

# 4 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》。

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2017年4月1日至2018年3月31日期間，我們共接獲43宗根據《競爭條例》提出的投訴及／或查詢個案，當中41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》的合併守則檢視兩宗交易，而最終毋須就這些交易作進一步跟進。

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

關係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2017年4月1日至2018年3月31日期間，通訊辦共處理429宗根據《商品說明條例》提出的投訴。在這些個案中，353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，26宗個案在通訊局向有關持牌人發出勸諭信敦促其注意有關事宜，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50宗個案則仍在不同階段的處理中。

### 《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2018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和取消接收商業電子訊息。

我們在2017／18年度共接獲677宗懷疑違反《非應邀電子訊息條例》的舉報，較去年減少約16%。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。

## 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.

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 2017 to 31 March 2018, a total of 43 complaints and/or enquiries were received under the Competition Ordinance, with 41 cases closed without the need for further actions and two cases under processing. During the year, we also assisted the CA in reviewing two transactions under the merger rule of the Competition Ordinance, and no further action was considered necessary in respect of these transactions.

Following the ruling of the Court of First Instance on TVB’s JR 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 Trade Descriptions Ordinance (“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 2017 to 31 March 2018, OFCA handled a total of 429 complaints under the TDO. Of these cases, 353 were closed due to insufficient evidence to suspect/establish a contravention, or because they fell outside the scope of the TDO; 26 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 50 cases were under processing at various stages.

## Enforcement of the Unsolicited Electronic Messages Ordinance

### *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 Unsolicited Electronic Messages Ordinance

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- ▲ 通訊辦每年均舉辦「做個精明通訊服務用家」消費者教育活動，提升市民對如何明智地使用通訊服務的認識。  
OFCA organises the “Smart Use of Communications Services” consumer education campaign every year to enhance public awareness of how to use communications services smartly.

### 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2017/18年度，我們共發出198封勸諭信和41封警告信。

如發現商業電子訊息發送人持續違反《非應邀電子訊息條例》，我們會根據該條例第38條發出執行通知，指示發送人採取措施糾正違例行為。任何人不服從向其送達的執行通知，第一次定罪最高可處罰款十萬元。

### 消費者教育活動

為持續提高公眾對精明使用通訊服務的認識，我們在2017年8月至2018年3月舉行一年一度的消費者教育活動。在活動舉行期間，我們在全港各區舉辦了共六場巡迴展覽，透過內容豐富的展板、有趣的遊戲及短片，宣揚各項實用的消費者訊息。我們亦與業界團體合作舉辦了四場公眾講座，教導公眾如何安全使用通訊服務。為接觸不同社羣，我們在公共圖書館和學校舉辦了17場小型展覽會，並於社會服務中心及長者中心舉辦了15場社區講座。鑑於公眾對流動服務無線電基站的輻射安全問題日益關注，我們在2018年1月至3月舉辦了三場大型社區講座。此外，我們亦於28所中小學舉辦話劇表演，教導學生如何適當使用智能電話。我們所舉辦的其他活動包括刊載一系列宣傳漫畫和舉辦Facebook帖文創作比賽，以盡量推廣相關教育訊息。為方便與市民溝通，我們亦透過「通訊達人•通訊辦」的Facebook專頁，定期公布最新的消費者訊息，以及消費者教育活動下各項節目與活動的第一手資訊。

("UEMO"). Commercial electronic messages ("CEMs") must not be sent to registered numbers unless the senders have obtained consent from the registered users. By March 2018, 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 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 senders concerned and unsubscribe from receiving their CEMs.

In 2017/18, a total of 677 reports in relation to suspected contraventions of the UEMO were received, a reduction of about 16% 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 2017/18, a total of 198 advisory letters and 41 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 up to \$100,000 on first conviction.

### Consumer Education Programmes

To sustain our effort in enhancing public awareness of smart use of communications services, we organised the annual

Consumer Education Campaign from August 2017 to March 2018. During the Campaign, a total of six roving exhibitions were held in different districts across the territory to disseminate useful consumer messages through informative display panels, interesting games and short videos. Four public seminars were organised in collaboration with an industry association to educate the public on the safe use of communications services. In order to reach different community groups, 17 mini exhibitions were held at public libraries and schools, and 15 community talks were held at social service centres and elderly centres. In view of the growing public concern over radiation safety of radio base stations for mobile services, three large-scale community talks were held from January to March 2018. Drama performances were staged at 28 primary and secondary schools to educate students on proper use of smartphones. Other activities, including the publication of a series of printed advertorials in the form of comic strips and a Facebook Post Creation Competition, were organised to maximise the exposure of our educational messages. To further facilitate our communication with the public, updated consumer messages and first-hand information about the programmes and activities of the Consumer Education Campaign were published regularly on the Facebook Fan page "Communication Master • OFCA".



▲ 公眾人士對流動通訊無線電基站的輻射安全愈來愈關注，有見及此，通訊辦於2018年1月至3月期間舉辦了三場有關此課題的社區講座。

In view of the growing public concerns over radiation safety of radio base stations for mobile communications, OFCA organised three community talks on this topic between January and March 2018.