The Fair Trading Commission
Seychelles

Fair Trading Commission

Annual Report 2011

Presented to the Minister and the National Assembly

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…to safeguard the interest of consumers,
to monitor and investigate the conduct of business enterprises,
to promote and maintain effective competition in the economy….

(Fair Trading Commission Act, 2009)

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Forward by the CEO

Mr. Daniel Gappy,
Chief Executive Officer of FTC

The year under review has been a very busy and challenging year for the Fair Trading Commission (Commission). The Commission's focus remains firmly on how to protect the competition process in the country and furthermore with the Consumer Protection Act 2010 (CPA) coming into force at the end of November 2010, the other important function of the Commission is on how to protect consumers against unfair trade practices.

With regards to infringement of the Fair Competition Act 2009 (FCA) the Commission received new five cases for 2011.

Moreover, as part of its mandates, the Commission issued an opinion paper to the Energy Commission on the Energy Bill. Likewise, an opinion paper was submitted to the Ministry of Finance and Trade (MoFTI) with regard to a complaint in respect of buses above 9 seats. This was an issue raised by the operators in the sector and MoFTI invited our opinion on the matter in a meeting held at MoFTI. The Commission outlined its position by means of a letter sent to the relevant ministry. Moreover, the Commission provided the Ministry of Environment with a research note regarding competition issues in awarding contract to prospective persons and companies to collect, process and export waste for recycling.

Other highlights in 2011 were the recruitment of staff to investigate and resolve consumer complaints. In respect of the above, the Commission registered 266 consumer complaints with regards to unfair trade practices by service providers and suppliers of goods. Of the total amount of consumer complaints, only 24% remained active as of January 2012.

Furthermore, under its function to keep under review commercial activities in order to ensure compliance with the CPA, 129 retailers were inspected and served with warning notices for infringements of the CPA.

Finally, I would like to pay tribute to the staff of the Commission for their continued dedication and hard work throughout 2011.

The Functions and Powers of FTC

The FTC is mandated to carry out, investigations in relation to the conduct of business in Seychelles in connection with matters falling within the provisions of the Fair Competition Act and the Consumer Protection Act and to monitor commercial activities and consumer market(s) to ensure that business practices are not affecting the interest of consumers.

Under the FCA, the FTC is also mandated to take action so as to prevent the abuse of dominant enterprises, to eliminate anti-competitive practices and to prevent or control anti-competitive mergers.

In addition the FTC functions under the CPA are to educate and assist consumers in resolving complaints and to monitor standard of services supplied by service providers.

Furthermore the FTC has the mandate to advise the government on matters relating to the Fair Competition Act and the Consumer Protection Act, to make available to businesses and consumers, general information with respect to their rights and obligations and to undertake studies and publish reports and information regarding matters affecting the interests of consumers and enterprises.

> "The Commission has exclusive jurisdiction to hear and determine matters under any written law relating to consumer protection and fair competition."

The FTC has the power to carry out investigations in relation to the conduct of business in Seychelles to determine if any enterprise is engaging in practices that are in contravention of the FTCA, FCA, CPA. Such investigations may be self-initiated by the FTC or be carried out following a complaint. All investigations are carried out by the staff of the FTC.

The FTC has the power:

- To hold inquiries
- To administer oaths
- To summon and examine witnesses
- To compel the production of such books, records, papers and documents necessary for the purpose of the investigation
- To seize documents
- To make test purchases
- To inspect goods
- To conduct hearings
- To impose remedies or financial penalties
- To conduct searches and seize documents or articles

The Board of Commissioners

The board of Commissioners constitutes five commissioners, headed by a Chairman, together with the Chief Executive Officer as an ex officio member as established by the Fair Trading Commission Act 2009. The Commissioners, meeting together, act as the strategic decision-making body for the Fair Trading Commission as an institution. They also make the decisions on all investigations of restrictive practices under the Fair Competition Act and the Consumer Protection Act conducting hearings with the parties concerned and, where necessary, imposing directions or agreeing to undertakings.

Dr. Shelton Jolicoeur

The Chairman of FTC Board of Commissioners

Dr Shelton Jolicoeur attended the University of East London in the UK where he obtained his Bachelor of Law Degree (LLB Hons) in 1985 and the University of Warwick, UK where he obtained a Masters Degree in Law (LLM) in 1986. In 1987 he pursued the vocational course for the Bar Finals at the Holborn Law Tutors in London.

Dr. Jolicoeur has occupied several key posts in government and has been extremely active in the academic front, writing many papers which culminated with his Doctors of Laws Thesis 'An Examination of the Legal Forms, Legal Status and the Managerial Mechanisms of Public Enterprises in Developing Countries.' He is an Associate Fellow of the Society for Advanced Legal Studies (UK).

Dr. Jolicoeur is a prominent International Legal Practitioner based in Seychelles with wide experience in practice areas of this firm. He is also the legal consultant to International Law and Corporate Services LTD and Trust & Fiduciary Services LTD both being Corporate and International Trust Service Providers in Seychelles. He is a regular contributor to the Doing Business in Seychelles.

Mrs. Annie Vidot

Mrs. Vidot completed her BA (Hons) in Accounting and Finance at the London Metropolitan University, UK in 2004, as well as several courses in related fields: Banking & Development, International Ireland Ltd, Dublin/London, 2007; Compliance & Risk Management Programme, Bakerplatt, Jersey, 2006; Anti-Money Laundering Refresher Training, Bakerplatt, Jersey, 2006, SME Financing and Development, Malaysia, 2010.

She has been the Loans Manager at the Development Bank of Seychelles since 2007 and has held several posts in the banking sector. For instance Internal Auditor, Development Bank of Seychelles (2005 – 2006) Project Officer/ Senior Project Officer, Development Bank of Seychelles (1995 -2005), Audit Assistant/ Audit Supervisor, Ministry of Finance, 1993 – 1995.

Mrs. Dolly Tirant

Mrs. Dolly Tirant is a Chevening Scholar with an MSc in International Banking & Finance from Heriot Watt University, Edinburgh, Scotland. Her first degree was a Bachelor of Commerce with a major in Banking and Finance from the SNDT Women's University, Bombay, India.

For the last 9 years she has been working with The Mauritius Commercial Bank (Seychelles) Ltd. She is presently the Corporate Manager. Prior to this she worked for 15 years with the Ministry of Finance, Seychelles, in Financial Planning and Control, Investment and Trade. Her last position with the Ministry was Director of Financial Services.

Mrs. Tirant is a member of the Soroptimist Club of Victoria, an international women's service club recognized by the UN that promotes the rights and welfare of women and children.

Mrs. Jenna Thelermont

Mrs. Thelermont has been the Assistant General Manager of Seychelles Savings Bank since 2007, after occupying the post of Finance Manager at the same bank for 11 years.

She has completed several studies in finance and accounting, from AAT at the Seychelles Institute of Management (in 1991) to ACCA at the Financial Training Company, UK (1999). She has also followed short courses in the subject, for instance, Certificate in Bank Card Management, Institute of Financial Services (2004) and Strategy & Management in Banking Programme, International

Mr. Phillipe Chong Seng

Mr. Chong Seng is a Chartered electrical engineer presently engaged in electrical consultancy work.
He has extensive experience in operations and management of utilities at government, parastatal and private company levels.

He is presently interested in energy savings and alternate energy issues with a view to reducing the country's total dependence on fossil fuels for its energy needs.

