

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

## 全面實施《競爭條例》

《競爭條例》已於2015年12月14日全面實施。該條例為跨行業的競爭法例，旨在禁止各行業從事反競爭行為。根據《競爭條例》，通訊局與競委會獲賦予共享管轄權，就在電訊及廣播業營運的業務實體的行為，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。《廣播條例》和《電訊條例》內的競爭條文，已同時在實施過渡安排下予以廢除。

隨着《競爭條例》全面實施，通訊局與競委會簽訂諒解備忘錄（「備忘錄」），以協調雙方履行有共享管轄權的職能。根據通訊局與競委會在備忘錄所同意的原則，對於屬於共享管轄權範圍內的事宜，通訊局一般會擔任主導機關。如某些事宜既涉及屬於共享管轄權的範圍，又涉及不屬於共享管轄權的範圍，通訊局與競委會將因應個別情況，討論和協定處理有關事宜的最佳辦法。

為了協助業界及公眾了解《競爭條例》，通訊局與競委會於2015年7月27日根據《競爭條例》共同發出六份指引，載述如何詮釋和執行三項競爭守則，以及處理投訴、進行調查和考慮豁免和豁免申請的程序。

有關處理電訊及廣播業根據《競爭條例》提出的寬待申請方面，經考慮電訊及廣播業的意見，並參考自2000年起根據《電訊條例》及《廣播條例》執行競爭條文的經驗，通訊局於2015年11月19日公布決定不會就《競爭條例》的執行，單獨或與競委會共同採納寬待政策。通訊局可根據《競爭條例》的相關條文，以及因應個別個案的實際情況，就該等通訊局與競委會有共享管轄權的個案，考慮與電訊及廣播持牌人訂立寬待協議。

我們會繼續協助通訊局在廣播及電訊業執行《競爭條例》，以及與競委會保持聯繫，以協調雙方在共享管轄權安排下履行職能。

## 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

自2015年12月14日全面實施《競爭條例》至2016年3月31日為止，我們共接獲45宗投訴及／或查詢個案，當中有40宗個案已經結案而無須作進一步跟進，有五宗個案則仍在處理中。在這段期間，我們亦協助通訊局根據《競爭條例》的合併守則檢視兩宗交易，而最終無須就該兩宗交易作進一步跟進。

除根據《競爭條例》處理競爭個案外，我們在2015年4月1日至2016年3月31日期間亦協助通訊局根據禁止電訊牌照持有人作出反競爭行為的《電訊條例》第7K、7L和7N條處理了五宗投訴個案，並根據禁止傳送者牌照持有人作出反競爭合併的《電訊條例》第7P條考慮了兩宗投訴個案。該等個案均在《競爭條例》實施前發生。經審慎考慮後，這些個案已經結案而無須展開調查。同期，我們協助通訊局根據禁止廣播牌照持有人作出反競爭行為的《廣播條例》第13條及14條，考慮了兩宗在《競爭條例》實施前發生的投訴個案。經審慎考慮後，這些個案已經結案而無須展開調查。

無線電視對《廣播條例》中的上訴機制及通訊局就無線電視涉嫌違反《廣播條例》競爭條文的投訴個案所作的裁決提出司法覆核，我們協助通訊局處理相關的法律程序。2016年1月29日，原訟法庭裁定在無線提出的七項司法覆核理據中，有兩項成立。該兩項司法覆核理據為：(i)根據《廣播條例》第34條向行會提出上訴的機制，違反《香港人權法案》第十條；以及(ii)在通訊局的決定的第277段中，通訊局要求無線電視中止所有相關的合約條款和政策，這與糾正無線電視的反競爭行為並不相稱。法庭撤銷了通訊局的決定。2016年2月26日，通訊局向上訴法庭提出上訴。

## Full Commencement of the Competition Ordinance

The CO, a cross-sectoral competition law prohibiting anti-competitive conduct in all sectors, commenced full operation on 14 December 2015. Under the CO, the CA is conferred concurrent jurisdiction with the Commission to enforce the CO in respect of the conduct of undertakings operating in the telecommunications and broadcasting sectors, including merger and acquisition activities involving carrier licensees in the telecommunications sector. The competition provisions in the BO and TO were repealed simultaneously subject to transitional arrangements.

