The Fair Trading Commission

Annual Report 2013

Our purpose & function

The Fair Trading Commission is an independent government body established under the FTC Act 2009. Its core function is to safeguard the interests of consumers and to ensure that the process of competition is maintained in Seychelles.

The Commission is empowered to investigate and evaluate complaints lodged as well as to monitor business practices so as to ensure that there are no contraventions of its laws.

The powers of FTC

- 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

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CEO's MESSAGE

It gives me great pleasure to highlight the activities and accomplishments of the Fair Trading Commission for the year 2013, in respect of the enforcement of the Fair Competition Act and the Consumer Protection Act. In March of this year under review, the President of the Republic entrusted me with the mandate to take the leadership of this important organisation. The challenge was to take the Fair Trading Commission (FTC) to the next level. The first exercises the new management decided were to be transparent, to resolve complaints in a reasonable timeframe and to revise our strategic plan. In such spirit staff empowerment became the key for a higher professionalism.

With regards to the administration of the Fair Competition Act, the small unit comprising of 3 analysts registered 16 complex complaints compared to 13 in the previous year and dealt with 3 merger notification at the COMESA level. With the increase of complex cases in consumer related cases, the unit had to assist officers in the gathering of evidence for such cases.

In terms of the Consumer Protection regime, FTC saw a significant increase in complaint, from 279 in 2012 to 418 consumer complaints in the year under review, resulting to a 49.8% increase. Though equipped with limit resources, both human and financial, I am proud to state that the service delivery was of high quality. Moreover, the Consumer Affairs Department carried out 449 inspections of business premises. Furthermore, in 29 cases presented before the Board of Commissioners, the latter imposes a total fines of SR 233,000/- on rogue traders.

FTC continued its advocacy and educational programme with the objective of educating the business communities on the provisions of the competition regime and their liabilities under the Consumer Protection Act. In that respect, on the 15th March FTC in collaboration with NATCOF carried out an outreach programme in the street of the capital under the theme "Consumer Justice Now" on the occasion of the 'World Consumer Rights Day'.

The 'National Day Expo', organised during the celebration of the country's national day was an important platform to show case our mandate and our work. We welcomed the public in our stand and educated them on their rights and responsibilities. The abovementioned occasion was amplified with the visit of the UNCTAD Secretary General where one of the aim was to strengthen the technical assistance being offered to FTC.

The end of the year was an occasion to celebrate the 'World Competition Day' and FTC joined competition agencies across the world to mark the 32nd anniversary of the adoption by the UN General Assembly, on 5th December 1980, of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

"We welcomed the public in our stand and educated them on their rights and responsibilities"

The way forward is to put into place a more proficient IT system and to recruit an IT Manager and also to have an effective database. Such tool will enable FTC to have proper information and to be able to identify market failure and to correct it. FTC aims at continuing its close working relationship with all its stakeholders. Once again, I take the opportunity to express my gratitude to all our stakeholders for the support during this year under review. I also assure the people of Seychelles that FTC will deliver its mission to be an effective and efficient organisation in "championing market efficiency for consumers' socio-economic welfare".

Board of Commissioners

From left: Mr. Phillipe Chong seng (Member), Mrs. Jenna Thelermont (Member), Mr. Collin Jean – Louis (Chairman), Mr. Michel Nalletamby (Member) and Mr. Victor Pool (Member)

