the Situation in Sweden, 1 J. Consumer Policy 359 (Stuttgart 1977). No legislative action has been taken by the Government so far. The same problem was recognized simultaneously in Norway, and the counterpart to the Swedish Marketing Practices Act has been amended accordingly. Heffermehl, Norsk jämställdhet: reklamregeln behövdes, K&E 1979/6, at 12.

KO 1976:4, at 35.


An example of this is the transition time allowed businessmen to correct improper packaging as long as important consumer interests are not unduly compromised.

Näringslivets Opinionsnämnd.

Scandinavian Touring AB, MD 1976:12, See text accompanying notes 79 & 80, infra.

Teknisk Industri Bengt Lindström AB, MD 1974:12.

AB Disperator, MD 1973:8.

Tava Juri Vaba med firma Happy Figure, MD 1975:28. On the misleading nature of corporate names, see, e.g., Byggbanken AB, MD 1979:22; Sveriges Villaägareförbund ./. Stig Blomberg, MD 1979:10; Fastighetsmäklarna Sparkronan, MD 1976:18.

E.g., Angereds Tipsservice AB, MD 1974:24 (improper to advertise an extra benefit as "free" if a purchase is required in order to receive it).

Philipsons Automobil AB, MD 1975:17.

See Edling, Höga krav kan ge sämre garantier, K&E 1978/6, at 22.

See id.
30 Tre Kök AB, MD 1971:8.
32 Astra Home Products AB, MD 1972:9 (Rymdfallet)
33 Prop. 1970:57, at 76.
34 SFS 1960:644.
36 The Trademark Act is presently being revised. See, Olsson, Varumärket som marknadsförare, K&E 1977/5, at 11.
37 H Jacobsohn med firma Harrimack ./ Tedder Kläder AB, MD 1972:10. The KO had previously refused to take the case to the Market Court. This is an example of the use of "subsidiary standing," whereby a competitor may sue in the Market Court if the KO chooses not to do so.
38 Barnängen AB ./ AB Buketten, MD 1974:5.
42 This case has been filed in the Market Court. Electrolux Svenska Försäljnings AB, dnr 77/K3665 (household stoves); see also K&E 1978/5, at 40. Note: The Electrolux case was decided April 21, 1981 as MD 1981:4.
Ett fall för KO, supra note 44, at 173.


For such a case under Section 2, see note 101, infra and accompanying text.

K&E 1977/6, at 20.

MD 1975:18.

Aktuellt om Hund och Katt, MD 1972:12.


Bertmarks förlag AB, MD 1976:1.


Jerry Konfektions AB, MD 1975:12.

The Market Court has relied on §3 to require an advertiser to clearly state its identity. Corteco AB, MD 1980:12.


E.g., AB Cernelle, MD 1976:16 (pollen tablets); AB Ferroson, MD 1974:11 (vitamins); Ahlen & Akerlunds Förlags AB, MD 1975:23 (weight reducing methods).

Astra Home Products AB, MD 1972:9 (Rymdfallet).

SFS 1975:1154. The Market Court had previously held that it was impossible to invoke the predecessor of §2 of the Marketing Practices Act to achieve this result. AB Nordman & Co (Ltd)., MD 1973:6. See Bernitz, Uppgiftspilktens gränser enligt marknadsföringslagen, NIR 1973, at 413.

AB Bo Lindorm Reklam, MD 1971:3; Philip Morris Sweden AB, MD 1971:4; Svenska Tobaks AB, MD 1971:5; Svenska Tobaks AB, MD 1972:1.

AB Nordman & Co (Ltd)., MD 1973:6

Annonsbyrå AB Nordia, MD 1975:32.

Pripp-Bryggerierna AB, MD 1973:5 (Three Towns).

67 KO 1976:3, at 18. The agreement also eliminated billboard and other outdoor advertising.

68 Lag (1978:764) med vissa bestämmelser om marknadsföring av tobaksvantar.

69 Lag (1978:763) med vissa bestämmelser om marknadsföring av alkoholdrycker.

70 The Swedish Constitution was amended in 1974 to remove freedom of expression limitations on the powers of Parliament to prohibit the advertising of tobacco and alcohol. Tryckfrihetsförordningen, 1 Kap. 9§ (SFS 1974:308).

71 The advertisement must contain both the warning text and declaration of contents. Eva-Lena Mehkri med firma Eva-Lena Jansson Import och Export, MD 1980:7.


73 Philip Morris AB, MD 1980:4.

74 In B R Abrahamson med uppgiven firma B R Abrahamson's Handelsbolag, MD 1980:10, the Market Court prohibited the use of emblems, pictures, packaging, etc., which encouraged the illegal use of drugs.


76 Svensson, supra, note 1, at 152.

77 NIR 1973, at 119 (referat).

78 See Strahl, Introduction to the Penal Code of Sweden, supra note 75, at 4-5; Bernitz, Modig & Mallmen, supra, note 1, at 337.


80 Scandinavian Touring AB, MD 1976:12.


82 Id., at 95. An account of just such a case handled by the KO is found in Ett fall för KO, supra note 44, at 155.

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83 Kvarnbolaget Nordmills AB, MD 1971:1.
85 Ahlen & Akerlunds Förlags AB, MD 1971:6 (Vecko-Revyn).
86 Prop. 1970:57 at 133. For a description of the Council on Legislation, see Chapter 1, n. 8.
87 Prop. 1975/76:34, at 121.
88 Compare id., at 38.
89 Id., at 121.
90 Bokförlaget Data AB, MD 1977:6.
91 The Market Court has subsequently found the combined offer of jeans and a skateboard to violate §8. DonGeorge AB, MD 1979:24.
93 See Ett fall för KO, supra, note 44, at 53.
94 Scandinavian Touring AB, MD 1977:2.
96 See text accompanying note 76, supra.
97 Reform of the legislation on lotteries was proposed in 1979 in a legislative committee report, SOU 1979:29.
98 See K&E 1977/5, at 37 for an example of informal enforcement by the KO.
99 Ett fall för KO, supra note 44, at 29-30.
101 See id., at 83.
102 Förlags Aktiebolaget Lokalkatalog, Kommun Tryck AB, MD 1973:22.
103 KO 1972:4, at 33.
104 With respect to such methods, and for a more thorough treatment of the methods discussed here, see Svensson, supra note 1.
105 Tre Kök AB, MD 1971:8.
107 J A Lindblads Bokförlagsaktiebolag, MD 1973:14. Such offers are now also subject to the price information requirements of the Consumer Credit Act.
110 Electrolux Svenska Försäljnings AB, dnr 77/K3665.
112 DonGeorge AB, MD 1979:24.
113 Prop. 1975/76:34, at 136.
115 Prop. 1975/76:34, at 117-118. The proposal was rejected for the following reasons: (1) it is difficult to know whether a correction will actually correct the effects of a misleading marketing campaign; (2) experience should be gained first with respect to the effect of the information requirements placed on advertisers by the present Section 3; and (3) the Freedom of the Press Act in the Constitution would have to be modified for the same reasons that Section 3 now imposes only a "relative" duty to provide information in advertising, as discussed above.
116 See, e.g., the discussion of the burden of proof with respect to product safety, infra.
117 Sören Egermark och Christer Larsson med uppgiven firma Bilgaraget, MD 1978:13. (The company ran a used car sales operation in Stockholm).
118 The desired result has been partially accomplished, however, under §2 of MFL. In Daniel Nielsen med uppgiven firma Möbel- & Billackeringen, MD 1979:12, the Market Court enjoined, pursuant to §2, use of the expression "guaranteed work," relying in part on the fact that the merchant in question had twice refused to comply with the recommendations of the Public Complaint Board.
119 AB Skånska Cementgjuteriet, MD 1979:18.
120 Corteco AB, MD 1980:12.
121 NK-Ahlens AB, MD 1980:2.
122 Konsumenttjänstlag, SOU 1979:36, at 45-46 (English Summary), 203-209, 511-513. For a discussion of the scope and other features of the Consumer Services Act, see Chapter 1, note 8.
123 K&E 1978/5, at 15.
124 See, e.g., B. Dufwa, Produktansvar 24 (Stockholm 1975).
125 Prop. 1975/76:34, at 128.
126 Epa AB, MD 1977:10.
127 Id.; AB Hobbex, MD 1978:8. See also AB Helax Verktyg, MD 1980:8 (smoke alarm).
129 Prop. 1975/76:34, at 102.
130 Carlo Palombo med firma Östgöta Partilager, MD 1978:11.
131 Nils Ove Hansson med firma Låskonsult, MD 1978:16. The "pistol" was inserted into the lock and "fired" repeatedly until the cylinder came loose and could be pulled out. It was apparently a very effective tool for operating the most common type of home door lock in Sweden. The outcome of the picklock pistol case caused the Swedish Parliament to enact special legislation in 1979 to control the sale of such devices. See K&E 1979/4, at 21.
133 Säljstopp för krigsleksaker, K&E 1979/1, at 18.
134 The Consumer Board is presently striving to establish a Scandinavian accident reporting system. See Heurgren, Produktsäkerhet, K&E 1978/5, at 3.
135 AB Hobbex, MD 1978:8.
136 The Court has also banned the sale of dangerous baby carriages, NK-Ahlens AB, MD 1980:2; decorative lamps, Pomex AB, MD 1979:6; and sconces, Postorder-Nytt Sonny Rydström AB, MD 1979:5.
137 Pro. 1975/76:34, at 128.
CHAPTER 3

THE TERMS OF CONTRACT ACT: CONTROL OF STANDARD CONTRACTS

I. STANDARD CONTRACTS: FORMS, PURPOSES AND PROBLEMS

The need for government intervention to protect consumers with respect to their contractual rights and responsibilities, something not possible under the Marketing Practices Act, has become more and more obvious as cases of consumer abuse by businessmen exploiting their superior bargaining position have continued to come to the public's attention. Such behavior is by no means novel, but it has been with the advent of the 20th century and high consumption industrial society, in which mass consumer transactions are the norm that this problem has gained sufficient focus to trigger political and judicial response. It has also been during this period and in response to these economic developments that the form of contracting has developed so as to facilitate public control of contract rights and liabilities. That new form of contracting is the standard contract.

A standard contract can be defined as a contract which in whole or in part consists of previously drafted terms intended to be applied similarly in many individual transactions in which at least one of the parties changes from one transaction to the next. Contracts will often contain both standard terms and
individually negotiated terms. Standard terms appear not only in printed contract forms such as installment sales contracts, but also in invoices, confirmations, tickets, order forms, receipts or other separate documents, and even in advertisements. There is often little flexibility with regard to the standardized terms in individual transactions, leaving the consumer in a take-it-or-leave-it dilemma, especially in the case of the so-called quick-hand transactions involved in high volume consumer sales. Standard contracts that the consumer has no choice but to enter, as is often the case with public utilities and public transportation, are known as contracts of adhesion.

Standard contracts are often drafted unilaterally. In consumer transactions the draftsman is normally the seller, the seller's trade association or the financial institution which finances the transaction. Although unilaterally drafted standard contracts are the more common type, standard contracts drafted on the basis of negotiations between the parties or their trade organizations are becoming more and more common. Such contracts are known as agreed documents and have the purpose of bringing about well-drafted agreements which more precisely distribute the rights and liabilities between the parties. Until relatively recently in Sweden, as elsewhere, agreed documents existed only in non-consumer transactions. With the advent of the Terms of Contract Act, however, we have begun to see the emergence of
agreed consumer documents as the result of negotiations between the Consumer Ombudsman and trade organizations.

The primary sources of private contract law in Sweden are two statutes enacted at the beginning of this century: the Contracts Act of 1915 and the Sale of Goods Act of 1905. Even today these laws are generally considered in Sweden to be legislation of high quality. The Contracts Act deals with the formation of contracts and their validity. The Sale of Goods Act regulates contracts for the sale of personal property by determining certain rights, liabilities and remedies and the meaning of certain commercial terms. Both statutes are rooted firmly in the principle of freedom of contract. Accordingly, each act provides that its provisions apply only to the extent that the parties have not agreed otherwise either explicitly or implicitly. Even the existence of a trade custom or usage is sufficient to set aside contrary provisions of either act. These laws were enacted on the assumption that contracts are individually negotiated. This is often not the case today, however, as we have seen. Indeed, even at the time these laws were enacted, standard contracts were quite important for certain types of transactions, particularly in the fields of insurance, credit and transport.

The principle of freedom of contract, implemented by making the laws non-mandatory, has had its intended beneficial effect: it has enabled new forms of contracting to spring up and flower
in response to changing commercial circumstances without hindrance by wooden legislative rules. Foremost among these new forms is, of course, the standard contract, well-suited to modern mass transactions. Its main virtue is efficiency: it brings economies of scale to the cost of contracting. In addition, it can reduce uncertainty as to the parties' rights and obligations by specifying them in much greater detail than do the statutes, which are necessarily generally worded in order to be applicable to many different types of transactions. At the same time, the standard contract can be tailored to account for the practical considerations involved in any particular line of business.

The advantages of reduction of uncertainty and specific adaptation apply, in principle, also to individually negotiated contracts, but it is only by the use of standard contracts that it is worth the time and effort to express in detail the terms of most consumer transactions. The same can be said of the major disadvantage associated with standard contracts: the party in the stronger bargaining position may misuse the principle of freedom of contract by shifting rights and obligations to the detriment of the weaker party, usually the consumer. Characteristic of the standard contract situation, however, is that the stronger party is much less likely to depart from the one-sided terms. Contracts of adhesion represent the extreme form of this phenomenon.
It can thus be seen that the use of the standard contract has positive as well as negative effects. The purpose of the Swedish legislators was therefore to eliminate the negative effects while retaining the positive.

II. CHOICE OF METHOD FOR CONTROL OF ONE-SIDED STANDARD CONTRACTS

There are basically two approaches to the control of standard contract terms. One is through reform of private contract law. The other is through public intervention. The Act Prohibiting Unreasonable Contract Terms is of the latter type. Sweden has not been content, however, with that approach alone, and has taken the initiative in reforming private contract law, as well.

Control of standard contract terms through private contract law takes place in the regular law courts in the context of the resolution of conflicts between individual contracting parties. This type of control takes two forms: covert and overt. The courts exercise covert control over one-sided standard contract terms when they "interpret them out" of the contract by holding that they have not been incorporated in the contract or by interpreting their contents restrictively. The courts exercise overt control over onerous clauses when they expressly base their re-
fusal to enforce them on their determination that the clauses are substantively unjust. Such a determination is based on mandatory judicial or legislative rules or on the power of the courts to set aside clauses which are unconscionable. Mandatory legislative rules are found, for instance, in the Consumer Sales Act and the Door-to-Door Sales Act, as discussed earlier. The general power of the courts to set aside unconscionable clauses was significantly expanded in 1976 with the adoption of a new Section 36 of the Contracts Act of 1915. That development is also treated elsewhere. It is sufficient for present purposes to point out that the standard under the new Section 36 is not "unconscionable," but "unreasonable," and that the courts have been requested by the Government to emphasize analysis which will be applicable to similar terms in subsequent cases. Underlying this directive is the recognition of the existence of two types of overt control: situation-oriented and clause-oriented. In the former, much of the analysis concerns the particular circumstances of the individual case. In the latter, the analysis focuses on the clause as such and the surrounding circumstances emphasized are typical of the contractual situations in which it appears. Overt control is preferred to covert, and clause-oriented overt control is preferred to situation-oriented overt control, because the preferred approaches establish useful principles and rules for future conduct and future court decisions.

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The second approach to the control of one-sided standard contract terms is reliance on government intervention. Such intervention may take different forms. Beforehand approval of contract terms by a public authority is one possibility. Although this method has been employed in some countries with respect to insurance contracts, for example, it has not been adopted in Sweden. The possibility of attacking the problem with the help of antitrust legislation also exists, since standard contracts are sometimes the result of agreements between companies to apply uniform contract terms. That solution would be inadequate even from a theoretical point of view, however, because many standard terms are not the result of agreements between companies and because the antitrust legislation focuses on competition and market structure, not on the fairness of contract terms as between the contracting parties.\(^8\)

Sweden chose instead to enact a law expressly directed at onerous standard contract terms and to employ the same sanctions and enforcement mechanisms employed with respect to the Marketing Practices Act. The application of the principles of the Marketing Practices Act to the field of standard contracts was an important innovation in Sweden, and it had no real counterpart anywhere else in the world.\(^9\) It is also the first statute in Sweden directed specifically at standard contracts.

The fundamental sanction is the prohibitory injunction issued by the Market Court upon the petition of the Consumer
Ombudsman. Great reliance is placed, nevertheless, on the monitoring and negotiating functions of the KO and the staff of the Consumer Board. This system has the advantage of allowing the government-appointed Consumer Ombudsman and the staff of the Consumer Board to concentrate on the areas most urgently in need of attention.

There are also several other features which the Terms of Contract Act shares with the Marketing Practices Act which should be noted as we pass on to a closer analysis of the Act: its purpose is inherently preventive; and it is not directly applicable either in the Market Court or in the regular courts to contractual disputes between individuals; rather, its purpose is to protect consumers as a group by setting standards for the conduct of business in the marketplace.
III. STRUCTURE AND SCOPE OF THE ACT

The Act contains only one substantive provision, the "general clause" of Section 1, which reads as follows:

If a merchant, when offering in the course of his business a product, service or anything else of value to a consumer for primarily personal use, applies a term which, with regard to the consideration and other circumstances, is unreasonable toward the consumer, the Market Court may, if the public interest so requires, issue an injunction prohibiting the merchant from using that term or a term substantially the same in similar cases in the future. The injunction shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

The provisions of the first paragraph shall apply correspondingly to a term applied by a merchant in the course of his business where he acts as an intermediary with respect to an offer from a merchant or other person which is subject to the first paragraph.

An injunction may also be issued to employees of the merchant and to others who act on behalf of the merchant.

It will be noticed immediately that there is no mention of standard contracts in the general clause. Nevertheless, the reference to the public interest indicates that the Act is concerned primarily with terms applied time after time in widespread consumer transactions. Of greatest significance are standard contracts which are employed throughout whole industries, but an individual seller's standardized terms also fall within the scope of the law. Even a term drafted separately for a specific contract is subject to the Act if it will provide the basis for an
important precedent in the Market Court or is expected to come shortly into wide use in consumer transactions.\textsuperscript{10}

Another important point which may be drawn from the wording of the general clause and the official preparatory documents is that the law does not take a critical posture towards standard contracts as such. Indeed, the advantages of standardized terms are recognized. One of those advantages is that they make public control of consumer contracts feasible. The Consumer Ombudsman has in fact taken the initiative in several instances to create written standardized terms for industries which had previously been without them.\textsuperscript{11}

As with the Marketing Act, the Government chose to attack the standard contract problem by means of a flexible general clause. The Act does not suffer from the limitations of specific mandatory legislation, which of necessity is detailed, limited in scope and relatively easy to circumvent. Indeed, one of the primary uses of the general clause is to supplement mandatory legislation and prevent its circumvention. Conversely, there is no counterpart to the Marketing Act's criminal sections, which serve as per se rules under that Act's general clause. The nearest thing to a counterpart is the mandatory legislation itself.

An important difference from the Marketing Act is that the general clause provides no protection for businessmen. It is exclusively consumers who are protected by the Act. Transactions, entered into by the purchaser both for personal purposes and for
business purposes fall under the Act as long as the personal purposes predominate. Attempts to afford smaller businessmen protection from other businessmen in a superior bargaining position have been rejected by the Government both at the time of original enactment in 1971 and in conjunction with the broadening of the Act in 1977. The major reason for this limitation is that small businessmen have much less need for such protection since they almost always have the opportunity to become members of trade associations whose purpose is to protect the interests of their members. It would also give rise to difficult definitional problems if protection were introduced for certain categories of businessmen. In any event, there will often be a spin-off effect for firms which deal both with consumers and businessmen whereby terms forbidden as to consumer transactions will also disappear from other transactions for practical reasons, as discussed in Chapter 1. It should also be noted that the need of small businessmen, such as farmers, artisans and subcontractors, for protection has not gone completely unheeded. The Small Claims Act is not limited to consumer disputes, nor is the new general clause of Section 36 of the Contracts Act. The interpretation of Section 36 of the Contracts Act will be heavily influenced by precedents under the Contract Terms Act. As originally enacted, the Contract Terms Act covered certain brokerage or agency situations by including employees and others who act on behalf of a businessman. The Act was expanded
in 1977 to include other transactions handled by brokers or agents.\(^{14}\) It is still required that the purchaser be a consumer, but now the seller may also be a consumer as long as a broker or agent is involved in the transaction in his professional capacity.\(^{15}\) The greatest need for this extension of the Act been found in the area of sales of secondhand residences.\(^{16}\) The sale is usually from one private person to another with the real estate broker employed by the seller and often supplying the standard-form contract for the transaction. The broker must have actively contributed to the content of a contract clause in order for it to be subject to the Contract Terms Act. Not only professional brokers, but also lawyers who carry out these functions for their clients, are subject to the Act. The Act can be invoked to protect the interests of the home buyer, but not the seller. The Minister of Justice reported that no need to protect the seller had appeared.\(^{17}\)

The Contract Terms Act requires only, as a prerequisite to its application, that a businessman have "used" the term in question. It does not require that a contract containing the term actually have been entered into. Nor is it necessary that the term be included in an offer made to a consumer. It is sufficient that a businessman has requested an offer from a consumer and has proposed that the term in question be included in the offer. This broad concept of what it is to "use" a contract term brings within the scope of the law a technique commonly used in
consumer transactions. The technique, often seen in door-to-door sales, consists of placing the consumer in the position of the offeror. Under Swedish contract law no consideration is necessary to keep an offer open. Unless modified by the offer, a "reasonable" time is given the offeree to accept the offer. During that time, as a result of this technique, the consumer is bound and the seller is not.

In addition, it is not a prerequisite for the law's application that the term in question have been successfully incorporated in the contract. Thus, the law may be applied to terms which the businessman first asserts as part of his invoice, even though it is doubtful that the term could be enforced as part of the contract between the parties in a civil proceeding. This rule greatly facilitates the application of the general clause to the substantive content of contract terms.

There is also no limitation on the type of document in which the term must appear. Order forms, invoices, confirmations and receipts may thus contain terms subject to the Act. All that is required is that the businessman purport or imply that the term is or will be part of the contract. The Market Court has held pursuant to §3 of the Marketing Practices Act, that a contract which incorporates other documents only part of which are applicable, must clearly indicate which of the many terms included and referred to in the documents are part of the contract with the consumer, and which are not.
The scope of the Act is restricted to some degree according to the subject of the transaction to which a contract applies. These exclusions have recently been significantly diminished, however, and the application of the Act is now quite broad.\textsuperscript{20} It now applies to contracts for the transfer of goods, services or anything else of value. This corresponds to the breadth of the Marketing Act. In short, it is applicable throughout practically the whole field of consumer transactions. The remaining exclusions are banking and insurance transactions which come under the purview of the national banking and insurance boards. These are important consumer areas, but the exceptions were maintained when the scope of the Act was broadened because the respective boards had given increasing attention to protecting consumer interests and because legislative commissions then at work had been asked to study these jurisdictional questions. It is worth pointing out that the extension of credit by sellers does not fall within the jurisdiction of the National Banking Board and is thus subject to the Contract Terms Act. In addition, the Consumer Credit Act has specifically brought within the purview of the Contract Terms Act security agreements used in connection with secured transactions.\textsuperscript{21}

An interesting limitation on the applicability of the Contract Terms Act came to light in a 1976 case involving a master chimney sweep.\textsuperscript{22} The dispute concerned the chimney sweep's notice that failure of the house owner to provide for access on
the announced cleaning day would lead to an extra charge for the return visit. The chimney sweep defended the use of the term in question on the basis that its use was closely regulated by legislation and administrative regulations. Municipal authorities were relying on private enterprise to carry out a public responsibility, not an unusual situation. The Market Court agreed. The Court found it decisive that the chimney sweep based his demand for the extra charge on an administrative regulation. The fact that a certain amount of discretion was allowed the chimney sweep, in determining whether to make the charge and how large it would be, was not sufficient to change the administrative character of the action. The law is not applicable, said the Court, to public administrative measures because they are not contract terms within the meaning of the Act.23

Also not a contract term within the meaning of the Act is the practice of a landlord whereby apartments are first leased to a corporation composed of the landlord and then subleased by the corporation to the tenants. The Market Court deplored the use of the method because it gives the tenant the impression that his legal rights in dealing with the landlord are less, but held that it did not constitute a contract term that could be enjoined within the meaning of the Contract Terms Act.24
IV. GUIDING PRINCIPLES OF INTERPRETATION

The Contract Terms Act marks a break with the previous restrictive legislation and practice with regard to determining the validity of contract terms. Until the enactment of a new Section 36 of the Contracts Act of 1915, the courts of general jurisdiction have had the power to set aside one-sided contract terms only if the terms were "manifestly improper." When the Contract Terms Act was introduced in 1971, the word "manifestly" was purposefully omitted to indicate the new, tougher standard of judgment that was to be applied. Two years later, in conjunction with the enactment of the Consumer Sales Act, the key word of the Contract Terms Act was changed from "improper" (otillbörlig) to "unreasonable" (oskälig). The switch to "unreasonable" was not intended to change the standard of judgment, however. Its purpose was to emphasize that a standard contract term may still violate the general clause even though it gives the consumer the rights guaranteed him by the mandatory provisions of the Consumer Sales Act. The Minister of Justice, in his authoritative comments on the Consumer Sales Act, emphasized that that act provided only minimum protection for the consumer throughout the whole field it covered and that it would be necessary to place greater demands on sellers in certain lines of business because of the particular circumstances of the business, the type of product, or the selling method. He also took the opportunity to
point out that the Contract Terms Act would serve a valuable purpose by stopping circumvention of the mandatory legislation and by setting standards in areas not covered by mandatory legislation. 27

There are two fundamental principles to be employed in determining whether a contract term is unreasonable. First, a comparison must be made with non-mandatory contract law, and second, a determination must be made of the overall balance that exists between the parties' rights under the contract. The first of these is the more significant.

In order to determine what is unreasonable, one must have a clear idea of what is reasonable. What is reasonable in the field of contracts is to be found in the non-mandatory law, which is based on a careful balancing of the opposing interests involved. It constitutes an official, recommended, normal solution. The use of this principle grows naturally out of the traditional interpretation of contracts against the background of non-mandatory law by the courts, based on the generally held view that non-mandatory law represents a reasonable and equitable pattern for contractual relations. 28 This was expressed by the Minister of Justice in the original legislative history as follows:

A contract term may typically be regarded as improper toward the consumer if, by deviating from applicable non-mandatory law, it gives the merchant a benefit or deprives the consumer of a right and thereby brings about a weighting of the parties' rights and obliga-
tions under the contract that is so one-sided that, on the whole, a reasonable balance between the parties no longer exists.29

This statement emphasizes also the importance of the overall balance of the rights and obligations of the parties under the contract, a subject to which we will return shortly. First, however, it is important to point out the inherent limitations of comparisons with non-mandatory (dispositive) law, the prime example of which is the Sale of Goods Act of 1905. Dispositive law has typically been given a broad, almost sweeping form because it is meant to apply over large areas and in many different types of situations. Standard contracts, on the other hand, are tailored to fit the particular circumstances in the line of business to which they apply. And in contrast to the statutory dispositive rules, it is relatively simple to adjust terms of standard contracts as circumstances change.

It is also quite possible for contract terms to diverge from the dispositive law without putting the consumer at a disadvantage. An example of this is the development of guarantees containing a commitment to repair defects. The Sale of Goods Act makes no provision for this type of term, so it makes no sense to try to make a comparison. Since the Consumer Sales Act of 1973 does take into account such terms30, it makes more sense to use that act as a standard, keeping in mind that it is the minimum standard under the Contract Terms Act in the area in which it applies and not, as with the Sale of Goods Act, the maximum standard.
A final disadvantage with the use of dispositive law is that it is often unclear just what the law is on many points, particularly in areas where legislation does not exist, for instance, the services area, and in areas where court precedents are sparse. Also, to the extent that dispositive law consists, not of legislation and court decisions, but of general principles of law, it may give only general guidelines and not concrete solutions.

In sum, then, a contract term is not unreasonable simply because it diverges from dispositive law. Dispositive law does constitute the starting point, however, for every application of the Act, and it is a significant development in Swedish law that as a result of the Contract Terms Act the non-mandatory contract rules, which had been largely displaced by the use of standard contracts, are once again performing a significant function.

Mandatory law, such as the Consumer Sales Act, serves as a useful measure of the maximum deviation allowed from dispositive law. As a practical matter, the minimum, mandatory standards that exist have proved very useful in the work of the Consumer Ombudsman and his staff. They also form one basis for the decisions of the Market Court in which terms have been held unreasonable per se.

Let us now return to the importance of the overall balance between the rights and obligations of the parties, which was emphasized by the Minister of Justice. According to the general
clause, the unreasonableness of a term is to be decided "with regard to the consideration and other circumstances." A threshold principle is that the price term itself cannot be held unreasonable under the Contract Terms Act. The Act is not to be used as an instrument for price control. Questions concerning unreasonable pricing must be judged according to the antitrust and public price control legislation.31 Price escalation clauses do, however, fall within the ambit of the Act.

Price is a factor, however, in the judgment of the reasonableness of other clauses in the contract, in the sense that the impact on the price of forbidding a clause should be taken into account. Although the preparatory comments to the Act seem to indicate otherwise, it is impractical and inconsistent with the Act's objective, except perhaps in exceptional cases, to give weight to the actual price in a specific instance. The Act's only sanction is prospective, and there is no way of knowing what prices may be in the future. Tying the use of a term to a specific price level is forbidden by the prohibition on price control. In addition, primarily terms used industry-wide are to be taken up under the Act, and not those peculiar to particular tradesmen. It would also be inconsistent with the fundamental objectives of the Act to allow clearly unreasonable contract terms to be used under any circumstances.32

It is thus the effect on the price that forbidding a term may have that is important. There is not much information
available at present on this relationship, although it has been shown that lengthening the guarantee period on cars from 6 to 12 months has had the effect of raising consumer car prices.\textsuperscript{33} It will often be the case, however, that increased costs caused by the disappearance of a specific clause will be of relatively little importance in determining the final consumer price when compared with the effect of increased labor and raw material costs and changes in the market and competitive circumstances. In addition, there appears to be support for the insurance line of reasoning by which it is considered better in doubtful cases to place the risk on the seller, who can then pass it on and spread it out among the consuming public, than to place the same risk on the individual consumer.\textsuperscript{34} However, in cases where the price increase will be particularly great, it may be in the best interest of consumers not to forbid the clause in question.

In general, the principle that the balance of the whole contract should be considered when determining the reasonableness of a term has not found great application. With one notable exception, in only a few cases has the Market Court mentioned the principle other than in its general description as to how the law is to work, and in those few cases it has stated only that, since there was no counterbalancing right given the consumer, the term was unreasonable. This may be a result of the selection of cases by the Consumer Ombudsman. In his negotiations with various industries, however, the idea of a total contract which on average
represents a reasonable balance of opposing interests has played a role. Thus, some terms which, considered alone, would be unreasonable have remained in a contract in return for other concessions by the tradesmen.\textsuperscript{35}

Caution must be observed in assessing the overall balance between the parties by balancing clauses of different types against one another, however. A consumer who is put at a disadvantage in one respect will not find much consolation in the fact that his rights have been improved in a totally different respect. On the other hand, an acceptable balancing can be achieved between related clauses, such as the limitation of the consumer's right to cancel and the commitment of the seller to repair or replace defective goods. In the notable case where the Court applied the balancing principle, it was held that a limitation on the amount of damages recoverable was permissible because the company subjected itself to strict liability within the limit set. In the same case, a partial limitation on the company's liability during the normal period for the statute of limitations was approved because the company had undertaken greater responsibilities during an initial one-year guarantee period.\textsuperscript{36}

The Contract Terms Act has no counterpart to the extensive set of precedents from the Council on Business Practice which formed the basis for the interpretation of the general clause against improper marketing in the Marketing Practices Act. This is a result of the fact that the business community had shown no
inclination to develop standards for good commercial practices in the contract terms area, in contrast to the interest evidenced in the marketing practices area by the work of the Business Council. Indeed, it was the purpose of the legislation to reform widespread use of terms considered unfair. This state of affairs is exemplified by the Ernst Nilson case\(^{37}\) in which the Market Court forbade the use of a time-honored term in the used-car business by which the seller exempted himself from liability for the fact that the car had been driven further than the odometer showed.

