

## **CHAPTER 2**

**Commerce and Economic Development Bureau  
Customs and Excise Department  
Office of the Communications Authority  
Consumer Council**

**Consumer protection against  
unfair trade practices, unsafe goods, and  
short weights and measures**

**Audit Commission  
Hong Kong  
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# **CONSUMER PROTECTION AGAINST UNFAIR TRADE PRACTICES, UNSAFE GOODS, AND SHORT WEIGHTS AND MEASURES**

## **Contents**

	<b>Paragraph</b>
<b>EXECUTIVE SUMMARY</b>	
<b>PART 1: INTRODUCTION</b>	<b>1.1</b>
Consumer protection	1.2 – 1.14
Audit review	1.15
Acknowledgement	1.16
<b>PART 2: ENFORCEMENT WORK AGAINST UNFAIR TRADE PRACTICES</b>	<b>2.1</b>
Implementation of the 2012 Amendment Ordinance	2.2 – 2.14
Audit recommendations	2.15 – 2.17
Response from the Government and the Consumer Council	2.18 – 2.20
Enforcement work of the Customs and Excise Department	2.21 – 2.35
Audit recommendations	2.36
Response from the Government	2.37
Enforcement work of the Office of the Communications Authority	2.38 – 2.42

	<b>Paragraph</b>
Audit recommendation	2.43
Response from the Government	2.44
 <b>PART 3: ENFORCEMENT WORK AGAINST UNSAFE GOODS, AND SHORT WEIGHTS AND MEASURES</b>	 3.1
Enforcement work of the Customs and Excise Department	3.2 – 3.7
Areas for improvement	3.8 – 3.23
Audit recommendations	3.24
Response from the Government	3.25
 <b>PART 4: OTHER CONSUMER PROTECTION MEASURES</b>	 4.1
Conciliation of consumer disputes by the Consumer Council	4.2 – 4.13
Audit recommendations	4.14
Response from the Consumer Council	4.15
Naming and public reprimand against unscrupulous traders by the Consumer Council	4.16 – 4.23
Audit recommendations	4.24
Response from the Consumer Council	4.25
Implementation of the Customer Complaint Settlement Scheme by the Office of the Communications Authority	4.26 – 4.29
Audit recommendations	4.30
Response from the Government	4.31
Research study on cooling-off periods by the Consumer Council	4.32 – 4.33
Consumer education and publicity	4.34 – 4.41

## **Paragraph**

Audit recommendations	4.42 – 4.43
Response from the Government and the Consumer Council	4.44 – 4.45

## **Appendices**

## **Page**

A : Customs and Excise Department: Organisation chart (extract) (31 December 2017)	97
B : Office of the Communications Authority: Organisation chart (extract) (31 December 2017)	98
C : Consumer Council: Organisation chart (extract) (31 December 2017)	99
D : Acronyms and abbreviations	100



# **CONSUMER PROTECTION AGAINST UNFAIR TRADE PRACTICES, UNSAFE GOODS, AND SHORT WEIGHTS AND MEASURES**

## **Executive Summary**

1. Hong Kong is a renowned shoppers' paradise with a total retail sales value of \$436.6 billion in 2016. According to the Commerce and Economic Development Bureau (CEDB), the primary objectives in consumer protection policy are: (a) to ensure that consumer products are safe and offered in accordance with good trade practices, and avenues for redress are available; and (b) to facilitate consumer access to legal remedies. The Customs and Excise Department (C&ED) is responsible for enforcing four consumer protection Ordinances: (i) the Trade Descriptions Ordinance (TDO — Cap. 362) which prohibits application of false trade descriptions and common unfair trade practices against consumers of goods and services; (ii) the Weights and Measures Ordinance (WMO — Cap. 68) which prohibits the use of false or defective weighing and measuring equipment for the purpose of trade; (iii) the Consumer Goods Safety Ordinance (CGSO — Cap. 456) which requires that consumer goods supplied for local consumption are reasonably safe; and (iv) the Toys and Children's Products Safety Ordinance (TCPSO — Cap. 424) which requires that toys and children's products supplied for local consumption are reasonably safe. In 2016-17, the C&ED deployed 246 staff and spent \$121.2 million on the enforcement of the four Ordinances. The Communications Authority, with the support of the Office of the Communications Authority (OFCA), is responsible for the enforcement of the TDO in relation to the provision of licensed telecommunications or broadcasting services. As at 31 October 2017, OFCA deployed 38 staff to carry out the enforcement work among other duties. The Consumer Council (CC) is a statutory body established to protect consumer interests through other measures such as conciliating consumer disputes, disseminating information and rendering advice to consumers, and organising consumer education activities. The CC is not a law enforcement agency and does not possess the power of investigation or adjudication. Instead, the CC handles complaints by means of conciliation, providing a platform for consumers and traders to resolve disputes by mutually acceptable agreements. The CC, with an establishment of 150 staff as at 31 March 2017, received recurrent subventions of \$115.4 million from the Government for 2016-17. The Audit

## Executive Summary

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Commission (Audit) has recently conducted a review to examine the efforts made by the C&ED, OFCA and CC to protect consumer interests with a view to identifying areas of improvement.

### Enforcement work against unfair trade practices

2. *Implementation of the 2012 Amendment Ordinance.* The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 was enacted in July 2012 to, among other things: (a) extend the coverage of the TDO to prohibit false trade descriptions in respect of services (in addition to goods); and (b) introduce criminal offences to deter the common unfair trade practices specified in the TDO. After the 2012 Amendment Ordinance came into full operation on 19 July 2013, the Government briefed the Legislative Council (LegCo) Panel on Economic Development on the implementation progress from 2014 to 2016. At the Panel meeting of May 2016, two Members considered that the prosecution rate was low compared to the number of complaints. In response, the C&ED explained that: (i) it was not suitable to deduce the prosecution rate on the basis of the number of complaints because some complaints did not involve contravention of the TDO and some involved the same traders and were hence processed as one investigation case; and (ii) the C&ED had initiated prosecution in 220 cases (16% of 1,363 completed investigations), including 7 successfully prosecuted service-related cases and 213 goods-related cases with 95% successful prosecution rate (paras. 1.5(b), 2.2 and 2.3(b)).

3. *Need to conduct a comprehensive review on the enforcement of the amended TDO.* In 2015 and 2016, OFCA conducted reviews of the enforcement of the amended TDO and found that it was more difficult to collect sufficient evidence against misconduct relating to services than goods and the criminal regime under the TDO required more stringent rule of evidence to prove an offence beyond reasonable doubt. Audit analysis of the enforcement statistics from July 2013 to December 2017 revealed that: (a) for OFCA, the prosecution rate for services was low (3%); and (b) for the C&ED, the prosecution rate for goods (27%) was more than three times higher than that for services (6%). According to the C&ED, there were a number of factors affecting the prosecution rates other than insufficient evidence (e.g. complainants' withdrawal of their complaints). In Audit's view, there is a need to ascertain the major contributing factors of the lower prosecution rate for services in order to enhance the effectiveness of the amended TDO. In light of the difficulty in collecting sufficient evidence against misconduct and the lower prosecution rate for



## Executive Summary

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services, and with the lapse of over four years since the implementation of the amended TDO, it is opportune to undertake a comprehensive review on the enforcement issues (paras. 2.4, 2.6 and 2.7).

4. ***Inadequacies in the information exchange and case referral between the enforcement agencies and CC.*** In December 2012, the Government informed the LegCo Panel on Economic Development that in connection with the implementation of the 2012 Amendment Ordinance, an electronic platform would be established for referral of cases between the C&ED and CC. The electronic platform (in the form of computer system interface) was established by enhancements to the computer systems of the CC and C&ED at a total cost of \$2 million which were completed in August 2014 and February 2016 respectively. The CC had shared unfair trade practice information with the C&ED since September 2014. On the other hand, the C&ED made minor enhancement to its existing system in 2014 to receive information. After the roll-out of its enhanced system in February 2016, the C&ED had not used the computer system interface for referring cases to the CC for conciliation. Moreover, the C&ED only started to use the computer system interface to share case information with the CC in February 2018. According to the C&ED, further system enhancements were required for referring cases to the CC for conciliation. Audit also noted that OFCA was not involved in setting up the electronic platform for information exchange and case referral (paras. 2.8 to 2.11, 2.13 and 2.14).

5. ***Enforcement work of the C&ED.*** The C&ED's enforcement work of the TDO is divided between its Intellectual Property Investigation Bureau (IPIB) and Trade Descriptions Investigation Bureau (TDIB). The two bureaux deployed 190 staff and spent \$92.9 million on the enforcement of the TDO in 2016-17. The IPIB is responsible for the enforcement of the TDO in relation to the supply of services and specified types of goods (notably ginseng, dried seafood and mobile phones which may involve syndicate crimes) while the enforcement responsibility for other goods rests with the TDIB. Their enforcement work includes: (a) handling of complaints; (b) patrol operations; (c) investigations; and (d) administering prosecutions and sanctions. In 2017, there were 6,922 TDO-related complaints, and the IPIB and TDIB completed 1,997 and 1,491 investigations, and instigated 22 and 50 prosecutions under their respective purview. Significant convicted cases in recent years included misleading pricing of goods at ginseng/dried seafood shops, aggressive commercial practices at a beauty parlor and a fitness centre, and false trade descriptions of goods sold at supermarkets (paras. 1.6, 2.7(b), 2.21, 2.22 and 2.30).

## Executive Summary

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6. ***Areas for improvement in the IPIB's enforcement work.*** Timeliness in conducting investigations is important to protect consumer interests as unfair trade practices could be promptly curbed to prevent more consumers from being preyed upon. Based on the C&ED's computer records of 2,960 investigations completed from July 2013 to 2 November 2017, Audit found that the IPIB had taken more than one year to close 1,532 (52%) investigation case files. According to the C&ED, the time required for each investigation depended on a number of factors (such as its complexity) and all investigations were completed within the statutory time limit for prosecution (para. 2.23). However, Audit's sample check of 50 investigation cases has revealed the following issues:

- (a) ***Need to step up supervisory oversight of investigation progress and fieldwork.*** According to the IPIB's Work Manual, supervisors shall monitor the progress of the investigation cases by reference to the progress reports submitted by case officers. For 7 of the 50 cases examined, 56 progress reports were submitted from 2014 to 2017. Audit found that:
  - (i) 5 (9%) reports were not signed off by supervisors concerned;
  - (ii) 19 (34%) reports were signed off more than 9 months after submission;
  - and (iii) 7 (12%) signed-off reports were undated. There was no assurance that timely supervisory checks had been properly conducted in these 31 reports. The Work Manual also requires supervisory check on surveillance/decoy operations. However, in 42 of the 50 cases examined which involved such operations, there was no record showing that supervisory check had been conducted for 214 operations in 38 (90%) cases (para. 2.26); and
  
- (b) ***Need to meet the internal time standards in handling investigation cases.*** To facilitate the intelligence collection and analysis work by the C&ED's Intelligence Bureau, the IPIB has set internal time standards for the submission of bimonthly reports on investigation results and reporting closed case information to the Intelligence Bureau. Audit examination of 50 investigations revealed that: (i) of 726 reports on investigation results submitted from January 2014 to October 2017, 120 (16.5%) had exceeded the two-month submission time standard by 1.1 to 6.3 months; and (ii) in 35 (70%) cases examined, the one-month time standard for reporting closed case information to the Intelligence Bureau was exceeded by 1.2 to 13.5 months (para. 2.27).

## Executive Summary

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7. ***Areas for improvement in the TDIB's enforcement work.*** The C&ED received 3,260 and 4,242 goods-related complaints from the public in 2016 and 2017 respectively. The C&ED has set a performance target in its Controlling Officer's Report (COR) to commence investigation into urgent complaints within 24 hours upon receipt of complaints. According to the C&ED, urgent complaints include those cases lodged by short-haul visitors or involving mobile/temporary stalls, that may require immediate investigation or action to be taken. The TDIB has also set time standards for completing investigations, i.e. within 4 months for cases not resulting in enforcement actions (e.g. seizure) and 6 months for cases with enforcement actions taken (paras. 1.9, 2.30 and 2.31). Audit examination has revealed the following issues:

- (a) ***Need to improve complaint handling and reporting achievement of key performance target in COR.*** Based on the information obtained from the TDIB, of the 3,260 goods-related complaints in 2016, 45 (1.4%) were classified as urgent cases requiring commencement of investigations within 24 hours upon receipt of the complaints. Audit found that the 24-hour time target for commencing investigation was not met in 12 cases. In response to Audit's enquiry, the C&ED in February and March 2018 said that: (i) 31 of the 45 cases had been misclassified as urgent cases (comprising the 12 cases found by Audit to have taken longer than 24 hours to commence investigations and another 19 cases with actions taken within 24 hours); (ii) the 31 cases were misclassified because for 19 cases involving temporary stalls, the durations of their operations were later found to be not temporary (longer than 24 hours); (iii) for another case involving a tourist, the complaint was lodged by e-mail after she had left Hong Kong; (iv) for the remaining 11 cases, they did not involve short-haul visitors or temporary stalls; and (v) only 14 cases (45 less 31) were confirmed urgent and all of them had met the 24-hour target. In Audit's view, the fact that the 31 urgent cases were only discovered by the C&ED to have been misclassified during this audit after the 24-hour performance target had been reported as 100% achieved based on 45 urgent cases suggested inadequate checking of: (i) the nature of the complaints in their classification; and (ii) the supporting records for reporting performance (paras. 2.31 and 2.32); and
- (b) ***Need to improve the timeliness in completing investigation work.*** Audit found that of 4,990 completed investigation cases for complaints received between July 2013 and December 2017, 1,946 (39%) cases could not meet the time standards, including 5 of the 14 urgent complaint cases of 2016.

## Executive Summary

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Among the 1,946 cases, the time taken to complete 38% of 1,328 cases not resulting in enforcement actions and 50% of 618 cases with enforcement actions taken had exceeded their respective time standards by more than 90 days. Audit examination of 30 cases not meeting the time standards revealed that the long time taken in carrying out test purchases and sending samples for laboratory testing had contributed to the delays. For example, in three cases that took more than two months to conduct test purchases after commencement of investigation, there was no documented justification for the long time taken. At present, there is no exception report generated by the C&ED's computer system to facilitate the monitoring of the delayed investigation cases (paras. 2.33 to 2.35).

### **Enforcement work against unsafe goods, and short weights and measures**

8. The Consumer Protection Bureau (CPB) of the C&ED is responsible for enforcing the CGSO and TCPSO against unsafe goods, and the WMO against short weights and measures. Its enforcement work includes: (a) handling of complaints on alleged offences; (b) conducting proactive spot checks and surveillance at retail shops; (c) conducting investigations on irregularities detected; and (d) administering prosecutions and sanctions. It deployed 56 staff and spent \$28.3 million on enforcing the three Ordinances in 2016-17. In 2017, the CPB received a total of 562 complaints, conducted 4,758 spot checks and completed 929 investigations under the three Ordinances (paras. 1.6 and 3.2 to 3.7).

9. ***Areas for improvement in spot checks.*** The objectives of spot checks are to detect the sale of unsafe goods under the CGSO and TCPSO, and short-weighted goods under the WMO. Audit has analysed the results of 6,740 CGSO-related, 7,371 TCPSO-related and 8,073 WMO-related spot checks conducted from 2013 to 2017 (paras. 3.8 and 3.13) and found the following issues:

- (a) ***Need to address the issue of high proportion of cases with target products not found in CGSO and TCPSO-related spot checks.*** Target products were not found in a high proportion of spot checks (81% for CGSO-related products and 55% for TCPSO-related products). While some overseas recalled products might not be available in the local market, Audit noted that some general types of products were also reported by CPB staff to be not found in spot checks, e.g. disposable gloves were reported not found in

## Executive Summary

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6 (38%) of 16 CGSO-related spot checks and infant toothbrush was reported not found in 41 (68%) of 60 TCPSO-related spot checks. The Intelligence Bureau of the C&ED facilitates the CPB in compiling a Company/Product List. The List is used as a reference for carrying out surveillance on the target product types as set out in the quarterly work plans. However, in 5% of the CGSO-related spot checks and 29% of the TCPSO-related spot checks, the target shops were found by CPB staff to have been vacated/closed or not having sufficient quantity of the target products for sample testing (paras. 3.9 and 3.10);

- (b) *Need to conduct more CGSO and TCPSO-related spot checks on online sales.* While the CPB has included goods supplied online in its spot check programme since April 2013, the number of spot checks on online sales averaged 8 a year compared to some 2,800 a year on retail shops. The detection rates of suspected offences were 16% for spot checks on online sales versus 1.1% on retail shops. In line with the growing popularity of online sales transactions, the C&ED needs to conduct more spot checks in this regard (para. 3.11);
- (c) *Need to address the decreasing detection rates of WMO-related spot checks.* The detection rate of suspected offences as a percentage of WMO-related spot checks decreased from 5.1% in 2013 to 0.5% in 2017. Audit analysed the 163 spot checks with suspected offences detected from 2013 to 2017 and found that 161 (99%) were by way of test purchases. While the spot check results suggested that test purchase was a more effective detection tool than equipment check, the proportion of test purchases among spot checks decreased from 64% in 2013 to 16% in 2017 (paras. 3.13 and 3.15); and
- (d) *Need for timely approval of WMO-related work plans and adequate spot checks for target trades.* According to the C&ED, WMO-related spot checks were performed in accordance with quarterly work plans which set out the target trades selected on a risk basis. However, all of the quarterly work plans for 2015 to 2017 were approved 9 to 34 days (averaging 13 days) after the commencement of the relevant quarters. Moreover, there was no laid-down guideline on the proportion of spot checks for the target trades. In 7 of 11 quarters from 2015 to September 2017, the percentages of spot checks for some target trades were less than those of the non-target trades (paras. 3.16 and 3.17).

## Executive Summary

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10. ***Areas for improvement in investigation work.*** Time is of the essence in enforcing the CGSO and TCPSO against unsafe goods and the WMO against short weights and measures. The C&ED has set performance targets in the COR for commencing investigations into: (a) urgent complaints within 24 hours upon receipt of complaints; and (b) priority complaints within 3 working days upon assessment of complaints. According to the C&ED, for CGSO or TCPSO-related cases, urgent complaints include cases: (i) involving injury; (ii) from complainants who have requested the C&ED to immediately conduct on site investigations with adequate justifications; or (iii) involving retailers who may terminate their short-term tenancy agreements at any time. Priority complaints include cases: (i) involving public/media concerns; (ii) from complainants asking for a reply on the progress of investigations; or (iii) involving products suspected of posing significant hazards to consumers. The CPB has also set internal time standards for completing: (a) CGSO and TCPSO-related investigations within 4 months for cases not resulting in enforcement actions and 6 months for cases with enforcement actions taken; and (b) within 3 and 4 months respectively for WMO-related investigations (paras. 3.3, 3.18 and 3.20). Audit examination has revealed the following areas for improvement in the CPB's investigation work:

- (a) ***Need to improve complaint handling and reporting achievement of key performance target in COR.*** Based on the information obtained from the CPB, of the 160 CGSO or TCPSO-related complaints in 2016, 72 (45%) were classified as urgent cases requiring commencement of investigations within 24 hours upon receipt of the complaints. Audit found that the 24-hour time target for commencing investigation was not met in 39 cases. In response to Audit's enquiry, the C&ED in March 2018 said that: (i) 70 of the 72 cases had been misclassified as urgent cases (comprising the 39 cases found by Audit to have taken longer than 24 hours to commence investigations and another 31 cases with actions taken within 24 hours); (ii) 47 of the 70 misclassified cases fell within the definition of priority cases as they either involved significant hazards (32 cases), public/media concerns (4 cases) or complainants requesting a progress reply (11 cases); (iii) the remaining 23 (70 less 47) cases were not in the nature of an urgent or priority case and hence fell within the low-priority category; and (iv) only 2 cases (72 less 70) were confirmed urgent and all of them had met the 24-hour target. In Audit's view, the fact that the 70 urgent cases were only discovered by the C&ED to have been misclassified during this audit after the 24-hour performance target had been reported as 100% achieved based on 72 urgent cases suggested inadequate checking of: (i) the nature of the complaints in their

## Executive Summary

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classification; and (ii) the supporting records for reporting performance (paras. 3.18 and 3.19); and

- (b) ***Need to improve the timeliness in completing investigation work.*** Audit analysed the 4,978 completed investigations in relation to the three Ordinances for the period from 2013 to September 2017 and noted that inability to meet the specified time standards was a cause for concern, particularly in respect of the CGSO and TCPSO-related cases, being 56% and 65% respectively. Ageing analysis showed that the extent of delays was also more significant for the CGSO and TCPSO-related cases, e.g. 52% and 62% respectively of those cases with enforcement actions taken were delayed for over 90 days (averaging 164 days). Audit examination of 60 completed investigations not meeting the time standards revealed that: (i) unsafe goods and other offences were confirmed by laboratory tests in 45 (75%) cases against which the C&ED took prosecution actions, or issued warning letters and/or safety control notices. While there was no time-barred prosecution case, the delays in meting out punishments to deter similar offences and/or issuing safety control notices to warn the public of the risks in buying/using the related products undermined consumer protection; and (ii) the long time taken in conducting test purchases, sending samples for laboratory testing and conducting raid operations had contributed to the delays. For example, in 13 (22%) cases, samples were sent for laboratory testing more than two months after test purchases but there was inadequate documentation of the justification for the long time taken in 11 cases. At present, there is no exception report generated by the C&ED's computer system to facilitate the monitoring of the delayed investigation cases (paras. 3.20 to 3.22).

## Other consumer protection measures

11. ***Consumer protection measures by the CC.*** The CC handles complaints by means of conciliation. In 2016-17, the CC received 25,039 complaints and the resolution rate of pursuable cases was about 74%. In the process of complaint handling, the CC may identify from repeated complaints lodged against a trader which has adopted some undesirable trade practices. The CC may decide to publicly name and reprimand such trader(s) or disapprove such practices in a certain industry. Moreover, the CC is committed to empowering consumers to protect themselves through disseminating consumer information and organising seminar and talks

## Executive Summary

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(paras. 4.2, 4.5, 4.16 and 4.34). Audit examination of CC records has revealed the following areas for improvement:

- (a) ***Inadequacies in taking follow-up actions on complaints.*** Audit sample check of 30 complaint cases revealed that: (i) there were omissions in issuing reminder letters to traders which did not respond to the CC's inquiry letters in 3 cases and delays in issuing such reminders in another 2 cases; (ii) in 4 cases, there were inadequate follow-up actions with the traders which did not respond to the reminder letters; and (iii) in 5 cases, the complainants were only informed of the case progress more than 30 days after the traders had not responded to the reminder letters (paras. 4.9 and 4.10);
- (b) ***Inadequate monitoring of long-outstanding complaint cases.*** Audit analysis of 2,526 complaints received from January 2012 to September 2017 which were in progress as at 17 November 2017 revealed that 396 (16%) cases had been outstanding for almost three years or more. According to the CC, 289 (73%) of the 396 cases were pending supervisors' review and approval for case closure due to an error in the CC's computer system which would not affect the interest of the complainants. However, follow-up actions for the remaining 107 cases were pending (paras. 4.11 and 4.12);
- (c) ***Need to enhance the computer system to support identification of traders with repeated undesirable trade practices.*** While the CC's computer system could generate reports showing traders/industries with the highest numbers of complaints in every month, there is no analysis of whether the complaints are related to their undesirable trade practices which are one of the factors for considering naming and public reprimand action. Moreover, the lack of data mining capability of the system makes it difficult to extract other useful information such as dispute resolution rates of traders for analysis. As such, there is a risk that some serious cases of undesirable trade practices may not have been brought up by the system for considering further actions. In an analysis of the CC's computer records, Audit noted that two traders had not been brought up for considering further actions despite an increasing number of complaints against them for undesirable trade practices and the low dispute resolution rate for one of them (paras. 4.18(c) and 4.19); and



## Executive Summary

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- (d) *Need to take forward the revamp project of CHOICE magazine.* According to the CC, CHOICE magazine plays a vital role in assisting consumers to make astute choices and make purchases in a safe, informed and responsible manner. However, the sale of CHOICE magazine had dropped by 23% from an average of 27,428 copies a month in 2009-10 to 21,033 a month in 2016-17. Moreover, the online version of the magazine, which was launched in 2004, had a slow pick-up rate due to the unfriendliness of the online subscription platform. According to a consultancy review completed in 2016 and the CC's internal review in 2017, a major revamp of the magazine was deemed necessary to sustain its value to the public (paras. 4.36 to 4.38).

12. *Low usage of a voluntary mediation scheme implemented by OFCA.* To address issues of billing disputes in the telecommunications services, OFCA has implemented a voluntary mediation scheme, namely the Customer Complaint Settlement Scheme (CCSS) to help resolve billing disputes in deadlock between the telecommunications service providers and their customers. The CCSS can handle over 400 cases a year if operating in full capacity. However, the number of cases referred to the CCSS from November 2012 to October 2017 averaged only 74 cases a year, representing a utilisation rate of about 18.5%. There is a need for OFCA to make greater efforts to promote the usage of the CCSS (paras. 4.26 and 4.28).

