NATIONAL CONSUMER POLICY

SEYCHELLES

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EXECUTIVE SUMMARY

- Seychellois consumers (particularly vulnerable or disadvantaged consumers) are facing difficulties and imbalances in information and bargaining power with respect to, e.g., defective imports or more complex goods and services. Such challenges are likely to become ever greater given likely future trends such as the development of digital content, e-commerce, or energy-saving/sustainable development-related products.

- The National Consumer Policy provides an overarching framework for stakeholders (including Government agencies, SOEs, business associations, NATCOF, etc.) to work together to remedy this situation. The NCP's approach is that, given Seychelles' limited resources, all should pool their efforts to ensure the Seychellois consumer is protected in all sectors, and full stakeholder buy-in and ownership is therefore needed. NATCOF will strengthen its community-based role as a key channel for complaints from and advice to consumers.

- The NCP builds upon the Fair Trading Commission's enforcement experience with the Consumer Protection Act, and consultations undertaken with various stakeholders, as well as international best practice and recommendations (including the UN Guidelines on Consumer Protection), tailored to local conditions.

- The NCP will mainstream and prioritize consumer policy within policies and legislation affecting consumers, ensuring uniform and effective consumer protection, as well as cooperation and no duplication among stakeholders. A pro-active approach will be taken in line with priorities (e.g. whatever affects health or safety) and with intelligence collected on Seychellois markets.

- The emphasis will be upon education and information campaigns aimed at consumers and business, as well as other "soft" approaches – while this will be backed up by strong enforcement as needed. There will be fairness and transparency in such enforcement action. International cooperation in this area will be strengthened.

- The Ministry of Finance will establish and provide policy and strategic advice to a National Consumer Protection Partnership which will include all interested stakeholders. The Partnership, which will be supported and chaired by the FTC, will facilitate and coordinate the implementation, monitoring and evaluation of the NCP.

- Some key areas where action will initially be focused include: importation and sale of unsafe/defective/mislabelled goods, construction and housing, information and communications technologies, financial services, electricity, transport, tourism, screening of contractual practices, and redress procedures. While it should be possible to quickly resolve issues relating to some of these areas, other issues will require more time, and some issues (such as importation and sale of unsafe/defective/mislabelled goods or the performance of complex services like construction) are likely to remain on the agenda indefinitely. A balanced approach will be maintained regarding enforcement priorities as between goods and services.

- The draft NCP was validated by stakeholders at a workshop held on 17 February 2016, subject to comments made then and later which were taken into account in finalizing the NCP. It was then submitted to Cabinet.

ACRONYMS

AA	Architectural Association
AG	Attorney General
AT	Appeals Tribunal
AS	Air Seychelles
BA	Banker's Association
BAR	Bar Association
BOC	Board of Commissioners
CHA	Car Hire Association
CB	Central Bank of Seychelles
CCC	COMESA Competition Commission
CJ	Chief Justice
COMESA	Common Market for Eastern and Southern Africa
CPA	Consumer Protection Act 2010
DMC	Destination Management Company
DT	Department of Transport
DICT	DICT Department of Information, Communication, Technology
FIU	Financial Intelligence Unit
FSA	Financial Services Authority
FTC	Fair Trading Commission
FTCA	Fair Trading Commission Act 2009
GA	United Nations General Assembly
GDP	Gross Domestic Product
HFC	Housing Finance Company
IA	Insurance Association
ICPEN	International Consumer Protection Enforcement Network
IGE	UNCTAD Inter-Governmental Group of Experts
IMF	International Monetary Fund

ITU	International Telecommunications Union
LSB	Land Surveyors Board
LWMA	Landscape and Waste Management Agency
MC	Media Commission
MERP	Macro-Economic Reform Programme
MEECC	Ministry of Environment, Energy & Climate Change
MOF	Ministry of Finance
MFA	Ministry for Fisheries and Agriculture;
MFAT	Ministry for Foreign Affairs and Transport
MH	Ministry of Health
MHA	Ministry for Home Affairs
MI	Ministry of Investment, Entrepreneurship Development & Business Innovation
MIT	Ministry for Information Technology, Public Administration and Youth & Civil Society
ML	Ministry for Labour & Human Resource Development
MLUH	Ministry of Land Use & Housing;
MT	Ministry of Tourism and Culture
NA	National Assembly;
NATCOF	National Consumer Forum
NCP	National Consumer Policy
NDP	National Development Plan
NTB	National Tender Board & Procurement;
OECD	Organisation for Economic Co-operation and Development
OP	Office of President
SPA	Seychelles Ports Authority
PAS	Planning Authority & Survey
PHA	Public Health Authority
POU	Procurement Oversight Unit
PUC	Public Utilities Corporation
RA	Retailers Association

SAA	Seychelles Agricultural Agency
SADC	Southern African Development Community
SBFA	Seychelles Business Financing Agency
SBS	Seychelles Bureau of Standards
SC	Supreme Court.
SCB	Seychelles Commercial Bank
SCCI	Seychelles Chamber of Commerce and Industry
SEC	Seychelles Energy Commission
SENPA	Seychelles Enterprise Promotion Agency
SeyPec	Seychelles Petroleum Company
SFA	Seychelles Fishing Authority
SBS	Seychelles Bureau of Standards
SHTA	Seychelles Hospitality & Tourism Association
SIB	Seychelles Investment Bureau
SIBA	Seychelles International Business Authority
SLA	Seychelles Licensing Authority
SMSA	Seychelles Maritime Safety Administration
SMB	Seychelles Marketing Board
SNBS	Seychelles National Bureau of Statistics;
SPA	Seychelles Port Authority
SPTC	Seychelles Public Transport Corporation
SRC	Seychelles Revenue Commission
SSDS	Seychelles Sustainable Development Strategy
STB	Seychelles Tourism Board
STC	Seychelles Trading Company
SIDS	Small Island Developing States
SOE	State-Owned Enterprise
TOA	Taxi Operator’s Association
TBTCOM	Technical Barriers to Trade WTO Committee
UNCED	United Nations Conference on Environment and Development

UNCTAD	United Nations Conference on Trade and Development
UNGCP	UN Guidelines on Consumer Protection
UNISEY	University of Seychelles
VPR	Voluntary Peer Review
WTO	World Trade Organization

PREFACE

This NCP was prepared by Mr. Rajan Dhanjee in pursuance of a consultancy contract with the COMESA Competition Commission (CCC) and Seychelles' Fair Trading Commission (FTC), which provided strong support throughout the preparation process. The Seychelles Government wishes to express its appreciation to the CCC for supporting the preparation of the NCP.

In line with the consultancy contract, the NCP has covered the following issues:

- Motivation for the policy i.e. rationale and benefits of the policy to the Seychelles
- Situational Analysis of Consumer Protection in Seychelles including an audit of the "scattered" pieces of legislation dealing with consumer protection
- Guiding principles, objectives and policy considerations
- Effective implementation and institutional framework for protection of consumer welfare in the Seychelles
- Monitoring and Evaluation mechanism

The following has also been undertaken:

a) Review of the social, economic, political and legal context guiding policy formulation in Seychelles, including its Small Island State status; major economic sectors; competition levels; regulatory reforms; development policies; openness to world economy; obligations under the bilateral, multilateral Treaties/Conventions/Agreements.

b) Identification of laws, regulations and other impediments across the market that affect consumers which are not in the broader public interest.

c) Examination of the existing policies at national level to ensure that they are aimed towards protecting consumers through quality products and reduction of prices.

d) Examination of the special requirements and needs for small enterprises as consumers.

e) Suggestions regarding the Institutional Framework to spearhead the reform process across the sections of the consumer market.

The elaboration process for the NCP involved:

1. A mission to Seychelles to undertake fact-finding research and carry out stakeholder consultations, to solicit ideas and expectations prior to the formulation of the zero draft.

2. Desk research to appreciate the best practices in the formulation of documents of this nature.

3. Preparation of the NCP as per the above.

4. Organization, in collaboration with the FTC, of a national validation workshop at the end of the task.

In preparing the NCP, the perspectives of a cross-section of Seychellois stakeholders (including Government agencies, SOEs, business associations, NATCOF, etc.) have been taken into account. In connection with the consultant's fact-finding mission, a concept note and questionnaires were sent by

the FTC to these stakeholders, which were also invited for interviews.[1] Several stakeholders participated in these interviews, replied to the questionnaires and/or provided relevant material.[2] A draft of the NCP was circulated to stakeholders and orally presented to them for explanatory and validation purposes by the consultant at a workshop held on 17 February 2016. Several stakeholders were present during this workshop,[3] and their comments upon the draft NCP were taken into account in revising it. Further comments received from the MF on 5 May 2016 were also taken into account in finalizing the NCP.

A central point emerging from this consultative process has been the broad consensus shared among all stakeholders regarding the need to strengthen consumer protection within their respective fields, and their willingness to consult and collaborate with the FTC and with other stakeholders for this purpose. Several issues arising from these consultations and approaches to deal with the issues raised are highlighted in the body of this NCP.

