



## 促進市場競爭 加強保障消費者 Facilitating Market Competition and Strengthening Consumer Protection

### 處理和調查有關具誤導性或欺騙性行為的電訊服務投訴

《2012年商品說明(不良營商手法)(修訂)條例》於2013年7月19日生效後，禁止電訊牌照持有人作出具誤導性和欺騙性行為的《電訊條例》第7M條同時被廢除。在過渡安排下，如果牌照持有人在經修訂的《商品說明條例》實施前作出具誤導性或欺騙性的行為，該等行為仍然受《電訊條例》第7M條所規管，並按該條文處理。在2014年4月1日至2015年3月31日期間，通訊辦根據《電訊條例》第7M條的規定，協助通訊局處理了81宗投訴個案，當中一宗個案證實違例。通訊局已向有關牌照持有人施加15萬元罰款。

### 處理和調查電訊與廣播業的競爭投訴及電訊業的合併與收購個案

《電訊條例》第7K、7L和7N條禁止電訊牌照持有人作出反競爭行為，我們根據這些條文，在2014年4月1日至2015年3月31日期間協助通訊局考慮了13宗投訴個案，通訊局在審慎考慮後，決定結束所有個案而不展開調查。同期，我們根據《廣播條例》第13條或14條協助通訊局考慮了兩宗投訴個案，該兩項條文禁止廣播牌照持有人作出反競爭行為。通訊局在審慎考慮後，決定結束這些個案而不展開調查。

另外，通訊局根據《電訊條例》第7P條考慮了兩宗個案，該項條文規管傳送者牌照持有人的合併與收購活動，結論是該等個案並不涉及需要根據第7P條展開調查的事宜。

### 處理和調查違反《商品說明條例》的投訴

經修訂的《商品說明條例》於2013年7月19日起全面實施，涵蓋範圍由商品擴大至包含服務，禁止訂明的不良營商手法，並加強執法機制(統稱為「公平營商條文」)。

除海關負責執法外，通訊局同時獲賦予共享管轄權，就《電訊條例》和《廣播條例》下的持牌人作出與根據相關條例提供電訊服務或廣播服務有直接關連的營業行為，按《商品說明條例》的公平營商條文執法。兩個執法機關已發出執法指引，就公平營商條文的實施向商戶和消費者提供指引，並已簽訂諒解備忘錄，以協調雙方在經修訂《商品說明條例》下履行各自的職能。

在2013年7月19日至2015年3月31日期間，通訊辦共接獲1 486宗根據《商品說明條例》提出的投訴。在這些投訴中，有1 155宗因證據不足以懷疑／證實違反《商品說明條例》或因不屬《商品說明條例》的規管範圍而結案，有105宗投訴在通訊局向有關持牌人發出勸諭信敦促該等持牌人注意有關事宜，並改善向消費者銷售、供應或推廣電訊服務或廣播服務的相關營業行為後，亦已結束。至於餘下的226宗投訴則仍在不同階段的處理中。

## Handling of and Investigations into Telecommunications Complaints about Misleading or Deceptive Conduct

Section 7M of the TO, which prohibits misleading and deceptive conduct by telecommunications licensees, was repealed upon the commencement of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 on 19 July 2013. As a transitional arrangement, if a licensee was engaged in misleading or deceptive conduct at a time prior to the implementation of the amended TDO, such conduct would still be regulated and dealt with under section 7M of the TO. Between 1 April 2014 and 31 March 2015, OFCA assisted the CA in handling 81 complaint cases under section 7M of the TO. One of these cases was confirmed as infringement of the TO, resulting in the imposition of a financial penalty of \$150,000 by the CA on the licensee concerned.

## Handling of and Investigations into Competition Complaints in the Telecommunications and Broadcasting Sectors, and Merger & Acquisition Cases in the Telecommunications Sector

Between 1 April 2014 and 31 March 2015, we assisted the CA in considering 13 complaint cases under section 7K, 7L or 7N of the TO, which prohibits anti-competitive conduct by telecommunications licensees. All the cases were closed after due consideration, with no further investigations. During the same period, we assisted the CA in considering two complaint cases under section 13 or 14 of the BO, which prohibits anti-competitive conduct by broadcasting licensees. After due consideration, all cases were closed with no investigation opened.

We also considered two cases under section 7P of the TO, which oversees merger and acquisition activities involving carrier licensees, and concluded that no issue was raised that required commencement of investigation under section 7P.