## Audit recommendations

13. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has recommended that:**

- (a) **the Commissioner of Customs and Excise and the Director-General of Communications should conduct a comprehensive review on the enforcement issues of the amended TDO (para. 2.15);**
- (b) **the Commissioner of Customs and Excise should:**
  - (i) **work with the CC to ensure the timely completion of enhancements to the computer system interface for case referral (para. 2.16);**

## **Executive Summary**

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- (ii) **take measures to improve the conduct of investigations by the IPIB and the timeliness in completing investigation work by the TDIB and the CPB (paras. 2.36(a) and (d), and 3.24(e));**
  - (iii) **take measures to improve complaint handling such as the processing and classification of complaints (paras. 2.36(b) and 3.24(c));**
  - (iv) **strengthen the checking of supporting records for reporting the achievement of performance targets in the COR (paras. 2.36(c) and 3.24(d)); and**
  - (v) **take measures to improve the effectiveness of spot checks by the CPB (para. 3.24(a) and (b));**
- (c) **the Director-General of Communications should review the need for sharing of unfair trade practice information with the CC and make greater efforts to promote the usage of the CCSS (paras. 2.17(a) and 4.30(a)); and**
- (d) **the CC should:**
  - (i) **tighten monitoring to ensure that complaint cases are dealt with in a timely manner (para. 4.14(e));**
  - (ii) **enhance the analytical capability of its computer system to facilitate the identification of serious and repeated cases of undesirable trade practices (para. 4.24(a)); and**
  - (iii) **continue the efforts to take forward the revamp project of CHOICE magazine (para. 4.42).**

## **Response from the Government and the Consumer Council**

14. The Government and the CC generally agree with the audit recommendations.

## **PART 1: INTRODUCTION**

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

### **Consumer protection**

1.2 Hong Kong is a renowned shoppers' paradise. The wide range of quality goods and services available at competitive prices not only benefit local residents, but also attract tourists spending in Hong Kong. According to the Census and Statistics Department, Hong Kong's total retail sales value (indicative of consumer spending) amounted to \$436.6 billion in 2016. The Government is committed to safeguarding the legitimate interests of consumers, both local residents and visitors alike. The Commerce and Economic Development Bureau (CEDB) has the policy responsibility for consumer protection. According to the CEDB, the primary objectives in consumer protection policy are: (a) to ensure that consumer products are safe and offered in accordance with good trade practices, and avenues for redress are available; and (b) to facilitate consumer access to legal remedies.

### ***Legal framework***

1.3 The laws for the general protection of consumers include the following four Ordinances which are enforced by the Customs and Excise Department (C&ED):

## Introduction

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- (a) ***The Trade Descriptions Ordinance (TDO — Cap. 362).*** The Ordinance prohibits common unfair trade practices deployed against consumers of goods and services (see exclusions in Note 1), including: (i) application of false trade descriptions; (ii) misleading omissions of material information; (iii) aggressive commercial practices (e.g. causing a consumer to take a transactional decision he would not have taken otherwise through the use of harassment, coercion or undue influence); (iv) bait advertising (e.g. advertising for the supply of products at a specified price if the trader has no reasonable grounds for believing that it will be able to offer those products for sale at that price for a reasonable period and in reasonable quantities); (v) bait and switch (e.g. making an offer to sell products at a specified price with the intention of promoting a different product); and (vi) wrongly accepting payment (i.e. accepting payment without the intention to supply the contracted products);
- (b) ***The Weights and Measures Ordinance (WMO — Cap. 68).*** The Ordinance prohibits the possession and use of false or defective weighing and measuring equipment for the purpose of trade. It also requires that goods sold by weight or measure in the course of trade must be sold by net weight or measure and not short of quantity purported to be supplied;
- (c) ***The Consumer Goods Safety Ordinance (CGSO — Cap. 456).*** The Ordinance requires manufacturers, importers and suppliers of consumer goods (see exclusions in Note 2) to ensure that the goods they supply for local consumption are reasonably safe. Subsidiary legislation under the

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**Note 1:** *The TDO does not apply to immovable property and financial products or services sold or supplied by a person regulated, licensed, registered, recognised or authorised under specific Ordinances (e.g. the Insurance Ordinance (Cap. 41) or the Securities and Futures Ordinance (Cap. 571)), being goods or services the sale or supply of which by that person is itself regulated under such Ordinances and under which the person is regulated, licensed, registered, recognised or authorised. In addition, commercial practices engaged by a person acting in the capacity of a professional person (e.g. a certified public accountant as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50)) listed in Schedule 3 of the TDO are not regulated, except for the offences of sections 4 and 5 in relation to goods, and false trade descriptions of goods under section 7.*

**Note 2:** *Consumer goods as defined in the Ordinance do not include goods such as food, motor vehicles, electrical products and any other goods the safety of which is controlled by specific legislation.*

Ordinance requires warning or caution on the packaging or labels to be provided in both English and Chinese; and

- (d) *The Toys and Children's Products Safety Ordinance (TCPSO — Cap. 424)*. The Ordinance provides for safety standards for toys and children's products (Note 3) manufactured, imported or supplied for local consumption to ensure that the products are reasonably safe. Subsidiary legislation under the Ordinance sets out the control on the concentration of six types of phthalates (Note 4) in certain toys and children's products and requires bilingual safety labelling with respect to safekeeping, use, consumption or disposal of toys and children's products, and identification marking in English and/or Chinese.

1.4 Specific ordinances have also been enacted to protect different aspects of consumer interests. Enforcement responsibilities of these sector-specific laws rest with the authorities specified by the respective laws. For example, in respect of consumer health, the Department of Health is responsible for enforcing the Pharmacy and Poisons Ordinance (Cap. 138) and the Chinese Medicine Ordinance (Cap. 549) which regulate the safety, quality and efficacy of pharmaceutical products and proprietary Chinese medicines respectively (Note 5). For electrical products, the Electrical and Mechanical Services Department is responsible for enforcing the Electricity Ordinance (Cap. 406) which prescribes safety requirements for such products to protect consumer safety. In respect of contract-related matters, the Sales of Goods Ordinance (Cap. 26) provides that goods sold should be of "merchantable quality" and empowers the buyer to reject defective goods where he/she has not had a reasonable opportunity to examine the goods, and the Supply of Services (Implied

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**Note 3:** *There are 12 classes of children's products stipulated under Schedule 2 of the Ordinance, e.g. bunk beds for domestic use, children's paints, and playpens for domestic use. A product also falls within the scope of the Ordinance if it is intended to facilitate the feeding, hygiene, relaxation, sleep, sucking or teething of a child under 4 years of age and contains any plasticised material.*

**Note 4:** *Phthalates are commonly used as plasticisers in plastic products. Studies have shown that long time exposure to some phthalates through prolonged mouthing may result in adverse health effects, including toxicity to the liver, kidney, as well as the reproductive and development systems.*

**Note 5:** *The Audit Commission conducted a review on the legislative control of Chinese and western medicines under these two Ordinances and the results of which were reported in Chapters 4 and 5 of the Director of Audit's Report No. 53 of October 2009.*

## Introduction

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Terms) Ordinance (Cap. 457) provides that a contract for supply of services should be carried out with reasonable care and skill and within a reasonable time. The Unconscionable Contracts Ordinance (Cap. 458) empowers the courts to give relief in certain contracts found to be unconscionable (Note 6).

### *Enhancing the regulatory regime*

1.5 With a view to ensuring that the regulatory regime continues to promote a fair, safe and informed market and to boost the confidence of citizens and tourists in shopping in Hong Kong, the Government, in conjunction with the Consumer Council (CC — see para. 1.13), has from time to time conducted reviews of existing measures to protect consumer rights. These reviews have led to major legislative amendments to the TDO to strengthen consumer protection in various aspects:

- (a) ***The 2008 legislative amendments.*** The Trade Descriptions (Amendment) Ordinance 2008 was enacted in June 2008 to prohibit the following four types of unscrupulous trade practices:
  - (i) false representations regarding after-sale services and warranties for goods;
  - (ii) misleading price indications (e.g. partial or total obscuring of any letter, word, numeral or character that indicates the price of goods, or the quantity unit to which the price relates);
  - (iii) misleading pricing for five types of electronic products, namely, mobile phone, digital camera, digital audioplayer, digital camcorder and portable multimedia player (Note 7); and

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**Note 6:** *For example, if a court finds that a contract or any part thereof to have been unconscionable in the circumstances relating to the contract at the time when it was made, the court may refuse to enforce the contract or alter any unconscionable part.*

**Note 7:** *For example, the amended TDO requires that a seller must inform a consumer, before the latter making a payment, whether the price of a product covers the essential accessories.*

- (iv) false or misleading representations regarding connection with and endorsement by another person.

Eight items of subsidiary legislation were also made to enhance protection for consumers in the purchase of jewellery items and electronic products, including assigning definitive meanings to platinum, diamond and fei cui (翡翠), and imposing certain disclosure requirements in relation to the retail sale of natural fei cui, diamond, platinum, gold and gold alloy, and regulated electronic products listed in item (iii) above. The Amendment Ordinance and the new subsidiary legislation took effect in March 2009; and

- (b) ***The 2012 legislative amendments.*** The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (hereinafter referred to as the 2012 Amendment Ordinance) was enacted in July 2012 to:

- (i) extend the TDO's coverage to prohibit false trade descriptions in respect of services made in consumer transactions (in addition to its previous coverage on sale of goods only) as enshrined in section 4 (i.e. marking and provision of information), section 5 (i.e. information to be given in advertisements), section 7 (i.e. offences in respect of trade description of goods) and section 7A (i.e. offences in respect of trade description of services) of the amended TDO;
- (ii) prohibit five specified unfair trade practices, namely misleading omissions, aggressive commercial practices, bait advertising, bait and switch, and wrongly accepting payment (see para. 1.3(a)) as enshrined in sections 13E, 13F, 13G, 13H and 13I of the amended TDO. The amended sections 4, 5, 7, 7A (see (i) above) and sections 13E to 13I are collectively referred to as the fair trading sections. Traders convicted of an offence under the fair trading sections of the TDO are liable to a maximum penalty of imprisonment for five years and a fine of \$500,000;
- (iii) empower the Communications Authority (CA — see para. 1.10) to enforce the fair trading sections in relation to the commercial practices of licensees under the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106) that are directly

## Introduction

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connected with the provision of a broadcasting service or telecommunications service under the respective Ordinances; and

- (iv) introduce a civil compliance-based mechanism under which the law enforcement agencies may, as an alternative to criminal prosecution, accept an undertaking from a trader which the enforcement agencies believe has engaged, is engaging or is likely to engage in a prohibited unfair trade practice to stop that practice. The purpose is to encourage compliance by traders and to stop identified non-compliant practices expeditiously.

The 2012 Amendment Ordinance came into full operation on 19 July 2013. To facilitate compliance and enhance transparency, the C&ED and the CA published a set of Enforcement Guidelines on 15 July 2013, which provides guidance on the operation of the fair trading sections of the Ordinance and states the manner in which the enforcement agencies exercise their powers. Generally speaking, in accordance with section 16E of the TDO, the CA will take up cases in which suspected violations relate to the provision of licensed telecommunications services and broadcasting services under the Telecommunications Ordinance and Broadcasting Ordinance respectively. All other cases, including those in which suspected violations relate to goods (or goods bundled with services), will be taken up by the C&ED.

### *Consumer protection work of the C&ED*

1.6 ***Organisation and resources.*** The C&ED is headed by the Commissioner of Customs and Excise. The Department comprises five branches. The Consumer Protection Bureau (CPB) under the Trade Controls Branch of the C&ED is responsible for the enforcement of the WMO, CGSO and TCPSO. The Trade Descriptions Investigation Bureau (TDIB), also under the Trade Controls Branch, is responsible for the enforcement of the TDO in relation to the supply of goods. The Intellectual Property Investigation Bureau (IPIB) under the Intelligence and Investigation Branch (Note 8) of the C&ED is responsible for the enforcement of the TDO in relation to the supply of services and specified types of goods (e.g. mobile phones, dried seafood

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**Note 8:** *Unlike the Trade Controls Branch which is mainly staffed by members of the Trade Controls Officer grade, the Intelligence and Investigation Branch is mainly staffed by members of the Customs and Excise Service which is a disciplined service established under the Customs and Excise Service Ordinance (Cap. 342).*



and Chinese herbal medicine of unclear pricing units). An extract of the organisation chart of the C&ED is at Appendix A. The manpower and expenditure involved in the enforcement of the four consumer protection Ordinances by the C&ED for the period 2014-15 to 2016-17 are as follows:

**Table 1**  
**Manpower and expenditure involved**  
**in the enforcement of the four Ordinances by the C&ED**  
**(2014-15 to 2016-17)**

Ordinance	Manpower for enforcement/ expenditure involved	Year		
		2014-15	2015-16	2016-17
TDO	Manpower (number of staff)	187	190	190
	Expenditure involved (\$ million)	87.6	95.1	92.9
WMO	Manpower (number of staff)	21	21	21
	Expenditure involved (\$ million)	9.4	9.8	10.3
CGSO	Manpower (number of staff)	19	19	19
	Expenditure involved (\$ million)	8.7	9.1	9.5
TCPSO	Manpower (number of staff)	16	16	16
	Expenditure involved (\$ million)	7.8	8.1	8.5
Total	Manpower (number of staff)	243	246	246
	Expenditure involved (\$ million)	113.5	122.1	121.2

*Source: C&ED records*

**1.7 Enforcement work.** To detect non-compliance with the consumer protection legislation, the C&ED conducts proactive spot checks on the accuracy of weighing and measuring equipment, compliance with the safety requirements for toys and children's products and consumer goods, compliance with the orders for provision of information on precious stones, metals and regulated electronic products, and compliance with the requirements on trade descriptions and trade practices. Besides,

## Introduction

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the C&ED conducts investigations in response to specific information from various sources (e.g. complaints and media reports), and follows up non-compliance detected in its spot checks. In 2017, the C&ED received 6,922 TDO-related complaints, 406 WMO-related complaints, 117 CGSO-related complaints and 39 TCPSO-related complaints. The C&ED has established Quick Response Teams to handle urgent complaints lodged by short-haul visitors or local consumers. In support of the enforcement work, the C&ED has put in place the following measures:

- (a) ***Procedural guidelines.*** The C&ED has issued Work Manuals to guide staff of the CPB, TDIB and IPIB in performing their duties. The Work Manuals set out the operational procedures and internal time standards as work targets for spot checks and investigations. The C&ED has also issued a Code of Practice which sets out the procedures for taking administrative and prosecution actions (Note 9) by the Trade Controls Branch; and
- (b) ***Management information systems.*** The C&ED has two major computer systems for administering spot checks and investigations, namely, the Trader Information Management System (TIMS — Note 10) and the Case Processing System (CAPS — Note 11). One of the sub-systems of TIMS is used for capturing data of spot checks and subsequent follow-up actions. CAPS is a central database which maintains progress of each case from the time an investigation file is opened up to its conclusion. It also captures details relating to investigations, prosecution and disposal of seized items.

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**Note 9:** *The administrative actions include the issue of warning and advisory letters to traders, and safety control notices requiring parties concerned to take remedial actions, namely, notice to warn, prohibition notice, recall notice and requirement notice.*

**Note 10:** *TIMS was implemented in 2005 to converge several standalone trader information systems to provide a consolidated data repository for better data sharing. With the approved funding of \$8.9 million in June 2014, the C&ED enhanced TIMS in February 2016 (see para. 2.10).*

**Note 11:** *CAPS was originally implemented in December 2001 to help the C&ED monitor the processing of investigation cases. With the approved funding of \$45.72 million in 2011, the C&ED replaced CAPS in June 2013 with a new system which is equipped with analysis and monitoring tools for enhanced investigation capability and case management control.*

1.8        ***Publicity and education.*** To promote traders' awareness of product safety and their obligations in complying with the related Ordinances, the C&ED has conducted education-oriented seminars for department stores, chain shops, trade and industry associations, and small and medium enterprises. In 2016, 40 seminars/briefing sessions were held to help traders understand the fair trading sections of the TDO and the consequences of non-compliance. To raise public awareness of consumer rights and to remind retailers of their legal obligations, the C&ED has launched publicity campaigns by distributing pamphlets with the salient points of the TDO to local consumers and visitors at tourist areas and shops as well as the passenger arrival halls of various control points.

1.9        ***Performance measures.*** The key performance targets and indicators on enforcing the four consumer protection Ordinances as reported by the C&ED in its Controlling Officer's Reports (CORs) for 2014 to 2016 are shown in Tables 2 and 3 respectively (key performance indicators for 2017 are also included in Table 3 for comparison purpose).

**Table 2**  
**Key performance targets**  
**(2014 to 2016)**

Key performance target	Target	2014	2015	2016
		Actual		
(a) Commencing investigations into urgent complaints (Note 1) against short weights and measures and unsafe products within 24 hours upon receipt of complaints	100 %	100 %	100 %	100 %
(b) Commencing investigations into priority complaints (Note 2) against short weights and measures and unsafe products within three working days upon assessment of complaints	100 %	100 %	100 %	100 %
(c) Commencing investigations into urgent complaints (Note 3) against unfair trade practices within 24 hours upon receipt of complaints	100 %	100 %	100 %	100 %
(d) Commencing investigations into priority complaints (Note 4) against unfair trade practices within three working days upon assessment of complaints	100 %	100 %	100 %	100 %

Source: C&ED records

*Note 1: According to the C&ED, for WMO-related cases, urgent complaints include those cases: (a) from complainants who have requested the C&ED to immediately conduct on site investigations with adequate justifications; (b) involving tourists who are going to leave Hong Kong shortly and are willing to cooperate with the C&ED; or (c) involving retailers who may terminate their short-term tenancy agreements at any time. For CGSO and TCPSO-related cases, in addition to (a) and (c) above, urgent complaints include those cases involving injury.*

*Note 2: According to the C&ED, for WMO-related cases, priority complaints include those cases: (a) involving public/media concerns; (b) involving seasonal goods and mobile hawkers; or (c) from complainants asking for a reply on the progress of investigations. For CGSO and TCPSO-related cases, in addition to (a) and (c) above, priority complaints include those cases involving products suspected of posing significant hazards to consumers.*

*Note 3: This performance target was introduced in 2014. According to the C&ED, urgent complaints include those cases: (a) lodged by short-haul visitors; or (b) involving mobile/temporary stalls, that may require immediate investigation or action to be taken.*

*Note 4: This performance target was introduced in 2014. According to the C&ED, priority complaints include cases such as those involving: (a) public interests or concerns; or (b) temporary stalls or traders which may terminate their short-term tenancy agreements within a few days.*

**Table 3**  
**Key performance indicators**  
**(2014 to 2017)**

Indicator	2014	2015	2016	2017
<b>Weights and measures</b>				
Spot checks	1,588	1,878	1,648	1,715
Seizure cases	49	13	25	19
Value of seizures (\$'000)	261.7	60.1	199.8	100.2
<b>Toys and children's products safety</b>				
Spot checks	1,417	1,529	1,607	1,603
Seizure cases	2	4	6	35
Value of seizures (\$'000)	28.8	27.6	15.8	160.6
<b>Consumer goods safety</b>				
Spot checks	1,146	1,439	1,460	1,440
Seizure cases	13	37	7	12
Value of seizures (\$'000)	278.4	430.4	116.5	2,076.9
<b>Fair trading in articles (trade descriptions)</b>				
Spot checks	4,052	4,128	4,060	4,000
Seizure cases	62	61	34	18
Value of seizures (\$'000)	2,774	4,673	1,776	2,944

Source: C&ED records

Remarks: According to the C&ED, manpower was deployed to enforce the export control on powdered formula and to implement the amended TDO in 2014 which led to the decrease in WMO, CGSO and TCPSO-related spot checks for that year. The number of spot checks under the three Ordinances had increased since 2015 after the manpower of the CPB returned to normal.

### *Consumer protection work of the CA*

1.10 **Organisation and resources.** The CA is an independent statutory body established on 1 April 2012 under the Communications Authority Ordinance (Cap. 616) as the unified regulator of both the telecommunications and broadcasting sectors in Hong Kong (Note 12). The role and functions of the CA are executed by its executive arm and secretariat, i.e. the Office of the Communications Authority (OFCA), which is a trading fund department headed by the Director-General of Communications. The enforcement of the fair trading sections of the TDO (see para. 1.5(b)) in relation to the provision of licensed telecommunications or broadcasting services under the Telecommunications Ordinance or the Broadcasting Ordinance is carried out by the Market and Competition Branch (MCB) of OFCA which had an establishment of 38 staff as at 31 October 2017. An extract of the organisation chart of OFCA is at Appendix B.

1.11 **Enforcement work.** According to the Enforcement Guidelines for the TDO jointly issued by the C&ED and the CA (see para. 1.5(b)), OFCA will, as it has been the case all along, closely monitor developments in the telecommunications and broadcasting markets, and where the circumstances warrant, carry out the necessary operations in exercise of the powers conferred on the CA under the TDO. OFCA will examine every consumer complaint that it receives to determine whether the complaint can be pursued for further investigation. OFCA accepts complaints from various channels (e.g. by phone, post, fax, e-mail, online submission or in-person). OFCA has issued an internal Office Manual providing guidelines on handling of complaints, investigations, taking of interview statements, handling of exhibits, preparation for prosecution, issuing of warning/advisory letters, etc., for staff's compliance. OFCA has also maintained a computer system to record details of the complaints received, investigation progress and case outcome.

1.12 **Other consumer protection measures.** Apart from the enforcement of the TDO, OFCA handles tasks and projects on consumer protection, which mainly include:

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**Note 12:** *As at 31 December 2017, the CA comprised the chairman, the vice-chairperson (the Permanent Secretary for Commerce and Economic Development (Communications and Creative Industries)) and 10 members (including the Director-General of Communications).*

- (a) supporting the telecommunications industry to implement a voluntary scheme to mediate billing disputes between service providers and their customers;
- (b) monitoring the implementation and effectiveness of various codes of practice and guidelines for the telecommunications industry; and
- (c) organising an annual consumer education campaign to relay various consumer messages to the public through a variety of programmes and activities.

### ***Role of the CC***

1.13 The CC was established in April 1974. It was incorporated as a body corporate with the enactment of the Consumer Council Ordinance (Cap. 216) in July 1977. The governing body of the CC is its Council (Note 13). According to the Consumer Council Ordinance, the Council shall appoint a person to hold office as its Chief Executive (CE), and the functions of the CC are to protect and promote the interests of consumers of goods and services, and purchasers, mortgagors and lessees of immovable property mainly by:

- (a) collecting, receiving and disseminating information concerning goods, services and immovable property;
- (b) receiving and examining complaints by and giving advice to consumers of goods and services, and purchasers, mortgagors and lessees of immovable property;

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**Note 13:** *As at 31 December 2017, the Council comprised the chairman, the vice-chairman, 20 members and 29 co-opted members. The Council is given the authority to exercise powers conferred upon it by the Consumer Council Ordinance. The Council may appoint Committees and Working Groups and may delegate to them the exercise of its power and performance of its functions. As at 31 December 2017, 12 Committees and Working Groups were established to deal with specific areas of consumer issues, including product testing (the Research and Testing Committee), trade practices (the Trade Practices and Consumer Complaints Review Committee) and legal protection (the Legal Protection Committee).*

## Introduction

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- (c) taking such action as it thinks justified by information in its possession, including tendering advice to the Government or to any public officer; and
- (d) encouraging business and professional associations to establish codes of practice to regulate the activities of their members.

1.14 The CC is funded mainly by recurrent subventions from the Government. For 2016-17, the government subvention to the CC amounted to \$115.4 million, which accounted for 95% of the total income of the CC. As at 31 March 2017, the CC had an establishment of 150 staff. An extract of the organisation chart of the CC is shown at Appendix C. The work of the CC ranges from developing new consumer protection initiatives to conducting studies on trade practices and matters affecting consumer interests. While the CC has no law enforcement power against any traders for any malpractice, it may initiate actions to name and reprimand a trader in serious cases of undesirable trade practices. It conciliates consumer disputes, disseminates information and renders advice to consumers, and organises consumer education activities. It also tests products, conducts in-depth studies and surveys, publishes a consumer magazine “CHOICE”, and examines and responds to consultation papers and reports on consumer-related issues. To facilitate consumer access to legal remedies, the CC administers the Consumer Legal Action Fund as its trustee. The fund was established in 1994 to provide legal assistance to consumers aggrieved by the acts or omissions of traders in cases involving significant consumer interests (Note 14).

## Audit review

1.15 In 2008, the Audit Commission (Audit) completed a review of “Consumer Council: Corporate governance and protecting and promoting consumer interests”. The results were included in Chapter 3 of the Director of Audit’s Report No. 51 of October 2008. In 2009, Audit conducted a review of “Customs and Excise Department: Enforcement work of the Consumer Protection Bureau”, the results of which were included in Chapter 2 of the Director of Audit’s Report No. 52 of March 2009. The CC and the Government agreed with the audit recommendations in

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**Note 14:** *The Fund was established in 1994 with an initial government grant of \$10 million. Further funding of \$10 million was granted by the Government in May 2010. As at 31 March 2017, the Fund had a balance of around \$9 million.*



the two audit reviews. In October 2017, Audit commenced a review to examine the efforts made by the C&ED, OFCA and CC to protect consumer interests, focusing on the following areas:

- (a) enforcement work against unfair trade practices (PART 2);
- (b) enforcement work against unsafe goods, and short weights and measures (PART 3); and
- (c) other consumer protection measures (PART 4).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

## Acknowledgement

1.16 Audit would like to acknowledge with gratitude the assistance and full cooperation of the staff of the CEDB, C&ED, OFCA and CC.