[1] MF/Policy & Strategy Division, MIT, DICT, MFAT, SPTC, AS, PA, MEECC, LWMA, SEC, M FA, SFA, SAA, MI, SIB, MHA, ML, UNISEY, BOC, AT, MH, PHA, SBS, TBTCOM, SLA, MLUH, PAS, MT, STB, SENPA, SBFA, SRC, CBS,FIU, FSA, NTB, MC, NATCOF, AG,CJ NA, SCCI,AA, IA, CHA, T OA, BA, RA, BAR, PUC, SeyPec, STC, SCB, Nouvobanq, HFC, SNBS, SC and OP.

[2] MF/Policy & Strategy Division, DICT, MFAT, DT, SPTC, AS, PA, MEECC, SFA, SAA, SEC, SIB, BOC, AT, PHA,SBS, TBTCOM, SLA, PAS, MT,SENPA, SRC, CBS, FSA, NATCOF, AG, PUC,STC, NTB and HFC.

[3] MF/Policy & Strategy Division & Trade Division, DICT, DT, AT, PHA,SBS, SLA, MT, SRC, CBS, FSA, NATCOF, STC, and HFC. A consultant from the World Bank was also present.

INTRODUCTION

Markets can fail to deliver optimal outcomes for the consumer in some circumstances, necessitating the promulgation and enforcement of rules of conduct for market transactions. Both consumer policy and competition policy act in a complementary and mutually reinforcing manner to protect consumers' well-being (UNCTAD 2012). Competition policy seeks to spur sellers to offer better deals to consumers. Consumer policy aims to suppress market conduct and conditions that impede effective consumer comparison and decision-making (such as where consumers do not have sufficient, clear and accurate information about products on sale and their prices), ensure sellers do not take unfair advantage of any imbalances in information and bargaining power between them and consumers, and provide consumers with tools to make more informed choices and defend their interests. Consumer protection rules typically cover such matters as: product safety and product liability; fraud, misrepresentation and other unfair business practices; sustainable consumption; and empowerment of consumers through information, education and redress.

The need for national and international action to protect consumers has long been authoritatively recognized by the GA. The UNGCP, unanimously adopted by the GA in 1985 and revised in 1999 and by GA resolution 70/186 on 22 December 2015, provide strong support and guidance for the development or maintenance of a consumer protection policy by UN Member States. The UNGCP establish principles for good business practices for conducting online and off-line commercial activities with consumers, including: fair and equitable treatment; avoiding illegal, unethical, discriminatory, or deceptive business practices; disclosure and transparency; education and awareness programmes; protection of privacy; complaints handling; avoiding conflicts of interest; and compliance with consumer laws and regulations. There are provisions on: physical safety; promotion and protection of consumers' economic interests; standards for the safety and quality of consumer goods and services; distribution facilities for essential consumer goods and services; measures enabling consumers to obtain redress; education and information programmes; promotion of sustainable consumption; domestic frameworks for consumer protection; mechanisms for enforcement; dispute resolution and redress mechanisms; private sector cooperation; dispute awareness and avoidance of resolution mechanism; e-commerce; financial services; specific areas including food, water, pharmaceuticals, pesticides and chemicals, supply of energy and other public utilities, and tourism; and international cooperation in this area. An UNCTAD IGE on Consumer Policy to meet annually is created to support and monitor the effective implementation of the Guidelines, serve as a forum for exchange of experiences, undertake studies, conduct voluntary peer reviews, and provide technical assistance and capacity-building to developing countries and economies in transition.

At the regional level, two organizations of which Seychelles is a member have established consumer protection rules. The consumer rules contained in COMESA's Competition Regulations (against false or misleading presentation of goods and services, unconscionable conduct, poor safety standards and unsafe goods) are directly applicable to protect consumers in the COMESA region, and also provide that Member States shall take all appropriate measures to ensure fulfilment of the obligations arising out of the Regulations or resulting from action taken by the Commission under the Regulations. COMESA has provided technical assistance to Seychelles on both competition and consumer policies. Furthermore, the SADC Declaration on Regional Cooperation in Competition and Consumer Policies establishes a system for cooperation in applying Member States' respective competition and consumer protection laws and provides that, to make cooperation effective, Member States shall adopt, strengthen and implement this legislation in their respective countries.

Seychelles is also a member of ICPEN, an informal network of organisations in the consumer field from various countries, involved primarily with enforcing fair trading practices. ICPEN's participants co-operate on tackling consumer problems connected with cross-border transactions, exchange information and best practices, and promote measures for effective consumer protection enforcement.

In line with these international rules, Seychelles' CPA prohibits unfair contract terms and unfair trade practices (including misleading or deceptive conduct and false representations), and provides for: disclosure and information to consumers regarding goods and services on offer; fair and responsible marketing; consumer rights on receipt of unsolicited goods; fair and honest dealing, avoidance of misleading or deceptive conduct, etc.; and fair value, good quality and safety in respect of goods or services sold. The FTC, which is regulated by the FTCA and administers both the CPA and the Fair Competition Act 2009, receives complaints from consumers, investigates and makes determinations on suspected contraventions of the CPA, and produces reports. The CPA provides for the possibility of issuing both mandatory and voluntary industry codes, which may be prescribed by the Minister at the recommendation of the FTC – so far, none have been recommended.

The Consumer Guidelines issued by the FTC provide an operating framework for implementing its mandate, inform and guide consumers and ensure transparency. The FTC's website also contains Complaint Guidelines, a Consumer Complaint form, a guide to complete this form, tips and advice for consumers on their rights, enforcement guidelines, notices regarding compulsory recall of goods, and statistics regarding inspections, mediation, complaints received in different sectors, and cases closed, being investigated, or before the BOC. Two explanatory leaflets have been produced, one advising suppliers of goods and services on compliance with the CPA, and another, advising consumers on how to spot a fake mobile phone. A consumer rights day has been held during which various workshops have been organized, TV adverts have been put out, and quizzes, competitions and radio presentations have been organized.

A substantial number of complaints have been received over the years. A body of consumer protection rulings has been produced by the BOC, some of which have been appealed to and dealt with by the AT. Several reports and advisory notes on different issues and sectors have been issued by FTC. There is ongoing cooperation with many stakeholders, and MOUs have been concluded by the FTC with several of these stakeholders.

A VPR of Seychelles' competition and consumer laws was undertaken under the auspices of UNCTAD and was discussed at the UNCTAD IGE on Competition Law and Policy held in in July 2014 (UNCTAD 2014a, 2014b). The VPR found that the CPA comprehensively included provisions in respect of each of the major areas expected in a modern consumer law, and found no significant deficiencies, while it recommended several amendments. However, it noted that there was no articulated and comprehensive consumer protection policy, and it recommended that such a policy should be developed in consultation with stakeholders and published, as it would help focus debate on the widest range of implementation strategies, priorities and performance. It considered that the absence of a consumer policy had not prevented the FTC and a number of other regulators from actively undertaking their consumer protection functions, but made it more likely that the various stakeholders would pursue their own agendas without regard to the functions and activities of fellow regulators, and that consumer protection would be seen simply as the resolution of individual consumer problems rather than as a significant building block of national development. It urged that the informal liaisons between some of the regulators be expanded, and this was particularly important in a small economy, where there should be less tolerance for duplication of effort or inefficient enforcement.

The VPR suggested that the explicit adoption by the FTC secretariat of the compliance pyramid regulatory model, involving resolution of more compliance issues at a lower cost while reserving the strongest and most costly interventions for the most detrimental conduct and culpable market participants, would provide a policy rationale for enforcement strategies and decisions – the success of lower cost resolutions was likely to be much greater if enterprises knew that more intrusive options were available and the FTC was willing to use them. While the FTC should therefore continue its current practice of attempting to resolve most complaints through negotiations and warnings, more serious contraventions (or contraventions by repeat offenders) should be used to test the limits of the law with a view to increasing the likelihood that more low-level contraventions would be resolved quickly and at

low cost. In this regard, it was suggested there was a need for low-cost access to information required for voluntary compliance (including the publication of guidelines on unfair contract term provisions) and for additional and increased sanctions and remedies.

In the light of the findings and recommendations of the peer review, as well as of the various changes that have taken place in the Seychellois market and the lessons learnt from experience, it is now envisaged to improve the CPA in various respects. The draft amendments to the CPA are still under review. It is also planned to further enhance and systematize the FTC's procedures for handling complaints and dealing with cases.

In line with the VPR recommendation, a draft National Competition Policy for Seychelles has been prepared and is awaiting adoption. To build upon the detailed binding legal rules laid down in the CPA and the consumer protection achievements realized in implementing it, and to complement the National Competition Policy, a comprehensive and consensual NCP is now adopted as an overarching framework to enable Government to better .protect consumers, support consumer empowerment, promote a fair and transparent market, and deliver effective enforcement.

THE CONTEXT

1.1 Background

Seychelles is comprised of 115 tropical islands spread over 1.374 million square kilometres in the western Indian Ocean off the mainland of Africa. The population of Seychelles numbers an estimated 93400 (2015), and its GDP amounts to SCR 4714.3 million (2015 4th quarter), equivalent to around US Dollar 354 million as of May 2015. Seychelles is one of the fifty-two countries and territories that are presently classified as Small Island Developing Countries (SIDS) by the United Nations Conference on Environment and Development (UNCED).