FTC Management

FTC is headed by its Chief Executive Officer who leads a team of twelve staff spanned over 5 Departments; the Competition Department, the Consumer Department; The Research and Policy Department, the Legal Department and the Communications and Corporate Department.

FTC started its operations on 1st December 2009 only with the Chief Executive Officer and the Director for Communications and Corporate Services. The director of the Legal Department was then recruited in February 2010 but resigned in July 2011. The director for Research and Policy and the Senior Competition Analyst was recruited in July and December 2010 respectively whilst the Director for Consumers was recruited in January 2011.

During the year 2011, FTC recruited enforcement officers, senior legal officer, accountant, complaint officer, consumer analyst and competition analyst resulting in a total of 15 staffs recruited so far.

Mr. Daniel Gappy

Chief Executive officer

Mr. Daniel Gappy was appointed Chief Executive Officer (CEO) of the Fair Trading Commission in December 2009.

He holds a BSc in Finance and Accounting from the Kansas State University. Later pursued a MSc in Applied Finance at the University of Melbourne, Australia. He has held post of Principal Lecturer at Seychelles Institute of Management (SIM) and Managing Director of the Seychelles Public Transport Corporation (SPTC).

Mrs. Luciana Lagrenade

Director of Communication and Corporate services

Mrs. Lagrenade graduated with a Bachelor of Education from what is now called Edith Cowan University (1987) in Australia. In 1992, she completed her Masters degree in English from the University of Warwick (UK). From June to September 1993, Mrs. Lagrenade completed a Certificate in Measurement and Evaluation from the University of Cambridge Local Examination Syndicate, Cambridge, UK.

She has worked as a teacher of English and Literature, Curriculum Development Officer, Teacher Trainer and from 2005 – 2009, as a Quality Assurance Officer, Ministry of Education.

Mrs. Lagrenade is also a part time Lecturer at the Seychelles Institute of Management, specifically for report writing, communication and presentation skills.

Mrs. Lagrenade joined the Commission in November 2010 as the director for Communication and Corporate Services.

Mrs. Ellen Carolus

Director of Legal Department

Mrs. Carolus is an experienced lawyer and legal draftsperson. She undertook her legal studies in Mauritius where in 1997 she graduated with her LLB (Hons) degree from the University of Mauritius and in 2002, a Barrister's Vocational Course at the Council of Legal Education, from the country's Council of Legal Education.

She has extensive experience, both as a practising lawyer and in drafting of laws and, until she joined the Commission, was working in the Attorney General's Chambers.

Ms. Juliette Dorizo

Director of Research & Policy

Ms Dorizo is a statistician who graduated with a first Class Honors BSc in Mathematics and Applied Statistics at the University of Plymouth's Faculty of Technology. She won an IMA (Institute of Mathematics and its Applications, UK) award for outstanding performance upon completion of her degree and received an award for best returned graduate for the year 2001 from the Government of the Seychelles.

Ms Dorizo started working as a statistician in the field of Consumer Price Index and Labor at the Seychelles National Statistics Office in 2001. In 2003 she was transferred to the Seychelles Fishing Authority, where she worked as a Fisheries Statistician and later on as a Senior Fisheries Statistician until she joins the Fair Trading Commission in July 2010.

As a statistician her expertise is in data and database management, data processing and analysis in addition to research.

Mr. Francis Lebon

Senior Competition Analyst

Mr. Lebon graduated with a BSc (Hons) in Economics, Finance & Banking at the University of Portsmouth in 2007.

Mr. Lebon started his career at the Central Bank of Seychelles and held the post of Senior Domestic Debt Officer in the Public Debt Unit. Mr. Lebon was the Trade and Sales manager at Barclays Bank of Seychelles before joining the Fair Trading Commission in December 2010 as Senior Competition Analyst and promoted to Director of competition in January 2012.

Mr. Lebon also holds a Diploma in Accounting from the Association of Accounting Technicians (AAT) in the UK and successfully completed ACCA Part 1. During his time at the Central Bank, Mr. Lebon attended numerous short term courses in Public Debt Management and in securities.

Mr. George Tirant

Director Consumer

Mr. Tirant graduated with a Bachelor Degree in Theology at the Catholic University of Toulouse (France) in 2004. Mr. Tirant has since then worked with the Catholic Church until 2008.

Prior to joining the Commission, MR Tirant held the post of Director for Insurance Supervision in the Central Bank of Seychelles.

He was recruited in January 2011 as Director for Consumer affairs to set up the Consumer Department at the Fair Trading Commission.

Ms. Chantale Barrallon

Senior Legal Office

Ms Barallon read Law at the University of Southampton in the UK and graduated in 2009 with an LLB.

She worked at the Seychelles International Business Authority as a Legal Officer and has had various attachments with law chambers in Seychelles as well as the Attorney General's Chambers.

As a law graduate her skills encompass legal analysis, interpretation and opinions, case preparation and legal drafting.

FTC Major Accomplishment

Strategic Plan

In early 2011, the Commission worked on its Strategic Plan 2012 - 2015. This is now nearing completion and will be finalized and published in 2012. The Mission and Vision Statements to accompany the Plan have already been stamped on FTC official documents.

FTC Vision

"Championing market efficiency for consumers' socio-economic welfare"

The FTC's mission is to "advocate in favour of sound competition and consumer protection policies to safeguard the interest of consumers and the competition process and implement those policies through advocacy, market studies and enforcement in partnership with all stakeholders."

Staff Empowerment

International conferences and/or workshops

To achieve international best practice, the Commission felt the need to build strategic alliance with international agencies. In 2011 The Director for Consumer Department participated as an observer in the 2011 International Consumer Protection Enforcement Network (ICPEN) conference, in The Hague in Netherlands. This was followed by the Commission's steps to apply the Partnership Status with the abovementioned network. ICPEN has been established to share and discuss cross-border issues that may affect consumer and also to encourage international cooperation among consumer protection agencies.

The Director for Research and Policy had the opportunity to enhance her knowledge on various topics in competition law through her attendance at the *10th International Competition network (ICN) conference* which was held at the World Forum, in The Hague in Netherlands in May 2011. The conference provided an opportunity to learn about ICN roles and how the Commission can benefit greatly from various indispensable tools provided by ICN, covering all aspect of competition law and policy, from advocacy to cartel, merger,

agency effectiveness as well as unilateral conducts, which are vital in competition law implementation. In addition the conference provided an opportunity for networking which is vital for a young agency like FTC, since it provide for meeting new people who can provide guideline, information and assistance on the implementation of the competition law in Seychelles.

Furthermore the CEO, the Director for Communication and Advocacy and the Senior Competition Analyst attended the *4th Regional SADC workshop on Competition, Consumer Law and Policy for SADC member states* which was held from 28th to 30th June 2011 in Botswana. The main objective of the Workshop was to develop and promote harmonization of competition policies in the region. The 3 day workshop was structured around the following topics:

- Essentials of the investigative process,
- basic elements of abuse of a dominant position,
- abuse of dominance in a developing economy,
- competition policy and Government procurement,
- regional cooperation in competition law enforcement,
- competition law and its interface with IP, and
- capacity building needs for effective consumer protection.

The need for a regional competition policy framework came from the realization that competition and consumer protection laws are national but the relevant markets can extend beyond national boundaries. It was also noted that cross-border effects of business activities were increasing with growing integration of SADC economies, market liberalization and globalisation. This brings with it the risk that anti-competitive practices will likewise cross frontiers.