Senior Management

Mr. George Tirant
Chief Executive Officer

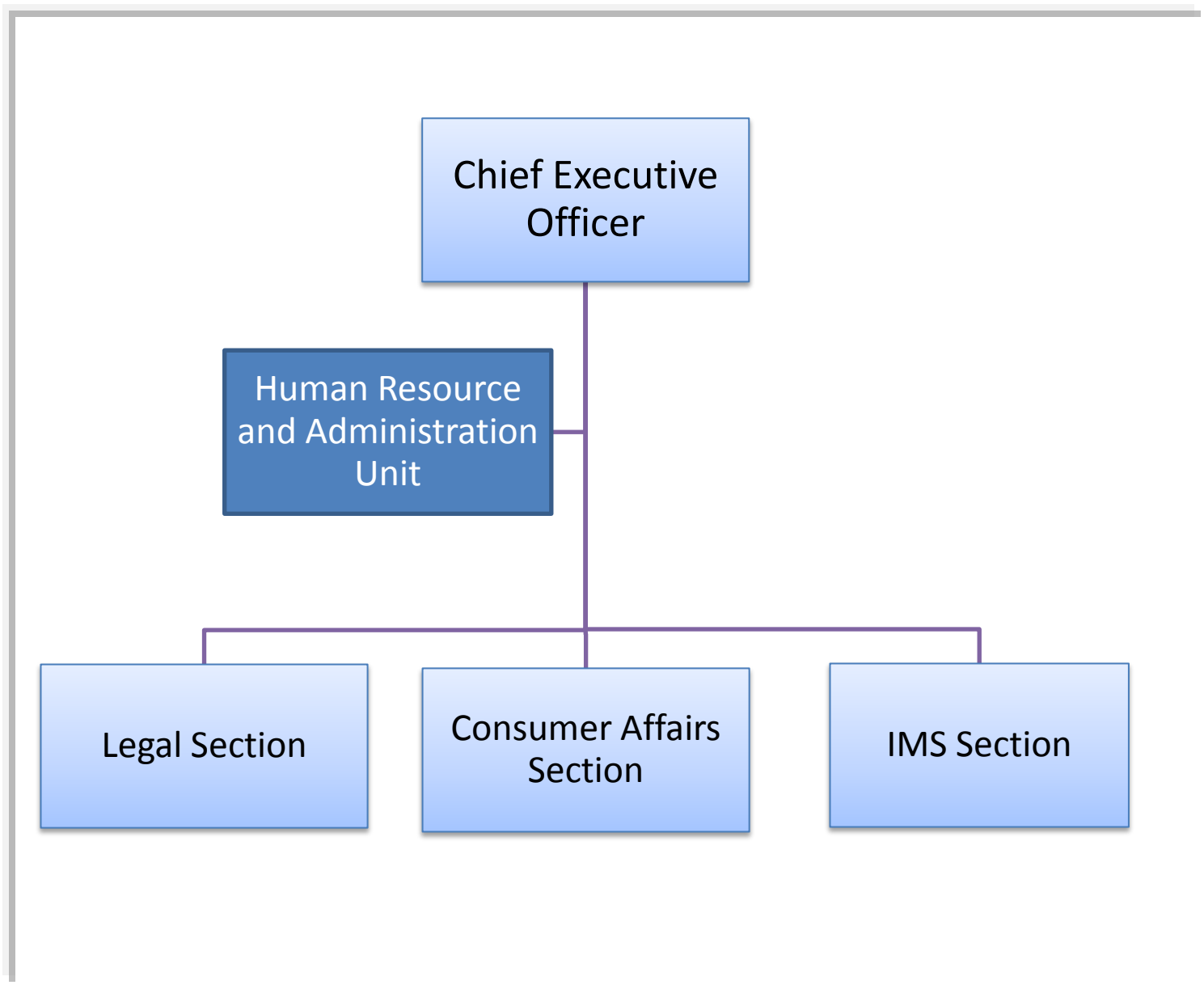
Mr. Francis Lebon
Deputy CEO

Ms. Chantale Barallon
Director Legal Affairs

Mrs. Lucianna Lagrenade
Director Consumer Affairs

Ms. Juliette Dorizo
Director Policy & Research

Organization Chart



Enforcement

The Fair Trading Commission's main goal is to protect consumers from unfair trading practices as well as ensuring that a healthy competitive culture is maintained amongst businesses. For the FTC, emphasis is on dealing with complaints efficiently but at the same time effectively. During the year 2013, the Commission registered a total of 434 cases, out of which 418 were complaints falling under the scope of the Consumer Protection Act 2010. Complaints range from services sought from construction businesses, garage services as well as the purchase of defective goods by consumers.

