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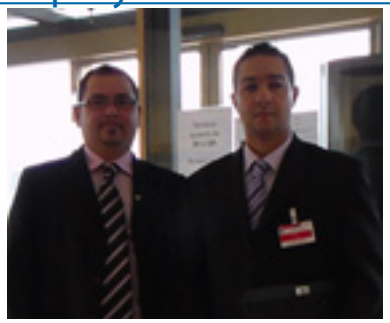
FTC NEWSLETTER

COME VISIT US AT: 3RD FLOOR, BLOCK B, UNITY HOUSE , VICTORIA

VOLUME 2, ISSUE 2

The Deputy CEO's Foreward...Taking the Next Step !!!



MR. GEORGES TIRANT (Left) CEO FTC and MR. FRANCIS LEBON (Right) Deputy CEO, FTC.

It is indeed a pleasure and privilege to be writing this foreword.

The Fair Trading Commission concluded the year 2014 by celebrating its 5th Anniversary in conjunction with the World Competition Day which is celebrated on the 5th of December. On this auspicious occasion the Commission had the pleasure of welcoming Professor Richard Whish and Mrs. Diane Terblanche as guest lecturers for the event.

The second semester of the year saw the consolidation of both the work started in the first semester and also the operational aspect of the strategic plan. For the 2nd semester the Commission recorded a total of 129 complaints and 7 new competition cases. Regular inspections were carried out on Mahe, Praslin and La Digue. Advocacy and Awareness sessions have been organized as a means to enlighten both consumers and businesses alike. Meanwhile, the Board of Commissioners continues to impose fines/penalties on businesses/consumers for breaching the CPA and FCA.

The need for a comprehensive national competition policy for Seychelles was also identified during the voluntary peer review of the enforcement of competition law in Seychelles that was undertaken under the auspices of the United Nations Conference on Trade and Development (UNCTAD). The report of the peer review, together with its recommendations, was adopted at the 14thSession of the Inter-Governmental Group of Experts on Competition Law and Policy (IGE) that was held in Geneva, Switzerland in July 2014.

This was followed by an exercise to amend our laws so that it reflects current international best practices. In the same vein, through a series of consultation with key stakeholders, the National Competition Policy was drafted, finalized and presented to the Cabinet of Ministers for approval at the end of the year.

"The Commission firmly believes that international exposure, participation, ...are the key to our long term success.

The Commission has been nominated by the Cabinet to participate in the next phase of the pilot implementation of Programme Performance Based Budgeting (PPBB) for the 2016 budget.

Internally, the Commission continues to put emphasis on capacity building. The Commission firmly believes that international exposure, participation, information and knowledge sharing through different platforms and organizations are the key to our long term success.

Information Technology is increasingly taking a more important and integral role in the daily operation of the institution. Our new website was also developed during the second part of the year and launched at the celebration of the Commission's 5th Anniversary event.

In 2015, there are numerous challenges and new projects on the horizon. As an institution, FTC will continue to work with our national and international partners in ensuring that the process of competition remains fair and the Seychellois consumers are protected.

JOIN US and HAPPY READING!

Administration/ Human resources

The second semester saw the departure of two staff of the Commission. Ms.Emily Mousbe who occupied the position of Legal Officer since July 2013 and Ms. Michelle Cupidon who was the Office Assisstant since December 2012.

The Commission thanks the two staff for their contribution through their time of service and wishes them all the best in their future endeavours.

It is good to note that during the second semester of 2014, the Commission had four staff undertaking further studies, namely Mr. Angelo Lesperance, Ms. Helene Marie, Mrs. Natalie Edmond and Mrs. Cosette Moustache.

MERGERS AND THEIR PRESENCE IN THE MARKET

What are mergers?

In accordance to the Fair Competition Act 2009 "merger" means ***the acquisition or establishment, direct or indirect, by one or more enterprise, whether by purchase of shares or assets, lease of assets, amalgamation or combination, of control over the whole or part of the business of an immediate competitor, supplier, consumer or other enterprise.***

What are the different types of mergers?
The different types of mergers include:

- vertical mergers
- horizontal mergers
- conglomerate mergers

a) Vertical Mergers

A vertical merger is one of the most common types of mergers. It typically occurs between enterprises which operate at different stages of the production or distribution chain such as a wholesaler and retailer or manufacturer and distributor. When an enterprise merges with either a supplier or a customer to create an extension of the supply process, it is known as a vertical merger or integration.

Example of Vertical Merger
An example of a vertical merger may be a wholesaler of goods merging with a retailer of goods. Where previously the wholesaler was selling in bulk to the retailer after the merger they would become one entity for the wholesaling and retailing of goods.

b) Horizontal Mergers

Horizontal mergers are types of mergers that involve enterprises which operate in the same market and are therefore in direct competition with one another. Horizontal mergers raise three basic anti-competitive issues:

i) the elimination of competition between the merging firms depending on their size.

ii) the union of the merging firms operation might create significant market power and might enable the merged enterprises to raise prices.

iii) by increasing powers in the relevant market, the transaction might strengthen the ability of other enterprises in the market to coordinate their pricing and output.

