Fair Trading Commission

Seychelles

2016 Annual Report

This report has been designed compiled and published by the Fair Trading Commission of Seychelles for the purpose of recording, reporting and showcasing the achievements Fair Trading Commission of Seychelles for the year 2016.

This report contains data in the form of written text, numerical statistics, and photographs of either individuals or groups of individuals for the purpose of this report only as described in the above paragraph.

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Our Purpose and Functions

About the Commission

The Fair Trading Commission is a statutory body established under the terms of the Fair Trading Commission Act 2009 along with the Board of Commissioners and the Appeal Tribunal. The Commission is the investigative and enforcement body, whereas the Board of Commissioners is the adjudicative body and the Appeal Tribunal considers appeals made against the decision of the Board.

Responsibilities

The Commission's overall responsibilities are to:

- promote and advance the welfare of consumers;
- promote, maintain and encourage fair competition among business enterprises and Service providers; and
- ensure that goods and services meet quality standards.

Functions of the Commission

The Commission's main functions are to:

- promote and maintain fair competition;
- carry out investigation in relation to conduct of trade;
- monitor commercial activities to ensure that practices that may adversely or unfairly affect the interest of consumers and businesses are prevented or terminated;
- prevent the abuse of a dominant position by an enterprise;
- eliminate anti-competitive practices;
- prevent or control anti-competitive mergers;
- provide general information to consumers with respect to their rights and responsibilities;
- initiate or receive complaints concerning alleged prohibited conduct, and deal with those complaints in accordance with CPA;
- investigate and evaluate complaints or alleged contraventions of the CPA;
- implement any policies on competition and consumer protection on behalf of the government.

The Board of Commissioners

Mrs. Jenna Thelermont - Commissioner (Far Left), Mr. Victor Pool – Commissioner (Second Left), Mr. Philippe Chong-Seng - Commissioner (Far Right), Mr. Michael Naletamby - Commissioner (Unfeatured)

The Vice-Chairman

Mr. Philippe Chong-Seng

The Chief Executive Officer

Mr. Georges Tirant

Our Strategic Goals

Strategic goal 1
Protect consumers from unfair business practices;

Strategic goal 2
Promote and maintain fair competition;

Strategic goal 3
Advance the Commission's performance through organizational, management and individual excellence.

Support

A. Human Resources & Administration

Staff Turnover, Recruitment and Internal Transfer

In the beginning of the year, the Commission had a workforce capacity of 22 staff. A total of 7 staff ended their employment with the Commission hence decreasing the workforce capacity. This raised the necessity to employ more staff and expand in order to manage the increased workload, hence, the Commission recruited a total of 12 staff.

Additionally, upon the resignation of the Human Resources & Budget Management Officer in March 2016, Ms. Audrey Ryland was transferred to the Human Resources & Admin Department in June 2016 as Assistant Human Resources & Budget Management Officer. Ms. Ryland joined the Commission on March 2015 as the Private Secretary to the CEO.

Internship & Work Attachment

The Commission accommodated five (5) students from the University of Seychelles, two (2) students from the School of Business Studies and Accounting and five (5) students from the National Institute of Health and Social Studies on internship program. These programs are being offered in order for the students to acquire work based experience in different fields within the Commission.

Performance Management System

The objective of implementing the new Performance Management System was to replace the existing performance appraisal system with a more articulate and efficient system to manage staff performance. The Performance Management System has been designed with the objective of improving performance by identifying performance requirements and boosting the performance of the employees. This encourages employee empowerment, motivation and implementation of an effective reward mechanism. The PM system moved to the piloting phase in October 2016 and will be fully implemented by February 2017 where performance will be properly measured and managed through an agreed framework of planned goals, standards and competency requirements.

Challenges and constraints

1. Lack of cooperation and communication with certain departments.
2. Lack of human resource to facilitate the work load of both HR and Administrative officer.
3. The objective to develop and implement a HR plan was stated in the Strategic plan 2014-2016. Since the objective has not been met, it is now a challenge for the current HR personnel to function as required in view that there is no proper procedures in place.

Plan for 2017

1. To build better communication with other departments.
2. To develop and implement a proper HR plan and procedures in order to enhance service delivery while contributing to the Commission's success in meeting its strategic goals, consistent with its mission and vision.

B. Information Technology Department

With the aim of improving the IT system to facilitate and enumerate the work of FTC, several projects were implemented or improved in 2016. Some of the projects have been completed, others are still work in progress whilst some have been delayed due to lack of resources.

Database

With the need to facilitate the work of FTC staff, generate faster reports with more specific data, provide easier access to information as well as ensuring that all files are backed up securely electronically, in 2016, the Commission started a trial run on the new database.

The project started off with the Market Surveillance unit uploading all complaints received up to November 2016 in the new database. At that stage, several minor issues were identified and rectified. Following this, in November 2016, the support group made up of IT and Market Surveillance staff started to provide training to staff from the various departments. Training started off with the two law clerks in order for them to receive complaints live. Training on how to use the various functions within the database was then given to the various departments based on their specific requirements.

By December 2016, all staff had been trained to use the new database and allocated a username and password. The two law clerks are actively receiving complaints live and the email alert feature allows for the management team to assign new cases through the database. On the other hand, the case handlers are yet to start using the various aspects of the database. There are also still some work to be done prior to generating reports from the new database hence market surveillance unit is still updating the old database to provide statistics.

Consultations with the various departments also led to further ideas for development in the various features of the database. The new features recommended for the database have been put forward to the programmer pending amendments. Following the addition of the new features to the database, the database support team will also create videos and screenshot tutorials as an extra support for the database users.

It is expected that by the end of 2017, the database will be in full operation.

Upgrading the network cables from CAT5 to CAT6

Ongoing upgrading of the network cables from CAT5 cables to CAT6 cables to provide a faster, more reliable and stable network for FTC.

Ongoing maintenance of the FTC Network and updating OS/software

The following have been effected:

- ✓ Upgrading all FTC OS to windows 10 for better security against viruses, adware and other malicious software.

- ✓ Upgrading all the hardware to a minimum of 4 GB providing a faster work station and increase staff productivity/efficiency.
- ✓ Upgrading all Microsoft office from 2007 to 2013 upwards providing more rich features and tools for data manipulation.

Network helpdesk & Intranet

A new helpdesk was designed and implemented on FTC network where FTC staff can interact with IT department and follow up on tickets/faults that occurs. The helpdesk provides a learning platform library for reoccurring errors, where staff can log in and find resolutions.

A local FTC intranet was also designed and implemented on the server to provide staff with template of forms, processes and other useful information.

Due to unexpected reoccurring power cuts, FTC IT Unit also proposed to purchase and install a UPS to support the 2 server running, that is, the database server and the main FTC DC server to prevent hardware failure. The project is pending funding, only part payment made in 2016 for UPS.

Exchange Server

The purchase of an Exchange server for better management of FTC emails was also proposed and will be effected in 2017 following budget approval. Currently, FTC emails are being managed externally by FTC ISP Cable and Wireless.

Upgrade our current backup system with removal backup tapes to implement a new proposed offsite Disaster Recovery Plan (DRP)

FTC was backing up data on an external NAS with Symantec backup Exec 2010, hence in 2016, a new backup system was received and installed using 3 backup tapes for backups for a minimum 1 month using backup exec software.

Installing a PABX Phone system for FTC

A new PABX has been installed to remove limitation on expending FTC phone system and eliminate the use of extension sharing amongst departments and staff.

Challenges and Constraints

1. With a high demand of Information Technology expertise at FTC, 1 person in the IT unit is not sufficient to cover every aspect of IT. There is a need to expand the IT Unit to be able to meet all FTC IT expectations and cope with the growing IT requirements.

2. The IT room is very small. It is congested with 2 servers and serves also as an IT office. It will be preferable to have a larger IT room to accommodate IT hardware/IT staff/servers and other hardware.

3. IT Project is restricted due to unavailability of Budget for important projects such as Disaster Recovery Plan, mail server and UPS.

4. There is a necessity to upgrade the current internet package from 4 to 1, 8mb speed to a 1 to 1, 8 mb dedicated speed. FTC has been experiencing slow internet frequently due

to sharing of the internet with 3 companies in our 4 to 1 ratio. The growing number of staff requires more speed to accommodate each staff with a decent enough speed.

Plan for 2017

4. Purchase new vigor 3900 router to create redundancy, fault tolerance IT network. In circumstances where one router fails, staff can still access information, the internet and network by diverting traffic to the other redundant router.