Summary of cases

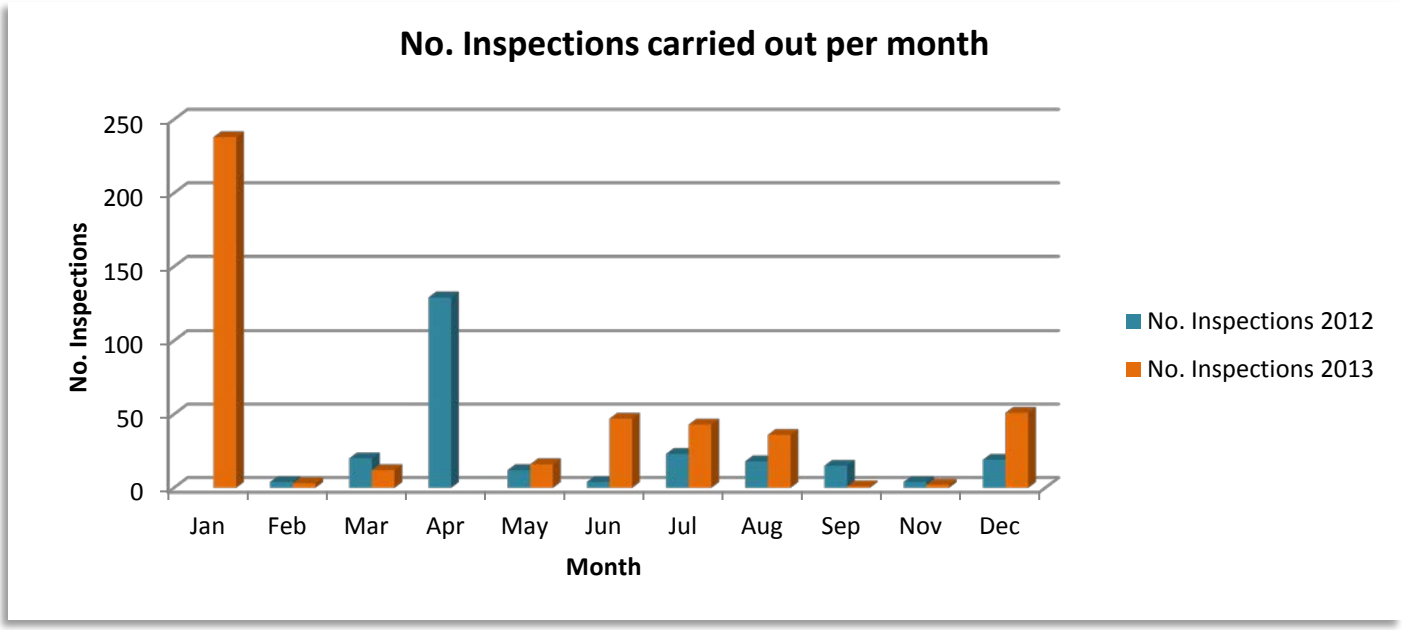
Status at 31st December 2013	**Active cases**	**Time frame**		
		2013	**2012**	**% change**
Consumer related Complaints		418	279	**+49.8%**
Competition related complaints		16	13	**+23.1%**
Investigations		363	186	**+95.1%**
Advisory papers		1	3	**-66.7%**
External Merger Notifications		3	0	**+100%**

Aside from dealing with consumer protection issues the Commission is also mandated to investigate complaints were the interest of the competition process amongst businesses is concerned. In 2013, 13 complaints relating to competition issues were lodged at the Commission these 13 complaints included 4 cases of alleged abuse of dominance and 9 were pertaining to anti- competitive agreements. The Commission also received 3 external merger notifications from COMESA. Altogether the total number of complaints and notifications received represents an increase of 23% as compared to the number of cases lodged at the Commission in the previous year. At the end of December 2013 out of the 16 complaints lodged; 6 are still active and 10 have been resolved.