Seychelles faces many of the common characteristics or challenges faced by the SIDS (particularly archipelagic SIDs), which overlap with the challenges arising from its small size and population. Such characteristics include: a narrow natural and human resource base and limited economic diversification; a small domestic market and very heavy dependence on relatively small consignments of goods imported from afar (merchandise imports were US Dollars 67.68 million for Marh 2016); diseconomies of scale in investment, production, consumption and social and economic infrastructure, including relatively high costs for energy and transportation, communications and services; diseconomies of scale as well with respect to governmental functions and administrative costs; a high degree of close personal contacts; and a fragile environment, including high vulnerability to climate change.

The Seychellois economy is predominantly service-based and, while the Government has encouraged foreign investment in construction or upgrading of hotels and other services, and promoted the development of farming and of small-scale manufacturing, the economy remains concentrated. The Government continues to play a major role in regulated sectors such as telecommunications, energy, financial services, retail, transport, or health care. The inflation rate has not been very high in recent years (the Consumer Price Index stood at 102.5 in March 2016 in relation to 100 at the base year of 2014), but Seychelles remains highly vulnerable to global economic shocks, particularly those related to international terms of trade.

Consumer markets for goods and services in Seychelles have undergone profound transformations in recent years, particularly since the adoption of liberalization and privatization policies in connection with the Macro-Economic Reform Programme of 2008, assisted by the IMF. Such regulatory reforms have contributed to the greater exposure of Seychelles to global markets, increased availability of new technologies and the growth of consumer services. The accession of Seychelles to the WTO on 26 April 2015 is accelerating such changes.

These momentous developments have provided substantial benefits to consumers in terms of availability, choice and pricing of products, while also posing many challenges. Increased diversification in types and sources of imported goods has made it more difficult to control imports of unsafe or defective products. The availability of a broader range of increasingly complex goods and services, including information and communication technologies, has made it more difficult for consumers to understand, compare and assess the nature and value of what is on offer and what recourse they have if something goes wrong While Seychellois consumers are better-educated overall, many still lack the skills required in today's more complex, information-intensive marketplace – and this particularly the case for those who are uneducated, disabled or elderly. Such challenges are likely to become ever greater given likely future trends such as the development of digital content, e-commerce, or energy-saving/sustainable development-related products. However, the implementation of the NCP also needs to take into account that most of the problems faced by the Seychellois consumer continue to be in traditional sectors, such as construction or retailing, where there remain significant imbalances in information and bargaining power between consumers and enterprises.

With respect to all types of cases, it would be necessary to combine forces among stakeholders to enhance levels of market intelligence, heighten vigilance to detect and evaluate current consumer problems and likely future trends, educate the consumer, take suitable preventive or corrective action, actively track what happens overseas and strengthen international co-operation. The NCP establishes the broad framework for addressing current and future challenges for the Seychellois consumer, as set out below.

1.2 Vision

The NCP aims to clarify the vision, objectives, guiding principles, priorities, and implementation strategies for systematically identifying and analysing consumer problems and effectively addressing them. A coherent framework is established to provide guidance on how to ensure compliance with enterprises' role and duties as suppliers, promote a fair, efficient and transparent market-place for consumers and business, support consumer empowerment and a culture of consumer responsibility, strengthen protection of vulnerable or disadvantaged consumers, improve speed of delivery and effectiveness of outcomes, and identify and address likely future trends in an appropriate and timely manner. Compared to the CPA, which is legally binding, the NCP reflects a broader and less mandatory approach to implementing public policies in favour of the consumer - the NCP sets out the measures the government will be undertaking for this purpose, while some of the NCP's contents will be translated in due course into binding legislative changes.

The NCP aims to explicitly “mainstream” and prioritize consumer policy within national development strategies, policies and legislation in a coherent manner. Consumer policy is indeed complementary to other Seychellois socio-economic policies that aim to enhance economic progress and effective management of the economy. Taking this into account, as well as the need to provide for consistent and effective consumer across all sectors and areas, every effort has been made to ensure broad consensus, buy-in and ownership by stakeholders with respect to the NCP, which will help to ensure the effectiveness of the action taken to implement it.

The NCP will enable Seychelles to enhance planning and implementation of programmes which build upon the existing infrastructure for consumer protection, taking into account the roles of different Government agencies responsible for consumer protection, while recognizing the premier role of the FTC in this area. In this regard, the NCP will promote the “consumer-friendliness” of existing or proposed policies/legislation in different areas, ensuring their consistency with the CPA and each other, the integration of consumer protection into the work of other policy-making and policy-implementing bodies, and continuing stakeholder engagement in the task of fully embedding consumer protection and empowerment in a transversal manner across different market sectors. It will be ensured that Government agencies and SOEs will also adhere to the NCP's principles.

The NCP has been elaborated pragmatically in the light of what is workable and realistic in Seychelles’ situation as a SID with limited resources needing to promote legitimate business and trade. The NCP takes into account such factors as: the social, economic, political and legal context guiding policy formulation in Seychelles; its Small Island State status; the state of and competition levels in major economic sectors; regulatory reforms; development policies; openness to the world economy; obligations under applicable bilateral or multilateral rules; best practices in consumer policies/legislation in other countries; and relevant rules in other national legislation (such as industrial and trade policies, regulatory policies, health and safety policies, environmental policy, social policies, environmental policies, standardisation policies, ICT policies, national development strategies and visions, etc.).

The NCP will help to promote legitimate business and trade in Seychelles. Establishing a reputation for fair dealing and respect for consumer rights helps enterprises to increase their customer base, particularly in a small country like Seychelles – but also puts them at risk of being undercut by less reputable enterprises. The NCP will encourage enterprises to seek to gain market shares on the basis of pricing, quality and innovation rather than through underhand tactics - which levels the playing-field since all enterprises have to apply a common set of fair standards. Moreover, greater awareness

by enterprises and consumers of their rights and responsibilities, activist consumers and a consistent, predictable and effective consumer policy regime foster consumer confidence in the openness and fairness of markets, enhancing the climate for conducting business and economic activity. This all boosts national economic performance.

The NCP will ensure that enterprises should not be unduly burdened with “red tape”, resulting in higher costs which could be passed on in higher prices for consumers. Instead, the NCP will promote partnership between Government and enterprises to promote compliance with the law in the least burdensome manner, and impartiality and procedural fairness will be adhered to in enforcing the law.

While everybody is a consumer and benefits from a stronger consumer regime, this is particularly so in Seychelles given its high level of imports. Small enterprises (defined in section 2 of the Small Enterprise Promotion Agency Act to be “a business entity that is engaged in a craft or cottage industry, manufacture, assembly, agro-processing, repair, maintenance or a service related to an industry and is operated by not more than ten persons including the owner or owners and has an annual turnover not exceeding R1.5 million”) particularly stand to benefit, as it is envisaged to widen the definition of consumers in the CPA to include such enterprises when acquiring goods or services from suppliers.

The NCP is a forward-thinking document which does not purport to lay down a complete and definitive blueprint for the application of consumer law and policy in Seychelles – which would be impossible given the fast-moving nature of the challenges in this area. The NCP does identify several specific measures which will be taken, but these do not constitute an exhaustive list – more measures will be taken over time as determined necessary. A system is set up to monitor and evaluate the NCP's effectiveness, and calibrate as needed in the light of experience and of changes in the market-place. Within the framework established, Seychelles should be able to make continuous progress in enhancing the protection of the Seychellois consumer to a high level in the light of future trends.- thus promoting Seychelles’ development.

The application of the NCP will require enhanced resources. In this regard, utmost care will be taken to ensure cost-effectiveness and value for money, including by avoiding fragmentation and duplication, emphasizing ex-ante prevention rather than ex-post enforcement, and targeting enforcement towards priority areas.

1.3 Objectives

The NCP integrates the CPA's objectives into its own objectives and expands upon them. The CPA's aims are indicated in its Preamble to be “to protect consumers' rights, to impose duties on producers and suppliers of goods and services”. More detail regarding what this involves is provided in section 3, which states that the FTC is responsible for the administration of the CPA “and shall carry out its responsibility with the objective of promoting and advancing the welfare of consumers by (a) achieving and maintaining a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally; (b) reducing any disadvantages experienced by consumers, in accessing any supply of goods or services, by reason of their illiteracy, vision impairment or limited fluency in a particular language; (c) promoting fair business practices; (d) protecting consumers from (i) unconscionable, unfair, unreasonable, unjust or otherwise improper trade practices; and (ii) misleading, unfair, deceptive or fraudulent conduct; (e) improving consumer awareness and information, and encouraging responsible and informed consumer choice and behaviour; (f) promoting consumer confidence, empowerment and the development of a culture of consumer responsibility through education and advocacy; and (g) providing for an accessible, efficient, harmonized, and effective system of redress for consumers.”

