

立法會
Legislative Council

LC Paper No. CB(4)1262/15-16
(These minutes have been seen
by the Administration)

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Panel on Economic Development

Minutes of meeting
held on Monday, 23 May 2016, at 10:45 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon James TIEN Pei-chun, GBS, JP (Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP (Deputy Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Albert CHAN Wai-yip
Hon Frankie YICK Chi-ming, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Gary FAN Kwok-wai
Hon Charles Peter MOK, JP
Hon CHAN Yuen-han, SBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

Members attending : Hon LEUNG Kwok-hung
Hon KWOK Wai-keung

Members absent : Dr Hon LEUNG Ka-lau
Hon Steven HO Chun-yin, BBS

Public Officers attending : Agenda item IV
Commerce and Economic Development Bureau
Mrs Alice CHEUNG, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)³

Customs and Excise Department

Mr Roy TANG, JP
Commissioner of Customs and Excise

Mr LAM Po-chuen
Head of Trade Controls

Ms Louise HO
Assistant Commissioner (Intelligence and
Investigation)

Office of the Communications Authority

Miss Elaine HUI
Assistant Director (Market and Competition)

Mr Kingsley YEUNG
Head, Market and Competition 2

Clerk in attendance : Ms Shirley CHAN
Chief Council Secretary (4)5

Staff in attendance : Ms Shirley TAM
Senior Council Secretary (4)5

Ms Lauren LI
Council Secretary (4)5

Ms Zoe TONG
Legislative Assistant (4)5

I. Confirmation of minutes of meetings

(LC Paper No. CB(4)995/15-16 — Minutes of meeting on 22 February 2016)

The minutes of the meeting held on 22 February 2016 were confirmed.

II. Information papers issued since the last regular meeting

(LC Paper No. CB(4)882/15-16(01) — Letter from Hon TANG and LC Paper No. CB(4)934/15-16(01) Ka-piu dated 13 April 2016 on a media report relating to local oil prices (Chinese version only), and the Administration's response dated 29 April 2016)

LC Paper No. CB(4)920/15-16(01) — Administration's response to the submission from the Joint Alliance of Public Cargo Working Area dated 24 March 2016 on outcome of the review on Public Cargo Working Areas as set out in LC Paper No. CB(4)802/15-16(01)

LC Paper No. CB(4)937/15-16(01) — Administration's paper on tables and graphs showing the import and retail prices of major oil products from April 2014 to March 2016

LC Paper No. CB(4)929/15-16(01) — Administration's response to the letter from Hon WONG Yuk-man dated 6 April 2016 addressed to the Public Accounts Committee on the new Air Traffic Control System as set out in LC Paper No. CB(4)859/15-16(01)

LC Paper No. CB(4)999/15-16(01) — Letter from Hon WONG Yuk-man dated 5 May 2016 addressed to the Public Accounts Committee on the new Air Traffic Control System (Chinese version only)

LC Paper No. CB(4)1014/15-16(01) — Letter from Hon CHAN Yuen-han dated 19 April 2016 on diversified development of industries in Hong Kong (Chinese version only))

2. Members noted the above papers issued since the last regular meeting.

III. Items for discussion at the next meeting

(LC Paper No. CB(4)993/15-16(01) — List of outstanding items for discussion

LC Paper No. CB(4)993/15-16(02) — List of follow-up actions

LC Paper No. CB(4)992/15-16(01) — Letter from Hon TANG Ka-piu dated 12 May 2016 on issues relating to domestic liquefied petroleum gas (Chinese version only))

3. Members agreed to discuss the following items at the next regular meeting scheduled for Monday, 27 June 2016 at 10:45 am –

- (a) Review of fees and charges under the Hong Kong Air Navigation (Fees) Regulations (Cap. 448D) and the Civil Aviation (Aircraft Noise) (Certification) Regulations (Cap. 312A); and
- (b) Prices of domestic liquefied petroleum gas.

IV. Implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

(LC Paper No. CB(4)993/15-16(03) — Administration's paper on implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

LC Paper No. CB(4)993/15-16(04) — Paper on implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(4)860/15-16(01) — Letter from Hon TANG Ka-piu dated 6 April 2016 on provision of a mandatory cooling-off period for consumer contracts involving pre-payment for services (Chinese version only)

Presentation by the Administration

4. At the invitation of the Chairman, the Commissioner of Customs and Excise ("the Commissioner") briefed members on the latest progress of implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012, including the measures adopted to enforce the Trade Descriptions Ordinance (Cap. 362) ("the Ordinance") and the handling of complaints concerned. Details were set out in the Administration's paper (LC Paper No. CB(4)993/15-16(03)).