5. Extending database with more features to improve reports and reduce error.

6. To fully upgrade FTC current physical network from CAT5 to CAT6 and fibre optic network by improving the speed and data/information access through the main network.

7. More users interacting thru the helpdesk for IT faults that affect FTC user's accessibility to data.

8. Updating the intranet with more template and provide resourceful access to template and documents to staff.

9. Purchasing new technology and IT tools to maintain a reliable IT infrastructure to reduce hardware and software failures that disrupt FTC work.

10. Upgrade our main internet to a 1 & 1 due to high demand

Operational

C. Market Surveillance

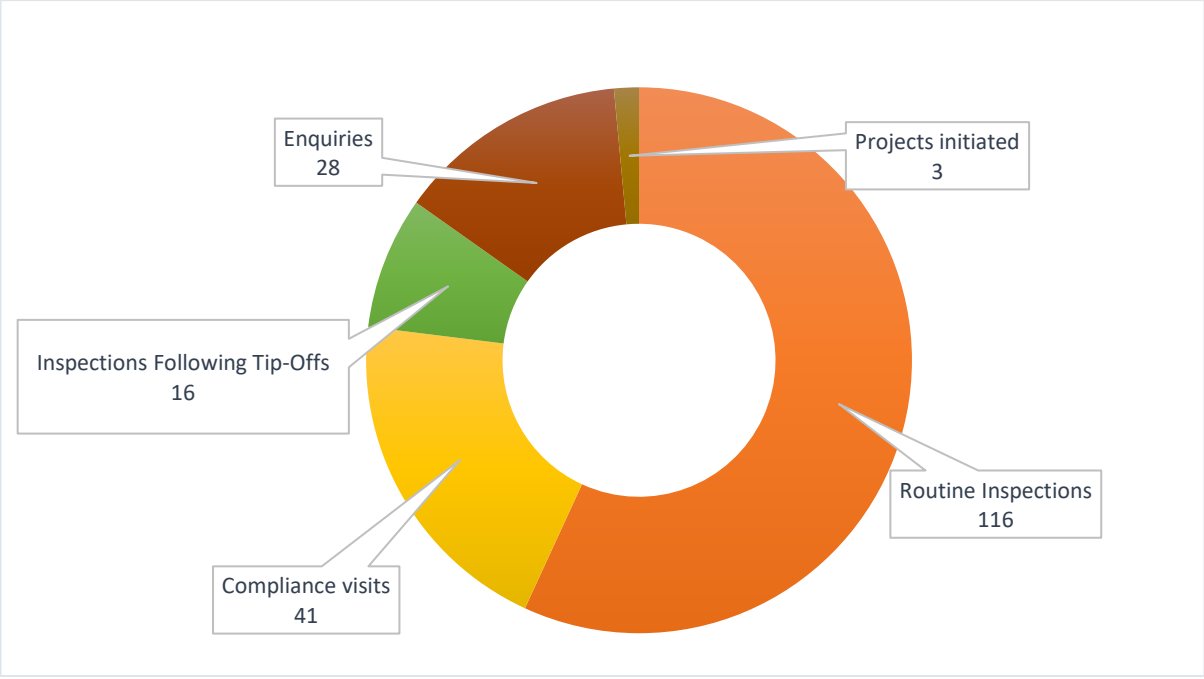
The Market Surveillance unit has as its main role to perform the Commission's mandate in ensuring that businesses are not engaging into practices that are in contravention of the Consumer Protection Act, 2010 or the Fair Competition Act, 2009 by monitoring the market.

During the year 2016, the unit has undertaken more tasks in order to carry out its function within the commission.

This included;

- Collection and compilation of data
- Ensuring periodical review and publishing of statistics
- Monitoring commercial activities and trends in the different markets
- Publishing the provisions of both the FCA and the CPA in the form of adverts and articles in the Newspaper and on the FTC website and Facebook Page to increase advocacy
- Providing support to IT and other departments for the new database
- Carry out regular inspections (Routine, tip-offs and compliance visits)
- Conducting investigations into enquiries
- Conducting research projects
- Assisting with the investigation of consumers cases

Below is a statistical summary of the work undertaken by the unit;

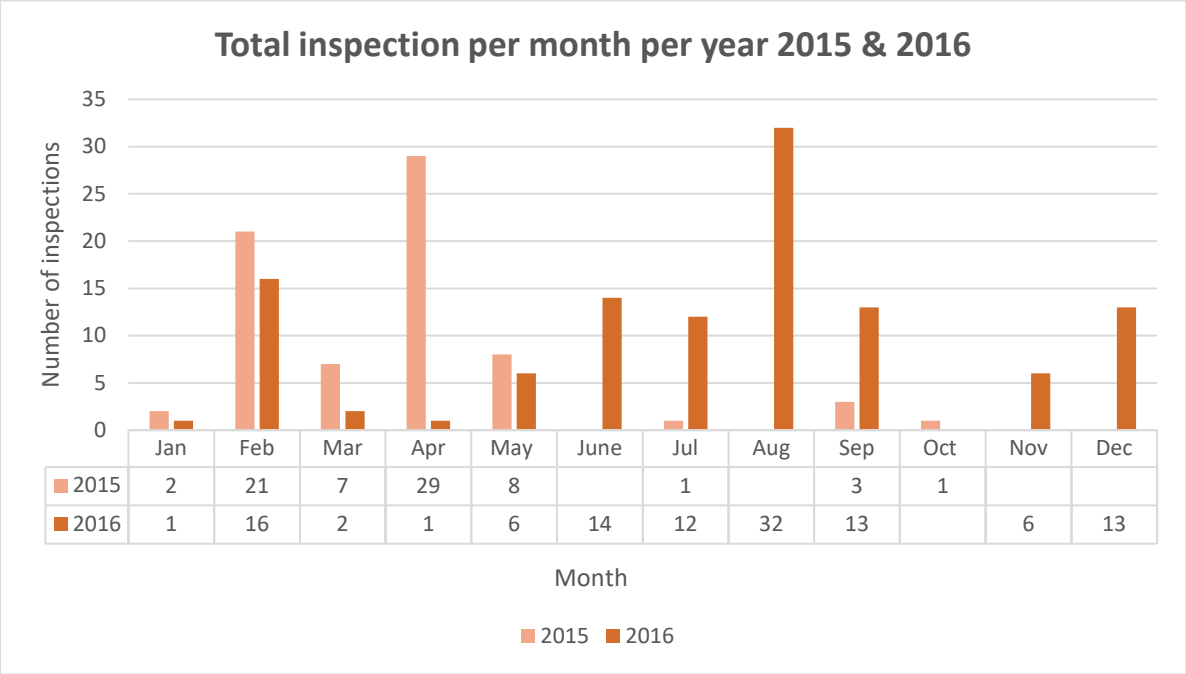


Routine and tip-off inspections and compliance visits

Market Surveillance has been actively involved in weekly routine inspections, compliance visits and tip-offs empowered under section 33 (j) of the Consumer Protection Act, 2010.

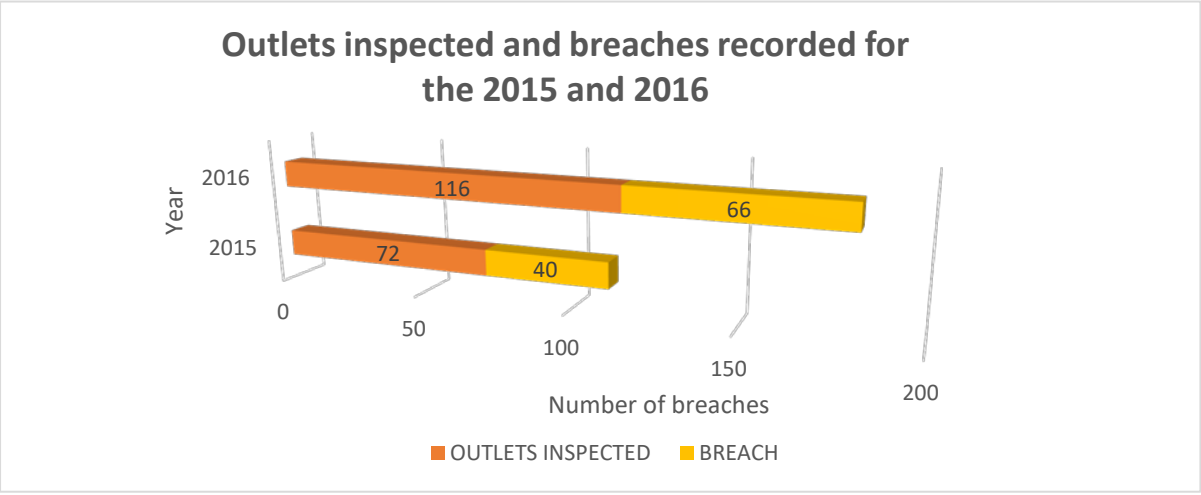
In 2016, the inspections were carried out on Mahe, Praslin and La Digue, in business outlets such as electronic shops, household shops, supermarket, retailers, bottling plants, pharmacies, hotel and restaurants. However, this was not the case in 2015 due to various reasons such as the unavailability of funds, the decrease in the number of staff and hence increase in staff workload.