In December the Director for Research and Policy attended the *SADC workshop on "Technical assistance to SADC to enhance corporation and harmonization of competition and consumer Policy in member state*" which was held in Gaborone, Botswana. The aim of the workshop was to review and provide feedback on various best practice guidance documents prepared under the project. The guidance notes will be very useful for empowering FTC staff in analysis methods for enforcement case handling, case selection, advocacy, consumer perspectives under competition law, merger enforcement, small economies best practices just to name a few.

Staff Attachment to other jurisdiction

The Director - Communications and Corporate Services spent a week long attachment at the South African Competition Commission in Sunnyside Pretoria, between 20th and 24th June 2011 for empowerment in Advocacy. The aim of such an attachment was to engage in active learning from experienced professionals in the field, thus

a) ensuring immediate empowerment in advocacy; and
b) enabling FTC to address some of its uncertainties and queries regarding this subject.

In particular the attachment sought to address the following:

- What is advocacy?
- Why should advocacy be conducted?
- How should advocacy be conducted?
- When should advocacy be conducted
- Who should conduct advocacy?

DCCS met with, and held discussions with a fairly wide spectrum of staff members, as well as with SA Commission key partners. She found the experience very enriching and believes it would hold FTC in good stead in its own advocacy activities locally.

In addition, the *Director for Consumer Affairs* spent one week attachment at the Barbados Fair Trading Commission with the objective of understanding the setting up of the latter and gaining on hands on experience.

FTC Website

On the 10th of June 2011 the FTC website officially went online accessible to the public at large. The website provides access to all three laws under the custodian of the FTC in addition to guidelines and relevant procedures for the implementation of all three acts.

In addition the public can have access to complaint forms, board decisions of cases, Commission decision on cases that does not require hearing before the board and notices by the Commission such as for recall of goods.

The FTC will also be posting various consumer tips and advice, opinion papers provided to the government, market studies and consumer survey results, advocacy materials and media releases.

Department Report

Communications / Corporate Services

Consumer Awareness

The Commission launched a Consumer Awareness session on the Consumer Protection Act (2010) as well as on consumer rights and responsibilities, through presentations to schools, Post Secondary Institutions, workplaces, districts and the local consumer group NATCOFF. Response to these was unexpectedly poor: Of the 25 districts in the country, only those in the East, South and Inner Island regions responded: In the East Region, Plaisance saw only one person and subsequentlu his Region postponed all the remaining sessions . Anse Royale saw only two people (DA and MNA) . At Baie Ste Anne Praslin (Inner island Region) the Commission managed to attract 12 people including the Member of the National Assembly (MNA), and on La Digue only the District Administrator (DA) turned up.

Workplaces have not been that enthusiastic either , with response and turnout being positive in only the following places: Department of Environment, Air Seychelles, Department of Public Administration, Ministry of Health, and Ministry of Education (3 schools : Beau Vallon Secondary , Pointe Larue Secondary and Anse Royale Primary – but the latter was postponed to a later date which never materialised), Post Secondary (the School of Business Studies).

Specific restrictions of the CPA were published in NATION, the local newspaper, and TV spots of them were also aired at prime time on National TV (SBC), both reaching a large percentage of the population. In addition the advert were also posted on the FTC website after this became operational in June 2011.

Corporate Services

In view of the Commission being new, 2011 was devoted to producing documents and procedures for its smooth operation and to enable it to manage unexpected and unavoidable interruptions to this. Towards this end, the following was started (but which are still in draft form):

Firstly a set of internal office procedures to ensure staff requests and needs are addressed in a very timely manner. Secondly the Commission's Strategic Plan to guide the effective implementation of the Commission's mandate; thirdly a plan for Training Needs Analysis and subsequently , a Training Plan for the Commission for staff empowerment ; fourthly a Disaster Preparedness Plan to eventually incorporate Standard Operating Procedures (SOPs)

in the event of any of the following afflicting the Commission a) fire b) the collapse of the building (Orion Mall) c) rapid evacuation of the premises.

The Commission also engaged in the recruitment process for Enforcement Officers, and an Accountant

Competition

The year 2011 has been a challenging one for the Competition department. The department's main purpose is to enforce the Fair Competition Act 2009;

> "An act to promote, maintain and encourage competition, to prohibit the prevention, restriction or distortion of competition, and abuse of dominant positions in trade, to ensure that enterprises, irrespective of size, have the opportunity to participate equitably in the market place and provide for matters connected therewith."

As per section 17 of the Fair Trading Commission Act, the Competition Department drafted guidelines on the economic and legal analysis which shall be used for the determination of cases under the Fair Competition act and to build a framework for the handling of competition cases on

- Abuse of dominance
- Merger Control
- Collusive agreements
- Penalties and remedies

The guidelines have been sent to the Board of Commissioners for comments before uploading on the FTC website for public access.

Opinion Papers

Beside enforcement actions, part of FTC mandate is to provide opinions to government agencies on issues having an effect on competition in relevant sectors. During the year in review, the Competition Department provided opinions to the Energy Commission on the Energy Bill and to Ministry of Finance on the issue of buses above 9 seats by taxis and car hires.

Competition Cases

The Department undertook investigations based on various complaints received of unfair trade practices. As of the year end 2011 the Commission had registered a total of 10 cases, 6 in 2011 alone (Figure 1). The list of cases registered and their status are shown in table 1 below.