Discussion

Introducing the provision of cooling-off period

5. Mr TANG Ka-piu was concerned about the increasing number of complaints relating to the public being misled, deceived or even coerced by staff members of fitness centres into signing contracts for the purchase of services and some cases involved a substantial amount of payment. Some of the victims were housewives, inexperienced young people, and people with intellectual disabilities or ex-mental illnesses who had difficulty in providing

evidence to prove that they had been harassed or threatened when purchasing a product or service. On the other hand, the trade practitioners might face a higher risk of being prosecuted under the Ordinance when they were required to achieve a high sales target. In order to strengthen the protection for consumers' rights whilst avoiding trade practitioners from infringing the Ordinance, he suggested implementing a mandatory cooling-off period arrangement for consumer contracts involving pre-payment for services, under which consumers might unconditionally cancel the contracts during the cooling-off period and receive a full refund of the paid fees.

6. Deputy Secretary for Commerce and Economic Development (Commerce and Industry) ("DSCED(CI)") responded that the issue of imposing a mandatory cooling-off period was widely discussed in the community during the public consultation on the legislative proposals to combat unfair trade practices in 2010 to 2011, and the Administration had communicated with different stakeholders on the topic. While the Government appreciated that consumers might have aspirations for a cooling-off period, certain fundamental issues that should be considered in relation to implementing a cooling-off period were not simple and were controversial, such as whether a mandatory cooling-off period should generally apply to all goods and services, how small-value transactions should be handled, whether consumers could enjoy the goods and services concerned during the cooling-off period, and whether consumers had enjoyed part of the goods and services concerned during the cooling-off period should be required to pay for the enjoyed part if they requested to cancel the transaction, and how the payment should be computed etc. Some practical issues also should not be disregarded, including how consumers should exercise the contract cancellation right and how refund should be made etc. Some trades considered that a mandatory cooling-off period would only increase the costs for honest traders but would have little deterrent effect on unscrupulous traders. Taking the aforementioned issues into account, the Administration considered that it was necessary to consider the matter carefully.

7. Dr Fernando CHEUNG was disappointed about the Administration's explanation and considered that provision of statutory cooling-off period was essential to protect consumers, especially for those with intellectual disabilities. He added that such measure was adopted in many overseas countries and the Consumer Council ("CC") had also expressed support for the introduction of cooling-off period in Hong Kong.

8. Sharing a similar view, Mr WU Chi-wai did not accept the Administration's explanation. He suggested that such measure could be initially imposed on consumer contracts involving pre-payment for services or goods as these contracts always involved large amount of payment.

9. DSCED(CI) responded that according to her understanding, some jurisdictions imposed a cooling-off period on certain types of transactions, such as purchases made through the Internet or door-to-door sales. She added that a cooling-off period might not address the problem of traders deploying unfair trade practices against consumers with intellectual disabilities since such consumers might have difficulties in exercising such rights. The Administration emphasized that the continued efforts in law enforcement, together with public education on "smart consumption", could combat unfair trade practices at source. The Customs and Excise Department ("C&ED") had organized public education programmes for disadvantaged communities, such as the elderly and the intellectually disabled. She added that the Administration had provided resources to CC to conduct research on various legal issues concerning cooling-off period, making reference to practices in other jurisdictions. It was expected that such research work would be completed in 2017 and the Administration would consider the findings carefully.

10. Miss CHAN Yuen-han was worried that the Administration gave up this measure just because of the objection raised by the commercial sector. She pointed out that some trade practitioners were supportive of the measure and in fact some local large corporations and even small shops had been providing cooling-off periods for their customers. As such, there should not be a problem for requiring all businesses to apply this measure mandatorily.

11. The Commissioner said that some Hong Kong traders provided cooling-off periods for consumers in respect of goods or services on a voluntary basis. He remarked that following the recent enforcement actions taken by C&ED, some fitness centres had begun offering cooling-off periods for their customers. In May 2016, C&ED interviewed the senior management of five major fitness centres and discussed their alleged trade practices. He would continue to communicate with the trade and keep watch on traders' offers of cooling-off periods.

12. Mr Albert CHAN pointed out that relying on the trade to provide cooling-off period on a voluntary basis was ineffective to protect consumers at large. He considered that there was public consensus on imposing a statutory cooling-off period on supply of goods and services. In this regard, he urged the Administration to address the public concern and introduce the said measure to curb unfair trade practices of unscrupulous traders.

13. Mr CHUNG Kwok-pan said that the adoption of pre-payment method in buying goods or services would help consumers save money. He enquired about the measures taken by the Administration to dampen the unfair and high-pressure marketing practices deployed by unscrupulous traders. He trusted that those traders, especially the large ones, being named for deploying high-pressure marketing practices would review thoroughly their marketing strategies to remedy their damaged reputation.

