

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



COMMERCE, INDUSTRY AND TOURISM BRANCH
**COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU**
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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6 June 2018

Mr Anthony CHU
Clerk, Public Accounts Committee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr CHU,

Public Accounts Committee
Consideration of Chapter 2 of the Director of Audit's Report No. 70
Consumer protection against unfair trade practices, unsafe goods,
and short weights and measures

Thank you for your letters dated 21 May to the Secretary for Commerce and Economic Development, the Commissioner of Customs and Excise, and the Director-General of Communications on the captioned subject.

The Administration's replies to the questions attached to your letters are at the **Annex**. The Consumer Council will provide its replies to you direct.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jacko Tsang', written over a light blue circular stamp.

(Jacko Tsang)

for Secretary for Commerce and Economic Development

Encl

c.c. Commissioner of Customs and Excise (Attn: Ms Teresa FU)
Director-General of Communications (Attn: Ms Elaine HUI)
Chief Executive, Consumer Council (Attn: Mr Simon CHUI)

**The Administration's Replies to
Letter from the LegCo Secretariat on 21 May 2018 regarding
Chapter 2 of the Audit Report No. 70
Consumer protection against unfair trade practices, unsafe goods,
and short weights and measures**

Part 2: Enforcement Work Against Unfair Trade Practices

Question 1 and Question 10

It is stated in paragraph 2.4(c) that the Office of the Communications Authority ("OFCA") would review its enforcement strategies and practices with a view to further enhancing the enforcement of the Trade Descriptions Ordinance (Cap. 362) ("TDO"). In this regard, please advise on the progress and results of the review. Does the Administration consider it necessary to introduce further amendments to TDO with a view to effectively combating misconduct relating to the trading of services and goods?

The Administration's Reply

Paragraphs 2.6 and 2.7 of the Audit Report state that, in relation to the Office of the Communications Authority ("OFCA")'s enforcement of the amended Trade Descriptions Ordinance ("TDO"), the prosecution rate for services is low. The Audit Commission ("Audit") considers that there is a need to ascertain the major contributing factors of the low prosecution rate for services in order to enhance the effectiveness of the TDO. Paragraph 2.15 of the Audit Report recommends that the Commissioner of Customs and Excise and the Director-General of Communications ("DG Com") should, in consultation with the Secretary for Commerce and Economic Development, conduct a comprehensive review on the enforcement issues of the amended TDO, taking into account the findings of the Audit Report.

As mentioned in paragraph 2.4 of the Audit Report, OFCA has already conducted reviews of the enforcement of the amended TDO in 2015 and 2016, and found that as compared with offences relating to goods, it was more difficult to collect sufficient evidence against misconduct and prove an offence relating to services under the criminal regime of the TDO. That said, as stated in paragraph 2.4(c) of the Audit Report, OFCA would continue its enforcement

efforts and review its enforcement strategies and practices with a view to further enhancing the enforcement of the TDO. To this end, OFCA has commenced a review. The objective is to identify ways to further enhance the effectiveness of TDO enforcement work with the benefit of the findings in the reviews conducted in 2015 and 2016 and the enforcement experience gained in the past two years. OFCA expects that the review will be completed in the fourth quarter of this year. In addition, taking into consideration the need to obtain complainants' full co-operation in criminal investigation under the TDO, OFCA is exploring various means and channels to strengthen consumer education, in order to improve consumers' understanding of the scope of the TDO and the importance of their assistance to OFCA after lodging a complaint.

Question 4

According to paragraph 2.7(a), the Customs and Excise Department ("C&ED") said that "there were a number of factors affecting the prosecution rate other than insufficient evidence, such as complainants' withdrawal of their complaints or refusal to assist in investigations". Please provide:

- (a) factors other than complainants' withdrawal of their complaints or refusal to assist in investigations which affect the prosecution rate;**
- (b) types of reasons for complainants' withdrawal of their complaints or refusal to assist in investigations and the number of such cases concerned (e.g. the number of cases in which complainants withdrew their complaints as a result of the settlement reached between complainants and traders); and**
- (c) information on whether there are any specific patterns regarding the reasons for complainants' withdrawal of their complaints or refusal to assist in investigations (e.g. whether the time taken for investigation or the amount of money involved in a complaint will affect a complainant's decision to withdraw his/her complaint).**

The Administration's Reply

Compared with complaints on sale of goods, the investigations into and evidence-gathering concerning complaints on sale of services are more complex due to the absence of physical goods. Nevertheless, the Customs and Excise

Department (“C&ED”) has been proactive in handling complaints and taking appropriate enforcement actions in the light of the facts and evidence of individual cases.