These seven objectives in section 3 are adopted among the NCP's objectives. The NCP also has three further objectives: (a) protecting consumers from hazards to their health, safety and environment; (b) enhancing the effectiveness of consumer policy by further strengthening education, information and advocacy programmes, applying a compliance pyramid for graduated law enforcement,

and identifying and addressing likely future trends in an appropriate and timely manner; and (c) mainstreaming consumer policy within government policy-making and development strategy, including by promoting partnerships among stakeholders in this area, and by enhancing collaboration and complementarity among the FTC and other governmental bodies with specific consumer protection responsibilities.

1.4 Guiding Principles

Taking into account the above, the NCP is based upon the following twelve guiding principles:

- *Mainstreaming*
- *Uniform and effective consumer protection*
- *Partnership with stakeholders*
- *Shared competence and cooperation*
- *Pro-active approaches*
- *Prioritization*
- *Market intelligence*
- *Education and information*
- *Compliance pyramid*
- *Fairness and transparency*
- *Best practice tailored to Seychelles.*
- *Strengthening of international cooperation.*

These guiding principles are elaborated below in connection with the inter-linked strategies for applying the NCP. Some of these strategies build upon points mentioned in the FTCA and the FTC Strategic Plan 2014 – 2016.

II. STRATEGIES

2.1 Mainstreaming and partnership

Strong and sustained political support will be provided to explicitly mainstream and prioritize consumer policy within Seychelles' development, policy and legislative framework, taking into account the pervasive nature of consumer protection issues across all economic sectors, and that all Seychellois citizens are consumers. Increased resources will also be required, while applying these principles and strategies will enhance cost-effectiveness in use of resources. In this regard, account will be taken of the fact that the UNGCP (as revised by GA resolution 70/186 of 22 December 2015) provides that Member States should work towards ensuring that consumer protection enforcement authorities have the human and financial resources to take action and obtain or facilitate redress for consumers, including monetary redress.

For such explicit mainstreaming and prioritization, active and productive partnerships among a broad range of stakeholders will also be strengthened. These partnerships will aim to: heighten stakeholder buy-in and ownership; enhance the NCP's uniform and effective application; improve collection and analysis of market intelligence and identification of likely future trends; help determine the directions and priorities for enforcement; and facilitate cooperation, complementarity and/or theapplication of dual competence among the FTC, other relevant Government bodies, and NATCOF. Institutional mechanisms for consultations and collaboration will be established or strengthened for such purposes, which will as appropriate include such procedures as periodic meetings, joint working groups and publications, and joint conduct of outreach activities, workshops, or public consultations. The application of the MOUs between the FTC and the FSA, NATCOF, PHA, POU, SBS, SCCI, SLA and SPA will be reviewed and strengthened, and new MOUs will be concluded with other stakeholders, including the CB, DICT, RC, SAA, SBS and TBTCOM.

The strengthening of working relationships is particularly necessary between the FTC and other governmental/regulatory bodies with specific consumer protection responsibilities and powers. The CPA is a general law universally and uniformly applicable to all economic sectors, agreements, geographical areas, enterprises and persons within Seychelles, with no exceptions or exemptions. This is so even where there is other legislation on specific areas containing provisions relevant to consumer protection - in such instances, there is dual competence between the FTC and the other Governmental body administering such legislation.

However, a distinction will be made between the applicability of the CPA and its actual application. Systems will be set up to promote complementarity and cooperation. As a matter of enforcement policy and practice, the FTC will refrain from pursuing complaints falling within sectors subject to legislation granting competence and enforcement powers to other Governmental bodies in these specific areas. This will recognize the specialized expertise and mandate of the other Governmental bodies concerned, avoid duplication and conflict between partners, and economize on scarce resources. However, even in such instances of dual competence, the FTC will at its discretion pursue or intervene in such cases if specific anti-consumer conduct does not fall within the scope of this other legislation, or if the other Governmental body does not have strong enough enforcement powers and/or suitable redress is not being provided at all or in a timely manner.

NATCOF will strengthen its role as a key interlocutor and channel for the handling of consumer complaints. Upon receipt of such complaints, NATCOF will continue to provide advice to consumers and refer complaints as appropriate to the FTC, and NATCOF will be able if it wishes to comment to the FTC upon complaints thus referred. This will strengthen communication, cooperation and coordination between the FTC and NATCOF in complaints handling (as provided for in the FTC - NATCOF MOU) and reinforce NATCOF's role as a community-based organization. Such procedures will not prevent consumers from taking complaints up directly with the FTC, or the FTC from exercising its functions and

powers in dealing with any complaint, in line with the CPA and FTCA.

After recording complaints received through NATCOF or directly from consumers, the FTC will as appropriate either take its own enforcement action or channel the complaint to other competent Governmental bodies. These other bodies would be expected to notify the FTC in due course regarding how these complaints have been dealt with and, if no such notification is received by the FTC within a reasonable time, it will contact the Governmental body concerned to check how matters stand. If, however, complaints are made directly by consumers to other Governmental bodies without going through the FTC, these other bodies will be expected to notify the FTC that these complaints have been received and what action has been taken.

The FTC will also hold consultations with the other governmental bodies concerned to promote consistency between the texts and application of the CPA and other existing or proposed new legislation with consumer protection provisions, while respecting their discretion to follow their own approaches. The aim would be to ensure consumer protection provisions in all legislation keep to at least the same standard as the CPA, and to avoid unnecessary discrepancies in wording giving rise to uncertainties – while no difficulty would be likely to arise where other legislation has stronger or more detailed consumer protection provisions than does the CPA.

There will thus be no enforcement gap when tackling illegal conduct affecting consumers. Such cooperative efforts to responsibly use limited resources for ensuring the Seychellois consumer benefits from a uniformly high and effective level of consumer protection are essential, given Seychelles' size and other characteristics highlighted above. Joint action in some areas will achieve results which would not be possible if each Government body acted in isolation. For the sake of transparency and to facilitate oversight and further cooperation, the FTC and the other Governmental bodies concerned will detail the cooperation they have undertaken with other stakeholders in their annual reports of their activities and operations, and NATCOF will also be encouraged to report on its own cooperation with the FTC and other Governmental bodies.

2.2 Pro-activeness and prioritization

Despite the drive towards uniformity, it will not be possible, given resource constraints, to simultaneously address all consumer problems and issues faced by the Seychellois consumer. There will thus be priority focus upon addressing those consumer issues which are most prevalent or causing the greatest harm - while staying alert to emerging issues and likely future trends. The FTC will make greater use of its powers to initiate complaints, and continuous review will be undertaken of which types of cases should be addressed in such self-initiated complaints. So far, while the FTC has initiated action with respect to such practices as misleading advertisements by telecommunications service providers, or misleading information on the weight or the prices of goods sold, it has been difficult to adopt a more activist approach given time and resource constraints - the FTC is obliged under the CPA and the FTCA to investigate complaints received from any person, unless it is satisfied that the complaint is trivial, frivolous, vexatious, or not made in good faith, or the complainant does not have sufficient interest in the matter, or has obtained reasonable redress directly from the seller.

Accordingly, in order to free more resources for pursuing the FTC's own complaints in line with its priorities, the FTC will follow a seven-fold approach: inform and empower consumers and encourage enterprises to comply with the law so that there will be less complaints from consumers; study systemic issues arising in specific sectors or areas, and advocate suitable policy measures to pre-emptively address consumer problems at their source; further strengthen its practice of screening complaints received to see if they fall within any of the above-mentioned exceptions, and encouraging consumers to seek redress directly from sellers or public service providers unless general issues are involved; request NATCOF to also exercise such selectivity before referring complaints to the FTC; as indicated above, direct complaints towards other Governmental bodies in sectors where they have competence and enforcement powers (the FTC's obligation to open an investigation into a complaint received unless it falls within the above-mentioned exceptions would not prevent the FTC from suspending the

investigation once another Government body is seized of the complaint); and streamline and enhance the efficiency of investigations and enforcement action to improve speed and quality of delivery.

Several criteria will be applied by the FTC in determining what to give priority to. A major criterion will be whether the issue could affect health or safety. Another criterion, in line with the UNGCP, will be whether any practice in any sector adversely affects vulnerable or disadvantaged consumers (as defined in Australia, Consumer Affairs Victoria), such as those who are poor, uneducated, disabled, elderly, children, or living on remote islands – for instance, elderly people are particularly affected by unfair practices in construction/survey types of cases, so this will be given priority attention. Priority will also be given to those business practices adversely affecting small enterprises (within the meaning of the Small Enterprise Promotion Agency Act) when they acquire goods or services from suppliers, taking into account the recognition in the Seychelles Strategy 2017 of the importance of promoting and developing small and medium enterprises (SMEs) as a tool of economic development. Attention will also be paid to opportunities to pre-emptively address likely future trends – limited but timely action may reduce the need to devote more resources to tackle problems once they have got worse. Account will also be taken, in line with the approach used by the UK's Competition & Markets Authority, of whether breaches of the CPA point to systemic failures in a sector (so that addressing the behaviour of one enterprise would set a precedent or have other market-wide implications), whether there is an opportunity to set an important legal precedent or whether there is a strong need for deterrence or to secure compensation for consumers. The criteria of extent of detriment, seriousness of conduct and public interest (used by the New Zealand Commerce Commission when deciding whether to open an investigation, and what enforcement action to take at the end of an investigation) will also be applied. A balanced approach will be maintained regarding enforcement priorities as between goods and services.

