

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，如果牌照持有人所作出具誤導性或欺騙性的行為是於經修訂的《商品說明條例》實施前作出，該等行為仍然受《電訊條例》第7M條所規管，並按該條例處理。在2013年4月1日至2014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92宗投訴個案，當中有6宗個案證實違例。通訊局向牌照持有人施加罰款，款額由港幣5萬元至9萬元不等。

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條禁止電訊持牌人作出反競爭行為，我們根據這些條文，在2013年4月1日至2014年3月31日期間協助通訊局考慮了56宗投訴個案。經詳細考慮後，通訊局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5宗投訴個案，該兩項條文禁止廣播持牌人作出反競爭行為。通訊局決定結束4宗個案而不展開調查。至於餘下一宗個案，通訊局認為有關的持牌人違反《廣播條例》第13條和14條，並向其施加包括港幣90萬元罰款的懲處⁴。

同期，我們亦根據《電訊條例》第7P條有關規管傳送者牌照持牌人的收購與合併活動的規定，協助通訊局考慮了兩宗個案。一宗個案關於港視在2013年12月20日收購China Mobile Hong Kong Corporation Limited

（「CMHKC」）100%股權。CMHKC是根據《電訊條例》發出的傳送者牌照持牌人，提供流動電視服務。2014年1月，通訊局決定不會就該收購按《電訊條例》第7P條展開調查，因為根據通訊辦的評估，該收購不會引起具有或相當可能具有大幅減少在相關電訊市場中的競爭的效果的憂慮。另一宗個案關於香港電訊有限公司（「香港電訊」）建議收購CSL New World Mobility Limited（「CSLNWM」）。香港電訊全資擁有Hong Kong Telecommunications (HKT) Limited（「HKT」），而HKT是根據《電訊條例》發出的若干傳送者牌照的持牌人，提供固定和流動電訊網絡服務；CSLNWM則全資擁有香港移動通訊有限公司（「香港移動通訊」），而香港移動通訊是根據《電訊條例》發出的傳送者牌照持牌人，提供流動電訊網絡服務。因應香港電訊就建議收購CSLNWM 提出的事先同意申請，通訊局根據《電訊條例》第7P條，於2013年12月23日至2014年2月4日進行公眾諮詢，邀請傳送者牌照持牌人和有利害關係的人提出申述。經考慮相關各方作出的申述、外聘經濟顧問進行的競爭分析及通訊辦的評估，通訊局於2014年4月決定就建議收購給予同意，惟HKT和香港移動通訊作為傳送者牌照持牌人，須按指示採取通訊局認為必需的行動，以消除或防止出現任何大幅減少競爭的效果。

經修訂的《商品說明條例》的執行事宜

經修訂的《商品說明條例》於2013年7月19日起全面實施，其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」）。除香港海關負責執法外，通訊局同時獲賦予共同管轄權，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

⁴ 詳情見第二章「有關無線電視違反《廣播條例》的競爭條文的調查」。

Handling of and Investigations into Telecom 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Section 7M of the TO, which prohibits misleading and deceptive conduct by telecommunications licensees, was repealed upon the commencement of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 on 19 July 2013.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 the misleading or deceptive conduct of a licensee was engaged at a time prior to the implementation of the amended TDO, such conduct is still regulated and dealt with under section 7M of the TO. During the period of 1 April 2013 to 31 March 2014, OFCA assisted the CA in handling 92 complaint cases under section 7M of the TO. Six of these complaint cases were confirmed as infringements of the TO and the financial penalties imposed by the CA ranged from HK\$50,000 to HK\$90,000.

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

During the period of 1 April 2013 to 31 March 2014, we assisted the CA in considering 56 complaint cases under section 7K, 7L or 7N of the TO, which prohibits anti-competitive conduct by telecommunications licensees. After due consideration, all the cases were closed with no investigation opened. During the same period, we assisted the CA in considering five complaint cases under section 13 or 14 of the BO, which prohibits anti-competitive conduct by broadcasting licensees. Four of these cases were closed with no investigation opened. As regards the remaining case, the licensee concerned was found in breach of sections 13 and 14 of the BO, and the CA imposed on it inter-alia a financial penalty of HK\$900,000 as sanction⁴.