During the year under review the Commission carried out 116 routine inspections, a significant increase of 61% as compared to the previous year where 72 inspections were carried out.



	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec
2015	2	21	7	29	8		1		3	1		
2016	1	16	2	1	6	14	12	32	13		6	13

In 2016, a total of 66 outlets were found to be in contravention of our laws representing a 65% increase compared to 2015 where a total of 40 outlets were found to be in contravention with our laws. It should be noted however that on average, both years recorded at least 56% of outlets inspected that were in contravention with our laws hence the increase in the number of breaches can be linked to the increased number of inspection carried out in 2016.



Out of the 66 outlets identified as being in contravention with the CPA, 2010 during inspections carried out in 2016, the most breaches were with regards to section 20 – offering for sale goods without displaying the price in relation to the good and section 19 – offering for sale goods that were not in understandable language.

30 outlets were found to be in contravention of section 20 and 15 outlets were found to be in contravention of section 19. Other breaches were, 10 outlets in breach of section 24 by offering for sale goods passed their expiry dates, 6 outlets in breach of section 32 (i) by making a false representation concerning warranty, 2 outlets in breach of section 21 by requiring customers to pay a price higher than the displayed price, 2 outlets in breach of section 22 by offering for sale goods that did not have proper trade descriptions and 1 outlet in breach of section 25 for not providing sales record to consumers.

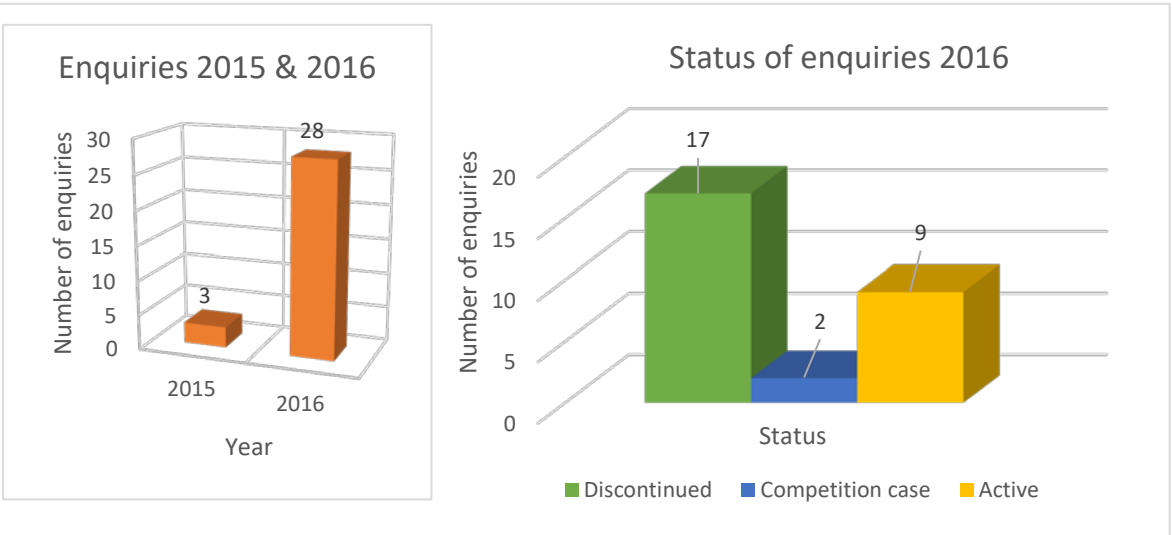
This was contrary to 2015 were out of the 40 outlets identified as being in contravention, most breaches were with regards to section 22 for which 9 outlets were in contravention and section 20 for which 8 outlets were found to be in contravention. The remaining breaches where with regards to section 19, section 24, section 25 and section 42.

The Commission also initiated 16 inspections following tip-offs. Additionally, 41 compliance visits altogether were carried out, of which 11 out of 28 outlets visited were again found to be in breach of other sections of the CPA, 2010 during compliance visits. Thus a second compliance notice had to be issued and a second compliance visit had to be conducted. It should be noted however that great improvements were noticed during compliance visits in the outlets (especially pharmacies) that were found to be in breach during inspections.

Enquiries

Throughout the year 2016, the Commission undertook investigations into 28 enquiries compared to 3 in the year 2015.

Out of the 28 enquires, 17 were discontinued out of which 5 were put to the attention of other relevant authorities with jurisdiction to look into the matter. 1 enquiry was sent to the consumer department for investigation, 1 was forwarded to legal for preparation for BOC, 1 was closed for no merit, 9 were remedied in accordance with the law. Additionally, 2 enquiries were converted into competition cases and 9 are still under investigations.



Research Projects

1. Genetically Modified Organisms in Food

In accordance to section 4(3)(a) of the Fair Trading Commission Act 2009, as part of its function, the Fair Trading Commission (the Commission) launched a research into Genetically Modified Organisms as there is growing consumer concern over the number of GMO foods on the shelves of supermarkets and allegations that its regular consumption may cause cancer.

The Commission conducted online desk research and liaised with the Public Health Authority and the Seychelles Bureau of Standards to obtain further information regarding the subject matter. Despite the concerns, information gathered showed that no studies globally has been able to prove that GM Foods have caused any human health issues and locally, the Ministry of has also confirmed that thus far they have not undertaken any research in the matter.

Nevertheless, in accordance with Section 22 (10) of the Consumer Protection Act 2010,
Any person who produces, imports, supplies or packages goods shall display on, or in association with, the packaging of those goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of those goods in accordance with any written law.

Taking into consideration Section 22 (10) of the Consumer Protection Act 2010 and with the aim of alleviating concerns and enabling consumers with an informed choice, the unit proposed a number of recommendations to improve consumer awareness and information, and encourage responsible and informed consumer choice and behaviour with regards to GM foods. Due to work constraints during 2016, it was agreed that the recommendations will be actioned upon in 2017.

2. Antibiotics in Food

The initiative for the research followed an article published in TODAY newspaper which highlighted the concern amongst health officials over the spread of resistance to last resort antibiotic and the scientists renewed call for ban on the use of antibiotics in agriculture. Additionally, this year's theme for the World Consumer Rights Day also raised growing consumer concern over the overuse of antibiotics and a call was made to take "antibiotics off the menu".

Based on the findings it was evident that local and international bodies understand the dangers associated with the widespread practice of routinely dosing farm animals with antibiotics leading to growing development of human resistance to antibiotics in all parts of the world. Following research, in view that the ministry of health were already tackling this issue, the unit proposed that the Commission looks into joining with the MOH, SAA and SBS to work towards improving awareness of the consumers on the use of antibiotics and antimicrobial resistance.

3. Construction

Based on the number and nature of cases recorded, it came to the attention of the Commission that there are multiple issues arising from the services provided in the Construction industry. With the aim of improving the standards of the quality of goods distributed by business enterprises over which it has jurisdiction; educate or assist consumers in resolving complaints; determine standard of services applicable to service providers, the Market Surveillance Unit

initiated a research aimed at identifying the market failures in the construction industry in the Seychelles.

The first stage of the research was a survey conducted in order to obtain information that will allow the Commission to understand the level of knowledge of the general public (18 years and above) in relation to construction. Prior to the start of the survey, the Commission published an article in Seychelles Nation to inform the public about the statistics recorded by the Commission and issues related to the Construction Industry. The article also informed the public about the survey and the locations were they could participate in the survey. The public were also informed about the survey and called on to participate on the Fair Trading Commission's website and Facebook page.

The Commission conducted the survey both online and on a one-to-one basis with random individuals at different locations around Victoria. The turnout for online participants was very low. A total of 500 participants took part in the survey. 6 questionnaires were not fully completed and could not be analysed. In total, 494 questionnaires were used to compile the information collected and provide recommendations to be actioned in 2017.