## Handling of and Investigations into Complaints about Contravention of TDO

The amended TDO came into full implementation on 19 July 2013, extending the coverage of the TDO from goods to services, prohibiting specified unfair trade practices, and providing for an enhanced enforcement mechanism (collectively known as “fair trading sections”).

The CA is conferred concurrent jurisdiction with the C&ED to enforce the fair trading sections of the TDO in relation to the commercial practices of licensees under the TO and the BO directly connected with the provision of telecommunications and broadcasting services. The two enforcement agencies have issued enforcement guidelines for traders and consumers as to the operation of the fair trading sections, and entered into a memorandum of understanding to co-ordinate the performance of their functions under the amended TDO.

From 19 July 2013 to 31 March 2015, OFCA received a total of 1 486 complaints under the TDO. Of these complaints, 1 155 were closed due to insufficient evidence to suspect/establish a contravention, or they fell outside the scope of the TDO; 105 complaints were closed after the CA issued advisory letters to the licensees concerned to bring to their attention the subject matter and advise them of the need to improve their relevant commercial practices in relation to the sale or supply or promotion of telecommunications or broadcasting services to consumers; and the remaining 226 complaints were under process at various stages.

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## 《非應邀電子訊息條例》的執行事宜

### 拒收訊息登記冊

我們根據《非應邀電子訊息條例》設立了適用於傳真訊息、短訊和預錄電話訊息的三份《拒收訊息登記冊》。除非發送人已取得號碼登記使用者的同意，否則發送人不可發送商業電子訊息到已登記在登記冊上的號碼。截至2015年3月，已有超過270萬個號碼登記在三份登記冊上。除須尊重已在登記冊上登記的使用者的意願外，商業電子訊息發送人亦須遵從《非應邀電子訊息條例》所訂明的多項發送訊息規則，例如發送人必須在商業電子訊息內提供聯絡資料和「取消接收選項」，讓收件人可以聯絡有關發送人，表明不欲再接收商業電子訊息的意願。

在2012/13、2013/14和2014/15年度接獲的懷疑違反《非應邀電子訊息條例》舉報總數分別為2 410宗、1 998宗和2 068宗。雖然2014/15年度的舉報宗數與2013/14年度的數字相若，我們察覺到濫發訊息活動逐漸從利用傳真和預錄電話訊息等傳統方式轉變為使用流動通訊應用程式發送短訊。我們會繼續監察各平台上的發送人遵守有關規定的情況，並理順程序，以便更有效執法。

### 執行條例

我們如收到針對某發送人的舉報數目不超過某個數額，會發出勸諭信，要求發送人遵守《非應邀電子訊息條例》的規定。如我們收到針對某發送人的舉報數目超過該數額，或在發出勸諭信後繼續收到針對同一發送人的舉報，便會進行正式調查，並可能向有關發送人發出警告信。在2014/15年度，我們共發出270封勸諭信和49封警告信。

如發現商業電子訊息發送人持續違反該條例，我們會根據《非應邀電子訊息條例》第38條發出執行通知，指示發送人採取措施糾正違例行為。任何人不遵從向其送達的執行通知，第一次定罪最高可處罰款港幣10萬元。在2014/15年度，我們向一名發送人發出一份執行通知。在報告期內，我們一直積極跟進一名發送人在互聯網透過WhatsApp Messenger平台發送同一宣傳補習導師中介服務短訊的個案。在該個案中，通訊辦累計接獲超過1 000宗舉報。



## Enforcement of the Unsolicited Electronic Messages Ordinance

### *Do-Not-Call Registers*

Under the UEMO, we have established three Do-Not-Call (“DNC”) Registers for facsimile messages, short messages and pre-recorded telephone messages. Commercial electronic messages must not be sent to registered numbers unless the senders have obtained consent from the registered users. By March 2015, more than 2.7 million numbers were registered with these three DNC Registers. Apart from the need to respect the wishes of the registered users of the DNC Registers, senders of commercial electronic messages are also required under the UEMO to comply with a number of sending rules. For example, they must provide their contact information and an “unsubscribe facility” in their commercial electronic messages so that the recipients can approach the sender concerned and indicate their wish not to receive further commercial electronic messages.

In 2012/13, 2013/14 and 2014/15, the total number of reports received in relation to suspected contraventions of UEMO were 2 410, 1 998 and 2 068 respectively. Although the number of reports in 2014/15 was comparable to that of 2013/14, we observed a progressive shift of spamming activities from the traditional means of faxes and pre-recorded voice messages to the use of mobile messaging applications to send short messages. We will continue to monitor the compliance situation on various platforms and streamline the procedures for more effective enforcement.