Upon full commencement of the CO, the CA and the Commission signed a memorandum of understanding (“MoU”) to co-ordinate the performance of their functions on which they have concurrent jurisdiction. In accordance with the principles agreed by the CA and the Commission under the MoU, the CA will ordinarily take the role of the lead authority for matters falling within the concurrent jurisdiction. For matters involving issues that are partly within and partly outside the concurrent jurisdiction, the CA and the Commission will discuss and agree on how best to process the matter on a case-by-case basis.

To assist businesses and the public to understand the CO, the CA and the Commission jointly issued under the CO six sets of guidelines on 27 July 2015 setting out how they would interpret and give effect to the three competition rules, and explaining the procedures for handling complaints, conducting investigations and considering applications for exclusions and exemptions.

In relation to handling leniency applications in respect of the telecommunications and broadcasting sectors under the CO, the CA, having considered the views received from the telecommunications and broadcasting sectors, and taking into account its experiences in enforcing the competition provisions under the TO and the BO since 2000, announced on 19 November 2015 that it would not adopt a leniency policy for its enforcement of the CO, either on its own or jointly with the Commission. The CA may, in accordance with the relevant provisions of the CO and the actual circumstances of the cases on which it has concurrent jurisdiction with the Commission, consider making leniency agreements with the telecommunications and broadcasting licensees on a case-by-case basis.

We will continue to assist the CA in enforcing the CO in the broadcasting and telecommunications sectors as well as liaising with the Commission to coordinate the performance of functions under the concurrent jurisdiction arrangement.

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

Since the full commencement of the CO on 14 December 2015 to 31 March 2016, a total of 45 complaints and/or enquiries were received, with 40 cases closed without the need for further actions and five cases under processing. During the period, we also assisted the CA in reviewing two transactions under the Merger Rule of the CO, and no further action was considered necessary in respect of these two transactions.

In addition to handling competition cases under the CO, from 1 April 2015 to 31 March 2016, we assisted the CA in processing five complaint cases under sections 7K, 7L and 7N of the TO, and two cases under section 7P of the TO, which respectively prohibit anti-competitive conduct by telecommunications licensees, and anti-competitive mergers involving carrier licensees, that took place prior to the commencement of the CO. All cases were closed after due consideration, with no investigation opened. During the same period, we assisted the CA in considering two complaint cases under sections 13 and 14 of the BO, which prohibit anti-competitive conduct by broadcasting licensees that took place prior to the commencement of the CO. After due consideration, all cases were closed, with no investigation opened.

We assisted the CA in handling the proceedings in relation to the JR lodged by TVB against the appeal mechanism under the BO and the CA’s decision on a complaint case relating to TVB’s alleged violation of the competition provisions under the BO. On 29 January 2016, of the seven grounds of appeal submitted by TVB, the Court of First Instance ruled in favour of TVB on two grounds: (i) the appeal mechanism to the CE in C under section 34 of the BO is in contravention of Article 10 of the Hong Kong Bill of Rights; and (ii) paragraph 277 of the CA’s decision, which required TVB to abandon all relevant contractual

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## 處理和調查違反《商品說明條例》的投訴

《商品說明條例》的公平營商條文禁止商戶在向消費者提供貨品和服務時作出某些訂明的不良營商手法。

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。兩個執法機關已簽訂備忘錄，以協調雙方在《商品說明條例》的公平營商條文下履行各自的職能，並已發出一套執法指引，就公平營商條文的實施向商戶和消費者提供指引。

在2015年4月1日至2016年3月31日期間，通訊辦共處理899宗根據《商品說明條例》提出的投訴個案。在這些個案中，有820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19宗個案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，亦已結案；有一宗個案檢控成功（法庭於2016年4月14日裁定控罪成立）。至於餘下的59宗個案則仍在不同階段的處理中。