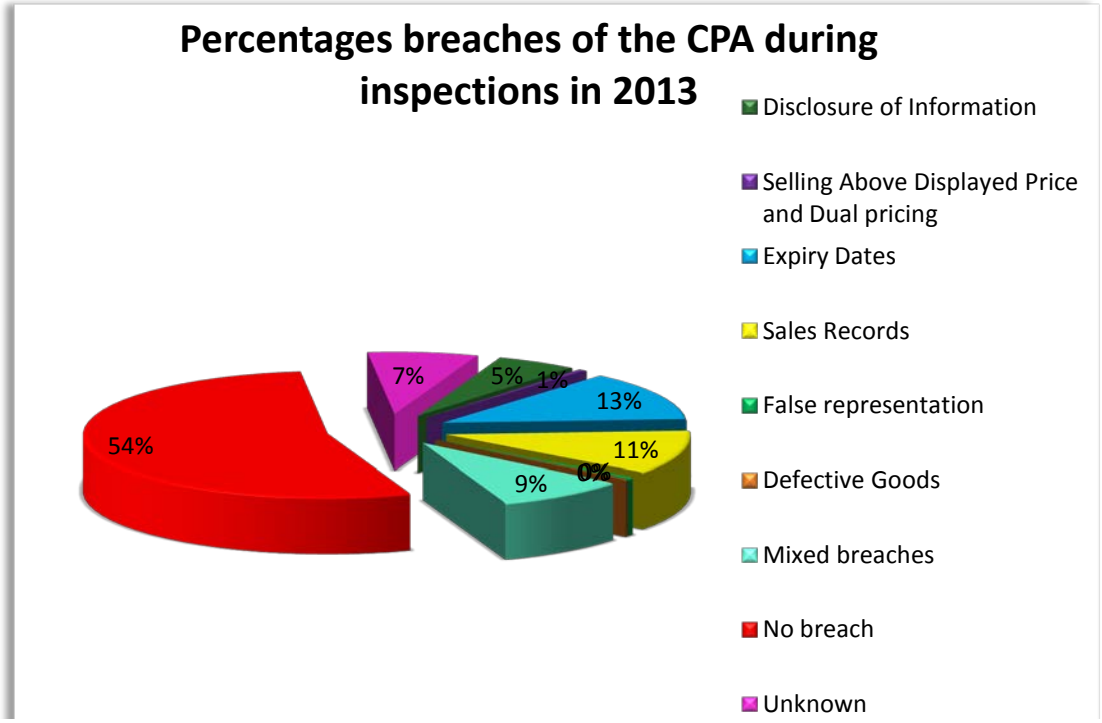
CASE CATEGORY	**2011**	**2012**	**2013**	**Total**
Abuse of Dominant Position	3	2	4	**11**
Mergers	0	0	3	**4**
Anti-Competitive Agreements	3	8	9	**21**
Not FCA Related	0	3	0	**3**
TOTAL CASES	**6**	**13**	**16**	**39**