(a) In considering whether a prosecution will be instituted against a trader by the C&ED, the main factor is whether there is sufficient evidence to prove that the trade practices of the trader concerned have contravened the TDO.

As revealed from details of investigations, the major factors affecting the prosecution rate include (1) complainants’ withdrawal of their complaints or refusal to assist in investigations; (2) insufficient evidence to establish the contravention of the TDO upon investigations or after seeking legal advice. In a few cases, the factors involved are as follows:

(i) The complaints fall outside the purview of the TDO. In case of breaches of other laws, the C&ED would refer the cases to the relevant law enforcement agencies or departments for follow-up.

(ii) The incidents involved in the complaints had taken place before the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 came into effect on 19 July 2013.

(b) For the 2 960 completed investigations on sale of services, the following cases involved withdrawal of complaints upon settlement between complainants and traders, or complainants’ refusal to assist in investigations:

Category	Number of completed investigations (as a percentage of the 2960 completed investigations)
<p>(1) Complainants withdrew the complaints</p> <p>(a) Settlement reached between complainants and traders (including refund or compensation measures by traders, e.g. extension of contracts)</p> <p>(b) Complainants did not reveal the reason of withdrawal</p>	<p>818 (28%)</p> <p>821 (28%)</p>

Sub-total	1 639	(56%)
(2) Complainants refused to assist in investigations (e.g. unwilling to give statement, attend identification parade or testify in court)	577	(19%)

(c) According to the C&ED's observations, the major reasons for complainants' withdrawal of complaints are:

- (i) Receipt of refunds or other forms of compensation; and
- (ii) Unwillingness to give statement, attend identification parade or testify in court.

There is no direct correlation between complainants' withdrawal of complaints and the time of investigation or the amount of money involved.

Question 5

According to paragraph 2.7, C&ED's change in its filing practice in 2014 resulted in a decrease in the number of detailed investigation cases from May 2016 to December 2017. Assuming that the filing practice has remained unchanged, what will be the enforcement situation of TDO by C&ED (including the number of complaints received, the number of case files opened and the prosecution rate, etc.)? What mechanism is put in place upon the implementation of the new filing practice to ensure that frontline officers will open case files according to guidelines so as to avoid some legitimate complaints not being handled?

The Administration's Reply

The C&ED's change in filing practice in 2014 focused on the criteria for opening "detailed investigation cases" so as to standardise the arrangements for case opening and classification among different formations. According to the new practice, the C&ED will open an "investigation file" and commence investigation for a "pursuable complaint". During the course of investigation, if there is reasonable suspicion that a trader has committed an offence under the TDO, enforcement actions such as arrests and seizures of exhibits will be taken, while a separate "case file" (i.e. the "detailed investigation cases" mentioned by Audit)

will be opened timely under departmental guidelines for the continued collection of evidence and prosecution¹. This practice enables the C&ED to have a more accurate picture on the number of complaints reasonably suspected to involve contravention of the TDO that require enforcement actions to be taken, and follow-up actions such as prosecutions to be instituted.

The above-mentioned practice aims at providing a clearer classification of the filing of complaints. It does not affect the C&ED's handling of complaint cases and its enforcement work, and will not result in reasonable complaints being left unhandled.

Upon implementing the new filing practice, the C&ED has been actively handling each complaint case as before, and conducting follow-up investigations based on the facts and evidence of each case. Meanwhile, investigation officers handle the cases and monitor the investigation progress according to established mechanisms and guidelines, thus ensuring that reasonable complaints are properly handled.

Question 6

According to paragraph 2.23(b), while the investigations into the particular complaints had been completed, the Intellectual Property Investigation Bureau ("IPIB") of C&ED continued to conduct decoy operations or surveillance to keep monitoring the subject traders. As a result, the files were not closed immediately. Please advise on:

- (a) the number of cases during the period of audit review in which decoy operations or other surveillance were conducted continuously, and the criteria for conducting such operations; and**
- (b) apart from investigations involving copyright and trademarks, whether there are similar arrangements for conducting investigations of cases involving other areas; if so, of the details; if not, the reasons for the inconsistency in the handling of investigations of cases involving other areas and those involving copyright and trademarks.**

¹ Prior to the change of filing practice, the Trade Descriptions Investigation Bureau opened a "case file" when a complaint was assessed as pursuable.