2.3 Market intelligence and analysis

To further facilitate identification of which other issues to prioritize in consumer education efforts and enforcement, the FTC and other Government bodies with consumer protection responsibilities in specific areas will pro-actively scrutinize and analyse complaints received and Seychellois markets to determine important systemic problems. Complaints received indicate, for instance, that problems are common with respect to construction (non-performance of service to completion and mediocre work), insurance (non-performance of services to satisfactory manner), and car repair/maintenance (non-performance of service to completion and mediocre work by some mechanics).

To obtain further information, the systematic collection and analysis of data with respect to types, sectoral distribution and importance of unfair practices and other consumer problems will be enhanced. Such data will be gleaned and brought together from different sources, including: complaints received from consumers by the FTC and other Governmental bodies; other relevant statistics (such as on imported products or on accidents/injuries from unsafe products); oral or written information received individually from or in meetings with stakeholders, governmental bodies, “whistleblower” employees, other enterprises, consumers or consumer associations such as NATCOF (with whom strengthened collaboration to collect market intelligence will be promoted); media reports; detection of misleading advertising and unfair contract terms; informal checks when shopping; on-site inspections of enterprises' premises; market surveys of consumer satisfaction or dissatisfaction through distribution of questionnaires; and information from international sources, as discussed below.

More research and market studies will be undertaken, covering competition and consumer protection aspects in an integrated manner, and with the choice of which areas or practices merit closer study being guided by patterns perceived in analysing statistics or collating information from different sources. Furthermore, when it is envisaged by any governmental body to adopt new or revised legislation or policies in any area which could significantly impact upon the Seychellois consumer, efforts will made to collect and analyse market data with respect to that area will be collected and analysed so as to facilitate assessment of the “consumer-friendliness” (as well as the “competition-friendliness”) of both the existing and proposed legislation or policies in that area, and to back up advocacy for any proposed changes with solid data and realistic options. The methodology for such studies, depending

upon the needs and the resources available, will follow the format used in the numerous brief opinion papers prepared by the FTC on different issues, or be inspired by the survey undertaken in 2013 by the FTC to understand consumer purchasing behaviour and experiences when purchasing meat products, in the context of an assessment of competition in the livestock sector. There will thus be close interaction between prioritization in terms of market intelligence sought and law enforcement or consumer advocacy activities. In the interests of transparency and obtaining input from the public, all opinions and studies prepared will be placed on the FTC's website, unless confidentiality needs to be ensured.

Any analysis or market study undertaken will seek not only to examine the issues, but to determine the most effective, realistic and evidence-based tools and solutions for addressing any consumer problems identified, in the light of conditions in Seychelles. In this regard, reference will be made to the guidance issued by the Swaziland Competition Commission for market inquiries, explaining the aim of such inquiries, selection criterion for markets to be studied, management of key processes, possible outcomes of market inquiries and assessment of impact. A six-step sequential process based upon the six-step process recommended in the OECD's Toolkit as suitably simplified for the Seychelles context will also be followed, as set out in the Box below. While these guides are envisaged for use by consumer authorities, they could be applied in Seychelles (with suitable adaptations) by the FTC and/or other Governmental bodies with consumer protection responsibilities within specific fields, either individually or in consultation/collaboration with other bodies. Defining the problem and its source (Step 1) will help identify the institutions and stakeholders that could be involved in any potential policy development process and, as underlined in the Toolkit, stakeholders can play an important role in many steps of the evaluation process, providing basic information, technical expertise and advice, particularly in Step 5.

TOOLKIT

Step 1: Defining the consumer problem and its source, such as firm behaviour (e.g. misleading advertising), information failures, consumer's behavioural biases or market and/or regulatory failures. Determining which Governmental body or bodies are the most appropriate entities to address the source of the problem, whether there is reasonable scope for correcting the problem at its source, and whether correcting the problem would conflict with any other public policy objectives.

Step 2: Measure consumer detriment. If it is decided to examine the problem further, it will be assessed how, to what extent and how many consumers are suffering or are likely to suffer harm, in financial and non-financial terms (such as time loss, stress or physical injury). In the Seychellois context, it may often only be possible to undertake a summary qualitative assessment, but quantification of consumer detriment may be undertaken where it is possible and not too resource-intensive.

Step 3: Determining whether the consumer detriment warrants a policy action or measure. Thus, an intervention will be undertaken if the detriment is small, but felt by a large number of consumers, or alternatively, if the detriment experienced even by a small group of consumers is very large. Any disproportionate impact upon certain groups, such as children, the elderly or the socially disadvantaged, will also be considered. It will also be evaluated how the detriment is likely to change over time – whether it will probably disappear reasonably soon or is expected to worsen. The political, social and economic consequences of taking no policy action will also be considered, including any substantial costs to the economy, or detriment for other stakeholders (such as distortions in competition among firms, or effects upon small enterprises). If it is decided that an intervention may well be necessary, it will be considered whether action can be taken straightaway or whether more evidence is required (which would involve returning to Step 2), a better understanding of the nature and/or source of the consumer problem is necessary (returning to Step 1). However, if no action is required, the analysis will be terminated.

Step 4: Setting a policy objective and identifying the range of policy options. A clear policy objective will be specified, in terms of what the policy intends to achieve for consumers and the market more generally. Appropriate success indicators, targets or metrics to measure the Governmental body's

activities and performance (which should support the needs of all stakeholders) will be determined to aid future reviews of the policy's effectiveness (under Step 6) and will focus upon the market outcomes for consumers rather than intermediate results. If such metrics are employed, efforts will be made to establish a baseline where possible prior to implementing a policy. Efforts will also be made to identify the full range of practical policy options which can be realistically implemented, including those that focus on consumer empowerment and those that focus on modifying firm behaviour, as well as those that have elements of both. Both new policy actions, as well as better enforcement of existing policies, will be considered. At this stage it will also be identified who will be responsible for implementation and enforcement, the cost of maintaining the policy and how it will be communicated to stakeholders and the public.

Step 5: Evaluating options and selecting a policy action. Once policy options have been identified, the most appropriate and cost-effective method for achieving the policy objective will be determined (from Step 4). A cost-benefit analysis will be carried out where possible, covering both quantifiable aspects (if the data is easily available) and those areas where quantification may not be practicable (e.g. community values and ethical considerations). The scale and depth of an analysis will be determined on the basis of the likely consequences of the policy under consideration. Not every action by government will require in-depth analysis. For example, an immediate product ban following a death or serious injury to consumers will not always require a cost-benefit analysis. On the other hand, in some instances, it may be worthwhile to carry out surveys, field trials and research aimed at deepening an assessment. This would likely be the case for policies that entail high costs on some stakeholders and are of a relatively permanent nature (e.g. locked in by legislation). Consultation with stakeholders, which include consumer organisations, affected firms and/or industry associations, could take place at any point in time during an investigation. It is particularly important to consider doing this at this step, however, as it can help to ensure that options are expressed clearly and adequately address all relevant issues. It may also help reveal consequences that are not anticipated or intended by policy makers. Finally, the effects of each option on other policy areas, such as competition and the environment, will be considered.

Step 6: Developing a policy review process to evaluate the effectiveness of the policy. Regular reviews of consumer policies serve to determine if the objectives (set at Step 4) are being achieved in a cost-effective manner. The review process will factor in changes in the nature of the consumer problem, changes in the marketplace, and potentially unforeseen or unintended consequences of the selected policy action. The review will take place after a policy has been in operation for a reasonable period of time. Post-implementation evaluations can range from interim monitoring to full-scale reviews. The methods for carrying out reviews will be similar to those used for prior assessment of expected costs and benefits. The reviews will be used to determine whether a measure should be maintained, modified or eliminated, whether enforcement should be strengthened, whether an alternative policy action should be considered, or whether reassessment of the nature and/or source of a problem would be beneficial (Step 1).

2.4 Consumer information, compliance pyramid and impartiality

There will be heightened use of education and information programmes, in line with the CPA and UNGCP. As recommended by the Open Government Guide, targeted consumer education programmes taking local priorities and regulatory and related policies into account will be developed, which will focus on key issues, use clear and concise language, offer practical advice, and take an integrated approach to meet the needs of different age groups and different social and economic backgrounds. Procedures will be established to collect and disseminate information on particular goods and services that are unsafe or sub-standard, and awareness of consumer rights in relation to product safety will be promoted. It will be explored how to supplement consumer education as a life-long process, starting with school curricula. UNISEY will look into the possibility of introducing a module on consumer protection within its law and business administration courses, in consultation with the FTC.