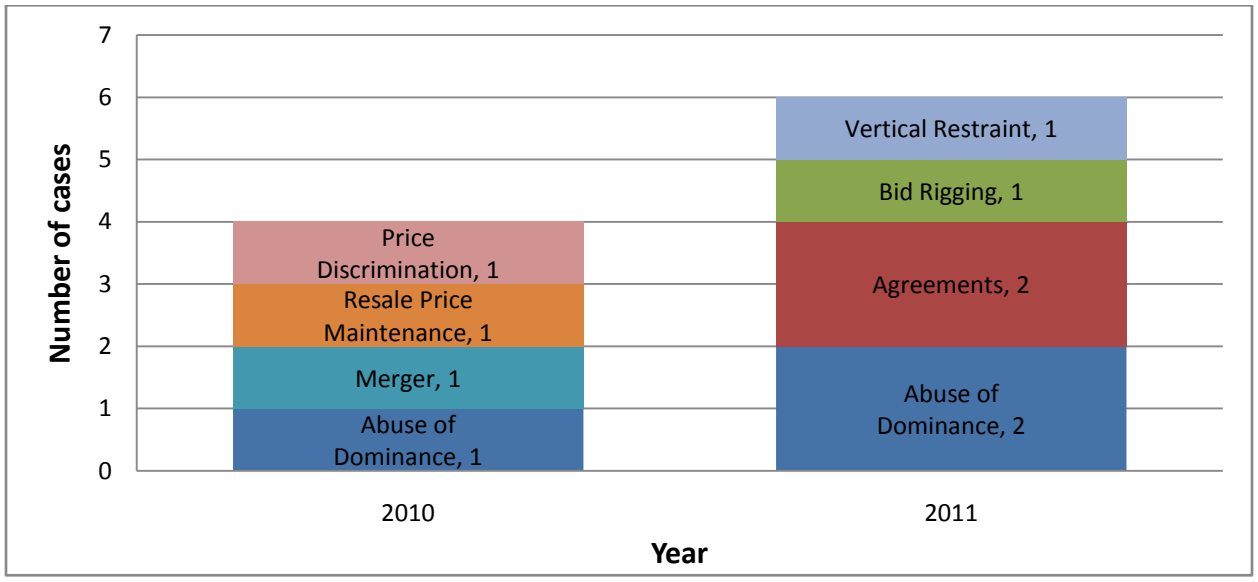

Figure 1. *Competition cases by type, year 201-2011*

Table1. Competition cases, year 2011

Case	Date Received	Status
FCA 01: *Alleged Abuse of Dominance in Port Services*	April 2010	The Investigation has been concluded and the report containing the Commission recommendations will be sent early January 2012 to the concerned parties.
FCA 02: Alleged Price discrimination against a Destination Management Company (DMC)	August 2010	The commission assessment is ongoing
FCA 03: Alleged Retail price maintenance	October 2010	Publication of Recommended Pricing by STC and whether this amounted to any RPM was investigated. The case was resolved by STC stating clearly that its prices were recommended and not obligatory.
FCA 04: Merger in helicopter services	August 2010	In July 2010 following speculations of a commercial joint venture between Zil Air and Helicopter Seychelles, the Commission made an enquiry in regards to the nature of the venture in question. Relevant documents provided by the parties were analyzed and the parties were advised to submit an application to effect the merger in question to the Commission in accordance with sections 22 of the FCA 09. However, the merger was not effected and therefore the application for approval of merger was deemed unnecessary. In conclusion this case has been officially closed.

Case	Date Received	Status
FCA 05: Franchising Agreement	June 2011	In conclusion it was decided that more detailed information from STC, followed by an in-depth analysis on their franchising set-up will determine whether the franchising format being used by STC is in line with the FCA, 2009 and international best practices. The aim of the Fair Competition Act of 2009 s to establish a level playing field for all market players whilst protecting the welfare of consumers receiving services and products in question. This includes players be it in a franchise market or even the general supermarket chain in Seychelles
FCA 06: Exclusive right offered through Sponsorship Guide of 8th IOIG 2011 as being unfair and restrictive to Competition	August 2011	The Commission Assessment concluded that the particular exclusivity did not constitute a concerted practice under Section 11 (1) of the FCA and that the exclusivity did not afford the enterprise the possibility of eliminating competition in respect of a substantial part of the goods and services concerned. (Section 11(4) (b) (iii) FCA).
FCA 07: Alleged Conditional Supply of Construction Materials	October 2011	The Commission received a complaint regarding the conditional supply of construction materials by UCPS whereby it was alleged that if a contractor is purchasing construction materials with UCPS it is obligatory for UCPS to transport the materials to the site. Following its preliminary analysis into the above subject matter, the Commission has determined that the matter does not justify further investigation. Such a determination is due to the absence of evidence to support the allegation made in the complaint. The Commission has however advised UCPS to take note of the provisions regulating the conduct of businesses or enterprises under The Fair Competition Act, 2009 and The Consumer Protection Act, 2010.

Case	Date Received	Status
FCA 08: Alleged Abuse of dominance in the Transport sector	December 2011	The commission received a complaint in December 2011 from a Classive Transport Services. The latter claimed that the Seychelles Public Transportation Corporation (SPTC) had an unfair advantage with regards to their omnibus services seeing that they receive certain government concessions and can therefore operate with lower costs. This case is still in progress as the commission is in consultation with both parties.
FCA 09: Alleged retail price maintenance by an Importer/Wholesaler	December 2011	Following a complaint brought against Dan imports of alleged RPM, the commission concluded that the there was infringement of the law. Dan Imports was informed of the commission's decision and they accepted that they had indeed breached the FCA. On the 30th of January 2012, the commission requested that they attend an advocacy session to which they gladly cooperated.
FCA 10: Alleged Predatory Pricing by a Retailer	December 2011	The commission assessment is ongoing

Consumer

Consumer cases

During the year 2011, the Commission received a total of 266 consumer complaints against suppliers of goods and service providers compared to 9 cases recorded in 2010. This may well be due to the FTC consumer awareness programs on the CPA.

It must be noted that once a complaint has been lodged a preliminary investigation is conducted to assess the legitimacy of the complaint. If the complaint does not merit investigation the case is closed and the parties are informed. If the complaint is not frivolous and falls under the scope of the CPA, the enforcement officer first tries to mediate the case so as to be resolved without the need for a board hearing. In cases where mediation fails, the case is forwarded to the Board of Commissioners for a hearing.

Out of the 266 cases 32% were investigated and resolved through mediation, 31% of cases did not merit investigation so were closed, 6 % was sent to the board for a hearing whilst 24% are still under investigation (figure 2).

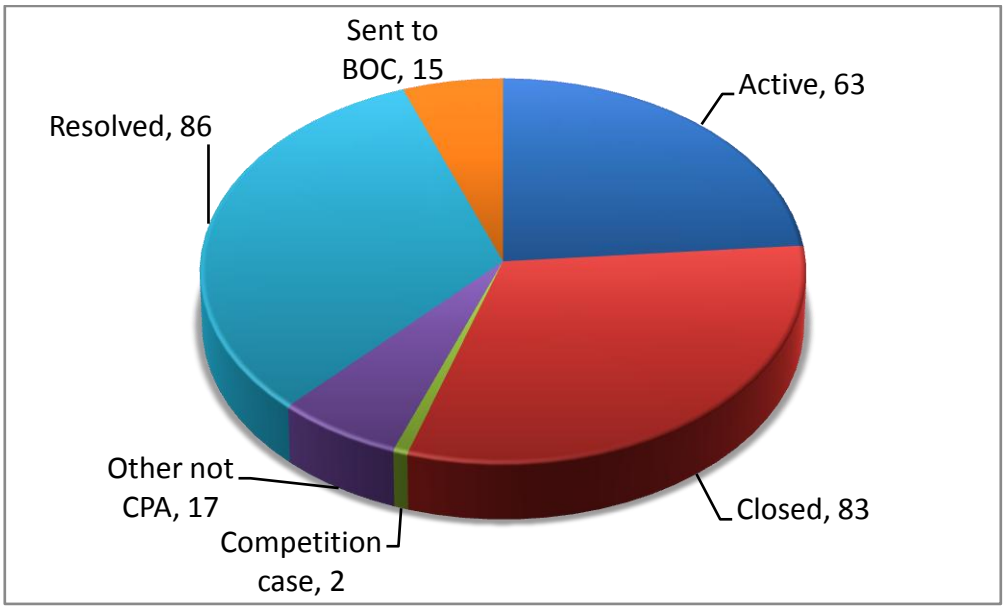

Figure 2. *Consumer case status, year 2011.*

It must be noted that the majority of consumer complaints received were regarding products representing 62% of the total complaints received whilst the remaining 38% were regarding

services. Analysis of monthly trend reveals that the majority of cases are recorded during the festive season in December where 14% of the complaints are received (figure 3).