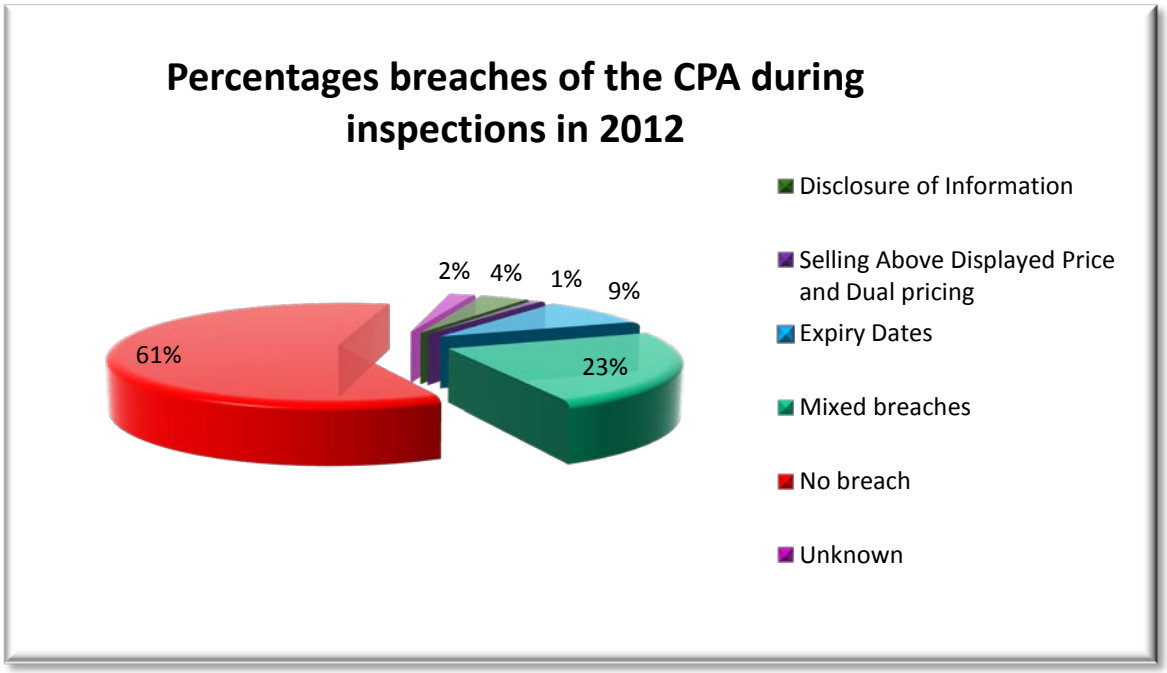
Inspections

Aside from investigating complaints received, the Commission also carried out routine inspections in different retail outlets on Mahe, Praslin and La Digue to make certain that provisions in the consumer protection act are being adhered too. In their inspection, staff of the Commission usually target the sale of expired goods, disclosure of prices of goods, product labeling and trade description. During the year under review the FTC carried out a total of 449 inspections. This has increased considerably (81%) as compared to the number of inspections carried out during the previous year.



Out of the 449 inspections, 241 were found to be in compliance with the provisions of the Consumer Protection Act 2010. Out of the remaining 208 inspections the staff of the Commission recorded several infringements of the Consumer Protection Act 2010. The most common breach that was observed during inspections was that businesses were selling expired goods to consumers, something which may have adverse repercussions on consumer's health especially when ingested.





Investigation

One of the goal of FTC 's is to ensure that consumers receive effective and efficient redress; however there are certain instances where cases cannot be resolved instantly due to their complexity these cases are forwarded to the investigation department for a more thorough assessment. During the year under review the Commission investigated a total of 363 cases revolving around the Consumer Protection Act 2010, out of which 220 were completed.

The cases sent for investigation are usually those regarding services rendered to consumers such as construction services and garage services, sometimes the cases involve the sale of defective goods such as electrical appliances and spare parts as well.

These cases are complex and often requires the need for assistance from other Organizations such as the Seychelles Planning Authority when it comes to construction cases. The Seychelles Bureau of Standard is another Organization that frequently assists the FTC when it comes to assessing the standard/quality of products and

Cases that are investigated are not only those involving consumer protection issues. During 2013 there were 16 competition cases that were being investigated out of which 5 were relating to abuse of dominance and 11 were relating to anti-competitive agreements. Competition related cases are quite convoluted and requires in depth investigation for over quite a long period of time. The FTC completed 7 cases out of the 16 cases that were being investigated during 2013.

Anti – competitive agreement between Eden Island Retail Center and Masons Exchange

On the 12th June 2013 the Commission received a complaint from Mr. Jean- Pierre Latour, the owner of JPL Exchange (Seychelles) Co. Ltd a bureau de change located at Eden Plaza. The complaint revolved around the fact that JPL Exchange had a lease agreement with Eden Island Retail Center which they intended to breach by terminating the agreement and for the complainant (Mr. Latour) to cease business operations. According to the complainant he was told to liaise with Masons Exchange which was given exclusivity to operate as a bureau de change at Eden Plaza.

On June 12th 2013, a request for interim injunction was submitted to the Board of Commissioners, requesting the Board of Commissioners to issue an interim order pursuant to the Fair Competition Act 2009, Section 47 to prevent Eden Island Retail Center from enforcing the exclusivity arrangement causing the complainant to cease operations and to allow the Commission sufficient time to investigate this matter in depth. On June 13, 2013 the Board of Commissioners granted the interim measure in the form of a ruling, directing the Commission to complete its investigation within a period not exceeding 6 weeks from the date of the ruling.