Some objectives of such information programmes, which will be undertaken in a coordinated

and synergistic manner by the FTC and other competent Governmental bodies, will include to: empower consumers and small enterprises to make effective choices, avoid becoming entrapped in unfair transactions, and be aware how to assert their rights or seek advice when things go wrong; publicize information on markets and on likely future trends (with respect, e.g., to digital content, e-commerce, or energy-saving/sustainable development-related products); encourage consumers or enterprises to come forward with more intelligence; encourage compliance with the law and with good business practice by enterprises, taking into account the UNGCP's provisions on principles for good business practices; disseminate information on cases dealt with by the FTC and the AT (which will necessarily involve some “naming and shaming” of enterprises determined to have broken the law); and also, in collaboration with the MEECC and PHA, educate consumers on health, safety, and environmental issues and hazards, the environmental, social and economic impacts of their choices, and sustainable consumption (in line with the UNGCP and the undertaking by the State under Article 38 (c) of the Constitution of the Republic of Seychelles to promote public awareness of the need to protect, preserve and improve the environment). The effect of such programmes will be to raise the profiles of the FTC and other Governmental bodies concerned.

Both traditional and electronic/digital means will be used to transmit and disseminate information, including: public media, explanatory leaflets and other material on specific points, websites, electronic communication tools such as social networks, public hearings, and meetings with stakeholders. There is already some explanatory material available in the consumer protection area: one FTC leaflet advises enterprises on compliance, while another covers unfair contract terms, selling above displayed price/dual pricing, fair and honest marketing, disclosure of information, and dishonesty with respect to unsolicited goods. More leaflets will now be produced in line with priorities and disseminated to both enterprises and consumers - such as one explaining consumers' rights when shopping (see Competition and Consumer Protection Commission, Ireland) or one on building a house - which will highlight practices prevalent in the relevant sectors, as identified by the data collected, and explain how these go against the law. The substantial material on the FTC's website informing consumers on their rights and the FTC's procedures and implementation record will be updated to reflect the NCP and the amendments to the CPA, complemented with guidelines on specific issues (such as on unfair contract term provisions in specific sectors), and used as a basis for an outreach campaign. In this regard, account will be taken of material issued overseas such as, for instance, the Consumer Charter reminding consumers of their rights and responsibilities by the Barbados Fair Trading Commission, the explanations of the prohibitions under consumer protection law by the Jamaican Fair Trading Commission, or the information leaflets by the Maltese Competition and Consumer Affairs Authority. The MC will fully support such outreach efforts. The online forum on the FTC's website will be drawn to the public's attention and its active participation in this encouraged.

Moreover, in line with the compliance pyramid recommended by the VPR, the law will be applied in a graduated manner, with emphasis upon the provision of information, advice and encouragement on compliance to enterprises and their associations. This will enhance certainty and legal security regarding how the law will be applied. FTC will also liaise with SIB to include a link to the FTC site on the SIB's website and references to consumer protection obligations in the guides and advice provided by SIB to local and foreign investors.

There will also be greater use of mandatory or voluntary product standards, as well as industry codes (including standards of service by service providers) setting out the conduct, quality standards, and procedures that enterprises should follow in specific sectors. The aim will be to address problems on a sector-wide basis, preferably by forestalling them. As envisaged in the CPA, there will be consultation with enterprises operating in the sector concerned (or their associations), as well as with NATCOF, in the development of such industry codes, which will be published for public comment, and periodically reviewed for effectiveness. Enterprises and NATCOF will be requested to help in monitoring conformity with such standards and industry codes.

Standard form contracts commonly used in some sectors will be checked for compliance with the law, and any discrepancies in such contracts will be brought to the attention of the enterprise or

industry association concerned for corrective action. Larger enterprises will, as appropriate, be encouraged to set up adequate complaints handling mechanisms, in line with the UNGCP. Where complaints are made to the FTC, these will continue to be resolved as far as possible, through negotiations and warnings. Mediation procedures to resolve differences between consumers and enterprises will also continue to be used by the FTC, while avoiding spending undue time on fruitless efforts. Such "soft" approaches to encourage private sector cooperation have the advantages of being less resource-intensive, helping to maintain good relations within Seychelles' small population, and conforming to the UN Guidelines.

However, as recommended by the VPR, the success of these "soft" approaches vis-a-vis enterprises will be enhanced by undertaking strong, effective and well-publicized enforcement action to prevent, sanction and/or deter anti-consumer conduct, particularly where there are more serious contraventions of the law or contraventions by repeat offenders – this may involve applying additional or increased sanctions and remedies where appropriate.

To enhance the acceptability of strong enforcement, it will be ensured that the law is applied – and is seen by enterprises and the public to be so applied - in an independent, fair and transparent manner to all, with penalties proportionate to the gravity of the offence. Currently, there is sometimes a feeling among enterprises that the CPA is pro-consumer and their own rights are not protected, and every effort will be made to correct such misperceptions. Full account will continue to be taken of sellers' defences against complaints from consumers if they are reasonable – defences currently made with respect to such products as electronic items or cars, for instance, are that the consumer has mishandled the product sold, or has broken the terms of the guarantee, or there is no receipt to prove the sale. In all enforcement action, there will continue to be full respect for procedural rights, transparency, and the possibility of correcting mistakes upon appeal. The BOC and AT will ensure the reasoning behind their decisions and the sanctions levied is fully clarified, to enable the FTC, consumers and enterprises to understand and apply or conform to the law.

2.5 Best practice and international cooperation

The NCP aims to ensure that the Seychellois consumer benefits from protection equivalent to the most effective levels of protection enjoyed by consumers elsewhere – while it will be ensured that whatever is adopted from overseas is suitable for or tailored to Seychelles' needs and conditions, and is implemented progressively as necessitated by resource and practical constraints. Accordingly, action will be taken to: (a) monitor international databases on product safety so as to better control the importation of unsafe or defective products into Seychelles; (b) actively track developments and trends overseas potentially impacting upon the Seychellois consumer; (c) examine best practices in different areas of consumer protection, and apply them as relevant and appropriate to local conditions, prioritizing what is currently most important for Seychelles without neglecting the need to prepare for when such issues will start to affect Seychelles; (d) strive to conform with the UNGCP's provisions in line with Seychelles's circumstances, needs and resources; and (e) actively seek for and participate in international cooperation, including in the context of COMESA, SADC, ICPEN and UNCTAD's annual meeting of the IGE on Consumer Policy. With respect to (e), Seychelles will take action to conform to the UNGCP's provision that: Member States and their consumer protection enforcement agencies should improve their ability to co-operate in combating cross-border fraudulent and deceptive commercial practices, make use of existing international networks and enter into appropriate bilateral or multilateral arrangements or other initiatives to implement the UNGCP, and take a leading role in developing the framework for combating fraudulent and deceptive commercial practices set forth in the UNGCP. Seychelles will further take full advantage of the fact that the recent revision of the UNGCP (as recommended by UNCTAD) has greatly raised the profile of consumer protection at the international level and hence the potential for obtaining technical assistance.

III. INSTITUTIONAL MECHANISMS

3.1 The MF will establish and provide political support for a National Consumer Protection Partnership, comprised of the MF, the FTC and all stakeholders wishing to participate (including relevant Government Ministries and other bodies, SOEs, enterprises and their associations, and NATCOF). The MF will also provide policy and strategic advice to the Partnership in the performance of its duties, in the context of national development priorities.

3.2 The Partnership will facilitate and coordinate the implementation, monitoring and evaluation of the NCP, including by:

(i) sharing and considering data on consumer issues and enforcement;

(ii) taking into account the priorities indicated above and the initial agenda set out in chapter IV, identifying current or future problems affecting or likely to adversely affect consumers and priority action needed toaddress these;

(iii) in the light of (i and ii), identifying the goals, objectives, targets, outcomes, outputs and specific activities in individual areas, as well as the means and resources required, using a logical framework approach;

(iv) encouraging stakeholders to cooperate effectively, assisting as needed in case allocation among different Government bodies, and promoting harmonization of approaches;

(v) organising joint education, information and awareness-raising activities;

(vi) conducting annual reviews (which will be made available to the MF, NA and the public) tracking the NCP's implementation, the impact, effects and outcomes of activities conducted under the NCP activities and progress towards the attainment of its objectives (as measured using pre-determined indicators and through suitable means of verification), identifying what went well and what did not;

(vii) determining whether the activities conducted under the NCP are successfully contributing towards attainment of its outlined objectives, or whether any changes are necessary to such activities or objectives, taking into account such criteria as relevance, efficiency, effectiveness, impact, sustainability, public acceptability, consistency with other Governmental policies and measures, and appropriateness in the light of changes in the economic or regulatory context and likely future trends;

(viii) recommending whether to go on with planned activities, take corrective measures, modify or update plans, or change strategies; and

(ix) making proposals for improvements through policies, legislation or good practice.

3.3 The FTC will undertake the following:

(i) Break down all the strategies and actions set out in the NCP, and draw up a schedule of all the individual SMART objectives needed for implementation of those activities for which it is responsible, i.e. it will list all the activities needed in a manner which is s*pecific*, *measurable* (either quantitatively or with some qualitative indicator), *attainable, relevant* and *time-related.* Judgement will be exercised regarding realistic time-frames for each activity, in the light of priorities and resources available.