## **PART 2: ENFORCEMENT WORK AGAINST UNFAIR TRADE PRACTICES**

2.1 The TDO regulates unfair trade practices including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait and switch, and wrongly accepting payment (see para. 1.3(a)). This PART examines the enforcement of the TDO, focusing on the following issues:

- (a) implementation of the 2012 Amendment Ordinance which covers the unfair trade practices of both goods and services (paras. 2.2 to 2.20);
- (b) enforcement work of the C&ED (paras. 2.21 to 2.37); and
- (c) enforcement work of OFCA (paras. 2.38 to 2.44).

### **Implementation of the 2012 Amendment Ordinance**

2.2 After the full operation of the 2012 Amendment Ordinance on 19 July 2013, the CEDB, C&ED and OFCA had provided reports to the Legislative Council (LegCo) Panel on Economic Development on the implementation progress from 2014 to 2016. The salient points of these reports are summarised below:

- (a) ***Enforcement strategy.*** The enforcement agencies of the TDO (i.e. the C&ED and OFCA) had been adopting a three-pronged approach in enforcing the fair trading sections of the TDO:
  - (i) ***Compliance promotion.*** By conducting briefings for and proactive visits to different business sectors, the enforcement agencies provided traders with advice and guidance on the legal requirements under the TDO;
  - (ii) ***Enforcement.*** The enforcement agencies took necessary and timely enforcement actions to combat non-compliant conduct and thereby instil public confidence. As the TDO covered a wide range of goods and services, in order to facilitate traders' compliance and optimise the use of enforcement resources, the enforcement agencies

accorded priority to handling cases that might have significant implications on consumers, the trade or the community at large (Note 15); and

- (iii) ***Public education and publicity.*** The enforcement agencies in coordination with the CC had launched extensive publicity and education programmes, raising consumers' awareness of the unfair trade practices, promoting the concept of "smart consumption", and also promoting good practices amongst traders; and
- (b) ***Complaint and enforcement statistics.*** From July 2013 to April 2016, the C&ED, OFCA and the CC respectively received 16,424, 2,182 and 9,877 complaints involving suspected breaches of the TDO (see Table 4 for a breakdown of the complaints according to the offences involved). Of the 16,424 complaints received, the C&ED found no contravention of the TDO and hence did not take further action on 5,947 complaints. For another 982 complaints, although evidence of breaching the TDO was not found, the C&ED reminded the traders to comply with the TDO. Detailed investigations were launched into 8,787 complaints and the remaining 708 complaints were referred to relevant bodies for follow-up action or under preliminary examination at the time. The 8,787 (i.e. 16,424 – 5,947 – 982 – 708) complaints together with those proactively developed by the C&ED were consolidated into 1,432 cases (more than one complaint might be involved in certain cases). After completing 1,363 investigations at the time, the C&ED issued warning or advisory letters in 199 cases, instigated prosecution in 220 cases and accepted written undertakings under the civil compliance-based mechanism in 10 cases. For another 7 cases, the C&ED had applied to the court for forfeiture of the goods concerned without initiating prosecution. The remaining 927 cases were closed due to insufficient evidence. Of the 2,182 complaints received by OFCA, 2,004 were closed due to no contravention of the TDO. For another

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**Note 15:** *Such cases generally involve conduct that: (a) has significant public interests or concerns; (b) is repeated, intentional, organised or constitutes a serious contravention; (c) results or may result in significant consumer detriment; (d) is targeted at disadvantaged or vulnerable consumer groups; (e) suggests a pattern of non-compliance by the trader or is indicative of a risk of future misconduct; (f) indicates a significant, new or emerging market trend or is likely to become widespread in an industry or across industries; and/or (g) conduct against which enforcement actions taken may likely bring about worthwhile educative or deterrent effect.*

## Enforcement work against unfair trade practices

126 complaints, although evidence of breaching the TDO was not found, OFCA issued advisory letters to remind traders to comply with the statutory requirements. OFCA initiated prosecution in one case and was at the time still examining the remaining 51 cases. As for the CC, 6,689 of the complaints received were pursuable, among which 6,134 had been closed (settled upon the CC's conciliation or referred to relevant bodies for follow-up action) and the remaining 555 were under conciliation up to April 2016.

**Table 4**

**Number of complaints received alleging breaches of the TDO  
(July 2013 to April 2016)**

Complaint by offences involved	C&ED	OFCA	CC
	(Number)		
False trade descriptions	10,083	1,101	4,446
Misleading omissions	2,108	939	1,560
Aggressive commercial practices	551	51	1,314
Bait advertising	185	13	199
Bait and switch	69	19	525
Wrongly accepting payment	3,247	449	1,833
Others (e.g. cases outside the scope of the TDO)	181	242	Not applicable
Total	16,424	2,182 (Note)	9,877

*Source:* C&ED, OFCA and CC records

*Note:* As some complaints received by OFCA involved more than one allegation of suspected breach of the TDO, the total number of cases according to the offences involved was greater than the total number of complaints received.

### ***LegCo Members' views/concerns on enforcement of the amended TDO***

2.3 During the discussions of the Government's update on implementation of the amended TDO at the meetings held in June 2015 and May 2016, some Members

of the LegCo Panel on Economic Development made enquiries and expressed views/concerns on complaints and enforcement actions. The Government's response in this regard is summarised below:

- (a) ***Panel meeting of June 2015.*** At the meeting, three Members asked for the details of the TDO-related complaints and the sectors with which the C&ED had encountered enforcement difficulties, particularly whether they covered the beauty industry and prepaid services. In response, the C&ED:
- (i) explained that the Department had been receiving 16 complaints and 62 enquiries each day on average when the amended TDO came into effect, ebbing to 13 complaints and 14 enquiries in the six months prior to the Panel meeting. The number of complaints held steady but more cases became actionable, and a marked decrease in enquiries showed broader understanding of the amended TDO;
  - (ii) elaborated that complaints related to goods outnumbered those related to services by three times and only 4 out of 122 prosecutions instigated from July 2013 to May 2015 were related to services;
  - (iii) admitted that investigating complaints related to services was invariably complex due to absence of physical commodities, and transgressions did not manifest at the outset;
  - (iv) pointed out that since unscrupulous traders would pick their prey selectively, the C&ED had to launch undercover operations to gather evidence; and
  - (v) assured that it had made meaningful headway in weeding out undesirable conduct in the beauty industry (Note 16); and

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**Note 16:** *The C&ED has stepped up efforts on compliance promotion and consumer education in respect of the beauty and fitness services (where prepaid services were common) since 2016. For example, the C&ED has held a number of meetings with the relevant traders since mid-2016 to disseminate messages on unfair trade practices. An episode on the TDO featuring unfair trade practices in the beauty industry was also broadcast via television programme "Police Magazine" in December 2016.*

## Enforcement work against unfair trade practices

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- (b) ***Panel meeting of May 2016.*** At the meeting, a Member (Note 17) asked for more information about the prosecution cases handled by the C&ED and considered that the prosecution rate was too low with respect to the number of complaints (i.e. 220 prosecutions as against 16,424 complaints received from July 2013 to April 2016). Another Member also considered the prosecution rate rather low and worried that the penalties imposed on convicted cases were too lenient and the enforcement actions were not adequate to achieve the deterrent effect on unscrupulous traders whilst not affecting honest traders. The Member urged the Government to review the enforcement tools and make appeals on cases as appropriate. In response, the C&ED explained that:
- (i) although the Department had received a total of 16,424 complaints during the period, about 6,000 of them involved no contravention of the TDO. In addition, among the 8,787 complaints followed up by detailed investigation, some involved the same traders and were hence processed as one investigation case. As such, it was not suitable to deduce the prosecution rate on the basis of the number of complaints;
  - (ii) the Department had initiated prosecution on 220 (16%) of the 1,363 completed investigations, with 95% of them resulting in successful prosecutions. 7 of the prosecution cases were related to supply of services and all of them had been prosecuted successfully. The remaining 213 prosecution cases were related to supply of goods with 95% of them being prosecuted successfully; and
  - (iii) penalties for each case were decided by the court. The Department of Justice (DoJ) might make appeals on cases with sufficient grounds.

2.4 ***OFCA's reviews of its enforcement of the amended TDO.*** In 2015 and 2016, OFCA conducted reviews of the enforcement of the amended TDO and reported the results to the CA. Key findings of the reviews are summarised below:

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**Note 17:** *The Member also expressed concern on the small number of successful prosecution cases at the Policy Address briefing of the LegCo Panel on Economic Development on 2 February 2015.*

- (a) ***More difficult to collect sufficient evidence against misconduct relating to services than goods.*** In contrast with goods which were tangible and could be produced as direct evidence *per se*, services were intangible and it was more complicated to collect sufficient evidence against misconduct of traders to prove their engagement in unfair trade practices;
- (b) ***Higher standard of proof under the criminal regime of the amended TDO.*** Before the implementation of the amended TDO, OFCA took enforcement action against misleading or deceptive conduct of telecommunications licensees under section 7M of the Telecommunications Ordinance. In terms of the scope of prohibited conduct, section 7M encompassed all the unfair trade practices prohibited under the amended TDO except those relating to aggressive commercial practices (see para. 1.3(a)(iii)). In terms of evidential standard, the criminal regime under the TDO required more stringent rule of evidence in order to prove an offence beyond reasonable doubt. As a result, it was more difficult to establish an offence on unfair trade practices under the TDO than that under the repealed section 7M of the Telecommunications Ordinance which only required a civil standard of proof on the basis of balance of probabilities; and
- (c) ***Way forward.*** OFCA would continue its enforcement efforts and review its enforcement strategies and practices with a view to further enhancing the enforcement of the TDO.

2.5 ***C&ED's reviews of its enforcement of the amended TDO.*** In response to Audit's enquiry on whether the C&ED had conducted a review on the enforcement of the amended TDO similar to that of OFCA, the C&ED in March 2018 said that since the implementation of the amended TDO in July 2013, the Department had on various occasions reviewed the enforcement effectiveness, operational efficiency, manpower resources, and publicity plan under the three-pronged approach (see para. 2.2(a)) to strive to combat unfair trade practices and protect consumers' rights.

2.6 ***Audit analysis of prosecution rate.*** To obtain an up-to-date picture of the implementation of the amended TDO, Audit analysed the enforcement statistics provided by the C&ED and OFCA (see Table 5).

## Enforcement work against unfair trade practices

**Table 5**

**Enforcement statistics of the amended TDO  
(July 2013 to December 2017)**

<b>Enforcement agency</b>	<b>C&amp;ED</b>		<b>OFCA</b>
<b>Type of complaints</b>	<b>Goods</b>	<b>Services</b>	<b>Services</b>
	<b>(Number)</b>		
(a) Complaints received	18,521	10,247	2,845
(b) Detailed investigation cases completed (Note) (b) = (c) + (d) + (e) + (f) + (g)	1,167	407	39
(c) Cases with prosecution instigated	314	26	1
(d) Cases with undertaking secured	8	4	0
(e) Cases with warning/ advisory letter issued	154	88	19
(f) Cases with forfeiture only	7	Not applicable	Not applicable
(g) Cases closed with no further action after detailed investigation under TDO	684	289	19
(h) Completed prosecution cases	299	23	1
(i) Convicted cases	284	18	1
(j) Prosecution rate ((j) = (c)/(b) × 100%)	27%	6%	3%
(k) Conviction rate ((k) = (i)/(h) × 100%)	95%	78%	100%

*Source: Audit analysis of C&ED and OFCA records*

*Note: The process through which complaints received were screened and consolidated into detailed investigation cases is summarised in paragraph 2.2(b).*



As shown in Table 5, for OFCA, the prosecution rate for services was low (3%). For the C&ED, while the number of complaints on goods (18,521) exceeded that on services (10,247) by 81%, the prosecution rate as a percentage of completed investigations for goods (27%) was more than three times higher than that for services (6%). The lower prosecution rates for services as a whole appear to support the OFCA's observation in its reviews that it is more difficult to collect sufficient evidence against misconduct relating to services as compared with goods (see para. 2.4(a)) under a criminal regime of the TDO.

**2.7      *Need to conduct a comprehensive review on the enforcement of the amended TDO.*** In response to the Audit's analysis in Table 5 of paragraph 2.6, the C&ED in February and March 2018 said that:

- (a) while investigating complaints on services was invariably complex due to absence of physical commodities (see para. 2.3(a)(iii)), there were a number of factors affecting the prosecution rate other than insufficient evidence, such as complainants' withdrawal of their complaints or refusal to assist in investigations. Specifically, more than 70% of the complaints involving the services sector could not be pursued due to the withdrawal of complaints and refusal to assist in investigations by complainants. In particular, these two factors accounted for more than 80% of the complaints involving the beauty and fitness industries; and
- (b) the prosecution rate had increased from 16% for the period from July 2013 to April 2016 to 57% from May 2016 to December 2017. The C&ED had proactively taken enforcement action under the TDO and there were significant cases of prosecution in different commercial sectors. Significant convicted cases included misleading pricing of goods at ginseng and dried seafood shops; aggressive commercial practices at a beauty parlor and a fitness centre as well as an investment and finance company; misleading omission by a renovation company; false trade descriptions of goods sold at supermarkets; bait advertising by electronic products retailers; wrongly accepting payment of fees by a warehouse operator and a wedding service company; and false trade descriptions of service provided by an employment agency, a travel agency and an educational centre.

However, Audit noted that the increase in prosecution rate from 16% to 57% (see (b) above) was mainly due to the decrease in the number of detailed investigation cases undertaken (i.e. from 1,363 cases in the 34 months from July 2013 to

## **Enforcement work against unfair trade practices**

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April 2016 (averaging 40 cases per month) to 211 cases in the 20 months from May 2016 to December 2017 (averaging 11 cases per month). According to the C&ED, the decrease in the number of detailed investigation cases was mainly attributable to a change in its filing practice in October 2014 (Note 18). As regards the C&ED's comments in (a) above, in light of the lower prosecution rate for services (as a percentage of completed investigations instead of complaints) and OFCA's review findings on the difficulty to collect sufficient evidence mentioned in paragraph 2.6, there is still a need to ascertain the major contributing factors of the lower prosecution rate for services in order to enhance the effectiveness of the amended TDO. With the lapse of over four years since the implementation of the amended TDO, it is opportune for the C&ED and OFCA, in consultation with the CEDB, to undertake a comprehensive review on the enforcement issues (see para. 2.4(a) for an example) taking into account the findings of this Audit Report (such as the timeliness in completing investigations — see paras. 2.23 and 2.34), with a view to drawing lessons for the future.

### ***Inadequacies in the information exchange and case referral between the enforcement agencies and CC***

2.8 In December 2012, when briefing the LegCo Panel on Economic Development on the preparatory work for the implementation of the 2012 Amendment Ordinance, the Government said that:

- (a) the two enforcement agencies (i.e. the C&ED and OFCA) would work with the CC on the arrangements for handling incoming complaints such that suspected violations of the TDO would be handled promptly by the enforcement agencies. In relation to cases not concerned with suspected violations, the CC would follow the current approach and provide advice to complainants and assist in conciliating between them and the traders; and

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**Note 18:** *Before October 2014, the C&ED would open a case file for detailed investigation from the beginning when a complaint was assessed as actionable. After the change in October 2014, the C&ED would only open a case file for detailed investigation when there is reasonable ground to suspect that an offence has been committed and to take enforcement actions (e.g. seizure of goods or arrest). Prior to opening a case file for detailed investigation, the C&ED would conduct background checks on alleged entities and products, make enquiries with parties concerned and test-purchase, etc., depending on the merits and circumstances of each individual case.*

- (b) in anticipation of an increase in reports of undesirable trade practices as a result of the implementation of the 2012 Amendment Ordinance, an electronic platform would be established for referral of cases between the C&ED and CC.

2.9 *Computer system interface between the C&ED and CC.* An electronic platform for information exchange and case referral was established by the C&ED and CC through enhancements to their computer systems to develop a system interface. In June 2014, the C&ED obtained funding of \$8.9 million to enhance its TIMS (see para. 1.7(b)), of which around \$1.6 million was used to create a sub-system to support the implementation of the 2012 Amendment Ordinance, including the provision of a computer system interface with the Complaints Case Management System (CCMS — see para. 4.4) of the CC. According to the C&ED's proposal, the C&ED could make use of the computer system interface to:

- (a) receive unfair trade practice information (i.e. TDO-related complaint cases with complainants' particulars obliterated) and complaints referred from the CC in a systematic and timely manner for making immediate response to the emerging trend in unfair trade practices and taking enforcement action expeditiously;
- (b) refer complaint cases which were consumer dispute in nature to the CC for conciliation; and
- (c) provide results on unfair trade practice cases for the CC's information.

2.10 The C&ED commenced the system enhancement project in September 2014 and the enhanced TIMS was rolled out in February 2016. On the CC's side, with the funding approval of \$0.4 million from the CEDB in July 2013, the enhancement of the CCMS to facilitate the system interface with the C&ED for sharing unfair trade practice information was completed in August 2014.

## Enforcement work against unfair trade practices

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2.11 *Computer system interface not used for case referral.* From September 2014 (Note 19) to September 2017, the CC had shared 12,413 pieces of unfair trade practice information (see para. 2.9(a)) with the C&ED via the computer system interface. However, the computer system interface had not been used for referral of complaint cases between the C&ED and CC (see para. 2.9(a) and (b)). Audit examination of the relevant records kept by the C&ED and CC revealed the following issues:

- (a) *Referral from CC to C&ED.* The feasibility of using the computer system interface to refer cases from the CC to C&ED was explored in several meetings between the C&ED and CC held in 2013. In October 2013, it was concluded that due to technical difficulties (e.g. disparity in the address format adopted in the CCMS of the CC and CAPS (see para. 1.7(b)) of the C&ED — Note 20), the proposal of referring cases via the computer system interface from the CC to the C&ED was suspended. As such, the CC had to refer complaint cases to the C&ED by e-mails which involved manual processing after receipt by the C&ED. From January 2014 to September 2017, the CC referred a total of 1,341 cases to the C&ED by unencrypted e-mails as there was no established encrypted channel between the CC and C&ED; and
- (b) *Referral from C&ED to CC.* Notwithstanding that the enhanced TIMS was rolled out in February 2016, the C&ED had not used the computer system interface for referring cases to the CC for conciliation. Audit noted that in the minutes of an internal meeting of the C&ED held in November 2014 concerning the enhancement of TIMS, it was stated that there was no need to transfer referral cases to the CC via the computer system interface. However, the justification for the decision was not documented. From January 2014 to September 2017, the C&ED referred a total of 157 cases to the CC, all by unencrypted e-mails, without making use of the computer system interface to save manual processing efforts and minimise human errors in data input.

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**Note 19:** *As the enhancement of the CCMS (in 2014) was completed before that of TIMS (in 2016), the C&ED made minor enhancement to the then existing TIMS in 2014 so as to facilitate the receipt of unfair trade practice information from the CCMS as an interim measure.*

**Note 20:** *Case referral from the CC to C&ED would involve enhancement of CAPS in addition to TIMS.*

2.12 ***Computer system interface not used for sharing case results.*** As regards the use of the computer system interface by the C&ED to share case results with the CC (see para. 2.9(c)), Audit found that this had not been done up to January 2018. The CC informed Audit in January 2018 that it was the existing practice for the C&ED to deliver a list of results on unfair trade practice cases to the CC on a monthly basis by hand for reference purpose.

2.13 ***Need to make full use of the computer system interface for information exchange.*** To sum up, apart from sharing of unfair trade practice information, the computer system interface had not been used for complaint case referral (see para. 2.11) and sharing of case results (see para. 2.12) to enhance the efficiency, cost-effectiveness and security of information exchange between the C&ED and CC. In response to Audit's enquiry, the C&ED in February 2018 said that:

- (a) due to system incompatibility, further enhancements to TIMS of the C&ED and the CCMS of the CC were needed for case referral (see para. 2.11(b)). The C&ED and CC aimed to complete the enhancements and start using the computer system interface for case referral in September 2018; and
- (b) after the successful completion of testing conducted in January 2018, the C&ED had made use of the computer system interface for transferring case information to the CC on a monthly basis since February 2018.

In Audit's view, the C&ED needs to work with the CC to ensure the timely completion of enhancements to the computer system interface for case referral (see (a) above).

2.14 ***Need to consider involving OFCA in the sharing of information via the system interface.*** Despite its enforcement role under the TDO, OFCA was not involved in setting up the electronic platform for information exchange and case referral (see para. 2.8(b)). As such, the CC only referred unresolved complaint cases related to trade practice or service quality of broadcasting or telecommunications services to OFCA in the form of letter upon the consent of the complainants, totalling 115 cases from January 2014 to September 2017. Moreover, there was no sharing of unfair trade practice information similar to that between the CC and C&ED (see paras. 2.9(a) and 2.11). According to the C&ED's proposal on the enhancement of TIMS, the system might be further developed to share intelligence and cases with OFCA. However, no action had been taken so far to further develop the existing

## **Enforcement work against unfair trade practices**

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computer system interface with a view to sharing intelligence and cases with OFCA. Audit analysis of the 12,413 pieces of unfair trade practice information shared by the CC with the C&ED via the computer system interface (see para. 2.11) revealed that 1,276 (10%) cases were on telecommunications and broadcasting services which might be under the jurisdiction of the CA and could have been shared with OFCA.

### **Audit recommendations**

**2.15**      **Audit has *recommended* that the Commissioner of Customs and Excise and the Director-General of Communications should, in consultation with the Secretary for Commerce and Economic Development, conduct a comprehensive review on the enforcement issues of the amended TDO, taking into account the findings of this Audit Report, with a view to drawing lessons for the future.**

**2.16**      **Audit has also *recommended* that the Commissioner of Customs and Excise should work with the CC to ensure the timely completion of enhancements to the computer system interface for case referral.**

**2.17**      **Audit has *recommended* that the CC and the Director-General of Communications should review the need for:**

- (a)      periodic sharing of unfair trade practice information relating to telecommunications and broadcasting services; and**
- (b)      computer system enhancements to facilitate case referral and information exchange.**

### **Response from the Government and the Consumer Council**

**2.18**      **The Commissioner of Customs and Excise, the Director-General of Communications and the Secretary for Commerce and Economic Development agree with the audit recommendation in paragraph 2.15. They have said that the C&ED and OFCA will conduct a review on the enforcement of the amended TDO, and the CEDB will work closely with them on the review.**

2.19 The Commissioner of Customs and Excise and the CC agree with the audit recommendation in paragraph 2.16. The Commissioner of Customs and Excise and the CE, CC have said that they will collaborate closely to timely complete the enhancement of the computer system interface.

2.20 The Director-General of Communications and the CC agree with the audit recommendations in paragraph 2.17. The Director-General of Communications has said that OFCA would work with the CC to review the need, and if so the means, to periodically share unfair trade practice information and to refer cases relating to telecommunications and broadcasting services.

### Enforcement work of the Customs and Excise Department

2.21 The C&ED's enforcement work of the TDO is divided between the IPIB of the Intelligence and Investigation Branch and TDIB of the Trade Controls Branch (Note 21). The IPIB (Note 22) is responsible for the enforcement of the TDO in relation to the supply of services and specified types of goods (notably ginseng, dried seafood and mobile phones which may involve syndicate crimes) where unfair trade practices prohibited by the amended TDO are commonly encountered. The TDIB is responsible for the enforcement of TDO in relation to the supply of goods (other than those covered by the IPIB).

