

立法會
Legislative Council

LC Paper No. CB(4)965/12-13
(These minutes have been seen
by the Administration)

Ref : CB4/SS/7/12

**Subcommittee on Trade Descriptions (Powers Not Exercisable by
Communications Authority) Notice and Trade Descriptions (Unfair Trade
Practices) (Amendment) Ordinance 2012 (Commencement) Notice**

**Minutes of the first meeting
held on Tuesday, 11 June 2013, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon SIN Chung-kai, SBS, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan
Hon Alan LEONG Kah-Kit, SC
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Charles Peter MOK
Hon TANG Ka-piu

Member absent : Hon CHAN Han-pan

Public officers attending : Agenda item II

Mr Joe WONG
Deputy Secretary for Commerce and Economic
Development (Communications & Technology)

Mr Sanda CHEUK
Assistant Director (Market & Competition)
Office of the Communications Authority

Miss Elaine HUI
Head, Market & Competition 1
Office of the Communications Authority

Mrs Alice CHEUNG
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 3

Ms Manda CHAN
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Special Duties

Mr CHAN Chi-keung
Head of Trade Controls
Customs and Excise Department

Mr LAM Po-chuen
Head of Trade Descriptions Ordinance Special
Planning Group
Customs and Excise Department

Mr Manuel NG
Senior Government Counsel (Acting)
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (4)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Ms Anki NG
Council Secretary (4)3

Action

I. Election of Chairman

Mr SIN Chung-kai was elected Chairman of the Subcommittee.

Action

II. Meeting with the Administration

(L.N. 71 of 2013 and L.N. 72 of 2013 -- Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice (L.N. 71 of 2013) and Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice (L.N. 72 of 2013)

Ref: CITBCR 05/08/1 -- Legislative Council Brief on Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice issued by the Commerce and Economic Development Bureau on 22 May 2013

Ref: CITBCR 05/08/1 -- Legislative Council Brief on Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice issued by the Commerce and Economic Development Bureau on 22 May 2013

LC Paper No. LS56/12-13 -- Legal Service Division Report

LC Paper No. CB(4)767/12-13(01) -- Background brief prepared by the Legislative Council Secretariat)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

3. The Administration was requested to provide the following information:

- (a) a copy of the final draft of the enforcement guidelines for the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("the Amendment Ordinance"); and
- (b) a copy of the latest draft of the memorandum of understanding to be signed between the Commissioner of Customs and Excise and the Communications Authority for the purpose of clear delineation of work and coordinating the performance of their functions under the Trade Descriptions Ordinance (Cap. 362) upon the commencement of the Amendment Ordinance.

(Post-meeting note: the Administration's information was issued to members vide LC Papers Nos. CB(4)786/12-13(02) and CB(4)819/12-13(01) on 17 and 21 June 2013 respectively.)

Legislative timetable

4. To allow sufficient time for the Subcommittee to study the Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice (L.N. 71) ("the Notice") and the Amendment Ordinance 2012 (Commencement) Notice (L.N. 72) ("the Commencement Notice"), members agreed that the Chairman should move a motion at the Council meeting of 19 June 2013 to extend the scrutiny period of the Notice and the Commencement Notice to the Council meeting of 17 July 2013.

II. Any other business

5. The Chairman advised that a further meeting might be scheduled in late June/early July 2013 upon receipt of the requisite information provided by the Administration.