The Administration's Reply

(a) During the period of audit review, Audit conducted a sample check on 50 investigation files which were closed after the prescribed timeline. The C&ED's information showed that the C&ED did not close the investigation files right after the investigation into the particular complaints had been completed as it continued to conduct decoy or other surveillance operations in 45 cases. The main reason was that the investigators had reasons to suspect that the traders concerned might be involved in unfair trade practices in the light of the facts and evidence of individual cases. Even though the complainants had withdrawn their complaints, refused to assist in investigations, or were not reachable by investigators, the C&ED continued their surveillance or decoy operations proactively to ascertain if the traders concerned were involved in unfair trade practices. When there was sufficient evidence, the C&ED would take appropriate enforcement actions to protect consumers' rights.

(b) Apart from investigations of unfair trade practices conducted by the Intellectual Property Investigation Bureau, the C&ED also conducts decoy or other surveillance operations in the investigations in other areas when necessary including after the completion of some investigation work. For instance, the C&ED carries out decoy operations in the enforcement of the Consumer Goods Safety Ordinance, the Toys and Children's Products Safety Ordinance and the Weights and Measures Ordinance to investigate contraventions against the relevant legislation.

Question 7

According to paragraph 2.37(a), C&ED said that it would "step up supervisory checks of investigation progress and fieldwork subject to the availability of manpower resources". What are the respective numbers of investigators and supervisors in IPIB and their ratios out of the total number of officers in IPIB over the past three years? How will IPIB implement and address the Audit Commission ("Audit")'s recommendation in paragraph 2.36(a) in the event of unavailability of manpower resources?

The Administration's Reply

The C&ED attaches great importance to the monitoring of investigation progress and fieldwork. Supervisors concerned check the investigation progress from

time to time and record the information in “Daily Report” and “Records of Outdoor Work”. The numbers of investigators and supervisors in the Unfair Trade Practice Investigation Group of the Intellectual Property Investigation Bureau and their ratios out of the total number of officers in the Group for the past three years (2015 to 2017) are as follows:

Unfair Trade Practice Investigation Group of the Intellectual Property Investigation Bureau						
	2015		2016		2017	
	Number	Ratio	Number	Ratio	Number	Ratio
Investigators (Rank and File)	44	80%	62	83%	62	83%
Supervisors (Inspectorate and above)	11	20%	13	17%	13	17%
Total Number	55	100%	75	100%	75	100%

The C&ED agrees to Audit’s recommendations, and the Intellectual Property Investigation Bureau will step up supervisory check on the investigation progress and fieldwork through flexible deployment of internal resources based on actual circumstances. At the same time, in accordance with Audit’s recommendation, the C&ED will conduct a comprehensive review of the enforcement of the TDO, which includes the review of manpower and resources, so as to ensure effective implementation of Audit’s recommendation in paragraph 2.36(a).

Question 11

According to paragraph 2.14, Audit analysis of 12 413 pieces of unfair trade practice information shared by CC with C&ED via the computer system interface revealed that around 10% of the cases might be under the jurisdiction of the Communications Authority. Will OFCA establish a mechanism/platform for periodic sharing of cases and information with CC? If yes, what is the estimated earliest time of completion? If no, what are the reasons for not doing so?

The Administration’s Reply

Paragraph 2.14 of the Audit Report states that at present, OFCA has not participated in the electronic platform established between the Consumer Council (“CC”) and the C&ED for information exchange and case referral. Paragraph

2.17 of the Audit Report recommends the CC and DG Com to review the need for (a) periodic sharing of unfair trade practice information relating to telecommunications and broadcasting services; and (b) computer system enhancements to facilitate case referral and information exchange.

With regard to Audit's recommendations, OFCA has touched base with the CC and preliminarily agreed to set up a mechanism for periodic sharing of unfair trade practice information relating to telecommunications and broadcasting services, and will discuss further on the implementation details later. For referral of complaints to OFCA by the CC, there is already an established mechanism in place to refer cases in writing. In view of Audit's recommendation, OFCA and the CC will review whether there is any room to improve the existing case referral mechanism. OFCA will meet with the CC in June to discuss the above matters in detail.

Part 3: Enforcement Work Against Unsafe Goods, and Short Weights and Measures

Question 8

Based on the situation mentioned in paragraph 3.10, does C&ED recognize the need to gather up-to-date intelligence about companies/products to enhance the efficiency of spot checks on shops conducted under the Consumer Goods Safety Ordinance (Cap. 456) and the Toys and Children's Products Safety Ordinance (Cap. 424)? If yes, what measures will be undertaken by C&ED and when will such measures be implemented to improve the situation? If no, what are the reasons for that?