### 處理和調查有關具誤導性或欺騙性行為的電訊服務投訴

《商品說明條例》的公平營商條文於2013年7月19日生效後，禁止電訊牌照持有人作出具誤導性或欺騙性行為的《電訊條例》第7M條同時被廢除。在過渡安排下，牌照持有人在2013年7月19日前作出具誤導性或欺騙性的行為，會繼續受《電訊條例》第7M條所規管。就此而言，在2015年4月1日至2016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23宗投訴個案，當中並無發現違例個案。

## 《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2016年3月，已有超過280萬個號碼登記在三份登記冊上。除不可發送商業電子訊息予已在登記冊上登記的使用者外，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向收訊人提供聯絡資料和「取消接收選項」，讓收訊人可以聯絡有關發送人，以取消接收商業電子訊息。

在2015/16年度，接獲的懷疑違反《非應邀電子訊息條例》舉報總數為1 725宗，較去年減少了約16%。我們察覺到濫發訊息活動繼續從利用傳真和預錄電話訊息等傳統方式轉變為使用流動即時通訊應用程式發送短訊。《非應邀電子訊息條例》採用「技術中立」的原則規管商業電子訊息的發送，包括經由即時通訊應用程式發送的商業電子訊息。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2015/16年度，我們共發出106封勸諭信和22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2015/16年度，我們向兩名發送人發出了兩份執行通

clauses and policies, was not proportional to redress the anti-competitive act of TVB. The Court quashed the CA's decision. On 26 February 2016, the CA filed its Notice of Appeal to the Court of Appeal.

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

The fair trading sections of the TDO prohibit certain specified unfair trade practices by traders in the provision of goods and services to consumers.

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 entered into a MoU to co-ordinate the performance of their functions under the fair trading sections of the TDO and have issued a set of enforcement guidelines to provide guidance for traders and consumers as to the operation of the fair trading sections.

From 1 April 2015 to 31 March 2016, OFCA handled a total of 899 complaint cases under the TDO. Of these cases, 820 were closed due to insufficient evidence to suspect/establish a contravention, or because they fell outside the scope of the TDO; 19 cases 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 supply or promotion of telecommunications or broadcasting services to consumers; one case was successfully prosecuted (with a conviction by the court on 14 April 2016) and the remaining 59 cases were under processing at various stages.

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

Section 7M of the TO, which prohibited misleading or deceptive conduct by telecommunications licensees, was repealed upon the commencement of the fair trading sections of the TDO on 19 July 2013. As a transitional

arrangement, a licensee engaged in misleading or deceptive conduct that took place before 19 July 2013 would continue to be regulated under section 7M of the TO. In this regard, OFCA assisted the CA in handling 23 complaint cases under section 7M of the TO from 1 April 2015 to 31 March 2016. No case of infringement was found.

## 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 ("CEMs") must not be sent to registered numbers unless the senders have obtained consent from the registered users. By March 2016, more than 2.8 million numbers were registered with these three DNC Registers. Apart from not sending CEMs to the registered users of the DNC Registers, senders of CEMs are also required under the UEMO to comply with a number of sending rules. For example, they must provide the recipients with their contact information and an "unsubscribe facility" in their CEMs so that the recipients can approach the sender concerned and unsubscribe from receiving their CEMs.

In 2015/16, the total number of reports received in relation to suspected contraventions of UEMO was 1 725, a reduction of about 16% from that of the previous year. We observed a continued shift of spamming activities from the traditional means of facsimile and pre-recorded voice messages to the use of mobile instant messaging applications ("IMAs") to send short messages. The UEMO adopts a "technology-neutral" principle in regulating the sending of CEMs, including CEMs sent via IMAs. 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

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通訊辦以「做個精明通訊服務用家」為主題舉辦一系列消費者教育活動，進一步加深公眾對精明使用通訊服務的認識。

A series of consumer education programmes under the theme "Smart Use of Communications Services" were organised to further enhance public awareness of using communications services smartly.