Example of Horizontal Merger
An example of a horizontal merger is the combination of two construction enterprises. Following the merger instead of having two enterprises there is only one.

c) Conglomerate Mergers

Conglomerate mergers are types of mergers that are in different and unrelated markets. There is no relationship between the types of business one enterprise is in and the type the other is in. The merger is typically part of a desire on the part of one enterprise to grow its financial means. By merging with a completely unrelated, but often equally profitable enterprise, the resulting conglomerate gains a revenue flow in many types of industries.

Conglomerate mergers however may reduce future competition by eliminating the possibility that the acquiring firm would have entered the market independently. A conglomerate merger also may convert a large firm into a dominant one with a decisive competitive advantage, or otherwise make it difficult for other enterprises to enter the market. Conglomerate mergers present less anti-competitive risk to the market and are most likely to be approved by the Commission.

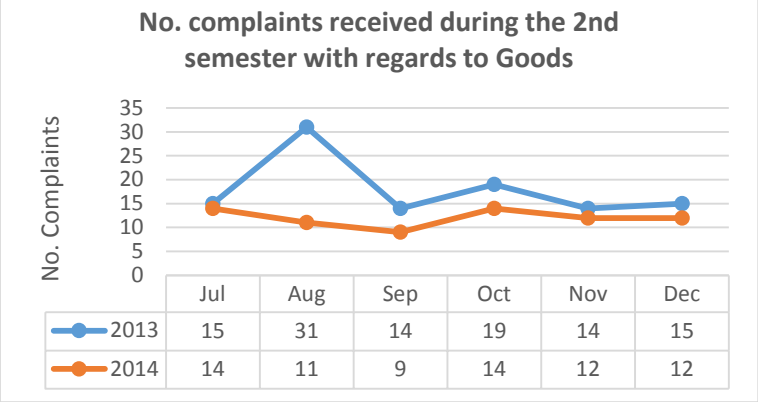
Example of Conglomerate Merger
An example of a conglomerate merger is that between an athletic shoe enterprise and a soft drink enterprise. The firms are not competitors producing similar products (which would make it a horizontal merger) nor do they have an input-output relation.

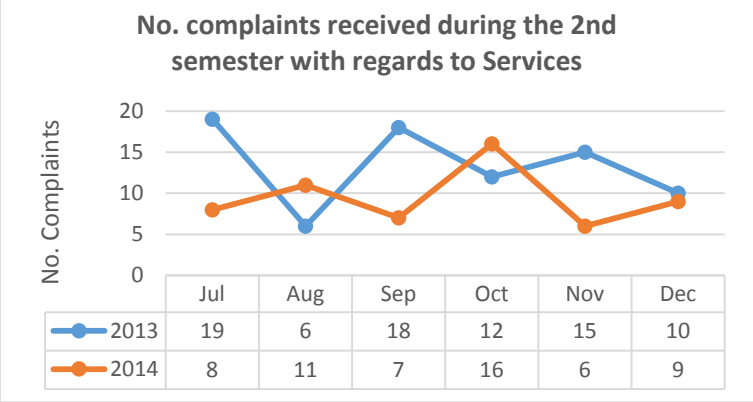
CONSUMER CASES RECORDED

THE FTC RECORDED A TOTAL OF 129 CONSUMER COMPLAINTS FROM JULY 2014 TO DECEMBER 2014.

Out of these 129 complaints lodged during the Second semester of 2014, 72 (55.8%) were related to goods whilst the remaining 57 (44.2%) were related to services. Compared to the same period in 2013 this shows a 33.33% decrease with regards to complaints pertaining to goods and 28.75% decrease with regards to complaints pertaining to services respectively.

The two graphs below show the trends in the number of complaints received per month for the same period for 2013 and 2014, firstly with regards to goods then with regards to services. We can see that the number of complaints recorded showed a similar trend except for the month of August in 2014 where there was a significantly larger number of complaints related to goods recorded compared to the same period in 2013. On another hand, for the second semester of 2014 and 2013 the number of complaints lodged with regards to Services at the Commission varied from month to month, showing a maximum number of recorded complaints of 18 in September 2013 and 16 in October 2014.