(ii) With respect to those activities needing joint efforts with one or more Governmental bodies, contact these bodies to establish task forces to implement such activities, within a SMART framework.

(iii) Conduct an informal internal review of the NCP's implementation every three months or more often as required. This review will assess: progress in implementing the SMART list (in the light of the timeframe determined), mainly focusing upon efficiency and effectiveness, what could be done better, sooner, more or more cost-effectively, in the light of any changes in the nature of consumer problems and the market-place, consequences of policy actions, or priorities; and whether there is any need to revise current performance measures or develop new measures. This review will include undertaking the following, as provided for in the FTC Strategic Plan 2014 – 2016:

- Assessing the extent to which the consumer complaints and other information made available by the Commission is used by its staff and law enforcement partners;

- Evaluating whether enforcement activities are tracking the areas of greatest concern and whether there are new practices or technologies that require additional law enforcement;

- Evaluating the effectiveness of FTC's enforcement efforts in those areas in which a baseline measure can be determined;

- Measuring the number of education messages disseminated each year and assessing the number and range of public and private sector organizations that partner with the FTC on outreach;

- Reviewing the focus of FTC education efforts, determining whether the Commission needs to reach new audiences in light of changes in demographics, advertising, marketing practices and identifying strategies or partnerships that will allow the FTC to reach those audiences;

- Evaluating whether the advice and comments FTC provides to government agencies on consumer protection policies have been considered and adopted when developing policies

(iv) Chair the Partnership, report to it on the FTC's activities and reviews of the NCP's implementation, seek support or guidance from the Partnership or individual stakeholders, prepare the draft of the Partnership's annual review on the basis of its own internal reviews and Annual Report, as well as any other relevant material, and revise it in the light of comments received.

IV. INITIAL ACTION IN KEY AREAS

4.1 Continuous process

The application in practice by the Partnership and/or individual bodies of the above-mentioned principles and strategies and related institutional arrangements is explained below with respect to some key areas. The action points set out here reflect matters arising from the consultations held with many stakeholders, and are not intended to exhaustively cover all action to be undertaken with respect to these areas, or all the areas where action needs to be taken. The intention here is to identify some key areas where action could initially be focused, thus providing fresh impetus and direction for the process of protecting the Seychellois consumer in an effective and coordinated manner in the light of evolving market conditions – and this will always remain work in progress. While it should be possible to quickly resolve issues relating to some of these areas, other issues will require more time, and some issues (such as importation and sale of unsafe/defective/mislabelled goods or the performance of complex services such as construction and housing, information and communication technologies, banking, or legal services) are likely to remain on the agenda indefinitely. As indicated above, balance will be maintained in tacklng issues with respect to goods and services.

4.2 Importation and sale of unsafe/defective/mislabelled goods

(a) The FTC will monitor international databases on product safety or defective products (such as those kept by the Australian Competition & Consumer Protection Commission, the EU Commission, the United States or the OECD) in consultation and collaboration with other governmental bodies in line with their respective areas of competence – including DICT for information and communication products, PHA for pharmaceuticals and food products, MEECC for energy-saving/sustainable development-related products, and SAA for agricultural inputs and supplies, including pesticides and chemicals. Depending on risk assessments made of whether such products have been or are likely to be imported, the FTC and/or the other competent bodies will request the SRC Customs Division to prevent such products from entering Seychelles. Such procedures will not derogate from existing procedures under the applicable legislation whereby SRC may, at its own initiative or the request of other governmental bodies, control importation of unsafe, defective, ineffective, mislabelled or counterfeit products.

(b) The FTC and these bodies will also intensify collaboration as appropriate to conduct inspections and ensure any unsafe or defective goods (as well as goods which do not have correct trade descriptions or labels, or explanatory leaflets in an understandable language, mis-packaged goods, expired or counterfeit goods, pharmaceuticals which are ineffective, low-quality or sold without import permits or used without following dosage or other requirements, food sold under insanitary conditions, etc.), are removed from sale on Seychellois markets. Where it comes to the attention of a governmental body in the course of its work that an enterprise is selling products which are unsafe, etc., this will be notified to other governmental bodies for whose work this could be relevant – in order, for instance, to verify this enterprise is not selling unsafe products of some other type.

(c) SBS will intensify its production and dissemination of voluntary and/or mandatory standards for products, processes and practices, its activities to sensitise enterprises and importers, and the monitoring of conformity with such standards with periodic review of their suitability. Where testing equipment is not available locally, SBS will look into possibilities for having samples of products tested overseas. SRC will continue to seek to ensure that products not complying with mandatory standards will not be imported. If they are still imported, SBS will, in line with the FTC/SBS MOU, assist FTC in investigating and ensuring removal of any non-compliant products on sale in Seychelles. SBS will also hold discussions with the SHTA on how to ensure products imported directly by hotels are safe.

(d) SBS will avoid setting out standards which are unnecessarily high and would result in removing low-cost options from the Seychellois market. Caution will also be exercised to avoid placing undue credence upon complaints received from enterprises seeking to exclude cheaper goods sold by competitors from the market. In collaboration with the TBTCOM, full conformity will be ensured with Seychelles' WTO obligations.

(e) Apart from cooperation on such individual cases, the FTC will strengthen consultations and cooperation with the above-mentioned government bodies through exchange of information and materials on issues and policies relating to consumer protection and on standards and standard-setting by the SLA, training for FTC staff on standards or other relevant issues, and education of consumers and enterprises on health, safety, and environmental issues and hazards.

(f) The FTC and other relevant bodies (including NATCOF) will further collaborate in advising the public and enterprises through the media or other means regarding such products, and warnings regarding them will be placed on the FTC websites, following the practice in such countries as Australia, Jamaica, Malta, or Papua New Guinea. Other relevant bodies will also place such warnings on their websites. Enterprises will upon request be provided assistance to avoid such issues when importing, including through advice on correct classification of imported products. Enterprises which persistently import or sell unsafe, defective, misclassified or mislabelled products, or fail to provide proper import documentation, or make misleading advertisements, will be flagged as high-risk and subjected to more inspections and possible enforcement of the CPA and/or other applicable legislation, in a proportionate and escalated manner.

(g) The above collaboration will take place pursuant to the existing MOUs between FTC and PHA and the FTC and NATCOF, as well as the MOUs which will be concluded between FTC and DICT, RC, SAA, SBS and TBTCOM, while collaboration will already be initiated pending conclusion of these MOUs.

4.3 Construction and housing

(a) Existing cooperation pursuant to the MOU between the FTC and the SLA will be strengthened. In collaboration with the FTC and the Land Surveyors Board, the SLA will review the conditions it places on business licences for building contractors, surveyors and architects to clarify their legal obligations vis-a-vis clients and that failure to meet such obligations will be sanctioned and could result in withdrawal of licences. The SLA will take into account information from the FTC that an applicant for a licence has contravened the CPA, in determining whether the applicant is a fit and proper person to hold a licence. The SLA will continue to send complainants who have experienced problems in the construction sector to the FTC. Where the FTC finds that complaints are justified, it will impose suitable sanctions and remedies upon the person concerned, and so inform the SLA for its consideration of whether to withdraw the business licence, taking into account the gravity of the matter and whether a repeat offender is involved.

(b) The PA, LSB and HFC will also refer to the FTC and SLA cases which come to their attention of contractors, surveyors or architects failing to fulfil their obligations and, to facilitate this, the FTC will conclude MOUs with LSB, PA and HFC. NATCOF will also participate in this exercise pursuant to its MOU with the FTC.

(c) The PA will strictly enforce applicable planning legislation in all cases where construction takes place without planning permission, or there is non-conformity with the conditions subject to which permission was granted. The PA will also examine options for reform of planning legislation, aimed at strengthening enforcement procedures and penalties in such cases.

(d) Detailed records and statistics will be kept by all these stakeholders of such cases, including types of problems experienced and the identity of persons against whom complaints are made and/or are determined to have contravened the law.

(e) The FTC will, in consultation with the AA, SLA, HFC, PA, LSB and NATCOF, undertake a market study of the construction sector (including building contractors, surveyors and architects). In the light of the results of this study, the FTC will, in consultation with these stakeholders and selected building contractors, elaborate a mandatory code of conduct for the construction sector.

(f) These initiatives will be publicized via the media and other means. Reminders will be provided that, under the CPA, a supplier of services is: obliged to perform in a timely manner or give timely notice of any unavoidable delay; perform the service in a manner and of a quality that persons are generally entitled to expect and, if he fails to do this, he shall at the direction of the consumer remedy any defect in the quality of the services performed or refund to the consumer a reasonable portion of the price paid for the service performed having regard to the extent of the failure; and is liable for any injury or damage caused to a consumer or other person.

(g) Large builders will be encouraged to set up adequate complaints handling mechanisms.