During the same period, we assisted the CA in considering two cases under section 7P of the TO, which oversees merger and acquisition activities involving carrier licensees. One case was the acquisition on 20 December 2013 by HKT of 100% equity interest of China Mobile Hong Kong Corporation Limited ("CMHKC"), which was the holder of a carrier licence issued under the TO to provide mobile television services. In January 2014, the CA decided not to commence an investigation under section 7P of the TO on the basis of OFCA's assessment that the acquisition did not give rise to a concern that it may have, or was likely to have, the effect of substantially lessening competition ("SLC") in the relevant telecommunications markets. Another case was the proposed acquisition of CSL New World Mobility Limited ("CSLNWM"), which fully owned CSL Limited ("CSL"), the holder of a carrier licence issued under the TO for the provision of mobile telecommunications network services, by HKT Limited, which fully owned Hong Kong Telecommunications (HKT) Limited ("HKT"), the holder of a number of carrier licences issued under the TO to provide fixed and mobile telecommunications network services. In relation to HKT Limited's application for prior consent to its proposed acquisition of CSLNWM, the CA conducted a public consultation from 23 December 2013 to 4 February 2014, as required under section 7P of the TO, to invite representations from carrier licensees and interested persons. Having considered the representations made by the concerned parties, the competition analysis performed by an external economic consultant and the assessment of OFCA, the CA decided to give consent in April 2014 to the proposed acquisition, subject to the direction that HKT and CSL, as the carrier licensees concerned, should take such remedial actions specified by the CA as necessary to eliminate or avoid any identified effect of SLC.

Enforcement of the Amended Trade Descriptions Ordinance

The amended TDO came into full implementation on 19 July 2013. It has extended 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").

⁴ See Chapter 2 "Investigation into TVB's Violation of the Competition Provisions of the Broadcasting Ordinance" for details.

5

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2014年3月31日期間，通訊辦共接獲359宗根據《商品說明條例》提出的投訴。在這些投訴中，有160宗因沒有足夠證據懷疑／確立出現違反《商品說明條例》的情況或因不屬《商品說明條例》的規管範圍而結束，有5宗投訴在通訊局向有關持牌人發出了勸諭信促請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相關的營業行為後，亦已結束。至於餘下的194宗投訴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2014年9月，已有超過260萬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還須遵從《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其聯絡資料和「取消接收選項」，讓收件人可以聯絡有關發送人，表明不欲再接收該發送人所發送的商業電子訊息的意願。

在2011/12、2012/13和2013/14年度收到的懷疑違反《非應邀電子訊息條例》舉報總數分別為2 613宗、2 410宗和1 998宗，這些數字代表舉報宗數逐年分別減少約14%、8%和17%。此下降趨勢反映電子促銷業對《非應邀電子訊息條例》的規定加深了認識，以致



遵守有關規定的紀錄得以持續改善。我們會繼續監察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2013/14年度，我們共發出155封勸諭信和83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。任何人不服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2013/14年度，我們向六名發送人發出六份執行通知，並首次因發送人違反執行通知而根據《非應邀電子訊息條例》提出檢控。

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 issued enforcement guidelines to provide guidance to 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.

During the period of 19 July 2013 to 31 March 2014, OFCA received a total of 359 complaints under the TDO. Amongst these complaints, 160 were closed for there being insufficient evidence to suspect / establish a contravention or falling outside the scope of the TDO, five complaints were closed after the CA issued advisory letters to the licensees concerned, with a view to bringing the subject matter to their attention and improving their relevant commercial practices in relation to the sale or supply or promotion of telecommunications or broadcasting services to consumers, and the remaining 194 complaints were under process at various stages.

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 September 2014, more than 2.6 million numbers have been 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 could approach the sender concerned and indicate their wish not to receive

further commercial electronic messages from that particular sender.

In 2011/12, 2012/13 and 2013/14, the total numbers of reports received in relation to suspected contraventions of UEMO were 2 613, 2 410 and 1 998 respectively. They represent a decrease in the number of reported cases by around 14%, 8%, and 17% respectively on a year-on-year basis. This downward trend reflects that the telemarketing industry has gained a better understanding of, and can therefore achieve an improving compliance record with the requirements under the UEMO. We will continue to monitor the compliance situation 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 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 2013/14, a total of 155 advisory letters and 83 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 2013/14, we issued a total of six enforcement notices to six senders and instituted the first case of prosecution under the UEMO for contravening an enforcement notice.