Challenges and constraints

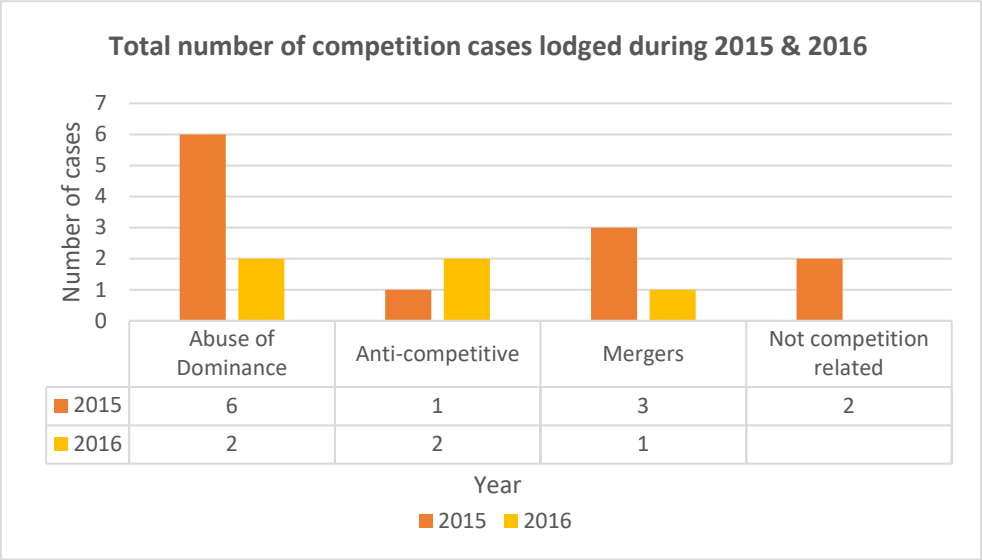
1. Human resource limitation is the main constraint for the market surveillance unit. The unit is staffed with only 2 persons with a wide variety of duties.
2. Financial Constraints as the Market Surveillance unit has no budget for its duties.
3. Lack of cooperation from some stakeholders.

Plan for 2017

1. Integrating the projects into proper programmes
2. Construction sector programme to come to fruition in terms of creation of a working group.
3. Launching other very important programmes such as economic mapping and the self-regulated compliance program.
4. Ensure proper mechanism for inspections and reporting.
5. Proper management of Website and Facebook page of the Commission.
6. Training of more than one staff to ensure continuity in the department

D. Competition

During the year 2016, a total of 5 competition complaints were lodged compared to 12 competition complaints during the year 2015. This accounts for a 58% decrease in competition complaints lodged compared to 2015. In 2016, 2 cases that were related to abuse of dominance, 2 concerned anti-competitive agreements and 1 merger. In 2015, there were 6 cases that were related to abuse of dominance while 1 was concerned anti-competitive agreements and 2 were not competition related. There were also 2 mergers from the COMESA competition Commission and 1 local merger that the Commission was assessing to determine whether there were any substantial lessening of competition or harm to competition post-merger.



The Commission investigated a total of 13 competition cases, representing a 46% decrease compared to 24 competition cases in 2015. Amongst the 13 cases, 8 were carried over from 2015, investigations have been completed in 5 and 8 cases will be carried over to 2017.

Despite the decrease in the number of complaints lodged and cases investigated, the complexity and laborious nature of the cases meant that a lot of time where spent in gathering data and evidence as such cases are subjected to stringent counter arguments from respondents. The overarching goal of the Commission is to protect consumers from unfair trading practices whilst also promoting fair competition amongst businesses hence the Commission places great emphasis on resolving cases expeditiously as well as efficiently.

Challenges and constraints

1. Time has been one of the major constraints for the department. A majority of cases that come to the department require intense research and analysis, as they keep increasing in complexity.
2. Lack of cooperation with other stakeholders has also been very trying as it has delayed the provision of crucial information for the progress of cases.
3. Other challenges encountered were in the form of lack of cooperation from respondents.
4. Lack of well trained staff is also a constraint as the new staff requires at least a reasonable period of time until they are well versed with the acts and processes.

Plan for 2017

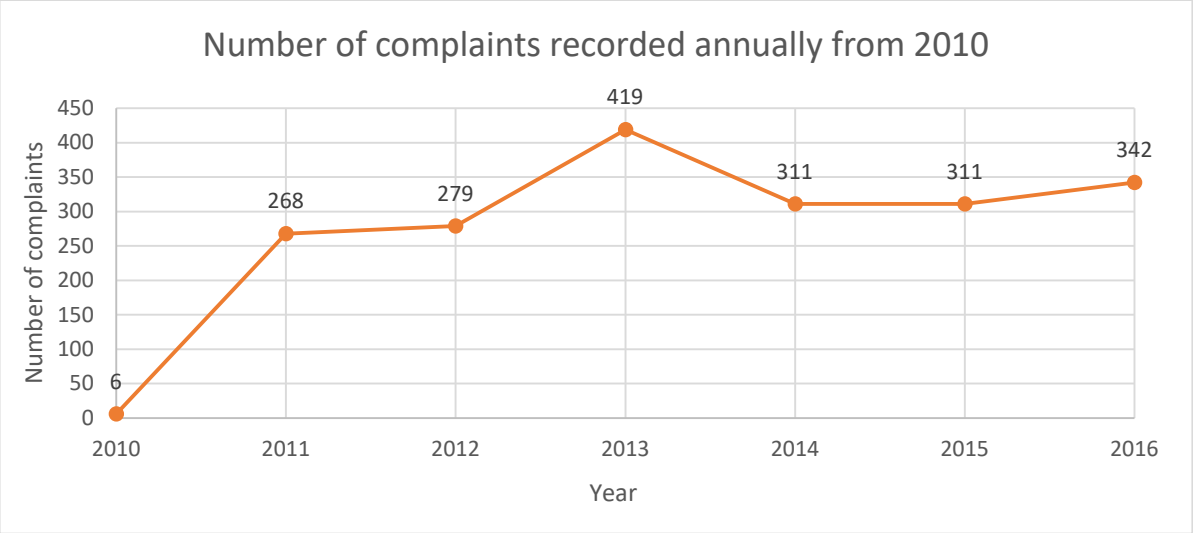
1. Implementation of a comprehensive National Competition Policy (NCP)
2. Consultations with businesses in various sectors.
3. To advise the government of the best international and adaptable local practices in the promotion of a competitive culture for the benefit of the economy and the consumers through researches and opinion papers.
4. To engage in stakeholder outreach to promote competition, advance its understanding, and create awareness of its benefits to consumers through conferences.
5. Hold awareness session on Praslin.

E. Consumer Affairs

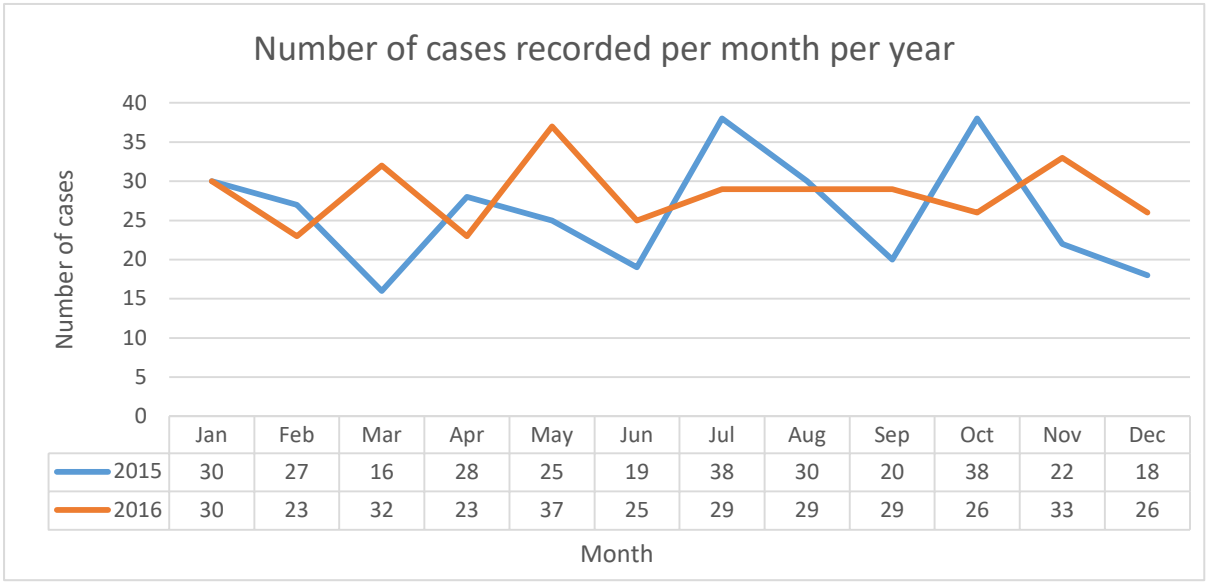
Consumer Affairs is the section responsible for consumer protection and is mandated to safeguard consumers from unfair trade practices through the enforcement of the Consumer Protection Act, 2010.