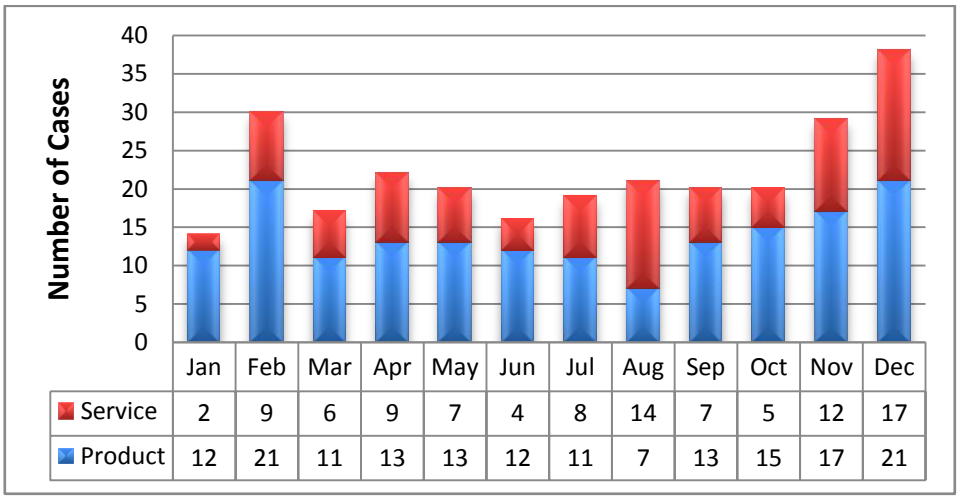

Figure 3. *Monthly trend of consumer cases by case type, year 2011.*

Statistics of consumer cases also shows that for the year under review, 20% of complaint about a product were about household appliances (figure 4). Mobile phones & repair and electronic items each accounted for 12% of the total product related complaints received whilst 20% of such complaints were about 24 different products each with less than 5 cases recorded.

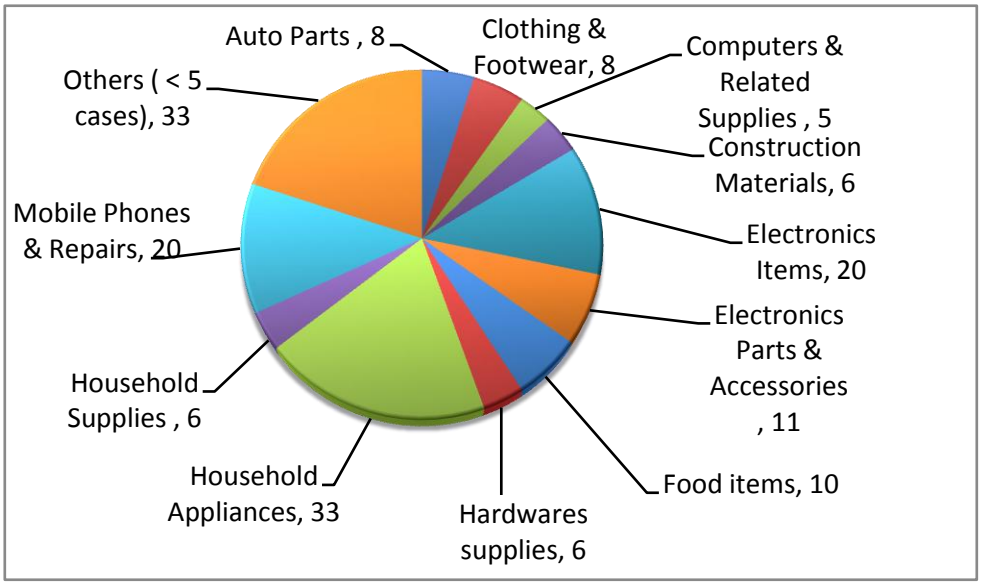

Figure 4. *Consumer cases by product type, year 2011*

In addition as depicted in figure 5 below, 23% of Consumer complaints received about services was from the construction sector followed by complaints about television services accounting for 13% of consumer cases regarding services. Also, 40% of the complaints received were regarding 29 different services offered to consumers each with less than 5 cases recorded.

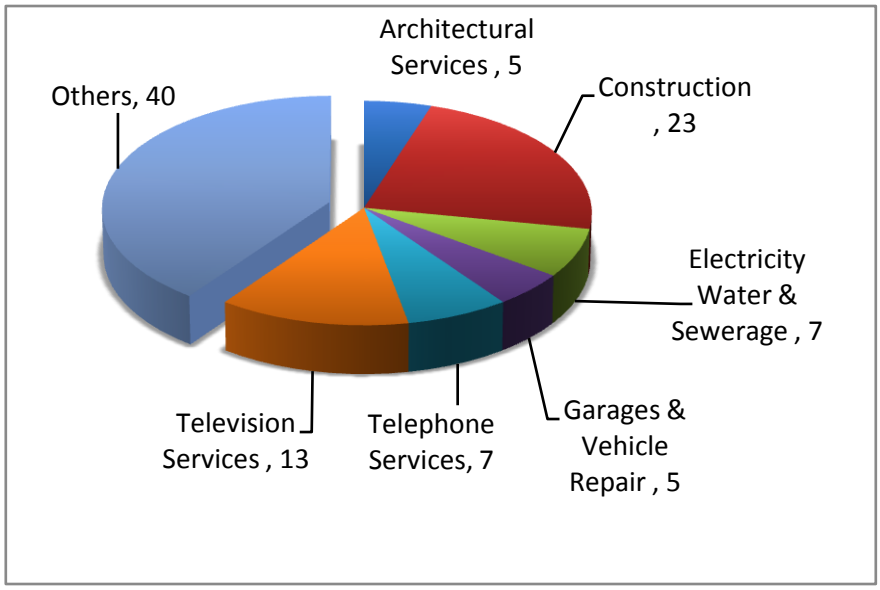

Figure 5. *Consumer cases by service type, year 2011*

Inspection

Besides complaint handling the Consumer Department also conducts inspections in various outlets over Mahe, Praslin and La Digue to ensure suppliers of goods and services are complying with the CPA. Enforcement officers inspect goods and record any breach of the CPA. In case of a breach the supplier either issued a compliance notice. In case of expired good the suppliers is also issued with a prohibition notice.

In 2011, the focus of inspection was in the retail sector, resulting in a total of 129 retailers being inspected for the year 2011. The main activities were to measure compliance with provisions of the Consumer Protection Act, regarding the supply of expiry goods, the display of price, dual pricing (where a consumer may be charged a higher price than the displayed price), labeling, including offering goods in a non understandable language, sales and promotion.

Analysis by region reveals that 28% of items that were in contravention with the CPA were identified on Praslin followed by 18% in Victoria and South of Mahe respectively (figure 6).

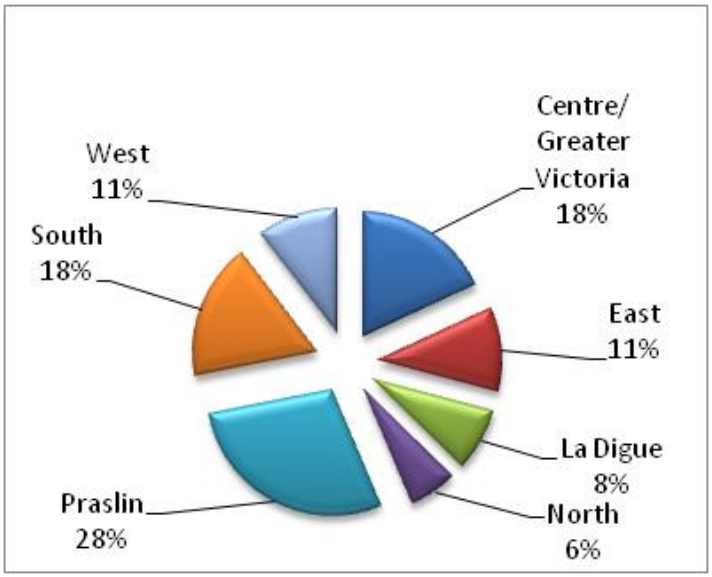

Figure 6. *Percentage of items in breach of the CPA by region, year 2011.*

Moreover, amongst the findings were a substantial amount of expired goods on the three main islands. A total of 11,395 expired goods were identified by the officers where 31% of the expired goods were identified on Praslin, followed by 18% in the South of Mahe and 13% in Victoria, (figure 7).

