

## LEGISLATIVE COUNCIL BRIEF

Trade Descriptions Ordinance  
(Chapter 362)

### Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice

#### INTRODUCTION

At the meeting of the Executive Council on 14 May 2013, the Council ADVISED and the Chief Executive ORDERED that the Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice (the Notice) at Annex A should be made pursuant to the new section 16E(2) of the Trade Descriptions Ordinance (Cap. 362) (the Ordinance).

#### JUSTIFICATIONS

2. The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Ord. No. 25 of 2012) (the Amendment Ordinance) extends the coverage of the Ordinance so as to prohibit specified unfair trade practices in the market, including false trade descriptions of services, misleading omissions, aggressive commercial practices, bait-and-switch, bait advertising and wrongly accepting payment. The Amendment Ordinance was passed by the Legislative Council (LegCo) on 17 July 2012. For the commencement of the Amendment Ordinance, we are finalizing the enforcement guidelines, and have drawn up a manpower deployment plan, a publicity plan and an enforcement strategy. We plan to bring the Amendment Ordinance into operation on 19 July 2013.

3. While the Customs and Excise Department (C&ED) is the principal agency responsible for enforcing the Ordinance, in the light of the existing regulatory regimes governing the provision of broadcasting and telecommunications services, the new section 16E of the Ordinance (added by section 27 of the Amendment Ordinance) confers upon the Communications Authority (CA) concurrent jurisdiction over commercial practices of licensees under the Telecommunications Ordinance (Cap. 106) (TO) and the Broadcasting Ordinance (Cap. 562) (BO) that are directly connected with the provision of

telecommunications or broadcasting services (as the case may be).

### **Powers not Exercisable by CA**

4. The concurrent jurisdiction conferred upon CA is confined to commercial practices of telecommunications and broadcasting licensees under TO or BO that are directly connected with the provision of the relevant licensed services. Certain powers conferred on an authorized officer under the Ordinance, such as those pertaining only to goods, are not necessary for CA to discharge its statutory functions under section 16E(3) of the Ordinance. Section 16E(2) of the Ordinance empowers the Chief Executive in Council to specify by notice published in the Gazette powers that are **not** exercisable by CA<sup>1</sup> in its enforcement as provided for under section 16E(3). The notice that may be made under section 16E(2) is subsidiary legislation which is subject to “negative vetting” by LegCo.

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5. The powers to be excised by the Notice are detailed at **Annex B**.

### **Division of Work between Enforcement Agencies**

6. With a view to enforcing the Ordinance effectively and ensuring that every actionable case is taken up by the appropriate party, the two enforcement agencies have worked out a clear delineation of work. Generally speaking, in accordance with section 16E of the Ordinance, CA will take up cases in which suspected violations relate to the provision of licensed telecommunications or broadcasting services under TO or BO. All other cases, including those in which suspected violations relate to goods (or goods bundled with services), will be taken up by C&ED (which has jurisdiction over the commercial practices of all traders of goods and services, including telecommunications and broadcasting licensees). If any of such bundled cases involve the provision of licensed telecommunications or broadcasting services under TO or BO, the Office of the Communications Authority (OFCA), the executive arm of CA, will provide professional advice and assistance to C&ED during enforcement actions.

7. The Amendment Ordinance empowers the Commissioner of Customs and Excise (the Commissioner) and CA to enter into a memorandum of understanding for the purpose of coordinating the performance of their functions. The Commissioner and CA are finalizing and will publicize the memorandum

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<sup>1</sup> Powers under Part IIIA of the Ordinance (which are in relation to trade marks) are not exercisable by CA in any event, by virtue of section 16E(1).

upon the commencement of the Amendment Ordinance. On a practical level, after the Amendment Ordinance is brought into operation, C&ED and OFCA will liaise closely with each other to exchange operational experience and ensure consistency in enforcement efforts and standards.

## **THE NOTICE**

8. The main provisions of the Notice are as follows –
- (a) **Section 1** stipulates that the Notice will come into operation on the day on which the relevant section of the Amendment Ordinance comes into operation; and
  - (b) **Section 2** sets out in detail the powers which are not exercisable by CA.

## **LEGISLATIVE TIMETABLE**

9. The legislative timetable will be –

Publication in the Gazette	24 May 2013
Tabling of the Notice at LegCo for negative vetting	29 May 2013
Commencement Date	19 July 2013

10. This legislative timetable tallies with the implementation of the Amendment Ordinance.

## **IMPLICATIONS OF THE PROPOSAL**

11. The Notice is in conformity with the Basic Law including the provisions concerning human rights. The Notice itself does not have any economic, environmental, family or sustainability implication. The binding effect of the Ordinance will not be affected by the Notice. Parties involved (including C&ED, OFCA, the Department of Justice, the Government Laboratory and the Consumer Council) will deploy existing resources or have been allocated resources respectively to cope with the additional workload arising from the implementation of the Amendment Ordinance.