Preparation for the Implementation of the Competition Ordinance

The CO was passed by the Legislative Council on 14 June 2012. It provides for a cross-sectoral competition law prohibiting anti-competitive conduct in all sectors

5

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》，除競爭事務委員會負責執法外，通訊局同時獲賦予共同管轄權，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。

在《競爭條例》生效前，通訊辦一直協助通訊局與競爭事務委員會保持緊密聯繫，以進行所需的籌備工作，包括擬備《競爭條例》的執法指引，以作公眾諮詢，以及擬備通訊局與競爭事務委員會之間簽訂的諒解備忘錄，以協調雙方在共同管轄權安排下履行各自的職能。

消費者教育活動

為繼續提升市民對明智地使用通訊服務的認識，我們在2013年8月至2014年2月期間舉辦了一年一度的消費者教育活動。活動以「做個精明通訊服務用家」為主題，所推出的多項活動和節目均採用創新互動的元素，務求有效地向市民傳達有關訊息。活動的重點之一，是在全港不同地點舉行六場名為「通訊達人智FUN嘉年華」的巡迴展覽，透過現場互動劇場、內容豐富的展板、短片和有趣的遊戲，向參觀者提供實用的消費者貼士。有見及學生使用智能電話愈趨普及，我們在20所中小學巡迴演出名為「擊退帳單大王」的話劇，以教育學生如何明智地使用智能電話和保護儲存於電話內的個人資料。我們亦舉辦了多項其他活動，包括四場公眾講座、網上遊戲暨幸運抽獎和海報設計比賽，透過互動形式鼓勵公眾踴躍參與，並在不同媒體播放一系列短片，介紹如何避免流動通訊「帳單震撼」和簽訂電訊服務合約應注意的事項。鑑於反應良好，我們將在2014/15年度，繼續以同一主題舉辦消費者教育活動。



「做個精明通訊服務用家」消費者教育活動舉辦多場巡迴展覽、公眾講座、學校話劇表演及網上遊戲，推廣如何適當使用各款通訊服務。
 "Smart Use of Communications Services" Consumer Education Campaign organised a series of roving exhibitions, public seminars, school drama performances and online game, to promote proper use of various communications services.

when it has the object or effect of preventing, restricting or distorting competition. Under the CO, the CA is granted concurrent jurisdiction with the Competition Commission to enforce the CO 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.

OFCA has been assisting the CA in close liaison with the Competition Commission on the preparatory work required before the commencement of the CO, including preparation of the guidelines on the enforcement of the CO for public consultation, and preparation of the memorandum of understanding to be signed between the CA and the Competition Commission to coordinate the performance of their functions under the concurrent jurisdiction arrangement.

Consumer Education Programmes

To sustain our efforts to enhance public awareness of using communications services wisely, we launched an annual consumer education campaign from August 2013 to February 2014. Under the theme “Smart Use of Communications Services”, the campaign embodied creative and interactive elements in various activities and programmes to effectively disseminate the message to the public. One of the highlights of the campaign was a series of six roving exhibitions held in a variety of districts under the title “Smart Communications Service Users Carnival”.



今年，通訊辦首以互動劇場形式，教育公眾善用流動數據服務。OFCA first used interactive drama performance this year to educate the public on the proper use of mobile data services.

The exhibitions provided useful consumer tips to visitors through onsite interactive theatre, informative display panels and short videos, as well as interesting games. With the widespread use of smartphones by students, we also staged a roving drama named “Defeating the King of Bills” at 20 primary and secondary schools to educate the students on how to use smartphones wisely and protect their personal data stored in the phones. Other activities, including four public seminars, an online game cum lucky draw and a poster design competition, were also held to encourage interactive participation by the community. A series of short videos on how to prevent “mobile bill shock” and matters to take note of when entering into telecommunications service contracts were broadcast on different media channels. In view of the good response, we will continue to run a consumer education campaign in 2014/15 under the same theme.