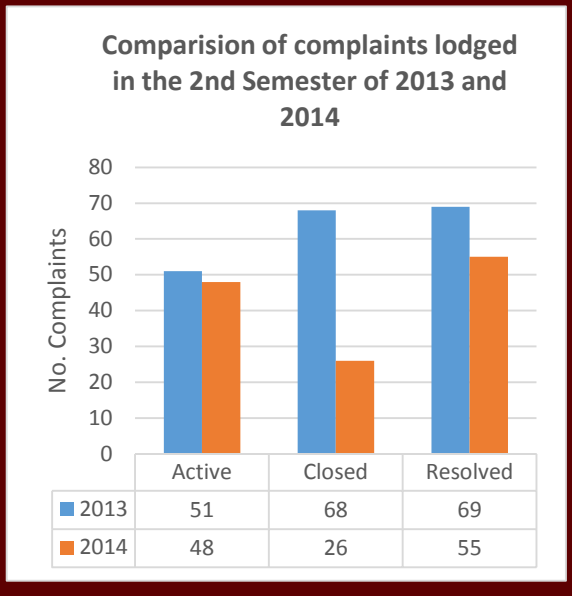


COMPLAINTS LODGED DURING THE 2nd SEMESTER OF 2013 & 2014

For the 2nd semester the Commission recorded a total of 129 complaints. This is a 31% decrease compared to the number of complaints recorded during the same period for the previous year which was 188 complaints.

Out of the 129 complaints recorded from July to December 2014, 26 cases have been closed and 55 have been successfully resolved by the Commission, whereas 48 cases are still active.

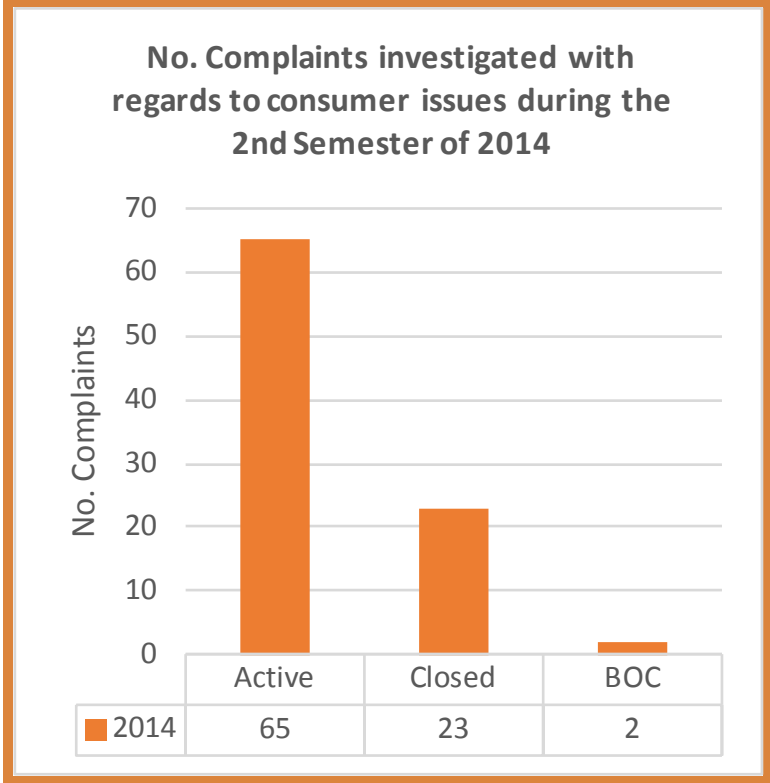
This is compared to the same period the previous year where, 68 cases have been closed, 69 have been successfully resolved, and 48 cases were still active.

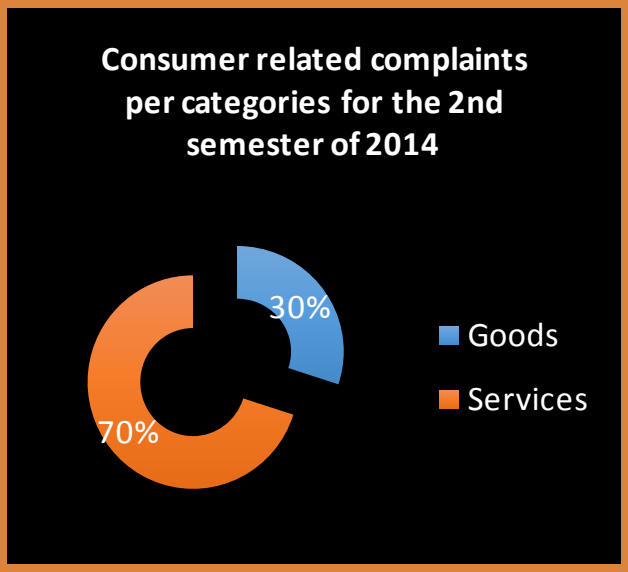


Consumer complaints investigation

During the second semester the Commission have been actively engaged in numerous activities within the different departments.

However, in terms of investigation of cases there have been 59 and 7 cases investigated during this semester with regards to consumer and competition matters respectively.