4.4 Information and communications technologies

DICT and FTC will rapidly finalize and implement the MOU being negotiated, and will further collaborate in:

(a) ensuring consistency between the CPA and the consumer protection provisions in any new IT/telecoms-related legislation to be adopted;

(b) with a view to adapting Seychelles' IT or telecoms policies and legislation in line with international recommendations or national good practice as appropriate, reviewing such material as the UNGCP's provisions on the protection of consumers using electronic and mobile commerce, prevention of fraudulent, misleading or unfair commercial conduct online, and consumers' privacy, as well as reports issued by ITU and UNCTAD;

(c) preparing and publicizing mandatory industry codes, in consultation with selected enterprises in the sector and with NATCOF, for each of the IT and telecoms sectors, covering such matters as truthfulness in advertising, information disclosure, clarity and fairness of conditions in standard contracts, respect for intellectual property rights and representations regarding provision of original software (in the case of IT), quality of service, reception of TV channels and picture quality, compensation for service outages, the scope and duration of warranties, after-sales service, etc.;

(d) publicizing these codes of conduct to both service providers and consumers;

(e) periodically reviewing these codes and their application, to update them in line with technological changes and the development within Seychelles of digital content or e-commerce, international trends and fresh challenges; and

(f) encouraging telecoms providers to set up adequate complaints handling mechanisms.

4.5 Financial services

(a) The CB and FTC will rapidly finalize their MOU with a streamlined content and will, in pursuance of this MOU, exchange information, consult, and collaborate in information campaigns, outreach activities and staff training. They will monitor and exchange information on relevant international recommendations or national good practice (such as those in the UNGCP on financial services, as well as guides issued by the Financial Stability Board and the CGAP/World Bank) to take them into account in any reform of Seychelles' banking legislation, as appropriate.

(b) The FSA and FTC will collaborate, in pursuance of their MOU and in consultation with the IA, and taking into account the G20 High-Level Principles On Financial Consumer Protection, to prepare a

mandatory industry code for the insurance industry in dealing with policyholders, reflecting the requirements of the CPA and the Insurance Act 2008 in an integrated manner and with more specificity and detail on such matters as information disclosure, truthfulness requirements or fairness of contractual terms. They will then publicize this code. The FSA and FTC will also keep under review the appropriateness of issuing in due course further industry codes covering other non-bank financial services, such as mutual funds.

4.6 Electricity

The SEC will consult with the FTC regarding any procedures or standards for quality of service submitted to the STC for approval by licensees or by the PUC, as well as any recommendation by the SEC on quality of service standards to be prescribed by the Minister with respect to the quality, reliability, efficiency, and economy of electricity supplied. The SEC will also explore with the FTC collaboration on information programmes for the consumer. Conformity with the UNGCP's provisions on consumer protection relating to electricity supply and utilities will be ensured.

4.7 Transport

In consultation with MFAT, the FTC will:

(a) request the SPTC to indicate on boards at bus stops, and to publicize in the media, that: commuters injured on/by SPTC buses or suffering damage to their belongings are covered under insurance, SPTC has an Accident Claim Procedure Guide and there is a Unit within SPTC to deal with injuries/damages; and, to handle customer complaints, SPTC has a Public Relations Office and a Hotline Service (giving the times these operate and the telephone numbers);

(b) request AS, as well as other airlines flying from Seychelles, to similarly publicize its situation regarding liability to passengers for injury or damage, and ensure conformity with the provisions in IATA's Core Principles On Consumer Protection that: passengers should have access to information on their legal and contractual rights and clear, transparent access to fare information, including taxes and charges, prior to purchasing a ticket; and airlines should employ their best efforts to keep passengers regularly informed in the event of a service disruption, and establish and maintain efficient complaint handling procedures that are clearly communicated to passengers;

(c) work with the SMSA to raise the maximum penalties prescribed for offences against the Merchant Shipping Act and the Control of Hire Craft Act, and to publicize any cases where offenders are caught and sanctioned;

(d) Coordinate with the CHA to ensure removal of any exclusion of liability clauses contained in standard form contracts used for car hire in Seychelles. Given their illegality under the Schedule to the CPA (read together with section 15 (4)) applicable to contracts not individually negotiated, such exclusions of liability cannot provide any defence to claims brought, but the deletion of such clauses will avoid wrong impressions in this regard. Media publicity will be provided on this.

4.8 Tourism

In the interests of improving the Seychelles tourism product (as provided for in the Seychelles Strategy 2017) and ensuring Seychelles maintains its brand name reputation as a quality tourist destination:

(i) the FTC will consult with the MT, STB, SHTA and selected DMCs regarding the CPA's provisions relevant to this area, in the context of conformity by Seychelles with the UNGCP's provision for improved consumer protection in the provision and marketing of goods and services related to tourism, travel and timeshares, including on information disclosure and the clarity and fairness of contractual conditions;

(ii) a mandatory industry code for the tourism industry will be elaborated;

(iii) the MT and STB will keep readily available data on numbers and nature of complaints received from tourists, and will refer such complaints to FTC for suitable action;

(iv) the FTC will enforce the CPA in this sector, in consultation with the MT and STB; and

(v) (v) a MOU will be concluded among the FTC, MET and STB to formalize such cooperation.

4.9 Screening of contractual practices

(i) The FTC will review standard form contracts used in different sectors, in collaboration with other competent Government bodies and other relevant stakeholders, to ensure that they are expressed in plain, intelligible language and do not contain the unfair clauses identified in the CPA. For instance, the FTC will: (a) coordinate with the SFA to ensure removal of the exclusion of liability clauses contained in contracts between the SFA and the captains of fishing vessels for installation and maintenance of VMS transceivers on these vessels; and (b) also coordinate with the STC to request it, when selling goods on a consignment basis, to clarify to customers buying such goods whether the consignor is solely responsible for repairs/replacement in case of defects, or whether the STC itself also would accept any responsibility.

(ii) The FTC will coordinate with NTB to ensure that consumer policy standards work alongside the requirements for procurement and tenders, thus further safeguarding the Government's interests when it acts as a buyer in the market-place.

4.10 Redress procedures

The following action will be undertaken:

(i) The FTC will publish information on its website and publicize on the media guidance to consumers regarding available recourse with respect to any consumer problems experienced.

(i) Such information will clarify to consumers that any enforcement action taken by the FTC or other governmental bodies would not prejudice their own right to bring cases before the courts for any loss or damage suffered, and, with the permission of the court, suits by different plaintiffs against the same defendant in respect of claims arising out of the same transaction or series of transactions may be consolidated.

(ii) With respect to complaints against legal practitioners, the FTC will hold discussions with the CJ and AG regarding what information should be provided to complainants regarding how they should proceed to obtain compensation for loss or damage suffered from actions or omissions of legal practitioners against whom disciplinary proceedings have been successfully brought, including whether a compensation order by the FTC would be appropriate for this purpose.

(iii) Given the difficulties experienced with formally serving documents upon persons against whom complaints are made, the FTC will consult with other Governmental bodies experiencing similar problems, and with the Registrar of the SC, to seek cooperative solutions to such difficulties.

(iv) In bringing complaints before the BOC, the FTC secretariat will not rely solely upon the information provided by the complainant, but will seek to anticipate and proactively obtain all additional information which could be required by the BOC.

(v) The BOC will seek to make its determinations regarding complaints on the basis of written evidence as a normal rule except that, in line with the FTCA: it may conduct a hearing if in its opinion, the person it intends to hear will be able to furnish any information required by the Commission, or if the

person it intends to hear will be affected by an investigation or a hearing; and it shall hear a person if the person has made a written request for a hearing showing that he is an interested party likely to be affected by the result of the investigation or hearing, or there are particular reasons why the person should be heard orally.

(vi) As required by section 41(1) of the FTCA, the FTC will issue rules of procedure to govern the conduct of hearings before it, including the issue of delays arising from frequent requests for adjournment. Where technical reports on survey and construction matters are required to help decide upon a case, the FTC will explore possibilities for consultation and collaboration with the PA.

(vii) In determining an appropriate penalty under the CPA, the BOC will explicitly indicate how this penalty is calculated, in line with the criteria set out in section 67(30) of the CPA, including whether it is a case of a repeat offender.

(viii) In consultation with the AG, designated FTC officers will be authorised to prosecute offenders for criminal offences committed under the CPA, with respect to failure or refusal to comply with a an order, direction, undertaking or compliance notice.

(ix) Rules of procedure will be issued on the exercise of rights of appeal to the AT, and the AT's practice and procedure.

(x) In deciding upon cases brought before it upon appeal, the AT will strive in its judgements to give full guidance to assist the BOC in its work.

(xi) There will be consultations among the FTC, the BOC and the AT to determine whether the existing quasi-judicial system for dealing with consumer issues (BOC and AT) with the possibility of appeal to the SC, is suitable for providing efficient, effective, fair, transparent and timely redress to consumers and to sufficiently deter anti-consumer action. Consideration will be given to whether matters could be improved by removing the deliberative powers of the BOC (while giving it administrative oversight functions, particularly with respect to the FTC's role under the above-mentioned NCP institutional mechanisms) and bringing cases directly before a consumer tribunal, with appeal to the SC.

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