Thus, good commercial practices is not the starting point as it is under the Marketing Practices Act. It can be significant, however, if it is shown that the term in question is more one-sided than is common among responsible members of the business community. This is an indication that the term is considered dubious and that it is not economically imperative. The KO has often shown an inclination in proceedings before the Market Court to bring in statements from trade associations that certain terms are not generally used. The Court has begun to accord such evidence some weight. If such evidence is recognized, it will have the effect of extending the standard contract terms arrived at on the basis of negotiations between trade associations and the Consumer Board to other parties.

The Ernst Nilson case involved another issue worth noting. The respondent company objected that it did not apply the exemp-
tion clause literally, but took responsibility for substantial deviations of the odometer reading from the actual mileage driven. The Court pointed out that the term itself admitted of no exceptions and that is was likely to cause the buyer to forego objections he would otherwise make. Indeed, the Court found that in such situations the car would be considered defective within the meaning of the Consumer Sales Act. The use of such a term would encourage consumers to refrain from asserting their legal rights under that act. Accordingly, the Court held that whether the term was enforced or not was immaterial. This is a laudable position for several reasons. Where the term violates mandatory law, it misleads the consumer as to his legal rights. Where it does not violate mandatory law, it may be held in reserve as a means of putting pressure on the buyer. The consumer is forced to rely on the seller's kindness and generosity instead of his own legal rights. Just the fact that the term is not applied indicates that it can be reformulated or eliminated without any real inconvenience to the seller.

The Contract Terms Act is applicable to contract terms not only as they affect legal rights, but also with regard to their formulation and presentation. This, too, is a new development in Swedish law. The mere use of a term forbidden by mandatory law tends to mislead consumers as to their legal rights and is therefore a violation of the Contract Terms Act. This is supplemented by the rule that terms which, by their form or presentation, mis-
lead the consumer are also unreasonable under the general clause. Tricky wording, hard-to-read provisions and hidden or fine-print terms come within the contemplation of this rule.

The application of the Contract Terms Act to misleading contract terms coincides, to a large degree, with the application of the Marketing Practices Act in the same area. The general clause of the latter act applies whenever contract terms or statements about such terms are used in furthering a sale. Thus, misleading statements that a term is particularly favorable to the buyer, or reference to a "guarantee" which actually deprives the buyer of rights he would otherwise have, are both enjoinable under the Marketing Practices Act.\textsuperscript{38} The same can be said of prices which give a deceptive impression of the actual total price\textsuperscript{39} and of contracts in foreign languages.\textsuperscript{40} The Contract Terms Act is more limited in its area of application than the Marketing Practices Act, being excluded from sales to businessmen and from transactions regulated by the national banking and insurance boards, but, to the extent it is applicable, it seems more appropriate to employ the Contract Terms Act when the form and presentation of terms are judged in connection with the reasonableness of their substance.

Section 3 of the Marketing Practices Act may come to play a significant role in this area. It is clearly applicable to contract terms and thereby gives the Market Court added flexibility. In addition to, or instead of, forbidding the use of a
certain presentation or formulation, the Court may require that the consumer be notified of certain terms or conditions, either in connection with advertising or within the contract itself. Indeed, this has been done. 41
V. PRACTICE UNDER THE ACT

A. The Market Court's Decisions

The hallmark of Market Court decisions under the Contract Terms Act is the per se nature of the principles adopted. Of the clauses held to be unreasonable, the Court has generally found the clause to be unreasonable regardless of the other terms of the contract. In some cases, the Court has said that since there is no counterbalancing term, the term in question must be considered unreasonable, but up to the present time the Court has in only one case approved an otherwise unreasonable term because it was counterbalanced by other terms, as discussed earlier.

The approach taken by the Market Court in this regard represents a choice between two essential principles that underlie the Contract Terms Act: (1) that analysis should focus on the term in question as such and not become involved in surrounding circumstances; and (2) that the analysis should consider the reasonableness of the balance between the businessman and the consumer as revealed by a consideration of the contract as a whole. There is a tension between these two principles which results from the fact that the rest of the contract, which should be taken into account according to principle (2), constitutes one of the surrounding circumstances which should not be taken into account according to principle (1). This conflict has been resolved in the
Market Court by emphasizing the first of these principles at the expense of the second. There is a tendency on the part of the KO, however, to do the opposite in negotiations with the trade associations.

1. Terms in Conflict with Mandatory Law

The most important class of per se unreasonable contract terms are those that conflict with mandatory rules of law. Mandatory rules are found in legislation governing private contracts, in the criminal statutes and in general principles of law. It has not been uncommon for the KO to discover contract terms in use which conflict with mandatory law, even though such terms, by definition, are without legal effect. The fact that such terms continue to appear is testimony to the fact that refusal of the courts to enforce them is not a powerful sanction against their use. This results from the fact that it is up to the consumer to enforce his rights under mandatory legislation. To the extent that the continued use of such terms is not a matter of mere routine or ignorance of the law, the continued use would seem to be motivated by an intention to mislead consumers as to their legal rights. It certainly has that effect, in any case.

The Contract Terms Act has brought to Swedish law for the first time the opportunity to eliminate, from standard contracts, terms which violate mandatory contract rules, lending considera-
bly greater impact to the mandatory rules than they have previously had.

The mandatory statutes which have been violated most commonly have been the Door-to-Door Sales Act, the Consumer Sales Act and the Installment Sales Act. For example, terms used in connection with door-to-door sales which state, "This order is binding on the purchaser but can be annulled by the seller within 8 days after the order's arrival at the company office," have been held unreasonable. This is because they are in conflict with the mandatory provision of the Door-to-Door Sales Act, namely, Section 4, which provides that the buyer may cancel the contract or withdraw his offer, as the case may be, up to one week after the making of the contract or offer. Thus, the language purporting to bind the buyer without exception is unreasonable.

Although not discussed by the Court, the provision would also seem to be in conflict with Section 2 of the same act which provides that such contracts are binding only if the salesman has delivered the necessary forms to the buyer. The other provision in the clause quoted, concerning the time within which the seller may accept or reject the buyer's offer, is also unreasonable, as will be discussed shortly.

Another term which has been held to be unreasonable per se on the basis of the Door-to-Door Sales Act reads, "Oral agreements which are not included in the written contract are not binding," or, simply, "Oral agreements are rejected." These
formulations, according to the Market Court, conflict with Section 3 of the Act. One may question, however, whether they actually do conflict with Section 3. That section provides that if the buyer has made an offer to the seller's representative and the seller accepts the offer, it will be presumed that he accepted the offer as it was presented to his representative, unless changed by express statements or by clear implications from the circumstances (emphasis added).

Couldn't these formulations be more reasonably viewed as the express contradictions anticipated by the concluding proviso of Section 3? The Court, in effect, rejected such a notion, and was very probably correct in doing so. The Court was holding, essentially, that such broadly worded exceptions to the general rule of Section 3 of the Door-to-Door Sales Act could not be justified on the basis of the statutory proviso for express statements or clear implications under the circumstances.51

The Installment Sales Act of 1915 is another mandatory piece of consumer protection legislation now replaced by the Consumer Credit Act with respect to its consumer terms, and terms violating it are not uncommon in standardized consumer contracts.52 In the Haga Bil & Motor case,53 the Market Court reviewed a repossession clause contained in a special typewritten agreement, under which the vehicle could be repossessed without resort to legal process if the amounts due were not paid strictly on time. A review by the Court of the Installment Sales Act revealed that
it was most unlikely that the seller could legally enforce the term. The Court went on to hold that the use of the term was nevertheless likely to create the impression among consumers that the seller could actually enforce it, and the Court therefore held it to be unreasonable.\(^5\)\(^4\) It is also likely that the repossession purportedly allowed by the term would constitute the misdemeanor under Swedish law of the unauthorized performance of an official duty.\(^5\)\(^5\) A term providing for conduct in violation of the *criminal laws* is per se unreasonable.

The Court has also held improper, with reference to the Installment Sales Act and other principles, a term which would allow a car dealer to retake not only the car upon the buyer's default, but also all accessories to the car whether they had been purchased from the dealer or not.\(^5\)\(^6\)

In another case, the Court enjoined the use of a contract term relating to the installment sale of automobiles whereby the automobile remained the property of the seller until all debts of the buyer to the seller of whatsoever nature had been paid in full.\(^5\)\(^7\) The Court held that the term was a violation of the prohibitions in the Installment Sales Act and Consumer Credit Act against making the right of the buyer to the goods dependant upon fulfillment of unrelated obligations to the seller, thus allowing prolongation of the Seller's security interest.\(^5\)\(^8\)

An important source of minimum standards for the interpretation of the Contract Terms Act is the *Consumer Sales Act*. 

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For instance, the Consumer Sales Act provides that under certain circumstances the buyer may cancel the purchase for delay in delivering the goods. Thus, terms in contracts for the sale of goods which deprive the consumer of such minimum rights would be unreasonable under all circumstances. A number of the decisions handed down by the Court have not referred to the Consumer Sales Act on this point, but, more commonly, the non-mandatory Sale of Goods Act of 1905. This is because a number of these decisions predate the Consumer Sales Act and others concern services, to which the Act is not directly applicable. Later decisions refer to the Act as additional support or apply it by analogy to services. The Consumer Sales Act, with its carefully defined rights for consumers who purchase products, has been expressly relied on to invalidate an unlimited force majeure clause that would have allowed significant delays by the seller with no right to rescind the contract on the part of the buyer.

The Consumer Sales Act also secures to the consumer certain rights with respect to defective goods. It is therefore per se unreasonable for a seller to attempt to exempt himself from the liability corresponding to those rights. In the Ernst Nilson case, the Market Court was asked to determine the validity of a term widely used in the sale of used cars which exempted the car dealer from any liability arising from the incorrect indication on the car's odometer of how far the car had been driven. The Court, on the basis of its finding that both the car industry and
car buyers considered the distance the car had been driven to be a major factor in judging the car's value and usefulness, held that any variance not insignificant between the odometer reading and the actual mileage would be a "defect" under the Consumer Sales Act, which, in turn, would trigger the remedies provided therefor. The clause in question, which purported to relieve the dealer of all responsibility in such cases, was therefore unreasonable per se, and the use of it was prohibited under the Contract Terms Act.

Another term used by the same car dealer violated Section 17 of the Consumer Sales Act (subsequently replaced by Section 11 of the Consumer Credit Act). By virtue of the term the consumer was obligated to execute a promissory note for any amounts outstanding after delivery. The note could then be transferred to a holder in due course against whom the consumer could not assert certain defenses he might have against the car dealer. The Court held the term per se unreasonable. The seller who accepts such an instrument from a consumer is subject not only to an injunction under the Contract Terms Act, but also to a fine under the Consumer Credit Act. Nevertheless, the instrument, once negotiated, is valid.66

In the case just referred to, the car dealer also used the following term:

The driver is likewise responsible for the vehicle's fitness for driving and for those repairs needed to put it in order and which an inspection may show to be necessary.
This clause was forbidden as a clear violation of Section 8 of the Consumer Sales Act which requires that cars which are sold to consumers must at least be able to pass the state vehicle safety inspection.67

Finally, the same car dealer also used the term: "The vehicle is delivered as is and as shown and is in all respects approved by the buyer (emphasis added)." This term was criticized for the same reason as the previous one. In addition, it did not comport with Section 9 of the Consumer Sales Act which guarantees the consumer certain rights even when the product is sold "as is."68 The term had also been criticized by the Minister of Justice in conjunction with the enactment of the Contract Terms Act and the Consumer Sales Act as inappropriate for new products and otherwise tending to mislead the consumer into believing that he had no right whatsoever to complain of defects.69 Although the "as is" clause was forbidden in the case under discussion, it is generally permissible to use the term in connection with the sale of secondhand goods.70 It may well be, however, in view of the expressed fears of the Government that consumers are often misled by the term itself, that additional explanatory language will be required to obtain the approval of the Court.

The Consumer Sales Act also allows consumers a "reasonable time" to complain after they have noticed defects in the goods, or should have noticed them, but, in no event, longer than one
year after receiving them. Before the passage of the complaint period provision of the Consumer Sales Act, the Market Court relied on the corresponding provisions of the Sale of Goods Act of 1905, which, in contrast to other provisions, gives the consumer less protection than the Consumer Sales Act. Even so, terms cutting off the buyer's right to complain of defects after 8 days were held improper. Since the coming of the Consumer Sales Act cases involving services have arisen, and the Act has been used by analogy to support the holdings that three days with respect to laundry and twenty-four hours with respect to household moving were unreasonably short complaint periods. Also by analogy, the Act has been used as a norm in determining the reasonableness of complaint periods in the housing industry. A time limit of one month to give notice of claims for predetermined damages on a house construction contract has been held unreasonable. Requirements that notice of claims be made in writing have consistently been enjoined by the Market Court in all lines of business.

In several of these complaint period cases, the term purporting to limit the complaint period appeared in invoices, or documents of similar effect, the normal content of which has no connection with these terms. A natural question in such cases would be whether these terms had been successfully incorporated into the agreement between the parties. Although the Market Court may proceed directly to a consideration of the contents and substan-
tive meaning of a clause without having to satisfy itself that the clause has actually been incorporated into the contract, the use by a businessman of a term not part of the contract between the parties would tend to mislead the consumer as to his legal rights, and the use of the term would therefore be unreasonable regardless of its content. The Court has not been asked to give explicit consideration to this issue, but the problem has been effectively dealt with by requiring, pursuant to Section 3 of the Marketing Practices Act, that the seller clearly state which contract terms are applicable to the transaction with the consumer.

The Arbitration Act is another law which contains a mandatory provision with respect to consumer contracts. It is there provided that arbitration clauses are not enforceable against consumers when the amount in controversy is less than the jurisdictional amount for the Small Claims Act. The purpose of the provision (§3a) is to ensure that the simplified procedure available under the Small Claims Act is not denied the consumer.

Consequently, in the case of Kvisseberg & Bäckström Byggnads AB, a supplier of prefabricated housing materials was forbidden to use the following term: "Disputes arising from this contract shall, if the seller so desires, be resolved by arbitration according to law." The Court based its decision on two grounds in the alternative. The second ground was the term's failure to comport with the Arbitration Act and the accompanying deception.

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of the consumer as to his legal rights. As its first ground the Court stated that arbitration procedures are more expensive for consumers than judicial procedures because the Legal Aid Act provides for financial help only in the latter instance. It feared that such clauses would discourage consumers from asserting their rights and from having them legally determined. As a result of the Court's reliance on this more general reasoning, the decision will have an impact outside the area covered by Section 3a of the Arbitration Act, and it will go a long way toward making arbitration clauses unreasonable in all consumer transactions to which the Legal Aid Act can be assumed to apply.84 The decision is also an example of the per se unreasonableness of any term which reserves to the merchant the right to make arbitrary choices affecting rights of the consumer.85

In a case involving lease agreements for residential purposes, the Market Court enjoined the use of several terms because they violated mandatory provisions of the Real Property Code.86 The leases implied that the rental payments could not be made monthly, but had to be made quarterly or yearly. The Court held that the term violated the provision of the Real Property Code requiring that rental payments may be made on a monthly basis, even if this is contrary to the agreement of the parties, for apartments up to four rooms and a kitchen in size. The Court also enjoined a term which set specific amounts to be paid by the tenant for broken windows, sinks and toilets. The Court held
that this was a violation of the responsibility placed on the landlord by the Real Property Code for normal wear and tear. Also incompatible with the responsibility of the landlord under the Real Property Code for normal wear and tear was a provision forbidding the use of tape or nails on the walls of apartments. Finally, the rental agreements specified a specific expiration date. This was again incompatible with the Real Property Code which requires that notice be given before a lease can be terminated and which gives the tenant the right to hold over in certain cases despite notice from the landlord. With the respect to each of the foregoing terms, the Court recognized that, since they were unenforceable in the Courts, their primary vice was that they would tend to mislead the consumer, causing him to underestimate his rights against the landlord.\textsuperscript{87}

Finally, mandatory contract rules are also to be found in general principles of Swedish law. This source of mandatory law has been tapped to outlaw clauses which would exempt the businessman from liability to the consumer for injury or damage intentionally inflicted or which is the result of gross negligence. Such clauses can have no effect under Swedish law,\textsuperscript{88} and in the \textit{Snabb-Bussar} case,\textsuperscript{89} the Court consequently held unreasonable the following term which was printed on the bus passenger's ticket: "The travel agency is not liable for personal injury or property damage, delay or force majeure." The term was read by the Court as an attempt to free the company from any li-
ability at all for injury to person or property. Since this was impossible with respect to intentional and grossly negligent acts, the term was to that extent misleading and therefore unreasonable. The Court went on to hold that even with respect to simple negligence it constituted a significant restriction of the liability otherwise provided for in non-mandatory legislation either directly applicable or applicable by analogy, and the term was therefore forbidden for that reason, as well. Another attempt by a provider of consumer services to exempt itself from liability for negligence, this time in the household moving business, was also held unreasonable for the same reason.

2. Terms Which Seek to Circumvent Mandatory Law

One of the most important functions that the Contract Terms Act has come to fill is the prevention of circumvention of mandatory rules. The Government relied on the existence of this function, for instance, in drafting the Consumer Sales Act. There was no need, it was said, to try to fill every loophole in the law, since the Contract Terms Act could be counted on to do that. The existence of the Contract Terms Act makes it less necessary to anticipate in detail the forms of consumer transactions in the future. Likewise, new legislation is not required at every turn.

The interplay of the laws on this point is illustrated by the following examples. The Consumer Sales Act provides the con-
sumer with certain remedies when the goods purchased prove to be defective. It contains no general definition of the term defect, however. Thus, the parties may determine between themselves, to a certain extent, what a defect is. The Ernst Nilson case, which involved the term exempting the seller from liability where the used car had actually been driven further than the odometer indicated, can be looked on from this perspective as an attempt by the seller to exclude that condition from the concept of "defect" under the Consumer Sales Act.

Another term which deserves mention is the as-is clause. According to the Minister of Justice the exclusion of certain warranties which is accomplished by selling goods "as is" is inappropriate for new products in most (but not all) cases. It was left to the Contract Terms Act to draw the line with respect to its use. By the same token, it is likely that inappropriate use of the as-is clause in individual cases will be refused effect under Section 36 of the Contracts Act of 1915.

Two other cases serve to illustrate this function of the Act. They were both actually decided with reference to the non-mandatory Sale of Goods Act of 1905, and the term in each case was held to diverge so widely from that act that it had to be held improper. Since these cases were brought, the Consumer Sales Act has entered into force, so that if they were decided today, they would be instances of circumvention of mandatory legislation. In P L Bilär i Göteborg AB, used cars were sold
with a guarantee for defects in materials "as determined by (the seller)." The seller, under this provision, could arbitrarily, and without any reference to objective standards, unilaterally decide whether a defect existed and thereby control the buyer's rights under the contract, the general Sale of Goods Act and, had it been in force, the Consumer Sales Act.94

The other case, AB Kulturhistoriska förlagen,95 involved circumvention of contract rules concerning time of delivery. The term in question provided that the books being sold would be delivered "when they have been made ready." The Court held the remedies provided by the general Sale of Goods Act for delay on the part of the seller in delivering the goods could not be invoked until the date for delivery had passed. Since the date for delivery, i.e., "when the books are made ready," was totally within the control of the seller and not subject to measurement by objective standards, the delivery date could be put off indefinitely by the seller without the buyer ever having a remedy. As a result, the Court held the term unreasonable and enjoined its use because it upset the reasonable balance between the rights of seller and buyer.

The Door-to-Door Sales Act is another piece of mandatory legislation which has not been neglected by those who would circumvent consumer protection legislation. Here again, the Contract Terms Act has proven its worth. In 1973, the Court was presented with an interesting question in the first Akademisk
Brevskole case,96 involving a Danish company which sold correspondence courses door-to-door in Sweden. In the application form for the courses was included a choice-of-law-clause: "Any disagreements between the school and the student will be resolved according to Danish law." There was no counterpart to the Swedish Door-to-Door Sales Act in Denmark. The company's representatives did not hand over the documents required by the Swedish act.

When consumers sought to cancel their purchases, as they were entitled to do under the circumstances, according to Section 2 of the Swedish act, the company refused to acquiesce. The Court, assuming that the term was enforceable under private international law, held that a term which would deprive the consumer of protection provided by mandatory legislation was improper.

The Court thereby disposed of the case in an acceptable manner. It is worth pointing out, however, that the normal first step in determining whether a term is reasonable is to determine its legal effect. There is reason to believe that this particular term would have been unenforceable in the regular courts.97 As a matter of construction of contracts, it might have been thrown out on the basis that it is both onerous and unexpected. It is also possible that a regular Court would have refused to enforce the contract because it had been entered into without the formalities required by local law, namely, the requirement of the Door-to-Door Sales Act (§2) that documents explaining the buyer's rights be delivered to the buyer in order for the contract to be
binding. If the term were found to have no legal effect, it could then be held improper by the Market Court as misleading the consumer concerning his legal rights.

As discussed earlier, it is debatable whether some of the Market Court decisions concerning to the Door-to-Door Sales Act are directly enforcing it or are preventing circumvention of it.

3. Unlimited Acceptance Period

In the comments of the Minister of Justice in conjunction with the enactment of the Contract Terms Act are found a series of terms characterized as improper under all circumstances (unreasonable per se). Among these is the term which purports to allow the seller an unlimited time period to accept the buyer's offer while the buyer remains bound. Under Swedish contract law no consideration is required to hold an offer open. The offeree has a reasonable time to consider the offer. As a result, the seller prefers to put himself in the offeree's position. This is useful for purposes of performing a credit check on the buyer and ensuring that the seller's own stock of the product is sufficient. In connection with this practice, particularly common with door-to-door sales, terms such as the following have appeared: "This order is binding on the purchaser but can be cancelled by the seller after arrival at the factory [or within 8 days of its arrival at the company office]," or "the company
reserves the right to approve each purchaser.\textsuperscript{100} These clauses have been consistently held to be invalid by the Market Court.\textsuperscript{101} The Court has stated that these clauses grant the seller an unlimited acceptance period and has then referred to the denunciation of them in the legislative history of the Act. It is doubtful, however, that these clauses would be given such an effect by the regular courts. Thus, the true objection to these terms is that they tend to mislead consumers as to their rights under the contract.\textsuperscript{102}

It is interesting to note, nevertheless, that the Market Court has approved a three-week period in connection with the door-to-door selling of books.\textsuperscript{103} This decision, and the negotiations of the KO pursuant to it, constitute a positive development in Swedish contract law, whereby a rule of thumb has been established for the "reasonable time" allowed the offeree to accept.

4. Force-Majeure Clauses: Price Escalation

The Market Court has handed down several decisions concerning price escalation clauses of various types. All have been held unreasonable. The first of these was a very significant decision. The name of the case was Tjäreborg Resor AB.\textsuperscript{104} It involved a price escalation clause which allowed a travel agency to pass on to consumers increases in the price of flight fuel, increases in taxes or other governmental charges and increases
resulting from changes in the international rates of exchange. The time for notification was at least one week before departure and the consumer could cancel for increases exceeding 10% of the price. The term had come into use as a result of the "oil crisis" of 1973.105

The Court began its opinion with a reference to the legislative history in which it was made explicit that unlimited price escalation clauses were to be condemned as unreasonable per se. The Court took pains, however to point out that such clauses, if properly qualified, would be acceptable. The Court would approve clauses based on purely force-majeure circumstances, that is, circumstances (1) over which the seller had no control and (2) which the seller could not foresee. The Court indicated that there were very few circumstances outside these which could be used to justify price increases. It also laid down the requirement of a "threshold" increase in the seller's costs, below which the seller could not pass the increase on even if it were the result of force-majeure circumstances. The seller was presumed to take into account normal increases in his costs when he set his price initially. The fundamental principle is that the contracted price should be maintained.

In addition to the demands already made on the clause in question, the Court laid down general rules respecting the consumer's right to cancel, pointing out that the term could be quite burdensome for the consumer in light of the fact that
several family members often travel together. Even under force-majeure circumstances, the Court implied, the consumer must have the right to rescind the contract even with respect to relatively modest price increases. The 10% threshold provided for in the term under consideration was too high. Also, the one week minimum notice provision was too short.106

5. Force-Majeure Clauses: Delay

Clauses such as the following have appeared in a number of cases before the Market Court:

The seller exempts himself from all liability in the event he becomes wholly or partially unable to meet his delivery commitments because of war, mobilization, defense alert, political disturbances, strike, lockout, fire, accident, transport difficulties, failure of his ordinary suppliers to deliver or other circumstances of any kind whatsoever, which are beyond the seller's control. -- The buyer is not entitled to refuse delivery which has been delayed because of one of the foregoing circumstances.107

These clauses are of the same general type as the price escalation clause just discussed. In each of these cases the clause was found unreasonable. The Court rested its decision on two grounds: (1) the authoritative legislative history which indicates that such clauses are to be considered unreasonable per se,108 and (2) the significant reduction which such clauses effect in the consumer's right to cancel the purchase under the Sale of Goods Act where (a) the delay is significant and not due to him or (b) he has stipulated that time is of the essence ($21).
In the AB Skånska Cementgjuteriet case, the Market Court analyzed force-majeure terms in use in the house construction industry. It analyzed the clauses both on the basis of their effect on the right of the consumer to rescind the contract and on the basis of their effect on the right of the consumer to receive damages for the delay. With respect to the former, the Court ruled out terms which allowed shortages of material and labor, unusual weather and very generally worded excuses to serve as the bases for delay in delivery. It recognized only one term as specifying true force-majeure circumstances, namely:

4. war, defense, epidemic, strike, boycott or walkout, however not strike or boycott resulting from the failure of the contractor or one of his subcontractors to meet their obligations toward their employees.

Even this term, however, according to the Court, would require some allowance for rescission by the consumer in order to be acceptable under the Contract Terms Act.

With respect the limitation placed by the force-majeure clause on the right of the consumer to damages, the Court approved the term quoted above and the term allowing for unusual weather and water conditions, as being consistent with the prevailing, non-mandatory law, that is, the law that would be applicable if the parties had not expressly come to an agreement on the subject. The Court disapproved the terms that would have allowed delay in delivery on the basis of shortages of labor and materials and very generally worded excuses. The Court held
the terms to be unreasonable on the basis of their diversion from what the Court determined to be the prevailing consumer non-mandatory law. The ability of the contractor to prevent shortages of labor and material and the heavy burdens which the generally worded excuses placed on the consumer were factors in the Court's determination.

6. Forfeiture of Downpayment

Forfeiture clauses have been involved in several cases before the Market Court. One clause read as follows: "If an article for which a downpayment has been given is not fully paid for within 14 days after the purchase is entered into, the downpayment is forfeited." The fact that the clause, as read by the Court, provided for forfeiture in conjunction with cancellation of the contract by the seller, regardless of the size of the downpayment, "shocked the conscience of the court." Consequently, the clause was found to be "manifestly unreasonable" under the Contract Terms Act.

7. Withholding Payment

In a case involving a household mover, the company was using a term which required payment immediately upon delivery regardless of the existence of any claims the consumer might have against the company. The Court did not hesitate to go straight to the rules in Sections 4 and 5 of the Consumer Sales Act which
give the consumer certain minimum rights to withhold payment with respect to defective goods. The Court saw no reason to provide the consumer anything less with respect to defective services. Noting that the company had in no other way taken into consideration the right of the consumer to make claims against the company, the Court held the term unreasonable.

In AB Skånska Cementgjuteriet, the Court considered a clause which required the consumer to pay all amounts due under the contract to the contractor prior to being put into possession of the completed house. The Court interpreted this to deprive the consumer of his right to withhold part of the purchase price until the seller had fully performed. On the basis of its precedents and the fact that there was no other security provided to insure the performance of the contractor, the Market Court held the term unreasonable.113

8. Real Property Clauses

Since July 1, 1977, when the Contract Terms Act became applicable to consumer transactions in real property, a sizable number of terms used in real property transactions have been brought before the Market Court by the Consumer Ombudsman, and the lion's share of these have been enjoined. A number of real property terms have already been discussed in conjunction with the earlier treatment of complaint periods, the proper form for
complaints, the landlord-tenant relationship, unlimited acceptance periods, force majeure/delay, forfeiture clauses and the right of the consumer to withhold the purchase price.

In addition to those terms, many of the real property terms which have been considered by the Market Court arose in the case of AB Skånska Cementgjuteriet.114 Two and one-half years from date of filing to date of decision and 150 pages in length, the decision has been hailed by the Consumer Ombudsman as the most significant decision yet decided by the Market Court pursuant to the Contract Terms Act.115 The respondent was the largest building contractor in Sweden, and the terms which the Market Court was asked to consider were terms that have been commonly used by the housing industry throughout the country.

Turning to the specific terms that were ruled upon in that and other cases, the Market Court enjoined a term used in connection with the sale of lots as building sites for recreational purposes which prohibited the recording of the purchase contract in the real property records at the local courthouse. The Court held that the right to protect one's purchase of real estate through recording in the real property records was the most important element in the legal system established by the Real Property Code. Not least among the benefits of recordation is the ability of the purchaser to protect himself against subsequent transfers and mortgages. According to the Court, most
consumers would mistakenly believe that the term was legally enforceable and would therefore fail to make use of the protection that Parliament wished to afford them. The Court held that the term was likely to seriously mislead the consumer in this regard and was therefore clearly unreasonable under the Contract Terms Act. 116

In another case, the Market Court enjoined the use of a term by a municipality which exempted it from liability for ground conditions in connection with the leasing of house lots. The Court pointed out that not only was the municipality considered to be a merchant with respect to the sale of the leaseholds, but also that the law applicable to it as a municipality required that it insure that land be used for the purpose for which it is best suited. The Court also pointed out that it was possible for the municipality to limit the type of construction so as to suit the particular soil conditions. On the basis of the foregoing, the expense of soil tests, and the fact that the consumer was being required to carry the full burden of the risk associated with ground conditions, the Court found a total lack of the balance of responsibilities that should prevail between the parties and therefore determined the clause to be clearly unreasonable under the Contract Terms Act. The Court so held despite the low price associated with the sale of the leaseholds, despite the fact that the purchasers had received information on ground conditions, and over the objection of the municipality that Section
36 of the Contracts Act was available to set aside the term in individual cases. The Court saw the municipality's Section 36 argument as an additional reason for the Court to afford the consumer the further protection of an injunction against the use of the term.\textsuperscript{117}

A house construction contract term placing the risk of loss on the consumer for damages which may arise during the term of the contract "as a result of war, uprising, riot, arson, sabotage, general devastation, natural catastrophe or comparable circumstances," has been enjoined by the Market Court. Rejecting as obsolete the argument of the respondent company that the risk of loss ought to follow ownership, the Court held that the risk of loss should lie with the party in possession of the property, which is the contractor up until the time of delivery, unless the owner moves in prior to that time.\textsuperscript{118}

Another such term considered by the Market Court limited damages to an amount corresponding to 15\% of the contract price where the damages arose from negligence or from inadequacies or defects in the contractor's work. The Court held the term unreasonable in one respect and approved its use in another. Its disapproval of the term was confined to its misleading character, the Court finding that the consumer would likely receive the impression that damages arising out of gross negligence or intentional acts were also within the 15\% liability limitation. If that problem with the clause were corrected, the Court would
have no further criticism of it. The 15% limitation, the Court found, applied to negligently caused damages to property of the consumer during the construction phase and to any damages arising from inadequacies or defects in the structure. It found the latter type of damage to be the more significant to the consumer, and pointed out that the liability of the contractor in that regard was a strict liability. In other words, the contractor was taking upon himself a greater responsibility than he otherwise would have, within the 15% limitation. In light of this, the Court considered the limitation to an amount corresponding to 15% of the contract price to be a reasonable balancing of the interests of the parties.119

The Market Court has also considered a construction contract term which liquidated damages to 200 Swedish crowns per week to be paid by the contractor for delay in delivering the finished house. The term also had the effect according to the Court, of limiting the consumer's total damages to 200 Swedish crowns per week. The respondent company defended on the grounds that the term afforded the consumer a benefit not afforded by the generally prevailing law, namely, strict liability on the contractor's part for delay in delivering the finished house. The Court attempted to determine the prevailing law in the area by drawing parallels with principles applicable to the sale of goods, but without great success. It held that it was unclear that prevailing law required a showing of negligence before the consumer was
entitled to damages, and, therefore, the company was not entitled to defend on the grounds that strict liability meant an added advantage for the consumer over prevailing law.