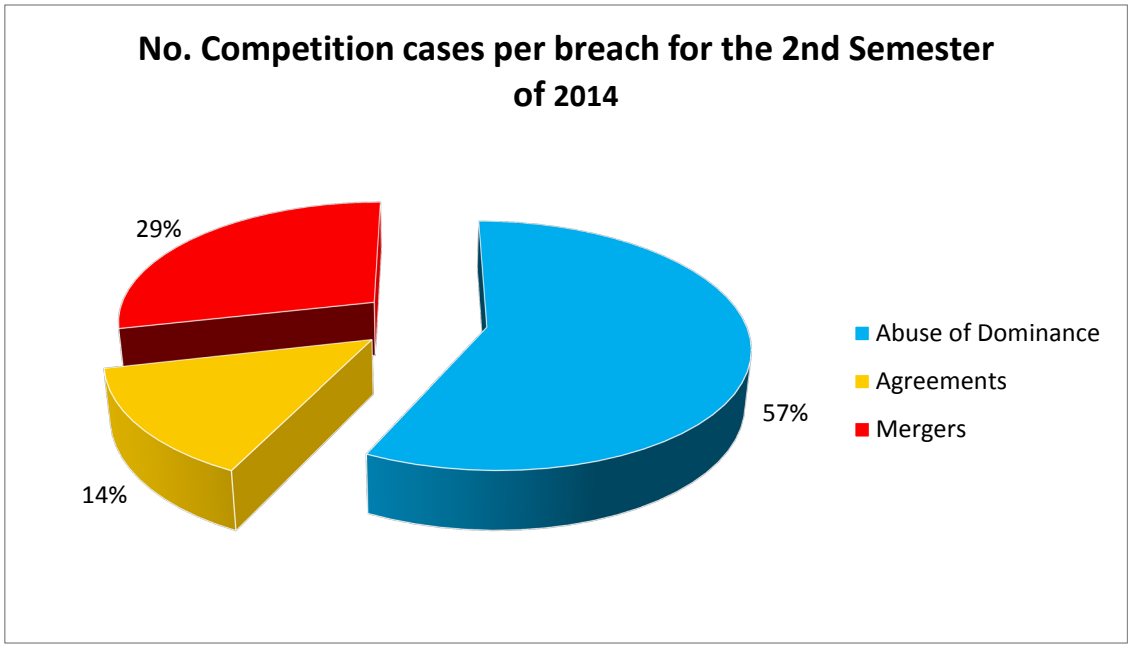
The graph on the left shows the number of cases which are either active, closed or sent to the Board of Commissioners (BOC) during this semester.

It also has to be noted that out of the 59 total consumer cases being investigated by the department, almost three quarter (70%) were related to services, the remaining 30% were related to goods.

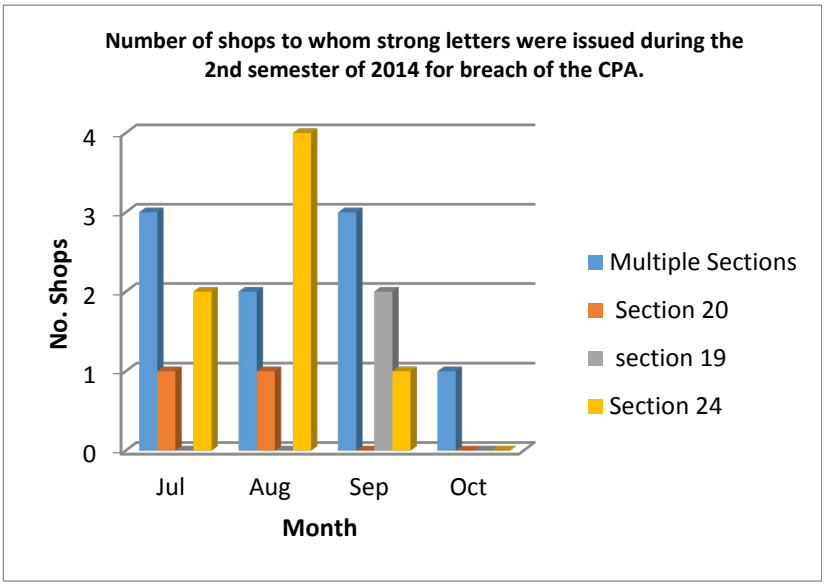
Status of competition cases lodged during the 2nd semester 2014

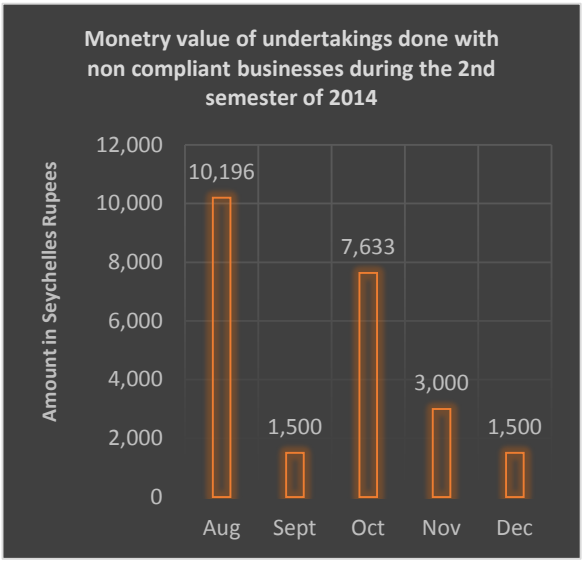
7 Competition cases were lodged during the period of July-December 2014. Out of the 7 cases, the highest number of cases was 4 which were with regards to Abuse of dominance, followed by Mergers-2, and Agreements-1 .