#### *Enforcement work of the IPIB*

2.22 The enforcement work of the IPIB includes handling of complaints, patrol operations and investigations, and administering prosecutions and sanctions, as follows:

- (a) ***Handling of complaints.*** The C&ED has set performance targets of 100% in the COR for commencing investigations into: (i) urgent complaints against unfair trade practices within 24 hours upon receipt of complaints;

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**Note 21:** *Before December 2013, the enforcement responsibility of the TDO rested solely with the TDIB.*

**Note 22:** *Apart from the TDO, the IPIB is also responsible for the enforcement of other laws such as the Copyright Ordinance (Cap. 528) and the Prevention of Copyright Piracy Ordinance (Cap. 544).*

## **Enforcement work against unfair trade practices**

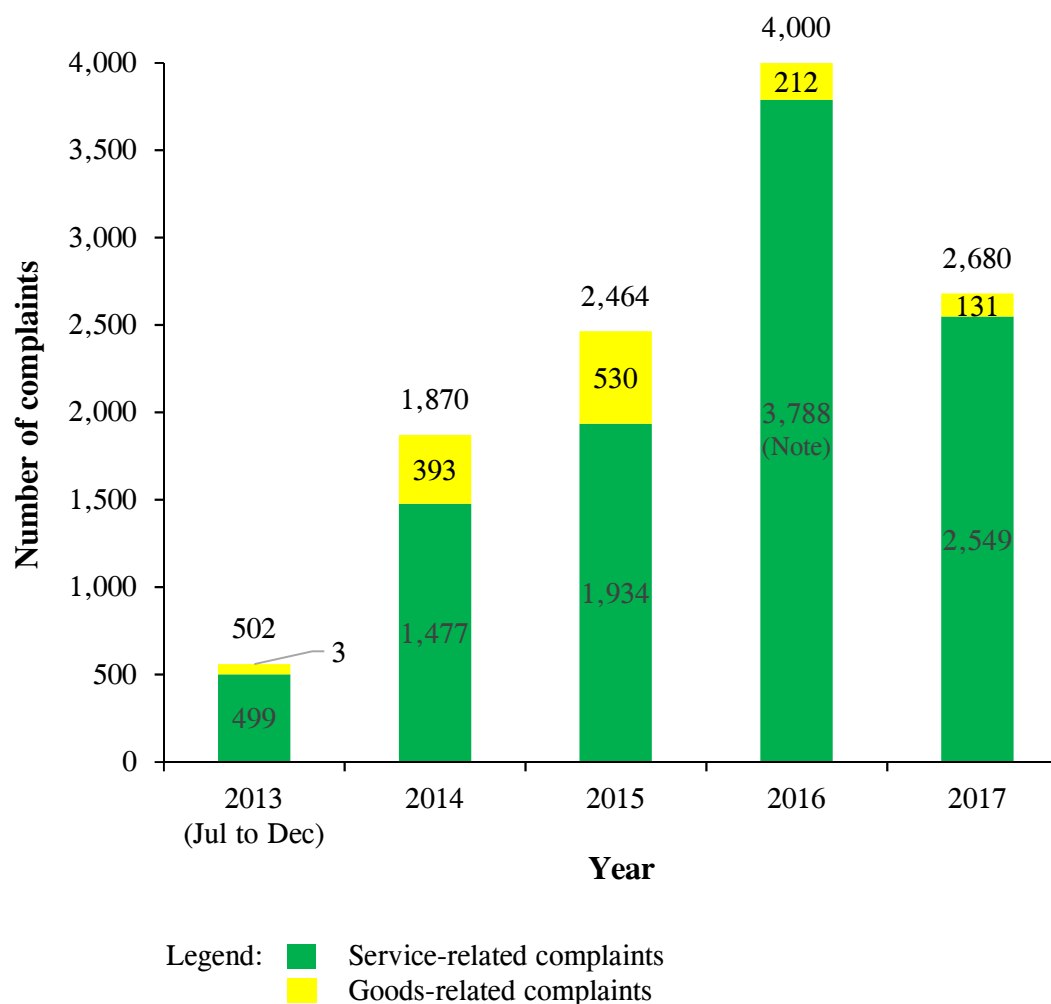
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and (ii) priority complaints within 3 working days upon assessment of complaints. All complaints are centrally processed by the Intelligence Bureau of the Intelligence and Investigation Branch. For complaints of urgent nature (see Note 3 to Table 2 in para. 1.9), the Intelligence Bureau will immediately contact the responsible officers of the IPIB to decide whether the complaints shall be treated as urgent complaints that warrant immediate investigations to be undertaken. The Quick Response Teams will contact the complainants within 24 hours to obtain further information and determine whether immediate action against the alleged traders (e.g. raid operation) is required. For non-urgent complaints, the Intelligence Bureau will (after entering the related details into CAPS) pass the cases to the Assessment and Support Division (see Appendix A) of the Trade Controls Branch for assessment and further classification (see Note 4 to Table 2 in para. 1.9). Low-priority cases will be handled by the investigation teams of the IPIB within 12 working days. Figure 1 shows the number of complaints on services and specified goods received from July 2013 to December 2017;



Figure 1

Number of complaints received on services and specified goods  
(July 2013 to December 2017)



Source: C&ED records

Note: Of 3,788 service-related complaints received in 2016, 1,672 (44%) were related to the closure of one fitness club.

- (b) **Patrol operations.** IPIB staff carry out patrols on a regular basis (Note 23) in plain clothes in tourist shopping areas and districts with a high

**Note 23:** In festive seasons, IPIB staff conduct high-profile patrols in tourist shopping areas to remind traders to comply with the TDO, and distribute pamphlets to tourists reminding them to check carefully the prices and units of measurement before making payments.

## Enforcement work against unfair trade practices

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concentration of the shops selling the specified types of goods (see para. 2.21). The objectives are to detect crimes of unfair trade practices, to enhance alertness of traders in compliance with the TDO, and to promote publicity education to consumers;

- (c) ***Investigations.*** The investigation teams conduct investigations on complaints by carrying out a series of follow-up actions including background checks, surveillance on the alleged traders, and taking witness statements. Depending on the merits and circumstances of each case, test purchase of goods/services may be conducted by staff posing as customers (decoy operation) and the purchased items will be sent to the Government Laboratory/an accredited laboratory for testing. If there is reasonable ground to suspect that an offence has been committed, enforcement action (e.g. raid operation and seizure) will be taken. In 2017, the IPIB completed 1,997 investigations and took enforcement actions on 48 cases; and
- (d) ***Prosecutions and sanctions.*** If an offence under the TDO is found, the investigation team will proceed to initiate prosecution proceedings on the advice of the DoJ. As an alternative to initiating prosecution, the investigation team may, with the consent of the DoJ, accept an undertaking from the trader under the civil compliance-based mechanism (see para. 1.5(b)(iv)). The TDO specifies that no prosecution for an offence under the Ordinance shall be brought after: (i) the expiration of three years from the date of commission of an offence; or (ii) the expiration of one year from the date of discovery of the offence by the prosecutor, whichever is the earlier. In 2017, the IPIB arrested 74 persons and instigated 22 prosecution actions.

### ***Areas for improvement***

2.23 ***Long time taken to close investigation case files.*** Timeliness in conducting investigations is important to protect consumer interests as there is a risk that more consumers would fall prey if unfair trade practices are not promptly curbed. The IPIB has set internal time standards for some stages of investigation work (see paras. 2.24 and 2.26 to 2.29). In response to Audit's enquiry on the time standard for completing investigations, the C&ED said that the IPIB had made reference to the statutory time limit for prosecution (see para. 2.22(d)) as the time standard. Based on an extract of the CAPS records as at 2 November 2017 provided by the C&ED, the IPIB had completed 2,960 investigations since July 2013. Audit analysis of the

investigation case file opening and closure dates (Note 24) shown in these CAPS records revealed that the IPIB had taken more than one year to close 1,532 (52%) investigation case files, up to 3.8 years in the longest case. In response to Audit's enquiry on the long time taken, the C&ED in March 2018 said that:

- (a) while the exact time required for investigation for each case might vary depending on a number of factors (e.g. complexity of the case and availability of the complainant for statement taking), all the investigations were completed within the statutory time limit for prosecution;
- (b) in some cases, while the investigations into the particular complaints had been completed (due to the complainants' withdrawal of their complaints or unwillingness to assist in investigations), the files were not closed immediately because the investigation teams continued to conduct decoy operation or surveillance to keep monitoring the subject traders;
- (c) the IPIB encountered a backlog of cases as a result of the increasing number of complaints from 2014 to 2016 as shown in Figure 1 of paragraph 2.22(a). Most of these backlog cases occurred in 2014 and 2015 as the resources had been put on handling new investigations instead of closing investigations of no follow-up value; and
- (d) regardless of when the investigation files were closed, the progress of investigations had in no way been adversely affected.

Audit noted the C&ED's clarification above. However, in a sample check of 50 investigations that took more than two years from case opening to closure, Audit found areas for improvement as shown in paragraphs 2.24 to 2.29.

**2.24     *Need to meet the time standards on commencing investigations of complaints.*** According to the Work Manual (see para. 1.7(a)), for urgent complaints

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**Note 24:** *According to the C&ED, upon receipt of a complaint, an investigation file will be created where appropriate and the process of handling the investigation file will begin. Generally speaking, the process includes investigation into the specific complaint, subsequent self-initiated investigation into the suspected trader if necessary as well as taking enforcement action if there is a contravention of the TDO or closing the investigation file if there is no further follow-up value.*

lodged by short-haul travellers, investigations shall commence within 24 hours upon receiving the complaints. The case officer concerned should confirm with the complainant of his/her willingness to act as a prosecution witness in court and conduct an interview as soon as possible while the complainant still has clear recollection of the alleged incident. For priority and low-priority cases, investigations shall commence within 3 and 12 working days respectively. As a sample check on the compliance with the time standards, Audit examined 50 investigation cases (see para. 2.23) which according to the IPIB's advice of January 2018 comprised two urgent cases and 48 low-priority cases. Audit found that the time standards of 24 hours and 12 working days for one urgent and 8 low-priority (18% of 50) cases respectively were not met. There was no documented reason for the late commencement of investigations for these cases. Upon Audit's enquiry in February 2018, the C&ED said that: (a) the urgent case was a mistaken entry in the Quick Response Team register as the complainant had left Hong Kong when she lodged the complaint (see similar Audit observations in para. 2.31). It was a single input error made by an individual officer; and (b) the case had been handled within the 12-working day time standard as a low-priority case. However, Audit noted that for the 8 late low-priority cases, investigations only commenced 1 to 13 working days (averaging 4.8 working days) after the time standard of 12 working days. There is a need to tighten control over the compliance with the laid-down time standards to ensure that timely actions are taken on complaint cases.

**2.25     *Need to contact complainants for early collection of evidence.*** Audit noted that of the 8 low-priority cases with late commencement of investigation, 3 were lodged by short-haul travellers who lodged their complaints by e-mail after they had returned to the Mainland. However, the investigation officers concerned only contacted the 3 complainants 14 to 21 working days after receiving the complaints. In the event, two complainants refused to assist the C&ED's investigations by withdrawing their complaints and one did not respond to the C&ED's e-mail. While the reasons for the complainants' withdrawal and non-response in these cases could not be ascertained, there is merit for the C&ED to consider setting a time standard for investigation officers to contact complainants (in particular those who are short-haul travellers) for early collection of evidence.

**2.26     *Need to step up supervisory oversight of investigation progress and fieldwork.*** According to the IPIB's Work Manual, supervisors shall monitor the progress of the investigation cases by reference to the progress reports submitted by case officers and other exception reports. Audit examination of the 50 investigations (see para. 2.23) revealed that in seven cases, a total of 56 progress reports were

submitted from 2014 to 2017. Audit found that: (a) 5 (9%) reports were not signed off by supervisors concerned; (b) 19 (34%) reports were signed off by the supervisors concerned more than 9 months after submission; and (c) 7 (12%) signed-off reports were undated. There was no assurance that supervisory checks had been properly conducted in these 31 (5 + 19 + 7) reports. The Work Manual also requires the officer-in-charge of a surveillance team to conduct supervisory check on his/her subordinates in the field. However, in 42 of the 50 cases examined where surveillance/decoy operations were conducted, there was no record showing that supervisory check of the fieldwork had been conducted for 214 such operations in 38 (90%) cases.

### 2.27 *Need to meet the internal time standards in handling investigation cases.*

To facilitate the intelligence collection and analysis work by the C&ED's Intelligence Bureau, the IPIB has set internal time standards for the submission of bimonthly reports on investigation results and reporting closed case information to the Intelligence Bureau. Audit examination of the 50 investigations revealed that: (a) out of a total of 726 reports submitted from January 2014 to October 2017, 120 (16.5%) reports had exceeded the two-month submission time standard by 1.1 to 6.3 months (averaging 1.9 months); and (b) in 35 (70%) cases examined, the one-month time standard for reporting closed case information to the Intelligence Bureau was exceeded by 1.2 to 13.5 months (averaging 4.4 months).

2.28 *Need to seek legal advice as early as practicable.* Timeliness in completing investigation is critical as the TDO has laid down the time bar for prosecution (see para. 2.22(d)). Audit noted that, the DoJ had expressed concern on the late submission of cases by the C&ED on two occasions, as follows:

- (a) **Case A.** In a suspected case of contravention of the TDO (i.e. misleading omission) and with prosecution time-bar falling on 20 May 2016, the C&ED sought legal advice from the DoJ on 20 April 2016; and
- (b) **Case B.** In a suspected case of contraventions of the TDO (involving multiple complaints of false trade description and wrongly accepting payment) with prosecution time-bar falling on 7 January 2017, the C&ED sought legal advice from the DoJ relating to 9 complaints on 8 December 2016. As the legal advice obtained for the 9 complaint cases on 28 December 2016 could not be taken as precedent, the C&ED sought further advice relating to another 13 complaints on 3 January 2017.

## **Enforcement work against unfair trade practices**

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On 8 February 2017, the C&ED and the DoJ agreed that cases requiring legal advice should reach the DoJ as early as practicable, preferably not later than three months prior to the prosecution time-bar. In September 2017, a new time standard was included in the Work Manual which specified that the officer-in-charge should send the case file to the DoJ at least three months prior to the expiry of the time limit for prosecution (Note 25).

2.29 From March to September 2017, the C&ED sought the DoJ's advice on 9 cases. Audit's examination revealed that in 5 of the 9 cases, the relevant case files were submitted to the DoJ only 1.9 to 2.8 months (averaging 2.2 months) before the prosecution time-bar (i.e. not meeting the agreed 3-month timeframe). According to the C&ED, in 2 of the 5 cases, it had informed the DoJ explaining that more time would be required for conducting investigation and collecting sufficient evidence before the case files could be submitted to the DoJ for advice. Audit considers that the C&ED needs to take measures to ensure compliance with the time standard for submitting case files to the DoJ for advice.

### ***Enforcement work of the TDIB***

2.30 The enforcement work of the TDIB includes handling of complaints, spot checks and patrol operations, investigations, administering prosecutions and sanctions, as follows:

- (a) ***Handling of complaints.*** The C&ED has set performance targets of 100% in the COR for commencing investigations into: (i) urgent complaints against unfair trade practices within 24 hours upon receipt of complaints; and (ii) priority complaints within 3 working days upon assessment of complaints. Similar to the IPIB, complaints are centrally processed by the Intelligence Bureau. For complaints of urgent nature, the Intelligence Bureau will immediately contact the responsible officers of the Trade Controls Branch to decide whether the complaints should be treated as urgent complaints that warrant immediate actions to be taken. Once a case is assessed as an urgent complaint, the Quick Response Teams/relevant case officers will be immediately deployed to commence investigation.

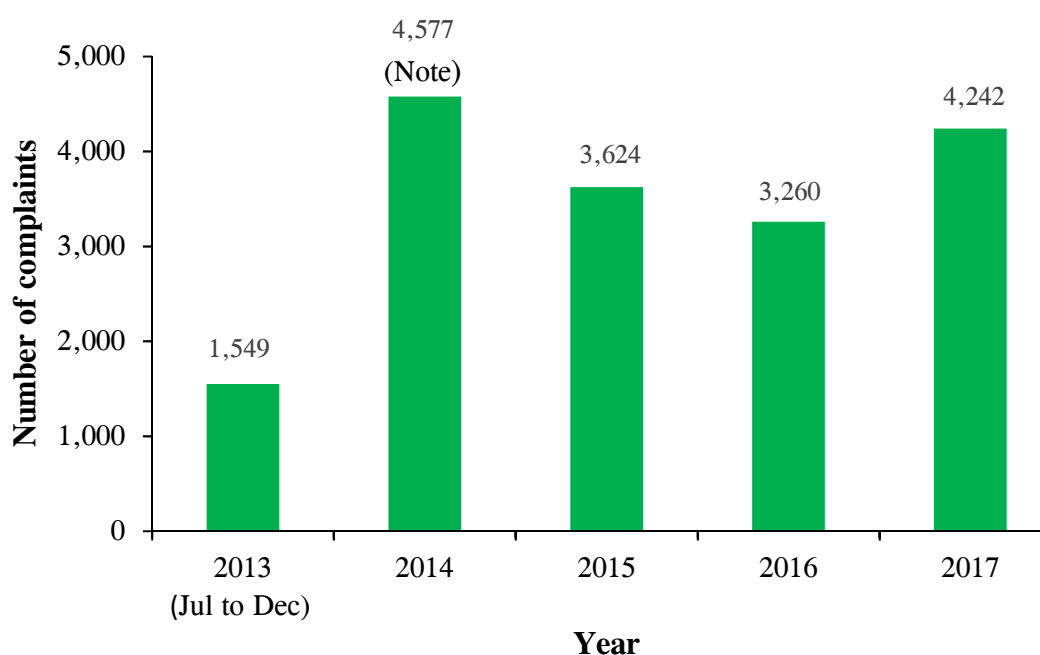
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**Note 25:** *The three-month time standard was included in the Work Manual in September 2017 after taking on board the advice of the Independent Commission Against Corruption in the same month.*

Non-urgent complaints will be forwarded to the Assessment and Support Division for further classification into priority and low-priority cases. According to the Work Manual, investigations shall commence within 5 working days for low-priority cases. Figure 2 shows the number of goods-related complaints received from July 2013 to December 2017;

**Figure 2**

**Number of goods-related complaints received  
(July 2013 to December 2017)**



*Source: C&ED records*

*Note: Of 4,577 complaints received in 2014, 1,337 (29%) were related to the supply of mobile phones by a telecommunications service provider.*

- (b) **Spot checks and patrol operations.** The TDIB conducts proactive spot checks on retailers (Note 26) and patrol operations to distribute TDO

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**Note 26:** *Goods/retailers selected for spot checks are mainly based on: (a) risk assessment results provided by the division responsible for intelligence profiling on products and/or retailers; (b) reports from other law enforcement agencies and statutory bodies, e.g. CC; and (c) reports of the mass media. Seasonal products with high risk of false origin and/or performance claim are selected for spot checks in each quarter.*

pamphlets in patrol areas during festive seasons. The objectives of the spot checks and patrol operations are to ensure compliance with the TDO, identify unscrupulous traders and dubious products, and educate traders and the public. Depending on the findings of the spot checks and media reports, the TDIB may conduct project-based research (known as product monitoring scheme) to identify products which may have TDO implications for follow-up investigations by relevant investigation units. In 2017, the TDIB conducted 4,000 spot checks;

- (c) ***Investigations.*** The investigation teams conduct investigations on complaints by carrying out background checks, surveillance on the alleged traders, and taking witness statements. Test purchases may be conducted and the purchased items will be sent to the Government Laboratory/an accredited laboratory or an expert for testing/examination. The TDIB will take enforcement actions on cases where there is reasonable suspicion that an offence has been committed under the TDO. The TDIB has set time standards for case officers to complete investigations, i.e. within 4 months for cases not resulting in enforcement actions (e.g. raid operation and seizure) and 6 months for cases with enforcement actions taken (both counting from commencement of the investigations) or one month before the time limit for legal proceeding (see para. 2.22(d)), whichever is the earlier. In 2017, the TDIB completed 1,491 investigations, comprising 1,328 cases not resulting in enforcement actions and 163 cases with enforcement actions taken (Note 27); and
- (d) ***Prosecutions and sanctions.*** If sufficient evidence is found after investigation, the TDIB will consider whether to take prosecution actions or accept an undertaking from the trader, seeking the advice of the DoJ where necessary. In 2017, the TDIB arrested 15 persons and instigated 50 prosecution actions, and issued 24 warning/advisory letters.

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**Note 27:** *Some of the complaint investigations were screened and consolidated into detailed investigation cases (e.g. those relating to the same alleged traders) for enforcement actions.*



### *Areas for improvement*

2.31 *Misclassification of urgent complaint cases.* After examining the complaint register kept by the Complaint Assessment Units (see Appendix A) and records of the TDIB, Audit obtained confirmation from the TDIB in February 2018 that of 3,260 goods-related complaints received by the C&ED in 2016, 45 (1.4%) were classified as urgent cases. Based on the dates of commencement of investigations as recorded by the investigation officers concerned in their case diaries (Note 28) for the 45 urgent cases, Audit found that the 24-hour time target for commencing investigation (see para. 2.30(a)) was not met in 12 cases (27%). There was no documented reason for the delayed action in all 12 cases. In response to Audit's enquiry, the C&ED said in February and March 2018 that:

- (a) 31 (69%) of the 45 cases examined by Audit (comprising the 12 cases that took longer than 24 hours to commence investigations and another 19 cases which had commenced investigations within 24 hours) were non-urgent in nature but misclassified as urgent cases by the officers concerned;
- (b) urgent complaints included those cases: (i) lodged by short-haul visitors; or (ii) involving mobile/temporary stalls, that might require immediate investigation or action to be taken;
- (c) for 19 of the 31 misclassified cases involving temporary stalls, the durations of their operations were later found to be not temporary (longer than 24 hours). For another misclassified case involving a tourist, the complaint was lodged by e-mail after she had left Hong Kong. For the remaining 11 misclassified cases, they did not involve short-haul visitors or temporary stalls; and
- (d) all 14 (45 less 31) urgent cases had met the 24-hour target.

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**Note 28:** *According to the Work Manual, an investigation officer shall maintain records (including a case diary) of all cases in progress for submission monthly to his/her supervisor for inspection. If a case cannot be commenced within the timeframe according to its classified priority, the investigation officer shall seek the supervisor's endorsement with full justifications for the delayed action and keep such record in the case diary.*

## **Enforcement work against unfair trade practices**

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**2.32      *Need to improve complaint handling and reporting achievement of key performance target in COR.*** The fact that the 31 misclassified urgent cases of the TDIB and the one mistaken urgent case of the IPiB (mentioned in paras. 2.31 and 2.24 respectively) were only discovered during this audit exercise after reporting the achievement of the 24-hour performance target on handling urgent complaints in the CORs suggested room for improvement in the following areas:

- (a) there was inadequate checking of the nature of the complaints to ensure that they were accorded the right priority before assigning them to the Quick Response Teams/case officers for actions; and
- (b) for the purpose of reporting the achievement of the performance target on handling urgent complaints in the COR, the TDIB submitted monthly returns on the number of urgent complaints handled and the number meeting the 24-hour time target. Audit examination of the 12 monthly returns submitted for 2016 revealed that a total of 45 urgent cases all meeting the 24-hour time target were reported. However, this was not fully supported by the case diaries in that 12 cases had taken more than 24 hours to commence investigations. The undetected discrepancies indicate a need to strengthen checking of the supporting records for reporting the achievement of performance target in the COR.

Audit also noted that for all the 12 misclassified cases of the TDIB which took 2 to 6 days after receipt of the complaints to commence investigations, the Quick Response Teams/case officers took actions on the same dates when the cases were allocated to them. In other words, most of the time spent was attributable to the lengthy case classification and/or assignment process, e.g. in 6 of the 12 cases, it took more than 2 days for such process, ranging from 3 to 6 days (averaging 5 days). The C&ED needs to make improvement in this regard.

**2.33      *Investigation time standards not met.*** Based on data provided by the TDIB, there were 4,990 completed investigation cases for complaints received between July 2013 and December 2017, comprising 3,784 cases not resulting in enforcement actions and 1,206 cases with enforcement actions taken. Audit analysed the time taken to complete the 4,990 investigations against the time standards (i.e. 4 months and 6 months respectively — see para. 2.30(c)) and found that the number of cases not meeting the time standards totalled 1,946 (39%), including 5 of the 14 urgent complaint cases of 2016 (see para. 2.31(d)). Upon Audit's enquiry in January 2018, the C&ED said that the specified time standards on completion of investigations were

internal work targets and guidance for officers to complete their assigned cases under normal circumstances. They also served as a guidance for supervisors in monitoring the progress of their assigned cases. As every case carried its own unique facts and circumstances, the time and investigation efforts devoted to each case would not be identical but varied depending on various factors, such as: (a) whether the complainant was co-operative in providing sufficient information in identifying the traders and product under complaint; (b) the number of traders involved and their reactions to the investigation; (c) the availability of the product; (d) the testing arrangement of the product involved; (e) the need for seeking legal advice from the DoJ; and (f) the caseload of the investigation officer. Each and every case would be closely monitored to ensure that the case would be concluded as early as possible and completed before the time limitation for legal proceedings.

**2.34 *Need to improve the timeliness in completing investigation work.*** Timeliness in conducting investigations is important to protect consumer interests as there is a risk that more consumers would fall prey if unfair trade practices are not promptly curbed. However, an ageing analysis of the 1,946 investigations not meeting time standards showed that the time taken to complete 38% of 1,328 cases not resulting in enforcement actions and 50% of 618 cases with enforcement actions taken had exceeded the time standards of 4 months and 6 months respectively by more than 90 days (Note 29). In Audit's view, the C&ED needs to make greater effort to achieve the investigation time standards.

**2.35 *Need to step up monitoring of investigation progress.*** Audit examination of 30 completed investigations not meeting time standards revealed that the long time taken in individual stages of investigation work had contributed to the delays. According to the Work Manual, an investigation officer should keep a case diary recording each stage of investigation work and submit it to his/her supervisor for monthly monitoring. However, the reasons for the long time taken were not always documented in the cases examined:

- (a) ***Test purchases.*** In 7 of the 30 cases examined, it took more than two months to conduct test purchases after commencement of investigation. Audit noted that in four cases it took time for the C&ED to obtain further

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**Note 29:** *The longest case took 741 days to complete investigation. According to the C&ED, the long time taken was due to the complicated product testing process and all the investigations were completed within the statutory time bar for prosecution.*

## **Enforcement work against unfair trade practices**

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information on the alleged goods/traders from the complainants or other sources before commencing the test purchases. However, in the remaining three cases, the delays were attributed, in part, to the investigation officers concerned and there was no documented justification for the long time taken (see Case C for an example); and

- (b) *Samples for laboratory testing.* Out of the 30 cases examined, 7 cases involved laboratory testing of the purchased samples or samples provided by the complainants. In 6 (86%) of the 7 cases, the samples were sent for laboratory testing 2 months or more after test purchases/obtaining the samples. However, in one case, there was no documented justification for the long time taken.