6. There being no other business, the meeting ended at 6:05 pm.

**Proceedings of the first meeting of
Subcommittee on Trade Descriptions (Powers Not Exercisable by Communications
Authority) Notice and Trade Descriptions (Unfair Trade Practices) (Amendment)
Ordinance 2012 (Commencement) Notice
on Tuesday, 11 June 2013, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000101 – 000200	Mr WONG Ting-kwong Ms Cyd HO Mr SIN Chung-kai Mr Charles Peter MOK Mr MA Fung-kwok Mr TANG Ka-piu	Election of Chairman	
000201 – 000330	Chairman	Opening remarks by the Chairman	
000331 – 000801	Chairman Administration	Briefing by the Administration	
000802 – 001557	Chairman Mr MA Fung-kwok Administration	<p>Mr MA Fung-kwok enquired about the measures taken by the Administration to raise public awareness of prohibited unfair trade practices. He also enquired whether there was any referral mechanism between the enforcement agencies on the handling of complaint cases suspected of violations of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("the Amendment Ordinance") and the enforcement mechanism put in place by the Customs and Excise Department ("C&ED").</p> <p>The Administration advised that during the consultation period of the draft enforcement guidelines for the Amendment Ordinance, consultation sessions had been held to assist traders in understanding the requirements of the Amendment Ordinance and to seek their views on the draft enforcement guidelines. In addition, weekly articles on the new offences under the Amendment Ordinance were published on free newspapers for seven consecutive weeks, and Announcement in the Public Interest had been broadcast on television. Besides, the Consumer Council ("CC") would produce video episodes on the new offences for broadcasting through various channels (e.g. roving exhibitions in shopping malls and Roadshow) to strengthen publicity and public</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>education. CC and the law enforcement agencies would also conduct seminars on the new offences for traders, schools, district councils, etc. The Administration would continue to step up the publicity and public education efforts and consumer empowerment initiatives before and after the commencement of the Amendment Ordinance.</p> <p>The Administration advised that arrangements on referral of complaints were currently available among C&ED, the Office of the Communications Authority ("OFCA") and the CC. A memorandum of understanding ("MoU") would be signed between the Commissioner of Customs and Excise ("C of C&E") and the Communications Authority ("CA") for clear delineation of work upon the commencement of the Amendment Ordinance. In addition, C&ED and OFCA were working with CC on strengthening the arrangements for handling complaints such that suspected violations of the Amendment Ordinance would be handled promptly by the enforcement agencies. For cases not concerned with suspected violations, CC would follow the current approach and provide advice to complainants and assist in conciliating between them and the traders concerned. On the enforcement mechanism, regular inspections of traders' premises and targeted spot checks would be conducted by C&ED in addition to follow-up actions on complaints lodged by the public relating to suspected violations of the Amendment Ordinance.</p>	
001558 – 004546	Chairman Ms Cyd HO Administration ALA	<p>In response to Ms Cyd HO's enquiry, the Administration advised that taking account of the views received during the consultation period, the Administration had revised the draft enforcement guidelines for the Amendment Ordinance by providing more detailed explanations on law enforcement priorities, enforcement tools, legal liabilities and available statutory defences; rendering the guidelines in individual chapters clearer; including more examples in respect of individual offences; and suggesting good practices for traders' reference.</p> <p>Ms Cyd HO enquired about the respective enforcement powers exercisable by C&ED under the Telecommunications Ordinance (Cap. 106) ("TO"), the Broadcasting Ordinance (Cap. 562)</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>("BO") and the Amendment Ordinance in terms of the regulation of telecommunications and broadcasting licensees.</p> <p>The Administration advised that the enforcement powers exercisable by C&ED and CA under the Trade Descriptions Ordinance (Cap. 362) ("TDO") as amended by the Amendment Ordinance were separate and distinct from those exercisable by CA under the TO and the BO. The enforcement agencies would exercise their respective powers in accordance with the provisions under the TDO as amended by the Amendment Ordinance and the enforcement guidelines. The jurisdiction conferred upon CA by the new section 16E(3) under the Amendment Ordinance was confined to enforcement in relation to commercial practices of telecommunications and broadcasting licensees under the TO or the BO that were directly connected with the provision of the relevant licensed services. In cases where the prohibited trade practices were related to the telecommunications and/or broadcasting services bundled with goods/other services, C&ED might conduct joint operations with OFCA in taking enforcement actions, with OFCA providing the required expertise and technical support.</p> <p>The Administration supplemented that when the Amendment Ordinance came into force, section 7M of the TO which prohibited a licensee from engaging in any misleading or deceptive conduct in providing, acquiring, promoting, marketing or advertising telecommunications networks, systems, installations, customer equipment or services would be repealed. Major categories of misleading or deceptive conduct that were covered by section 7M of the TO would be covered by the fair trading provisions under the TDO as amended by the Amendment Ordinance. In addition, wider protection would be offered to cover the conduct of aggressive commercial practices, which currently did not fall within the scope of section 7M of the TO.</p> <p>Enforcement powers exercisable by C&ED and CA (Paragraphs 6 and 8 of LC Paper No. LS56/12-13.)</p> <p>Discussion on cooling-off period.</p>	