Consumer cases statistics

During the year 2016, the Commission recorded a total of 342 consumer complaints, a 10% increase from 2015 were 311 complaints were recorded. This is the second highest number of consumer complaints recorded since the establishment of the Commission in 2010 were 419 complaints were recorded.

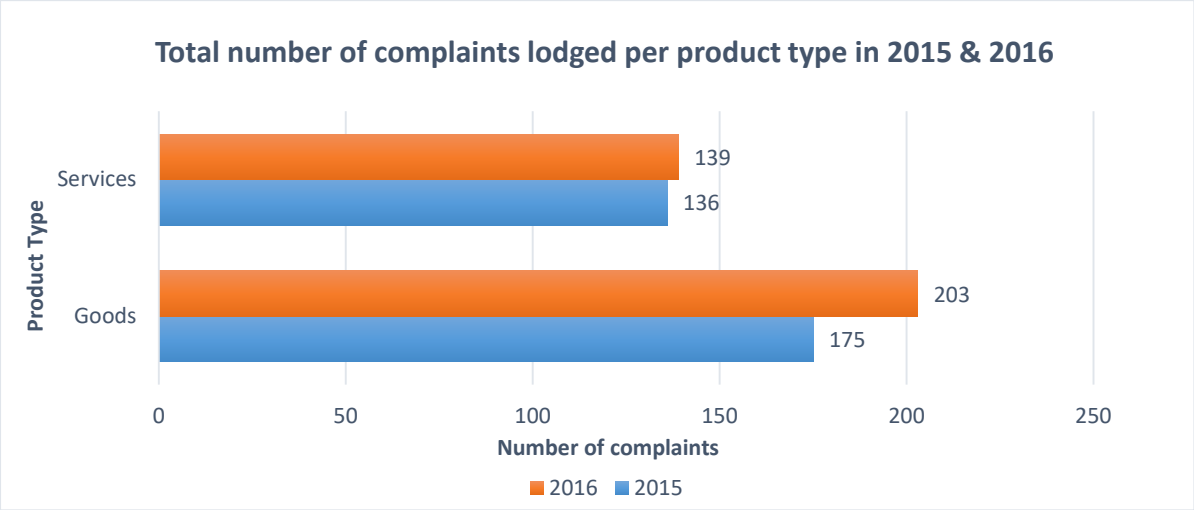


During 2015, there were great fluctuations in the number of complaints recorded per month, 16 being the lowest recorded in March and 38 the highest recorded in July and October. On the contrary in 2016, the number of complaints recorded over the months where almost stable with 23 being the lowest recorded in February and April and 37 being the highest recorded in May.



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	30	27	16	28	25	19	38	30	20	38	22	18
2016	30	23	32	23	37	25	29	29	29	26	33	26

Out of the 342 consumer cases lodged in 2016, 203 were consumer goods complaints whereas 139 were consumer services complaints. This represents a significant 21% increase in the number of consumer goods complaints compared to 175 in 2015. The number of consumer services complaints lodged in 2016 also saw a slight 2% increase compared to 136 in 2015.

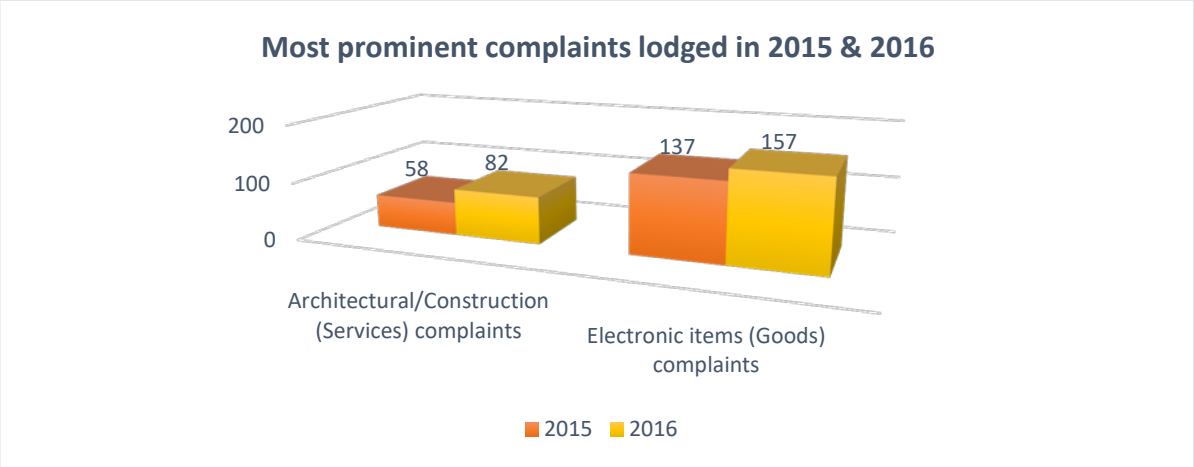


33% of the complaints lodged were spread out between 7 respondents, 4 of which are electronics shops and 3 of which provides construction/architectural related services. As it was the case in 2015 where 13% of complaints were against one respondent, from the 33% of complaints lodged in 2016, one respondent accounted for 18% of total complaints lodged in 2016.

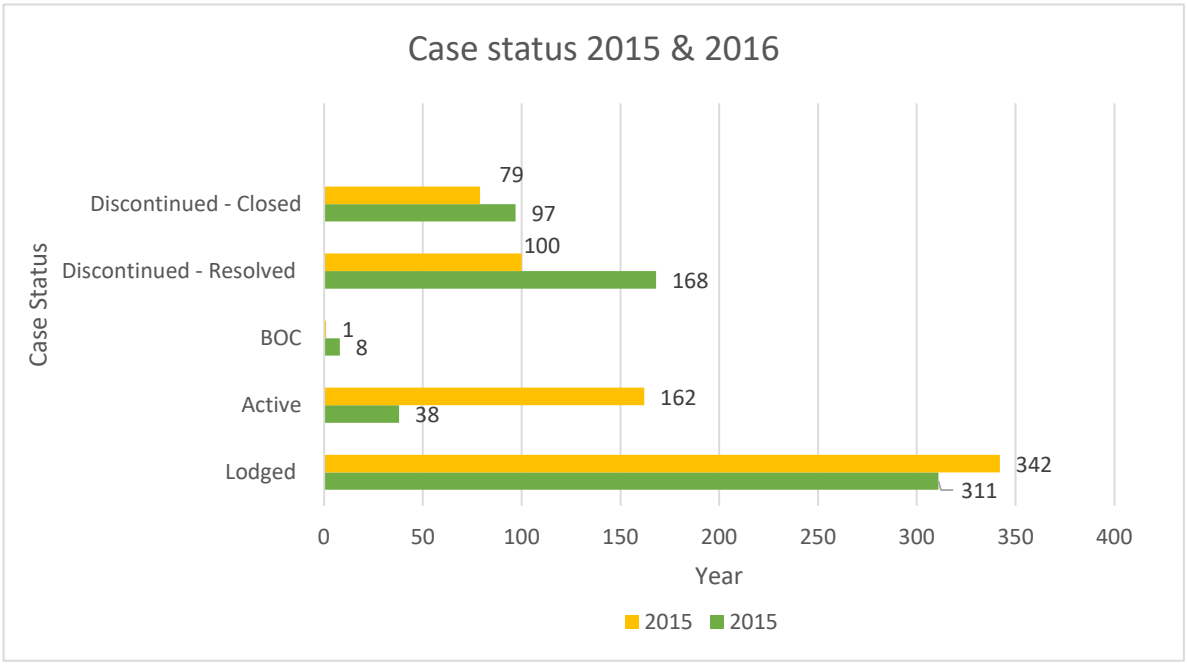
As indicated above, the most prominent complaints as in previous years were electrical and architectural/construction related.