## **PUBLIC CONSULTATION**

12. CA was consulted on 8 September 2012. It notes that the Notice is prepared in accordance with the approach enshrined in the Amendment Ordinance so as to confer on CA only such enforcement powers that are necessary for it to discharge its functions under the Ordinance. The LegCo Panel on Economic Development was briefed at its meeting on 11 December 2012 and had no adverse comments on the proposal.

## **PUBLICITY**

13. This LegCo brief and a press release were issued on 22 May 2013. A spokesman is available to answer media and public enquiries.

## **BACKGROUND**

14. The Ordinance presently prohibits only false trade descriptions of goods. There have been strong public demands for extending the application of the Ordinance to prohibit other types of unfair trade practices against consumers. In response to these concerns, we consulted the public in mid-2010 on a package of proposed legislative amendments to the Ordinance, which sought to tackle specified types of unfair trade practices that might be deployed in consumer transactions. With general public support, we introduced the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 into LegCo on 29 February 2012. The Bill was enacted on 17 July 2012. During LegCo's scrutiny, we undertook to bring the Amendment Ordinance into operation in 2013.

## **ENQUIRY**

15. Any enquiry on this brief may be addressed to Ms Manda Chan, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) Special Duties, at 2810 2969.

**Commerce, Industry and Tourism Branch**  
**Commerce and Economic Development Bureau**  
**22 May 2013**

## Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice

(Made by the Chief Executive in Council under section 16E(2) of the Trade Descriptions Ordinance (Cap. 362) as added by section 27 of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (25 of 2012))

### 1. Commencement

This Notice comes into operation on the day on which section 27 of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (25 of 2012) comes into operation.

### 2. Powers not exercisable by Communications Authority

(1) Subject to subsection (2), the powers conferred on an authorized officer under the following sections of the Ordinance are not exercisable by the Communications Authority—

- (a) section 15(1)(a);
- (b) section 15(1)(b);
- (c) section 15(1)(c);
- (d) section 15(1)(e);
- (e) section 15(1)(f)(i);
- (f) section 15(2);
- (g) section 16A; and
- (h) section 16B.

(2) Subsection (1)(b) does not apply to an authorized officer's power to enter any non-domestic premises under section 15(1)(b) of the Ordinance.

Clerk to the Executive Council

COUNCIL CHAMBER

2013

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### **Explanatory Note**

Under new section 16E(1) and (3) of the Trade Descriptions Ordinance (Cap. 362) (*the Ordinance*) as added by the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (25 of 2012), the Communications Authority may, subject to new section 16E(2) of the Ordinance, exercise any of the powers conferred on an authorized officer under the Ordinance (other than Part IIIA) in relation to any commercial practices of licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562) that are directly connected with the provision of a telecommunications service or broadcasting service under the relevant Ordinance. New section 16E(2) of the Ordinance provides that the Chief Executive in Council may, by notice published in the Gazette, specify powers covered by new section 16E(1) of the Ordinance that are not exercisable by the Communications Authority.

2. This Notice specifies those powers conferred on an authorized officer under the Ordinance that are not exercisable by the Communications Authority.
3. This Notice comes into operation on the day on which new section 16E of the Ordinance comes into operation.

**Trade Descriptions (Powers Not Exercisable by  
Communications Authority) Notice**

**List of Powers not Exercisable by  
Communications Authority (CA) under the Notice**

<b>Section</b>	<b>Power not Exercisable by CA</b>	<b>Remarks</b>
15(1)(a)	All powers in the subsection	The powers under this section to purchase goods are unrelated to the scope of CA's jurisdiction.
15(1)(b)	Power to inspect goods	While the power to inspect goods under this section is unrelated to the scope of CA's jurisdiction, the power to enter non-domestic premises under the same section should be exercisable by CA in its performance of enforcement work in relation to telecommunications and broadcasting services.
15(1)(c)	All powers in the subsection	The powers under this section to seize or detain goods are unrelated to the scope of CA's jurisdiction.
15(1)(e)	All powers in the subsection	The powers under this section to enter, stop or search premises or vehicles in relation to offending goods are unrelated to the scope of CA's jurisdiction.
15(1)(f)(i)	All powers in the subsection	The powers under this section to seize, remove or detain offending goods are unrelated to the scope of CA's jurisdiction.

<b>Section</b>	<b>Power not Exercisable by CA</b>	<b>Remarks</b>
15(2)	All powers in the subsection	The powers under this section in relation to the use of force are either unrelated to the scope of CA's jurisdiction or are not necessary for the exercise of CA's jurisdiction.
16A	All powers in the section	The powers under this section to lock or seal premises or containers are unrelated to the scope of CA's jurisdiction.
16B	All powers in the section	The powers under this section to arrest are not necessary for the exercise of CA's jurisdiction.