14. Assistant Commissioner (Intelligence and Investigation) added that following C&ED's law enforcement actions, some fitness centres had taken the initiative to enhance their services through, for example, stepping up internal monitoring systems, improving staff training, as well as providing cooling-off periods for consumers.

15. Ir Dr LO Wai-kwok expressed doubt on the effectiveness on self-regulation by the trade given that the problem of unfair trade practices had existed for a long time in various sectors in Hong Kong. Similarly, he also considered enhancement of staff training ineffective as the marketing strategy adopted by staff was ultimately determined by their employers. Sharing other members' views, he supported the implementation of a statutory cooling-off period and said that considerations should be given to the optimal length of the cooling-off period.

16. Mr CHAN Kam-lam considered that the Administration should formulate consumer protection policy from the angle of consumers and take a step forward to devise suitable measures to tackle the problem of unfair trade practices. Given that the introduction of a statutory cooling-off period would change the course of transactions and have significant implications on both traders and consumers, he casted doubt on the overall effectiveness of such measure.

17. Mr KWOK Wai-keung suggested reviewing whether the length of contract period for pre-paid services could be capped in order to reduce the associated impacts.

Complaints and enforcement actions

18. Mr SIN Chung-kai asked for more information about the prosecution cases handled by C&ED. He also considered that the prosecution rate was too low with respect to the number of complaints received by C&ED. In response, the Commissioner explained that C&ED had received 16 424 complaints from 19 July 2013 to 30 April 2016, and launched detailed investigation into

8 787 complaints. These complaints, together with the cases proactively developed by C&ED, had been consolidated into 1 432 detailed investigation cases. Of these, C&ED had completed investigations on 1 363 cases. Among the 1 363 investigated cases, 927 were closed due to insufficient evidence. C&ED initiated prosecution on 220 cases or 16% of the total cases, with 95% of them resulting in successful prosecutions. Seven of the prosecution cases were related to supply of services and all of them were prosecuted successfully. The remaining prosecution cases were related to supply of goods with 95% of them being prosecuted successfully.

19. The Commissioner added that although C&ED had received a total of 16 424 complaints during the said period, about 6 000 of them involved no contravention of the Ordinance, some of which involved exempt persons as set out in Schedule 3 of the Ordinance. In addition, among the 8 787 complaints which followed by detailed investigation, some involved the same traders and were hence processed as one investigation case. As such, it was not suitable to deduce the prosecution rate on the basis of the number of complaints.

20. In response to Mr SIN Chung-kai's further enquiry, the Commissioner added that for those cases without prosecution, C&ED had (a) issued warning or advisory letters to the owners and sales staff concerned, or (b) applied to the court for forfeiture of the goods concerned without initiating prosecution, or (c) accepted written undertakings from traders of ceasing the trade conduct concerned. Cases involving warning or advisory letters or forfeiture of the goods were those unlikely to be prosecuted successfully in accordance with the advice of the Secretary for Justice ("SJ"). In respect of the cases with the acceptance of written undertakings, C&ED had sought SJ's written consent and also took into account if the traders would honour the commitment in the undertakings. In addition, the traders were also required to admit that they might have contravened the provisions of the Ordinance, and set out a compliance plan for themselves as well as their employees to comply with the Ordinance. C&ED would take immediate enforcement actions on them if further incompliance was found.

21. Mr Paul TSE also considered that the prosecution rate was rather low. He worried that the penalties imposed on convicted cases were too lenient and the enforcement actions were not adequate to achieve the deterrent effect on unscrupulous traders whilst not affecting honest traders. In this regard, he urged the Administration to review the enforcement tools and make appeals on cases as appropriate. The Commissioner stressed that penalties for each case were decided by the court. The Department of Justice might make appeals on cases with sufficient grounds.

22. Mr WU Chi-wai queried whether C&ED had taken any enforcement actions in a proactive manner apart from acting on complaints. Mr Paul TSE enquired about the C&ED's considerations for conducting investigations on its own initiative. The Commissioner responded that C&ED developed its own investigation cases and also conducted some 2 600 inspections on traders of various sectors since the full commencement of the Ordinance, averaging 70 to 80 inspections per month.

23. Mr WU Chi-wai asked further if there were any investigation cases concerning financial intermediaries adopting bait advertising and misleading tactics for their money lending services. The Commissioner responded that there had not been prosecution cases of financial intermediaries under the Ordinance, because the cases were referred to the Police for investigation of business fraud or offences under the Money Lenders Ordinance (Cap. 163).