In 2016, 82 construction related cases were recorded compared to 58 in 2015. This represents a 41% increase compared to 2015. The financial worth of architectural/construction services complaints lodged in 2016 was SCR9, 793,656. The bad workmanship seems to be occurring from the pre-designing stage through to the post-construction phase. The Commission has therefore found it imperative to seriously address the concerns that have arisen in this sector hence has launched the construction project with the aim of eliminating the market failures existing therein.

In 2016, 157 complaints lodged were related to electronic items compared to 137 in 2015. This represents a 15% increase compared to 2015. The financial worth of electrical goods complaints lodged in 2016 was SCR103, 523. The importation of poor quality products in the country is still the major factor causing the number of complaints to increase as the items are not durable, not of good quality and hence does not last the warranty period. Presently there are no mandatory regulations for the standard of goods entering the market hence the increase in sub-standard products entering the country. Aside from liaising with the respondents for a redress, pursuant to Section 78(1) a (ii) of the Consumer Protection Act 2010, the Fair Trading Commission has been liaising and will continue to liaise with other stakeholders to take action in order to ensure that the licensed premises are providing suitable service and quality of goods to consumers.



Out of the 342 complaints lodged in 2016, 162 cases lodged in 2016 are still active and will be carried over to 2017. 180 complaints have been discontinued, out of which, 100 received a reasonable redress, 79 were closed out of no merit (no breach, not CPA or withdrawn) and 1 case was forwarded to the Board of Commissioners for a ruling. The Commission also carried over cases from previous years out of which the following; 3 cases from 2012, 4 cases from 2013, 17 cases from 2014 and 61 cases from 2015 were discontinued. Therefore, during the year 2016, a total of 265 cases were investigated and discontinued.



The 100 cases that were lodged in 2016 and discontinued with a redress can be accounted as follows; 49 refunds, 16 repairs, 23 replaced, 3 settlements and 9 performance of service.

Challenges and constraints

1. Inadequate man power to carry out investigation and obtain timely redress.

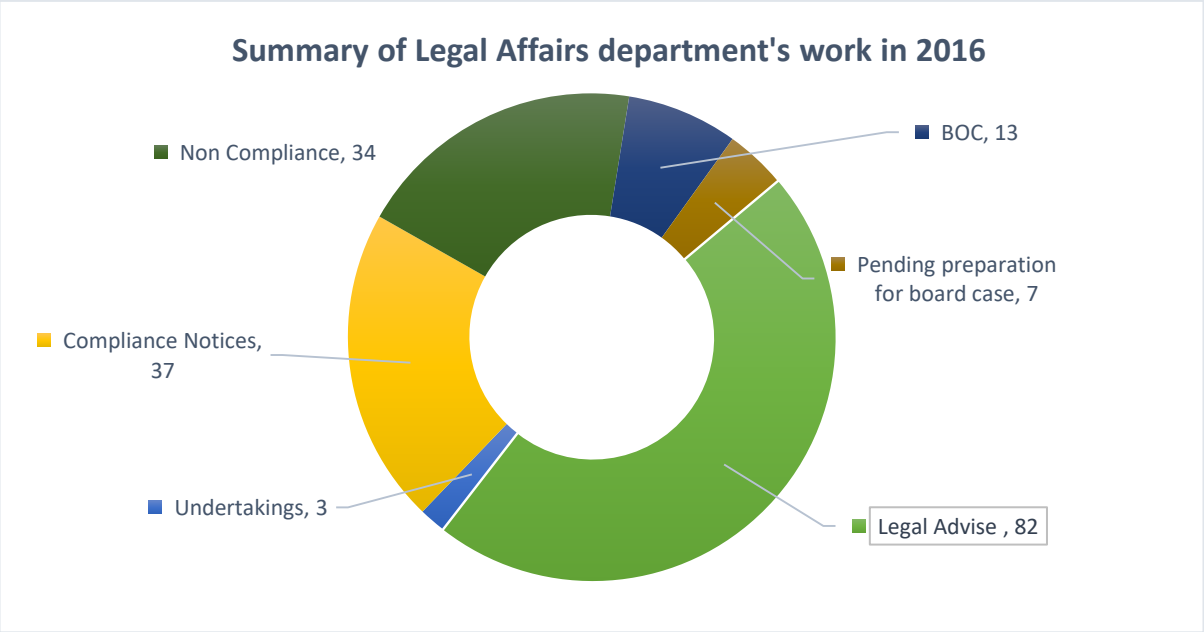
2. Long investigation process, due to the complexity of the complaints.
3. Lack of cooperation from other stakeholders in obtaining requested information in a timely manner.
4. Uncooperative respondents towards the instructions of the Commission.
5. Deficiencies in the current law for empowerment during the investigation process.
6. Progressive change in the investigation process, which lead to adjustment of the manual.

Plan for 2017

1. An intensive educational campaign has started but needs to be intensified with proper funding in 2017.
2. More training in the field of investigation, evidence collection and preparation of cases are required.
3. Need to strengthen ties with other authorities such as SRC to call for strengthening of import conditions and SBS to call for revision of some of the voluntary laws.
4. An additional staff for Inner Islands is indispensable as this will provide a faster redress in many areas rather than sending officers to Praslin as support for duties.

F. Legal Affairs

The Legal Affairs Department is tasked with providing legal services to the Commission so as to protect its interests and support its operations. Broadly speaking, legal services refer to 1) providing legal advice on all aspects of the Commission's work and 2) taking legal action on behalf of complainants based on the analysis of facts in a specific case, as well as applicable provisions of the law. Below is a summary of work undertaken by the department in 2016;



Providing legal advice

The majority of the departments work throughout 2016 has been to provide advice on (and promote understanding of) the law to the other departments and to the Deputy and CEO so as to ensure the legality of the Commission's decisions. For the year under report, the Legal Affairs Department was consulted and gave advice and oral guidance in 82 cases and in 10 enquiries.

Undertakings

Pursuant to Section 75 of the Consumer Protection Act, 2010 the Department accepted, with the CEO's approval 3 undertakings from respondents as a means to settle matters prior to proceeding before the Board of Commissioners.

Compliance Notice

Compliance notices are issued by the FTC in terms of Section 72(1) where it has reasonable grounds to believe that a person is engaging in prohibited conduct. The notice serves to notify the person that it is engaging in prohibited conduct, it then outlines the details and extent of the non-compliance and the steps that must be taken in order to comply as well as the timeframe given for compliance.

During the year 2016, in view of the Market Surveillance Department's renewed strategy and increased inspections and in line with their recommendations, 37 Compliance Notices were issued.

Non-Compliance

Failure to comply with summons, rulings & undertakings, compliance notice creates offences under Section 33(6) of the Fair Trading Commission Act, 2009, Section 70 of the Consumer Protection Act 2010, and Section 72(5) of the Consumer Protection Act, 2010 respectively hence the department have been forwarding these cases of non-compliance to the Commercial Crime Unit of the Seychelles Police for their appropriate action. During the year under review, 34 non-compliance were recorded as per below;

1. 12 Non-Compliance to Summons of which 7 cases were withdrawn for various reasons.
2. 2 Non-compliance to Compliance Notice
3. 6 Non-Compliance to Undertakings
4. 8 Non-Compliance to Board of Commissioners Rulings

Cases before the Board of Commissioners

The Board of Commissioners has the exclusive jurisdiction to hear and determine matters under the Consumer Protection Act, 2010 and the Fair Competition Act, 2009. For this period under report, the Legal Affairs Department, for the Fair Trading Commission (being the Authority mandated to enforce the Acts) and on behalf of complainants filed 13 cases before the Board of Commissioners.

1 case was withdrawn due to an 'out-of-board' settlement and an application to vary an undertaking was also filed but was withdrawn on instruction. The Board delivered rulings in FTC/the complainants' favour in 6 of these cases and ordered a total of SR 278,817 in refunds and SCR 42000.00 in fines. The other cases are still at various stages of hearing before the Board.

7 cases are still pending at the Department level for preparation of the Board Case.

The Appeal Tribunal

During the year 2016, 3 respondents and 2 complainants availed of their right and filed their appeals before the Appeal Tribunal, established pursuant to Section 44 of the FTC Act. The Department appeared in all 5 cases. 4 of these appeals were against the Board of Commissioners rulings, whereas there was 1 appeal against a decision of the CEO. Of these, 1 was dismissed for failure of the Appellant to appear. The Tribunal confirmed the determination appealed against in 1 case and varied the determination appealed against in 3 of these cases.