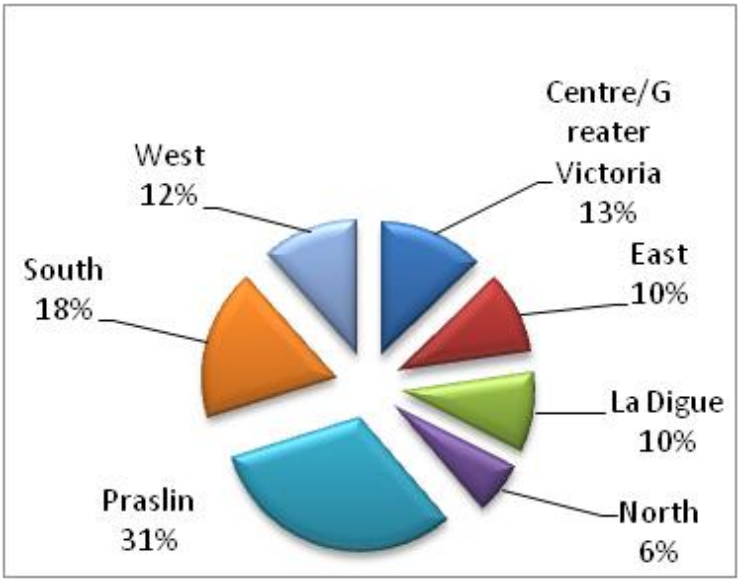

Figure 7*. Percentage of expired goods identified by region, year 2011.*

In accordance with section 72 of the Act, the Commission served on suppliers found to be breaching the consumer law a total of 40 compliance notices. A total of 68 notices were issued to retailers, prohibiting the supply of unsafe goods. Amongst the retailers found to be contravening the law, four were brought for hearings before the Board of Commissioners.

The Commission also published various adverts with regards to consumer rights and responsibilities

The right to safety *To be protected from products & services which are hazardous to health and life.* **The right to be informed** *To be protected against fraudulent, dishonest or misleading practices for better informed choices and decisions.* **The right to choose** *To have access to a variety of satisfactory goods & services at competitive prices.* **The right to goods of acceptable quality** *To purchase safe & durable goods fit for all the purposes for which they may be commonly used.* **The right to redress & fair treatment** *To receive fair settlement of just claims of unfair trade practices.* **The right to competent & timely service** *To have access to services executed with reasonable care and skill and in reasonable time.* **The right to rely on the seller** *Goods purchased should fulfill the purpose stated by the seller.* **The right to consumer education** *To become informed consumers capable of good choices, & knowing consumer rights & responsibilities.*	**CONSUMER RIGHTS**	**CONSUMER RESPONSIBILITIES** **The responsibility to be careful** *Be alert to quality & safety of goods & services & use products as stated in the instructions.* **The responsibility to be aware** *Ask for information, on goods and services, including quality, features and prices.* **The responsibility to be wise** *Shop around and compare prices before purchasing goods or services.* **The responsibility to make the best choices** *Compare the quality, features and prices of products before buying.* **The responsibility to respect procedures** *Put a complain at the business first, if redress are not obtain in reasonable time, submit a complain at the FTC.* **The responsibility to obtain services from competent person** *Check the licence of the supplier and also relevant work carried out before.* **The responsibility to inform the supplier of specific requirements needed** *Make the supplier aware for what purpose the product will be used.* **The responsibility learn from consumer education** *Learn from consumer education*

FTC
Fair Trading Commission
Seychelles

Research & Policy

Market Studies

Market studies play a vital role in competition and consumer protection laws. The Fair Trading Commission is mandated under the Fair Trading Commission Act 2009 to "undertake studies and publish reports and information regarding matters affecting the interests of consumers and enterprises."(Section 4(5)(c))

In order to ensure that market studies conducted by the Commission is as per international best practice, the Research and policy department dedicated most of its effort and resources in 2011 to draft procedures and guidelines required for conducting market studies in a professional and transparent manner (Table 2). Market studies involve identifying and selecting markets for study, identifying the participants in the markets, examining the market structure, analysing entry barriers, anti-competitive business conducts consumer detriment and government policies or regulations that may have an adverse effect on competition and consumers.

Statistics

The Research department also designed and created two databases for proper recording of both consumer and competition cases so as to ensure that from the very beginning all cases are properly recorded for future statistical analysis.

Research Papers

During the year under review, the research department drafted three research notes for the Commission (table 3). The first note was prepared to make certain recommendations to the Government to review the institutional, personal and budgetary independence of the Fair Trading Commission in line with international best practice.

The second paper was drafted as part of the Commission advocacy program to advocate competition to government institutions. The paper presented the importance of competition and competition policy, various section of the Fair Competition Act and the role of competition advocacy to government competition policy.

In addition an advisory note was drafted for ministry of environment regarding competition related issues in awarding contract to prospective persons and companies to collect process and export waste for recycling.

Competition Cases

The research department also assisted the Competition department on competition cases by drafting various research notes to provide background knowledge on the subject under investigation to the commission staffs (table 4). The department also finalised the guideline for relevant market definition

Table 2. Guidelines and Procedures For market studies drafted in 2011.

Number	Guidelines/ Procedures	Status
MR01	Market studies procedures	Completed
MR02	Guideline for Market selection & prioritization	Completed
MR03	Guideline for conducting research (MR03)	Adopted International Standard for conducting market, opinion and social research, ISO 2052
MR04	Market Research Code of Practice (MR04)	Code drafted. 80% Completed.
MR06	Guideline for competition assessment (MR06)	Guidelines drafted. 90% completed.

Table 3. Research papers drafted in 2011.

Number	Research Note	Status
1	Research Note on Independence of the Commission	Completed
2	Research Note on Competition Policy Advocacy	Completed
3	Opinion paper for Waste Management	Completed
4	Guidelines for Relevant market definition	Completed

Table 4. Research for Competition Cases, year 2011

Number	Case Title	Research	Status
FCA 01	Alleged abuse of dominance in port sector	Assisted with report writing and economic analysis of the case.	Completed
FCA 02:	Alleged Price discrimination against a Destination Management Company (DMC)	Research note on Price discrimination in tourism sector	Ongoing
FCA 03:	Alleged Retail price maintenance	Research note on Retail Price maintenance	Completed
FCA 04:	Proposed Merger in helicopter services	Research in relevant market for helicopter services. Assisted with the drafting of the Note to the Board and draft decision of the case	Completed
FCA 05:	Alleged bundling in telecom sector	Drafted an information note for the case.	Completed

Legal

A Senior Legal Officer was recruited in July 2011. All relevant pending work that was previously being done by the Director of the Legal Department was passed on to the Senior Legal Officer.

The Legal Department is essential in its function as it is linked to all departments of the Commission, mainly the Consumer Department, Competition Department, Communications and Corporate Services Department and administrative matters.

Consumer Protection

The Legal Department has aided the Enforcement Officers in the Consumer Department in their investigations, collection of evidence and legal analysis of complaints that were pending prior to July 2011 and subsequent complaints, as well as the preparation of documents to be sent before the Board of Commissioners. Most of all cases undertaken by the Consumer Department have been vetted by the Legal Department and recommendations or changes have been duly made in respect to each case. (See Consumer Department report for cases)

The Legal Department has also aided in the conception of adverts relating to consumer awareness as well as written material that has been published.