The Court began its analysis of the reasonableness of the contract term by pointing out that the function of damages is two-fold: preventive and remedial. The remedial purpose of damages is fulfilled when the injured party is made whole by awarding him such compensation as will place him in the position that he contracted for. The Court found that the sum of 200 Swedish crowns per week was not reasonable compensation for the considerable expenses the consumer was likely to have in such a situation, which would include the costs of acquiring temporary housing, the cost of extra trips and the cost of storing furniture and household goods. The Court reviewed the industry practice with regard to liquidated damages and found that it was not uncommon to specify liquidated damages to be one-quarter to one-half percent of the contract price. The Court therefore held the term to be unreasonable on the basis of its divergence from general contract law principles, sales law principles and industry practice. It further stated that a term liquidating damages for late delivery in an amount equal to one-half percent of the contract price per week would probably cover the costs of the consumer caused by the delay.

Three members of the Market Court dissented from that decision. It was their position that the Market Court should

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not, as they believed it had, prescribe terms to be used in consumer transactions, but rather, should only consider the reasonableness of the contract terms brought before it. These members of the Court were also dismayed with the decision for the reason that terms specifying liquidated damages were not required by law to be included in construction contracts, and they suggested that the result of the Court's decision would be the disappearance of the term altogether, which would be a loss for consumers.120

The Market Court has also been asked to determine the reasonableness of a construction inspection term which states that no cause of action against the contractor, on the basis of defects present at that time, may be prosecuted unless the defects are noted in the inspection report. The term excepts from this rule defects which were not noticed at the time of inspection and which are of such a nature that they should not have been noticed. The Court recognized that the term was quite typical and important in the construction industry. Its purpose is to authoritatively determine to what extent the product, i.e., the house, conforms to the contract. According to the term, the inspection report is the exclusive means of proving that defects existed at the time of inspection. The Consumer Ombudsman did not attack the practice of inspection, but rather the exclusive effect given to the inspection report by the contract term. In other words, the Ombudsman criticized the fact that the consumer
was deprived of any right to complain of defects not noted in the inspection report, but which could have been.

The Market Court reviewed the parallel rules prevailing with respect to the sale of goods and real property and found that, particularly with respect to real property, the area of the law nearest to that being considered by the Court, the inspection by the purchaser at the time of purchase was not given the exclusive effect that was required by the term before the Court. In the Court's judgment, here also, there should be at least some opportunity for the consumer to have rectified defects not noticed at the time of inspection even if they should have been noticed. Since the term before it allowed for absolutely no such opportunity, it was held to be unreasonable. The Court went on to stress that the fears of the industry that inspection would lose its usefulness should not be exaggerated. It asserted that the inspection report, as a practical matter, would most often be the decisive evidence of the condition of the structure at the time of inspection.121

The Consumer Ombudsman has also challenged the reasonableness of a guarantee on consumer housing which was limited to one year. He suggested to the Market Court that the period of the guarantee should be two years rather than one. The Court rejected the position of the Ombudsman. It held that the one-year guarantee offered by the contractor afforded the consumer a clear benefit over and above the rights that the consumer has under
prevailing non-mandatory law. The Court pointed out that the contractor also has the burden of proof if he wants to avoid liability on the basis that the defect is the result of something other than his work. To require further extension of the benefit that had been afforded the consumer, would, the Court held, be impossible under the Contract Terms Act.¹²²

Another consumer housing construction term brought before the Market Court by the Consumer Ombudsman read as follows:

The contractor is responsible for flaws or defects which were not noticed and were not such that they should have been noticed prior to the end of the guarantee period, to the extent the flaws or defects are shown to be the result of gross negligence by the contractor.

The Court perceived the Contract term to constitute a limitation on consumer rights in two respects. First, it limited the liability of the contractor by cutting off any liability for defects that should have been noticed by the consumer during the one-year guarantee period but weren't. The Court held the term unreasonable in this regard, for the same reasons that it had ruled the exclusive nature of the inspection clause to be unreasonable, as previously discussed. It again stated that there should be some opportunity for the consumer to recover for such defects and that the failure of the consumer to notice them during the one-year period should not result in a conclusive loss of his rights.
The second element of the contract term limiting consumer rights was its limitation of contractor liability during the ten-year statute of limitations period to defects which are the result of gross negligence. In this regard, the Market Court held the term to be acceptable under the Contract Terms Act. Although it recognized that this aspect of the term constituted a clear restriction of consumer rights, it held that this disadvantage was counterbalanced by other factors. The Court made an overall analysis of the contract and found the term to be reasonable in light of the curative action that the contractor is obligated to take with respect to defects discovered at the time of inspection and with respect to defects discovered in the first year during which the guarantee is in effect, which guarantee, the Court reiterated, was a significant benefit for the consumer. The Court also pointed out that the normal unrestricted liability of the contractor during the ten-year statute of limitations period was associated with considerable costs which, if assumed by the contractor, would mean an increase in price to consumers. Finally, the Court asserted that truly major defects would most likely be the result of cheating by the contractor and thus would come under the liability for gross negligence. Even smaller problems, the Court asserted, which occur with great frequency in housing developments would often be found to be the result of gross negligence. The practical suppositions of the
Court with respect to this latter line of reasoning, however, are not altogether convincing.

9. Misleading Form or Presentation

The Minister of Justice, in his discussion of the power to enjoin contract clauses solely because of their misleading character, cited as an example the selling of products "as is."124 This term is not unreasonable per se under the general clause, but it gives consumers the impression that the seller has absolutely no responsibility for the quality of the product, which is not true. The Contract Terms Act may thus be invoked to counteract this erroneous impression.

In only one instance to date has the Market Court had to rely on this power to enjoin terms solely for their misleading effect. In that case, discussed elsewhere, the Court found unreasonable a term which limited damages for negligence.125 The Court held the term misleading because of the likelihood that consumers might receive the impression that damages for gross negligence and intentional acts were also limited, as the term did not expressly exclude them.

In addition, the Court has invalidated clauses in three other cases solely on the ground that they deceived consumers with regard to their rights. The terms in two of the cases were "No exchanges"126 and "The purchase agreement cannot be annulled
by the buyer." The Court pointed out that these terms might lead the consumer to forego his legal remedies in the event the goods were defective. However, the Court could just as easily have based its decisions in these two cases on the fact that they were in conflict with mandatory law, namely, the Consumer Sales Act. The Court's power under the general clause to enjoin terms that are unobjectionable from a substantive point of view, but which are worded or presented in such a way as to mislead consumers as to their legal rights, was not required. The terms were simply misleading in the same way all terms which conflict with mandatory law are. For instance, the term "No exchanges" admits of no exceptions. In particular, there is no exception for defective goods. The statements by the Consumer Ombudsman and the Court that there was no objection to the substantive content of the clause would therefore appear to be open to question. Indeed, in other cases, the Court has taken the position that a contract term is substantively improper if it violates mandatory law under any circumstances.

In the third case, the term prohibited recordation of the real estate purchase contract by the consumer. The Court stated that the term was of no effect because the recording statute did not recognize contractual limitations on the right to record. It was, therefore, unreasonable in the eyes of the Court because it would deceive consumers as to their rights. Here again, however, this was merely an example of the natural
deception accompanying the use of any term inconsistent with mandatory law.

With the expansion of the Marketing Practices Act in 1976, an additional means of dealing with the problem of misleading contract terms was introduced. Section 3 of the Act allows the Market Court to require the provision of information which is of particular significance to consumers. The section is applicable to contract terms. Indeed, the KO has successfully invoked Section 3 before the Market Court to require a contractor to specify which of many terms are applicable to a given transaction in order to eliminate consumer confusion in that regard.130

B. Enforcement By the Consumer Ombudsman/Consumer Board

The enforcement of the Contract Terms Act, by means of monitoring contract practices, negotiating with companies and trade associations, and prosecuting cases before the Market Court, has been the duty of the Consumer Ombudsman. Since the merger of the Consumer Ombudsman's office and the National Board for Consumer Policies in July 1976, most of the nonprosecutorial duties have been delegated to the larger agency staff.

Many contract forms from different lines of business have been collected and scrutinized. These have included order forms, installment sales contracts, guarantee forms, delivery term forms, receipts and invoices. During the first nine years the Act was in force, over 3000 matters were handled pursuant to the
Most of these were taken up on the Consumer Ombudsman's own initiative. Some, usually the more flagrant cases, were the result of complaints from consumers. It is also not unusual for businesses to request comments from the agency on terms to be included in new standard contracts.

By far the greatest number of these enforcement actions have taken the form of negotiations with the company or trade association involved. Only a very small percentage of the files opened are ultimately taken to the Market Court. This is in keeping with the intent of the framers of the Act. The decisions of the Market Court play a major role, however, in the determination by the Consumer Board of its positions vis-a-vis the business community.

When the agency negotiates with individual companies, the negotiations are usually pursued by an exchange of written proposals and comments until a result satisfactory to the agency is reached. The result is normally confirmed in writing by the company.

The KO and the Board have carried out a number of large scale negotiations with trade associations in the interest of maximizing their impact. This approach assumes the existence of strong trade associations which can ensure compliance by their members and whose members are responsible for a high percentage of the business of the particular industry. By and large, this assumption is justified. Trade associations occupy a rather
strong position in Sweden, and their influence is growing. Membership is still far from total in most lines of business, however. The negotiations usually take the form of face-to-face meetings, often including representatives of other relevant governmental authorities, where drafts by the trade association form the basis for discussion. The agency follows up the broad-based negotiations with negotiations with nonmember companies, and a large number of agreements have been reached as a result.

Compliance by member companies with the terms agreed to has been good according to the Consumer Board, although it has been shown that compliance by nonmember companies with the agreements reached in negotiations with the Consumer Board cannot be taken for granted.

Part of the enforcement process is monitoring compliance with the agreements that have been reached. The necessary monitoring has not always been done, and the result has been that some companies have not lived up to their agreements with the agency. Even some who have agreed to consent orders issued by the Ombudsman have reportedly continued to use the terms enjoined with impunity. Any flouting of consent orders is probably the result of the expectation by the companies involved that there will be no monitoring of their conduct.

The agreements with trade associations are not, of course, legally binding on anyone. They are introduced increasingly, however, in the Market Court by the Consumer Ombudsman as evi-
dence of good commercial practices in the particular line of business, and the Court has begun to accord such evidence official recognition.\textsuperscript{141} They also set a more or less authoritative standard for the industry involved, depending upon the standing of the trade association.

The key to whether the Market Court can exercise its intended function as the fountainhead of legal development under the Act lies in both the number and quality of its decisions. Both these factors are to a large degree within the control of the Consumer Ombudsman. It is properly he who must, on the basis of his familiarity with the marketplace and the problems of consumers, set enforcement priorities. In truth, it was the opportunity to vest this resource-allocation function in the Consumer Ombudsman which was a prime motivation for the adoption of the present administrative scheme.

The Consumer Ombudsman determines how many, and which, cases are to be taken to the Market Court. Only 21 of the 145 cases which were brought to the Court during his first five years of operation concerned contract terms.\textsuperscript{142} The others were Marketing Practices Act cases. The prime explanation for this allocation of cases lies in (1) the choice of the Consumer Ombudsman to emphasize the negotiation approach to enforcement and (2) the inherent limitations imposed by the negotiating process. The Government, in connection with the passage of the bill, stated that once the KO had reached an agreement with industry

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representatives, he should not challenge the agreed terms unless circumstances changed or other special reasons arose, and, in any case, not before attempting to negotiate a new agreement.\textsuperscript{143} Such prerequisites appear to be called for as a practical matter to obtain the cooperation of the business community.\textsuperscript{144}

The KO did seize the initiative, however, in challenging a new and strained interpretation placed by the travel industry on one agreed term. That initiative resulted in the Tjäreborg price-escalation-clause decision of 1974 by the Market Court.\textsuperscript{145} Soon after the creation of his office, the Consumer Ombudsman had taken up negotiations with the associations for the package tour and charter flight travel industry. The agreement, reached in 1972, contained a price escalation clause which was simply the first sentence of the provision that came before the Court in the Tjäreborg case.\textsuperscript{146}

When the oil crisis of late 1973 hit the industry, the KO was contacted by industry representatives to ask whether he would agree that the price clause in the agreement was broad enough to support price increases to compensate for rising fuel costs. He took the position that the original clause allowed price increases only in response to increases in taxes, airport fees and other officially imposed expenses. The industry argued that the price increases for oil were not the result of normal market forces, but were nothing more than camouflaged taxes.
The KO refused to give his approval. The companies did not bow to his interpretation, however: they went ahead and demanded more money of their customers, sometimes even at the airport under threat of their being excluded from the flight minutes before departure. This led to a very large number of complaints, about 1500, to the Consumer Ombudsman. He responded with a petition in the Market Court for an immediate interim injunction which was denied.\textsuperscript{147} The travel agencies then formulated the new clause which was subsequently substituted for the original one by the KO in his petition for a permanent injunction. The decision of the Court then formed the basis of further negotiations between the KO and the industry associations, the results of which have been detailed elsewhere.\textsuperscript{148} This is an example of the satisfactory functioning of the statute and the institutions obligated to enforce it.

The principle of taking into account the overall balance of the rights of the parties, as evidenced in other terms of the contract, when deciding the reasonableness of the specific term in question, is a principle shown to have had little impact on the decisions of the Market Court. It has had greater impact on the agreements negotiated by the KO, however. This is especially true in the instances where the KO has taken the initiative in creating standard contracts for lines of business where there previously were none.\textsuperscript{149} Otherwise, however, the principle has not been used extensively. The agency's monitoring and negotia-
tion has tended to focus on particular clauses which are per se unreasonable, that is, unreasonable by definition regardless of the other terms in the contract. Reportedly, the principle will sometimes come into play at the final stage of negotiations where it is useful in reaching a compromise. The recurring problem with the principle is the difficulty of balancing terms which come into play at different times and in different situations.

In its negotiations, the Consumer Board relies on the decisions of the Market Court and the legislative history of the Contract Terms Act. It thus looks to mandatory legislation, particularly the Consumer Sales Act, the Consumer Credit Act, the Door-to-Door Sales Act and the mandatory provisions of the Real Property Code. When mandatory legislation is not applicable, resort is made to general legal principles, non-mandatory law (e.g., the Sale of Goods Act and the dispositive provisions of the Real Property Code). Efforts are also made to eliminate misleading presentation of contract terms by working for easily understood language and clear layout. The level of consumer protection reached through negotiation has varied. In areas covered by mandatory legislation, the minimum level afforded by the legislation has been agreed to in many areas according to the Consumer Board. Just bringing contracts into conformity with mandatory legislation is a major accomplishment. It has been asserted, however, that negotiated terms which do not meet the
minimum level of mandatory legislation have been allowed by the
KOV/KO and that the Ombudsman has not sufficiently availed him-
self of the opportunity to raise the norm for contract terms
above the minimum level by bringing them before the Market
Court.153

There are certain contract terms which the agency deals with
regularly because they appear in industry after industry. These
include the seller's period during which he may accept or reject
the contract to which the consumer is already bound, the effort
here being to limit the period to a reasonable, specific time;
price terms, including price escalation (force majeure) clauses;
consumer remedies for defects and delays; attempts by the seller
to unilaterally determine whether defects exist; guarantee
periods, which are lengthened if possible; complaint periods,
which are often too short; improper restrictions on the manner of
making complaints; and arbitration clauses.154

The KO has reached a number of significant agreements. The
contract developed for group travel, referred to earlier, is one
of these. In those negotiations, the KO was able to eliminate,
for instance, the clause by which the travel agencies had pur-
ported to act "as agent only" with respect to the services they
arranged, which services were often provided in foreign coun-
tries.155 The length of guarantee periods has been extended in a
number of areas. Guarantees have also been extended in various
instances to cover subsequent owners of a product. Utilities
providing electricity and telephone services cannot terminate their services now on the basis of insignificant payment problems and without notice, as they could before the KO took them to task.\textsuperscript{156} The sale of automobiles has been of special interest. The KO/Consumer Board has achieved better consumer protection with regard to the purchase terms and guarantees for new cars, guarantees on used cars, terms for car repair, guarantees on auto replacement parts, tire guarantees and auto leasing terms.\textsuperscript{157}

The KO has performed a very useful function in fleshing out mandatory legislation, establishing, for example, what will normally constitute a "reasonable time" and a "reasonable compensation" under the Consumer Sales Act. Unlimited acceptance periods have been cut down to two weeks in all lines of business except door-to-door sales, where the period is three weeks.\textsuperscript{158}

The KO has even taken initiatives outside what could be enforced in the Market Court. The creation of standard contracts in industries which had previously lacked them is one example. Another is the persuasion of a printer to eliminate unreasonable terms from the standard contracts he prints.\textsuperscript{159}

The KO/Consumer Board has also acted in the area of the contract terms involved in pyramid sales schemes. These schemes normally consist of the sale of dealerships or distributorships for consumer products. The Market Court has forbidden certain marketing practices practiced by pyramid sales schemes.\textsuperscript{160} It is doubtful, however, that the Contract Terms Act is applicable to
the contract terms between the company and those who buy dealerships. This is a result of the fact that those who buy dealerships are not consumers in such situations because they are not acquiring the dealerships or products for their own private use. Rather, they are acquiring the products for resale to consumers. The Market Court would, therefore, be unable to forbid the use of unreasonable contract terms in connection with the sale of dealerships in pyramid sales schemes. Nevertheless, the Consumer Ombudsman/Consumer Board has succeeded, through negotiations with a company involved in the pyramid sales marketing of consumer chemical products, in improving the contractual rights of the purchasers of such dealerships.¹⁶¹

Another important function performed by the agency is follow-up negotiations after a decision of the Market Court. This was done after the Tjäreborg case.¹⁶² It was also done after Skånska Cementgjuteriet.¹⁶³ These negotiations are the tool by which the KO seeks to apply the Court's decision by making specific determinations of time and amount consistent with the Court's ruling. Terms not considered by the Court are also taken up.
VI. EFFECT OF INJUNCTIONS ON INDIVIDUAL CONTRACTS

It is worthwhile to consider briefly the effect of an injunction on contracts containing the term enjoined. In his authoritative remarks on the Contract Terms Act, the Minister of Justice stated:

One should also be able to assume that the Supreme Judicial Court would hardly be willing, in a private contract case, to make statements of principle concerning the propriety of a certain term as a general rule, in direct conflict with a determination which had earlier been made in the injunction proceedings [by the Market Court].

But is the term automatically invalid as between the two contracting parties? In short, it is not. This can be true even in the event that the respondent to the injunction subsequently enters into a contract including the enjoined term, although it is unlikely. This is a result of the fact that the Market Court's decisions have certain administrative characteristics which do not allow them to be legally binding upon courts of general jurisdiction in private disputes. Section 4 of the Contract Terms Act allows the Market Court to reconsider its decisions "when changed circumstances or other special reasons require it." Also, its decisions are not self-executing. It is necessary to seek the imposition of fines for contravention of an injunction in the courts of general jurisdiction. Those courts have authority (1) to consider the jurisdiction of the Market Court to issue the injunction and (2) to adjust the amount of the penalty fine set by the Market Court. Also, the inherent
nature of a Market Court decision, in which the term is considered as it is typically employed, makes it unsuitable to automatically apply a Market Court decision to the particular circumstances of individual, private disputes.

Nevertheless, it would be most unsatisfactory if the courts of general jurisdiction were to enforce a contract term on behalf of a businessman who had previously been enjoined from using the term by the Market Court, except in the most unusual circumstances. According to the Minister of Justice, the primary instrument by which the Courts can invalidate a contract term, the new Section 36 of the Contracts Act of 1915, is to be interpreted in harmony with the precedents under the Contract Terms Act.167

Because the relief afforded by the Market Court is prospective in nature, and for the other reasons just stated, a clause appearing in contracts entered into before issuance of the Market Court's injunction cannot be invalidated solely on that basis, even when the party seeking to enforce it was the respondent before the Market Court.168 It may be, nevertheless, that the clause will be invalidated or reformed by the regular courts in conformance with the Market Court's reasoning on the basis of principles which predate the contract, such as general mandatory and non-mandatory rules of contract law.

The foregoing principles require, a fortiori, that other businessmen cannot be subjected to automatic invalidation of a
clause employed either before or after issuance of the injunction in the Market Court. However, many of these cases will be the typical ones the Market Court had in mind when it enjoined the clause in question.

Consent orders issued by the Consumer Ombudsman, if they are accepted by the businessman involved, have the same force as injunctions issued by the Market Court, but they will not exercise as strong an influence on the regular courts as decisions of the Market Court. Negotiated agreements reached between the Consumer Ombudsman and business organizations may also exert some influence. The KO's expertise is likely to be given considerable weight when he takes a position on principle. Care is required with respect to negotiated agreements, however, since they are not determinations as to which term is and which is not "reasonable" under the Act.

It is also possible that a regular court will find a term unreasonable under Section 36 of the Contracts Act even after the KO or the Market Court have declined to do so. This possibility stems from the different approaches necessary in the respective determinations. The Court hearing a contract dispute between two private parties must look to all the particular circumstances of the contractual situation before it in order to do justice between the parties. A term which is innocuous in most situations, and therefore not objectionable under the Contract Terms Act, may appear in a form or context requiring it to be held unreasonable.
in that instance. In addition, the general rules for construction of contracts and for determining whether a term has been incorporated are available.\textsuperscript{169}
NOTES

1 Whether the seller has successfully incorporated these terms in the contract is another question. For treatment of the issues of incorporation and interpretation of standard contracts under Swedish law generally, see U. Bernitz, Standardavtalsrätt 17-34 (3d rev.ed. Stockholm 1978).

2 Lagen (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område, m.m. (Avtalslagen).


4 The principle of freedom of contract has two branches: on the one hand, the freedom to choose whether and with whom one will contract; on the other hand, the freedom of the parties to give the contract the content which they can agree upon. It is the second of these branches which is under discussion here. As to the first branch, the general principle of freedom to choose contract partners prevails with exceptions for monopolies, racial discrimination and refusals to deal which violate the Swedish antitrust legislation. See U. Bernitz, Svensk och internationell marknadsrätt §§6.4, 6.8 (2d rev. ed. Stockholm 1973).


8 For a fuller consideration of these alternatives see Bernitz, Utveckling mot en standardavtalsrätt II. Avtalsvillkorlagen, SvJT 1974, 81, 85-90 and Hondius, supra note 5.

9 For the story of how the ideas and impetus for the Contract Terms Act developed, see Bernitz, supra note 8, at 91-92.

10 In a case involving landlord-tenant terms, the Market Court rejected the contention of the landlord-respondent that action by the Court was not required by the public interest. It pointed out that the landlord had been involved in many disputes with tenants arising from various contract terms and that the terms in question were of central importance to the landlord-tenant relationship. Herta Anupöld, MD 1979:9.


12 As the Swedish legal scholar Knut Rodhe has pointed out, there are generally no counterparts to business organizations among consumers, such as a "National Association of Washing Machine Buyers," which could negotiate on behalf of consumers with expertise in particular areas.

13 It should also be noted that, unlike the Consumer Sales Act, there is no coverage by the Contract Terms Act of manufacturer guarantees and their concomitant exemption clauses, since the Act applies only to businessmen who contract directly with consumers. The Consumer Sales Act gives the buyer the right to damages against anyone, other than the seller, who has made a commitment to repair defects in products (KKL §12).


15 The Consumer Sales Act also covers transactions where a businessman acts as an agent for a private seller (KKL §1).

16 See Ds Ju 1976:10, supra note 11, at 105. The sale of used cars and boats is also handled by professional agents to a great extent, both individually and in connection with auctions. Id., at 50. The extension of the Act to brokered transactions occurred simultaneously with the extension of the Act to cover contracts for the transfer of real property. The former was necessary in order to make the latter extension effective since so many homebuying transactions are handled by real estate brokers.

See, e.g., Hjalmar Svedins AB, MD 1973:10.

AB Skånska Cementgjuteriet, MD 1979:18.

Previously excluded were contracts for the purchase of real property and for the transfer of the right to use real property. With the removal of these exclusions contracts for the purchase of homes, for example, are now covered. In the landlord-tenant area, the Terms of Contract Act now overlaps and supplements the work of other bodies. In each county there is a committee (hyresnämnd) which hears disputes concerning rental agreements. Appeal from the committee’s decision lies with the Landlord-Tenant Court (Bostadsdomstolen). These bodies, however, correspond to the regular courts, for they are devoted to the solution of individual disputes and cannot forbid the continued use of onerous contract clauses. In the case of Herta Anupöld, MD 1979:9, the Market Court for the first time prohibited a landlord from using certain unreasonable contract terms in rental agreements with consumers.

KKrL, §15. The Consumer Board has recommended to the Government that the exception in the scope of the Contract Terms Act for transactions subject to the purview of the National Insurance Board be eliminated so as to allow review of finance company contracts. K&E 1978/4 at 49.

Skorstensfejarmästaren Einar Ek, MD 1976:15.

The Market Court has rejected a similar argument by the largest builder in Sweden. AB Skånska Cementgjuteriet, MD 1979:17. The company unsuccessfully argued that the pervasive system of government housing loans, the land use controls of the county governments (kommuner) and the involvement of the county governments in the actual ownership and initiation of housing projects should preclude application of the Contract Terms Act to the builder’s standard contract with consumers.

Herta Anupöld, MD 1979:9.

See Skuldebrevslagen §8; Bernitz, supra note 1, at 50-54.

Prop. 1973:138, at 118. See Bernitz, supra note 8, at 100-102 for a fuller discussion.

28 See Bernitz, supra note 7, at 31.


30 KKL, §4.

31 See U. Bernitz, Konkurrens och priser i Norden (Stockholm 1971). This principle is illustrated by the KO's handling of consumer complaints of unfair charges by the state telephone company. When both husband and wife asked to be listed in the telephone book, an extra fee was charged for the second listing. The KO dismissed the complaints because the Contract Terms Act was not applicable. Konsumentombudsmannen, Ett fall för KO 100 (Stockholm 1975).

32 See Bernitz, supra note 8, at 108-109. The applicability of the mandatory terms of the Consumer Sales Act does not depend in any way on the price of a product, for example.

33 J. Luft, Konsumentköp av personbilar 164 (Sweden 1977).

34 See Konsumentköplag, SOU 1972:28, at 54.

35 The Consumer Ombudsman believes that the consumer benefits more from this give-and-take approach than from a hard-line, "sue the bastards" policy. One reason for this is the length of time necessary to obtain a decision from the Market Court. The time for a decision concerning several terms in a contract is often about 12 months. (The Court took two and a half years to reach its decision in a large contract case, Skånska Cementgjuteriet.) The wisdom of the KO's policy has been questioned. See Luft, supra note 33, at 251-54.

36 AB Skånska Cementgjuteriet, MD 1979:17.

37 Ernst Nilson AB, MD 1974:10.

38 E.g., Philipsons Automobil AB, MD 1975:17.


40 The Committee on Law of the Riksdag has expressed this view. LU 1971:10, at 53.

41 See AB Skånska Cementgjuteriet, MD 1979:18. The terms of sale can be considered "marketing" under the broad definition of that term employed under the Marketing Practices Act.

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42 E.g., Nils Svensson med uppgiven firma Snabb-Bussar (hereinafter Snabb-Bussar), MD 1975:24; All-Flytt Transport & Spedition AB, MD 1977:9.

43 AB Skånska Cementgjuteriet, MD 1979:17. See text accompanying note 36, supra.

44 See Ds Ju 1976:110, supra note 11, at 37.

45 For a description of continued ignorance by consumer of their rights in Sweden, see Luft, supra note 33, at 161, 249.

46 E.g., Christer Lindqvist med uppgiven firma C L PERSIENNEN, (hereinafter C L PERSIENNEN), MD 1975:30.

47 Id.; The Richards Co. of Sweden AB, MD 1972:12; Knut Helander, MD 1974:20.

48 Id. The holdings have been extended beyond door-to-door sales to other situations characterized by the Court as "shocking" where car dealers have used such clauses in the written contract when the owner of the business was also the salesman. Sören Egermark och Christer Larsson med uppgiven firma Bilgaraget, MD 1978:14; Tommy Westman, MD 1978:23. The Court has also pointed out that KKL §7 places certain responsibilities on the seller for information given prior to the purchase. Adolf Taikumer, MD 1979:15. The parol evidence rule does not exist in Swedish law.

49 See discussion of the technique of placing the consumer in the role of offeror in connection with the description of the Door-to-Door Sales Act in Chapter 1.

50 See generally, L. Grobgeld, Konsumenträtt 75-77 (Lund 1976).

51 This reading of the Door-to-Door Sales Act may influence the regular courts in their construction of the statute in the course of private lawsuits. See discussion of the Effect of Injunctions on Individual Contracts, infra.

52 See Luft, supra note 33, at 159 n. 4.


54 Accord, Bjarne Skafte, MD 1977:20.

55 Egenmäktig förfarande, BrB 17:14.

56 Sten Johanssons Bilaffär, MD 1973:29.
Adolf Taikumer, MD 1979:15.

In the Taikumer case, the Court also ruled unreasonable a term which disallowed use of the car outside the country during the existence of the seller's security interest, as being unduly restrictive.

KKL §3.


Snabb-Bussar, MD 1975:24 (travel).

Bjarne Skafte, MD 1977:20 (cars); Brita Sewon med firma Libro-Tvättan (hereinafter Libro-Tvätten), MD 1976:2 (laundry).

Bjarne Skafte, MD 1977:20. The case involved the use of the following term in connection with the sale of automobiles:

The seller is exempted from all liability in the event of war, strike, lockout, fire, accident, transport difficulties, lack of delivery, together with everything which otherwise lies outside the seller's control.

KKL, §§ 4 & 5.

MD 1974:10; accord, Adolf Taikumer, 1979:15.


Accord, Adolf Taikumer, MD 1979:15.

Id.


See id.

KKL §11.

Stig Hagströms Radio-TV AB, MD 1972:11; Hjalmar Svedins AB, MD 1973:10 (clothing).

Libro-Tvätten, MD 1976:2.

Trollhättans flyttningsbyrå, R Severinson, MD 1976:12. More recently the Court employed a similar line of reasoning in holding unreasonable another household moving term which required complaints to be made within seven days in writing. All-Flytt-Transport & Spedition AB, MD 1977:9. Accord, AB Skånska Cementgjuteriet, MD 1979:17 (housing: 1 month); AB Gävle Smidesprodukter, MD 1978:31 (wrought iron goods: 8 days).
75 AB Skånska Cementgjuteriet, MD 1979:17.

76 Id. (housing construction); All-Flytt-Transport & Spedition AB, MD 1977:9 (moving); Finnwood AB, MD 1978:29 (building materials).

77 Whether or not the clause has actually been incorporated into the contract will vary from one individual case to the next. This exemplifies the protection of consumers as a group which the Act is intended to provide.