Ultimately, this means that 57% of competition complaints had to do with businesses abusing their dominance in the market at the loss of much smaller businesses.



Enforecement measures taken against non-compliant businesses



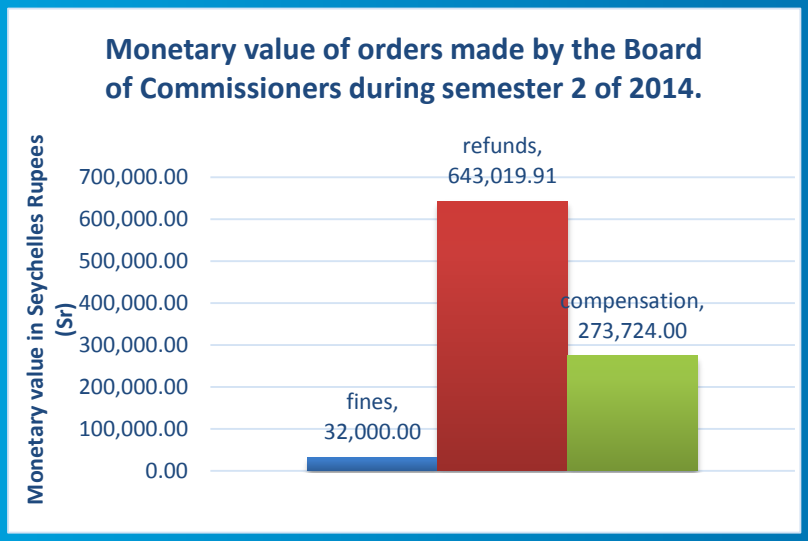


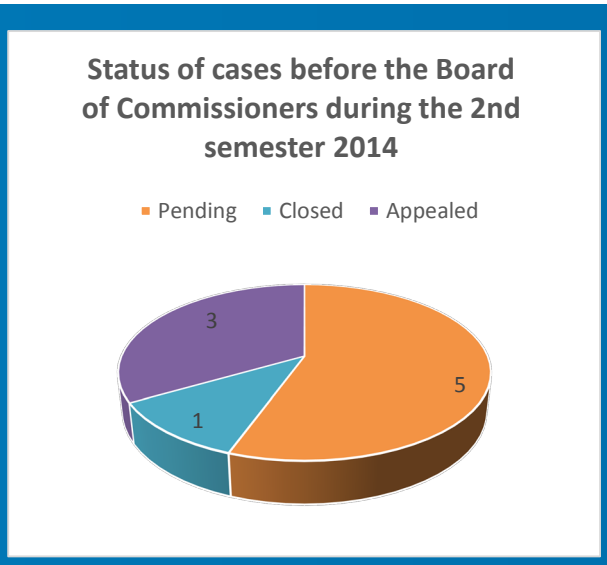
Since it's existence in 2010, the Commission has had to find ways in which to discourage non compliance with the Acts which the Commission is mandated to administer. This is done mainly through strong warning letters or undertakings.

The graphs above shows that during the second semester of 2014 the Legal Affairs & Policy collected a grand total of Sr 23,829.00/- from non compliant businesses with regards to undertakings - breaches encountered on business premises during inspections done by the Commission's Officers. A total of 20 businesses were issued strong letters as to the breach of the Act.

Cases heard before the Board of Commissioners for the 2nd Semester of 2014

9 cases were filed before the Board of Commissioners in the 2nd Semester of 2014 of which 1 case is already closed. For the remaining 8 cases heard by the Board of Commissioners, 5 cases are still pending and 3 cases appealed.





The graph to the left is showing the monetary values of orders made by the Board of Commissioners during the second semester of 2014.

Out of the total refund of Sr 643,019.91 only Sr 3,000.00 has been paid, the remaining sum is yet to be settled hence remains pending.

All the other orders of the Board of Commisioners are yet to be complied with.