Competition

The Legal Department has aided in all the investigations of complaints lodged at the Competition Department as well as the collection of evidence, legal analysis and writing and interpretation of complaints that were pending prior to July 2011 and subsequent complaints. (See Competition department report for cases)

Aided in the completion and drafting of Competition Guidelines -

- Abuse of dominance
- Merger Control
- Collusive agreements
- Penalties and remedies

Technical Assistance

The Legal Department has undertaken the role of project Leader for the Technical Assistance being negotiated with the United Nations Conference for Trade and Development (UNCTAD). This project is being requested to span over 3 years to cover the following:

- Compilation of required guidelines and regulations in line with the Consumer Protection Act and the Fair Competition Act
- Guidance in the manner to assess government policies and prepare policy papers for consumer and competition areas
- The provision of a long term institutional framework for the Commission in relation to all sections
- In house training of staff in areas of complaint handling, investigation procedures, case compiling, report handling and board hearings
- Acquiring overseas attachments for senior staff in their relevant department to allow for impressionable exposure
- Co organising specific seminars for specific bodies in order to educate about the Commission and the 2 Acts: eg. ministries, authorities, private bodies
- Prepare and conduct an induction course applicable to all appointed Commissioners and future appointees to detail the role of a Commissioners and the conduct of hearings as well as how decision should be made and presented in line with the relevant law

The Commission is hoping to obtain training within the week of March 26th 2012 which shall cover in depth issues of Competition Law as well as investigatory procedures with the Commission's staff and relevant regulators and agencies. Various experts are expected to participate eg: COMESA, SADC etc.

A session shall also be conducted with regards to the composition of the Board of Commissioners and the standard role and functions of search Boards established.

Confidentiality Agreements and Memorandum of Understandings

During the year 2011, the legal department also facilitated the signing of a Confidentiality Agreement with the Seychelles Revenue Commission and has drafted a Confidentiality Agreement and Memorandum of Understanding for signing with other relevant regulators.

Law Amendments and drafting

With regards to legal amendments, the Legal Department has been working on the following:

- attaining the Commission's independence through papers written to the Vice President detailing the immediate steps that could be taken; such as changing the Organisational Status of the Commission with the government from a budget dependent entity.

- Completing the investigative procedures for Competition cases which has yet to be sent to the Minister as a regulation

- completing the Staff Regulations

Staffing and Administration

FTC Structure

FTC operational structure comprised of five department being the Competition, Consumer, Legal, Research & Policy and Communications and Corporate services as shown in figure 8 below.

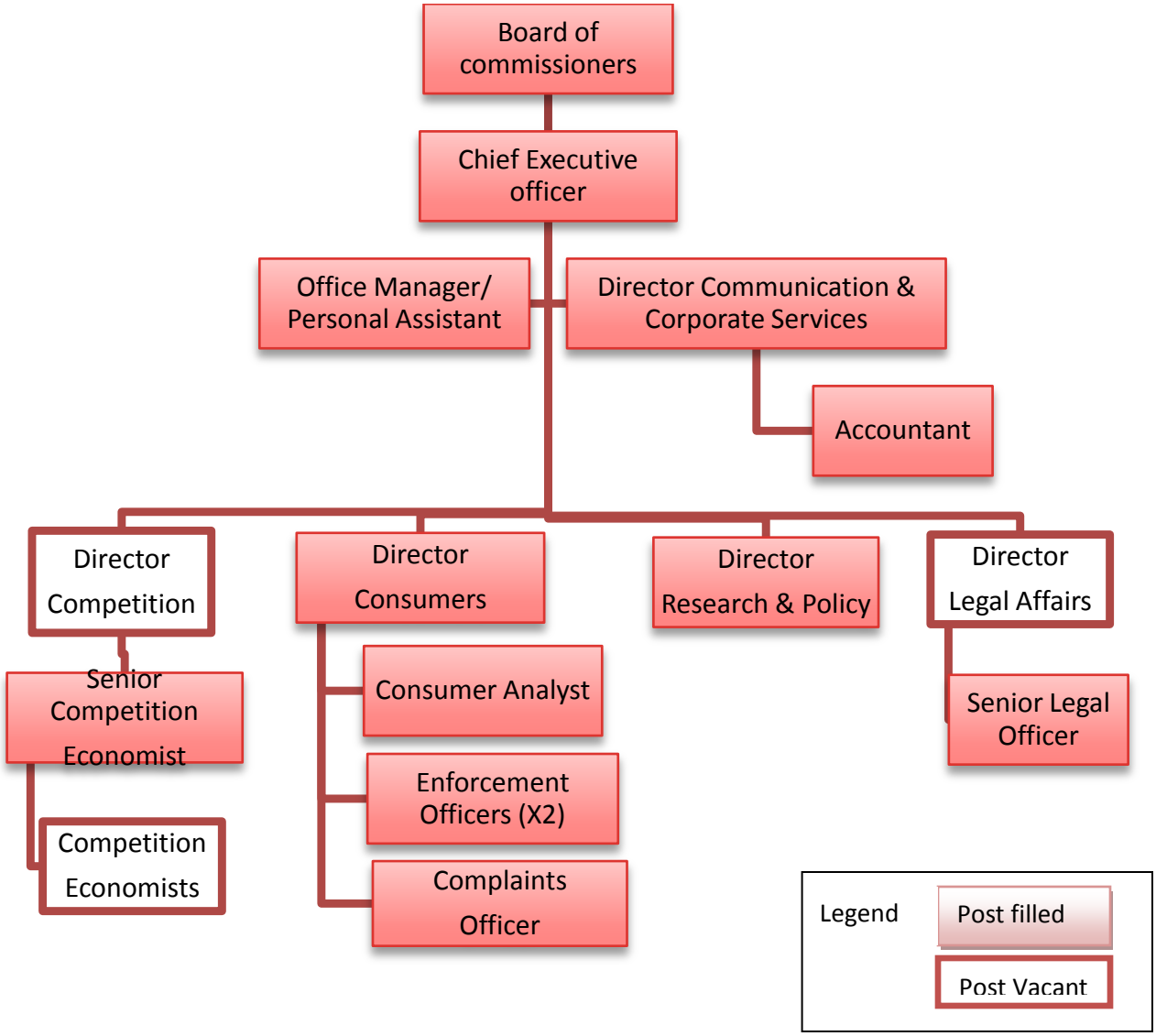

Figure 8. *FTC operational structure.*

Communication and Corporate Services Department

Advocacy

- Promote competition and protecting the competition process through advocacy, advising Government/other bodies and the private sector.
- Promote consumer welfare through a robust sensitisation of consumers' rights and responsibilities that target consumers as well as suppliers

Corporate Service

- Manage the Commission's premises ;
- Provide logistical support to the work of the Commission
- Ensure employee safety at work;
- Oversee emergency evacuation plans and exercises and salvage operations
- Advise on matters relating to personnel.
- Advise the Commission on all financial matters.
- Design and/or develop of specific internal applications;

Competition Department

- Conduct thorough economic and financial impact analysis in market segments and businesses in respect of competition law.
- Investigating anti-trust behaviours, structures, and practices and handling the competition side in cases.
- The focal contact with regulators.
- Liaising with the Consumer Department as an additional means of monitoring to ensure that markets are working well.
- Provide economic advice to the commission and assist businesses to comply with the Competition law.