78 See Bernitz, supra note 8, at 113-114.

79 AB Skånska Cementgjuteriet, MD 1979:18. The issue was originally raised by the KO before the Market Court under AVL.

80 Lagen (1929:145) on skiljemän, as amended.

81 The Small Claims Act is discussed in Chapter 1.


83 MD 1975:5.

84 The same result has subsequently been reached by the Court with respect to the sale of building materials, Finnwood AB, MD 1978:29, and home construction contracts, AB Skånska Cementgjuteriet, 1979:17.

85 See Bernitz, supra note 8, at 118.

86 Herta Anupöld, MD 1979:9.

87 The Court also ruled unreasonable terms extending the responsibilities of the tenant beyond those provided for in the Real Property Code (liability for damage to windows and fixtures regardless of causation; no house pets), and it ruled out cleaning deposits because they are not necessary to secure the primary obligation of the tenant, which is to make the rental payments.


89 MD 1975:24.

92 Some specific instances of defects are contained in KKL §§ 7, 8 & 9, however.
94 A related form of contract term is one in which the seller requires that any conflict between terms applicable to the transaction shall be resolved so as to minimize cost to the seller. Such a term was forbidden in AB Skånska Cementgjuteriet, MD 1979:17.
95 MD 1974:2.
96 Aksel Vrist, ansvarig innehavare av Akademisk Brevskole; MD 1973:11.
97 On this point, see Bernitz, supra note 8, at 116.
98 It was not specified where the contract was entered into, but the implication of the arguments made by the is that it was entered into in Sweden. The Contract Terms Act is applicable to all terms involved in sales to the Swedish public regardless of the nationality of the firm. Prop. 1971:15, at 89.
   It is also possible that the term would have been given no effect by the regular courts on the basis either that there were insufficient contacts with Denmark or that the lack of a counterpart to the Door-to-Door Sales Act in Denmark was clearly incompatible with the basis for legal order in Sweden. This last possibility (ordre public), however, is supposed to be relied upon only in exceptional cases. Prop. 1973:138, at 121.
99 Knut Helander, MD 1974:20 (curtains); C L PERSIENNEN, MD 1975:30 (blinds).
100 The Richards Co. of Sweden, MD 1972:12. (encyclopedias)
101 In addition to the three cases cited above, Stig Hagströms Radio-TV AB, MD 1972:11; Bjarne Skafte, MD 1977:20 (cars); Borås Orient Inrednings AB, MD 1978:1 (blinds); Tomt- & Handels AB Jaco, MD 1979:3 (sale of real property).
102 For a more detailed analysis, see Bernitz, supra note 8, at 119. The Contract Act of 1915 allows the offeree only a "reasonable time" to accept the offer (§3). Section 8 of that act specifically provides that the offeror may inquire of the offeree whether he wishes to accept the offer. If the offeree does nothing, the offer is void. Although the Act is non-mandatory, the application of traditional rules of
construction would indicate that any attempt to deprive the offeror of his right of inquiry would have to be much more specific than the clauses which have come before the Market Court.

103 The Richards Co. of Sweden, MD 1972:12. During that period the consumer would seem, from a reading of the Court's opinion, to be deprived of any remedy he might have under non-mandatory legislation. See note 102, supra.


105 The clause read as follows:

Should there arise after the reservation has become binding on the travel agency but before departure, price changes involving one or more parts of the trip, the agency is authorized to undertake consequent adjustments of the price of the trip if, and to the extent that, the price changes are the result of new or increased taxes or governmental fees, changed rates of exchange or other similar circumstances over which the travel agency has no control. A similar circumstance which entitles the agency to undertake consequent adjustments of the price for the trip is that the price of flight fuel for the charter company relied upon by the travel agency for the trip has increased for reasons over which the travel agency and the charter company have no control. Travelers affected by such a price adjustment resulting from increased prices of flight fuel will be notified thereof through the agency in good time but no later than one week prior to departure, and they have the right, if the price adjustment is an increase in price of more than 10% of the trip price, to cancel the contract and thereby have returned all payments made. Such cancellation, in order to be effective, must be made without delay after the traveler is notified of the price increase.

106 The Court held that in general, the consumer should be entitled to count on a price which will remain constant a considerably longer time before departure.

The terms ultimately agreed upon, after follow-up negotiations between the KO and the industry, incorporated all the elements of this decision and made the principles enunciated there more specific: the traveler has to be notified at least 30 days before departure, and he may cancel his trip and have his money refunded if the increase is more than 5%. Ett fall för KO, supra note 31, at 117.
In four subsequent cases the Court has knocked down other price escalation clauses, with respect to laundry (Libro-Tvätten, MD 1976:2), household moving (All-Flytt-Transport & Spedition AB, MD 1977:9) car sales (Bjarne Skafte, MD 1977:20) and building materials (Finnwood AB, MD 1978:29).

107 Berglunds Bilaffär, MD 1973:19 (cars); see also Knut Helander, MD 1974:20 (shades — "Delayed delivery which could not be avoided or foreseen by the supplier entitles the seller to an extension of the time for delivery."); Libro-Tvätten, MD 1976:2 (laundry); Bjarne Skafte, MD 1977:20 (cars); Borås Orient Inrednings AB, MD 1978:1 (blinds); Finnwood AB, MD 1978:29 (building materials); AB Gävle Smidesprodukter, MD 1978:31 (wrought iron goods); Stocktimrade Hus i Södertälje AB, MD 1979:19 (housing construction).

109 MD 1979:17.
110 The two provisions rejected by the Court as justifications for late delivery read as follows:

3. a general shortage of facilities, materials or goods, as well as governmental limitations on the labor force

6. other conditions not caused by the contractor which significantly affect the contractor's performance, and which the contractor could not have foreseen, or whose detrimental effect he could not reasonably have removed.

111 Hjalmar Svedins AB, MD 1973:10 (women’s clothing).
Generally similar terms have been enjoined with respect to the sale of real property (Tomt-& Handels AB Jaco, MD 1979:3) and cars (Adolf Taikumer, MD 1979:15).

112 All-Flytt-Transport & Spedition AB, MD 1977:9. See also Finnwood AB, MD 1978:29 (building materials).

113 MD 1979:17.
114 Id.
115 Heurgren, Nya förhandlingar om småhusvillkor, K&E 1980/1, at 2.
116 Tomt-& Handels AB Jaco, MD 1979:3. See text accompanying note 128, infra.

117 Finspångs kommun, MD 1979:4. Exemption clauses in conjunction with the sale of real estate to consumers was singled

118 AB Skånska Cementgjuteriet, MD 1979:17.
119 Id. See text accompanying note 125, infra.
120 Id.
121 Id.
122 Id.
123 Id.
124 Prop. 1971:15, at 73.
125 Skånska Cementgjuteriet, MD 1979:17. See text accompanying note 119, supra.
126 AB Örebro Barnkläder och Konfektions AB Mega, MD 1974:22 (clearance sale of clothes).
128 Eg., Snabb-Bussar, MD 1975:24; Ernst Nilson AB, MD 1974:10.
129 Tomt-& Handels AB Jaco, MD 1979:3. See text accompanying note 116, supra.
131 Utterström, Uppgörelser enligt avtalsvillkorslagen, K&E 1980/3, at 23.
133 Utterström, supra note 131, at 23.
134 See Prop. 1971:15, at 78.
135 Utterström, supra note 131, at 23.
136 Id.
138 Utterström, supra note 131, at 23.
139 Luft, supra note 33, at 245 (automobiles).
140 Id., at 222, 234.
141 See AB Skånska Cementgjuteriet, MD 1979:17 (reliance on delay penalty terms generally used in the housing industry).
142 Luft, supra note 33, at 252.
143 Prop. 1971:15, at 66, 75.
144 Luft, supra note 33, at 252, 253.
146 See note 105, supra.
147 Ett fall för KO, supra note 31, at 116.
148 See note 106, supra.
149 Luft, supra note 33, at 224. Standard contracts have been drawn up for the first time on the KO's initiative for driver education schools, laundries and horse riding schools. Id., at 233.
150 Id., at 223.
151 Utterström, supra note 131, at 24.
152 Id., at 25.
153 Luft, supra note 33, at 229, 254. See also Hellner, supra note 6, at 53.
154 Utterström, supra note 131, at 25.
155 Actually, this clause was unrealistic and of doubtful legal validity.
158 In accordance with the Market Court decision, The Richards Co. of Sweden, MD 1972:12.
159 See K&E 1977/5, at 39.
161 See K&E 1978/2, at 32.
162 See note 106, supra.
164 See generally, Bernitz, supra note 8, at 123-129; Hellner, supra note 6, at 49.
165 Prop. 1971:15, at 63.
166 A reconsideration has not been sought under AVL so far. Reconsideration has been sought in one case under MFL §2, Theodor Berg med firma Vigoron Import T. Berg, MD 1980:14. The attempt was unsuccessful.
168 The Market Court is empowered to issue preliminary injunctions under the Contract Terms Act ($5) if quick action is required.
169 See Bernitz, supra note 8, at 123-129; Bernitz, supra note 1, at 84-85 In one case, where the Supreme Court found a failure to incorporate a term which had been negotiated by the KO, the Ombudsman argued in his amicus brief to the Supreme Court that the term was reached through negotiation, and one could not automatically assume that he considered it reasonable in and of itself. In fact, he argued that the term was not reasonable as a result of changed circumstances. See K&E 1979:4, at 47; K&E 1979/2, at 14-15.
As will have appeared from the foregoing, consumer protection in Sweden is looked upon primarily as a task for the state and to some extent the municipalities, a task which is performed largely through legislation, administrative action and judicial enforcement. Compared to most other countries outside Scandinavia, the stress put on the legal approach to many consumer problems and their solution is very characteristic. Another noticeable feature is the small role played by private consumer organizations. In Sweden, there do not exist any such organizations covering the whole area, and those organizations which do exist in certain fields, such as organizations for motorists and small house owners, have in general only a rather limited influence. Typically, as is the case with the Market Court, the Consumer Board and the board of the National Price and Cartel Office, consumer interests are not represented by pure consumer organizations but by the major trade unions and the consumer cooperative organization.

Some parts of the consumer protection legislation in Sweden are based on what had early come to be accepted as good practice. This is largely the case in the area of improper marketing practices. What is new in this connection above all is the creation in 1970 of a special enforcement system to implement these principles. The legislation introduced in Sweden during
the 1970's on control of contract terms, product safety and the
duty to provide information in advertising does, however, signal
a definite advancing of consumer interests. This has also been
ture with respect to major parts of the mandatory legislation of
a private-law character.

What then are the major novelties in Swedish market and con-
sumer law? The most important new developments, so far, seem to
be found in the market-law area.\(^1\) Probably best known interna-
tionally is the creation of the office of the Consumer
Ombudsman. However, since the merger in 1976 of his office with
the Consumer Board, the legal supervision and enforcement of the
consumer legislation on advertising, information, product safety
and unfair contract terms is in reality vested with a government
agency of a more traditional type.

Looking at the substantive parts of Swedish market law,
attention is drawn especially to the Terms of Contract Act and
the provision on information in the Marketing Practices Act.
Both are new achievements in the legal field, even by
international standards. Thus, the Swedish control system over
unfair contract terms, based on a two-layer system, seems to be
the most effective system so far established in this area.\(^2\) In
the marketing area, current developments concern particularly the
application of the new rules in the Marketing Practices Act on
the merchant's duty to deliver information of particular signifi-
cance to consumers. Here, Swedish legal developments are cover-
ing new ground, without the benefit of established patterns.\textsuperscript{3} In the field of consumer law of a private-law nature, the Consumer Sales Act and the Door-to-Door Sales Act represent a rather early stage of development, and both acts are now being revised in order to expand and clarify their rules.\textsuperscript{4} The recent Consumer Credit Act is on the whole well in line with other national and international developments, such as the British legislation and the draft EC directive in that area. Much more of a novelty, from a comparative point of view, is the very recent Consumer Insurance Act of 1980.\textsuperscript{5} The draft Consumer Services Act is also novel by international standards.\textsuperscript{6}

Turning to procedural law, Swedish legal developments aiming at consumer protection have been more moderate. The Consumer Ombudsman's proposals for the introduction of a \textit{parens patriae} system, for enforcing consumers' legal rights in the regular courts, have been much opposed and have, so far, not resulted in legislation.\textsuperscript{7} Swedish procedural law does not recognize class actions of the American type. On the whole, litigation of consumer law problems in the ordinary courts plays a rather limited role in Sweden. The most interesting procedural developments in Swedish law are the establishment of the special Market Court, to hear cases where the Consumer Ombudsman or the Antitrust Ombudsman normally act as prosecutors, and the Public Complaints Board, for solving small consumer disputes. The Public Complaints Board has been reorganized and since the
beginning of 1981 has been accorded the status of an independent governmental authority.

From a comparative point of view, it would further seem to be characteristic of the Swedish approach that those framing consumer protection legislation have set about their task in a rather unconventional way, have adapted the solutions to economic, social and institutional realities and have succeeded in accommodating ends and means. According to traditional systematics, sales law, for example, has been considered a central part of private law, whereas rules on advertising, information, product control and the like, have been regarded as legal regulations of a more special character. Under the new approach, a broader view is taken, as in business economics, of product safety, advertising, information, warranties and other contract terms used, the actual selling to, or ordering by, an individual consumer, possible ensuing complaints, and after-sales service, as being closely connected and consecutive parts in the marketing process. The new approach leads to an integrated market and consumer law, where administrative control and purely private law rules are woven together into a system which functions as a whole.

If we now look at the importance of Swedish market and consumer law, it is a mistake to regard it as being directed merely against "rogue enterprises" and "extreme" practices in industry and commerce. Consumer protection legislation is of great and
increasing importance for well-conducted firms, as well. Thus, one can point to the fact that reputable foreign enterprises with subsidiaries or agents in Sweden have been compelled to adapt their activities to Swedish standards — which from an international perspective are high — in the field of consumer protection, particularly with regard to advertising and the provision of information important to consumers, the framing of warranties, and product safety. As a whole, consumer protection has rapidly acquired considerable strength. Broadly speaking, the legislation is well accepted and faithfully implemented in business circles. An important factor in achieving this result has been the ability to carry through the legislative measures — even where these were at first received with scepticism in certain quarters — with a fairly high degree of consensus. It is, however, a problem to drive home to the consumers, by information activities, the existence and meaning of the legislation in such a way that they will be prepared to assert their rights.

What has been said above about the attitude of business is of great importance for the implementation of the laws. It is characteristic that negotiations and agreements play a great part. Thus, where the implementation of the market-law legislation is concerned, the main emphasis is in practice placed on negotiations with business firms and trade organizations as well as on the non-binding guidelines published by the Consumer
Board. In many ways this avoids confrontation, but it should always be remembered that so-called voluntary settlements in reality take place under the shadow of legal action, that is, the threat of a legal proceedings in the Market Court. In addition, a fact of great importance for the large measure of cooperation shown by firms toward the Consumer Board is undoubtedly the pressure exerted by the press, which is generally in favor of consumer protection. The fear of negative publicity is an ever-present reality for business enterprises.

On the other hand, the picture is by no means idyllic. On the contrary, in the last several years public debate on the aims and methods of Swedish consumer policy has been intensified considerably. Sweden is at present experiencing a slowdown in the pace of the reform work. The staffs of the Consumer Board and other consumer protection agencies are no longer expanding. The costs to business and eventually to consumers resulting from the introduction and enforcement of new consumer protection measures are given more weight than before. This change in attitude is certainly influenced by changes in Sweden's economic and political situation. However, there have been no proposals for a reduction of the requirements embodied in the consumer protection legislation now in force, and the standards now established seem to be accepted even within the business community.

Nevertheless, important new legal developments are still taking place in Sweden. A bill proposing a new and enlarged
Restrictive Trade Practices Act is expected to be presented to Parliament in 1981. In the marketing practices field, much attention is paid to the issue of brand differentiation. A committee report, suggesting an expansion of the product safety provision in the Marketing Practices Act and clarifying the legal status of the guidelines issued by the Consumer Board, is expected to be published in 1982. In the area of private law, a bill proposing a new, expanded Door-to-Door Sales Act is expected to be presented to Parliament in 1981. Another bill, based on the report suggesting the introduction of a Consumer Services Act, is expected in 1982. In addition, a special government committee is working on a thorough revision of the present Consumer Sales Act. In most of these areas, there is close cooperation with similar legislative work in Denmark, Finland and Norway.
NOTES

1 For an explanation of the term market law, see p. 27, supra.

2 This also seems to be the view of the well-known Dutch expert on standard contracts law, Ewoud Hondius. See Hondius, Unfair Contract Terms: New Control Systems, 26 Am. J. Comp. L 525 (1978).


4 For a general discussion, see Hellner, Rechtsreform durch Gesetzgebung im Bereich des Verbraucherschutzes in Festschrift für Konrad Zweigert 827 (Tübingen 1981).


7 See p. 30, supra.

The General Trend

In retrospect, the 1970's were the decade of great development in consumer law and policy. This is true not only in Sweden and the other Nordic countries but, broadly speaking, also in Western Europe and North America. During the first half of the 1980's the general interest in consumer protection matters has been reduced and opposition to further protective measures from industrial and commercial circles has been stronger.

Politically, the long Swedish tradition of social democratic governments was brought to an end in 1976. During the years 1976-1982 Sweden was ruled by various non-socialist coalition governments. In 1982 the Social Democrats took power again. On the whole, however, these changes so far have not had any major impact on the development of Swedish market and consumer law.

During the 1980's, however, there has been a strong trend in Sweden to stop the expansion of government administration and to reduce costs. Thus, Konsumverk (the National Consumer Board) has suffered considerable budgetary cuts, which has made it necessary for the Board to formulate its priorities more carefully. Special attention is being devoted to product
safety. There have been cuts in the Board's resources allocated to the implementation of the Marketing Practices Act. There has necessarily been increased reliance on self-regulation as a supplementary means of control within the marketing area. However, the primary responsibility for consumer protection remains a task for the state.

On the other hand, the legal structure established for consumer protection in Sweden during the 1970's has been kept intact and has not been the target of any political party. In addition, there has been enacted new legislation aimed at stronger consumer protection. Of special importance is the new Competition Act of 1982, the new Door-to-Door Sales Act of 1981 and the completely new Consumer Services Act of 1985. Of current interest is a recent proposal for a new, expanded Consumer Sales Act. Also, in the end of 1985, a bill proposing the strengthening of the rules of the Marketing Practices Act on product safety has been approved by the Swedish Riksdag (Parliament).

Following, are brief comments upon the legislative developments that have taken place.

The Competition Act

The Restrictive Trade Practices Act, presented on pp 31-33 supra, has been replaced by the Competition Act of 1982, in force from January 1st, 1983.1) The statutory text is reproduced in translation in the Appendix. The new Act is based upon already existing principles and represents no major change in the organizational framework and basic structure, but the prediction in the text, that coercive powers of regulation and some form of merger control would be introduced (p. 33, supra), has come to pass. The new Act contains stricter rules on certain points than the old act and expresses the Government's interest in an active competition policy.
As in the old Act resale price maintenance and collusive tendering are the only anti-competitive practices prohibited *per se* (Sec. 13 resp Sec. 14 of the new Act). However, the scope of the prohibition on collusive tendering has been broadened most considerably and the penalties have been made more severe (see especially Sec. 36).

The basic provision of the new Act is the general clause directed at all types of restrictive trade practices having "harmful effects" (Sec. 2). The wording of this provision is practically identical with the counterpart of the old Act (Sec. 5). This is intentional in order to preserve the validity of previous case law.

However, in the new Act a system of sanctions has been introduced partially replacing the former negotiation system. The foremost sanction in proceedings by the Antitrust Ombudsman is the injunction. An injunction is an order by the Ombudsman (in minor cases) or the Market Court prohibiting certain restrictive practices or enjoining an enterprise to take appropriate measures in order to remove harmful effects or ordering the enterprise not to exceed a certain price level. The injunction may be issued under penalty of a fine, as is the case with injunctions in the fields of marketing practices and improper contract terms.

Another important change in the new Act is the introduction of a system of merger control. The Antitrust Ombudsman has been empowered to institute proceedings against mergers having harmful effects on the competition. Merger cases are tried by the Market Court in the same way as other antitrust cases. However, the Court's decision to prohibit an acquisition or to divest a merged company is not enforceable until it has been submitted to and upheld by the Government (Sec. 7). The Antitrust Ombudsman has instigated proceedings in the Market Court against a number of mergers, but so far there is under the new Act no decision in a merger case by the Market Court.
From the viewpoint of consumer protection it should be noted that restraints on price competition are given special attention in the enforcement of the Competition Act. The maintenance of active price competition in the distribution sector is an important goal.

In recent years, there has been increased use in Sweden of price control, especially temporary price freezes. Most experts agree that these measures are largely ineffective against inflation and might have serious negative long-term effects on price competition and the allocation of resources. Unfortunately, for political reasons the Government does not seem to be able to avoid using direct price control. An extensive price freeze has been in force during large parts of 1985. The legal basis for such measures is still the Price Control Act of 1956, however, not the Competition Act.

Marketing Practices and Dangerous Products

There has so far been no change in the wording of Sections 1-3 of the Marketing Practices Act. New decisions by the Market Court are well in line with previously established principles.

The question of legislation against sex discrimination in advertising (see p 130 supra with footnote 16) has been discussed in various connections but no such legislation has been proposed. Probably, the Swedish constitutional law on freedom of expression needs to be changed to allow such legislation (see on the Freedom of the Press Act pp 125-131 supra). The Norwegian experience shows, in my opinion, that these cases have little to do with consumer protection, but rather amount to a type of control of pornographic and semi-pornographic advertising.

In the Electrolux case on brand differentiation (MD 1981:4, see p 146 f supra with footnote 41) the Market Court essen-
tially approved the Consumer Ombudsman's position. Applying section 3 of the Marketing Practices Act the Court ordered the Electrolux Company to include in their product catalogue information clarifying that two different brands of household stoves both produced by Electrolux were practically identical products. However, the Court found it too farreaching to require retailers, selling only one of the brands under Electrolux's selective distribution system, to inform consumers about the existence of the other, identical brand. The Electrolux case was much discussed while pending, but in the last few years the whole issue of brand differentiation has diminished in notoriety. The Consumer Ombudsman has made use of the power to require information about the identity of products with different brand names in only a few instances.

The relative number of cases in the Market Court filed by private plaintiffs (merchants) has increased considerably. Most of these cases concern allegations of deception concerning the commercial origin of goods and misleading product claims or statements in comparative advertising. The Market Court has applied its normal strict standards in evaluating advertising of industrial and other products bought by non-consumers.

As already mentioned, a Government bill proposing certain changes in the Marketing Practices Act has recently been approved by Parliament (Prop 1984/85:213). The most important change concerns Section 4 of the Act on Dangerous Products. As the section has been worded until 1986, the Market Court could not forbid a producer or wholesaler from selling a dangerous product for resale, even if the product would subsequently be sold to a consumer (see p 184 supra). By the amendment this rather inadequate statutory language is amended so that it will be possible for the Market Court to issue injunctions directly to producers, importers and wholesalers selling dangerous products intended for resale to consumers.
The change also applies to products manifestly unfit for their main purpose. In addition, the enlarged Section 4 applies to all types of dangerous consumer services and services manifestly unfit for their main purpose. 2)

The amendment has also given the Market Court - in cases relating to Section 4 of the Act and if special circumstances so suggest - the power to issue interim injunctions without prior exchange of documents with the trader involved:

A newly appointed Government Commission is considering the introduction of special legislation on recall of dangerous consumer products. The same Commission will investigate the need for rules making it possible to prohibit the export from Sweden of dangerous consumer products.

The Guidelines System

It is one of the most important tasks of the Consumer Board to develop and issue guidelines for marketing practices directed towards consumers, consumer information to be given in marketing, and the safety of consumer products (see pp 74-78, supra). In their appearance, the promulgated guidelines are similar to ordinary statutory texts. However, nearly all guidelines, now around 40, are the result of negotiations between the Consumer Board and representations of trade and industry. The latter have been negotiating not only substantive rules but also the form the rules should take.

The contents of the guidelines are, in most cases, typical products of negotiation, incorporating considerable elements of compromise. During the initial years in which the guidelines system was applied, the negotiations were found to be quite costly and time-consuming. However, these difficulties were not so great, in most cases, as to prevent ultimate agreement on the guidelines. In recent years, work on the development of guidelines has proceeded more smoothly.
Strictly speaking, the guidelines are not legally binding. From a legal point of view, they have the character of recommendations. However, this is not the whole truth. In practice, the guidelines function very much in the same manner as formally binding regulations. The guidelines contain normally only such provisions based on the statutory provisions of the Marketing Practices Act. This means that if a firm does not act in accordance with a provision in a guideline, the Consumer Ombudsman normally would be able to bring a successful case against the firm before the Market Court. The Market Court would not base its decisions on the guideline provision, but rather on the basic statutory rule in the Marketing Practices Act. In practice, it has seldom been necessary for the Consumer Ombudsman to refer this kind of case to the Market Court. An important explanation is certainly that the validity of the guidelines is supported by representatives of trade and industry. Normally, adherence to the guidelines has been satisfactory. They seem to have had as much impact as if they were formally binding regulations.

About one half of the approximately 40 guidelines issued so far deals primarily with information, while the other half deals with product safety. The guidelines in the area of information require information to be given about prices, quality of goods, etc. Many of them also require instructions as to the handling of goods, mainly for safety reasons. Of special importance are the guidelines concerning information on consumer credit and consumer insurance. They supplement the special statutes in these areas. The guidelines on dangerous products often contain specific requirements as to the construction and quality of the goods in order to establish a satisfactory safety standard.

The scope and number of provisions vary greatly from one guideline to the next. Some are quite comprehensive and might cover a whole branch of industry. The guideline on mail order
sales can be mentioned as an example. To give another example, very detailed rules are given in the guideline on the marketing of package vacation tours. On the other hand, a number of guidelines only contain a few rules concerning information and/or safety standards to be given or observed when selling to consumers a specific type of product (e.g., skate-boards or babies' beds).

The guidelines system has been examined and evaluated in depth in a report by a Government Commission (SOU 1983:4). The background of the Commission's work was severe criticism against the system during its first years of application, especially from the business side. However, the Commission found the criticism to be exaggerated and did not find any fundamental shortcomings in the current system. It stressed that both the Consumer Board and trade and industry now have become accustomed to the system and have learned to handle it. Thus, no major changes were suggested. One proposed innovation, however, was that the development of norms should be divided into two phases, namely research and negotiations.

The recent Government bill proposing changes in the Marketing Practices Act (Prop 1984/85:213) also discusses the guidelines system. The Government accepts the position taken by the Commission. Thus, the present system will remain unchanged in practice. However, the bill stresses the importance of self-regulation in industry and trade as a supplementary instrument. In the future it is probable that norms developed within industry and trade in some form of co-operation with the Consumer Board will gain importance as an alternative method. For the Consumer Board the development of guidelines consumes much more time and resources than an advisory and consultative role within a self-regulating system.
Improper Contract Terms

There have been no new substantial changes in the Terms of Contract Act of 1971. Banking and insurance transactions are still excluded and come under the purview of the national banking and insurance boards. Practice under the Act and its enforcement by the Consumer Ombudsman/Board has developed along the same lines as before. Special attention has been devoted to contract clauses in the real property area, both purchase and transfer of houses and contracts in landlord-tenant relations.

However, there has been an important change in the attitude towards protection of small businessmen. As stated in the book (p 212 f supra) the Terms of Contract Act only protects consumers in the proper sense, not small businessmen. Earlier attempts to afford the latter protection against improper contract clauses imposed by large firms in a superior bargaining position were rejected. This attitude has now been changed. As of July 1st, 1984 a new Act, the Terms of Contract between Tradesmen Act, came into force. Simultaneously, the name of the old Terms of Contract Act was changed to the Terms of Contract in Consumer Relations Act. The statutory text of the new Act is reproduced in the Appendix.

The new Terms of Contract between Tradesmen Act is modelled on the old Terms of Contract Act. Cases are tried exclusively by the Market Court. This court is empowered to issue an injunction prohibiting the future use by a particular company or businessman of a contract term found to be improper. Normally, the injunctions are issued under penalty of a fine. However, the Consumer Ombudsman is not involved in these contract cases between merchants. Applications to the Market Court can be made by associations of merchants and the particular merchants involved. In deciding whether or not a specific contract clause shall be deemed to be improper, special consideration shall be given to the need for protec-
tion of those who are in an inferior position in the contract relationship (Section 2 of the Act).

It should be noted that a case in the Market Court is not equivalent to a case in an ordinary court of law, nor will it resolve disputes in individual cases arising under already existing contractual relations between two parties. The Market Court has no power to enforce or invalidate existing contracts or to award damages. Such cases are to be tried by the ordinary courts according to the general law of contracts. The special task of the Market Court is to stop by way of injunction the future use in business relations of such types of contract clauses which must be considered as improper. See pp 273-276, supra.

As with the 1971 Act, there is a close relationship between the new Act and Section 36 of the Contracts Act (see on the latter pp 60-65 in the book, supra). This very broad provision gives the ordinary courts a general power to adjust or set aside unreasonable contract terms in all types of individual contracts. The introduction of the new Act applied by the Market Court may result in a more active use of the powers under Section 36 in cases concerning unbalanced contract relations between big firms and small businessmen.

The introduction of the new Terms of Contract between Tradesmen Act was controversial. It was strongly supported by associations representing small businessmen which were lobbying for the Act but opposed by the Federation of Swedish Industries, among others. So far, little case law has developed under the new Act. Presumably, it will be of greatest significance as a weapon to refer to in negotiations on contract terms matters between trade associations. The preparatory materials of the Act provide rather little guidance as to which types of clauses might be regarded as improper. 3) However, practice under the 1971 Terms of Contract Act may provide guidance, as well as case law under Section 36 of the Contracts Act.
Door-to-Door Sales

The Door-to-Door Sales Act of 1971 (see pp 44-53 supra) has been replaced by a new Door-to-Door Sales Act of 1981. The new Act is primarily based on the Commission Report of 1979, presented in the book (pp 50-53 supra) with footnotes 62-63. Thus, the new Act extends coverage for the first time to telephone sales, e.g. agreements entered into during telephone conversations initiated by a company as part of its telephone sales operations. However, the Government and Parliament have rejected the Commission's radical and much criticized proposal that sales visits may be made only to consumers who have given their consent in advance. 4)

The rules for calculation of the seven days cooling-off period have been modified. If, at the time of entering into the contract, the consumer has not had an opportunity to examine the goods he has agreed to buy, or similar goods, the cooling-off period normally runs from the day on which he receives the goods.

The proposal for the introduction of a cooling-off period for sales of second-hand cars (see footnote 64 on page 113 supra) has never led to legislation and there seems to be no current interest in such a provision.

The new statutory text of the Door-to-Door Sales Act is to be found in the Appendix.

Consumer Services

In May 1985 Parliament passed the long awaited Consumer Services Act. This important and quite novel piece of legislation will enter into force on July 1, 1986. The Act is based on the proposal put forward in the 1979 Commission Report, presented in the book on pp 9-10 supra and more extensively in footnote 8 on pp 107-109. 5) On most points the final sta-
tutory text closely follows the committee proposals. The scope of the Act has been broadened, however, to include the storage of movable consumer property. On all other points mentioned on p 108 in the book, the proposals made by the Commission have been followed. Thus, the Act applies to consumer services related to work on movables (except treatment of live animals) and work on real property, buildings or other premises on land and in the water. However, work relating to the construction of buildings for dwelling purposes falls outside the scope of the Act.

In connection with the enactment of the Consumer Services Act, the scope of the Consumer Credit Act has been enlarged. As of July 1, 1986 Sections 10-14 of the Consumer Credit Act are applicable also to consumer services covered by the Consumer Services Act. This means that the present rules on the buyer's right vis-à-vis creditors other than the seller of goods, prohibition of certain instruments of claim, payments ahead of time and prohibition of certain accounting procedures will be applicable also to most services. It should be noted that the provisions of the Consumer Credit Act on marketing of credit (Sections 5-7) and credit cards (Section 24) have been applicable to consumer services ever since the Act originally went into effect. As mentioned above, the provisions in the Marketing Practices Act on dangerous products have also been extended to include dangerous services (see supra in this Supplement).