At present, there is no exception report generated by the C&ED's computer system to facilitate the monitoring of the delayed investigation cases. In Audit's view, the C&ED needs to step up monitoring of investigation progress with a view to ensuring that timely enforcement actions are taken against unfair trade practices.

**Case C**

**Delays in conducting test purchase**

1. On 7 February 2016, the C&ED received a complaint against a chain dried seafood shop alleging that one of its branches was supplying faked shark fin. On 18 February 2016, the investigation officer approached the complainant but she refused to attend an interview or provide a sample of the product for investigation. On 1 March 2016, the investigation officer conducted a test purchase but could not find the target type of shark fin in one of the branches of the shop. There was no documented justification for not conducting another test purchase.

2. In mid-August 2016 (some 5.5 months later) after reviewing the case, the TDIB management considered that one more test purchase should be conducted in other branches of the shop. In the event, the target type of shark fin was purchased on 18 August 2016 (some 6 months after receipt of the complaint) for expert examination which found that the shark fin sample was genuine.

***Audit comments***

3. In Audit's view, there is a need to conduct all test purchases expeditiously as the test result may point to the need for taking enforcement actions.

*Source: Audit analysis of C&ED records*

**Audit recommendations**

**2.36 Audit has recommended that the Commissioner of Customs and Excise should:**

***Enforcement work of the IPIB***

**(a) take measures to improve the conduct of investigations by the IPIB, including:**

## **Enforcement work against unfair trade practices**

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- (i) **tightening control over the compliance with the laid-down time standards for commencing investigations of complaint cases;**
- (ii) **considering setting a time standard for investigation officers to contact complainants (in particular those who are short-haul travellers) for collecting evidence;**
- (iii) **stepping up supervisory checks of investigation progress and fieldwork in accordance with the Work Manual requirements and reminding supervisors to maintain sufficient evidence of their checks;**
- (iv) **ensuring that the time standards for reporting investigation results and closed case information to the Intelligence Bureau are always complied with; and**
- (v) **ensuring compliance with the time standard for submitting case files to the DoJ for advice on taking prosecution actions or administering other sanctions;**

### ***Enforcement work of the TDIB***

- (b) **take measures to improve complaint handling, including:**
  - (i) **stepping up the checking of the nature of complaints in case classification to ensure that they are accorded the right priority for action within the timeframe laid down in the COR or relevant Work Manual; and**
  - (ii) **reminding staff concerned to take prompt action in the case classification and assignment process;**
- (c) **strengthen the checking of supporting records for reporting the achievement of performance targets in the COR; and**
- (d) **take measures to improve the timeliness in completing investigation work by the TDIB, including:**

- (i) **stepping up monitoring of investigation progress, including making use of the computer system to generate exception reports on delayed investigation cases for management attention; and**
- (ii) **reminding investigation officers to take prompt actions in investigation work, and maintain adequate records of each stage of work, including the reasons for any long time taken.**

### **Response from the Government**

2.37 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

#### ***Enforcement work of the IPIB***

- (a) the C&ED will step up control over the compliance with the laid-down time standards for commencing investigations of complaint cases; consider setting a time standard for contacting complainants, in particular short-haul travellers; step up supervisory checks of investigation progress and fieldwork subject to the availability of manpower resources; and remind all relevant personnel to maintain sufficient evidence of their checks;
- (b) while noting that the timing for case file closure does not affect the progress of the investigation of the relevant cases, the C&ED has reminded all relevant personnel to comply with the time standards for reporting investigation results and closed case information to the Intelligence Bureau;
- (c) the C&ED has reminded all relevant personnel to comply with the time standard for submitting case files to the DoJ for advice. C&ED's officers will continue to communicate with the DoJ during the investigation process and notify the DoJ in advance if the time standard cannot be met and alternative arrangement is required. At the early stage of implementation of the TDO, there was no concrete time standard but a standing arrangement for the submission of case files to the DoJ for legal advice. While the C&ED made every effort to complete investigations and submit case files to the DoJ earlier, in some complicated cases involving a huge volume of documents or a large group of complainants, there might be only one or two months left for seeking legal advice as a result of the

## **Enforcement work against unfair trade practices**

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comprehensive and in-depth investigations. However, with the concerted efforts of the DoJ and the C&ED, the time bar for prosecution was duly met in all cases including Case A and Case B in which the defendants were convicted;

### ***Enforcement work of the TDIB***

- (d) while the misclassification of non-urgent cases as urgent cases did not adversely affect the progress of the relevant investigations, the C&ED has reminded all relevant personnel of the criteria for classifying the nature of complaints so as to accord right priority for action in accordance with the performance target set out in the COR or relevant Work Manual and to take prompt action in the case classification and assignment process;
- (e) the C&ED will step up checking to ensure accuracy of classification and compliance with time standards;
- (f) the C&ED will enhance the existing departmental mechanism to closely monitor investigation progress, and explore the feasibility of generating exception reports on delayed investigation cases for management attention; and
- (g) the C&ED has reminded all relevant personnel to expedite action in investigation work and maintain adequate records of each stage of work. For the 3 cases that took more than 2 months to conduct test purchases but without documented justification (see para. 2.35(a)), the delays were attributable in part to the caseload of the officers concerned.

## **Enforcement work of the Office of the Communications Authority**

2.38 The MCB of OFCA is responsible for, among other duties, the enforcement of the fair trading sections of the TDO in relation to the commercial practices of licensees under the Telecommunications Ordinance and the Broadcasting Ordinance that are directly connected with the provision of a telecommunications service or broadcasting service under the two Ordinances.



### *Investigation procedures*

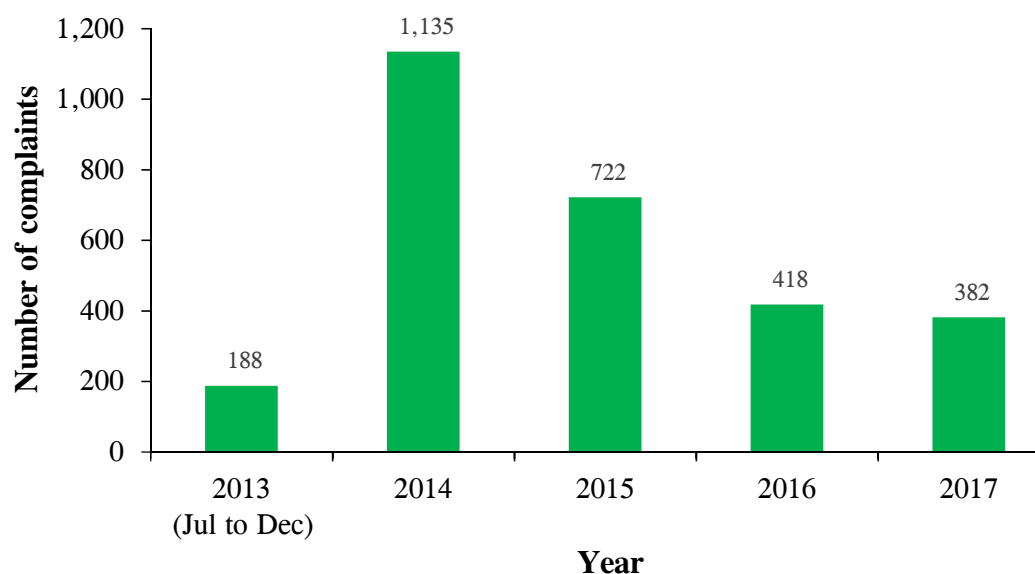
2.39 **Complaint handling.** OFCA mainly adopts a complaint-based approach in the enforcement of the TDO and only performs proactive monitoring to identify malpractice from time to time having regard to risk assessment. From July 2013 to December 2017, OFCA received 2,845 complaints involving suspected breaches of the TDO (see Figure 3). All complaints received are forwarded to a case assignment officer (at Principal Regulatory Affairs Manager or Senior Controller Telecom rank) for registration and allocation to the three divisions for further allocation to case officers. Upon taking up a complaint case, the case officer will input information into the computer system, which serves as the central record of all cases received and as the tool to report progress. Based on the complainant's information and subject to any necessary enquiry and clarification, the case officer will determine whether the case should be investigated, referred to the C&ED or other branches/divisions of OFCA, or closed, after seeking the required approvals in accordance with the Office Manual. The complainant will be informed if the case is to be referred or closed. Advisory letters (Note 30) may also be issued for cases not proceeded to investigation. From July 2013 to December 2017, the MCB issued advisory letters in respect of 143 complaints not proceeded to investigation.

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**Note 30:** *An advisory letter aims to advise a trader to: (a) avoid engaging in certain commercial practices which have the risk of contravening the TDO; and (b) improve its relevant commercial practices in relation to the sale, supply or promotion of the service concerned.*

Figure 3

**Number of complaints received  
(July 2013 to December 2017)**



Source: OFCA records

2.40 ***Investigations and sanctions.*** The case officer will carry out an investigation in accordance with the procedures laid down in the Office Manual. Subject to the outcome of the investigation and after seeking the required approval, advice will be sought from the DoJ, where appropriate, as regards the most appropriate enforcement option for the case. Possible enforcement sanctions include instigation of prosecution, accepting of an undertaking under the civil compliance-based mechanism (see para. 1.5(b)(iv)), and issuance of a warning letter or advisory letter. From July 2013 to December 2017, there were 39 investigation cases and OFCA issued advisory letters in respect of 19 investigation cases and instigated prosecution in one case.

### ***Need to promulgate performance measures on enforcement of the amended TDO***

2.41 While the C&ED has promulgated two performance targets to inform the public of its pledged time for commencement of investigations into complaints under the TDO (see Table 2 in para. 1.9), OFCA has not promulgated any performance target in relation to its performance in enforcing the TDO although it has set the following internal time targets in the Office Manual:

## **Enforcement work against unfair trade practices**

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- (a) the case officer will acknowledge receipt of a complaint in writing within 3 working days upon receipt of the complaint by the MCB; and
- (b) the case officer should strive to complete processing of a complaint, including completion of the investigation, and where a case is established, taking the civil or criminal enforcement options, within 9 months upon receipt of a complaint.

Audit analysed the OFCA's computer records of 2,845 complaints received from July 2013 to December 2017 and found that in 2,830 (99%) cases, the internal time target for acknowledgement of receipt of complaints was met. Among the 2,792 closed cases as of December 2017, the internal time target for completion of 2,704 (97%) cases was met.

2.42 Audit noted that before the implementation of the amended TDO in July 2013, OFCA had been enforcing the Telecommunications Ordinance against misleading or deceptive conduct of the licensees. Such offences are now dealt with by OFCA under the amended TDO. Before July 2013, OFCA had promulgated a performance target to inform the public of its pledged time for completion of investigation under the Telecommunications Ordinance and reported the results in the annual trading fund accounts of OFCA which were posted on the OFCA's website. In line with the accountability and transparency practice, OFCA needs to consider promulgating performance measures on the enforcement of the amended TDO.

### **Audit recommendation**

2.43 **Audit has *recommended* that the Director-General of Communications should consider promulgating performance measures in respect of the enforcement work under the amended TDO.**

### **Response from the Government**

2.44 The Director-General of Communications agrees with the audit recommendation.

## **PART 3: ENFORCEMENT WORK AGAINST UNSAFE GOODS, AND SHORT WEIGHTS AND MEASURES**

3.1 This PART examines the enforcement work of the C&ED against unsafe goods under the CGSO and TCPSO, and fraudulent or unfair trade practices in connection with quantity under the WMO.

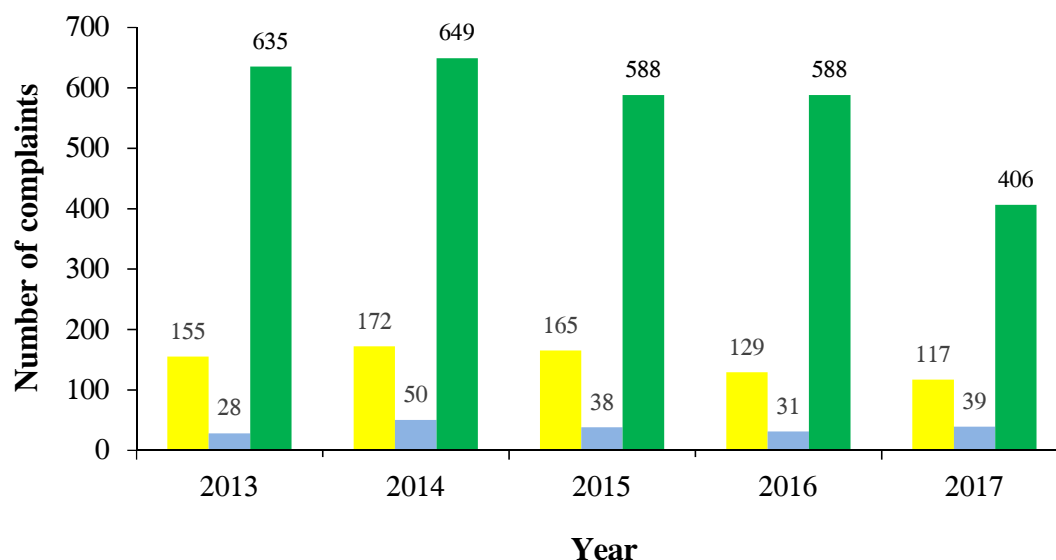
### **Enforcement work of the Customs and Excise Department**

3.2 The CPB under the Trade Controls Branch of the C&ED (see para. 1.6) is responsible for enforcing the CGSO, TCPSO and WMO. Its enforcement work includes handling of complaints on alleged offences under these Ordinances, conducting proactive spot checks and surveillance at retail shops, conducting investigations on irregularities detected, and administering prosecutions and sanctions (see Note 9 to para. 1.7(a)).

3.3 *Handling of complaints.* All complaints are centrally processed by the Intelligence Bureau of the Intelligence and Investigation Branch. For complaints relating to the CGSO, TCPSO and WMO, the Intelligence Bureau will (after entering details into CAPS) pass the complaints to the CPB for according priority (see criteria in Notes 1 and 2 to Table 2 in para. 1.9). The C&ED has set performance targets of 100% in the COR for commencing investigations into: (a) urgent complaints against short weights and measures and unsafe products within 24 hours upon receipt of complaints; and (b) priority complaints within 3 working days upon assessment of complaints. According to the Work Manuals, investigations shall commence within 5 working days for low-priority cases. Figure 4 shows the number of complaints received from 2013 to 2017.

Figure 4

Number of complaints received  
(2013 to 2017)



Legend:   
■ CGSO-related complaints   
■ TCPSO-related complaints   
■ WMO-related complaints

Source: C&ED records

3.4 **Spot checks.** The CPB has standard programmes for conducting spot checks to detect the sale of unsafe consumer goods/toys and children's products, and the use of inaccurate weighing and measuring equipment and practices. Quarterly work plans are prepared setting out the target products and shops to be checked. For enforcing the CGSO and TCPSO, the types of products selected for spot checks are based on the information collected from a variety of sources, including previous investigation results, studies conducted by the CC and professional bodies, media reports on injuries caused by unsafe goods and safety news released by overseas enforcement agencies and product safety organisations, and seasonal or festive products (e.g. lanterns). For enforcing the WMO, the CPB devises a risk profile on types of goods to be checked based on complaint figures. Spot checks are conducted by way of test purchases and equipment checks (in the case of WMO-related cases). The test purchased items and any suspected inaccurate weighing and measuring equipment are sent to the Government Laboratory or an accredited laboratory for

## **Enforcement work against unsafe goods, and short weights and measures**

examination. Investigations will be conducted to follow up any non-compliance detected (see para. 3.6). In 2017, the CPB conducted 4,758 spots checks of which 1,715 were WMO-related, 1,440 CGSO-related and 1,603 TCPSO-related.

**3.5 *Surveillance.*** The CPB conducts surveillance on the availability of target products for sale by visiting retail shops under the quarterly work plans. Information so obtained will be used for conducting spot checks.

**3.6 *Investigations.*** The CPB conducts investigations on complaints received by carrying out test purchases and sending product samples to the Government Laboratory or an accredited laboratory for examination. If the test results confirm that the products are unsafe or there are short-weighted sales or fraudulent weighing and measuring equipment, a series of follow-up enforcement actions will be carried out including seizure of relevant products and documents, taking statements from the responsible persons and tracing the suppliers at all levels, i.e. manufacturers, importers, wholesalers and retailers. After completion of all investigation actions, the case officer prepares and submits an investigation report to his/her supervisor for evaluation. In 2017, the CPB completed 929 investigations (comprising 736 not resulting in enforcement actions and 193 with enforcement actions taken), of which 444 were WMO-related, 279 CGSO-related and 206 TCPSO-related.

**3.7 *Prosecutions and sanctions.*** If an offence under any of the three Ordinances is found after investigation, the CPB will consider whether to take prosecution action or issue a written warning after consulting the DoJ where necessary. For any product covered by the CGSO or TCPSO which is assessed to carry a risk, the C&ED may serve a safety control notice, such as a notice to warn (requiring the party concerned to issue a public warning about a product which may be unsafe unless certain steps are taken), a prohibition notice (requiring the party concerned to stop supplying a product in the market) or a recall notice. In 2017, the CPB instigated 28 prosecution actions (of which 19 were WMO-related, 5 CGSO-related and 4 TCPSO-related), issued 103 warning letters (of which 22 were WMO-related, 39 CGSO-related and 42 TCPSO-related) and 30 safety control notices.

## **Areas for improvement**

### ***Spot checks under the CGSO and TCPSO***

3.8 The objectives of CGSO and TCPSO-related spot checks are to detect the sale of unsafe consumer goods/toys and children's products and whether there are other irregularities, such as non-compliance with the labelling requirements. Based on the C&ED's TIMS and CAPS records, Audit analysed the results of the spot checks conducted by the CPB from 2013 to 2017, a summary of which is shown in Table 6.

**Table 6**  
**Results of spot checks under the CGSO and TCPSO**  
**(2013 to 2017)**

<b>Spot check</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Overall</b>
<b>CGSO-related</b>						
Total number of spot checks conducted	1,255	1,146	1,439	1,460	1,440	6,740
<b>Results:</b>						
Target product not found	1,075 (86%)	943 (82%)	1,135 (79%)	1,149 (79%)	1,185 (82%)	5,487 (81%)
Target shop vacated/closed	34 (3%)	55 (5%)	54 (4%)	48 (3%)	51 (4%)	242 (4%)
Insufficient samples for testing	15 (1%)	12 (1%)	12 (1%)	11 (1%)	10 (1%)	60 (1%)
Target product examined/test purchased	131 (10%)	136 (12%)	238 (16%)	252 (17%)	194 (13%)	951 (14%)

## Enforcement work against unsafe goods, and short weights and measures

Table 6 (Cont'd)

Spot check	2013	2014	2015	2016	2017	Overall
<b>TCPSO-related</b>						
Total number of spot checks conducted	1,215	1,417	1,529	1,607	1,603	7,371
<b>Results:</b>						
Target product not found	550 (45%)	688 (49%)	730 (48%)	958 (60%)	1,119 (70%)	4,045 (55%)
Target shop vacated/closed	75 (6%)	114 (8%)	104 (7%)	81 (5%)	62 (4%)	436 (6%)
Insufficient samples for testing	359 (30%)	374 (26%)	465 (30%)	327 (20%)	210 (13%)	1,735 (23%)
Target product examined/test purchased	231 (19%)	241 (17%)	230 (15%)	241 (15%)	212 (13%)	1,155 (16%)

Source: Audit analysis of C&ED records

3.9 *Need to review the high proportion of cases with target products not found.* As shown in Table 6, target products were not found in a high proportion of spot checks (81% for CGSO-related products and 55% for TCPSO-related products). Audit noted that some of these spot checks were conducted according to the information from overseas recalls and reports by overseas authorities or media. While these products might not be available in the local market, the C&ED carried out spot checks and necessary follow-up actions in order to protect public safety. However, Audit examination revealed that some target products were general types of products (which are commonly available in the retail market) but they were still reported by CPB staff to be not found in the spot checks. For example, in 16 CGSO-related spot checks on disposable gloves conducted during the first quarter of 2017, the target product was reported not found in 6 checks (38%). In 60 TCPSO-related spot checks on infant toothbrush (to test for excessive phthalates — see Note 4 to para. 1.3(d)) conducted during the first quarter of 2016, the target



## **Enforcement work against unsafe goods, and short weights and measures**

product was reported not found in 41 checks (68%). In Audit's view, there is a need for the C&ED to ascertain the reasons for the persistently high proportion of cases with target products not found (particularly those relating to general types of products) in order to identify further improvement measures.

3.10 *Need to provide up-to-date intelligence for spot checks.* For the selection of target shops for spot checks, the Intelligence Bureau facilitates the CPB in compiling a Company/Product List. The List is used as a reference for carrying out surveillance on the target product types as set out in the quarterly work plans. Information collected for spot checks includes the names/addresses of relevant retailers and quantities of products available. However, as shown in Table 6, in 5% of the CGSO-related spot checks, the target shops were found by CPB staff to have been vacated/closed or not having sufficient quantity of the target products for sample testing. Similar problems were also found in 29% of the TCPSO-related spot checks. The C&ED needs to take measures to ensure the provision of up-to-date intelligence for spot checks.

3.11 *Need to conduct more spot checks on online sales.* In response to the recommendations of the Independent Commission Against Corruption's assignment studies, the CPB included proactive spot checks on goods supplied online in its spot check programme in April 2013. However, from April 2013 to September 2017, the CPB only conducted a total of 37 spot checks on online sales of CGSO and TCPSO-related products (i.e. averaging 8 checks a year compared to some 2,800 spot checks a year on retail shops). The detection rates of suspected offences were 16% for spot checks on online sales versus 1.1% on retail shops. According to the C&ED, some of the online shops were not operating in Hong Kong and hence outside the C&ED's jurisdiction. However, Audit noted that from 2013 to 2017, the CC received 10,792 complaints related to Internet shopping/group purchase which were pursuable and of which 7,879 were finally settled. While not all these complaints were related to product safety, they generally reflected the growing popularity of online sales transactions. The C&ED needs to conduct more spot checks in this regard to strengthen consumer protection.

3.12 *Need for surveillance at control points.* According to the C&ED, surveillance requests to customs officers at control points to assist in watching out for target products were made on an ad-hoc basis. In light of the high proportion of cases with target products not found in spot checks at retail shops (see para. 3.9), the C&ED needs to consider stepping up surveillance at control points where appropriate.

***Spot checks under the WMO***

3.13 The objectives of WMO-related spot checks are to detect the use of inaccurate weighing and measuring equipment by traders and the sale of short-weighted goods. Based on the C&ED's TIMS and CAPS records, Audit analysed the results of 8,073 spots checks conducted by the CPB from 2013 to 2017, a summary of which is shown in Table 7.

**Table 7**

**Number and percentage of WMO-related spot checks  
with suspected offences found  
(2013 to 2017)**

<b>Spot check</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Overall</b>
Number of suspected offences detected (a)	64	62	19	10	8	163
Number of spot checks conducted (b)	1,244	1,588	1,878	1,648	1,715	8,073
Detection rate (a)/(b) × 100%	5.1%	3.9%	1.0%	0.6%	0.5%	2.0%

*Source: Audit analysis of C&ED records*

3.14 ***Need for a review of the decreasing trend of detection rate.*** Table 7 shows that the detection rate of suspected offences in WMO-related spot checks was on a decreasing trend. While the decreasing trend could be due to more law-abiding trading practices, there is also a possibility of detection risk due to inadequacies in conducting spot checks. The C&ED needs to ascertain the reasons for the decreasing trend of detection rate with a view to identifying specific measures to improve the effectiveness of spot checks. In this connection, Audit examination of the spot check records has revealed issues that warrant the C&ED's attention (see paras. 3.15 to 3.17).

## **Enforcement work against unsafe goods, and short weights and measures**

3.15 ***Need to consider conducting more spot checks by way of test purchases.*** WMO-related spot checks may be conducted by way of test purchases or equipment checks. Audit analysed the 163 spot checks with suspected offences detected from 2013 to 2017 (see Table 7 in para. 3.13) and found that 161 (99%) were by way of test purchases. While the spot check results suggested that test purchase was a more effective detection tool than equipment check, the proportion of test purchases among spot checks decreased from 64% in 2013 to 16% in 2017. Audit noted that the number of test purchase could be limited by the allocated budget. However, the direct cost of a test purchase in most cases was lower than the staff cost involved in a spot check. The C&ED needs to take into account the overall cost-effectiveness and consider conducting more spot checks by way of test purchases.