Consumer Protection Department

- Receive and assess complaints lodged at the FTC
- Conduct hearing when evaluating complaints
- Investigate and evaluate complaints and alleged contraventions of the Consumer Protection Act 2010
- Inspect wholesalers and retailers outlets
- Issue and enforce compliance notices
- Accept and enforce undertaking under section 76 of the Consumer Protection Act
- Monitor the consumer market to ensure that prohibited conducts are prevented

Research and Policy Department

- Provide Competition policy advice to the Commission.
- Carry out in-depth analysis of competition policy issues.
- Maintains relations with government departments and international bodies in relation to competition and consumer policies
- Design databases, manage statistical data and conduct statistical data analysis
- Assist with economic and financial analysis
- Carry out Market studies
- Carry out research in competition and consumer related issues

Legal Department

- Advise the Commission on all legal matters including those pertaining to staff employment, the Commission's liability with respect to any of its acts including communications to the media
- Draft and vet contracts and other agreements which the Commission wishes to enter into
- Vet documents produced by the Commission and clear all communications to the media
- Assist with drafting of any subsidiary legislation required under the FTCA, FCA and CPA
- Assist in training other members of staff in understanding and knowing relevant laws
- Assist in the investigation of cases under the FCA and CPA and the drafting of any relevant documentation

Staffing

In 2011 the Commission recruited 6 additional staffs with two staff members resigning from their posts during the same year. These were the Director – Legal Department (June 2011) and the consumer Analyst (November 2011). This resulted in a total of 12 staffs by the end of the year (table 5)

Despite the recruitment the Commission remains heavily understaffed, considering both the nature as well as the amount of work needed to be done. It is hoped further recruitment will be conducted during 2012.

Table 5. Number of staff recruited and total staff by department, year 2011.

Department	**Staff Recruited**	**Number Recruited**	**Total Staff**
CEO office		0	**2**
Legal	Senior Legal Officer	1	**1**
Corporate Services	Accountant	1	**2**
Consumer Department	Enforcement Officers Complaint Officer Consumer Analyst	2 1 1	**5**
Competition Department		0	**1**
Research & Policy		0	**1**
Total			**12**

Training and Development

Being a newly establish commission and the custodian of the Fair Competition Act which is new to Seychelles, FTC main objective during the year 2011 was to continue to build capacity In order to build capacity of its management staffs, the Commission sponsored three of its senior staffs to pursue their post graduate studies at masters level through distance learning (table 6). The course started in September and 2011 for duration of 2 years. The Commission future plan is to provide training opportunities to all its staff members depending on availability of funds.

Table 6. Staff training through Courses

Staff Member	Post Tittle	Course Enrolled	University
Juliette Dorizo	Director Research and Policy	Economics for Competition Law	Kings College, London University
Luciana Lagrenade	Director for Communications and Corporate Services	Business Law	De Montfort University Leicester
George Tirant	Director Consumer Department	Business Law	De Montfort University Leicester
Helene Marie	Office Manager	Office Management	Seychelles Institute of Management
Dolores Barrack	Enforcement Officer	A'Level Law	ALDEC
Gina Servina	Complaint Officer	A'Level Law	ALDEC

In addition, various staff members had the opportunity to enhance their capacity through training and attendance at various conferences and workshops both local and international (Table 7).

Table 7. Overseas Duty Trip

Participants	Post	Workshop/ Conference	Date & Place of Mission
Georges Tirant	Director Consumer	International Consumer Protection Enforcement Network (ICPEN) conference	April 2011
Juliette Dorizo	Director Research & Policy	10th International Competition network (ICN) conference	Netherlands May 2011
Luciana Lagrenade	Director - Communications and Corporate Services	Attachment at the South African Competition Commission	South Africa, June 2011
Daniel Gappy Luciana Lagrenade & Francis Lebon	CEO Director Communication & Corporate Services Board Member Senior Competition Analyst	4th Regional SADC workshop on Competition, Consumer Law and Policy	South Africa, June 2011
George Tirant	Director Consumer	Attachment at the Fair Trading Commission of Barbados	Barbados, July 2011
Daniel Gappy & Chantale Barallon	CEO Senior Legal Officer	5th Annual Conference on Competition Law, Economics Policy	South Africa October 2011
Daniel Gappy & Chantale Barallon	CEO Senior Legal Officer	Roundtable on SADC Regiona Competition Policy	Botswana October 2011
Juliette Dorizo	Director Research & Policy	SADC workshop on "Technical assistance to SADC to enhance corporation and harmonization of competition and consumer Policy in member state	Botswana, December 2011

Constraints

Location

In January 2011, FTC moved to its current location on 2nd floor of the Orion Mall in Victoria. Although FTC's present location is spacious enough for its present number of staff and is centrally located and within easy reach of commuters and consumers, it is actually problematic. For instance it is in the centre of a mall, hence the Commission must put up with uncontrollable noise throughout the day from the volume of people and traffic going about their business within the vicinity.

Security at the building is limited to one post. This post does not enjoy a central location from which a proper monitoring of entry and exit of members of the public can be conducted. This consequently exposes the Commission to theft and vandalism that cannot be traced. To date, the Commission has lost 2 lap tops from its offices that had been accidentally left unattended and access to which had been possible via the main door which in turn had been left unlocked.

The building itself is not very appropriate for the Commission considering the commission's mandate. In the first instance, the building is a potential hazard: it is cracked. Secondly it leaks but the landlady is not willing to engage in repair works in the areas that leak until Orion Complex Management sees to the structural repair work first. Thirdly, the staircase is rather narrow, therefore posing a potential handicap in the event of an emergency evacuation. Furthermore, the Commission is frequently harassed for payment of service charge for sub standard services like the escalator that is frequently out of order or for the only lift to the building , also used by the other tenants to transport their (cargo) and which sometimes leaves patrons waiting unnecessarily .

In the second instance, the Commission is spread out and across to the two extreme sides of the building, consequently obliging staff to waste time migrating from one office to another and wasting otherwise productive time, unnecessarily.

Staffing

Despite new recruitments in 2011, the Commission remains heavily under staffs. Both the Competition and consumer protection laws requires qualified, experienced specialist with technical knowledge on how to effectively implement these laws. It has proved very difficult t to recruit staffs of such calibre for imminent effective implement of the law. The Commission needs to recruited staffs from various backgrounds and start building capacity.

Budget

The budget allocated to the Commission limits the quantity and quality of works expected from the Commission. Being a newly established Commission it is imperative that the Commission conducts a lot of advocacy and awareness for the two laws. However the present budget proves insufficient for such programs which require a lot of media programs and printed documents.

Building a Competition Culture

A cornerstone of a successful market economy is the existence of a "competition culture" within a country – an understanding by the public of the benefits of competition and broad-based support for a strong competition policy. Hence competition advocacy has been an important focus for advocacy by the Commission in 2011 to instil the competition culture in all parts of a society – consumers, businesspeople, trade unions, educators, the legal community, government and regulatory officials. Building a competition culture in Seychelles will ease the work of Commission when it comes to enforcing the Competition law. When the public is aware of the benefit of competition and businesses are aware of the consequences of violating the FCA, businesses will be more ready to comply with the law, the public will be more willing to corporate with the Commission for example to provide evidence and the policy makers and government will be more supportive to the mission of the Commission. However despite all efforts of the Commission to conduct advocacy sessions during the year, the turnout to these events remained very poor.

Consumer Awareness

Despite the limited budget, the Commission conducted various awareness session to consumers but again the turnout to these sessions were even poorer. The Commission even attempted to conduct the sessions at the various working places but very limited corporation was received from work places.

Financial Statement

The Fair Trading Commission
Seychelles

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