**Consumer Sales and Rate of Interest**

The enactment of a new, much more comprehensive Consumer Sales Act has recently been proposed by a Government Commission. The proposal presents a practically complete sales act for merchant-consumer relations consisting of some 40 sections. The proposal largely follows the draft of a new general Sale of Goods Act that is being drawn up by a Nordic working group established by the Ministries of Justice of
the Nordic countries on the basis of, i.a., the 1980 UN Convention on Contracts for the International Sale of Goods. 6)

As yet, it is not decided whether these two proposals will be merged into one, consolidated sales act in which certain provisions are made mandatory in consumer relations or will result in two separate acts, one for sales in general and another for consumer sales. A consolidated Act seems preferable because it would avoid unnecessary duplication.

A new Act on Interest has been proposed by another Government Commission in 1985. 7) The present Act on Interest of 1976 does not contain mandatory rules and, thus, may be set aside by contract. Now it is proposed to introduce special provisions of a mandatory character regarding personal and consumer cases which will modify and supplement existing rules. The proposed new rules will be applicable when a private person is either the creditor or the debtor of the claim. According to the new rules the rate of interest must not exceed the official rate of discount increased by two per cent ("the consumer rate of interest"). This can be compared with the rate of discount increased by eight per cent which is the present, non-mandatory rule also in consumer and personal cases. However, the proposal has been met with opposition from commercial circles, and it is not certain that it will be accepted by the Government.

Procedural Matters

So far, there have been no changes of importance in the procedural system relating to consumer disputes. The Public Complaints Board since 1981 has been an independant authority which no longer is connected administratively with the National Consumer Board.

The Consumer Ombudsman has not been given the power to bring parens patriae-suits in the ordinary courts. 8) Also, no legis-
lation on class action suits in consumer cases or on a more general basis has been proposed. Both these issues still attract current interest but have not advanced much during the last five years.

At present, there is a tendency to allocate increased resources to local consumer boards within the municipalities. A Committee Report of 1985 it is proposed to stimulate that such local boards to handle consumer disputes of a more trivial nature in order to decrease the number of cases brought to the Public Complaints Board. ⁹)
NOTES


2) These proposals are based on the Commission Report SOU 1983:40, Konsumentpolitiska styrmedel - utvärdering och förslag (The Instruments of Public Consumer Policy. Assessment and Proposals, with Summary in English).


5) See, in addition to the literature mentioned in footnote 8 on p 107 ff Government Bill prop 1984/85:110.

6) The two reports are SOU 1984:25, Ny konsumentköplag and NU (Nordisk Utredningsserie) 1984:5, Nordiska köplagar. Both reports contain Summaries in English. On the present Consumer Sales Act, see the book supra pp 33-44.

7) SOU 1985:11, Ny räntelag (with Summary in English).

8) The legislation on this point proposed in the late 1970's has not led to Government action; see pp 30 and 72-73 supra with footnotes 37 and 98. For detailed information see Demeulenaere, Sweden's System to Resolve Consumer Disputes (Publications by the Institute of Intellectual Property and Market Law at the Stockholm University No 22, 1983).

ABBREVIATIONS

AVL Avtalsvillkorslagen (The Swedish Terms of Contract Act, SFS 1971:112, as amended)

BrB Brottsbalken (The Swedish Penal Code)

Ds Ju Departementsserie, justitie departementet (departmental memorandum, Ministry of Justice)

KBL Konkurrensbegränsningslagen (The Swedish Restrictive Trade Practices Act)

K&E Konsumenträtt & Ekonomi (periodical on consumer law and economics published by the Consumer Board six times per year)

KKL Konsumentköplagen (The Swedish Consumer Sales Act, SFS 1973:877)

KKrl Konsumentkreditlagen (The Swedish Consumer Credit Act, SFS 1977:981)

KO Konsumentombudsmannen (The Swedish Consumer Ombudsman)

KO 1974:5 Periodical published prior to the 1977 inauguration of K&E, by the office of the Swedish Consumer Ombudsman and the Swedish Consumer Board, six times per year (year and issue indicated)

KOV Konsumentverket (The National Swedish Board for Consumer Policies = The Consumer Board)

KOVFS Konsumentverkets författningssamling (Compilation of guidelines promulgated by the Consumer Board)

LU Lagutskottet (The Committee on Law of the Swedish Parliament)

MD Marknadsdomstolen (The Market Court of Sweden)

MPL Marknadsföringslagen (The Swedish Marketing Practices Act, SFS 1975:1418)

NIR Nordiskt Immateriellt Rättsskydd (Swedish legal periodical)

NJA Nytt juridiskt arkiv, avd I (Reports of the decisions of Högsta Domstolen, the Supreme Judicial Court of Sweden)
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<th>Description</th>
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<tr>
<td>Prop.</td>
<td>Proposition (Government Bill with authoritative comments)</td>
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<tr>
<td>RB</td>
<td>Rättegångsbalken (The Swedish Code of Judicial Procedure)</td>
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<td>Sc.St.L.</td>
<td>Scandinavian Studies in Law (published yearly by the University of Stockholm School of Law)</td>
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<td>SFS</td>
<td>Svensk författningssamling (The official compilation of Swedish statutes)</td>
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<td>SOU</td>
<td>Statens offentliga utredningar (Reports by special Government commissions)</td>
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<td>SvJT</td>
<td>Svensk Juristtidning (Swedish legal periodical)</td>
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<td>UCC</td>
<td>Uniform Commercial Code</td>
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THE MARKETING PRACTICES ACT

(1975:1418, as last amended 1985:926)

Object of the Act

Section 1. The object of this Act is to promote consumers interests in connection with the marketing of goods, services and other commodities by tradesmen and to counteract improper marketing which adversely affects consumers or other tradesmen.

Improper Marketing

Section 2. A tradesman who, in the marketing of any goods, service or other commodity, advertises or takes other action which, by conflicting with good commercial standards or otherwise, adversely affects consumers or tradesmen, may be prohibited by the Market Court from continuing therewith or undertaking any similar action. A prohibition may also be issued to an employee of a tradesman and to any other acting on behalf of a tradesman, as well as to any other person who has substantially contributed to the action.

Information

Section 3. A tradesman who, in the marketing of any goods, service or other commodity, omits to deliver information of particular significance to consumers, may be enjoined by the Market Court to give such information. An injunction may also be issued to an employee of a tradesman and to any other person acting on behalf of a tradesman.

An injunction referred to in the first paragraph may stipulate that the information shall:

1. be given through labelling of the goods or be furnished in other form at the point of sale,
2. be given in advertisements or other representations used by the tradesman for marketing purposes,
3. be given in a certain form to a consumer who so requests.
Safety of Products, etc.

Section 4. A tradesman who offers for sale to a consumer goods for personal use may be prohibited by the Market Court from continuing therewith if the properties of the goods may involve a special risk of personal injury or of damage to property. The same applies if the goods are manifestly unfit for their main purpose.

To the extent it is needed to prevent that the goods mentioned in the first paragraph is offered for sale in the way mentioned in that paragraph, the Market Court may prohibit a tradesman who in the name of manufacturer, importer or otherwise offers goods for sale to another tradesman to continue therewith.

A prohibition may also be issued to an employee of a tradesman and to any other person acting on behalf of a tradesman.

The first to third paragraphs shall be applicable likewise when goods is offered for hire against remuneration or services are performed against remuneration.

A prohibition under this Section may not be issued insofar as a statute or a resolution of a public authority contains special regulations concerning the goods, with the same purpose as the prohibition would fulfil.

Penalty Clause

Section 5. A prohibition or injunction under Sections 2-4 shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

Punishable Practices

Section 6. A tradesman who, in the marketing of any goods, service or other commodity, intentionally uses a misleading representation relating to his own or to another's business and likely to affect the demand for the commodity shall be liable to a fine or to imprisonment for a term not exceeding one year.

The first paragraph shall apply likewise to an employee of a tradesman and to any other person acting on behalf of a tradesman.

Section 7. A tradesman who, in return for a stamp or other certificate supplied in connection with the sale of goods, services or other commodity, offers to a consumer a consideration other than money shall be liable to a fine or to imprisonment for a term not exceeding one year. This shall not apply, however, if the certificate confers the right only to overhaul, repair, or the like, in respect of the sold commodity.
Section 8. A tradesman who, in a case other than referred to in Section 7, offers to a consumer two or more items of goods at an all-in price, or offers to a consumer who purchases any item of goods the acquisition of another item of goods the acquisition of another item without payment or at a particularly low price, shall, if the goods manifestly lack any natural connection and such action makes it difficult for the consumers to judge the value of the offer, be liable to a fine or to imprisonment for a term not exceeding one year. The provisions of this Section concerning goods apply also to services and other commodities.

Section 9. A person who has contravened an injunction issued under penalty of a fine shall not be held liable for a criminal offence under this Act as a result of an act embraced by the prohibition. If the crime is petty no punishment shall be imposed for an offence referred to in Sections 6-8.

Rules of Procedure

Section 10. A question concerning the issuing of a prohibition or injunction under Sections 2-4 shall be considered upon an application. An application shall be lodged by the Consumer Ombudsman. If, in a certain case, the latter decides not to lodge an application, this may be done by an association of consumers, employees or tradesmen or, as regards a prohibition under Section 2, by a tradesman affected by the act complained of.

Section 11. On demand by the Consumer Ombudsman a tradesman shall submit a statement or explanation in a matter concerning the application of Sections 2-4. In a matter where it may be presumed that a decision to issue a prohibition or injunction may be made, a tradesman is also under obligation, on demand by the Consumer Ombudsman, to furnish documents, merchandise samples and the like which may be of significance for the inquiry in the case.

If a demand as stated in the first paragraph is not complied with, the Consumer Ombudsman may order the tradesman to discharge his obligation under penalty of a fine not exceeding 10,000 crowns.

If special reasons exist, the Consumer Ombudsman shall pay compensation for a merchandise sample and the like furnished as stated in the first paragraph.

Section 12. A decision concerning the issuing of a prohibition or injunction under Sections 2-4 shall no constitute a hindrance to reconsideration of the matter in question if altered circumstances or other special reasons give occasion therefor.
Section 13. Under special circumstances, a prohibition or injunction as stated in Sections 2-4 may be issued also in respect of the period elapsing until a final decision is reached.

Prohibition Order

Section 14. A question concerning the issuing of a prohibition under Section 2 or 4 may, in a case of minor importance, be dealt with by the Consumer Ombudsman by submitting a cease and desist order.

The submission of a cease and desist order implies that there is submitted to a person who is presumed to have committed an action referred to in Section 2 or 4, for acceptance immediately or within a specified period, an order prohibiting him from continuing such action or, in a case referred to in Section 2, undertaking other similar action, under penalty of a fine.

If such an order has been accepted, it shall have the effect of a prohibition issued by the Market Court under Section 2 or 4. An acceptance which takes place after the time appointed in the order has expired shall, however, be without effect.

Information Order

Section 15. A question concerning the issuing of an injunction under Section 3 may, in a case of minor importance, be dealt with by the Consumer Ombudsman by submitting an information order.

The submission of an information order implies that there is submitted to a person who is presumed to have been guilty of an omission referred to in Section 3, for acceptance immediately or within a specified period, an order to furnish information as stated therein, under penalty of a fine.

If such an order has been accepted, it shall have the effect of an injunction issued by the Market Court under Section 3. An acceptance which takes place after the time appointed in the order has expired shall, however, be without effect.

Supervision, etc.

Section 16. A person who is subject to prohibition or injunction under Sections 2-4 shall, on demand by the Consumer Ombudsman, furnish information, documentation, merchandise samples and the like needed for supervision that the prohibition or injunction is obeyed. If such a demand is not complied with, the Ombudsman
may order the person concerned to fulfil his obligation under penalty of a fine not exceeding 10,000 crowns.

For a merchandise sample and the like furnished as stated in the first paragraph the Ombudsman will pay compensation if special reasons exist.

Regulations governing the obligation for a person who furnishes merchandise samples and the like as stated in the first paragraph to bear the costs of the Consumer Ombudsman for sampling and examination of samples will be issued by the government or by an authority appointed by the government.

Section 17. Proceedings regarding non-compliance with a prohibition issued under penalty of a fine shall be brought before an ordinary court of law by the Consumer Ombudsman. If the Market Court has issued an injunction under penalty of a fine upon an application by some other, the latter may also institute proceedings for the imposition of the fine.

A public prosecution for an offence against this Act may be brought only after permission of the Consumer Ombudsman.

Section 18. In the event of non-compliance with a prohibition issued under penalty of a fine as stated in Section 2 or of the provisions of Sections 6-8 an ordinary court of law may, insofar as it deems reasonable, direct that a misleading representation which appears on any goods, packaging, advertising matter, commercial document or the like shall be deleted or altered in such a way that it is no longer misleading. If this aim cannot be attained by other means, the court may order that the property be destroyed.

Property referred to in the first paragraph may be seized pending the court's order. Such seizure shall be governed by the stipulations, where applicable, concerning seizure under criminal law.

The first and second paragraph shall apply likewise to an offer referred to in Section 7.

**Damages**

Section 19. A person who disobeys a prohibition referred to in Section 2 or the provisions of Sections 6-8 shall make good a loss thereby caused to a competing tradesman. The right to such compensation shall be forfeited if the claim is not instituted within five years from the time when the loss was incurred.

A consumer's right to damages is governed by special regulations.
Other Regulations

Section 20. The government may direct that the following provisions shall apply in respect of a foreign State.

As regards any goods carrying an incorrect or misleading designation of origin which directly or indirectly indicates that the goods have been produced or manufactured in the foreign State, or at any place situated therein, an ordinary court of law may issue directions as stated in Section 18 also in cases other than those referred to. This shall no apply, however, if according to commercial custom the designation serves solely to characterize the nature of the goods or if it is accompanied by a statement which clearly indicates that the goods were not produced or manufactured in the State or at the place named.

An application for such directions as stated in the second paragraph may be made by a prosecutor or, if the latter has decided not to make an application, by a person conducting business in goods of the same kind as those to which the application relates.

Section 21. The section is repealed from January 1st, 1981.

Section 22. An appeal may not be made against a demand by the Consumer Ombudsman as stated in Section 11, first paragraph, first sentence, or, after such a demand, against an order under penalty of a fine.

A complaint against a decision of the Consumer Ombudsman in any other matter referred to in Section 11 or in a matter referred to in Section 16, first and second paragraph, may be made by appeal to the Fiscal Court of Appeal. The same applies to a complaint against a decision of a public authority according to regulations as stated in Section 16, last paragraph.

This Act shall enter into force on July 1, 1976

Through this Act the Marketing Practices Act (1970:412) is annulled. Any action taken in accordance with the provisions of the latter Act shall have effect as though the corresponding provisions of the new Act had been applied.
THE TERMS OF CONTRACT IN CONSUMER RELATIONS ACT

Act Prohibiting Improper Terms of Contract
(1971:112 as last amended 1985:213)

Section 1. If any tradesman in his commercial activities, when offering any goods, service or other commodity to a consumer for primarily personal use, applies a term which, in regard to the payment and other circumstances, is to be considered as improper on the part of the consumer, the Market Court may, if so is called for from a public point of view, issue an injunction prohibiting the tradesman from using that term or in the main the same term in similar cases in the future. The injunction shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

The provisions of the first paragraph shall apply correspondingly to terms which a tradesman applies in his commercial activities when conveying, from a tradesman or someone else, an offer as referred to in the first paragraph.

An injunction may also be issued to any employee of the tradesman and to any other person who is acting on his behalf.

Section 2. This Act shall not apply to activities which are under the supervision of the Bank Inspection Board or the National Private Insurance Supervisory Service.

Section 3. Questions concerning the issuing of an injunction shall be considered upon an application. Such an application shall be made by the Consumer Ombudsman. If, in a certain case, the Ombudsman decides not to make an application, an application may be made by any association of tradesmen, consumers or employees.

Section 3 a. A tradesman is obligated upon request by the Consumer Ombudsman to submit an opinion or information in a matter under this Act. Failing compliance with such a request, the Ombudsman may enjoin on the tradesman to discharge his obligation on pain of a fine of at most 10,000 crowns.

Appeal may no be lodged against the Ombudsman's decision enjoining such conditional fine.
Section 4. Decisions concerning the issuing of an injunction shall constitute no obstacle to reconsideration of the matter in question, where altered circumstances or other special reasons give cause for it.

Section 5. If special reasons give cause for it, an injunction may be issued also in respect of the period before a final decision is reached (interim injunction).

Section 6. Questions concerning the issuing of an injunction may, in cases which are not of great importance, be dealt with by the Consumer Ombudsman by submitting to the tradesman a cease and desist order for acceptance.

If such an order has been accepted it shall have the effect of an injunction issued by the Market Court. An acceptance which takes place after the time set out in the submission of the order has expired is, however, without effect.

Further provisions on the submission of cease and desist orders for acceptance shall be issued by the Government.

Section 7. Proceedings for the imposition of a fine shall be instituted in an ordinary court of law by the Consumer Ombudsman. If the Market Court has issued an injunction under penalty of a fine upon an application by some other, the latter may also institute proceedings for the imposition of the fine.
THE TERMS OF CONTRACT BETWEEN TRADERS ACT

(1984:292, as last amended 1985:220)

Section 1. If a tradesman, when he concludes or intends to conclude a contract with another tradesman, demands a contract term which is to be considered as improper on the part of the other tradesman, the Market Court may issue an injunction prohibiting the tradesman from using that term or in the main the same term in similar cases in the future. An injunction may also be issued to any employee of the tradesman or to any other person who is acting on his behalf.

The provisions of the first paragraph shall not apply to activities which are under the supervision of the Bank Inspection Board or the National Private Insurance Supervisory Service.

Section 2. When deciding whether or not a term is to be considered as improper special consideration shall be given to the need for protection of the person who assumes an inferior position in the contract relationship.

An injunction shall be issued only if it is called for from a public point of view.

Section 3. Questions concerning the issuing of an injunction shall be considered upon an application. Such an application shall be made by an association of tradesmen or by an individual tradesman against whom the term in question has been directed.

Section 4. Decisions concerning the issuing of an injunction shall constitute no obstacle to reconsideration of the matter in question, where altered circumstances or other special reasons give cause for it.

Section 5. An injunction shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

Proceedings for the imposition of a fine shall be instituted in an ordinary court of law by the person who has applied for the injunction.
SECTION 36 OF THE CONTRACTS ACT
(1915:218, as last amended 1977:672)

Section 36. A contract term may be adjusted or held unenforceable if the term is unreasonable with respect to the contract's contents, circumstances at the formation of the contract, subsequent events or other circumstances. If the term is of such significance for the contract that it cannot be reasonably demanded that the contract shall otherwise be enforceable in accordance with its original terms, the contract may also be adjusted in other respects or held unenforceable in its entirety.

With respect to the application of the first paragraph, special consideration shall be given to the need for protection of consumers and others who assume an inferior position in the contract relationship.

The first and second paragraphs shall be given similar application to terms in other legal relationships than that of contract.
THE COMPETITION ACT
(1982:729, as last amended 1985:219)

Introductory Provision

Section 1. The object of this Act is to promote such competition in business as is desirable in the public interest through measures against harmful restrictive business practices.

Measures in Individual Cases

The Elimination of Harmful Effects

Section 2. If a restrictive business practice has harmful effects within the country, the Market Court may, in order to prevent such effects, decide upon measures according to this Act. Such a measure may be taken against an entrepreneur causing the harmful effects.

A restrictive business practice shall be deemed to have harmful effects if, contrary to the public interest, it

1. unduly affects the formation of prices,
2. restrains productivity in business, or
3. impedes or prevents the trade of others.

Section 3. The Market Court may issue upon the entrepreneur

1. a prohibition to apply a certain agreement, contractual condition or any other restrictive business practice or to carry out a practice corresponding essentially to that prohibited in this manner,
2. an injunction to supply another entrepreneur certain goods, a certain service or other commodity on conditions equivalent to those offered other entrepreneurs (injunction to supply), or
3. an injunction to otherwise modify a restrictive business practice applied by him, to comply with a certain condition in connection with such a practice, or to furnish specific information or to take any other measure which remedies the practice (injunction to correct).

If the harmful effect implies that a price, with regard to the costs and other circumstances, is obviously too high and the matter is of major significance, the Market Court may enjoin the entrepreneur, for a specified period of time and for not more than one year, from exceeding a certain maximum price (price injunction).
Section 4. Before a prohibition or an injunction according to Section 3 is issued, the Market Court shall endeavour to prevent the harmful effects through negotiations, if the circumstances do not speak against such negotiations.

Special Provisions Regarding Mergers

Section 5. If the restrictive business practice as defined in Section 2 consists of that the entrepreneur, through a certain acquisition, attains a dominant position on the market for goods, a service or other commodity or strengthens an already dominant position, the Market Court shall endeavour to prevent the harmful effects through negotiations. Should the matter be of major significance from the viewpoint of public interest, the object of the negotiations may be that the entrepreneur shall abstain from the acquisition.

In the context of this Act, an acquisition is the purchase of an enterprise conducting business in the country. The purchasing of shares, equity interests in partnerships, a business or a part of a business are also considered to be an acquisition. Furthermore, a merger is also classified as an acquisition.

The first subsection is also applicable in cases where the entrepreneur is one of several entrepreneurs joined together by common ownership, or other means, and which, through his acquisition, attains or strengthens a dominant position on the market.

Section 6. If the negotiations concerning an abstention from the acquisition as stated in Section 5, have been concluded without the harmful effects being prevented, and if the Market Court finds that a prohibition or injunction according to Section 3 should not be issued or is insufficient, the Court may prohibit the acquisition.

A prohibition according to the first subsection may not be issued concerning an acquisition of shares purchased on the Stockholm Stock Exchange or an acquisition made through a purchase at a compulsory auction. The Market Court may instead enjoin the entrepreneur to sell the shares or the property purchased at the auction.

Section 7. A prohibition or injunction decision according to Section 6 is enforceable against the entrepreneur only if the Government upholds the decision. The Market Court shall immediately submit the decision to the Government for consideration regarding the question of upholding the decision.

If the Government upholds a decision regarding an injunction according to Section 6, second subsection, the decision shall be carried out within six months from the time the Government announced its decision or within a longer time-period decided by the Government.
Section 8. An acquisition is deemed null and void, if the Government upholds the decision by the Market Court to prohibit the acquisition.

Section 9. If the Government finds that a decision according to Section 6 is not to be upheld, the Government may, if new circumstances or other particular reasons give occasion for doing so, submit the case to the Market Court for reconsideration.

Administrative Fines, etc

Section 10. A prohibition or injunction according to Section 3 or 6 may be issued under a penalty of an administrative fine.

Section 11. If the conditions for action according to Section 3, first subsection, are present in a certain case, which is not of major importance, the Competition Ombudsman may, under a penalty of an administrative fine and subject to the approval by the entrepreneur, immediately or within a specified period of time, submit to him,

1. a prohibition to apply a certain agreement, contractual condition or any other restrictive business practice or to apply a practice essentially corresponding to that prohibited in this manner (a prohibition order),

2. an order to supply another entrepreneur certain goods, a certain service or other commodity on conditions equivalent to those offered other entrepreneurs (an order to sell), or

3. an order to otherwise modify a restrictive business practice applied by him, to comply with a certain condition in connection with such a practice or to furnish specific information or to take any other measure which counteracts the practice (order to correct).

An order approved of by the entrepreneur has the same effect as a prohibition or injunction issued under Section 3 by the Market Court. An approval which takes place after the time appointed in the order has expired shall, however, be without effect.

International Government Agreement

Section 12. If consideration of an international government agreement requires it, the Government may, after a request by the Competition Ombudsman, decide to consider the question of action according to Section 3 in a specific case concerning a restrictive business practice having harmful effects outside the country. Such a restrictive business practice is deemed to have harmful effects if it violates the agreement.
Criminalized Restrictive Business Practices etc

Prohibition Against Resale Price Maintenance

Section 13. An entrepreneur may not

1. require an entrepreneur in a subsequent level of trade not to charge less than a specified price in the resale or hiring out of goods in the country, or

2. as a guidance for the determination of prices in a subsequent level of trade in the country, specify a certain price for the reselling or hiring out of goods unless it is clearly stated that the price may be set lower.

Prohibition Against Collusive Tendering

Section 14. An entrepreneur may not enter into or apply an agreement with another entrepreneur, or in collusion with an entrepreneur apply a concerted practice, or for the purpose of achieving such an agreement or practice, exercise pressure upon another entrepreneur, if the agreement or the concerted practice implies that, in a tendering procedure for the supply of goods, a service or other commodity within the country

1. someone shall abstain from submitting a tender,

2. a tenderer shall submit a higher tender than another, or

3. any other collaboration shall occur concerning the sum of a tender, advance payments or credit terms.

The first subsection shall not apply to an agreement or concerted practice which

1. is due to several entrepreneurs supplying goods, a service or other commodity through a specific legal person with common functions for these entrepreneurs (marketing organization) or

2. implies that entrepreneurs join together for joint performance with a common tender, or in the form that any of them participates as a subcontractor to a tenderer.

An entrepreneur which has entered into or applied such an agreement or applied such a concerted practice as defined in the first subsection but permitted under the second subsection shall, if he submits a tender in a tendering procedure affected thereof, not later than when the tender is submitted give written notice regarding these facts to the party to which the tender is directed.

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Exceptions from the Prohibitions

Section 15. The prohibition in Section 13 and 14 do not apply to practices carried out by an economic entity under common control in relation to another enterprise within the economic entity. Further exceptions from the prohibition in Section 13 are to be found in the CECA Act, Section 10 (1972:762).

Exemptions from the Prohibitions

Section 16. The Market Court may, for a specified period of time or until further notice, grant an entrepreneur a permission to carry out a practice prohibited under Section 13 or 14.

Such a permission may be granted only if the practice can be expected to result in cost savings, which substantially benefit the consumers or otherwise furthers the public interest, or if there are other special reasons for granting a permission.

Application etc

Section 17. The Market Court shall deal with cases under this Act pursuant to an application.

An application concerning an examination according to Section 2 shall be made by the Competition Ombudsman. If, in a certain case, the Ombudsman decides not to lodge an application, an application may be lodged by an organization of consumers, employees or entrepreneurs or by an entrepreneur directly affected by the restrictive business practice in question.

Interim Decisions

Section 18. If particular reasons so require, the Market Court may issue a prohibition or an injunction according to Section 3, or grant a permission according to Section 16, for a period of time until a final decision is reached.

Specific Provisions Regarding Mergers

Section 19. Cases concerning mergers shall be handled with particular promptness.
Section 20. As soon as the Competition Ombudsman finds reason to examine an acquisition of an enterprise, he shall concerning this reach a specific decision. If a party to an agreement regarding an acquisition of an enterprise has notified the acquisition to the Ombudsman for examination of the question of a prohibition or an injunction according to Section 6, the Ombudsman shall promptly decide either to examine the acquisition or to abstain from further action as regards such a prohibition or an injunction.

If the Competition Ombudsman, in accordance with the first subsection, has decided to abstain from action against a notified acquisition he is thereafter not entitled to request the Market Court to examine the question of a prohibition or injunction under Section 6 as regards that same acquisition, unless the entrepreneur has given incorrect information about existing factual circumstances of substantial significance for the position taken in the decision. If the Ombudsman has decided to investigate the acquisition and if he wishes to request such an examination by the Court, he shall do so within three months from the time of his decision, unless the parties to the agreement concerning the acquisition approve of an extension of this time-limit.

The Market Court may, if extraordinary reasons are present, on request of the Competition Ombudsman, for a specific period of time and for no more than a month each time, extend the time-limit applicable according to the second subsection.

Section 21. When extraordinary reasons are present, the Market Court may prohibit an entrepreneur from pursuing an acquisition of an enterprise under a penalty of an administrative fine until a final decision is reached in the case. If the Court's decision concerning an acquisition of an enterprise is submitted to the Government in accordance with Section 7, the Government has the corresponding authority.

Section 22. Before a prohibition or injunction according to Section 6 is issued or a decision by the Government according to Section 7 is issued, the acquiring entrepreneur's opposite party to the agreement on the acquisition shall be given the opportunity to submit a statement.

Section 23. The Market Court may not issue a prohibition or injunction according to Section 6 later than six months after an application according to Section 17. The Court may extend this time-limit, if the parties to the agreement on an acquisition give their approval or if extraordinary reasons are present. A prohibition or injunction according to Section 6 may not be issued later than two years after the conclusion of the agreement on the acquisition.

When the Market Court has submitted a decision to the Government, according to Section 7, the Government shall reach a decision in the case not later than three months thereafter. What has been set down in the first subsection as regards extension of the time-limit may be correspondingly applied by the Government.

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Re-examination etc

Section 24. A decision by the Market Court concerning a prohibition or an injunction according to Section 3, a conclusion of negotiations according to Section 4 or 5 or a permission according to Section 16 does not constitute an impediment to re-examine the same question anew if altered circumstances or other special reasons exist. This also applies to a decision by the Competition Ombudsman concerning an order according to Section 11.

If the Market Court has decided not to take action according to Section 6 against an acquisition of an enterprise, the Court may not re-examine the matter unless the entrepreneur has given incorrect information concerning existing factual circumstances of substantial significance for the position taken in the decision. If, in applying Section 7, the Government has decided not to confirm a decision taken by the Court, it may re-examine the matter only under corresponding conditions.

If the Government, in applying Section 7, has confirmed a decision taken by the Market Court regarding a prohibition or injunction, the Government may examine the matter anew, provided there are reasons to reverse or reduce the prohibition or injunction on the grounds that it is no longer needed or no longer appropriate.

Section 25. An application for a renewed examination by the Market Court or the Government according to Section 24, shall be made to the Court by the competition Ombudsman or the party against which a decision about prohibition or injunction is directed.

An application concerning a re-examination according to Section 24, second subsection, shall be made at the latest within one year from the time of the announcement of the decision taken by the Market Court or, if a confirmation consideration according to Section 7 has been made from the time of the Government decision.

Prior to the Government's re-examination according to Section 24, second or third subsection, the Court shall make a preliminary examination of the requirements for a revision. The Court shall notify the Government as to the outcome of this consideration.

Obligation to inform

Section 26. The Government may issue directives regulating the obligation for the acquirer to furnish such information concerning the acquisition as is required for an examination according to this Act.

Section 27. The Competition Ombudsman may, if it is required for an examination according to this Act, and special reasons are present, order a certain entrepreneur to give notice prior to entering into an acquisition agreement. Such an obligation to notify shall remain in force for a specified period of time, no longer than one year.
Section 28. The Competition Ombudsman may order an entrepreneur to furnish certain information, documents or other items required in a case according to this Act. The Ombudsman may also decide on a corresponding obligation in cases regarding the supervision of the compliance with a prohibition or injunction according to this Act regarding the party to which the prohibition or injunction is directed.

The same obligation may, by the Competition Ombudsman, be imposed upon other entrepreneurs than those mentioned in the first subsection if it is necessary for the control or completion of what is to be fulfilled according to the first subsection, and if it is necessary owing to special circumstances.

In a case which has been submitted for examination by the Government in accordance with Section 7, the Head of the Department which is to report on the case may impose an obligation in accordance with the first subsection, first sentence, or the second subsection.

Special Provisions

Section 29. In this Act an association of entrepreneurs is of the same standing as an entrepreneur. A decision by such an association is of the same standing as an agreement or concerted practice according to Section 14.

Section 30. An order according to Section 27 or 28 may be issued under a penalty of an administrative fine, if circumstances give reason for this.

Section 31. The obligation to inform according to this Act does not imply a duty to disclose trade secrets of a technical nature.

Section 32. The entrepreneur which is obligated to inform according to this Act shall not be unnecessarily burdened.

Section 33. The Competition Ombudsman and the Market Court may request the assistance of the authority referred to in the Information Act (1956:245) for the investigation of questions that may be of importance for examination according to this Act.