3.16 ***Target trades not adequately covered in some spot checks.*** According to the C&ED, WMO-related spot checks were performed in accordance with quarterly work plans which set out the target trades selected on a risk basis. The work plans only specified the target trade categories (typically 3 to 4 types) and the total number of spot checks to be conducted in the relevant quarters. However, there was no laid-down guideline on the proportion of spot checks for the target trades. In 7 of 11 quarters from 2015 to September 2017, the percentages of spot checks for some target trades were less than those of the non-target trades. For example, of 514 spot checks conducted in the first quarter of 2016, two target trades, i.e. fruit and seafood only accounted for 5% and 4% respectively whereas a non-target trade, i.e. medicine accounted for 26%. The low percentage of target trades covered in the spot checks is not consistent with the intended risk-based enforcement strategy.

3.17 ***Late approval of work plans.*** All of the quarterly work plans for 2015 to 2017 were approved after the commencement of the relevant quarters. The delays ranged from 9 to 34 days, averaging 13 days. In other words, some of the spot checks could have been conducted before the approval of the quarterly work plans.

### ***Investigation work***

3.18 ***Misclassification of complaint cases.*** The C&ED has set a performance target in the COR for commencing investigations into urgent complaints against short weights and measures and unsafe products within 24 hours upon receipt of complaints at 100% (see para. 3.3). In February 2018, Audit obtained from the CPB information on all urgent complaints received in 2016 for examination. Of 160 CGSO or TCPSO-related complaints in 2016, 72 (45%) were classified as urgent. Audit found

## **Enforcement work against unsafe goods, and short weights and measures**

that the 24-hour time target for commencing investigation was not met in 39 (54%) cases. In response to Audit's enquiry, the C&ED in March 2018 said that:

- (a) 70 (97%) of the 72 cases examined by Audit (comprising the 39 cases that took longer than 24 hours to commence investigations and another 31 cases which had commenced investigations within 24 hours) were misclassified as urgent cases;
- (b) for CGSO or TCPSO-related cases, urgent complaints included cases: (i) involving injury; (ii) from complainants who had requested the C&ED to immediately conduct on site investigations with adequate justifications; or (iii) involving retailers who might terminate their short-term tenancy agreements at any time. Priority complaints included cases: (i) involving public/media concerns; (ii) from complainants asking for a reply on the progress of investigations; or (iii) involving products suspected of posing significant hazards to consumers (see Notes 1 and 2 to Table 2 in para. 1.9);
- (c) 47 of the 70 misclassified cases fell within the definition of priority cases instead of urgent cases because 32 cases involved significant hazards, 4 cases involved public/media concerns and the complainants in 11 other cases requested a progress reply. The remaining 23 (70 less 47) cases were not in the nature of an urgent or priority case and hence fell within the low-priority category; and
- (d) all 2 (72 less 70) urgent cases had met the 24-hour target.

However, Audit noted that for two cases (Cases D and E) which were reclassified as priority cases on account of significant hazards, there were reported injuries (see (b) above) by the complainants concerned (i.e. a cut on palm by broken strap component of a watch used for several months and lip bleeding caused by falling on the sharp edge of a sofa bed when asleep). In response, the C&ED said that: (i) in Case D, the complainant did not mention injury when lodging the complaint on 19 August 2016. It was not until 26 August 2016 that the C&ED noted that injury was involved when the complainant provided further information to the C&ED. Hence, Case D was not treated as urgent but was accorded priority in dealing with the complaint; and (ii) for Case E, the C&ED considered that the cause of the injury was the fall of the victim which was not related to any structural issue of the sofa bed. Hence, Case E was reclassified as a priority complaint.

## **Enforcement work against unsafe goods, and short weights and measures**

3.19 *Need to improve complaint handling and reporting achievement of key performance target in COR.* The fact that the misclassified urgent cases were only discovered during this audit exercise after reporting the achievement of the 24-hour performance target on handling urgent complaints in the COR for 2016 suggested room for improvement in the following areas:

- (a) there was inadequate checking of the nature of the complaints by the CPB leading to these misclassified cases;
- (b) for the purpose of reporting the achievement of the performance target on handling urgent complaints in the COR, the CPB submitted monthly returns on the number of urgent complaints handled and of which the number meeting the 24-hour time target. Audit examination of the returns submitted for 2016 revealed that all the 72 urgent cases were reported as meeting the 24-hour time target. However, this was not supported by the complaint details recorded by the Intelligence Bureau and the CPB's case diaries in that 39 cases had taken more than 24 hours to commence investigations. The undetected discrepancies indicate a need to strengthen checking of the supporting records for reporting the achievement of performance targets in the COR;
- (c) for one of the two confirmed urgent cases (see para. 3.18(d)), Audit noted that the complainant sent an e-mail regarding an alleged unsafe product on 22 February 2016 to the C&ED's enquiry e-mail address. The e-mail was routed to the Toys and Children's Product Safety Division of the CPB (see Appendix A) on 23 February 2016 for reply and was treated as an urgent complaint on the same day. According to the C&ED, the Division Head assigned the case to a Unit Head on 24 February 2016 which was followed up immediately by conducting background research (though not documented). In other words, over one day was spent on routing the e-mail from receipt in the e-mail box to the Unit Head. In response, the C&ED in March 2018 said that the case should have complied with the 24-hour time target taking into account the complaint classification date and the work done by the Unit Head. Given that the public may lodge an urgent complaint to the C&ED's enquiry e-mail address that takes extra time for routing, the C&ED needs to take measures to improve the situation; and
- (d) according to the COR, the performance target for priority cases is to commence investigations within 3 working days upon assessment of the complaints. In other words, the time taken by the Intelligence Bureau to

## **Enforcement work against unsafe goods, and short weights and measures**

process the complaints and input details into CAPS for transmission to the CPB and the subsequent case priority assessment by the CPB is not taken into account in measuring the achievement of the 3-working day time target. As mentioned in paragraph 3.18(c), of the 47 urgent cases reclassified by the C&ED as priority cases, 32 involved significant hazards (e.g. broken furniture posing danger to users). However, Audit noted from the C&ED's records of 2016 that in 14 of the 32 cases, it had taken more than 3 days each in processing the complaints for transmission to the CPB. In 10 of the 32 cases, the CPB had taken more than 3 days each in priority assessment/case assignment. The C&ED needs to expedite action in this regard.

**3.20 *Investigation time standards not met.*** Timeliness in completing investigations is important as there is a time limit on commencement of legal proceedings which is three years after the commissioning of an offence or within 12 months after the first discovery of the offence (for CGSO and TCPSO) whichever is the earlier, or 6 months from the time when the matter arises (for WMO). For goods assessed to have a safety risk in an investigation, there is also a need to inform the public as soon as possible the findings and potential hazard. The CPB has set internal time standards for completing: (a) CGSO and TCPSO-related investigations within 4 months for cases not resulting in enforcement actions and 6 months for cases with enforcement actions taken; and (b) within 3 and 4 months respectively for WMO-related investigations. According to the Work Manuals, investigation work has to be completed within the specified time standards or one month before the time limit for legal proceedings, whichever is the earlier. The C&ED informed Audit that the time standards served as internal work targets and guidance for officers to complete their assigned cases under normal circumstances. Audit analysed the 4,978 completed investigations (comprising 2,090 cases not resulting in enforcement actions and 2,888 with enforcement actions taken) in relation to the three Ordinances for the period from 2013 to September 2017 and noted that inability to meet the specified time standards was a cause for concern, particularly in respect of the CGSO and TCPSO-related cases, being 56% and 65% respectively (see Table 8 for details).

## Enforcement work against unsafe goods, and short weights and measures

Table 8

**Number and percentage of completed investigations  
not meeting time standards  
(2013 to September 2017)**

Completed investigation		CGSO-related	TCP SO-related	WMO-related
Cases not resulting in enforcement actions	Number of cases not meeting time standards (a)	255	265	97
	Total number of cases (b)	442	311	1,337
	Percentage not meeting time standards ((a)/(b) × 100%)	58%	85%	7%
Cases with enforcement actions taken	Number of cases not meeting time standards (c)	391	221	368
	Total number of cases (d)	709	433	1,746
	Percentage not meeting time standards ((c)/(d) × 100%)	55%	51%	21%
Overall	Number of cases not meeting time standards (e)	646	486	465
	Total number of cases (f)	1,151	744	3,083
	Percentage not meeting time standards ((e)/(f) × 100%)	56%	65%	15%

Source: Audit analysis of C&ED records

## **Enforcement work against unsafe goods, and short weights and measures**

3.21 *Need to improve the timeliness in completing investigations.* An ageing analysis of the completed investigations not meeting the time standards showed that the extent of delays was also more significant for the CGSO and TCPSO-related cases than the WMO-related cases. While 52% and 62% respectively of the CGSO and TCPSO-related cases with enforcement actions taken were delayed for over 90 days (averaging 164 days), only 23% of such WMO-related cases were delayed for over 90 days. Audit examination of 60 completed investigations not meeting the time standards revealed that unsafe goods and other offences were confirmed by laboratory tests in 45 (75%) cases (Note 31) against which the C&ED took enforcement actions, including prosecutions, issuing warning letters and/or safety control notices. While there was no time-barred prosecution case, the delays in meting out punishments to deter similar offences and/or issuing safety control notices to warn the public of the risks in buying/using the related products in these cases undermined consumer protection. Cases F and G are two examples to illustrate this point. In Audit's view, there is a need to improve the timeliness in completing investigations in order to provide timely protection for consumers against the sale of unsafe or short-weighted goods.

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**Note 31:** *After taking into account the test results, the C&ED concluded that no further action was required in respect of the other 15 cases.*



**Case F**

**Delays in investigation of a CGSO-related complaint**

1. A complaint was received on 3 May 2013 alleging that a stool was structurally insecure. The case was assigned to the case officer on 7 May 2013 (i.e. 4 days later) who contacted the complainant on 8 May 2013. CPB staff subsequently visited the complainant to inspect the stool and obtained the Government Laboratory's advice on applicable safety standards on 29 May 2013. However, it was not until 27 June 2013 (some 1 month later) that the case officer sought clarification from the Government Laboratory on the applicable safety standards. Test purchase was then conducted on 24 July 2013 (about another month later). On 25 July 2013, the samples were sent to Government Laboratory for safety analysis. Test results obtained on 17 September 2013 confirmed that the stools failed to comply with the applicable safety standards (i.e. serious permanent deformation was observed during the test which could pose a falling hazard to users). The associated risk was assessed to be "moderate to significant" (Note).

2. On 2 October 2013, the case officer recorded on the case diary that raid operation was pending the result of an appeal (which according to the C&ED's information of March 2018, was lodged by the retailer in another case involving a Prohibition Notice issued by the C&ED on a different product). On 27 November 2013, the CPB conducted a raid operation to seize the unsold stools and issued a Prohibition Notice to prohibit the retailer from supplying the unsafe stools. Investigation continued with interviewing the retailer and tracing the supplier of the stools. On 8 May 2014, the case officer submitted the investigation report to his supervisor for evaluation. However, it was not until 5 August 2014 (3 months later) that a recommendation was made to prosecute the retailer.

3. In the event, the court case was concluded in December 2014 and the retailer was fined \$50,000 and the offending goods were confiscated.

### Case F (Cont'd)

#### *Audit comments*

4. The CPB took some 6 months (after receipt of the complaint in May 2013) to seize the unsafe stools and issue a Prohibition Notice to prohibit the retailer from supplying the stools in November 2013. Over the period, uninformed consumers could have purchased and used the unsafe stools which was unsatisfactory. The long time taken was partly attributable to the delays of some 2 months in seeking clarifications from the Government Laboratory on the applicable safety standards and arranging the test purchase (see para. 1), for which there was no documented reason.

5. While the test results confirming that the stools failed to comply with the applicable safety standards were obtained on 17 September 2013, prosecution action was only initiated in August 2014 (about 1 year later) and the retailer was fined in December 2014. The long time taken was partly attributable to the delay of some 3 months in recommending prosecution action after completion of the investigation report (see para. 2), for which there was no documented reason. The delay in fining the retailer and confiscating the offending goods (about 19 months after receipt of the complaint) could have undermined the deterrent effect of the punishment against similar offences.

6. The C&ED needs to draw lesson from this case and remind relevant staff to take prompt actions in their investigation work, and maintain adequate records of each stage of work, including the reasons for any periods with no progress made.

*Source: Audit analysis of C&ED records*

*Note: Based on a statistical model widely used in other countries, the CPB assesses product risk with reference to factors including maximum potential injury, probability of hazard occurrence, hazard recognition and availability of the product. On a scale of 0 to 90, a score of between 50 and 60 represents moderate to significant risk. A score of 70 or above represents high risk.*

**Case G**

**Delays in a TCPSO-related investigation**

1. A complaint was received on 28 August 2014 concerning the safety of a children's mat. In early September 2014, CPB staff conducted surveillance to confirm that the children's mat was still for sale and obtained further information from the complainant. However, the supervisor's approval of the test purchase and further information on the mat to be purchased were only obtained in mid-October and end-November 2014 respectively (about 2 months later). As the target mat was out of stock, a purchase order was placed with the retailer in mid-December. The sample mats were eventually obtained by the CPB in late-December 2014.

2. In March 2015, the case officer recorded on the case diary that the purchased samples were pending testing as the Government Laboratory was heavily engaged in other testing work. In April 2015, the complainant enquired about the test results and an e-mail reply was given by the C&ED on the same date. However, it was not until 29 July 2015 that the CPB obtained a quotation from an accredited laboratory for conducting tests for the samples. Preliminary test results by the accredited laboratory obtained on 20 August 2015 indicated that the packing materials and the zipper which was used to assemble the mats were unsafe. Final test report was available on 20 October 2015 and the hazard level was assessed as "high" (see Note in Case F).

3. In a raid operation on 4 November 2015, the CPB seized the unsold mats and issued a Prohibition Notice to prohibit the retailer from supplying the mats. Laboratory testing of the seized mats commenced in mid-November and the test report of December 2015 confirmed that the seized mats were unsafe. During the interviews held in January 2016, the retailer and the supplier provided the C&ED with two test reports to substantiate that they had exercised due diligence to avoid committing an offence under the TCPSO. After reviewing the investigation report submitted by the case officer in March 2016, the CPB sought advice from the DoJ in April 2016. Finally, a warning letter on identification marking was served on the retailer in August 2016.

### Case G (Cont'd)

#### *Audit comments*

4. The CPB took about 15 months (from the date of complaint in August 2014) to stop the sale of the unsafe mat by seizing the unsold mats and issuing a Prohibition Notice to the retailer in November 2015. Over the period, uninformed consumers could have purchased and used the unsafe mats which was unsatisfactory. The long time taken was partly attributable to the delay of about 2 months (see para. 1) in obtaining the supervisor's approval and further information for the test purchase, for which there was no documented reason. While there was indication in March 2015 that the Government Laboratory was heavily engaged in other testing work, there was no documented reason why a decision to use an accredited laboratory for safety testing was only taken in July 2015 (about 4 months later). In March 2018, the C&ED informed Audit that the decision was taken in July 2015 as the Government Laboratory was unable to confirm the date for testing the samples.

5. The C&ED needs to draw lesson from this case and remind relevant staff to take prompt actions in their investigation work, and maintain adequate records of each stage of work, including the reasons for any periods with no progress made.

*Source: Audit analysis of C&ED records*

3.22 ***Need to step up monitoring of investigation progress.*** Audit examination of the 60 completed investigations not meeting the time standards (see para. 3.21) also revealed that the long time taken in individual stages of investigation work had contributed to the delays. According to the Work Manuals, a case officer should keep a case diary recording each stage of investigation work and submit it to his/her supervisor for monthly monitoring. However, the justifications for the long time taken were not always documented in the cases examined:

- (a) ***Test purchases.*** In 11 (18%) cases, it took more than two months to conduct test purchases after commencement of investigations. However, there was inadequate documentation of the reason for the long time taken in one case. For this complaint case which was received in October 2015, after obtaining

## **Enforcement work against unsafe goods, and short weights and measures**

additional information from the complainant in December 2015, the investigation officers did not conduct test purchase until May 2016 (i.e. about 5 months later). However, there was no documented justification for the delayed action;

- (b) ***Samples for laboratory testing.*** In 13 (22%) cases, samples were sent for laboratory testing more than two months after test purchases. However, there was inadequate documentation of the justification for the long time taken in 11 cases; and
- (c) ***Raid operations.*** In 10 (17%) cases, raid operations (i.e. shop search and seizure) were conducted more than two months after obtaining the laboratory test results confirming that the test products had failed the relevant tests. However, there was inadequate documentation of the justification for the long time taken in 4 cases.

At present, there is no exception report generated by the C&ED's computer system to facilitate the monitoring of the delayed investigation cases. In Audit's view, the C&ED needs to step up monitoring of investigation progress with a view to ensuring that timely enforcement actions are taken against unsafe goods and offences of inaccurate measurement.

3.23 ***Need to review the guidelines on issuing warning instead of prosecution.*** According to the C&ED's enforcement guidelines, written warning in place of prosecution is allowed if the risk level of the offence is not high and the offending retailer has not been subject to any previous prosecution or written warning for the same product type of the same offence. Audit examined 80 investigation files and noted that the C&ED issued warnings in 44 cases. In one of the 44 cases, the retailer concerned was warned in January 2014 for supplying an unsafe fishing game which was assessed to carry moderate risk. According to the C&ED's records, the retailer had been previously warned 10 times for supplying different types of unsafe toys (such as twirling cup, mobile phone and toy car) and once for breaches of the identification marking requirement. Audit noted that in the submission to the DoJ for advice in issuing a warning instead of prosecution (see para. 3.7), the case officer stated that the retailer had been previously warned of supplying non-compliant toys not of the same product type (as the unsafe fishing game). This case suggests that the term "same product type" in the enforcement guidelines could have limited the imposition of appropriate sanctions to deter recurrence of similar offences. The C&ED needs to review the enforcement guidelines to rectify the situation.

## **Audit recommendations**

**3.24      Audit has *recommended* that the Commissioner of Customs and Excise should:**

### ***Spot checks under the CGSO and TCPSO***

- (a)      take measures to improve the effectiveness of spot checks for the detection of the sale of unsafe goods and other offences under the CGSO and TCPSO, including:**
  - (i)      ascertaining the reasons for the persistently high proportion of cases with target products not found (particularly those relating to general types of products) in spot checks with a view to identifying specific areas in need of improvement;**
  - (ii)     providing up-to-date intelligence to assist the selection of target shops for spot checks;**
  - (iii)    conducting more spot checks on online sales of goods; and**
  - (iv)    stepping up surveillance at control points;**

### ***Spot checks under the WMO***

- (b)      take measures to improve the effectiveness of spot checks for the detection of the sale of short-weighted goods and other offences under the WMO, including:**
  - (i)      ascertaining the reasons for the decreasing detection rate with a view to identifying specific areas in need of improvement;**
  - (ii)    considering to conduct more spot checks by way of test purchases;**

## **Enforcement work against unsafe goods, and short weights and measures**

- (iii) **laying down requirements that the numbers of spot checks on target and non-target trades should be commensurate with their risk profiles; and**
- (iv) **ensuring that quarterly work plans for guiding the direction of spot checks are approved before commencement of the checks;**

### ***Investigation work***

- (c) **take measures to improve complaint handling, including:**
  - (i) **stepping up the checking of the nature of complaints in case classification to ensure that they are accorded the right priority for action within the timeframe laid down in the COR or relevant Work Manuals; and**
  - (ii) **reminding staff concerned to take prompt action in the processing and classification of complaints;**
- (d) **strengthen the checking of supporting records for reporting the achievement of performance targets in the COR;**
- (e) **improve the timeliness in completing investigation work to protect consumers against the sale of unsafe or short-weighted goods, including:**
  - (i) **stepping up monitoring of investigation progress, including making use of the computer system to generate exception reports on delayed investigation cases for management attention and action; and**
  - (ii) **reminding officers to take prompt actions in investigation work, and maintain adequate records of each stage of work, including the reasons for any long time taken; and**
- (f) **review the enforcement guidelines on issuing warning instead of prosecution to see if there are any terms (such as “same product type”) which need clarification to ensure the imposition of appropriate sanctions to deter recurrence of similar offences.**

## **Response from the Government**

3.25 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that the C&ED:

### ***Spot checks under the CGSO and TCPSO***

- (a) will enhance the existing mechanism under which, when the target products are not found, similar products from the target shops will be bought or a search of target products will be conducted in nearby shops;
- (b) will ensure that spot check findings are reported to the Intelligence Bureau for updating in a timely manner, conduct more spot checks on online sales of goods with reference to high-risk products, and consider devising a mechanism to enhance detection of high-risk products at control points;

### ***Spot checks under the WMO***

- (c) noted that the decreasing detection rate was mainly attributable to greater awareness and understanding of the WMO on the part of traders resulting in increased compliance, and proactive measures taken by the management offices of markets to enhance tenants' compliance. Nevertheless, the C&ED will continue to keep in view the situation and further examine other reasons for the decreasing detection rate;
- (d) will prepare guidelines to lay down requirements for the number of spot checks to be commensurate with risk profiles of products;
- (e) has started formulating work plans one month ahead of the end of the preceding quarter and to conduct more spot checks by way of test purchases;

### ***Investigation work***

- (f) has reminded all relevant personnel of the criteria for classifying the nature of complaints so as to accord the right priority for action in accordance with



## **Enforcement work against unsafe goods, and short weights and measures**

performance targets set out in the COR or relevant Work Manuals and to take prompt actions in the complaint classification and assignment process;

- (g) will review the classification criteria with a view to making them clearer and easier to follow;
- (h) will step up checking to ensure accuracy of case classification and compliance with time standards, enhance the monitoring mechanism and explore the feasibility of generating exception reports on delayed investigation cases for management's attention;
- (i) has reminded all relevant personnel to expedite action in investigation work and maintain adequate records of each stage of work; and
- (j) will review the enforcement guidelines to see if there is any need for improvement to ensure the imposition of appropriate sanctions to deter recurrence of similar offences.

## **PART 4: OTHER CONSUMER PROTECTION MEASURES**

4.1 Apart from the enforcement of relevant consumer protection legislation, the efforts to protect consumers also include resolving disputes between consumers and traders, and providing education and information to consumers. This PART examines other consumer protection measures, including:

- (a) conciliation of consumer disputes by the CC (paras. 4.2 to 4.15);
- (b) naming and public reprimand against unscrupulous traders by the CC (paras. 4.16 to 4.25);
- (c) implementation of the Customer Complaint Settlement Scheme (CCSS) by OFCA (paras. 4.26 to 4.31);
- (d) research study on cooling-off periods by the CC (paras. 4.32 and 4.33); and
- (e) consumer education and publicity (paras. 4.34 to 4.45).

### **Conciliation of consumer disputes by the Consumer Council**

4.2 The right to redress is one of the most widely recognised basic consumer rights. Consumer disputes in most cases involve moderate amount of money which may not warrant the pursuit of legal action. The CC is not a law enforcement agency and does not possess the power of investigation or adjudication. Instead, the CC handles complaints by means of conciliation, providing a platform for consumers and traders to resolve disputes by mutually acceptable agreements. Therefore, settlement of disputes relies heavily on voluntary cooperation of the traders concerned and mutual understanding of the parties involved.

4.3 *Types of complaints handled and complaint channels.* The CC only handles complaints on immovable property, goods and services purchased from traders by individual consumers for private use or consumption. According to the

CC, complaints involving private transactions between individuals not in the course of business or goods and services supplied by the Government would fall outside the CC's scope of work. A consumer aggrieved by unfair trade practices can lodge a complaint with the CC by phone, postal mail, electronic means on the CC's website or in person at any of the seven Consumer Advice Centres.

**4.4      *Operation and procedures.*** The Complaints and Advice Division (C&AD — see Appendix C) of the CC is responsible for handling consumer complaints and conciliation of disputes (Note 32). The C&AD, with an establishment of about 60 staff and led by a Principal Complaints and Advice Officer, operates two hotline centres and seven Consumer Advice Centres. An operational manual setting out the procedures on handling enquiries and complaints has been issued to provide reference and guidelines to all C&AD staff involved in the processes. The C&AD uses the CCMS (see para. 2.9) to record all details of the complaints received and case progress, and as a communication log on correspondence/phone calls with the complainants, traders and other relevant parties.

**4.5      *Complaint statistics.*** The CC publishes in its annual reports statistics on complaint handling and dispute conciliation. Figure 5 shows the number of complaints received from April 2013 to September 2017. During the same period, the resolution rate of pursuable cases (Note 33) was about 74%.