Challenges and constraints

1. Service delivery, was once again hindered by the process involved to hold respondents accountable for non-compliance. Referring cases to the Commercial Crime Unit who in turn refers them to the Attorney General's Office is cumbersome and adds delay, much to the frustration of our complainants who after winning their cases can still be without a remedy years down the line. It is also difficult to obtain feedbacks on these cases, which in turn means we cannot update complainants on any progress.

2. With an already highly-utilized 3 staff team, time and resources were challenged with the Law Review exercise, highlighting the need for an extra legal officer.

3. Time constraints limits extra tasks such as research in order to keep abreast with new developments and organising in-house trainings.

Plan for 2017

1. Finalise the Consolidated Draft Bill in order to present to the AG's Office for Presentation at Cabinet level.

2. Effective cooperation is critical to protect consumers and prevent duplication of efforts, therefore there is a need to Review, Develop and Negotiate Memorandum of Understanding with other Sector Regulators and Authorities.

3. Design and implement in collaboration with the other Departments a robust programme aimed at educating Suppliers of goods and services (who end up being respondents in our cases) about the requirements of our laws and their responsibilities.

Highlights

Law review

The Fair Trading Commission (FTC) recently concluded stakeholders' consultation on the proposed amendments and consolidation of the Fair Trading Act, 2009, the Consumer Protection Act, 2010 and the Fair Competition Act, 2009. The week long consultation ended on the 7th of October 2016 and saw the participation of stakeholders from different government ministries, sector regulators, market players, the Seychelles Police, the Bar Association of Seychelles and from NATCOF and CEPS.

Stakeholders' consultations are very important in the law review process and provide valuable opportunities for stakeholders to voice opinions and concerns regarding the current situation and propose solutions to existing challenges.

The stakeholders' were generally supportive for the proposed amendments, namely for the creation of the Fair Trading Tribunal which will now be the adjudicating body, separate from the Fair Trading Commission. The roles and responsibilities of sector regulators vis-à-vis the FTC was also discussed at length as was ways to improve the current provisions of the Consumer Protection Act, 2010 and the Fair Competition Act, 2009.

The FTC is undertaking the review process as after 6 years' experience of administering the laws under its jurisdiction it has observed certain gaps and shortcomings that need to be addressed. One of the other important rationale for this exercise is the need for our legislations to stay abreast with changes in the dynamic fields of competition and consumer laws in order to remain relevant. It is also important that our legislations are in line with international best practices and are forward looking, coherent and capable of ensuring an effective application and delivery of FTC's mandate.

Mrs. Diane Terblanche, the current Executive Chairperson of the National Consumer Tribunal of South-Africa and Mr. Fungai Sibanda, a part-time member of the same Tribunal are the two consultants appointed by the FTC for the project. Both consultants have well-renowned experience with consumer and competition policy and law as well as legislative and policy development and analysis.

During their week-long visit, the Consultants also paid courtesy calls to the Chief Justice-Mrs. Mathilda Twomey, the Minister for Finance, Trade and the Blue Economy-Mr. Jean-Paul Adam, the Speaker of the National Assembly-Mr. Patrick Pillay. They also held very fruitful discusssions during meetings with the Attorney General, Mr. Ronny Govinden and his Principal Legal Draftsperson as well as with the Registrar of the Supreme Court-Mrs. Juliana Esticot.

Following the stakeholders' discussions at the meetings and the comments received, a new version of the draft Consolidated Bill has been circulated to the stakeholders and the FTC has invited an additional round of written comments from the stakeholders.

The Bill is targeted to be tabled in the National Assembly by the 2nd half of next year.

World Competition Day 2016

In celebration of the World Competition Day for the year 2016, a workshop was held by the Fair Trading Commission on the 7th of December with the theme "Challenges to effective Competition in small island states".

For this event a number of businesses were invited to attend and participate, including the Members of the National Assembly.

In line with the theme of the day, The Fair Trading Commission's presentation highlighted the following challenges faced by small island states:

- High dependence on international trade
- High dependence on Imports
- No economies of scale or the adequate volume for mass production/sale
- Barriers to entry or expansion.

During question time which saw impressive participation, it was noted that a number of the questions and points raised related to the high cost of living. Many of the attendees wanted the Fair Trading Commission's view on this matter and its role in reducing the high cost of living. This highlighted the main constraint of the Fair Trading Commission that is the need to undertake more awareness programs and the lack of human and financial resources. It was also an occasion for the Commission to reiterate its mandates vis-à-vis the issues surrounding the cost of living and how this ties up with the theme of the day.

Cable and Wireless (Seychelles) Limited also delivered a presentation concerning the challenges that businesses, namely Service operators, face in small island states. The concerns raised ranged from the small size of the market to the need for more consultation and communication with regulators. It was stated that Companies need to understand the principle or rationale behind the decision and ruling made as this will help enterprises to avoid repeating or making the same mistakes.

Local and Internal Trainings

Technical Barriers to Trade Committee

Mr. Ziggy Adam, Legal Officer continued to represent the Fair Trading Commission on the Technical Barriers to Trade Committee. The Committee comprises of policy makers from key organizations relating to Trade. It receives notifications from the Regional Committee with regards to Trade affairs such as recalls of products and change and proposals for amendments in influential laws, regulations and international treaties.

Copyright and related rights organized by the World Intellectual Property Organization

On the 25-26th January 2016, Ms. Hazel Renaud, Law Clerk attended a 2 day seminar on Copyright and related rights organized by the World Intellectual Property Organization in co-operation with the Department of culture through the Office of the Registrar of Copyrights.

Photography Training

Photography is an important tool in the investigation of cases as they are used as evidence to advocate for the case. Photography enable better understanding of matters brought forth as it is explanatory and illustrative hence it is important for officers to take relevant photographs.

In its efforts to ensure that staff are using this tool to its maximum efficiency a half day in house training in collaboration with the Department of Culture was held whereby staff learned how to take the photos that are used as evidence. This particular training is divided in two parts and it is expected that the second part will be done on field.

Planning Authority Training

On the 24th of November 2016, the Commission organised a training session with the Seychelles Planning Authority (SPA). SPA is one of the authorities which the Commission works most closely with and therefore the training was aimed at enlightening the Commission on their functions and procedures.

The first presentation was by Mr. Dereck Marie, a Planning Engineer who explained the criteria and procedure for recommending license to Seychelles Licensing Authority for draftsman, architects and contractors and to allocate class to a draftsman, architect and contractor. Ms. Lindy Zoe & Mr. Trevor Hoareau, two Planning officers elaborated over the procedure for submission of planning application by draftsman and architects and SPA's in house procedures for approval once the plan has been submitted.

Lastly, Mr. Ardy Philoe, Senior Development Control Officer elaborated on the set recommendations for a developer to start construction of a project, the monitoring process during the construction phase, enforcement action for construction outside the scope of approval and the different enforcement action for recurrent offenders.

The FTC staff had the opportunity to ask questions and a lot of questions were asked in regards to SPA's process of consideration from the day the planning documents is submitted to the Planning Authority until the day it is approved and released, the different contractors class, draftsman specification, the process of the appeal committee, site visit and report from site visit by Planning Officers and the interviews conducted by the Planning Officer for license of Contractors and draftsman.

Legal Advice

The Legal Department conducted an in-house training with the consumer services department on the interpretation and application of Sections 30, 31, 32, 40 & 41 of the Consumer Protection Act, 2010. Active cases were used as examples and the training was very interactive and based on feedback received, very productive. A training session on Compliance Notices and Burden & Standard of Proof was also conducted.

Stress Management

Stress is a large part of our everyday life and stress in the workplace reduces productivity, and increases management pressures. Staff wellbeing is of utmost importance to the Commission and to ensure that staff are working in a stress free environment a one day Stress Management session was organised on the 25th November 2016. The session was held at Anse Gaulette beach, Baie Lazare and was conducted by Mr. Bernard Monnaie from the University of Seychelles.

The aim for such activity was to provide insight that will help staff to further improve their competencies in managing stress within the work place. Staff learned that healthy habits including regular exercise, healthy nutrition, spiritual wellness and regular sleep increased productivity, performance and resistance to stress. Moreover staff also learned the importance to identify signs of stress among their colleagues and themselves early enough to prevent impacts on their productivity and performance levels.