Penalties, Appeal and Other Provisions

Penalties etc

Section 34. An entrepreneur will pay criminal fines or be imprisoned for no more than one year if the entrepreneur
1. intentionally violates Section 13, first subsection or Section 14, first subsection,

2. intentionally or by negligence violates Section 13, second subsection or Section 14, third subsection, or

3. otherwise intentionally or by negligence submits incorrect information in the fulfilment of an obligation to notify or inform according to this Act.

Section 35. If an act defined in Section 34 is considered to be of minor significance, the act shall render no liability.

Section 36. If a crime defined in Section 34, first subsection is considered to be serious, a sentence of imprisonment for no more than two years will be passed.

In considering whether the crime is serious, special attention shall be paid to whether the crime constitutes a part of an organized, extensive collaboration or of a repeated criminality, or whether it has caused considerable damage.

Section 37. An act covered by such a prohibition or injunction as has been issued under penalty of an administrative fine according to this Act, shall not result in liability according to Section 34 or 36.

Section 38. Proceedings regarding the imposition of administrative fines which have been enjoined according to this Act shall be brought before a district court by the Competition Ombudsman. If the Market Court has issued an injunction under penalty of a fine upon an application by some other, the latter may also institute proceedings for the imposition of the fine.

Section 39. A public prosecution following a violation against this Act may only be instituted after an approval by the Competition Ombudsman.

Appeal

Section 40. An appeal may not be made concerning the decisions by the Competition Ombudsman according to Sections 11, 12, 17, 20, 25, 33, 38 or 39. An appeal may also not be made concerning decisions according to Section 28, third subsection.

Decisions according to Section 27 or Section 28, first or second subsection may, if the decision is combined with a penalty of an administrative
fine, be appealed to the Fiscal Court of Appeal by way of a complaint. The decision shall take effect immediately if nothing else is decided.

Other Provision

Section 41. This Act does not apply to agreements between employers and employees concerning wages and other conditions of work.

This Act becomes effective January 1, 1983. Through this Act the Restrictive Business Practices Act (1953:603) is annulled. Action taken in accordance with the latter Act is effective as if a corresponding provision in the new Act had been applied.

An application for an exemption according to Section 16 can be examined before the Act becomes effective.
THE MARKET COURT ACT
(1970:417, as last amended 1985:927)

Introductory Provisions


Section 2. No appeal shall lie from decisions of the Market Court in cases referred to in Section 1. The same shall apply to other decisions of the Court under this Act.

Composition of the Market Court

Section 3. The Market Court shall consist of a Chairman and a Vice-Chairman and ten other members, of whom four shall be special members, three for cases concerning restrictive business practices and terms of contract between tradesmen and one for cases concerning marketing and terms of contract in consumer relations.

Section 4. The Chairman and the Vice-Chairman and one of the special members for cases concerning restrictive business practices and terms of contract between tradesmen shall hold legal qualifications and shall have judicial experience. The two other members for such cases shall have a special knowledge of trade and industry. The member for cases concerning marketing and terms of contract in consumer relations shall have a special knowledge of consumer problems. The Chairman, the Vice-Chairman and the special members may not be appointed from among persons who can be considered to represent either the interests of entrepreneurs or the interests of consumers and employees.

For the Vice-Chairman and for each of the special members there shall be appointed one or more deputies. The provisions concerning the Vice-Chairman and the special members shall also apply to their deputies.

Section 5. Of the other members, three shall be appointed from among persons representing the interest of tradesmen and three from among persons representing the interests of consumers and employees.

For each member as referred to in the first paragraph there shall be one or more deputies. The provisions concerning members shall also apply to their deputies.

Section 6. The Government shall appoint the Chairman, the Vice-Chairman, the other members and the deputies of the Market Court. Members and deputies shall be appointed for a specified term.

Section 7. Members and deputies of the Market Court shall be Swedish citizens of legal age. No member or deputy shall begin to serve on the Court before he has taken the judicial oath.
Section 8. The provisions in Chapter 4 of the Code of Judicial Procedure concerning challenge of judges shall, where applicable, apply to the members of the Market Court.

Section 9. A quorum of the Market Court shall be constituted when the Chairman and four other members are present. An equal number of members representing the interests of tradesmen and of members representing the interests of consumers and employees must be present when a decision is taken by the Court.

As regards the special members, there shall participate in the consideration of cases concerning restrictive business practices and terms of contract between tradesmen only those members who have been appointed for such cases, and in the consideration of cases concerning marketing or terms of contract in consumer relations there shall participate only the member who has been appointed for such cases.

As regards negotiations regulated in Section 4 or 5 of the Competition Act (1982:729) there are specific provisions in Section 14 hereunder.

The Chairman may, on behalf of the Court, undertake preparatory measures and consider the question of dismissing a case without the participation of other members.

Section 10. The opinion on which the majority of the members are agreed or, where there is an equal number of votes, the opinion supported by the Chairman shall be deemed a decision of the Market Court.

The Competition Ombudsman and the Consumer Ombudsman

Section 11. For questions concerning restrictive business practices there shall be a Competition Ombudsman, and for questions concerning marketing and terms of contract in consumer relations there shall be a Consumer Ombudsman.

Each Ombudsman shall be appointed by the Government for a specified term and shall hold legal qualifications.

Section 12. Repealed.

Procedure

Section 13. Applications under Section 17 of the Competition Act (1982:729) shall be submitted in writing. This shall also apply with respect to applications for prohibition or injunction under Sections 2-4 of the Marketing Practices Act (1975:1418), Section 1 of the Terms of Contract in Consumer Relations Act (1971:112), and the Terms of Contract Between Tradesmen Act (1984:292). The application shall state the reasons on which the application is based and the facts and other circumstances considered relevant by the applicant.
Section 13a. Concerning the right for associations of tradesmen to participate in cases mentioned in Section 13 second sentence the following special rules are applicable.

If an association of tradesmen makes it probable that the outcome of the case might be of considerable interest for the members of the association, the Market Court may, on request of the association, permit the association along with the proper party to participate in the procedure and to call for evidence.

The application to participate shall be submitted in writing and contain the reasons on which the application is based.

The parties shall be given opportunity to comment on the application. The application must not be granted, if the party, on whose part the association wants to participate, opposes the application.

Section 14. The applicant and his respondent shall be given an opportunity at a hearing of the Market Court to present their views and to put forward facts and circumstances which they wish to submit. The Ombudsman for issues about which the case is concerned shall be invited to attend such a hearing even if he is not the applicant. He who is participating according to Section 13a shall also be invited to the hearing.

Prior to the hearing oral or written preparatory proceedings may take place to such extent as the Court may determine.

Negotiations regulated in Section 4 or 5 of the Competition Act (1982:729) shall be conducted in a hearing with the parties before the Court or its Chairman. The Court or the Chairman may also hold separate meetings with a party. The negotiations shall, however, always be concluded in a hearing with the parties before the Court.

Section 15. Cases may be decided and decisions pursuant to a special examination in accordance with Section 15a hereunder may be rendered without a hearing as referred to in Section 14, first paragraph, if satisfactory documentation exists and a party does not request a hearing. An application which manifestly does not merit consideration may be dismissed without such a hearing.

Questions concerning the issuing of prohibitions, injunctions or permissions under Section 18 of the Competition Act (1982:729), prohibitions under Section 21 of the same Act or prohibitions or injunctions under Section 13 of the Marketing Practices Act (1975:1418) or Section 5 of the Terms of Contract in Consumer Relations Act (1971:112) may be considered without a hearing as referred to in Section 14, first paragraph.

Prohibitions or injunctions, referred to in the second paragraph, or revocation of permissions, referred to therein, may not be issued without an opportunity having been given to the person to whom the prohibition, injunction or revocation relates to express his views on the question, unless there is reason to believe, that he has ascended or otherwise abstained from appearing.
In a case concerning a prohibition according to Section 4 the Marketing Practices Act because of special risk of personal injury or of damage to property, the Market Court may, however, also in other situations promptly decide about prohibition according to Section 13 of the same Act, if particular reasons are at hand.

Section 15a. In cases concerning examination under Section 2 of the Competition Act (1982:729) the Market Court may specifically examine and decide upon the question whether an entrepreneur’s restrictive business practice is having harmful effects.

Section 16. The provisions in Chapter 5 of the Code of Judicial Procedure concerning admission of the public to courts of law shall, where applicable, apply to the Market Court.

Notwithstanding the first paragraph the Market Court may direct that a hearing held to deal with a case concerning restrictive trade practices shall be held in camera if it can be assumed that the negotiations in the case would be impeded if the hearing were held in public.

Section 17. At hearings of the Market Court records shall be kept.

Section 18. The Market Court may summon a party or other person who may be presumed to have information relevant to the case, to appear in person before the Court, on pain of a fine. The Court can decide that a person who is not a party shall be heard as a witness. In that connection, Chapter 36 Sections 3, 5, 6, 10 paragraph 2, 11, 12, 13 paragraph 1 and 14 of the Code of Judicial Procedure shall be correspondingly applicable. If the witness without acceptable reason refuses to take the oath or make an affirmation or give evidence or answer a question the Court may order the witness to fulfil his duty on pain of a fine.

A party, or he who participates according to Section 13a, may also be summoned, on pain of a fine, to make available to the Court document, sample and the like which may be relevant to the case. This, however, does not imply an obligation to divulge trade secrets of a technical nature.

Concerning the kind of fine which is intended in this section, Chapter 9 Section 8 of the Code of Judicial Procedure is correspondingly applicable. Instead of 5 000 cr and 10 000 cr, the amounts mentioned in that section, the figures 50 000 cr and 100 000 cr shall be applicable.

A person, not being a party and not even participating according to Section 13a, who has appeared before the Court after summons, has a right to receive compensation in accordance with the provisions in the Code of Judicial Procedure concerning compensation to witnesses or experts. In cases where an Ombudsman is presenting the case the provisions of criminal procedure shall apply, and in other cases the provisions of civil procedure. If the compensation is to be paid by the parties jointly and severally the Court shall finally distribute the cost between them equally.
Section 19. In a decision by the Market Court whereby a case is settled or a question referred to in Section 15a decided, the reasons on which the decision was based shall be stated. The decision mentioned here and decisions mentioned in Section 15, second paragraph, shall be sent to the parties and to those participating according to Section 13a on the day on which it is rendered.

Section 20. If a petition, summons or order has to be communicated to a party or other person this shall be done by serving the document. This also applies to decisions sent out according to Section 19. Other document may be communicated to a party or other person by serving the document, if this is considered necessary.

Service of a decision by the Market Court which includes an injunction issued under penalty of a fine in accordance with the Competition Act (1982:729), the Marketing Practices Act (1975:1418) the Terms of Contract in Consumer Relations Act (1971:112), and the Terms of Contract Between Tradesmen Act (1984:292) must not be served under Section 12 of the Act on Service (1970:428), 1) unless there is reason to believe that the person sought has absconded or is otherwise hiding.

Section 21. A person who unduly divulges anything which by decision of the Market Court may not be made public shall be liable to a fine or to imprisonment for a term not exceeding one year, unless the action is punishable under the Criminal Code.

Section 22. Questions concerning the imposition of fines in accordance with Section 18 shall be considered by the Market Court.

1) I.e., substituted service.
THE INFORMATION ACT

Act Concerning the Obligation to Submit Information as to Conditions of Price and Competition

(1956:245, as last amended 1982:732)

Section 1. In accordance with the provisions of this Act, entrepreneurs are obliged to submit such information as is required to promote the public knowledge of conditions of price and competition in the national economy.

Other persons are also obliged to submit information in the manner and to the extent prescribed for entrepreneurs where, owing to special circumstances, this is necessary for the verification or completion of information to be submitted by entrepreneurs.

Section 2. The provisions relating to entrepreneurs shall also be applicable to associations of entrepreneurs.

Section 3. An entrepreneur shall be bound to submit, upon request, to such public authority as is designated by the Government information about such restraint on competition as is specified in the request, and which concerns his activity and relates to the conditions of price, production, commerce or transport, and information on prices, revenues, costs, profits and other conditions affecting the formation of prices.

Section 4. The obligation to submit information under this Act does not imply any duty to disclose trade secrets of a technical nature.

Section 5. Detailed provisions concerning the extent of the obligation to submit information as well as the manner and time for its accomplishments shall be made by the authority.

Under such provisions the authority may order an entrepreneur to produce agreements in restraint of competition, books, correspondence and other documents. Any person who is obliged to submit information may also be summoned to appear before the authority.

The authority shall take care to avoid imposing unnecessary burdens on entrepreneurs in fulfilment of the obligation to submit information.

Section 6. If a request to submit information is not complied with, the authority may subject the defaulting person to an appropriate fine.
Fine in case of default may also be prescribed in connection with orders to produce information or summonses under Section 5.

Section 7. Any person who, on being summoned under Section 5, appears before the authority, is entitled to witness allowance according to rules laid down by the Government.

Section 8. All agreements in restraint on competition in respect of which information has been submitted, or which have otherwise become known to the authority, shall be entered in a register (the Cartel Register).

When a decision to register an agreement has been made, the authority shall forthwith notify all parties to the agreement.

The provisions relating to agreements are also applicable to by-laws adopted by associations of entrepreneurs and to other rules and regulations instituted by such associations.

Section 9. Repealed.

Section 10. Any person who intentionally, or by gross negligence, fails to submit information in accordance with this Act within the time prescribed, or in the fulfilment of that duty gives wrong information, shall be punished by daily fines.

If the violation of the law is grave, the punishment shall be imprisonment for not more than one year, or daily fines.

Section 11. Repealed.

Section 12. If consideration of an international government agreement requires it, the Government may, after a request by the Competition Ombudsman, decide that the provisions under this Act shall in a specific case, wholly or partly apply to conditions outside the country.

Section 13. An appeal shall lie to the Government against any decision by administrative authority under this Act.

Section 14. This Act does not apply to agreements between employers and employees concerning wages or other conditions of work.

Section 15. Repealed.
THE ACT ON NAMES AND PICTURES IN ADVERTISING

(1978:800)

Section 1. A tradesman shall not, in the marketing of any goods, service or other commodity, make any representation in which another person's name or picture is used, without that person's consent. A representation which clearly indicates a specific person shall be regarded as equivalent to a name.

What is stated in the first paragraph about a tradesman shall apply likewise to an employee of a tradesman and to any other person acting on behalf of a tradesman.

Section 2. A person who intentionally or with gross negligence violates Section 1 shall be liable to a fine.

In case of complicity in such an act, Chapter 23, Sections 4 and 5, of the Penal Code shall be applied.

Section 3. A person who violates Section 1, or assists in such an act, shall pay reasonable compensation to the person whose name or picture was used. If the violation was intentional or negligent, the infringer shall also pay damages for other damages. In the termination of the occurrence and extent of such damages, mental suffering and other circumstances which are not of a purely economic nature shall be taken into consideration.

An employer is liable to pay the damages required for a violation of Section 1 by an employee, if the act undertaken was within the scope of his employment. An employee is liable for damages for such an act only if extraordinary reasons exist for such liability.

Section 4. In case of a violation of Section 1 the court can, at the request of the person whose name or picture was used, if it is deemed reasonable for the prevention of future unauthorized use, make certain orders regarding the devices which were used for the act or the presentations which appear on the goods, on the packaging, in the advertising text or in similar circumstances. The court may order that such property be destroyed, that such property shall be altered in specific ways, or that such property be surrendered, in return for compensation, to the person whose name or picture was used.
Section 5. A criminal action for violation of Section 2 may not be brought by the public prosecutor unless there is a complaint from the injured party or a prosecution is necessary in the public interest.

Section 6. A person who has violated Section 1 or contributed to such an act or is liable for damages under the second paragraph of Section 3 shall in a case involving this Act, upon the request of the person whose name or picture has been used, in view of the circumstances be held liable to pay the costs for publication in one or more newspapers of the judgment rendered as a result of such proceedings.
THE MARKETING OF ALCOHOLIC BEVERAGES ACT

Act Containing Certain Regulations on the Marketing of Alcoholic Beverages

(1978:763)

Section 1. This Act regulates the marketing of alcoholic beverages by tradesmen to consumers.

The term alcoholic beverages means liquor, wine, strong beer and beer as defined in the Beverage Production Act (1977:292).

Section 2. In view of the health risks connected with the use of alcohol, special moderation shall be exercised in the marketing of alcoholic beverages. In particular, no advertising or marketing measure may be taken which is intrusive, seeks out prospective customers, or encourages the use of alcohol.

In the marketing of liquor, wine or strong beer, no commercial advertisements shall be placed in a periodical, or other publication to which the Freedom of the Press Act is applicable and which is comparable with a periodical. However, this does not apply to publications which are available only at the sales location for such beverages.

Section 3. In application of the Marketing Practices Act (1975:1418), actions contravening Section 1 of this Act shall be considered improper practice towards the consumer.

Section 4. Regulations which prohibit certain other marketing practices are to be found in the Beverage Trade Act (1977:293).
THE MARKETING OF TOBACCO GOODS ACT

Act Containing Certain Regulations on the Marketing of Tobacco Goods

(1978:764)

Section 1. This Act regulates the marketing of tobacco goods by tradesmen to consumers.

Section 2. In view of the health risks connected with the use of tobacco, special moderation shall be exercised in the marketing of tobacco goods. In particular, no advertising or marketing measure may be taken which is intrusive, seeks out prospective customers, or encourages the use of tobacco.

Section 3. If, in the marketing of tobacco goods, a commercial advertisement is used in a periodical, or other publication to which the Freedom of the Press Act is applicable and which is comparable with a periodical, then the advertisement shall contain a warning text and declaration of contents as required on the packaging in accordance with the Act Concerning Warning Texts and Declarations of Contents on Tobacco Goods (1975:1154). If several warning texts have been prescribed for the product, at least one of these shall be printed. In the case of repeated advertising, the different warning texts shall be used alternately and, as far as possible, to the same extent.

The warning text and declaration of content shall appear clearly in the advertisement, and be presented in a practical manner.

Section 4. In application of the Marketing Practices Act (1975:1418), actions contravening Sections 2 or 3 of this Act shall be considered improper practice towards the consumer.
THE CONSUMER SALES ACT

(1973:877, as last amended 1985:718)

Introductory Provisions

Section 1. The present Act shall apply where a consumer buys goods from a person carrying on business activities, provided that the goods are intended mainly for private use and are sold in the course of the seller's commercial activities.

Under the aforementioned conditions the Act shall also apply where goods are sold by a person who does not carry on business activities, provided that the sale is transacted by a person who carries on such activities and is acting as the seller's agent.

Section 2. In case of a sale to which the present Act applies, the buyer shall always enjoy the rights which are conferred on him by the Act. Any contractual provision which excludes or limits any such right shall be null and void.

The provisions of the preceding paragraph shall not restrict the application of any contractual clause or of any provisions of the Sale of Goods Act (1905:38 page 1) or of any other rule which may be applicable to the relationship between the buyer and the seller or a person other than the seller against whom the buyer is entitled to exercise rights under the present Act, provided that thereby more extensive rights are conferred on the buyer than those conferred on him under the present Act.

The Relationship between the Buyer and the Seller

Section 3. If the seller has not delivered the goods in due time and the delay is not attributable to the buyer or due to an event for which the buyer bears the risk, the buyer may rescind the contract, unless the seller upon the buyer's request delivers the goods within a reasonable time. The foregoing provision shall not, however, apply if the delay is of minor importance for the buyer. Even without having made such a request the buyer is entitled to rescind the contract, if for any other reason it must have been apparent to the seller that the delay is of more than minor importance for the buyer. A contractual clause which restricts the buyer's right to rescind the contract shall, however, apply in case of the purchase of goods
which have been manufactured specifically in accordance with the buyer’s instructions or wishes, or which for any other reason the seller must be assumed to be unable to sell on reasonable conditions to a person other than the buyer, unless it is readily apparent that owing to the delay the buyer’s purpose in concluding the contract would essentially fail to be achieved.

In case of a delay in the delivery of goods for which the purchase price is payable at or after the time which has been fixed for the delivery, the buyer is entitled to withhold the purchase price until the goods have been placed at his disposal.

Section 4. If the goods suffer from a defect that the seller has undertaken to remedy but the defect has not been so remedied within a reasonable time after the buyer has made a claim on account of the defect, and non-defective goods have not been delivered in place of the defective goods within such time, then the buyer is entitled either to obtain a reduction of the purchase price, or to demand reasonable compensation for remedying the defect, or, if the defect is of more than minor importance for the buyer, to rescind the contract. A contractual clause which restricts the buyer’s right to rescind the contract shall, however, apply if the seller would sustain substantial loss in consequence of the rescission and the seller offers the buyer reasonable compensation on account of the defect and it is not readily apparent that the goods cannot be used for the purpose intended.

If the goods are to be paid for at or after the time which has been fixed for their delivery and if they are defective, then the buyer is entitled to withhold the purchase price until the defect has been remedied or non-defective goods have been placed at his disposal. However, if it is readily apparent that the defect is only of minor importance for the buyer, he may not withhold more than an amount which can be assumed to be equal to twice the cost ofremedying the defect.

The first and second paragraphs of this section shall also apply if the undertaking to remedy the defect has been made on the seller’s behalf by the manufacturer of the goods or by any other person.

Section 5. If the goods are defective but there is no undertaking to remedy the defect such as is referred to in Section 4, then the buyer is entitled to obtain a reduction of the purchase price, or, if the defect is of more than minor importance for him, to rescind the contract. With respect to the validity of any contractual clause which restricts the buyer’s right to rescind the contract, the second sentence of the first paragraph of Section 4 shall apply mutatis mutandis.

If the buyer has made a claim on account of the defect and the seller offers to remedy the defect or to deliver non-defective goods in place
of the defective ones and if such remedying or delivery is effected immediately and without the buyer being subjected to any costs or substantial inconvenience, then the buyer may not exercise the rights which are conferred on him under the first paragraph of this section. With respect to the buyer’s right to withhold the purchase price, the second paragraph of Section 4 shall apply mutatis mutandis.

Section 6. In any such case as is referred to in Section 3, in the first or third paragraph of Section 4, or in the first paragraph of Section 5, the buyer has the right to obtain reasonable compensation for expenses he has incurred in consequence of any delay or any defect, unless the seller proves that he is not at fault. With respect to the remedying of a defect, the buyer is not, however, entitled to obtain compensation in any other case or to a fuller extent than is provided for in Section 4.

Section 7. Where the seller, when making the sale, or on the package containing the goods, or in an advertisement or any other message intended to be communicated to the public or to the buyer, has made a misleading statement regarding the nature or quality of the goods or the use thereof, and if such statement can be assumed to have influenced the making of the purchase, then the goods shall be considered defective. However, the foregoing provision shall not apply if the seller has corrected the statement in clear terms.

Where the manufacturer of the goods, or any other person who has dealt with the goods in connection with a previous sale of them, has, on his own or on the seller’s behalf, made a misleading statement such as is referred to in the preceding paragraph, and if the statement can be assumed to have influenced the making of the purchase, the goods shall be considered defective, provided that the seller has referred to the statement in his dealings with the buyers or, although he knew or clearly ought to have known that the statement was misleading, has failed to correct it in clear terms.

If the seller fails to provide information concerning the nature, quality or use of the goods which he has been ordered to provide pursuant to the Marketing Practices Act (1975:1418), the goods shall be considered defective if the failure to provide the information can be assumed to have influenced the purchase. The same applies if such an order has been issued to the manufacturer of the product or anyone else who has earlier been responsible for the goods, and the seller knew of, or should have known of, the failure to comply with the order.

Section 8. Where the goods have been sold in contravention of a prohibition against their sale, which has been issued in a statute or by a public authority and has as its principal purpose to protect any person using the goods from suffering ill health or sustaining an accident, or in general to prevent the use of goods which are un-
reliable from the point of view of safety, then the goods shall be considered defective. The foregoing provision shall apply also where the goods are imperfect to such an extent that their use entails an obvious danger to the life or health of the buyer or any other person.

Section 9. Where the goods have been sold "in existing condition" or under some similar reservation, they shall, even in cases other than those referred to in Sections 7 and 8, be considered defective if their condition is not such as the buyer had reason to expect and the seller has failed to inform the buyer of the true circumstances. The foregoing provision shall also apply where the goods are in a condition substantially inferior to that which the buyer, having regard to the price of the goods and other circumstances, had reason to expect.

Section 10. Where the seller, or any other person on the seller's behalf, has, in terms of a guarantee or in any other similar way, assumed responsibility for the goods during a specified period of time, the goods shall be considered defective if they are not in conformity with the terms of such undertaking and it is not shown to be probable that the non-conformity is due to an accident or to a circumstance attributable to the buyer.

Section 11. If the buyer wishes to exercise rights ensuing from a defect in the goods, he shall notify the seller of the defect within a reasonable time after he has noticed or ought to have noticed the defect but in no case after the expiry of two years \(1\) from the time he received the goods. Where a person other than the seller has on the seller's behalf undertaken to remedy defects in the goods, the buyer may instead notify such person.

Relationship between the Buyer and the Manufacturer of the Goods et Alii

Section 12. If the manufacturer of the goods or any other person has, on the seller's behalf, undertaken to remedy defects in the goods, and if such person is negligent with respect to the fulfilment of his undertaking, he shall be liable to pay compensation for any loss or damage which the buyer may suffer, provided that such loss or damage is not insignificant.

Section 13. The buyer is entitled to demand fulfilment of any undertaking such as is referred to in Section 12, if he has made notification as prescribed in Section 11.

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1) The statutory change in force from July 1st, 1986.
Section 14. If the manufacturer of the goods, or any other person who has dealt with the goods in connection with a previous sale of them, has, on the package containing the goods or in an advertisement or any other message intended to be communicated to the public or to the buyer, knowingly or negligently made a misleading statement regarding the nature or quality of the goods or the use thereof, and if such statement can be presumed to have influenced the making of the purchase, then the manufacturer or such other person shall be liable to pay compensation for any loss or damage thereby occasioned to the buyer. The same applies if the manufacturer or anyone else who has earlier been responsible for the goods has failed to provide information concerning the nature, quality or use of the goods which he has been ordered to provide pursuant to the Marketing Practices Act (1975:1418), and the failure to do so can be assumed to have influenced the purchase.

Special Provisions Regarding Credit Sales

Sections 15-17 are repealed from July 1st, 1979, and substituted by provisions of the new Consumer Credit Act, infra.

Final Clauses

Section 18. Where a notification which the buyer wishes to convey to the seller or to any other person pursuant to Sections 3, 4, 11 or 13 has been handed in for delivery by mail or telegraph and is delayed or is not delivered to the addressee, such circumstance shall not have the effect of barring the buyer from exercising the rights conferred upon him under this Act.

Section 19. The present Act shall not apply to any loss suffered by the buyer as a result of personal injury or to any damage caused to property other than the goods sold.
THE DOOR-TO-DOOR SALES ACT
(1981:1361)

Introductory Provisions

Section 1. This Act is to be applied when a trader - during a visit to a private home or in the course of a telephone conversation which constitutes a part of telephone sales - sells movables on a commercial basis to a consumer mainly for personal use. It is a "visit to a private home" when a trader goes to see a consumer at his residence or at any other place where the consumer is not only to be found for a short while.

The Act is also to be applied when a trader, under the conditions set out in the first paragraph, undertakes to carry out for remuneration continuous services of a nature such as the maintenance or supervision of property, instruction or the like.

The Act is, however, not to be applied if the total price the consumer is to pay is less than 200 Swedish kronor. Nor is the Act applicable to the sale of foodstuffs.

Section 2. When a consumer has made an offer to a trader who has not made an immediate decision on the matter, what is stated in this Act in regard to contracts shall instead apply to the offer.

Section 3. Contract terms which, in comparison with the provisions of this Act, are to the consumer's disadvantage are not valid in regard to the latter.

The Trader's Obligation to Provide Information, etc.

Section 4. When a contract is concluded during a visit to a private home, the trader shall at the same time give the consumer a document which informs him about the contents of this Act. The consumer shall sign one copy of the document to confirm that he has received it. With the informative document that is to be handed to the consumer, there shall also be a form which the consumer can use if he wishes to change his mind and exercise his right to cancel the contract pursuant to Section 6.

When a contract is concluded on the telephone, the trader, within three days, shall hand or send to the consumer confirmation of what has been agreed, with the document and the form referred to in the first paragraph.

The document and the form which are referred to in the first and second paragraphs shall be in accordance with blanks approved by the Government or the authority decided by the Government.
Section 5. If the provisions of Section 4 are not observed, the consumer is not bound by the contract.

If the consumer wants the contract to be annulled pursuant to the first paragraph, he shall inform the trader to this effect within a year of the date when the contract was entered into. If the consumer does not do so, he will have lost the right to require that the contract should be annulled.

The Right of a Consumer to Cancel a Contract

Section 6. The consumer has the right to waive a binding contract (right to cancel) by handing or sending to the trader a written communication to this effect within a week from the day stated in Section 7 (cooling-off period).

If a consumer waives an offer such as is referred to in Section 2, a contract concluded by the acceptance of the offer becomes void.

Section 7. Where the purchase of movables is concerned, the cooling-off period begins to run from the day when the consumer had an opportunity to examine the goods or similar goods, however, at the earliest from the day when the documents referred to in Section 4 are received by the consumer.

Where the contract concerns a continuous service, the cooling-off period begins to run from the day when the documents referred to in Section 4 are received by the consumer. The same holds good in the purchase of movables if the trader has agreed, in writing, to this with the consumer in cases where

1. the goods have been manufactured or substantially changed in accordance with the special wishes of the consumer, or
2. the goods are bulky or there is some other similar reason which would not make it reasonable for the cooling-off period to begin until the consumer had had an opportunity to examine the goods or similar goods.

Section 8. In the purchase of movables, the consumer may only exercise his right to cancel a contract if the goods he has received are, in essentials, in an unchanged condition. However, this does not apply if the goods have been damaged or been changed on account of some step that has been necessary so as to enable the consumer to examine the goods or on account of some circumstance for which the consumer cannot be deemed responsible.
The Effect of a Consumer Exercising his Right to Cancel a Contract

Section 9. If, in the purchase of movables, the consumer exercises his right to cancel a contract, the goods which he has received shall be made available at the place where they are received. However, the goods may be made available at some other place indicated by the consumer if the trader can fetch them from that place without inconvenience.

If the goods have been sent by post to the consumer, the latter shall send them back in the same way provided that the trader supplies suitable packaging and the consumer does not need to defray the cost of return postage.

Section 10. If, in the purchase of movables, the consumer exercises his right to cancel a contract, the trader shall return the sum the consumer has paid. The consumer is entitled to retain the goods until the trader has complied with that obligation.

If, in cases such as are referred to in Section 9, first paragraph, a trader does not fetch the goods within three months from the day the cooling-off period begins to run, the goods become the property of the consumer free of charge. The same is true if, in cases such as are referred to in Section 9, second paragraph, the trader does not return what the consumer has paid within that time.

Section 11. If, in the case of a contract concerning a continuous service, a consumer exercises his right to cancel a contract, the trader shall return the sum the consumer has paid.

Authority Vested in a Trader's Representative

Section 12. If a trader makes use of the services of a representative, the latter shall always be regarded as having authority to act on behalf of the trader when it is a matter of entering into contracts such as are referred to in this Act, of pledging benefits which are intended to be included in such a contract and of receiving payment on behalf of the trader. The trader cannot restrict this authority to the detriment of the consumer.

In regard to commercial agents and commercial travellers, there are special provisions in the Act (1914:45) regarding Factors, Commercial Agents and Commercial Travellers.

This Act is to enter into force on 1 July 1982. This Act repeals the Act (1971:238) on Door-to-Door Sales, etc. In the case of contracts concluded before this Act enters into force, earlier provisions are however to remain in force.
THE CONSUMER SERVICES ACT
(1985:716)

Introductory Provisions

Section 1. This Act applies to contracts concerning services rendered to customers by entrepreneurs in their commercial activities, principally for private use in cases where the service relates to

1. work on movables, but not treatment of live animals,
2. work on real property, buildings or other premises on land or in water, or other fixtures, but not work relating to the construction of buildings for dwelling purposes or other work which the person constructing the buildings has undertaken to carry out in connection therewith,
3. the keeping of movables, but not the keeping of live animals.