知。2016年1月22日，我們就一名商業傳真訊息發送人懷疑違反向其送達的執行通知採取突擊搜查行動<sup>7</sup>。

### 消費者教育活動

在2015 / 16年度，我們繼續舉行一年一度的消費者教育活動（「教育活動」），以推廣精明使用通訊服務。是次教育活動以「做個精明通訊服務用家」為主題，在2015年8月至2016年5月期間舉行。在教育活動舉行期間，我們在不同地點舉辦了共八場展覽，透過內容豐富的展板、各項有趣的遊戲和短片，向市民宣揚實用的消費者訊息。我們亦與一個業界聯會合作舉辦五場公眾講座，由通訊業專家擔任嘉賓講者，教育公眾如何精明使用通訊服務。為與更多不同的社羣接觸，尤其是不熟悉新科技和流動裝置的人士，我們亦在教育活動舉行期

間，在社會服務中心舉辦了23場社區講座。我們又舉辦了一系列校園活動，包括巡迴話劇演出、小型展覽會，以及手機桌布設計比賽，加深學生對精明使用流動數據服務和保護手機資料的重要性的了解。在活動期間，我們到訪了20所中小學，安排超過4 000名學生觀看話劇演出。為盡量推廣相關的教育訊息，我們亦在報章印載一系列宣傳漫畫，並在公共交通工具的媒體頻道播放短片。

此外，通訊辦於年內推出了一系列以外遊人士為對象的宣傳活動，提醒他們在香港境外使用流動數據漫遊服務時須注意的事項。該等活動包括在旅遊旺季前發出新聞公報，載述消費者訊息；在香港旅遊業議會網頁刊登相關訊息；透過本港旅行社分店派發有關消費者訊息的漫畫；以及在主要出入境管制站張貼海報。

<sup>7</sup> 通訊辦在2016年5月及7月向發送人提出檢控。

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 2015/16, a total of 106 advisory letters and 22 warning letters were issued.

In the event of repeated contraventions by the senders of CEMs, we may issue enforcement notices in accordance with section 38 of the UEMO, directing the senders to take steps to remedy the contraventions. 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 2015/16, we issued two enforcement notices to two senders. On 22 January 2016, we mounted a raid operation against a commercial facsimile sender in relation to its suspected contravention of an enforcement notice served on him<sup>7</sup>.

## Consumer Education Programmes

We continued to organise the annual Consumer Education Campaign (“the Campaign”) in 2015/16 to promote the smart use of communications services. The Campaign, which featured the theme “Smart Use of Communications Services”, was held from August 2015 to May 2016. During the Campaign, a total of eight exhibitions were held at different locations to convey to the community useful consumer messages through informative display panels, various fun games and short videos. In collaboration with an industry association, five public seminars hosted by guest speakers who are experts in the communications industry were also held to educate the public on how to use communications services smartly. In order to reach out to different community groups, in particular those who are not well-versed with the new technologies and mobile devices, 23 community talks were held at social service centres during the Campaign period. A series of school activities, including roving drama performances, mini exhibitions and a Wallpaper Design Competition, were organised to enhance students’ understanding of the importance of using mobile data services smartly and protecting their data in mobile phones. During the Campaign, we visited 20 primary and secondary schools, performing the drama to over 4 000 students. To maximise the exposure of our

educational messages, a series of printed advertorials in the form of comic strips were printed in newspapers, and short videos were broadcast on public transport media channels.

In addition, a series of publicity initiatives targeting outbound travellers were launched during the year to remind them of issues to which they should pay attention while using mobile data roaming services outside Hong Kong. The initiatives included issuing press releases with consumer messages before peak travelling seasons, posting messages on the website of the Travel Industry Council of Hong Kong, distributing comic strips of consumer messages through the outlets of local travel agents, and displaying posters at major immigration control points.



活動期間，通訊辦在學校舉辦了20場巡迴互動話劇表演及手機桌布設計比賽，推廣如何精明而安全地使用智能電話及好好保護電話的資料。

During the Campaign period, 20 interactive roving drama performances and a mobile phone wall paper design competition were organised at schools to promote how to use smart phones in a smart and safe manner and protect phones’ data.

<sup>7</sup> Charges were laid against the sender in May and July 2016.