Defective goods – What to do? Warranties and the three R's

Under the Consumer Protection Act 2010 , all goods bought must be reasonably suitable for the purposes for which they are intended, and must be of good quality, in good working order and free of any defects. They must also be useable and durable for a reasonable period of time. If the goods you encounter a problem with have been purchased within six months of being delivered, you are entitled to return them, and hence entitled to one of the three remedies – the three R's, available under the Consumer Protection Act 2010. That is a Repair, Replacement or Refund given that all the conditions under the CPA are met then the supplier must cover the costs of repairing, collecting or replacing the defective goods or refund the cost of the good in its totality.

As always, there are exceptions to the rules, and the rules around these remedies do not apply where:

1. the consumer was specifically told that the particular goods were on offer with specific condition. For example, you are offered a refrigerator at a lesser price because it had visible dents on it, and you were explicitly informed that this was due to a fall by the supplier. In the event that you accept this, it can be concluded that you also accept the fact that the refrigerator will probably not be as durable as it would normally have been had you purchased one in excellent condition.

2. the consumer uses the goods contrary to the instructions or tampered with the goods, this would void the warranty. Hence trying to fix the product first then going to the shop when your repair fails will render your warranty void, and the supplier will have every right to refuse to offer you a remedy, or he may charge you for the repair, replacement or trade of the goods.

Remember, that not every defective good allows a consumer to return goods for a refund or replacement, if it was fit for a period of time then the first remedy would be a repair. Consequently if you bought a washing machine and it worked for three months then stopped, and it was found to be defective, then, it would have to be repaired by the supplier within a period of 60 days. And if within 3 months of the repair the defect or unsafe feature has not been remedied or further failure, defect or unsafe feature is discovered, then you can have a replacement or refund.

In the event that the washing machine never worked, hence it was not fit for the purpose, then you are entitled to either a refund within 24 hours of return of the product or a replacement within 7 days of the return of the goods.

Updates

Advocacy

This semester Mr. Neddy Padayachy represented FTC in a workshop held by the Ministry of Health at Savoy Hotel.

The workshop aimed at assessing the effect of imported medicines on population when Seychelles joined the World Trade Organisation. The focal point of the discussions was whether only patent products should be imported and the consequences or impact on consumers.

Consumer Education

The Consumer Department has also contributed 4 articles to the Seychelles Nation. The articles which featured in the Seychelles nation which is a local newspaper, were:

1) Sales records as per CPA, 2010,
2) Warranty on products (defective/repaired products)
3) Performance of service (especially land surveyor)
4) Lagreman ant klian ek kontrakter.

However as a part of the educational programme, 2 adverts were published with regards to Mobile phones and perfumes, thus educating the general public on counterfeit and authentic products.

In house training

Last year the FTC celebrated its 5th anniversary. For the occasion a lecture was organized at the Eden Bleu hotel on the 5th December 2014. The FTC requested the participation of Mrs Diane Terblanche, Chairperson of the National Consumer Tribunal of South Africa as one of the consultant for the lecture. During her visit the staff benefited from a 3 days session prior to the lecture where Mrs Terblanche provided trainings on CPA 2010 in regards to:

- *Complaint recording (including questioning techniques)*
- *Preliminary complaint analysis (identification of theory of harm)*
- *Recording of information and evidence*
- *Mediation Procedures*
- *Investigative procedures and developing analitical skills*
- *Evidence gathering procedures*

Office Choir Competition

The Fair Trading Commission Staff took part in a public charity event called 'The Office Choir'. This had the aim of getting organisations together to sing during the Christmas Holidays for a charitable cause.

The Commission participated with 13 staff with the support of the Chief Executive Officer.

The event had an elimination stage whereby the FTC staff succeeded to get through to the finals. Balancing the work, additional duties and the singing was quite a challenge. Although the Commission did not come out in the top 5, we were champions since we had the chance to promote and create awareness for a charitable cause being the Autism Association of Seychelles.

The Commission truly had the pleasure of performing for such an occasion and discovered hidden talents in the process.

"Taking the Next Step"
FTC celebrates Fifth Anniversary

The FTC welcomed the end of 2014 through the celebration of its Fifth year anniversary on December 5th. Despite the Fair Trading Commission Act have been enacted in November 2009.

The FTC had the pleasure of welcoming Mrs Diane Terblanche and Professor Richard Whish as guest lecturers of the Fifth Anniversary of the Commission. Mrs Terblanche the Executive Chairperson of the National Consumer Tribunal of South Africa and Professor Whish a legal expert in Competition law, guided invitees on the importance of having Competition and Consumer Protection Laws and Policy in small island states.

The event which took place at the newly opened Eden Bleu Hotel on Eden Island, saw the participation of various high dignitaries such as the Vice President, the Minister of Finance and the High Commissioner of India, Chief Executive Officers, Board members and private business owners.

The Minister of Finance Trade and Investment started off the lecture through an opening speech which highlighted the achievements of the Commission as well as obstacles faced during the five years as a new Commission implementing new laws. The Minister informed the invitees of the Commission's aims for next five years and urged the stakeholders to actively participate in workshops conducted by the Commission, especially in line with the review of laws which are to be finalized in 2015.