Section 2. The Act does not apply to

1. the manufacture of movables, except in cases where the consumer is to furnish a substantial part of the material,
2. installation, fitting or other work which an entrepreneur carries out for the performance of a contract concerning purchase of movables,
3. work which, with a view to the performance of a contract, is carried out to remedy defects in the property sold.

Section 3. Contractual terms which in comparison with the provisions of the Act are to the disadvantage of the consumer shall be null and void, unless stated otherwise in this Act.

The Order etc.

Performance and Material

Section 4 (1). The entrepreneur shall perform the service in a professional manner. Furthermore, he shall safeguard the consumer's interests with due care and consult the consumer to the extent that this is necessary and feasible.

(2). Unless it may be considered as otherwise agreed, the entrepreneur shall supply requisite material as part of the service.
Safety

Section 5. The entrepreneur shall be especially mindful that the service is not performed
1. in contravention of such statutory provisions or official decisions whose main purpose is to ensure that the object of the service is reliable from the point of view of safety, or
2. in contravention of a prohibition under Section 4 of the Marketing Practices Act (1975:1418).

The Entrepreneur's Obligation to Dissuade

Section 6 (1). If a service, on account of the price, the value of the object of the service or other special circumstances, cannot be considered to be of reasonable benefit to the customer, the entrepreneur shall dissuade him from having it carried out.

(2). If it becomes apparent only after work has commenced on it that the service cannot be considered to be of reasonable benefit to the customer, or that the price of the service may be appreciably higher than the customer can have calculated with, the entrepreneur shall advise the customer of this circumstance and request further instructions.

(3). If the consumer cannot be found, or if for any other reason the entrepreneur does not receive instructions from him within a reasonable time, the entrepreneur shall suspend the work that has begun. This shall not apply, however, if there are special grounds for assuming that the consumer would wish to have the service performed nevertheless.

Section 7 (1). If the entrepreneur has neglected his obligations under Section 6 and there are strong grounds for assuming that the consumer would otherwise have refrained from ordering the service, or would have cancelled it, the entrepreneur shall not have more right to compensation than he would have had if the consumer had refrained from ordering the service or had cancelled it.

(2). For costs which are not to be paid pursuant to subsection (1) of this section the entrepreneur is, however, entitled to receive payment to the extent that the consumer would otherwise be favoured in an unreasonable manner.

Additional Work

Section 8 (1). If in the course of performance of the service there appears a need of work which by reason of its connection with the order ought to be performed at the same time as this (additional work), the entrepreneur shall notify the consumer and request his instructions.

(2). If the consumer cannot be found, or if for any other reason the entrepreneur does not receive instructions from him within a reasonable
time, the entrepreneur may carry out the additional work

1. if the price of this is insignificant, or if it is small in relation to the price of the service agreed upon, or
2. if there are special grounds for assuming that the consumer would wish to have the additional work carried out in conjunction with the order.

(3). The entrepreneur is obliged to carry out such additional work as cannot be postponed without risk of serious detriment to the consumer if instructions cannot be obtained from the consumer or if the consumer requests it.

(4). With regard to an extra charge for additional work Section 38 is applicable.

Defects in the Service

Definition of Defects

Section 9 (1). The service shall be considered defective if the result is not in conformity with

1. what the consumer is entitled to demand with regard to Section 4, even if the deviation is due to an accident or other comparable event,
2. such regulations or official decisions whose main purpose is to ensure that the object of the service is reliable from the point of view of safety, or
3. what in addition to this may be considered as agreed upon.

(2). The service shall also be considered defective if it has been carried out in contravention of a prohibition under Section 4 of the Marketing Practices Act (1975:1418), or if the entrepreneur has not carried out such additional work as he is obliged to do pursuant to Section 8 (3) of this Act.

Section 10 (1). The service shall further be considered defective if the result is not in conformity with such information of importance for an assessment of the nature or usefulness of the service as may be assumed to have influenced the contract and which, in connection with entering into the contract or else in connection with marketing, has been given

1. by the entrepreneur,
2. by another entrepreneur or by a trade association or similar organization on behalf of the entrepreneur, or
3. by a supplier of material for the service or by someone else at an earlier stage.

(2). Subsection (1) of this section does not apply in the case of information which has been corrected in time and in an explicit manner.
Section 11. Finally, the service shall be considered defective if in cases other than those referred to in Section 6 (1) the entrepreneur has, prior to the conclusion of the agreement, omitted to inform the consumer of a circumstance relating to the nature or usefulness of the service which the entrepreneur was aware of, or should have been aware of, and which he realized, or should have realized, was of significance to the consumer. A precondition for considering the service to be defective is, however, that the omission may be assumed to have influenced the contract.

Section 12 (1). The question of whether the service is defective shall be considered with reference to conditions at the time when the order was completed. If the service relates to an object which has been delivered to the entrepreneur, or is in his possession for some other reason, the order is considered as having been completed only when the object has come into the possession of the consumer.

(2). If the entrepreneur has performed the service but the order cannot be completed punctually owing to a circumstance attributable to the consumer, the determining point in time shall instead be that when the order should have been completed.

Section 13. If the result deteriorates after the time stated in Section 12, the service shall be considered defective if the deterioration is a consequence of the entrepreneur's having neglected his obligations under the contract or under this Act.

Section 14 (1). If the entrepreneur, by a guarantee or similar pledge, has assumed responsibility for the result of the service for a specified period after the time stated in Section 12, and the result so pledged deteriorates during the stated period, the service shall be considered defective.

(2). Subsection (1) of this section shall not apply if it is shown by the entrepreneur to be probable that the deterioration is due to an accident or other comparable event, or to negligence, irregular use or other similar circumstance attributable to the consumer.

Section 15 (1). If the service relates to the keeping of a movable, it is prescribed, in lieu of the provisions in Sections 9, 10 and 12-14, that the service shall be considered defective if such keeping is contrived in a manner that is not in conformity with

1. what the consumer is entitled to demand with regard to Section 4, even if the deviation is due to an accident or other comparable event,
2. such regulations or official decisions whose main purpose is to ensure that the object of the service is reliable from the point of view of safety, or
3. what in addition to this may be considered as agreed upon.

(2). The service shall also be considered defective if such keeping is contrived in contravention of a prohibition under Section 4 of
the Marketing Practices Act (1975:1418), or so as not to be in conformity with such information mentioned in Section 10 as has not been corrected in time and in an explicit manner.

Consequences in the Case of Defects

Section 16 (1). If the service is defective without this being attributable to the consumer, the consumer may withhold payment in accordance with Section 19. He may moreover demand that the defect be remedied in accordance with Section 20 (1) or make a price deduction or rescind the contract in accordance with Section 21. Furthermore, the consumer may demand damages from the entrepreneur under the provisions of Section 31.

(2). Provisions relating to the consumer's right to damages in respect of another person than the entrepreneur are contained in Section 33.

Claims

Section 17 (1). If the consumer wishes to allege that the service is defective, he shall notify the entrepreneur to this effect within a reasonable time after he has noticed, or should have noticed, the defect (claim). A claim may, however, not be made later than two years after completion of the order or, with respect to work on land or on buildings or on other premises on land or in the water or on other fixtures, ten years after completion of the order, unless otherwise provided for under the terms of a guarantee or similar pledge.

(2). If the entrepreneur has acted contrary to good faith and honour, a claim may always be made within ten years of completion of the order.

(3). If notification of a claim has been handed in for delivery by mail or dispatched by some other expedient means, the claim is considered to have been made when this was done.

Section 18. If the consumer does not make any claim within the time prescribed in Section 17 he forfeits the right to allege the defect.

The Consumer's Right to Withhold Payment

Section 19. The consumer may withhold as much of the payment as is necessary to give him security for his claim on the grounds of a defect in the service.
Remedying Defects

Section 20 (1). The consumer is entitled to demand that the entrepreneur remedy the defect if this does not entail inconvenience or expense for the entrepreneur that are unreasonably great in proportion to the importance of the defect to the consumer.

(2). Even if the consumer does not demand it, the entrepreneur may remedy the defect if, immediately after a claim has reached him, he offers to do this and the consumer does not have special grounds for rejecting the offer.

(3). The defect shall be remedied within a reasonable time after the consumer has given the entrepreneur opportunity to do so.

(4). The defect shall be remedied without cost to the consumer. This does not, however, apply to expenses that would have arisen even if the service had been performed without defect or, if the defect is due to an accident or other comparable event, expenses for the replacement of material which the consumer, in accordance with the contract concerning the service, has furnished and paid for.

Price Deduction and Rescission of Contract

Section 21 (1). If the defect is not remedied in accordance with the provisions of Section 20 the consumer may make a price deduction.

(2). If the service substantially fails its purpose the consumer may instead rescind the contract. The same applies if the service has been carried out in contravention of a prohibition under Section 4 of the Marketing Practices Act (1975:1418).

(3). If the service has been partially carried out and there are strong grounds for assuming that it will not be completed without a defect of material importance to the consumer, the consumer may rescind the contract in respect of the remainder. If the defect is such that the service substantially fails its purpose, or if the service is carried out in contravention of a prohibition under Section 4 of the Marketing Practices Act (1975:1418), the consumer may instead rescind the contract in its entirety.

(4). If, even before work has begun on the service, there are strong grounds for assuming that it will not be completed without a defect of material importance to the consumer, the consumer may rescind the contract.

The Size of the Price Deduction

Section 22 (1). A price deduction shall correspond to what it will cost the consumer to have the defect remedied, apart from such costs as are referred to in Section 20 (4), sentence 2. If a price deduction computed by this means is unreasonably great in proportion to the importance of the defect
to the customer, the price deduction shall instead correspond to the importance of the defect to the consumer.

(2). If the service relates to keeping of goods, the price deduction shall always correspond to the importance of the defect to the consumer.

Effects of Rescinding the Contract

Section 23 (1). If the consumer rescinds the contract the entrepreneur is not entitled to payment for the service. The entrepreneur is entitled to recover the material he has supplied, if this can be done without significant inconvenience or expense being caused to the consumer. Insofar as this is reasonable, the consumer shall compensate the entrepreneur's costs for what cannot be restored to him, but not in excess of an amount equivalent to its worth to the consumer.

(2). If the service has been partially carried out and the consumer rescinds the contract in respect of the remainder, the entrepreneur is entitled to payment of an amount equivalent to the price of the complete service with a deduction for what it will cost the consumer to have the remainder carried out.

Delay on the Part of the Entrepreneur

Definition of delay

Section 24 (1). There is a delay on the part of the entrepreneur if the order, without this being attributable to the consumer, has not been completed in the time agreed or, if no such time has been agreed, in a reasonable time with respect to what is normal for a service of the same nature and scope.

(2). There is also a delay on the part of the entrepreneur if the entrepreneur does not adhere to the time agreed for commencement of the service or progress of the work.

Consequences in the Case of Delays

Section 25. In the case of a delay on the part of the entrepreneur the consumer may withhold payment in accordance with Section 27. He may choose between demanding that the entrepreneur perform the service pursuant to Section 28 and rescinding the contract pursuant to Section 29. Moreover, the consumer may demand damages from the entrepreneur in accordance with the provisions of Section 31.
Claims

Section 26 (1). If the order has been completed, the consumer may rescind the contract or demand damages on account of the delay only if he has advised the entrepreneur, within a reasonable time of the completion of the service, that he wishes to allege delay (claim).

(3). If notification of a claim has been handed in for delivery by mail or dispatched by some other expedient means, the claim is considered to have been made when this was done.

The Consumer's Right to Withhold Payment

Section 27 (1). The consumer may withhold as much of the payment as is necessary to give him security for his claim on the grounds of a delay on the part of the entrepreneur.

(2). If under the contract payment shall be made on commencement of the work or while it is in progress the consumer may, albeit that this is not specified in subsection (1) of this section, withhold the part of the payment that has become due on commencement of the delay until such time as work is commended or is in progress. With respect to payment for the part of the service which has been carried out the consumer may not, however, withhold more than is specified in subsection (1) of this section.

The Consumer's Right to have the Service Performed

Section 28. The consumer may demand that the entrepreneur perform the service, if this does not entail inconvenience or expense for the entrepreneur which are unreasonably great in proportion to the consumer's interest in the performance of the contract.

Rescinding the Contract

Section 29 (1). If the delay is of material importance to the consumer he may rescind the contract. If more than an insignificant part of the service has been carried out the consumer may, however, only rescind the contract in respect of the remainder. The contract may be rescinded in its entirety in such a case too if the service substantially fails its purpose as a result of the delay.

(2). If there are strong grounds for assuming that a delay of material importance to the consumer will occur, he may rescind the contract in accordance with the provisions of subsection (1) of this section.
Consequences of Rescinding the Contract

Section 30. With respect to the consequences of rescinding the contract Section 23 shall be applicable.

The Entrepreneur's Liability for Damages etc.

Liability for Damages as a Result of Defects or Delay

Section 31 (1). The entrepreneur is liable to compensate the consumer for damage caused to him as a result of defects or delay, unless the entrepreneur shows that the damage is not due to negligence on his part or on the part of someone whom he has engaged to perform the service.

(2). The entrepreneur's liability for damages due to defects or delay also includes compensation for damage to the object of the service or other property which belongs to the consumer or some member of his household.

(3). The entrepreneur and the consumer can conclude a contract by which compensation in accordance with subsection (1) or (2) of this section shall not apply to loss relating to business activities.

Other Damages

Section 32 (1). If the object of the service or some member of his household is damaged while in the possession of the entrepreneur, or otherwise under his control, the entrepreneur is also liable to compensate the damage in cases other than those provided for in Section 31, unless the entrepreneur shows that the damage is not due to negligence on his part or on the part of someone whom he has engaged to perform the service.

(2). The entrepreneur is otherwise liable to compensate the consumer if the damage has been caused due to negligence on the part of the entrepreneur. The same applies with regard to property which belongs to some member of the consumer's household.

(3). The entrepreneur and the consumer can conclude a contract by which compensation as a result of damage to property in accordance with subsection (1) or (2) of this section shall not apply to loss relating to business activities.

Liability for Damages to Third Parties in Certain Cases

Section 33 (1). If a person referred to in Section 10 (1) 2. or 3. has wilfully or negligently given misleading information of importance for an assessment of the nature or usefulness of the service, and if for this reason the service is defective in accordance with Section 10 or Section 15 (2), he is liable to compensate the consumer for the damage caused to him in this way.

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(2). If a person referred to in Section 10 (1) 2. or 3. has omitted to give such information of importance for the assessment of the nature or usefulness of the service as he is obliged to give pursuant to the Marketing Practices Act (1975:1418), and if the omission can be assumed to have influenced the contract concerning the service, he is liable to compensate the consumer for damage caused to the latter in this way.

(3). Liability for damages in accordance with subsections (1) or (2) of this section also applies to compensation for damage to the object of the service or to other property which belongs to the consumer or some member of his household.

Adjustment of Damages

Section 34. If the liability to pay damages would be unduly burdensome with regard to the economic circumstances of the person so liable, the damages may be adjusted in accordance with what is reasonable. In this connection account shall also be taken of existing insurance policies and possibilities of insurance on the part of the person who has suffered damage, the possibility of foreseeing and preventing the damage on the part of the person liable to pay damages and other special circumstances.

Exception for Personal Injury

Section 35. The provisions of Sections 31-34 do not apply to personal injury.

The Price etc.

The Price

Section 36 (1). Insofar as the price is not specified in the contract, the consumer shall pay what is reasonable with regard to the nature, extent and performance of the service, to current prices or methods of calculating prices for similar services at the time of contract and to other circumstances.

(2). If the entrepreneur has made an approximate price quotation, the price quoted may not be exceeded by more than 15 per cent, unless another price limit has been agreed or the entrepreneur is entitled to an extra charge in accordance with Section 38.

Section 37. If the consumer has instructed the entrepreneur only to undertake a preliminary examination to investigate the extent or the cost of a service, the consumer is not liable to pay for the examination if, on account of practice in the trade or for other reasons, he has grounds for assuming that the examination would be undertaken free of charge.
Extra Charge

Section 38 (1). The entrepreneur is entitled to make an extra charge
1. if he has carried out additional work in accordance with the provisions of Section 8 or
2. if the service has become more expensive due to circumstances which are attributable to the consumer and which the entrepreneur could not have foreseen when the contract was entered into.

(2). With respect to the size of the extra charge the provisions of Section 36 are applicable.

Payment After an Accident etc.

Section 39. The consumer is not liable to pay for work which the entrepreneur has carried out, or material which he has supplied, insofar as the work or the material is impaired or is lost through an accident or other comparable event which occurs before the time stated in Section 12.

Specified Invoice

Section 40. The entrepreneur is under an obligation to make out a specified invoice for the service at the consumer's request. The invoice shall enable the consumer to assess the nature and extent of the work carried out. Insofar as the work has not been carried out against a fixed price it shall be apparent from the invoice how the price has been calculated.

Time for Payment

Section 41 (1). Unless otherwise specified in the contract, the consumer is liable to pay on demand after the entrepreneur has performed the service.

(2). If the consumer has requested a specified invoice in time, he is not liable to pay until such an invoice has reached him.

Cancellation

Section 42 (1). If the consumer cancels the service before it has been completed, the entrepreneur is entitled to compensation for the part of the service which has already been carried out and also for work which must be done despite the cancellation. The compensation shall be equivalent to the price which would have applied if the contract had only related to what had been carried out.
(2). Moreover, the entrepreneur is entitled to compensation for loss in the form of costs for the remainder of the service as well as compensation for other losses due to the fact that he has refrained from undertaking other work or that he has otherwise accommodated himself to the order. The entrepreneur is not entitled to such compensation, however, if the service has failed its purpose for the consumer inasmuch as

1. the object of the service has been damaged or been lost without this being attributable to the consumer, or

2. the consumer has been prevented from benefiting from the service in consequence of statutory provisions, official decisions or other similar circumstances beyond his control.

(3). Compensation to the entrepreneur in accordance with subsection (2) of this section may not exceed his loss due to the cancellation.

Section 43. The entrepreneur may reserve a compensation determined in advance for the event of cancellation, if this is reasonable with regard to such compensation, in accordance with Section 42, as can normally be assumed to accrue to an entrepreneur in the event of cancellation.

Section 44 (1). If the service cancelled is related to work on goods which have been delivered to the entrepreneur, or which are in his possession for some other reason, and the consumer does not in due time pay what he is liable to pay for the service in accordance with Section 42 or Section 43, or furnish security for the entrepreneur's claim in respect of this compensation, the entrepreneur may complete the service and demand the full price for the same.

(2). Subsection (1) of this section does not apply if it is apparent that, in the case of such a sale of the goods as is referred to in Section 50 (2), the entrepreneur will in any case receive payment for his claim after deduction from the purchase-money of the costs of the sale and what accrues to the entrepreneur in accordance with Section 50 (1).

Delay on the Consumer's Part

The Entrepreneur's Right to Suspeend Work

Section 45 (1). If under the contract payment is to be made completely or in part before the service has been performed and the consumer does not pay in due time, the entrepreneur may suspend work until such time as the consumer makes payment. If it is specified in the contract that the consumer shall assist in the performance of the service, and he does not in due time render such assistance as constitutes a material condition for performance, the entrepreneur may suspend work until such time as the consumer renders this assistance.

(2). If the service has been commenced the entrepreneur is, however, obliged as far as possible to carry out such work as cannot be post-
poned without risk of serious detriment to the consumer.

(3). If the entrepreneur suspends work in accordance with subsection (1) of this section, he is entitled to compensation for costs and other losses caused to him for this reason, unless the consumer shows that the delay is not due to negligence on his part.

Rescinding the Contract

Section 46 (1). If, in a case provided for in Section 45, the consumer does not pay or render assistance in due time, and the delay is of material importance to the entrepreneur, the latter may rescind the contract in respect of the remainder of the service. The same applies if, in accordance with Section 6 (3), the entrepreneur has suspended work that has been commenced for the purpose of receiving instructions from the consumer and the suspension of work entails substantial inconvenience for him.

(2). If the entrepreneur wishes to rescind the contract in accordance with subsection (1) of this section, he shall first remind the consumer of his obligation to pay, render assistance or give instructions, and he shall give the consumer reasonable time to do so.

(3). If a reminder has been handed in for delivery by mail or dispatched by some other expedient means, the reminder is considered to have been made when this was done.

Section 47. The entrepreneur may also rescind the contract in respect of the remainder of the service if, even beforehand, there are strong grounds for assuming that the consumer will not pay or render assistance in accordance with Section 45 and that the delay will be of material importance to the entrepreneur.

Section 48. If the entrepreneur rescinds the contract the consumer is liable for payment as if he had cancelled the service on the day the contract was rescinded.

The Entrepreneur's Right to Retain the Object of the Service etc.

Section 49. If the service relates to goods that have been delivered to the consumer, or are in his possession for some other reason, and if the consumer does not in due time pay the amount payable to the entrepreneur in respect of the order, the entrepreneur may retain the goods until such time as he has received payment or, in the case of a dispute concerning payment, until the consumer has furnished acceptable security for the amount demanded by the entrepreneur.

Section 50 (1). The entrepreneur shall take such measures as can reasonably be required of him to take care of goods that he retains in accordance with Section 49 or which have not been collected in due time. He is entitled to
reasonable compensation for this care.

(2). With respect to the entrepreneur's right to sell goods which he has received for the purpose of working on, provisions are contained in the Act (1950:104) on the Right of Tradesmen to Sell Goods Which Have Not Been Collected.

This Act enters into force on July 1, 1986.
THE CONSUMER CREDIT ACT

(1977:981, as last amended 1985:720)

Introductory provisions

Section 1. This Act concerns credit arrangements (delays of payment or loans) primarily relating to private use which are granted or offered to a consumer by a tradesman in the course of the latter's business activities.

The Act shall apply correspondingly also in matters concerning credit granted by persons other than a tradesman if the credit is negotiated by a tradesman as an agent of the credit grantor.

Section 2. In this Act the terms listed below are defined as follows:

- creditor: a person granting credit or taking over the original creditor's claim,
- cash price: the price at which the goods, service or other commodity can usually be obtained by the consumer through cash payment,
- credit amount: in respect of delays of payment, that part of the cash price for which a delay is granted and, as regards loans, the amount borrowed,
- cost of the credit: the total amount of all interest, supplements and other costs payable by the consumer in connection with the credit,
- effective interest: the cost of the credit described in terms of annual interest calculated on the credit amount, where applicable taking into account that the instalments shall be paid during the credit period in question,
- credit claim: sum total of the credit amount and the cost of the credit.

Section 3. Credit sale shall mean sale of goods whereby the seller grants the buyer a delay for payment of part of the price or some part of the payment is covered by amounts lent to the buyer by the seller or some other credit grantor and the seller.

Should the contract be described as a lease or payment as compensation for use of goods, it shall nonetheless be considered as credit sale if the intention is that the party to whom the goods are delivered shall become the owner thereof.
Section 4. Contract clauses restricting the consumer's rights or benefits under this Act shall be void.

Marketing of credit

Section 5. In connection with advertising, display or similar marketing practices in respect of credit, a tradesman shall supply information about the effective interest for the credit. With respect to credit for the acquisition of a particular article, service or other commodity, the cost of the credit and the cash price shall also be indicated.

The information referred to in the foregoing paragraph need not be provided if the credit concerns a small sum or if there are special circumstances.

Section 6. Before a credit agreement is concluded, a tradesman granting or negotiating credit shall supply information to the consumer in the respects and to the extent referred to in Section 5. Such information shall be provided in writing.

Section 7. In the event of failure to provide the information referred to in Sections 5 and 6 or information which may otherwise be of particular importance from the consumer's point of view, the provisions of the Marketing Practices Act (1975:1418) shall apply.

Provisions regarding credit sales

Initial cash payments

Section 8. With respect to credit sales the seller shall require from the buyer an initial cash payment consistent with good commercial practices in the market. This initial payment shall correspond to no less than 20 percent of the cash price of the goods unless a different amount is justified by special circumstances.

Payment with money borrowed by the buyer from the seller or some other creditor under an agreement between that creditor and the seller shall not be considered an initial cash payment.

Section 9. The sale of goods by a tradesman on his own or someone else's account without complying with the provisions of Section 8 shall be regarded as an action referred to in Section 2 of the Marketing Practices Act (1975:1418).
The buyer's rights vis-à-vis creditors other than the seller

Section 10. With respect to credit sales, the buyer may raise the same defenses on the basis of the sale against a creditor's claim for payment as he is entitled to raise against the seller.

In the event of the buyer, on account of the purchase, having a claim against the seller for refund of the price, damages or other payment, the creditor shall be equally liable with the seller for satisfaction of this claim. The creditor shall not, however, be required to pay more than he has received from the buyer as a result of the credit.

Prohibition of certain instruments of claim

Section 11. The creditor may not receive a bill of exchange issued by the buyer regarding claims connected with the credit sale. Neither may he as proof for his claim receive a negotiable promissory note or any other instrument of debt issued by the latter, transfer or pledging of which restricts the buyer's right to raise defenses based on the purchase should a new creditor acquire the instrument of claim in good faith.

The first sentence of the foregoing paragraph shall not apply to personal checks drawn on a banking company, a savings bank or a credit union within the agricultural credit system.

Any person intentionally failing to comply with this paragraph shall be sentenced to a fine.

Payments ahead of time

Section 12. In credit sales, the buyer shall always be entitled to pay his debt to the creditor ahead of time.

The creditor shall only be entitled to demand payment in advance if there is a special clause to this effect and if the buyer is at least a month overdue in paying a part of the credit claim exceeding one tenth of the entire credit claim, or, if two or more payments due at different times are overdue, more than one twentieth of the whole credit claim.

The second paragraph does not preclude a bank or other creditor from imposing stricter conditions concerning payment ahead of time if other statutory provisions so require.
Section 13. With regard to payments ahead of time pursuant to Section 12, when calculating the creditor's claim, the unpaid part of the credit claim shall be decreased by that part of the cost of the credit which, according to accounting principles consistent with good commercial practices in the market, corresponds to the unused credit period. If such advance payment is made at a time other than a payment date designated in the contract, the unused credit period shall be calculated from the first designated payment date following the advance payment.

With respect to calculations pursuant to the first paragraph of the section, the creditor may include in the (unpaid part of the) credit claim the entire cost of arranging for the credit, if such cost is expressly stated in the contract and is not unreasonable.

Prohibition of certain accounting procedures

Section 14. A sum paid by the buyer on a particular credit claim in connection with a credit sale may not first be credited against any other claim by the creditor in satisfaction.

Security interests

Section 15. By reservation of a security interest is meant any clause in an agreement entitling the creditor to take back the goods if the buyer fails to fulfill his part of the credit sale agreement.

A reservation of security interests may be invoked only if the clause has been inserted by the seller in connection with the sale for the purposes of securing his right to payment and the buyer is more than a month overdue in paying a part of the credit claim exceeding one tenth of the entire credit claim, or, if two or more payments due at different times are overdue, more than one twentieth of the whole credit claim.

Should a tradesman avail himself of a provision reserving a security interest in connection with the sale of goods which by virtue of their nature or value or on account of market conditions are not suitable as security, he may be enjoined from using the provision in the future in similar instances. With regard to injunctions, the provisions of the Act Prohibiting Improper Contract Terms (1971:112) shall apply correspondingly.

Section 16. Should the buyer, after expiration of the period specified in Section 15, second paragraph, but before the goods have been taken back, pay the amount he failed to pay when it fell due, together with interest and costs as set out in Section 17, third to fifth paragraphs,
the creditor may not take back the goods on the basis of the delay. Nor may the creditor in such cases invoke the clauses referred to in Section 12, second paragraph.

Settlement with respect to the repossession of goods

Section 17. Should the creditor wish to avail himself of the right to take back goods, there shall be a settlement of accounts between him and the buyer.

In this connection the buyer shall be credited with the value of the goods at the time of their return. The value is calculated according to what the creditor can be expected to receive for the goods by way of a suitable sale of the goods.

The creditor shall be credited with the unpaid part of the credit claim after adjustment in accordance with Section 13, together with interest for default where applicable, though such interest rates may not exceed those laid down in Section 6 of the Interest Rates Act (1975:635).

In this connection the creditor may demand compensation for the following costs for recovery of the goods: fees for the recovery procedure, reasonable costs for transport of the goods, as well as costs for appearance at recovery proceedings if such appearance has been necessary to safeguard the creditor's rights. When determining compensation for the cost of such appearance, the regulations governing the calculation of compensation from public funds to witnesses shall apply correspondingly.

In recovery proceedings, the creditor may, as shall be specified in greater detail in government regulations, demand compensation for his own work in connection with the case as well as fees to a representative assistant.

Section 18. If, when accounts are settled, the buyer is credited with a larger sum than the creditor, the latter shall not be entitled to take back the goods unless either he repays the difference to the buyer or, if the goods have been valued by the enforcement service, the amount is deposited with the latter.

If the creditor has been required to pay debts of the buyer in order to be able to take back the goods or to make it possible for him to use the goods as intended after recovery, the creditor may, in applying the foregoing paragraph, affect such payment against the amount due to the buyer.

Should the creditor be credited with a larger sum than the buyer, he shall not be entitled to require payment of the difference (outstanding debt) in cases other than those in which the goods have experienced a
significant decline in value because the buyer has failed to properly care for the goods.

Redemption of goods that have been taken back

Section 19. The buyer may redeem goods that have been taken back within fourteen days. Should the buyer wish to redeem the goods, he shall pay the creditor the value of the goods at the time of re-possession as well as any outstanding debt that may exist according to the settlement of accounts.

Assistance in the recovery of goods etc.

Section 20. The creditor may apply to the enforcement service for assistance in the recovery of goods, provided that the credit sale has been accompanied by a written instrument drawn up by the parties comprising a clause reserving a security interest as well as information on the cash price, the credit amount, the cost of the credit, the credit period, the credit claim and the intervals at which payment falls due.

Applications for assistance shall be submitted in writing and state how large a part of the credit claim is outstanding. If the creditor demands interest for the delay in payment, the application shall also state what the creditor claims in that regard. A certified copy of the document referred to in the first paragraph shall be appended.

Section 21. Assistance may only be given if it is obvious that the conditions set out in Section 15, second paragraph, are satisfied.

Should a clause reserving a security interest have been used contrary to the prohibition contained in Section 15, third paragraph, assistance shall not be granted.

Assistance or enforcement of a judgment requiring the buyer to return goods sold subject to a security interest shall not be granted with regard to goods which under Chapter 5 Sections 1-3 of the Code on Execution are exempted from distraint.

Section 22. With respect to assistance and execution of judgment referred to in Section 21, third paragraph, Section 12, second and third paragraphs and Sections 14-18 of the Act (1978:599) on Conditional Sales among Tradesmen and Others shall apply correspondingly. In this connection the reference in Section 16, third paragraph, to Section 10, first paragraph, shall be read as applying to Section 18, first paragraph, of this Act.
Prohibition against separate distraint

Section 23. Goods sold subject to the reservation of security interests may not be levied upon to satisfy a separate judgment arising out of the credit sale.

Services on Credit

Section 23a. In the event of the consumer, in connection with a service contract covered by the Consumer Services Act (1985:716), having been granted a credit in accordance with what has been mentioned in Section 3 about sale of goods, Sections 10-14 shall be applied to the contract.

Liability for loss of credit card, etc.

Section 24. A clause making the credit cardholder liable for amounts charged to an account as a result of use of the credit card by an unauthorised person may be invoked only if the cardholder or other person entitled under the credit agreement to use the credit card
1. has given the card to someone else,
2. has lost the card as a result of gross negligence,
3. in some other way has lost possession of the card and failed after discovery of the loss to notify the creditor as soon as possible.

With respect to amounts charged to the account in a manner specified in the foregoing paragraph after the creditor has received notification that the cardholder or other person authorised under the credit agreement to use the credit card no longer has the card in his possession, the cardholder is liable only for payment if he has acted fraudulently.

Enforcement etc.

