

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

## 處理和調查電訊與廣播業的競爭投訴及 電訊業的合併與收購個案

《競爭條例》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》，通訊局與競爭事務委員會（「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》。《競爭條例》於2015年12月14日全面實施後，《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。

根據通訊局與競委會簽訂的諒解備忘錄（「備忘錄」），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做法。

在2016年4月1日至2017年3月31日期間，我們共接獲74宗根據《競爭條例》提出的投訴及／或查詢個案，當中72宗個案已經結案而毋須作進一步跟進，有兩宗個案則仍在處理中。年內，我們亦協助通訊局根據《競爭條例》的合併守則檢視一宗交易，而最終毋須就該交易作進一步跟進。

無綫電視對《廣播條例》中的上訴機制及通訊局就無綫電視涉嫌違反《廣播條例》競爭條文的投訴所作的裁決提出司法覆核。在原訟法庭於2016年1月就該司法覆核作出裁決後，通訊局於2016年2月向上訴法庭提出上訴。我們會繼續協助通訊局就上訴作出所需準備。

## 處理和調查有關電訊與廣播業不良營商 手法的投訴

《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。

除香港海關負責執法外，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2016年4月1日至2017年3月31日期間，通訊辦共處理457宗根據《商品說明條例》提出的投訴。在這些個案中，有373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16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。餘下的68宗個案則仍在不同階段的處理中。

《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2016年4月1日至2017年3月31日期間，通訊辦根據《電訊條例》第7M條的規定，協助通訊局處理了兩宗投訴個案，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2017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

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

The Competition Ordinance provides for a cross-sectoral competition law prohibiting anti-competitive conduct in all sectors. Under the Competition Ordinance, the CA is conferred concurrent jurisdiction with the Competition Commission to enforce the Competition Ordinance 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 The competition provisions in the BO and TO were repealed simultaneously subject to transitional arrangements when the Competition Ordinance commenced full operation on 14 December 2015.

Pursuant to the memorandum of understanding (“MoU”) signed by the CA and the Competition Commission, the CA will ordinarily assume 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 Competition Commission will discuss and agree on how best to process the matter on a case-by-case basis.

From 1 April 2016 to 31 March 2017, a total of 74 complaints and/or enquiries were received under the Competition Ordinance, with 72 cases closed without the need for further actions and two cases under processing. During the year, we also assisted the CA in reviewing one transaction under the merger rule of the Competition Ordinance, and no further action was considered necessary in respect of the transaction.

Following the ruling of the Court of First Instance on TVB’s judicial review against the appeal mechanism under the BO and the CA’s decision on a complaint relating to TVB’s alleged violation of the competition provisions under the BO in January 2016, the CA filed in February 2016 its Notice of Appeal to the Court of Appeal. We continued to assist the CA in conducting the necessary preparatory work for the appeal.

## Handling of and Investigations into Complaints about Unfair Trade Practices in the Telecommunications and Broadcasting Sectors

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 Customs and Excise Department 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 an 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 2016 to 31 March 2017, OFCA handled a total of 457 complaints under the TDO. Of these cases, 373 were closed due to insufficient evidence to suspect/establish a contravention, or because they fell outside the scope of the TDO; 16 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; and the remaining 68 cases were under processing at various stages.

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 two complaint cases under section 7M of the TO from 1 April 2016 to 31 March 2017. No case of infringement was found.

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2016/17年度共接獲803宗懷疑違反《非應邀電子訊息條例》的舉報，較去年減少約53%。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

如我們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2016/17年度，我們共發出244封勸諭信和37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十萬元。在2016/17年度，一名商業傳真訊息發送人因沒有遵循通

訊辦就其發送違反《非應邀電子訊息條例》的商業電子訊息而向其送達的執行通知，被裁判法院裁定控罪成立。

### 消費者教育活動

我們繼續以「做個精明通訊服務用家」為主題，在2016年8月至2017年5月期間舉行一年一度的消費者教育活動。我們在全港各區舉辦了12場巡迴展覽，透過內容豐富的展板、有趣的遊戲和親子活動，推廣各項消費者訊息。在教育活動舉行期間，我們舉辦了多場有關善用流動數據服務和保護手機個人資料的講座，包括四場與業界團體合作舉辦的公眾講座、12場以不熟悉新科技和流動裝置的人士為對象的社區講座，以及八場專為中小學生而設的學校講座。此外，我們於中小學舉辦了31場話劇表演暨小型展覽會，以推廣消費者訊息。我們亦刊印了一系列宣傳漫畫，並在雜誌登載一系列宣傳專輯，以進一步推廣相關的教育訊息。

為更方便與市民溝通，我們於2016年11月推出名為「通訊達人·通訊辦」的新Facebook專頁。我們透過這個社交媒體渠道，定期公布最新的消費者訊息，以及年度消費者教育活動下各項計劃及節目的第一手資訊。此外，Facebook專頁桌面版設有教育平台「通訊學習園地」，為中小學生提供網上學習資源，例如有關各項消費者訊息的漫畫、短片及工作紙。



▲ 通訊辦每年透過舉辦「做個精明通訊服務用家」消費者教育活動，加深公眾對精明使用通訊服務的認識。 OFCA organises the “Smart Use of Communications Services” consumer education campaign yearly to enhance public awareness of using communications services smartly.

## Enforcement of the Unsolicited Electronic Messages Ordinance (“UEMO”)

### Do-not-call Registers

We have established three Do-Not-Call (“DNC”) Registers for facsimile messages, short messages and pre-recorded telephone messages under the UEMO. Commercial electronic messages (“CEMs”) must not be sent to registered numbers unless the senders have obtained consent from the registered users. By March 2017, 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 2016/17, a total of 803 reports in relation to suspected contraventions of UEMO were received, a reduction of about 53% from that of the previous year. 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 2016/17, a total of 244 advisory letters and 37 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 2016/17, a commercial facsimile sender was convicted by the Magistrates’ Court of contravention of the enforcement notice served on him for sending CEMs in contravention of the UEMO.

## Consumer Education Programmes

The annual Consumer Education Campaign (“the Campaign”) continued to be held between August 2016 and May 2017 under the theme “Smart Use of Communications Services”. Twelve roving exhibitions were held in different districts across the territory to convey various consumer messages through informative display panels, interesting games and family activities. A number of talks about smart use of mobile data services and protection of data in mobile phones were held during the Campaign period, including four public seminars organised in collaboration with an industry body, 12 community talks targeting those who are not well-versed with new technologies and mobile devices, and eight school talks tailored for primary and secondary students. In addition, 31 drama performances cum mini exhibitions were staged in primary and secondary schools for promoting our consumer messages. A series of printed advertorials in the form of comic strips and a series of magazine advertorials were also published to maximise the exposure of our educational messages.

To further facilitate our communication with the public, a new Facebook Fan page named “Communication Master • OFCA” was launched in November 2016. Updated consumer messages and first-hand information about the programmes and activities of our annual consumer education campaign were publicised regularly through this social media channel. In addition, an educational platform “Learning Corner”, which provides online learning resources like comic strips, videos and worksheets on various consumer messages which target primary and secondary students, is available on the desktop version of the Fan Page.

◀ 透過發放不同消費者資訊，「通訊達人 • 通訊辦」Facebook專頁自推出以來已吸引超過一萬名市民讚好支持。

Through sharing diversified consumer tips, the “Communications Master • OFCA” Facebook fan page has already drawn over ten thousands “Likes” since its launch.