### *Enforcement*

If the number of reports received against a sender is below a certain threshold, we will issue an advisory letter reminding the sender to observe the requirements under the UEMO. If the number of reports received against a sender exceeds the threshold, or if we continue to receive reports against the same sender after the issuance of an advisory letter, we will conduct a formal investigation and may issue a warning letter to that sender. In 2014/15, a total of 270 advisory letters and 49 warning letters were issued.

In the event of repeated contraventions by the senders of commercial electronic messages, we may issue enforcement notices under section 38 of the UEMO, directing the sender to take steps to remedy the offences. Anyone who fails to comply with the enforcement notice may be liable to a fine of up to HK\$100,000 on the first conviction. In 2014/15, we issued an enforcement notice to a sender. During the period, we have been actively pursuing a sender of an identical short message promoting a tutor referral service via the WhatsApp Messenger platform on the Internet, which cumulatively resulted in over 1 000 reports submitted to OFCA.

## Preparation for the Implementation of the Competition Ordinance

Passed by the Legislative Council on 14 June 2012, the CO provides a cross-sectoral competition law prohibiting anti-competitive conduct in all sectors when it has the object or effect of preventing, restricting or distorting competition. Under the CO, the CA is conferred concurrent jurisdiction with the CC to enforce the Ordinance in respect of the conduct of telecommunications and broadcasting licensees, including merger and acquisition activities involving carrier licensees in the telecommunications sector. Upon commencement of the CO, the competition provisions in the BO and TO will be repealed, subject to transitional arrangements.

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## 實施《競爭條例》的籌備工作

立法會已在2012年6月14日通過《競爭條例》，作為跨行業的競爭法例，以禁止各行業從事具妨礙、限制或扭曲競爭的目的或效果的反競爭行為。根據《競爭條例》，通訊局與競委會獲賦予共享管轄權，就電訊和廣播牌照持有人的行為，包括涉及電訊業傳送者牌照持有人的合併與收購活動，執行《競爭條例》的相關條文。《競爭條例》生效後，《廣播條例》和《電訊條例》內的競爭條文將在實施過渡安排下予以廢除。

通訊辦一直協助通訊局與競委會保持緊密聯繫，進行《競爭條例》生效前所需的籌備工作。2014年10月，通訊局與競委會共同發出六份關於執行和詮釋《競爭條例》的草擬指引，收集業界和公眾的看法和意見。通訊局與競委會經考慮該等意見後，在2015年3月共同發出修訂草擬指引，邀請各界提出意見，並於2015年4月27日諮

詢立法會。通訊局與競委會在考慮各界對修訂草擬指引的意見後，於2015年7月發出指引定稿。隨着政府在憲報刊登《生效日期公告》，指定2015年12月14日為《競爭條例》全面生效的日期，通訊辦會繼續協助通訊局完成全面實施《競爭條例》所需的所有籌備工作，包括與競委會聯繫，擬備通訊局與競委會將簽訂的諒解備忘錄，以協調雙方在共享管轄權安排下履行各自的職能。

## 消費者教育活動

在2014/15年度，我們繼續致力加強公眾對明智地使用通訊服務的認識，在2014年8月至2015年4月期間，我們以「做個精明通訊服務用家」為主題舉行一年一度的消費者教育活動（「教育活動」），在全港不同地點舉行九場巡迴展覽，透過內容豐富的展板和多項互動遊戲及活動，向公眾宣揚消費者訊息，並在兩份報章刊載一系列漫畫，宣傳同類的消費者訊息。我們又舉行四場公眾講



通訊辦舉辦一系列「做個精明通訊服務用家」消費者教育活動，藉此推廣如何善用各類通訊服務。

A series of consumer education programmes under the theme “Smart Use of Communications Services” were organised to promote proper use of various communications services.

OFCA has been assisting the CA in close liaison with the CC on preparatory work required before the commencement of the CO. In October 2014, the CA and the CC jointly issued a set of six draft guidelines on the enforcement and interpretation of the CO and solicited views and comments from the business sectors and the general public. Having considered comments received from the consultation exercise, the CA and the CC jointly issued revised draft guidelines for comments in March 2015. The Legislative Council was also consulted on the revised draft guidelines on 27 April 2015. The CA and the CC issued the final guidelines in July 2015 having taken into account comments received on the revised draft guidelines. With the Government gazetting a commencement notice appointing 14 December 2015 as the full commencement date of the CO, OFCA will continue to assist the CA in completing all the necessary preparation work for the full implementation of the CO, including liaising with the CC to prepare the memorandum of understanding to be entered into between the CA and the CC to co-ordinate the performance of their functions under the concurrent jurisdiction arrangement.