Time marker	Speaker	Subject(s)	Action required
004547 – 005415	Chairman Mr TANG Ka-piu Administration	<p>Mr TANG Ka-piu enquired about the procedure for amending the enforcement guidelines for the Amendment Ordinance, and whether complaints relating to suspected violations of the Amendment Ordinance could be lodged before its commencement.</p> <p>The Administration advised that section 16BA of the TDO as amended by the Amendment Ordinance had provided for the amendment or revocation of the enforcement guidelines. In general, the C of C&E might amend any such guidelines but must consult any persons that he considered appropriate before issuing the amendments. There was similar provision for issue and amendment of enforcement guidelines by CA pursuant to section 16H of the TDO as amended by the Amendment Ordinance.</p> <p>In response to Mr TANG Ka-piu's enquiry, the Administration advised that continued efforts, including launching promotional campaigns, would be made to educate the public on the Amendment Ordinance. CC had maintained close liaison and collaboration with C&ED in promoting compliance with TDO and the existing co-operation arrangements had proved to be effective. CC would continue to make appropriate referrals to the corresponding enforcement agencies on receiving complaints relating to suspected violations of the Amendment Ordinance.</p>	
005416 – 010439	Chairman Mr YIU Si-wing Administration	<p>Mr YIU Si-wing was concerned about the compliance with the Amendment Ordinance by various sectors, in particular small and medium sized enterprises ("SMEs"). As the modes of operation varied in different sectors, he enquired about the areas of consultation made under the draft enforcement guidelines and the sectors which had been consulted, and the publicity efforts to be made after the commencement of the Amendment Ordinance.</p> <p>The Administration advised that about 20 consultation forums/sessions were conducted on the draft enforcement guidelines from December 2012 to March 2013 for District Councils, trade associations, chambers of commerce, SMEs and individual business operators, etc., covering various sectors including beauty and fitness, telecommunications and broadcasting,</p>	

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		<p>pharmaceutical products, tourism, electrical appliances, advertising, jewellery, dried seafood and group purchases. Educational websites would be established by the enforcement agencies and CC, and dedicated radio programmes might be produced.</p> <p>Civil compliance-based mechanism.</p>	
010440 – 011810	Chairman Mr Charles Peter MOK Administration	<p>In response to Mr Charles Peter MOK's enquiry about the date of repeal of section 7M of the TO, the Administration advised that upon the commencement of the Amendment Ordinance on 19 July 2013, section 7M of the TO would be repealed (see section 37 of the Amendment Ordinance). Any misleading or deceptive conduct relating to telecommunications services that took place before 19 July 2013 would be covered by section 7M of the TO, whereas any unfair trade practices relating to telecommunications or broadcasting services that took place on or after that date would be covered by the Amendment Ordinance.</p> <p>The Chairman and Mr Charles Peter MOK expressed concern about the exercise of powers by C&ED over the telecommunications and broadcasting services sectors under the Amendment Ordinance. The Administration advised that the existing powers exercisable by C&ED in respect of goods as stipulated under the extant TDO, which would cover services upon commencement of the Amendment Ordinance, were not amended by the Amendment Ordinance. They generally covered the prohibited trade practices in respect of goods and services, including telecommunications and broadcasting services. C&ED must exercise its powers in strict accordance with the legislative provisions, having regard to the circumstances of the cases. The powers to be exercised by CA would be subject to section 16E(2) of the Amendment Ordinance. In cases where the prohibited trade practices were related to the telecommunications and/or broadcasting services bundled with goods/other services, C&ED might conduct joint operations with OFCA in taking enforcement actions, with OFCA providing the required expertise and technical support. The details of such co-operations would be set out in the MoU.</p>	The Administration to take follow up action as detailed in paragraph 3 of the minutes.

Time marker	Speaker	Subject(s)	Action required
011811 – 012220	Chairman Mr Yiu Si-wing Administration	<p>Mr Yiu Si-wing enquired about when and how the enforcement guidelines for the Amendment Ordinance would be reviewed.</p> <p>The Administration advised that the law enforcement agencies would, in the light of enforcement experience upon commencement of the Amendment Ordinance and changes in market practices, consider whether the enforcement guidelines should be adjusted. In the meantime, there was no pre-set date for reviewing the enforcement guidelines.</p> <p>Mr Yiu Si-wing urged the Administration to enhance communication with the various sectors in the implementation of the Amendment Ordinance. The Chairman requested that the Administration should provide a progress update to the relevant Panel on the implementation of the Amendment Ordinance six to nine months after the commencement date.</p>	
012221 – 013015	Chairman Ms Cyd HO Administration	Discussion on the drafting of section 2 of the Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice (L.N. 71) in relation to section 15(1)(b) of the TDO.	
013016 – 013548	Chairman Mr Yiu Si-wing Administration Ms Cyd HO	<p>Legislative timetable and extension of the scrutiny period.</p> <p>Members agreed that it was unnecessary to invite public views on L.N. 71 and L.N. 72.</p>	