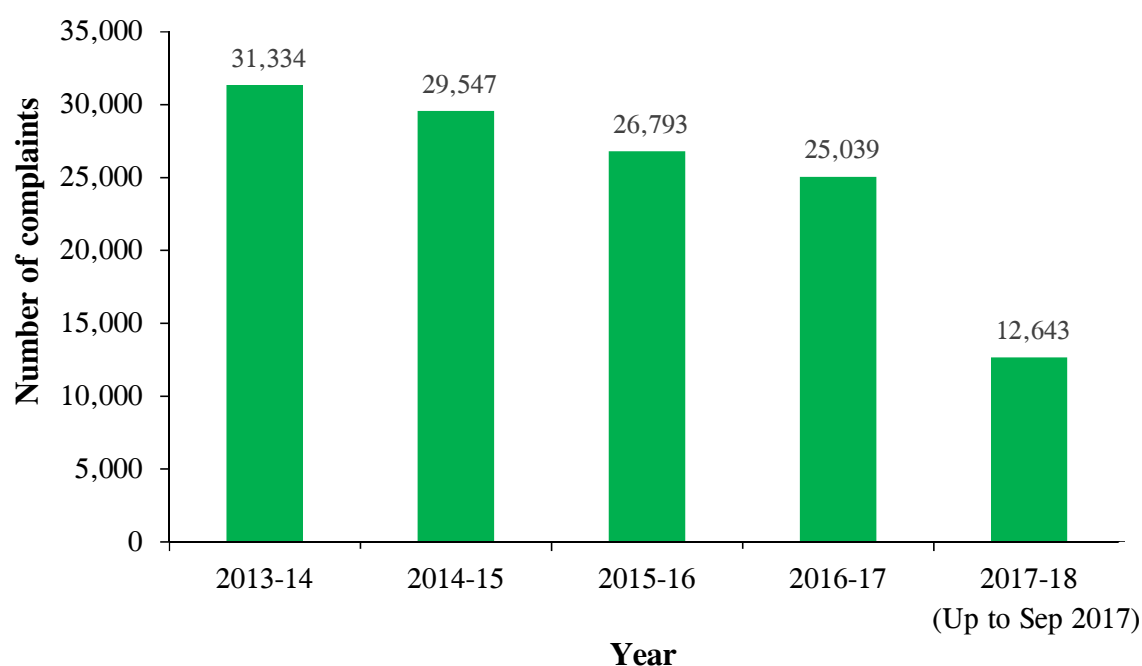
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**Note 32:** *Apart from handling complaints and conciliating disputes, the C&AD is also responsible for handling general enquiries (e.g. some 80,000 enquiries were handled in 2016-17) and monitoring market trends and intelligence to safeguard consumer interests.*

**Note 33:** *According to the CC, anonymous complaints, cases with insufficient information, and complaints outside the CC's terms of reference are in general non-pursuable. A pursuable complaint case is regarded as resolved when redress has been obtained on behalf of the consumer or the trader has responded with reasonable explanations.*

**Figure 5**

**Number of complaints received by the CC  
(April 2013 to September 2017)**



*Source: CC records*

### ***Inadequacies in setting performance targets and reporting results***

4.6 The CC has set two performance targets on handling consumer complaints and the actual achievement of the targets is reported in the COR of the CEDB (Commerce, Industry and Tourism Branch). According to the CORs, the two targets (i.e. issuing initial reply after receipt of complaint in 7 working days and notifying the complainant of progress/results in 16 working days) were met from 2014-15 to 2016-17. However, Audit examination of the CCMS records revealed that the average time taken to issue initial reply ranged from 3 to 4 calendar days instead of the reported 6 working days. Moreover, the average time taken to notify progress/results ranged from 5 to 6 calendar days instead of the reported 16 working days. Accurate performance reporting is important for effective performance management. The CC needs to make more efforts in checking the accuracy of the results in attaining the two performance targets on handling consumer complaints

before submission to the CEDB for inclusion in the latter's CORs. Moreover, given that the actual response times were consistently shorter than the target times (e.g. the actual time taken to notify complainants of the case progress averaged 5 to 6 calendar days in three consecutive years as against a target response time of 16 working days), there is a need to consider raising the target levels to ensure that they remain useful in motivating performance improvement.

### *Inadequacies in taking follow-up actions on complaints*

4.7 The CC has stipulated in the operational manual of the C&AD the following requirements on follow-up actions to be taken on complaint cases:

- (a) if no response is received from a trader within 30 calendar days after the issue of the first inquiry letter (Note 34), a reminder letter should be sent to the trader requesting a reply within two weeks; and
- (b) it is a good practice for the case officer to contact the complainant proactively and keep him/her informed of the case progress. A copy of the first inquiry letter and the reminder letter should be sent to the complainant as a notification of progress.

4.8 ***Tracking of case progress.*** The CCMS has been designed to automatically generate alerts and reports to assist case officers and their supervisors to keep track of case progress, such as the following:

- (a) reminder for initial response to alert on a case without an acknowledgment letter sent within 7 days from the date of complaint (i.e. the date that the complainant has provided all information and documents necessary for complaint processing);
- (b) reminder letter to a trader automatically generated if no response is received from the trader 30 calendar days after the issue of the first inquiry letter; and

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**Note 34:** *The purpose of an inquiry letter is to solicit the trader's response on the consumer's allegation and any settlement offer.*

## Other consumer protection measures

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- (c) monthly report on outstanding cases to provide statistical information on cases not closed for over two calendar months from the dates of complaints.

4.9 *Areas for improvement regarding the issue of reminders to traders.* Notwithstanding the tracking mechanism mentioned in paragraph 4.8, Audit found in a sample check of 30 complaint cases received from April 2013 to September 2017 that:

- (a) in 20 (67% of the 30) cases, the traders had not responded to the first inquiry letters. However, no reminder letters had been sent to the traders concerned in 3 (15% of the 20) cases; and
- (b) of the 17 cases with reminder letters issued to the traders, there were delays of 6 and 17 days in 2 (12%) cases.

In response to Audit's enquiry, the CC informed Audit in February 2018 that the observed problems in (a) and (b) were due to the fact that two inquiry letters each had been sent in these cases for various reasons (e.g. one to the official e-mail account of the trader and another to the e-mail address of the trader's customer service). Under the system rules of the CCMS, no reminder would be generated if there was a progress action with the trader after issuing the first inquiry letter. The CCMS regarded the second inquiry letter as such a progress action. Therefore, it did not generate a reminder in (a) above. For the cases in (b) above, the case officers concerned issued the reminders manually after noticing the omission and hence the observed delays. In Audit's view, there is a need to enhance the CCMS on automatic generation of a reminder letter to a trader which has not responded to an inquiry letter to ensure compliance with the operational manual requirement.

4.10 *Need to provide more guidance on following up complaint cases.* The operational manual has not stipulated the follow-up procedures in case a trader fails to respond to a reminder letter after two weeks. According to the CC, it was the practice to follow up non-response cases by phone calls or e-mails. Of the 30 cases examined, the traders in 12 cases did not respond to the reminder letters (see para. 4.7(a)). Audit examination revealed that:

- (a) follow-up actions taken varied among different case officers in the 12 cases. While the case officers in 8 (67%) cases made further attempts to contact the traders by telephone calls or issuing further reminders, the

case officers in the remaining 4 (33%) cases did not follow up with the traders; and

- (b) in 5 (42%) cases, the complainants were only informed of the case progress more than 30 days (ranged from 38 to 1,126 days) after the traders had not responded to the reminder letters within 2 weeks. In one extreme case, after the trader had not responded to a reminder letter issued in February 2014, there was no record of follow-up action with the trader or correspondence with the complainant to update him/her of the case progress. The case was closed in March 2017, after a lapse of some three years.

In response to Audit's enquiry, the CC in February 2018 said that in respect of 3 of the 4 cases mentioned in (a) above, no follow-up action was taken because: (i) in 2 cases, the trader was identical but the phone number and e-mail address of the trader were not provided by the complainants; and (ii) in one case, the case officer considered that the likelihood of the trader responding to the CC's further reminder was very slim. However, Audit noted that for the 2 cases in (i) above, the trader's phone number was available in the CCMS records of other complaints against the same trader. To observe the principle of confidentiality, a case officer was only allowed to access information of the cases he/she handled. Nevertheless, the case officer may seek the help of his/her supervisors who could get access to the information of all cases for the contact details of the traders concerned. As regards (ii) above, the basis of the case officer's decision for not taking follow-up action was not documented. In Audit's view, there is a need to provide more guidance to case officers on following up complaint cases, taking into account the above audit observations.

### ***Inadequate monitoring of long-outstanding complaint cases***

4.11 According to the operational manual, after a case is concluded, i.e. the case officer has taken all necessary follow-up actions, the case officer should submit the case in the CCMS to the supervisor for review and approval for case closure. After approval, a final reply letter will be sent to notify the complainant of the closure of the case. Audit analysed the CCMS records of complaints received from January 2012 to September 2017 and found that of 2,526 cases which were in progress as at 17 November 2017, 396 (16%) cases had been outstanding for almost three years or more. Of the 396 long-outstanding complaint cases, 310 cases were received in 2012 (i.e. outstanding for some 5 years).

## **Other consumer protection measures**

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4.12 In response to Audit's enquiry on the 396 long-outstanding cases, the CC in December 2017, January and February 2018 said that:

- (a) of the 310 outstanding cases of 2012, the case officers had concluded 289 cases for submission to the supervisors for review and approval in the CCMS (see para. 4.11). However, due to a system error, these cases were not delivered to the supervisors for actions in the CCMS;
- (b) the system error was first identified by the CC in October 2016. The CCMS contractor failed to provide an explanation to the satisfaction of the CC on the system error and was also unable to provide a permanent solution to solve the system problem. The CC accepted an interim measure proposed by the CCMS contractor, i.e. to execute a one-off patch program in the CCMS to close 428 outstanding cases from 2013 to 2016 not delivered to the supervisors for actions. In addition, a patch program had been executed in the CCMS on a daily basis to identify similar cases for action by the supervisors;
- (c) the CC was unaware of the 289 outstanding cases of 2012 (see (a) above) pending review and approval for case closure due to the system error until they were discovered during this audit exercise;
- (d) as a matter of practice, the case officer would inform a complainant of the outcome of the case upon its conclusion before submitting the case for the supervisor's review and approval for case closure in the CCMS. The failure to submit the case for the supervisor's review and approval for case closure would be basically an issue of internal record and in essence would not affect the interest of the complainant concerned in being informed of the conciliation outcome; and
- (e) for the other 107 (396 less 289) cases from 2012 to 2014, there were outstanding actions (up to 17 November 2017) as summarised in Table 9.



**Table 9**

**Outstanding actions of 107 complaint cases  
(17 November 2017)**

Item	Outstanding action	Number of complaint cases			
		2012	2013	2014	Total
(a)	Cases not yet assigned to case officers	0	2	0	2
(b)	Case officers had not completed follow-up actions	11	13	38	62
(c)	Case officers had not submitted closure requests after completion of follow-up actions	3	2	14	19
(d)	Case closure requests pending supervisors' review	0	7	7	14
(e)	Reopen cases but could not be closed due to another system bug	7	1	2	10
Total		21	25	61	107

*Source: CC records*

4.13 Given the lapse of over 2 to 4 years, the CC needs to expedite actions to settle/close the 107 outstanding cases as appropriate. There is also a need to tighten monitoring of outstanding cases to prevent recurrence of similar problems.

## **Audit recommendations**

4.14 **Audit has recommended that the CC should:**

- (a) **make more efforts in checking the accuracy of results in attaining the two performance targets on handling consumer complaints before submission to the CEDB for inclusion in the latter's CORs;**

## **Other consumer protection measures**

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- (b) **consider raising the target levels of the two performance targets on handling consumer complaints to ensure that they remain useful in motivating performance improvement;**
- (c) **enhance the CCMS on automatic generation of a reminder letter to a trader which has not responded to an inquiry letter to ensure compliance with the operational manual requirements;**
- (d) **provide more guidance for staff in taking follow-up actions on complaints, taking into account the audit observations in paragraph 4.10; and**
- (e) **expedite actions to settle/close the long-outstanding complaint cases such as those identified in paragraph 4.12(e) and tighten monitoring to ensure that complaint cases are dealt with in a timely manner.**

## **Response from the Consumer Council**

4.15 The CC agrees with the audit recommendations. The CE, CC has said that:

- (a) as regards the audit recommendations in paragraph 4.14(a) and (b), the CC has taken action to tighten verification of the input to the COR for the 2018 Estimates and revise the targets to enhance clarity, and will consider raising the target levels of the two performance targets on the handling of consumer complaints, taking into account relevant factors including manpower resources;
- (b) as regards the audit recommendations in paragraph 4.14(c) and (d), the CC will seek to enhance the CCMS, and has taken and will take actions to provide more guidance for staff in taking follow-up actions, as follows:
  - (i) staff of the C&AD have been briefed on the system rules of the CCMS (see para. 4.9), in particular, those related to generating of reminders with emphasis on the need of vigilance in using the system; and

- (ii) the CC has reminded all the case officers and their supervisors of the practice to follow-up non-response cases and such practice will be included in the operational manual (see para. 4.10). Staff of the C&AD have been briefed on the way to handle cases where the phone number of a trader is not provided by the complainant but available in the CCMS records (see para. 4.10(i)). In light of the case where no follow-up action was taken because the case officer considered that the trader was not likely to respond to the CC's further reminder (see para. 4.10(ii)), all the case officers have been strongly reminded of the need to consult their supervisors and document the rationale for any deviation from the general practice; and
- (c) as regards the audit recommendation in paragraph 4.14(e), the CC has reviewed the 107 long-outstanding complaint cases mentioned in Table 9 of paragraph 4.12, expedited actions and settled/closed all the cases identified, as follows:
  - (i) for item (a) in Table 9, it has all along been a practice of the C&AD to check if any complaint case is left unassigned. The 2 unassigned cases were resulted from slip and omission rarely occurred. In any event, the CC will strengthen the checking process. After the problem had come to light, the CC contacted the affected complainants offering assistance to them. Both of them indicated that assistance was not required;
  - (ii) for item (b) in Table 9, the CC has already put in place since 2017 a practice that a team supervisor would check if his/her case officers have any cases not yet closed for 3 months for providing timely advice or assistance. The result of the checking would be reported to the Head/Deputy Head of the C&AD. Currently, the CCMS only sends alert to the supervisors with the counts of cases not closed for over 2 calendar months. The CC is considering enhancing the CCMS to improve the monitoring capacity of the supervisors. Moreover, the CC has informed the affected complainants that their cases were unresolved and would offer further assistance if needed;
  - (iii) for item (c) in Table 9, actions have been taken to close the cases; and

- (iv) the outstanding actions in items (d) and (e) in Table 9 were due to system errors of the CCMS. The problems have been fixed upon request of the CC.

### **Naming and public reprimand against unscrupulous traders by the Consumer Council**

4.16 In the process of complaint handling, the CC may identify from repeated complaints lodged against a trader which has adopted some undesirable trade practices (Note 35). To protect the interest of consumers and to discourage these kinds of undesirable activities, the CC may decide to publicly name and reprimand such trader(s) or disapprove such practices in a certain industry.

4.17 ***Guidelines and procedures.*** The CC has issued a set of guidelines setting out the considerations (Note 36) for naming and public reprimand, and the procedures for taking such actions (hereinafter referred to as the naming guidelines). According to the naming guidelines, once any of the prescribed complaint features has been observed from a series of complaints against a trader found having undesirable trade practices, amongst other steps to be taken with a view to instituting a naming action, a meeting with the trader would be held to ask it to cease such practices and take improvement actions immediately. A warning letter will be issued to the trader after the meeting. The trader will then be put under close observation for a six-month period (Note 37). If one new complaint is lodged against the trader, the naming mechanism will be triggered off, i.e. submitting a case paper to the Trade Practices and Consumer Complaint Review Committee of the CC for

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**Note 35:** *Undesirable trade practices refer to any act, omission, course of conduct or practices adopted by traders in the course of business towards consumers, which are detrimental or potentially detrimental to consumers whether or not they are fraudulent, false or ethically reprehensible.*

**Note 36:** *According to the naming guidelines, a holistic approach should be adopted in considering naming and public reprimand action having regard to (among other things) complaint features such as: (a) a considerable number of complaints against certain undesirable trade practices have been identified; and (b) considerable sums of money are involved.*

**Note 37:** *According to the naming guidelines, under special circumstances (e.g. sudden surge of complaints against a trader with unfair trade practices identified), the procedures of meeting with the trader and observation for improvement would be skipped.*

consideration of making a recommendation for naming and public reprimand to the Council for endorsement. With the endorsement of the Council, the details of the trader being named and the undesirable trade practices adopted will be promulgated in a press briefing and also uploaded onto the CC's website. Based on the list of traders under close observation provided by the CC, there were seven traders on the list in 2017 and one of them was publicly named and reprimanded.

### ***Need to enhance the CCMS to support the identification of traders with repeated undesirable trade practices***

4.18 ***Existing procedures to identify unscrupulous traders.*** Audit examined the naming guidelines and found that there was no laid-down procedure to identify traders with repeated undesirable trade practices. In response to Audit's enquiry, the CC in January 2018 said that trade malpractices could be identified at different stages during the complaint handling process:

- (a) ***Case processing.*** When case officers came across repeated complaints lodged by a considerable number of complainants against a trader for adopting undesirable trade practices, they were required to escalate the cases to supervisors to decide what appropriate follow-up actions to be taken. Case officers might choose to bring out the cases for discussion at the divisional meeting, which was held once every two to three months, in order to see if the suspected malpractices were prevalent in the industry. Case officers might also approach the supervisors direct to alert the identified malpractices;
- (b) ***Case assignment and review.*** When supervisors assigned complaint cases received to different case officers for follow-up actions or conducted reviews of concluded cases submitted by case officers, they might identify repeated complaints against a trader or identify some trade malpractices common in the industry. They would obtain more case information from the responsible case officers and decide what appropriate action to be taken;
- (c) ***Complaint reports.*** Sudden surge of complaints against a trader or in a certain industry might serve as the first signal for the CC's staff to assess whether trade malpractices were involved. In this connection, the CCMS could generate reports showing the 20 traders and the 20 industries which had received the highest number of complaints every month; and

## Other consumer protection measures

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- (d) **Case registration.** C&AD staff were required to alert supervisors by e-mails upon receipt of consumer complaints involving prepayment service contracts of over a certain amount.

4.19 ***Inadequate analytical capability of the CCMS for identifying unscrupulous traders.*** According to a submission to the Council in 2016, on proposing the naming of a trader, C&AD staff had to analyse the complaints against the trader from different aspects such as the alleged sales malpractices, trends of complaints, case resolution rate and the impacts on consumer interests before making a recommendation to name and reprimand a trader. The complaint reports generated by the CCMS (see para. 4.18(c)) which only highlight traders with the highest number of complaints received without any analysis of whether the complaints are related to their undesirable trade practices (or just problems in the quality of goods or services supplied which are outside the scope of the naming and public reprimand mechanism — see para. 4.16) could not provide sufficient details for identifying serious cases of undesirable trade practices. Moreover, the lack of data mining capability makes it difficult to extract other useful information such as dispute resolution rates of traders from the CCMS database for analysis. As such, there is a risk that some serious cases of undesirable trade practices may not have been brought up by the CCMS for considering further actions. Based on an extract of the CCMS records of complaints received from January 2012 to September 2017 provided by the CC on 17 November 2017, Audit used a spreadsheet software to identify traders with a large number of unsuccessful resolution cases for further examination of their complaint history. In the process, Audit noted that two traders (Traders A and B) had an increasing number of complaints against them for undesirable trade practices and the resolution rate of the complaints against one of them was substantially below the industry average:

- (a) **Trader A.** From January 2012 to September 2017, a total of 113 complaints were lodged against Trader A. 60 (53%) complaint cases were related to its sales practices. An analysis of the complaints by year showed an increasing trend, up from 11 cases in 2014 by 145% to 27 cases in 2017. The resolution rate of the complaints against Trader A was only 27%, which was substantially below the average of 68% for the industry to which it belonged. Moreover, in 50 (44%) of the 113 complaints, the conciliation was unsuccessful because Trader A refused to cooperate or could not be reached. However, there was no record to show that the case of Trader A had been brought up for consideration of further actions; and

- (b) **Trader B.** The number of complaints lodged against Trader B increased from 4 cases in 2014 to 31 cases in 2015. Trader B was alleged to have malpractices of high-pressure sales, late in response to the CC's queries and unwilling to settle disputes. At a meeting held in December 2015, the CC obtained Trader B's undertaking to clear all outstanding cases and implement a voluntary cooling-off period. As the performance of Trader B had not improved during the subsequent observation period, the case was brought up to the Trade Practices and Consumer Complaint Review Committee in April 2016 for considering whether Trader B should be named. The Committee decided not to name Trader B as the caseload and details of complaints against Trader B were not sufficient. In early December 2016, the CC issued a letter to Trader B expressing serious concern in light of the increasing number of complaints from 31 cases in 2015 to 69 cases in 2016 (up to 8 December). Audit examination of the CCMS records revealed that the number of complaints against Trader B continued to increase from 74 cases in 2016 to 84 cases in 2017 (up to September), with 88% of the complaints relating to Trader B's sales practices. With the CC's conciliation effort, there was a resolution rate of 73% of Trader B's complaint cases in 2017. However, there was no record to show that the overall performance of Trader B had been brought up for review in 2017.

4.20 In Audit's view, there is a need to enhance the analytical capability of the CCMS to facilitate the identification of serious and repeated cases of undesirable trade practices for taking follow-up actions.

### ***Need to lay down guidelines on monitoring traders for service improvement***

4.21 According to the naming guidelines, if one new complaint is lodged against a trader during the six-month observation period, the naming mechanism will be triggered off (see para. 4.17). Of the 7 traders on the observation list in 2017, only one was named and reprimanded. Audit found that despite new complaints had been lodged against the remaining 6 traders during the six-month observation periods, the naming mechanism was not triggered off.

## Other consumer protection measures

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4.22 In response to Audit's enquiry, the CC in February 2018 said that:

- (a) it was the practice of the C&AD to invite traders with substantial problems on matters affecting consumers' interests (e.g. unfair trade practices, unsatisfactory quality of service or goods, late delivery, etc.) to meetings for improvement of their problem areas and resolution of complaints against them. Such traders would be put under close observation for monitoring their progress of improvement. Such practice was not intended for instituting naming action;
- (b) the 6 traders under close observation in 2017 were for the purpose of monitoring their progress of improvement instead of instituting naming action; and
- (c) after the meetings with the 6 traders, they undertook to resolve outstanding complaint cases and took other steps for improvement. The number of new complaints against all 6 traders had decreased comparing with the positions before the observation periods.

4.23 Audit notes the CC's clarification on the need to put in place another monitoring mechanism on traders with problems affecting consumer interests for service improvement. However, in the absence of clear guidelines for such monitoring mechanism, there could be: (a) confusion as to the purpose of monitoring for traders put on the same observation list; and (b) inconsistencies in handling these traders. The CC needs to make improvement in this regard.

## Audit recommendations

4.24 **Audit has *recommended* that the CC should:**

- (a) **enhance the analytical capability of the CCMS to facilitate the identification of serious and repeated cases of undesirable trade practices for taking follow-up actions; and**
- (b) **lay down guidelines on monitoring traders for service improvement.**



## Response from the Consumer Council

- 4.25 The CC agrees with the audit recommendations. The CE, CC has said that:
- (a) the CC will seek to enhance the CCMS and has started preparing a set of guidelines on monitoring traders for service improvement; and
  - (b) regarding Trader B mentioned in paragraph 4.19, the CC emphasised that its trade practice was put under close monitoring in 2017 and would be brought up to the Trade Practices and Consumer Complaint Review Committee for review when necessary.

## Implementation of the Customer Complaint Settlement Scheme by the Office of the Communications Authority

4.26 **Background.** The CCSS is one of the measures implemented to address issues of billing disputes in telecommunications services (Note 38). The CCSS is a voluntary mediation scheme to help resolve billing disputes in deadlock between the telecommunications service providers and their customers through mediation. The mediation service is provided by an independent service agent (CCSS Agent) set up under the Communications Association of Hong Kong (CAHK — Note 39). In November 2012, OFCA, in collaboration with the telecommunications industry, conducted a two-year trial of the CCSS. Having regard to the encouraging outcome of the trial, OFCA supported the long-term implementation of the CCSS which commenced on 1 May 2015. OFCA supports the operation of the CCSS, through a Memorandum of Understanding (MoU) signed with the CAHK, by contributing the

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**Note 38:** *OFCA, in collaboration with the industry, has also implemented other measures to further enhance the protection of consumer interests, e.g. the implementation of the mobile bill shock preventive measures and industry code of practice for telecommunications service contracts. OFCA also runs publicity campaigns to educate the public about proper use of mobile services with a view to avoiding mobile bill shocks and billing disputes.*

**Note 39:** *The CAHK is an industry association representing the communications sector, with the participation of most of the major telecommunications service providers.*

## Other consumer protection measures

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necessary funding (Note 40), screening the CCSS applications against prescribed criteria, and monitoring the performance and the governance of the scheme.

4.27 *Acceptance criteria and application procedures.* According to the MoU, a billing dispute complaint will be accepted for handling by the CCSS Agent when the following criteria are met: (a) it relates to a telecommunications service provided by a CCSS member for personal and/or residential use; (b) the amount in dispute is not less than \$300; and (c) a deadlock is reached. Telecommunications service users who choose to use the mediation service under the CCSS may first contact OFCA which will assess the cases against the criteria in (a) to (c). OFCA will refer eligible cases to the CCSS Agent for follow-up actions. For a case accepted and referred to the CCSS Agent, the applicant and the telecommunications service provider concerned will be charged a service fee of \$100 and \$200 respectively for using the CCSS service.