The Administration's Reply

The C&ED agrees to Audit's recommendation and has formulated new guidelines to enhance the efficiency of spot checks on shops. According to the new guidelines, frontline officers have to update the information on the Company/Product List within three working days if target shops are found to be closed or vacated during spot checks. In addition, the C&ED has also formulated guidelines on spot checks in the quarterly work plans, giving clear instructions to frontline officers that if they fail to test buy the target goods because they are sold out or there are insufficient stock at a specified shop, they can test buy other goods of the same category at that shop or test buy the target goods at nearby shops instead, so as to enhance the efficiency of spot checks.

Question 9

According to paragraph 3.11, the number of spot checks on online sales was much lower than that of spot checks on retail shops. Please advise whether C&ED will set a yearly quota or percentage of spot checks for online sales, having regard to the growing popularity of online sale transactions.

The Administration's Reply

The types of toys, children's products and consumer goods on the market change rapidly and so do their modes of sale. The C&ED agrees with Audit's relevant recommendation and will proactively increase the number of spot checks on online sale by adopting a risk-based management approach, so as to address the growing popularity of online sale transactions. As the modes of sale on the market continue to evolve, in order to ensure the effective use of resources and maintain flexibility, the C&ED considers it not suitable to set a fixed quota or percentage of spot checks for individual mode of sale. The C&ED will closely monitor and study different behaviours and modes of sale, shopping habits of the public and trends of goods, and will adopt the most effective approach of spot checks to enhance the detection of unsafe products supplied in various ways.

Part 4: Other Consumer Protection Measures

Question 2 and Question 12

According to paragraph 4.28, OFCA said that the availability of various measures to address issues of billing disputes had resulted in a decrease in the number of the complaints received by OFCA and the cases eligible for referral to the Customer Complaint Settlement Scheme ("CCSC"). Apart from exploring ways to promote the usage of CCSC and reviewing the target level of the two performance indicators, as stated in the response in paragraph 4.31, will the Administration consider reviewing and adjusting the current funding provision for CCSC in order to optimize the use of public money?

The Administration's Reply

The Customer Complaint Settlement Scheme ("CCSS") helps resolve billing disputes in deadlock between customers and their telecommunications operators by means of mediation. The CCSS was set up by the Communications Association of Hong Kong to provide the service. All major telecommunications service providers in Hong Kong have participated in the CCSS. OFCA supports the CCSS by contributing the necessary funding, screening applications against the acceptance criteria, and monitoring the performance and governance of the scheme.

OFCA has been exploring measures with the industry to increase the usage of the CCSS and the target level of the performance indicators. Depending on the effectiveness of the measures to increase the usage of the CCSS, there may be implication on the funding required for the scheme. After implementation of the relevant measures, OFCA will consider factors such as the effectiveness of the measures and review the funding for the CCSS.

Question 3

According to paragraph 4.39, the Consumer Council ("CC") had applied for and obtained from the Commerce and Economic Development Bureau ("CEDB") the necessary funding for taking forward the revamp project of CHOICE magazine. What is the total amount of funding granted? What are the respective amounts of funding to be used in different areas (e.g. marketing, making CHOICE magazine available in digital devices, etc.)? What mechanism has been put in place by the Government to monitor the use of the funding?

The Administration's Reply

In view of the CC's proposed measures to improve the online version of CHOICE Magazine, the Government approved a time-limited allocation of \$9.318 million for three years (\$2.614 million for 2018-19, \$3.209 million for 2019-20 and \$3.495 million for 2020-21) for the setting-up of an online subscription portal, production of multi-media content, search engine optimization, and preparation for the development of a mobile-friendly version, etc.

In addition, three applications were submitted by the CC in 2017 for information technology projects, one of which was the Application Systems for the Project of

Sustainable Development of CHOICE Magazine. The three projects were granted a total funding of \$3.593 million, and \$1.5 million of which will be used for the development of an in-house subscription portal for “CHOICE” Magazine and the development of a mobile-friendly interface for the existing “Online Price Watch” website.

The Government will monitor the use of the government funding in accordance with established mechanism, for example by requesting the CC to report progress of project implementation at regular meetings, and examining the relevant project expenditures during the vetting of the annual budget of the CC.