An investigation was launched based on the complaint lodged in order to gather more information and clarification on the alleged conduct. It was concluded from the investigation that Masons Exchange had requested exclusivity from Eden Island Retail Center to operate as the sole bureau de change on their premise. It was therefore concluded that the following Section of the Fair Competition Act 2009 has been breached:

- **Section 11 (1) FCA 2009** which states "*agreements between enterprises that have or are likely to have as their **object or effect** the prevention, restriction or distortion of competition within Seychelles, are prohibited unless they are excluded in accordance with the provisions of this sub-part.*"

The Commission determined that this was a breach of the Fair Competition Act, 2009 and deemed it necessary for the case to be forwarded to the Board of Commissioner for determination. The matter appeared before the Board of Commissioners on Wednesday 2nd October, 2013 for hearing. The Board of Commissioners took into account all the evidence adduced before it and the fact that the respondents (both Eden Island Retail Center and Masons Exchange) had presented an undertaking and that there was no longer an exclusivity agreement and imposed a fine of SR10, 000 on both businesses as a penalty for the breach of the FCA 2009. The case is now on appeal.

2013 in figures

434 Complaints

Cases Investigated

Inspections carried out

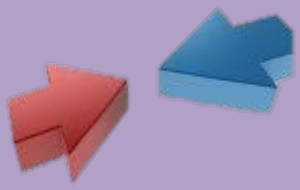
29

Cases adjudicated by the Board

SCR 233,000

Total fines imposed on Businesses by the Board of Commissioners

3 Merger Notifications



Enriching knowledge .....

Unleashing potential

The FTC has always been one Organization that puts emphasis in the training of its staff in order to enrich the Commission's knowledge base; after all an investment in knowledge always pays the best interest.

During the year in review some of the FTC staffs were taking different courses all with the aim of contributing essential knowledge to the organization as well as for their own personal achievement. Amongst the courses studied by the staff in 2013 were A level course in law, some staff were also following a postgraduate course in Economics for Competition Law, this can enable an improvement in the staff's ability to interpret and apply the laws administered by the Commission. There was also a course in General Business insurance studied by the staff so as to improve their general knowledge on insurance matters. The Human Resource Officer was also studying for a diploma in Human Resources and Management and the Administration Officer was studying for a qualification in Accountancy from the Association of Chartered Certified Accountants.

Other than the courses mentioned above; the FTC staff attended a training on competition law which was delivered by two competition law associates Mr. Robert Lancorp and Mr Andre Brantz who have worked on significant cases at the competition Bureau of Canada

The training went through the various anticompetitive practices such as abuse of a dominant position by a business, conspiracies and collusive agreements between competitors and the calculation of market shares in merger cases en-shrined in general competition

One of the associates (Mr Brantz) during his presentation

The FTC staffs attending the workshop

Advocacy

Consumer Justice now: World Consumer rights day

The World Consumer Rights Day was celebrated on the 15th March 2013 and to commemorate this day the FTC along with the National Consumers Forum distributed several leaflets containing information on different provisions of the Consumer Protection Act to consumers. During the distribution of the leaflets the officers of the Commission explained to the consumers of their rights and responsibilities, consumers also had the chance to clarify any issues they face.

The FTC shinning at the Expo 2013

The National Day Expo 2013 was an opportunity to show case FTC's accomplishments during the three years of its establishment as the custodian of the Fair Competition Act and Consumer Protection Act.

The Commission developed different advocacy tools to educate the public on the Consumer Protection & the Fair Competition Act. Amongst some of the knowledge enhancing activities were a replica of how prices should be displayed in shops, interactive games were also designed for different age groups and certificates were issued upon successful completion of the games. The general public also exposed to a series of TV/media representations of consumer redress and consumer advice from jurisdictions. The highlight of the expo was the successful launching of the FTC poster competition.

FTC poster competition

Winners for Category 1

Category 2 Prize Winner

The FTC poster competition was launched in June 2013. The aim of this competition was to increase awareness of the role of the Commission in relation to consumer rights and the competition process in Seychelles. Two themes were given per school level namely; "My Consumer Rights" for (Primary 3 to Primary 6 students) and "Championing market efficiency for consumer's socio-economic welfare" for (i)secondary 1 to secondary 5 students and ii) post secondary students).

The Commission saw the participation of many students for the 3 different categories. The prize giving ceremony was carried out on the 5th December 2013 in line with the World Competition Day.

Winners from all three categories were awarded with Fair Trading Commission's souvenirs and educational gift vouchers. The event was attended by the Chief Executive Officer of the Fair Trading Commission, the Minister and the Principal Secretary for Tourism and culture, staff of the Commission, Head teachers, teachers and parents as well as the participants themselves.