### *Low usage of the CCSS*

4.28 According to OFCA, the CCSS Agent has a capacity of handling a minimum of 200 cases a year. If operating in full capacity, it can handle over 400 cases a year. From November 2012 to October 2017, OFCA received a total of 2,382 CCSS applications, of which 703 cases were accepted as eligible for referral to the CCSS Agent. However, 333 (47%) of the 703 accepted cases were settled before referral to the CCSS Agent. The number of cases referred to the CCSS Agent for mediation over the five years totalled 370, averaging 74 cases a year. In other words, the utilisation of the CCSS only represented about 18.5% of its full capacity. According to OFCA, with the various measures to address issues of billing disputes (see Note 38 to para. 4.26), the number of billing dispute complaints received by OFCA had decreased from 1,121 in 2012 to 322 in 2017. As a result, the number of deadlock billing dispute cases eligible for the CCSS was also on the decrease. Under-utilisation of the CCSS is not an effective use of the Government funding (of \$1.2 million to \$1.8 million a year — see Note 40 to para. 4.26) for helping consumers resolve their disputes with the telecommunications service providers.

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**Note 40:** *According to the MoU, OFCA shall provide financial contribution not exceeding \$2 million per annum to the CAHK for the operation of the CCSS, subject to the actual cost incurred. In the first two years of long-term implementation, i.e. from May 2015 to April 2016 and from May 2016 to April 2017, the OFCA's contribution amounted to \$1.8 million and \$1.2 million respectively.*

Audit considers that OFCA needs to make greater efforts to promote the usage of the CCSS.

### *Inadequacies in setting performance targets*

4.29 According to the MoU, OFCA has set 10 key performance indicators to measure the operational performance of the CCSS Agent. The key performance indicators cover different aspects, such as the CCSS workflow, user satisfaction, and the submission of reports and statistics to OFCA. The achievement of the targets is reported in the CAHK's annual reports which are accessible through a hyperlink of the OFCA's website. Audit found that the reported performance of two targets was consistently above the target level from November 2012 to April 2017, as follows:

- (a) against a target level of 30% on resolution rate, the actual result ranged from 93.7% to 100%; and
- (b) against a target level of 3 (5 being the highest) on user satisfaction, the actual average score of the user satisfaction survey ranged from 4.5 to 4.8.

To ensure that the two performance targets remain useful in motivating performance improvement, there is a need to consider raising the targets to a more challenging level.

### **Audit recommendations**

4.30 **Audit has *recommended* that the Director-General of Communications should:**

- (a) **make greater efforts to promote the usage of the CCSS; and**
- (b) **consider raising the target level of the two performance targets on resolution rate and user satisfaction of the mediation service of the CCSS.**

### Response from the Government

4.31 The Director-General of Communications agrees with the audit recommendations. She has said that OFCA will explore ways to promote the usage of the CCSS and review the target level of the two performance indicators.

### Research study on cooling-off periods by the Consumer Council

4.32 The issue of imposing a mandatory cooling-off period was widely discussed in the community during the public consultation on the legislation proposals to combat unfair trade practices in 2010 and 2011. Following discussions with stakeholders and careful considerations, the Government considered that imposing a mandatory cooling-off period would change the course of transactions and had significant implications on both traders and consumers, and the matter should be considered carefully. At the LegCo Panel on Economic Development's meeting of June 2015, some members opined that the availability of a cooling-off period should be able to provide better protection to consumers. In May 2016, the LegCo Panel on Economic Development passed a motion urging the Government to introduce legislation on imposition of mandatory cooling-off periods, and accord priority to implementing a statutory cooling-off period for prepaid services involving a lot of complaints and large amount of payment, such as those provided by the fitness and beauty service sectors. In response to the motion, the CEDB indicated that resources had been provided to the CC to conduct a research study on various issues concerning cooling-off periods and the research study was expected to be completed by the following year.

4.33 *Progress of the research study on cooling-off periods for prepaid services.* Audit examination of the CC's records revealed that funding for the research study had been obtained from the CEDB in November 2013. In response to Audit's enquiry on the progress of the study, the CC in January and February 2018 said that:

- (a) cooling-off period was one of the five key subjects of consumer legal protection (Note 41) with which the Legal Affairs Division of the CC was tasked to review and study from 2013 to 2016. Due to prioritisation among the said subjects, personnel changes and longer time required to hire a suitable contract legal counsel to support the legal research, the Legal Affairs Division began the research study on cooling-off periods in early 2016; and
- (b) as the subject matter was highly complicated and sensitive, the Legal Protection Committee (see Note 13 to para. 1.13) of the CC carried out extensive discussions at different stages of the study from July 2016 to September 2017. Upon conclusion of the proposed framework of the cooling-off regime, including the scope of application and its operational arrangements, the research report proceeded to drafting in September 2017 for the Committee's further deliberations and comments. The research report was scheduled to be released in April 2018.

## Consumer education and publicity

4.34 **CC's work.** Apart from the right to redress, the right to be informed and the right to consumer education are two other widely recognised basic consumer rights. In this regard, the CC is committed to empowering consumers to protect themselves through the following work:

- (a) **Disseminating consumer information.** The CC publishes the CHOICE monthly magazine which provides a regular outlet of information, advice and viewpoints on all matters affecting consumer interests. Readers can also access and view the full digital version of CHOICE online (Note 42). The CC's website with dedicated sections such as CHOICE articles and Online Price Watch registered 4.4 million page views in 2016. The CC's

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**Note 41:** *The five key subjects were: (a) pre-payment safety measures; (b) corporate insolvency protection; (c) online consumption; (d) consumer arbitration; and (e) cooling-off period. According to the CC, these study subjects were prioritised in accordance with their complexity, sensitivity and urgency. Reports on subjects (a) to (d) were released between August 2016 and May 2017.*

**Note 42:** *The cover price of CHOICE magazine has been maintained at \$12 per copy since the last price increase in 1997. For the online version, the price is \$8 per article.*

## Other consumer protection measures

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Shopsmart webpage that provided Mainland visitors with tailored information and shopping tips also received more than 2.4 million page views in 2016; and

- (b) ***Empowering consumers through education.*** The CC has been organising seminars and talks for various strata of the society, including young people, students of primary and secondary schools, senior citizens and new immigrants, to provide more opportunities for learning consumers' culture and rights, and enhance their abilities to help themselves protect their rights and interests as a consumer. About 220 seminars, workshops and talks are held every year.

4.35 ***Concerted efforts of CC, C&ED and OFCA.*** With the implementation of the 2012 Amendment Ordinance in July 2013, a three-pronged approach with equal emphasis on public education and publicity has been adopted in enforcing the fair trading sections of the TDO (see para. 2.2(a)). The C&ED, OFCA and the CC have been launching publicity and education programmes since 2013 with a view to empowering consumers by raising their awareness of the prohibited unfair trade practices and promoting the concept of “shopping smart”, and promoting good practices amongst traders, as follows:

- (a) from July 2013 to September 2017, the C&ED and the CC organised over 300 briefing sessions/seminars to traders and other members of the public;
- (b) the C&ED, as the principal enforcement agency, has been issuing press releases on TDO-related matters, e.g. upon the arrest of suspects or conviction of prosecuted cases, to raise public awareness of the unfair trade practices and appeal to members of the public to report any suspected cases. In 2017, the C&ED issued over 60 press releases on TDO-related matters;
- (c) for OFCA, a consumer education campaign lasting about eight months (August to March) (including roving exhibitions, public seminars and community talk programme) is held every year to further enhance public awareness of using communications services smartly; and
- (d) as regards the CC, in the wake of the commencement of implementation of the fair trading provisions of the TDO, the CC launched public education

through various means such as roving exhibitions, radio segments, a designated website and education seminars to raise consumers' understanding regarding the relevant statutory provisions and alertness towards unfair trade practices. The CC continues such efforts in educating the public through the articles concerning complaints published in the CHOICE magazine, videos dramatising prevailing unfair trade practices and naming exercise against unscrupulous traders.

### *Challenges faced by CHOICE magazine*

4.36 According to the CC, CHOICE magazine plays a vital role in assisting consumers to make astute choices and make purchases in a safe, informed and responsible manner. Since its introduction, findings of around 1,300 product tests, 2,280 in-depth studies and 580 market surveys have been released. There are also articles on other subjects such as healthcare, typical complaint cases revealing prevalent undesirable trade practices for consumer education. The announcement of CHOICE's publication every month has received wide media coverage and stimulated public discussions on significant consumer issues.

4.37 However, the 21st century sees the global trend of convergence of printed and online media in accessing information and news, alongside with the gradual dwindling of the former and increasing proliferation of the latter. As a result, the sale of CHOICE magazine had dropped by 23% from an average of 27,428 copies a month in 2009-10 to 21,033 a month in 2016-17. Feedback collected through surveys and focus groups to the CC from consumers, media and other stakeholders included that: (a) the current format of CHOICE magazine was outdated in design, too wordy and hard to comprehend; and (b) content needed to be more diversified and made available in digital devices such as tablet personal computers and mobile devices.

4.38 According to the CC, the online version of the magazine, which was launched in 2004, had a slow pick-up rate due to the unfriendliness of the online subscription platform. In 2016, there were only 1,066 subscribers and 50,128 downloads recorded. As early as 2013, the CC obtained funding of \$2.9 million from the CEDB and deployed \$1.7 million from its reserve to embark on a comprehensive review of CHOICE magazine based on a primary goal of sustaining and creating further value to the public. According to the consultancy review completed in 2016 and the CC's internal review in 2017:

## **Other consumer protection measures**

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- (a) the online version of the magazine was presented in a basic and primitive format for download with poor browsing experience and functionalities. The outdated engine had also brought challenges in safeguarding its intellectual properties as the content could be easily copied and circulated via the Internet free of charge;
- (b) the public awareness of the online version of the magazine was extremely low. The subscription procedures were cumbersome, e.g. while there was a downloadable subscription form, a subscriber had to fill out and submit the form to the CC by post, fax or e-mail to complete the entire subscription process; and
- (c) a major revamp of the magazine with particular emphasis on building a user-friendly online platform and reformatting the aged print version was deemed necessary to sustain its value to the public.

4.39 Since the completion of the consultancy review in 2016, the CC had discussed with the CEDB on the funding requirements for a revamp of CHOICE magazine. In 2017, based on its proposed strategic plan made in light of the observations of the consultant and the internal review, the CC obtained the necessary funding for a revamp project which covered the development of new content, information technology infrastructure and marketing programme.

4.40 As shown in paragraphs 4.37 and 4.38, there was a general trend of decline in the sales of the print version of CHOICE magazine and the subscription rate of the online version was staying low, despite the endeavours of the CC to boost the sale by different promotion tactics. It indicates that there is an imminent need to revamp CHOICE magazine to enhance its accessibility and quality so that it can meet the rising expectation of the public. In Audit's view, with the funding approved and in view of the significance of CHOICE magazine in educating the public, the CC should continue the efforts to take forward the revamp project of CHOICE magazine.

### ***Need to address common problems in non-pursuable complaint cases***

4.41 Since the fair trading sections of the TDO came into operation in July 2013, the C&ED and OFCA together had received and processed some



30,000 complaints up to September 2017. However, there were only some 300 prosecution cases. Audit examination revealed that:

- (a) of 11,924 complaints received by the C&ED from July 2013 to September 2017 but not selected for investigation, the C&ED concluded that in 8,597 (72%) complaints, no further action was required because there was insufficient evidence or the complaints only involved consumer disputes. To address the common problem of insufficient evidence, in May 2016 and January 2018, the C&ED advised consumers through the media of the need to keep relevant documents of transactions and report case details in a timely manner. However, there was no record to show that the C&ED had stepped up consumer education on differentiating consumer disputes (which are more appropriately dealt with by the CC) from suspected offences under the TDO (which are dealt with by the C&ED); and
- (b) of 2,658 complaints received by OFCA from July 2013 to September 2017 but not proceeded to investigation, 511 (19%) complaints could not be pursued because the complainants refused to assist in the investigations. There was no record to show that OFCA had stepped up education on consumers' obligations after lodging a complaint and the criminal proceedings and investigation procedures involved.

There is a need for the C&ED and OFCA to monitor common problems in non-pursuable TDO complaint cases with a view to formulating specific consumer education/publicity programmes to address these problems.

### Audit recommendations

4.42 **Audit has *recommended* that the CC should continue the efforts to take forward the revamp project of CHOICE magazine.**

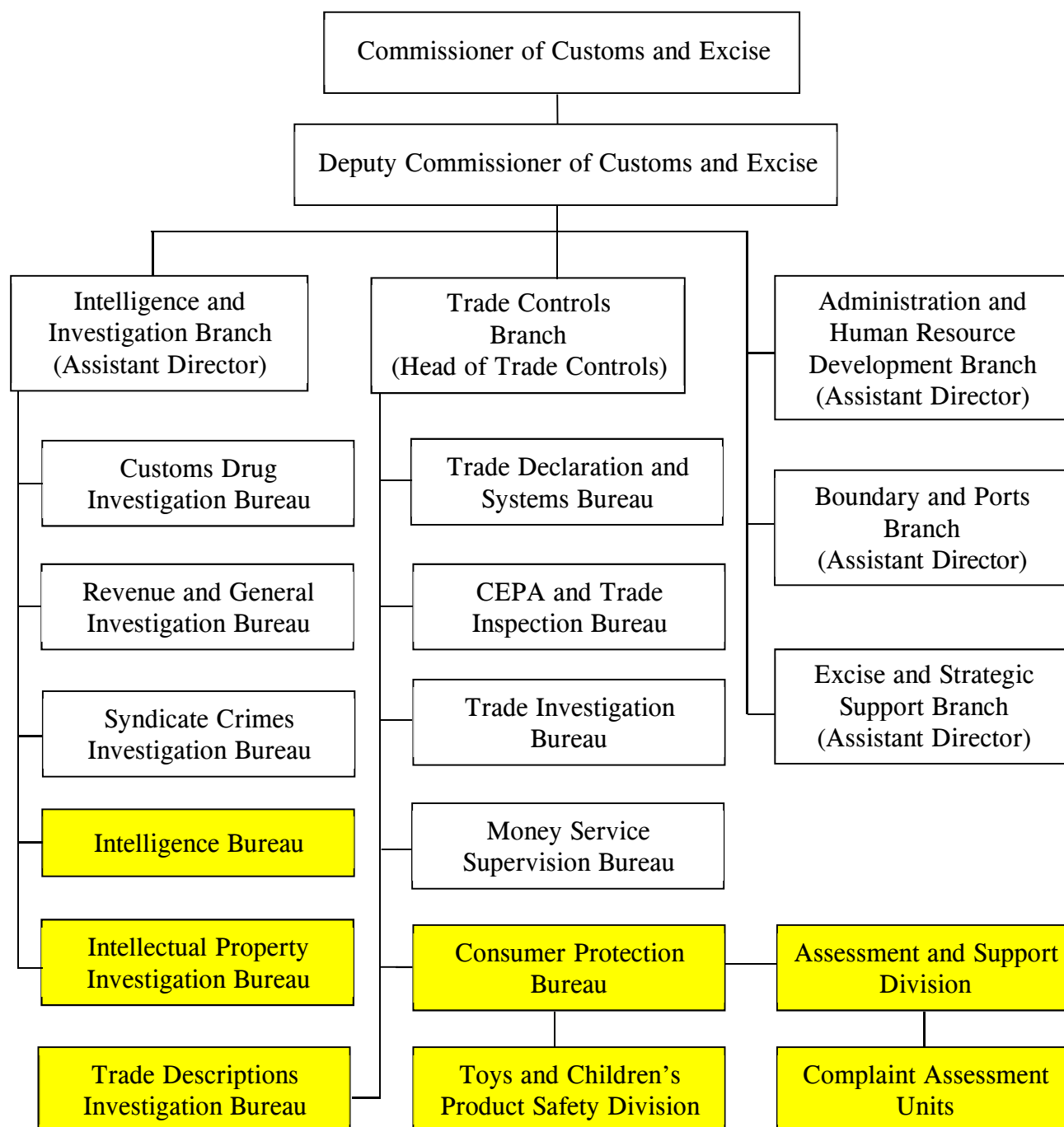
4.43 **Audit has also *recommended* that the Commissioner of Customs and Excise should in collaboration with the Director-General of Communications, monitor common problems in non-pursuable TDO complaint cases with a view to formulating specific consumer education/publicity programmes to address these problems.**

## **Response from the Government and the Consumer Council**

4.44 The CC agrees with the audit recommendation in paragraph 4.42. The CE, CC has said that the CC would continue its efforts to take forward the revamp project of CHOICE magazine.

4.45 The Commissioner of Customs and Excise and the Director-General of Communications agree with the audit recommendation in paragraph 4.43.

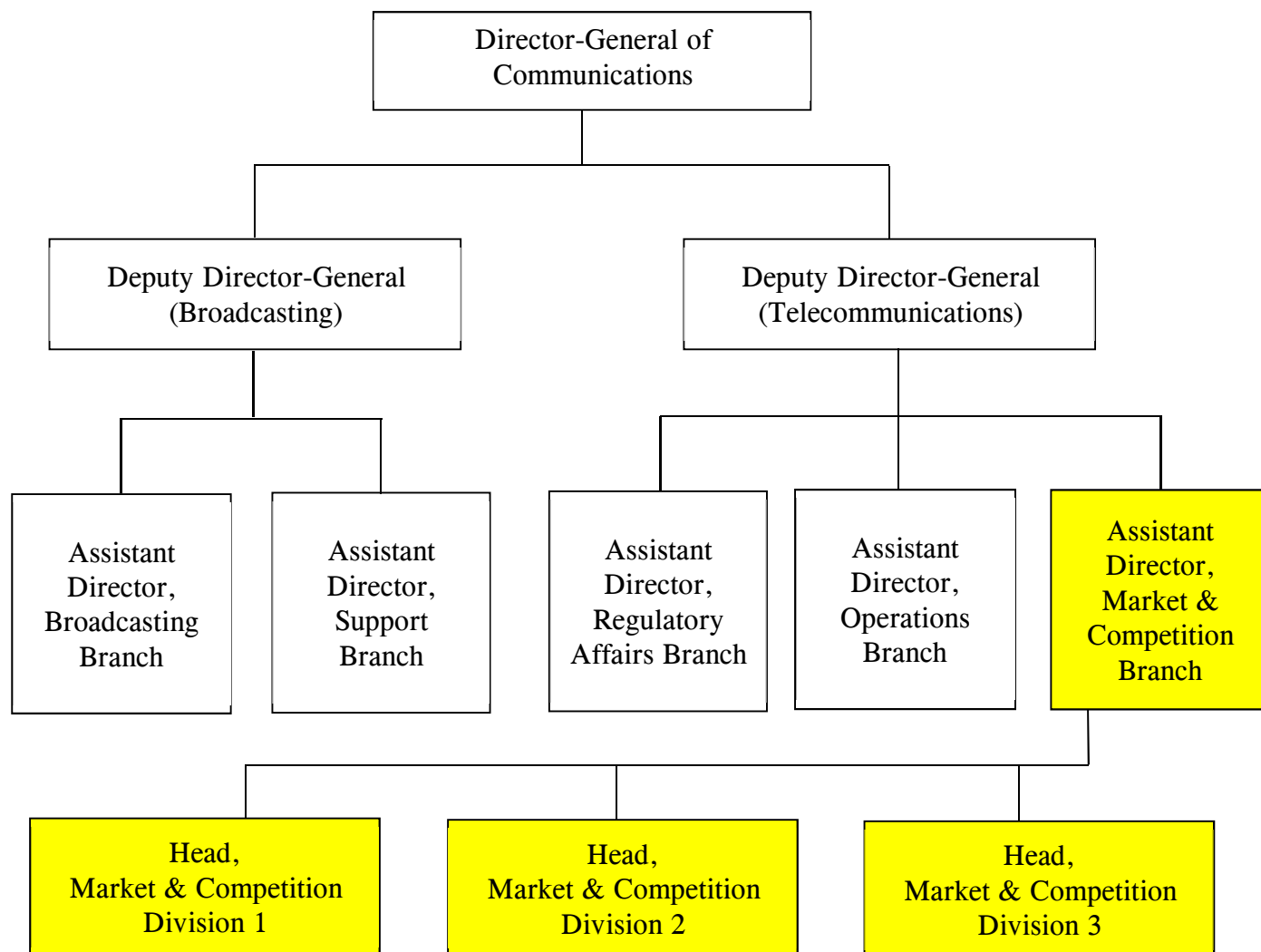
**Customs and Excise Department:  
Organisation chart (extract)  
(31 December 2017)**



Legend:  Bureaux/divisions/units covered in this Audit Report

Source: C&ED records

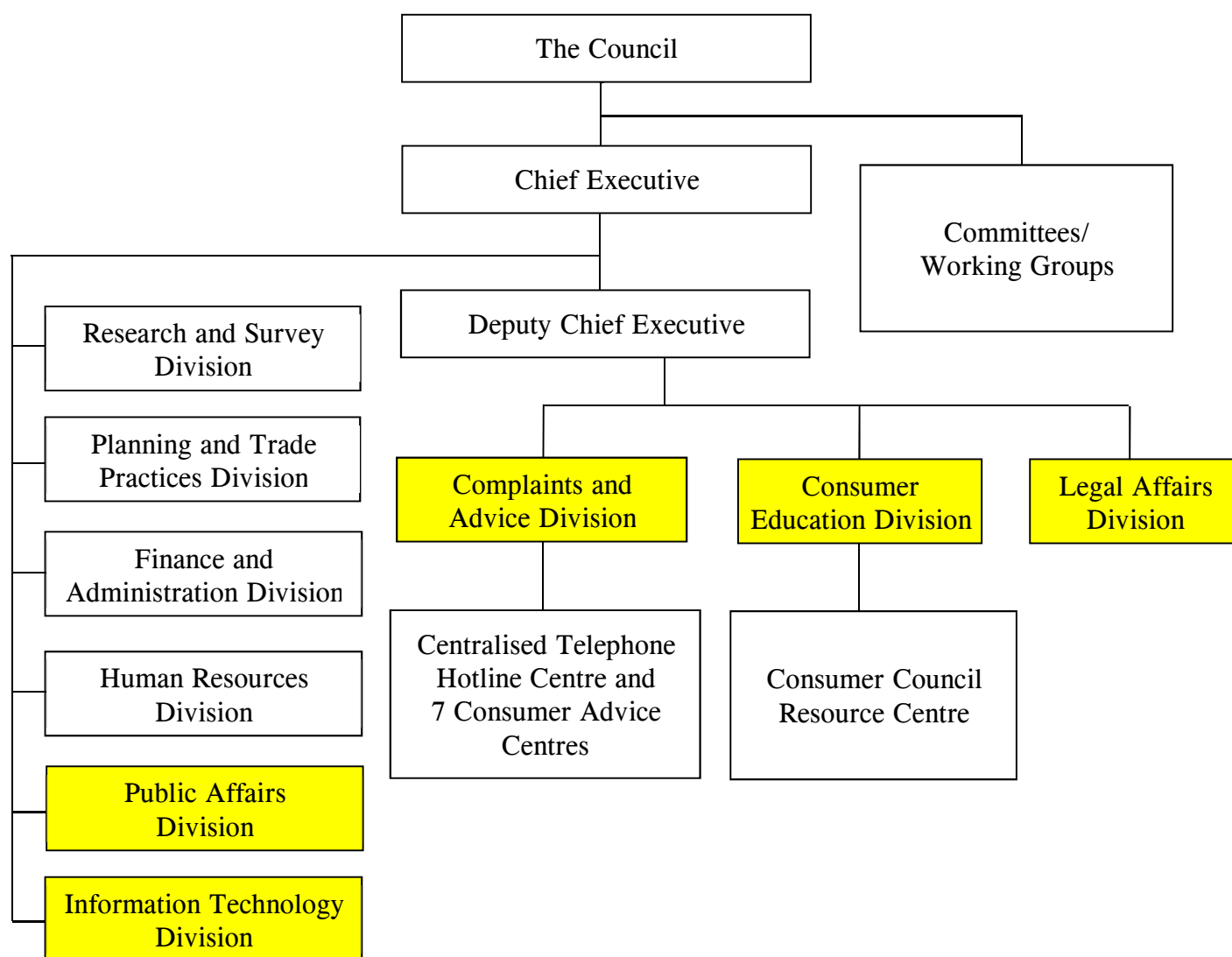
**Office of the Communications Authority:  
Organisation chart (extract)  
(31 December 2017)**



Legend:  Branch/divisions covered in this Audit Report

Source: OFCA records

**Consumer Council:  
Organisation chart (extract)  
(31 December 2017)**



Legend:  Divisions covered in this Audit Report

Source: CC records

**Acronyms and abbreviations**

Audit	Audit Commission
CA	Communications Authority
C&AD	Complaints and Advice Division
CAHK	Communications Association of Hong Kong
CAPS	Case Processing System
CC	Consumer Council
CCMS	Complaints Case Management System
CCSS	Customer Complaint Settlement Scheme
CE	Chief Executive
C&ED	Customs and Excise Department
CEDB	Commerce and Economic Development Bureau
CGSO	Consumer Goods Safety Ordinance
COR	Controlling Officer's Report
CPB	Consumer Protection Bureau
DoJ	Department of Justice
IPIB	Intellectual Property Investigation Bureau
LegCo	Legislative Council
MCB	Market and Competition Branch
MoU	Memorandum of Understanding
OFCA	Office of the Communications Authority
TCPSO	Toys and Children's Products Safety Ordinance
TDIB	Trade Descriptions Investigation Bureau
TDO	Trade Descriptions Ordinance
TIMS	Trader Information Management System
WMO	Weights and Measures Ordinance