External Participation and Workshops

Committee of initial determination meeting and ICN workshop on agency effectiveness

The Chief Executive Officer attended the Committee of Initial Determination (CID) meeting which was held in Johannesburg from the 07th - 8th March 2016. The objective of the meeting was to discuss the committee's mandate and activities, the mappings of global, regional and national efforts on the international protection of consumers and review the Committee's work in the last two years, that is, engagement in international Organizations dealing with consumer protection such as the; Revision of UN Guidelines on Consumer Protection; The UN Intergovernmental Group of Experts (IGE) on Consumer Protection Law and Policy; Collaboration with Consumers International at the Revision of the UN Guidelines and UNCTAD Manual on Consumer Protection; Protection of International Tourists at the Hague Conference on Private International Law; Meetings among Committee's members; Preparation of a final report on Best Practices on international protection of consumers and lastly to make recommendations and set guidelines on the Best Practices on International Protection of Consumers.

https://www.google.com/search?q=Committee+of+Initial+Determination

During his mission he also attended a workshop on "Agency Effectiveness" held in Gaborone, Botswana from the 10th - 11th March 2016. The workshop was organized by the ICN Agency Effectiveness Working Group, the Competition Authority of Botswana, the Swedish Competition Authority, and the Norwegian Competition Authority, in cooperation with the African Competition Forum.

Annual Competition and Economic Regulation

From the 08th - 12th March 2016, Mrs Natalie Edmond, Principal Analyst attended the 2nd Annual competition and Economic Regulation which was held in Zambia.

COMESA board meeting

On the 18th April 2016, the Chief Executive Officer attended the 09th Board meeting of the COMESA Competition Commission which was held on Mbabane, Swaziland. A Cooperation Agreement between the COMESA and the Fair Trading Commission was also signed. Mr. Ted Camille, Process Server accompanied the CEO to witness the signing of the ceremony.

International Competition Network Annual Conference

From the 26th-29th April 2016, Mrs. Sylvie Faure, Senior Legal Officer and the Deputy CEO, Mr. Francis Lebon attended the International Competition Network (ICN) Annual Conference held in Singapore. The conference consisted of numerous speeches, plenary sessions and breakout sessions. It included a special plenary session on "Building Economic Communities with Competition Policy" and a special project on Disruptive Innovations, which tied in with one of the conference themes on new technology. In addition there were a number of sessions by the ICN Working Groups on advocacy, agency effectiveness, cartels, mergers, and unilateral conduct.

Regional workshop on "Training the trainers" planning and conducting competition investigations

The Regional workshop on Planning and Conducting Competition Investigations conducted by the United States Federal Commission, the United States Department of Justice, and the South Africa Competition Commission was held at the South Africa Competition Commission, Pretoria, South Africa between June 6th and 10th 2016. Representing the Fair Trading Commission of Seychelles was the Senior Analyst from the Competition Department. Mr Erol Sophola. Illustrated through a combination of presentations, discussions and learning by doing exercises, Mr Sophola obtained practical skills in planning and conducting an investigation from receipt of the initial compliant through to developing a remedy.

7th meeting of the SADC competition and consumer law and policy committee

From the 26th to 27th May 2016, the 7th meeting of the SADC Competition and Consumer Law and Policy Committee was held in Gaborone, Botswana. The Member States present included representatives from Botswana, Malawi, Mauritius, Nambia, Seychelles, Africa, Swaziland and Tanzania. Member states provided updates on status of Competition and Consumer Law and policy, discussed recent cases, conducted research on consumer issues and received progress report from merger and cartel enforcement and research working groups. They also reviewed and signed the MOU on inter-agency cooperation.

The FTC was represented by Competition Senior Analyst, Mr Erol Sophola and Legal Officer, Ms. Karine Dick.

OECD cartel investigation techniques and procedures workshop

Mrs. Sylvie Faure attended a two-day Workshop on Cartel Investigation Techniques and Procedures organized by the OECD, in collaboration with the Directorate-General of Competition of the European Commission and the South African Commission, from the 28th to the 29th July 2016. This was held in Pretoria, South-Africa. Over 50 officials attended the training which covered effective investigative tools including leniency programs, dawn raids, and interviews and interrogations. The training gave insights into best practices and discussed tips (dos and don'ts) based on country experiences. Practical exercises provided opportunities for participants to learn and exchange know-how.

8th edition of the African Dialogue

The 8th edition of the African Dialogue conducted by the United States' Federal Trade Commission was held in Boksburg, South Africa from the 08th to 12th August 2016. Representing the Fair Trading Commission of Seychelles were the legal officer Mr. Ziggy Adam and 3 compliance officers namely Mr. Christopher Mellon, Ms. Naomi Louise and Mrs. Genevieve Alcindor.

The purpose of the conference was for the different agencies protecting consumer rights to share best practices and constraints whilst in operation. The Officers benefited from the experience of mature organizations such as the Federal Trade Commission of the United States of America and gained the experience of sharing with other agencies on how and where the operation of the Commission is more ideal for particular situations. In total, 3 presentations were made by Ziggy Adam on; Complaints Handling, Effective Redress and Consumer Protection and Related Competition Highlights in Africa and USA. Mr. Adam also used the opportunity to discuss with the Chairperson of the National Consumer Tribunal of South Africa the review of the laws which the Commission administers (prior to the Chairperson's official visit to the Seychelles).

ACF capacity building workshop on merger review and analysis

The African Competition Forum held a capacity building workshop on merger review and analysis at the Competition Commission of South Africa in Pretoria on September 20-22, 2016. Mrs Frederika Confait-Poussou, Analyst from the Market Surveillance unit represented FTC in the workshop which also saw participants from Mauritius, Zambia, Nigeria, COMESA Malawi, Angola, Tanzania, Botswana, South Africa and USA. The workshop was facilitated by Molly Askin and Nick Franczkyck from the Federal Trade Commission with additional trainers being drawn from other competition authorities, Zambia (Naomi Fulaza), Mauritius (Noor Eydatoulah) and South Africa (Grashum Mutizwa).

The workshop was designed to help case handler's practical and substantive skills for merger review and analysis. The workshop covered substantive sessions on market definition, competitive effects theories, entry and expansion and remedies. It also covered practical skill sessions whereby participants were grouped in 5 groups of 5 and given a hypothetical merger application to apply the skills obtained. The participants had to plan the investigation, consider the theoretical effects, prepare interview questions and review documents. The workshop was also held in a way to accommodate the audience and allow for time to discuss pertinent issues and subjects of interest arising within the competition commission.

ICPEN workshop & conference

From the 27th - 30th September 2016, three officers from the Commission, Mr. Neddy Padayachy, Ms Annashanta Canaya and Mrs Natalie Edmond undertook a work mission to Bad Weisse, Germany, for a workshop and conference.

The workshop took place from the 27th – 28th and the Conference in turn was held from 29th – 30th. The workshop which was mainly focused towards best practices in the digital world provided insights into the way in which the digital era is affecting consumers. To further situate the information being shared into perspective, there were breakout sessions where different countries were classified into groups to share experiences and the ways in which they are tackling such issues. The latter included terms and conditions online, privacy statements amongst many others.

On the other hand from the 29th to 30th September 2016 the conference further elaborated and discussed the theme which was still revolving around the way in which the information era was rapidly developing around quite often unsuspecting consumers. The challenges were highlighted while a call for a more coordinated approach amongst the countries represented in ICPEN was called upon. Both sessions were very informative and productive for the officers of the Commission who returned with a vast amount of information and knowledge to be used and implemented locally.

Education & Advocacy

SBC Programmes

The newly opened FTC office on Praslin participated in an SBC news program depicting services offered by this office. FTC requested the participation of stakeholders such as the SLA and Planning Authority for the coverage of the programme. The programme focused on construction industry where contractors do not perform in a timely manner or provide quality services as expected by the consumer.

Behavioural change program

'Konnen ki ou pe aste' poster was designed as a first tool to sensitize the population on their responsibilities when purchasing any goods or services. With the help of all the departments, over 200 posters where put up on Mahe, Praslin and La Digue emphasizing on consumers behavioral change. Most consumers are buying goods without giving due consideration to; the price vs the quality of the products - cheap products are often imitated products which can be defective; without checking whether the instructions on or in the case of perishable goods whether the ingredients are in a language that they understand and without taking a receipt which is vital for the return of goods.

TV Spots

FTC produced 3 TV adverts before the festive season as another means of encouraging behavioral change of consumers. The adverts focused on price displayed, defective products, durability, acquiring receipt and warranty. Such adverts will be produced continuously as from next year and will be aired throughout the year.