The Lecturers then introduced the invitees to the various benefits of having a competition and a consumer protection law in a market, even one as small as Seychelles. Such laws are further reinforced through the creation of effective and well researched policies that would guide government and the Commission in the enforcement of the laws of the republic along the lines of competition and consumer protection policy and aims.

The need for efficient cooperation between stakeholders, especially technical regulators was underlined by the speakers. This is due to the scope of the regulation the Commission is mandated to enforce, it is imperative that technical regulators are in constant liaison with the Commission to ensure standards are continually reviewed and effectively enforced.

Mr. Phillipe Chong-Seng, a Commissioner from the Board of Commissioners of FTC stated "…both of the speakers did very good presentations on their respective topics. We should also endeavor to actively learn from the experiences of these experts as they have been exposed to more varied international experiences than what we would normally encounter in Seychelles. From what I can recall of Richard Whish's presentation, one thing really sticks: 'Evidence is the key to all investigations'!"

The event also encapsulated the launching of the Commission's new website, where FTC had the honour of inviting the Vice President and the Minister of Finance to officially launch the FTC website www.ftc.sc
The Anniversary Lecture ended with a cocktail where all invitees where given a chance to deliberate with officers of the Commission and the Lecturers as well as take home FTC souvenirs. A tableau of the Commission's journey throughout its five years of its existence was positioned outside the conference room, detailing all the events, training and staff movements that had occurred leading to the FTC being the reputable institution it is today.

PROFESSOR WHISH AND MRS. DIANE TERBLANCHE CONDUCT TRAINING SESSIONS FOR FTC STAFF

The Commission had the pleasure of welcoming professor Richard Whish as a guest lecturer during the Commission's fifth Anniversary celebrations. Professor Whish is a legal academic and author. In addition to the informative presentation given by Professor Whish on Competition Law and Policy during the event, the Commission also managed to benefit from the Professors knowledge through a staff training.

The officers of the Commission were provided with useful tips and procedural documents that would aid the enforcement of the Fair Competition Act in Seychelles. During the training session Professor Whish gave insight into:

- Complaint recording
- Preliminary complaint analysis
- Recording of information and evidence
- Investigative procedures and developing analitical skills
- Evidence gathering procedures
- Presentation of analysis and findings through report writing

Important points discussed during the session revolved around the need to ensure knowledge management and retention of staff to ensure that knowledge and skills and shared amongst all staff. Complaint handlers were also reminded to verify information provided by the complainant. Investigators and legal officer were also prompted to ensure the rights of the respondent are not breached when conducting the investigation or a hearing. Matters such as ensuring it is clear whether a legal counsel is representing a company or a person where highlighted.

Various documents and cases were also shared such as Manual procedures of the European Commission and the Competition and Markets Authority guidance on investigation procedures.

The session was found to be helpful in terms of guidance for the proper handling of complaints.
FTC Staff were also provided with training sessions Mrs. Diane Terblanche the Chairperson of the National Consumer Tribunal (NCT) of South Africa and her team Mrs Marelize Bosch and . The NCT representatives provided presentations on the set up of the Tribunal and the law and procedures that governs the applications under the South African Consumer Protection Act.

Each department of the Commission was provided with comparisons of law to the South African system, and various proposals were made vis-a-vis procedures needing review between departments. Important elements of evidence and hearing procedures were highlighted with the legal officers. The consumer department was informed of the need for clear and distinct mediation procedures and the investigation officers were provided with various ways to effectively gather evidence when building their case.

Various queries were made by staff such as steps for effectively planning prosecution of cases and differentiating duties between the mediation and investigation departments.

Overview of CEO's visit to Consumer Affairs Authority of Sri Lanka

In November 2014 the CEO, Mr. Tirant paid a courtesy with to the Consumer Affairs Authority of Sri Lanka. Consumer Affairs Authority (CAA) is the apex government organization mandated to protect consumers' interests and ensure fair market competition in Sri Lanka. It has been established under the Consumer Affairs Authority Act of 2003.

Mr Tirant was briefed on the structure and work of the CAA by Mrs. Shanthini Thiruneelakandan, Director for Competition Promotion. CAA is very active in the ambit of consumer protection, specifically to ensure that traders comply with the price control regulations. Raids are often carried out on traders.

One example is in May 2014, a raid was conducted, as per a complaint received by the Investigation officers of the Consumer Affairs Authority, regarding issuing of re-packed expired cement stock. Accordingly large number of expired cement bags and expired re-packed cement stock has been taken into custody and the said cement store has been sealed. and action against culprits are brought to court for prosecution.

FEEDBACK FROM COMPLAINANTS

Anonymous complainant

" I did not expect that the officers would reach my home to provide their assistance....and i am very satisfied with the assistance provided.

i feel very at ease to bring a complaint to the fair Trading Commission, if i feel that any of my rights have been violated as a consumer."