Category 3 prize winners

World Competition day

The World Competition day was celebrated on the 5th December 2013 with this year's theme being "Fostering Fair Competition in Seychelles and enforcing the Fair Competition Act 2009". The Commission marked this important occasion with a presentation to different stakeholders.

Present was the Principal Secretary for the Ministry of Trade and Finance Dr. Steve Fanny, as well as regulators and members from all sectors of the business community and law students from the University of Seychelles. The presentation was made by the staff of the Competition Department who is actively engaged in competition cases of the Commission which allowed them to relay both the theoretical and the practical aspect of the law to the participants

Deepening engagement

Aside from encouraging its staff to pursue further studies; the Commission recognizes the benefits of allowing its workforce to attend overseas workshops and conferences. Not only does this broaden their perspectives into the consumer and competition related issues surrounding the Commission, it also allows them to share experiences with Authorities from other jurisdictions hence given an insight into how their different approaches to the issues the Commission is faced with.

Analyst from the Competition department (2nd from right) attending the workshop fighting bid rigging in public procurement hosted by the ACF held on 26th to 27th June 2013 in Tanzania

The Chief Executive Officer & the Director for Legal Affairs and Policy attended the 13th Session of Intergovernmental Group of Experts on Competition Law and Policy and the Ad Hoc Expert Meeting on Consumer protection hosted by the United Nations Conference on Trade and Development, which took place from July 8th to July 12th in Geneva, Switzerland.

Senior Analyst from the Competition department (3rs from right; standing) attending the Regional Workshop on merger analysis which took place on the 1st – 4th September 2013. The Workshop was organised by the Federal Trade Commission and the Department of Justice in the in USA and the South African Competition Commission.

Analyst from the Competition department (first from left) next to the Deputy CEO at the regional workshop on the working relationship between COMESA Competition Commission & National Authorities held 21st to 22nd August 2013 in Lusaka, Zambia

The Director for Legal Affairs & Policy (right hand side), The Deputy CEO (middle) and an analyst from the Investigation department (left) attending the ICN Cartel workshop held 15th – 18th October 2013 in Cape Town, South Africa.

Other workshops attended in 2013

- The Chief Executive Officer attended an Agency Effectiveness workshop, which was organized by the African Competition Forum (ACF) in collaboration with the Kenyan Competition Authority. This was held from 25th to26th July 2013 in Nairobi, Kenya.

- The Chief Executive Officer, a compliance officer from the Consumer Protection department and an investigator from the Investigation department attended the fifth Annual African Consumer Protection Dialogue Conference, held at the Zambezi Sun hotel in Livingstone, Zambia from Tuesday 10th to Thursday 12th September. The Dialogue was organized by the Zambian Competition and Consumer Protection Commission and The United States Federal Trade Commission under the theme of "Moving Cross Border Collaboration Forward".