24. Noting that some members of the public had lodged complaints about unfair trade practices to Members instead of relevant authorities, Mr CHAN Kam-lam urged the Administration to step up its publicity about its complaint handling mechanism so as to enhance the public confidence in its enforcement determination. In addition, he also requested the Administration to review the Government policy and the Ordinance to enhance the consumer protection in respect of, for example, unfavourable contract terms commonly used by the telecommunications sector and matters receiving frequent complaints but were found no contravention of the Ordinance.

Unfair trade practices relating to tourism

25. Mr YIU Si-wing enquired about the enforcement actions taken to combat the issues arising from Mainland tourists joining zero/negative fare tours who were coerced to shop in Hong Kong, as this problem had caused adverse impact on the tourism sector. Mr Paul TSE enquired if the Administration would make special arrangements for handling complaint cases made by tourists.

26. The Commissioner responded that C&ED would continue to conduct surprise checks at shops registered with Travel Industry Council of Hong Kong, and distribute leaflets to Mainland visitors at tourist spots during major Mainland holiday periods. Visitors lodging complaints relating to the Ordinance would be attended to within 24 hours by the Quick Response Team of C&ED.

27. Mr YIU Si-wing also queried about the measures adopted by the authorities to tackle the enforcement difficulties as a result of the non-cooperation movement launched by travel agents and tourist guides in response to the Government measures to combat problems arising from zero/negative tour fares and coerced shopping. The Administration undertook to give a written response after the meeting.

(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(4)1120/15-16(01) on 14 June 2016.)

28. Miss CHAN Yuen-han opined that since a corresponding law had been introduced in the Mainland to prohibit tourists from joining zero/negative tours, implementing statutory requirement on provision of cooling-off period in Hong Kong could help strengthen the protection on tourists and combat issues arising from Mainland tourists joining zero/negative tours.

Unfair trade practices relating to the placement services of foreign domestic helpers

29. Mr KWOK Wai-keung expressed concern about the quality of the placement services of foreign domestic helpers ("FDHs") provided by local employment agencies to local employers and enquired whether C&ED had received any relevant complaints. He also asked about how FDH employers could be protected under the law if the employment agencies had provided a false description of FDHs' abilities.

30. In response, the Commissioner said that C&ED had received 128 complaints against employment agencies of FDHs since the full operation of the Ordinance. Two employment agencies were convicted for applying false trade descriptions to their services. The court meted out penalties of \$8,000 and \$20,000 respectively. C&ED was currently investigating into an employment agency suspected of promising to waive part of the agency fee payable by the employer but eventually renegeing.

31. The Commissioner supplemented that apart from false trade descriptions, the Ordinance also prohibited misleading omissions, under which an employment agency might commit an offence if it had omitted material information or provided incorrect information to its customers. Furthermore, the Ordinance also provided for saving for civil rights that a contract for the supply of any goods or service should not be void or unenforceable by reason only of a contravention of the Ordinance.

Others

32. Mr Paul TSE enquired about the protection for consumers purchasing pre-paid vouchers under the law. The Commissioner advised that traders selling pre-paid vouchers might have breached the Ordinance if they applied false trade descriptions on the terms of using the vouchers, or if they accepted payment with no reasonable grounds for believing that they could supply the product.

Motion moved by Mr TANG Ka-piu

33. Mr TANG Ka-piu proposed the following motion which was seconded by Miss CHAN Yuen-han –

"本會促請政府就強制實施冷靜期進行立法，並優先在投訴多、金額大的預繳式服務，例如健身中心和美容業，推行法定冷靜期，讓消費者可在該期限內無條件退款及取消合約，保障消費者，也間接打擊不良和高壓推銷的誘因，最終也保護了相關從業員。"

(Translation)

"That this Panel urges the Government to introduce legislation on imposition of mandatory cooling-off periods, and accord priority to implementing a statutory cooling-off period for pre-paid services involving a lot of complaints and large amount of payment, such as those provided by fitness centres and the beauty industry, so that consumers may unconditionally receive a refund of the paid fees and cancel the contracts during the cooling-off period with a view to protecting consumers' rights, thereby indirectly dampening the incentive to engage in unfair and high-pressure marketing practices, and ultimately safeguarding practitioners of the relevant trades as well."

34. The Chairman ruled that the proposed motion was directly related to the agenda item under discussion and members agreed that the motion should be dealt with at the meeting. The Chairman put the motion to vote. All members present at the meeting voted for the motion. The Chairman declared that the motion was passed.

(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(4)1029/15-16(01) on 24 May 2016. The Administration's response to the motion was issued to members vide LC Paper No. CB(4)1119/15-16(01) on 14 June 2016.)

V. Any other business

35. There being no other business, the meeting ended at 12:11 pm.

Council Business Division 4
Legislative Council Secretariat
26 July 2016