Section 25. The Consumer Board shall supervise compliance with this Act. Such supervision shall not apply, however, to the Bank of Sweden, the Swedish Investment Bank, activities controlled by the Bank Inspection Board or the Private Insurance Inspectorate or the activities of execution authorities.

Such supervision shall be exercised in such a way as to cause as little cost or inconvenience as possible.

Section 26. In the exercise of such supervision, the Consumer Board or a person designated by the Board shall be authorised to undertake inspections of a tradesman selling goods or, in the course of his commercial activities, negotiating or taking over credit referred
to in this Act, and shall have access to any documents necessary for the supervision. The tradesman shall provide any information on his activities requested for this purpose.

Should a tradesman fail to give access to documents or to provide information in cases specified in the foregoing paragraph, the Consumer Board may order him to fulfill his obligations subject to a fine of a maximum of 10,000 Crowns.

Section 27. Repealed.

Section 28. Repealed.

Section 29. Should the Consumer Board under Section 26, second paragraph, have ordered a tradesman to produce documents, an appeal against this decision may be lodged with the Fiscal Court of Appeal. Appeals may not be lodged against any other decision of the Consumer Board under Section 26.

Section 30. The provisions of Sections 8 and 9 shall not apply to credit sales with respect to which regulations concerning initial cash payments have been promulgated under the Act (1975:90) authorising the Promulgation of Regulations Regarding Terms of Payment in the Commercial Sale of Automobiles. The provisions of Sections 8 and 9 shall also have no application to credit sales for which regulations have been promulgated pursuant to the Act (1980:523) Authorizing Promulgation of Regulations Regarding Terms of Payment in Credit Card Transactions.

This Act shall enter into force on July 1, 1979. The provisions of Section 24 shall be applicable even in cases where the credit agreement was entered into before the effective date of this Act.

Where other legislative or statutory provisions exist concerning the possession of goods as a result of conditional sales, those provisions shall be given corresponding application to the possession of goods under a credit sale agreement in accordance with the Consumer Credit Act.
THE CONSUMER INSURANCE ACT


Introductory Provisions

Section 1. This Act applies to contracts of insurance which consumers enter into with insurance companies principally for private purposes and which may be assigned to one of the following types of insurance:

1. Household insurance
2. Homeowner’s insurance
3. Holiday home insurance
4. Travel insurance
5. Third party motor insurance or other motor vehicle insurance
6. Yacht insurance

The provisions of the Act shall not apply in respect of third party motor insurance in so far as such insurance is regulated by the Motor Traffic Damage Act (1975:1410).

The Act shall not apply to a contract of insurance which is based on a collective agreement or on a group agreement and is managed by a representative of the group. Nor is the Act applicable to insurance of houses for an indefinite period.

Section 2. In this Act the term "policy holder" refers to the person who has entered into a contract of insurance with an insurance company. The term "the insured" refers to the person whose interest has been insured against loss or on whose life or health an insurance policy has been taken out.

Section 3. Insurance contract provisions which are less favourable to the policy holder, the insured or other person entitled to indemnity than the provisions of this Act would be, are void unless otherwise stated.

Section 4. In relation to any person other than the policy holder the provisions of Sections 25, 54-58, 86-88, 95, 96, 122 and 123 of the Insurance Contracts Act (1927:77) shall also apply in respect of contracts of insurance referred to in this Act. Where these pro-
visions are applicable Section 3, paragraph 1, of the Insurance Contracts Act shall also apply.

Provisions designed to ensure that insurance contract provisions are fair and equitable are to be found in the Insurance Business Act (1948:433).

Information

Section 5. Before an insurance policy is entered into, the insurance company shall provide such information concerning its premiums and other terms of insurance as is necessary to enable the consumer to assess the cost and extent of the insurance. The information shall be provided in such a form as to facilitate the choice of the type of insurance.

Such information need not be provided where either the consumer states that he does not require the information or it is impracticable to give it.

Section 6. Where an insurance policy has been entered into the insurance company shall, if it has not already done so, furnish the policy holder as soon as possible with clear information in writing about any terms of the insurance policy which constitute a substantial limitation of the scope of the insurance policy as compared with what it is reasonable for consumers in general to expect.

Where in accordance with Section 17, paragraph 2, or Section 19, paragraph 1, the insurance company seeks an alteration of the terms of insurance contained in the contract, the company shall at the same time state in writing the reasons for this change and furnish information as to the new terms.

During the period of insurance, the insurance company shall be under a duty, where the policy holder so requests, to furnish information in relation to the premium and other terms of the insurance contract.

Section 7. In the course of assessing a loss, the insurance company shall, expect where this is unnecessary in the circumstances, inform the person claiming indemnity of the facilities available for the adjudication of any dispute concerning the indemnity. Where there exists any risk that the right to indemnity may be forfeited by reason of any statutory prescription, the company shall also point this out. The information shall be furnished in writing.

Section 8. In the event of failure to furnish information in accordance with Sections 5-7, the provisions of the Marketing Practices Act (1975:1418) on failure to furnish information in the course of marketing shall apply.
An order to furnish information in accordance with Section 5 or Section 6, paragraph 3, may stipulate that the information shall be furnished in writing.

The Right to Insurance

Section 9. An insurance company may not refuse to allow a consumer to enter into a contract of insurance of a type which the company normally makes available to the general public.

The provisions of the preceding paragraph shall not apply if, having regard to the risk of the occurrence of the event insured, the probable extent of the loss, or other circumstances, the insurance company has special reasons for not providing the insurance.

Period of Insurance

Section 10. The period of insurance is the period for which a contract of insurance is made. It may not exceed one year unless there exist special reasons for a longer period of insurance.

Section 11. The period of insurance shall commence on the date which has been agreed upon or which appears from the circumstances. If the period of insurance is not established in accordance with the provisions of the preceding paragraph, the period of insurance shall commence on the day following the date on which the policy holder informed the insurance company that he wished to enter into the contract of insurance. If, however, the contract of insurance is entered into by payment of the premium by the policy holder, the period of insurance shall commence only on the day following the date on which the premium was paid. The same shall apply if the contract of insurance otherwise is valid only provided that the premium is paid before the period of insurance commences.

Section 12. Upon the expiry of the period of insurance, the insurance shall be renewed in the cases and on the terms which are stated in Sections 14-17.

In the case of a renewed insurance, the period of insurance shall commence when the previous period of insurance expires.

Section 13. The liability of the insurance company for the events insured shall begin with the commencement of the period of insurance and shall continue until the expiry of the period of insurance or
until the insurance ceases to be in force because of cancellation or for any other reason. A different period of liability may, however, be agreed upon in so far as the need for insurance constitutes a reason.

The policy holder is not under a duty to pay a premium except for the period during which the insurance company is at risk.

Renewal of the Insurance

Section 14. A contract of insurance shall be renewed if it has not been cancelled with effect at the expiry of the period of insurance and if the policy holder has not by that time entered into a similar contract of insurance with another insurance company.

The provisions of the preceding paragraph shall not apply if it appears from the agreement or the circumstances that the contract of insurance is not to be renewed.

Section 15. The insurance company may not cancel the contract of insurance with effect at the expiry of the period of insurance unless the company has special reasons for no longer providing the insurance.

Cancellation by the insurance company shall have effect only if written notice of cancellation is sent to the policy holder not later than fourteen days before the expiry of the period of insurance. If the policy holder can show that it is probable that this notice has been delayed or has failed to reach him owing to circumstances beyond his control, the contract of insurance shall cease to have effect not earlier than one week after the date on which the notice reached him and not later than three months after the date on which the insurance company sent the notice to him.

Section 16. Should the policy holder wish to cancel the insurance with effect at the expiry of the period of insurance, he may give notice of cancellation at any time beforehand.

Section 17. An insurance shall be renewed for the normal period of insurance which most closely corresponds to the period of insurance last in force and on such other terms as have applied during this period.

If the insurance company has required amendment of the terms of insurance in a written notice which has been sent to the policy holder not later than fourteen days before the expiry of the period of insurance, the renewed contract of insurance shall apply to the period and on the terms in general which the company has offered.
Termination in advance, etc

Section 18. The insurance company may cancel the contract of insurance with effect before the expiry of the period of insurance if the policy holder or the insured has shown gross disregard of his obligations towards the insurance company or if other particularly strong reasons exist.

Cancellation by the insurance company shall take effect fourteen days after the date on which the insurance company sent a written notice of cancellation to the policy holder. If the policy holder can show that it is probable that that notice was delayed or failed to reach him owing to circumstances beyond his control, the contract of insurance shall cease to have effect not earlier than one week after the date on which the notice reached him and not later than three months after the date on which the insurance company sent the notice to him.

With regard to cancellation on account of delay in the payment of premium, the provisions of Section 25 shall apply.

Section 19. The provisions of the insurance policy may, if so required by the insurance company, be altered during the period of insurance if the policy holder or the insured has disregarded his obligations towards the insurance company intentionally or by negligence other than of a minor nature or if particularly strong reasons exist. The alteration shall take effect fourteen days after the date on which the insurance company sent a written notice of the alteration to the policy holder.

If the insurance company has required alteration of the terms of insurance under the provisions of the preceding paragraph, the policy holder may cancel the contract of insurance with effect from the date on which the alteration would otherwise have taken effect. The notice of cancellation shall be given before this time.

Section 20. The policy holder may cancel the insurance with immediate effect if his need of insurance has ceased to exist or if some other similar circumstance has arisen.

If a contract of insurance has been renewed under Section 14 or if the provisions of the insurance policy have been altered during the period of insurance under Section 19, paragraph 1, the policy holder may, before he has paid any part of the premium required, cancel the insurance with immediate effect. A renewed contract of insurance shall also cease to have effect immediately if, without paying the premium for this insurance, the policy holder enters into a similar contract of insurance with another insurance company.
Payment of Premium

Section 21. The first premium for an insurance shall be paid within fourteen days of the date on which the insurance company sent a written notice to the policy holder demanding payment.

The provisions of the preceding paragraph shall not apply if the contract of insurance is entered into by payment of the premium by the policy holder or if the insurance otherwise is valid only provided that the premium is paid before the period of insurance commences.

Section 22. The premium for a renewed insurance shall be paid not later than the date on which the new period of insurance commences. The premium need not, however, be paid earlier than one month after the insurance company has sent a written notice to the policy holder regarding the payment.

Section 23. If the insurance contract provides for more than one premium period, the premium for each period after the first shall be paid not later than the first day of the period. A premium relating to a period longer than one month, however, need not be paid earlier than one month after the insurance company has sent a written notice to the policy holder regarding the payment.

Section 24. If the premium is not paid on the due date, the insurance company may, in so far as is reasonable, charge a default payment in accordance with what may have been stipulated in the insurance contract.

Section 25. In the event of delay in the payment of the premium, the insurance company may cancel the contract of insurance with effect fourteen days after the date on which a written notice of cancellation was sent to the policy holder. If the policy holder can show that it is probable that this notice was delayed or has failed to reach him owing to circumstances beyond his control, the contract of insurance shall cease to have effect not earlier than one week after the date on which the notice reached him and not later than three months after the date on which the insurance company sent the notice to him.

The contract of insurance shall not cease to be valid if the premium is paid before the expiry of the period which is indicated in the preceding paragraph. The policy holder shall be reminded of this fact in the notice of cancellation.

Nor does the contract of insurance cease to have effect in accor-
dance with the provisions of the first paragraph of this article if the policy holder has been unable to pay the premium on the date when it falls due because he has fallen seriously ill or has been deprived of his liberty or because he has not received his pension or the remuneration earned from his main employment. The same shall apply if some other similar unexpected event has prevented the policy holder from paying the premium on the due date. When the obstacle to payment ceases to exist, the policy holder shall immediately pay the premium. Should the policy holder not do this, the insurance shall cease to have effect. If the delay has continued for three months, the insurance shall cease to have effect even if the obstacle continues to exist.

Section 26. If the policy holder pays the premium after the contract of insurance has ceased to have effect in accordance with the provisions of Section 25, he shall be considered thereby to have applied for a new contract of insurance as from the day after the date on which the premium was paid. If the insurance company is not willing to provide insurance as applied for by the policy holder, a written notification to that effect shall be sent to the policy holder within fourteen days of the date on which the premium was paid. Otherwise a new contract of insurance shall be considered to have been entered into in accordance with the application of the policy holder.

Payment of Additional Premium

Section 27. If an additional premium is to be paid during the period of insurance, this premium shall be paid within fourteen days of the date on which the insurance company sent a written notice to the policy holder demanding the payment.

Section 28. If an additional premium is not paid on the due date, the insurance company may recalculate the period of insurance for the changed insurance on the basis of the premium which has been paid. After written notification of such recalculation of the period of insurance has been sent to the policy holder, the insurance shall be valid for the shorter period which follows from the recalculation, but for not less than fourteen days after the notice has been sent.
Return of Premium

Section 29. If a contract of insurance is terminated in advance, the insurance company is entitled only to the premium which would have been fixed if the contract insurance had initially been entered into for the period for which it has been in force. Should a renewed contract of insurance be terminated in advance, the insurance company is not, however, entitled to a premium higher than that corresponding to the risk which the insurance has covered.

If the policy holder has paid in advance a premium higher than that to which the insurance company is entitled under the preceding paragraph, the company shall repay the excess amount.

Reduction of Insurance Indemnity

Section 30. If at the time of entering into a contract of insurance the policy holder intentionally or by negligence other than of a minor nature furnishes incorrect information or fails to disclose a material circumstance, the insurance indemnity may be reduced, with effect for all insured. The reduction shall be made on the basis of what is reasonable having regard to the influence which the true state of affairs has had upon the occurrence of the event insured and upon the extent of the loss and to the intent or negligence of the policy holder and other circumstances.

Section 31. If an insured fails intentionally or by negligence to act according to his obligations under the terms of the insurance contract, the insurance indemnity may be reduced, in so far as he himself is concerned. The reduction shall be made on the basis of what is reasonable having regard to the influence which the failure has had upon the occurrence of the event insured and upon the extent of the loss and to the intent or negligence of the insured and other circumstances.

Equalled to the actions of an insured are those of any other person who acts with his consent. Also equalled thereto are those of any other person who has a substantial economic interest in common with the insured with regard to the insured property. The same rule shall apply to any person who, in place of the insured or together with him, has the insured property in his charge, if such has been provided in the contract of insurance.

Section 32. If an insured intentionally causes the occurrence of the event insured, he forfeits all right of indemnity from the insurance as far as he himself is concerned.
If an insured causes the occurrence of the event insured by gross negligence, the insurance indemnity may be reduced in so far as he himself is concerned; this shall not, however, apply to insurance providing damages to a third party. If an insured causes the occurrence of the event insured by negligence other than of a minor nature, the insurance indemnity may be reduced in so far as he himself is concerned if such has been provided in the contract of insurance; this shall not, however, apply to insurance covering damages for a third party. Such a provision may be included in the contract of insurance only if its inclusion called for in order to prevent the occurrence of the event insured or if other special reasons exist. The reduction shall be made on the basis of what is reasonable having regard to the negligence of the insured and to other circumstances.

Equalled to the actions of an insured are those of any other person who acts with his consent. Also equalled thereto are the actions of any other person who has a substantial economic interest in common with the insured with regard to insured property, unless there are special reasons to the contrary.

Section 33. Even if the policy holder or the insured has acted in a manner which according to Sections 30-32 may lead to reduction or forfeiture of the insurance indemnity, these provisions shall not apply if the policy holder was in a mental state such as is envisaged in Section 33, paragraph 2, of the Penal Code, or if he was less than twelve years old.

In the application of Section 31, paragraph 2, or Section 32, paragraph 3, the actions of a person who is in a mental state such as is envisaged in Section 33, paragraph 2, of the Penal Code or who is less than twelve years old shall be regarded as equivalent to the actions of an insured only if he acted with the consent of the insured.

Section 34. If a person entitled to indemnity, after the occurrence of the event insured, intentionally or by gross negligence states incorrectly or fails to disclose or conceals a circumstance which is material to the determination of his right to an insurance indemnity, the indemnity to which he would otherwise have been entitled may be reduced to such extent as is reasonable having regard to the circumstances.

Underinsurance

Section 35. If under the terms of the insurance contract the sum insured is to equal the value of insured property or other insured interest and the sum is substantially lower than that value, an insu-
rurance indemnity for loss of or damage to the property or other interest may be reduced in proportion to the underinsurance.

Double Insurance

Section 36. If an interest is insured against the same risk with two or more insurance companies, each company is liable towards the insured as if that company alone had provided insurance.

The insured is not, however, entitled to a higher indemnity from the insurance companies than in total corresponds to his loss. If the sum of the amounts for which the companies are liable exceeds the loss, the insurance companies shall contribute in proportion to the amounts for which each company is liable.

Adjustments of Claims

Section 37. When an insurance company has received notice of the occurrence of an event insured, the company shall without delay take such measures as are necessary in order to adjust the claim. The claim shall be dealt with promptly, having regard to the due interests of the person entitled to indemnity and of other injured parties.

The terms of an insurance policy shall contain provisions for the valuation of damaged property and other loss which is a consequence of the event insured.

Section 38. An insurance indemnity shall be paid not later than one month after the person entitled to the indemnity gave notice of the loss and provided such information as might in the circumstances reasonably be required of him in order to enable the insurance company to adjust the claim. This rule concerning the time of payment shall not, however, apply to an indemnity in the form of an annuity or to the extent that the right to an indemnity is contingent on property being reinstated or replaced, on the decision of an administrative authority or on the occurrence of some other similar event after the expiry of the period just stated.

If it is clear that the person claiming an insurance indemnity is entitled to at least a certain sum, that sum shall be paid immediately and shall be deducted at the final payment of indemnity.
Prescription

Section 39. The right to an insurance indemnity shall be forfeited if the person entitled thereto does not file a suit against the insurance company within three years of his learning that he had such a claim and at the latest within ten years from the time when the claim arose.

If the claim for an insurance indemnity has been presented to the insurance company within the period specified in the preceding paragraph, there shall always be available to the person entitled to an indemnity a period of six months during which he can file a suit commencing from the time when the insurance company announced its final decision concerning the indemnity.

The presenting to an officially appointed average adjuster of a claim for indemnity under a contract of yacht insurance shall be equivalent to filing a suit.

Section 40. An insurance company shall forfeit the right to any unpaid premium when six months have elapsed from the date when the premium should have been paid, unless the contract of insurance has been cancelled before that date by the company or has ceased to be in force, for reasons other than cancellation by the company.

Disputes Regarding the Right to Enter into or Maintain a Contract of Insurance

Section 41. If an insurance company, contrary to Section 9, has refused to allow a consumer to enter into a contract of insurance, a court shall at the petition of the consumer declare that the consumer is entitled to enter into the contract of insurance.

The court may declare that the period of insurance shall be deemed to have commenced on the date which would have applied if the insurance company had granted the consumer's application for insurance.

A suit to obtain a declaration under the preceding paragraph must be filed within one month of the date on which the consumer received from the insurance company notification of its decision and of the reasons therefor with a reminder of the action that the consumer must take if he wishes to have the decision reversed.

If a suit is not filed within the time stated in the preceding paragraph, the right to such an action shall be forfeited.
Section 42. If an insurance company, contrary to Section 15, 18 or 25, has cancelled a contract of insurance, a court shall at the petition of the policy holder declare the cancellation to be void.

A suit to obtain a declaration under the preceding paragraph must be filed within one month of the date on which the insurance company sent the notice of cancellation together with a written notification of the reasons for the decision to cancel the contract of insurance and a reminder of the action which the policy holder must take if he wishes to have the decision reversed.

If a suit is not filed within the time stated in the preceding paragraph, the right to such an action shall be forfeited.

Section 43. The court may on request issue a declaration under Section 41 or Section 42 to apply for the period until a final decision is reached. Such a declaration may not, however, be issued unless the insurance company has had the opportunity to submit a statement concerning the request.

Before such a dispute as is mentioned in Section 41 or Section 42 is resolved, the court shall obtain an opinion from the National Private Insurance Supervisory Authority, unless such an opinion is superfluous.

1. This act shall enter into force on 1 January 1981.

2. The renewal of a contract of insurance which takes place after 1 January 1981 shall be subject to the provisions of Sections 14-17, even though the contract of insurance was entered into before that date. The new Act shall apply to the renewed insurance.

3. If the cancellation or other termination in advance of a contract of insurance or the alteration of the terms of an insurance contract during the period of insurance is based on a state of affairs which has arisen after 1 January 1981, Sections 18-20 shall apply even if the contract of insurance was entered into before that date. If the contract of insurance is terminated in advance after 1 January 1981, Section 29 shall apply.

4. If a premium is to be paid after 1 January 1981, Sections 21-25, 27 and 28 shall apply even if the contract of insurance was entered into before that date.
5. If an event insured has occurred after 1 January 1981, Sections 30-38 shall apply even if the contract of insurance was entered into before that date.

6. The provisions of Section 39 shall also apply to claims which have arisen before 1 January 1981 and which are yet subject to prescription under older provisions. If a premium is to be paid after 1 January 1981, Section 40 shall apply even if the contract of insurance was entered into before that date.
THE SMALL CLAIMS ACT

The Act concerning the Procedure in Civil Actions relating to Small Claims.

(1974:8, as last amended 1984:136)

Application, etc.

Section 1. This Act shall apply to the procedure in the courts of general jurisdiction in such civil matters as can be settled by agreement between the parties if the value of the claim obviously does not exceed half the basic amount in accordance with the National Insurance Act (1962:381).

The first paragraph of this section shall not apply if a party in his first pleading or when he otherwise first declares his contentions in the action requests that this Act shall not apply and then satisfies the court of the probability that the underlying dispute concerns property whose value is in excess of that specified in the preceding paragraph or that the result of the action otherwise is of special importance in forming an opinion as to matters of legal significance. Where proceedings have been instituted by petition for an official demand for payment, then, if a party moves that the matter be referred for trial, he shall make the aforesaid request not later than he so moves.

"Value" in the first paragraph of this section means the value which at the time when proceedings are commenced may be assumed to be the one applicable. Where proceedings have been commenced by a petition for summary documentary procedure or for an official demand for payment or provisional remedy or by way of private claim in a criminal case, the relevant value shall be the one applicable when the court decides that the matter is to be dealt with in the form of a civil action. In assessing the value, litigation costs shall be left out of consideration.

Section 2. Where the value of the claim exceeds the one specified in the first paragraph of Section 1, this Act shall nevertheless apply if

(1) the dispute mainly concerns a question as to which an opinion has been given by the Public Complaints Board, or
the parties have agreed that the Act shall apply and this is appropriate in the opinion of the court.

The first paragraph of this section shall only apply if a party in his first pleading or when he otherwise first declares his contentions in the action requests that this Act shall apply and then makes reference to the opinion or the agreement. Where proceedings have been commenced by petition for an official demand for payment, the second sentence of the second paragraph of Section 1 shall apply correspondingly.

Section 3. This Act shall not apply in relation to matters which are dealt with by a specially constituted county court or in accordance with the Bankruptcy Act (1921:225) or the Composition with Creditors Act (1970:847), nor in relation to matters cognisance of which is taken immediately by courts of higher instance or the Labour Court.

Section 4. In lieu of the provisions relating to pre-trial proceedings in Sections 6-8 and 9-22 of Chapter 42 of the Procedural Book of the General Code to the trial in Chapter 43, to Sections 15-18 and 21-22 of Chapter 50 and to Sections 12 and 15 of Chapter 55 of the said Book, the provisions of the present Act concerning hearings and written procedure shall apply. In other respects the Procedural Book shall apply to the extent that its provisions do not conflict with the present Act. A "hearing" pursuant to the present Act shall then be equated with the trial.

Regarding trials in cases which, according to the Act on Trials in Labour Conflicts (1974:371), shall be appealed to the Labour Court instead of the Court of Appeals, the first paragraph shall apply only if it does not conflict with the special instructions which according to that Act shall apply in trials in the Labour Court as an appeals instance.

General Procedural Provisions

Section 5. A matter shall be prepared for decision either at a hearing or by written procedure. Bearing in mind the provisions of the first paragraph of Section 15, and Section 27, the court decides according to the circumstances to what extent the proceedings are to be oral or written.

The judgment shall be based on such material as has been brought out at the hearing or hearings of the court and on the contents of the documents submitted to the court.
Section 6. The court shall give the parties guidance in conducting their cases and shall see to it that the issues are defined and the matter clarified to the extent required by its character.

The court shall endeavour to bring about a settlement between the parties unless there are special reasons to the contrary.

Section 7. In any dispute between a merchant and a consumer concerning any goods, service or other utility supplied mainly for private consumption (hereinafter referred to as a "consumer dispute"), the court shall, if it would assist in clarifying the matter, obtain the opinion of the Public Complaints Board.

Section 8. No order as to costs shall cover any expenses other than in respect of

1) legal advice pursuant to the Legal Aid Act (1972:429) on one occasion for each court instance,

2) the application fee,

3) travelling and subsistence for the party or his or its representative or, if personal appearance has not been ordered, travelling and subsistence for counsel,

4) evidence given by witnesses,

5) translation of documents,

An order as to costs shall only be made to the extent that any expenses were reasonably necessary for the protection of the rights of the party.

An order as to costs of the nature referred to in subparagraphs (3) of the first paragraph of this section shall only be made pursuant to rules which the government will make.

Expenses in respect of other advice given by an advocate or an associate in any law office or firm shall be treated as expenses of the nature referred to in subparagraph (1) of the first paragraph of this section, to the extent that they do not exceed the legal advice fee fixed by the Legal Aid Act.
Where a matter has initially been dealt with in accordance with some procedure other than that laid down by this Act, an order as to costs incurred in connection therewith shall be made in conformity with the rules applicable to such other procedure.

Section 9. Any compensation to witnesses shall be fixed in accordance with the principles applicable to such compensation when payable out of public funds.

Section 10. Where the court decides to obtain the opinion of an expert, then it shall also, after hearing the parties, decide who shall be consulted. The costs of obtaining such opinion shall be defrayed out of public funds. Where there are special reasons, the court may order costs for obtaining the opinion of an expert who has not been selected by the court to be defrayed out of public funds pursuant to the principles applicable where the court selects the expert.

Section 11. In consumer disputes the merchant may be sued where the consumer is resident if the value of the claim obviously does not exceed half the basic amount referred to in Section 1.

Procedure in the County Court

Section 12. Where dealing with matters according to this Act, the county court shall consist of one judge possessing the prescribed academic qualifications.

Section 13. The application for a summons shall contain a statement of the claim and the circumstances on which the party relies in support of his claim. It shall also contain a statement of the evidence on which the party intends to rely and of the circumstances which give the court jurisdiction, unless it otherwise follows from the application that the court is competent. Written evidence should be lodged with the court at the same time as the application is submitted.

Section 14. Any summons issued shall direct the defendant to answer the claim. The answer may be made orally or in writing. The court shall make arrangements to have any oral answer taken down in writing.

The court may order the defendant to answer on penalty of a default judgment being given against him.
Section 14a. Where a matter regarding a petition for an official demand for payment has resulted in an action pursuant to this law, or where a matter has been taken up after an application for a re-hearing, the court may order the defendant to answer, on penalty of a default judgment being given against him.

Section 15. A hearing shall be held unless a wholly written procedure is found to be more suitable on account of the nature of the matter.

If the defendant does not comply with an order issued pursuant to the second paragraph of Section 14, or pursuant to Section 14a, the court may issue a default judgment. Regarding such a judgment the provisions of Sections 8-10 of Chapter 44 of the Procedural Book of the General Code, which deal with the issuance of a default judgment upon the ground of the defendant's absence, shall be applied.

A default judgment pursuant to the second paragraph may be issued notwithstanding the fact that the plaintiff has not made a motion regarding such a judgment.

Section 16. Each party shall be summoned to attend the hearing on penalty of a default judgment being given against him. Where there are special reasons, a party may instead be summoned on penalty of a default judgment being given against him or the matter being decided notwithstanding his absence.

Where a party is ordered to attend in person, the court shall direct him to attend on penalty of a fine.

Where a party is summoned to a hearing arranged only in order to receive evidence, orders prescribing penalties pursuant to the first paragraph of this section shall not be given.

Section 17. At the hearing the parties shall state their points of view and the evidence shall be received. If it is convenient, evidence may also be received at any other court. An expert who has given a written opinion may be examined orally only if the court finds this to be necessary.

Rules concerning the form and contents of minutes to be kept at hearings will be made by the government.

Section 18. If a hearing is held, the matter shall if possible be finally disposed of at the hearing. More than two hearings may only be held for special reasons. When hearings are held on more than one occasion, the same judge shall preside unless prevented by matters of special importance. If oral evidence has been received at a court hearing and the presiding judge becomes prevented from
giving judgment in the case, then the evidence shall be received anew if the reception thereof is found to be of importance in the action and there is nothing to prevent such reception.

Where the consideration of the matter has not been concluded at a hearing, the court shall, if not unnecessary, give the parties an opportunity of submitting final arguments within a stated time on penalty of the matter nevertheless being decided.

Section 19. When the case has been prepared for decision, the court shall give judgment without delay.

Where both parties fail to appear at a hearing which is not wholly intended for the reception of evidence, then the case shall be dismissed for want of prosecution. Where only one party fails to appear at a hearing, the court may, on the motion of the party present and in accordance with the orders issued pursuant to Section 16, either give a default judgment or decide the case notwithstanding his absence. If no such motion is made, the court shall decide how the matter shall be dealt with thereafter.

Section 20. Further rules as to the form of judgments and orders will be made by the government.

Procedure in the Court of Appeal

Section 21. An appeal against a judgment or order of a county court may not be considered by a court of appeal to any extent beyond that referred to in Section 22, unless the court of appeal has given the party leave to appeal.

No leave to appeal is required where the complaint is directed against

- a decision concerning any person other than a party or an intervening third party,
- an order by which the county court has overruled a challenge against the judge,
- an order to pay a fine directed to be paid in stated circumstances or imposing liability for any breach of the rules of procedure, or
- an order dismissing a notice of appeal or an application for a rehearing or an appeal.

Where leave to appeal has been given, the second paragraph of Section 11 of Chapter 54 and Section 13 of the Procedural Book of the General Code shall apply correspondingly.
Section 22. Leave to appeal may only be given if

(1) it is important in order to create a precedent for guidance in the application of the law that the case is considered by a superior court,
(2) a party invokes circumstances or evidence which have not previously been presented or adduced and which would probably have given a different result in the action,
(3) the interpretation of the law on which the judgment or order is based must be considered incorrect,
(4) there is reason to believe that the result of the action has been influenced by the production in evidence of a forged document or by a false statement made on oath or under solemn affirmation,
(5) where the judgment is affected by some serious procedural defect, or
(6) there is cause for changing the decision reached by the county court.

Section 23. An appeal against an order of the county court in a matter of the nature referred to in section 1 or 2 shall be in the same form as an appeal against an order overruling a plea to the jurisdiction or other objection to the proceedings as such.

Section 24. When considering an application for leave to appeal, the court of appeal shall consist of two members. Where one of the members desires to grant leave, his opinion shall prevail.

Section 25. The petition of appeal shall state the circumstances on which the party relies in support of his application for leave to appeal, if such leave is required. The petition should further specify the judgment or order appealed against, the changes requested and the grounds of appeal. The petition shall also state the evidence relied on. Any written evidence not previously adduced shall be attached to the petition.

Section 26. Where leave to appeal is required, the court of appeal shall, when the exchange of pleadings has been closed, decide whether such leave shall be granted or not. When there are reasons for doing so, the application for leave to appeal may be considered without pleadings having been exchanged.

Section 27. In cases where the mode of appeal known as "vad" has been used, the procedure shall be written unless a hearing or hearings ought to be held for special reasons. The provisions of Sections 17, 18 and 20 shall apply correspondingly to the procedure in the court of appeal.
Procedure in the Supreme Court

Section 28. No appeal shall lie against a decision of a court of appeal to grant leave to appeal.

Section 29. The provisions of Section 17 shall apply correspondingly to the procedure in the Supreme Court.
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