Other highlights in 2013

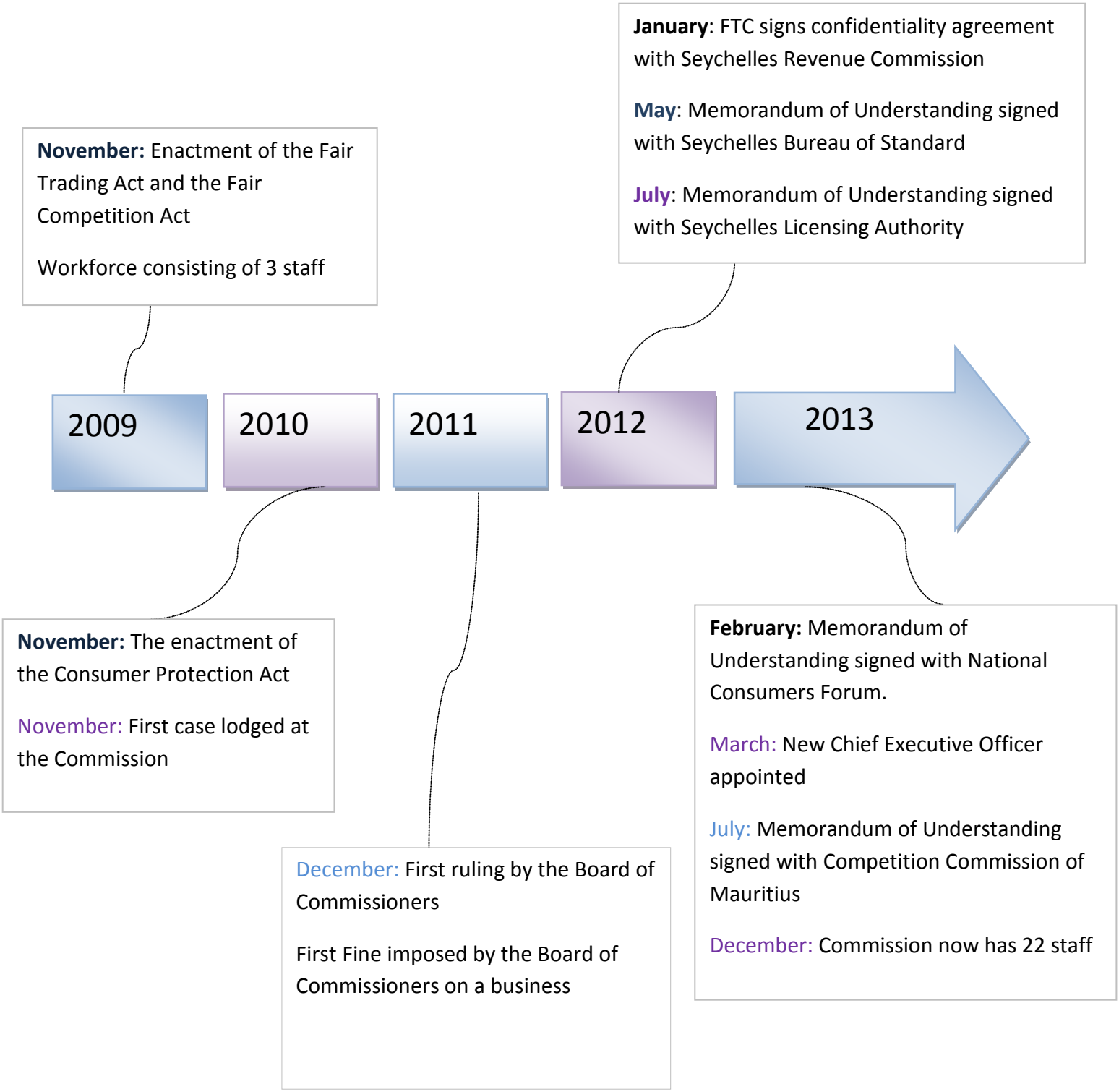
The Secretary General of the United Nations Conference on Trade and Development, Dr Panitchpakdi was an invited guest of the Seychelles government at the celebration of Seychelles's 20th National Day of the Third Republic.

Dr Panitchpakdi and the President Mr James Michel

Dr Panitchpakdi's visit was in line with UNCTAD's assistance program to the Fair Trading Commission in the area of competition and consumer law. The Secretary General along with the Head of the Competition and Consumer Policies Branch Mr Hassan Qaqaya presented the final Independent Review Report to government officials such as the Minister of Foreign Affairs, Minister of Finance Trade and Investment and the President's Office and advocated for the need to have an independent and resourceful Commission in order to be able to fully meet their mandate under their laws.

The Independent Review Report was formulated by two international consultants, Mr Carl Buik a former senior official of the Australian Competition and Consumer Commission and Mr Alexander Kububa, Head of the Competition and Tariff Commission of Zimbabwe and Chairman of the COMESA Competition Commission, and the report was submitted to the FTC in January 2013. The consultants examined the legislation for internal coherence and compared them to national and international laws.

FTC presentation with the Business Community

The Fair Trading Commission conducted a presentation with the collaboration of SCCI on the 1st August 2013. The presentation targeted the business community where they were given explanations and the applications of the provisions of the Fair Competition Act 2009 and the Consumer Protection Act 2010. At the end of the presentation there was a Q&A session where businesses were able to voice out any queries they had or bring to the attention of the Commission the dilemmas they face as businesses. It was overall a very productive presentation and the attendees took with them valuable information about the work carried out by the Commission.

Fair Trading Commission Milestones