## Consumer Education Programmes

In 2014/15 we continued our efforts to raise public awareness of intelligent use of communications services. The annual consumer education campaign (“the campaign”) under the theme “Smart Use of Communications Services” was carried out from August 2014 to April 2015. Nine roving exhibitions were held at different locations across the territory, conveying consumer messages to the general public through informative display panels and a number of interactive games and activities. A series of advertorials in the form of comic strips were also published in two newspapers to disseminate the same consumer messages. Four public seminars, as well as 10 talks at centres for the elderly and community centres were conducted in cooperation with various non-government-organisations to educate the public on how to protect and use mobile phone data and services wisely. In addition, a one-minute TV Announcement in the Public Interest (“API”) was produced to publicise consumer tips in relation to the 3G spectrum reassignment exercise. The broadcast of the API was arranged on various free and pay TV channels.



在各區中學巡迴演出 20 場互動劇場及舉辦故事攝影比賽，推廣有關通訊服務的消費者資訊。

20 interactive roving drama performances were staged and a photo storytelling competition was organised at secondary schools to promote consumer messages about communications services.



座，以及與多個非政府機構合作，在長者中心及社區中心舉行十場講座，教育公眾如何明智地保護智能電話內的資料，以及使用智能電話服務。此外，我們製作了一分鐘電視宣傳短片，宣傳有關3G頻譜重新指配事宜的消費者貼士。該宣傳短片已安排在各免費及收費電視頻道播放。

鑑於智能電話深受青少年歡迎，我們安排了一系列以中學生為對象的活動，包括在中學舉行20場互動話劇表演暨小型展覽會，以及舉辦故事攝影比賽，鼓勵青少年積極參與其中。我們來年會繼續舉辦教育活動，以期更廣泛接觸社會各界。

## 推廣通訊局與通訊辦的角色及職能的宣傳活動

為使市民進一步認識通訊局作為香港通訊業法定規管機構的角色，以及通訊辦作為通訊局的執行部門所提供的專業支援，通訊辦於年內開展了一系列的宣傳活動，包括製作短片，宣傳香港通訊業所取得的成就和通訊局與通訊辦的角色及職能；在通訊辦網頁增設名為「OFCA全接觸」的專欄，向市民介紹通訊辦的活動；安排學生參觀通訊辦無線電監察組，令他們更了解通訊辦在管理香港無線電通訊和防止無線電干擾所擔當的角色；為大專學生舉辦職業資料講座，介紹通訊辦內多個公務員職系；以及參與政府「科學為民」活動所舉辦的公眾講座。我們將在2015／16年度繼續推行同類的宣傳活動。

In view of the popularity of smartphones among young people, we also arranged a number of activities targeting secondary students, including the staging of 20 interactive drama performances cum mini exhibitions as well as organising a photo storytelling competition at secondary schools to encourage active participation of the youngsters. We will continue to run the campaign in the year ahead and try to reach out to a wider spectrum of the community.

## Publicity Initiatives to Promote the Role & Functions of the CA and OFCA

In order to strengthen the community's understanding of the role of the CA as the statutory regulator for the communications sector in Hong Kong and the professional support given to the CA by OFCA as its executive arm, a series of publicity initiatives were conducted during the year. They included the production of a corporate video to present the achievements of the communications industry in Hong Kong and the role and functions of the CA and OFCA; the introduction of a new column "OFCA Close-up" on OFCA's website to inform the community of the activities of OFCA; organising visits for students to the Radio Monitoring Unit of OFCA to enhance their understanding of OFCA's role in the management of radio communications and the prevention of radio interference in Hong Kong; organising career talks for tertiary students to introduce various civil service grades in OFCA; and participating in public talks held under the Government's "Science in the Public Service Campaign". We will continue to undertake similar publicity initiatives in 2015/16.



我們製作了短片介紹香港通訊業的成就，以及通訊局和通訊辦的角色及職能。

A corporate video is produced to introduce the achievements of the communications sector in Hong Kong and the role and functions of the CA and OFCA.



通訊辦網站已推出「OFCA 全接觸」專欄，讓公眾人士更深入了解通訊辦在不同方面的工作。

A new column "OFCA Close-up" is launched on OFCA's website to facilitate the public to have a better understanding of OFCA's different aspects of work.