Marc Uzice

" I have appreciated the service gained from FTC and i have been able to receive a remedy.

I hope the Commission keeps up the good work."

Tips

Just bought your phone? Please note that:

"the consumer may, within 6 months after delivery of the goods, return the goods to the supplier, without penalty and at the supllier's risk and expense... and at the direction of the consumer,

(i)unless the goods are not reasonably fit for the purpose...,repair the goods within 60 days;

(ii) replace the goods within 7 days or agreed period by the parties or;

(iii)refund the customer the price paid for the goods within 24 hours ...

of return of the goods to the supplier"

Section 42
Consumer Protection Act, 2010

WORLD COMPETITION DAY

As Competition Authorities around the globe draw to the close of yet another formidable year, this 2014, many if not all are engaged in the preparations for the celebration of the World Competition Day, celebrated on the 5th of December every year.

It was during the year 2010 that CUTS introduced this concept and simultaneously launched a campaign advocating for the celebration of the 5th of December as the World Competition Day. The date itself was designated as such on the basis that it echoed the sound of a Competition culture which was in agreement with the commitment taken by the UN General Conference on Restrictive Business Practices on that same date. The commitment entailed the approval and adoption of a UN Set, termed as the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (UN Set).

Further down the line, precisely the year 2012, UNCTAD fused its allegiance with CUTS in promotion of the World Competition Day which since then has swiftly gained colossal popularity amongst Competition Authorities worldwide.

As fervently advocated by CUTS, UNCTAD and the rapidly increasing number of Competition Jurisdictions across the world, the establishment and commemoration of such a day on the national level will undoubtedly impact the world's Competitive current in a positive way. The latter is anticipated to translate into the day becoming an internationally recognised day for Competition Advocacy.

The Fair Trading Commission which has the mandate to administer the Fair Competition Act has not remained isolated and insensitive to such a significant campaign. Consequently, for two years consecutively, 2012 and 2013, the Commission has celebrated the day through publication of an article in the local newspaper entitled "World Competition Day: Impacts of Cartel on the Poor". Conversely, on the 5th of December 2013, the Fair Trading Commission organised an advocacy workshop in conjunction with the SCCI to commemorate the World Competition Day. The Workshop saw the participation of several businesses in the business community within various key sectors of the economy and the distribution of leaflets around Victoria.

This year the World Competition Day could not have coincided in a more fitting manner than with the celebration of the 5th Anniversary of the Commission which has been scheduled to be celebrated on the 5th of December 2014. The Anniversary of the Commission coupled with the Competition Day has thus created the perfect platform for the Commission to be graced with the presence of one of the most distinguished expert in the Competition Law Arena. Professor Richard Whish, a lecturer at the Kings' College with innumerable years of experience in the field of Competition Law has been entrusted with the mission of delivering a lecture on the "application of competition policy in small island states" for this special occasion.
The World Competition Day for the year 2014 has seen the Fair Trading Commission go to great lengths that will undoubtedly not only be remembered because of the significance to its anniversary but concurrently because of the emphasis given to Competition Law and its regulation in the country.

DID YOU KNOW?

129

THIS WAS THE TOTAL NUMBER OF CONSUMER COMPLAINTS THAT THE COMMISION RECORDED FROM JULY TO DECEMBER 2014

44% OF THESE COMPLAINTS PERTAINED TO SERVICES

55 COMPETITION CASES

SINCE ITS INCEPTION IN 2009, UP TO DECEMBER 2014 THE FTC HAS RECORDED A TOTAL OF 55 COMPE-TITION CASES. THIS REPRESENT AN AVERAGE OF 9 CASES PER YEAR!.

SCR 643,019.91

THIS WAS THE TOTAL AMOUNT OF PENALTIES IMPOSED ON BUSINESSES BY THE BOARD OF COMMISSIONERS BETWEEN JULY TO DECEMBER 2014

For more Information:
Visit our website at
www.ftc.sc
Call (+248) 4 325250
Fax:(+248) 4325240
Email: info@ftc.sc

Capturing the moment

IGE Geneva, Seychelles Delegation - 08.07.2014. (Above)

FTC's 5th Anniversary - 05.12.2014. (Below)

Minister Pierre Laporte delivering the opening speech at the FTC's 5th Anniversary, held at Eden Blue, Seychelles. (Above)

FTC staff performing at the finals of Office Choir Competition. (Above)

Guest speaker Mrs. Diane Terblanche, Chairman of the National Consumer Tribunal of South Africa, addressing the audience (Right)

Guest speaker Professor Richard Whish, Legal Expert in Competition Law, delivering his lecture. (Right)

5th anniversary lecture panel during Question & Answer Session (Above), and launching of the new FTC website by the Seychelles Vice President Mr. Danny Faure (Right)