



FOSTERING COMPETITION AND A FAIR MARKETPLACE 促進市場競爭及公平交易

The Council advised the Government and traders on various matters by way of in-depth studies regarding competition and trade practices in different sectors, as well as through consultation submissions¹⁰.

Block Exemption Regarding Certain Liner Shipping Agreements

The Council made a submission to the Competition Commission (the Commission) in response to a block exemption application submitted by the Hong Kong Liner Shipping Association (HKLSA). The application was in respect to certain liner shipping agreements, i.e. voluntary discussion agreements (VDAs) and vessel sharing agreements (VSAs). The Council noted a lack of solid evidence from overseas studies on any adverse effect in both tariff rates and service quality in the liner shipping market due to the withholding of a block exemption. Therefore, the Council suggested the Commission take a cautious approach and deny the exemption, unless quantitative evidence could be put forward by the HKLSA demonstrating clearly, the economic benefits accruing from maintaining the arrangements found in the subject VSAs.

The Commission, later published a block exemption order in respect of VSAs for 5 years, subject to certain conditions. The exemption order did not cover VDAs, on the basis that it was not demonstrated that the relevant VDA activities meet the terms of efficiency exclusion.

本會深入研究不同議題，包括不同行業的競爭及營商手法，向政府及業界提供意見，並就各政策諮詢作出回應¹⁰。

若干定期班輪協議之集體豁免命令申請

就香港定期班輪協會向香港競爭事務委員會（競委會）提交的集體豁免申請，本會作出回應。該集體豁免申請的相關班輪協議包括「自願討論協議」及「船舶共用協議」，本會注意到，海外研究並沒有實質證據顯示，任何競爭法執法機構因拒絕向船舶公司發出集體豁免而對貨櫃船航次服務收費和相關服務質素造成負面影響。因此，本會建議除非該協會能提出實質數據證明維持「船舶共用協議」或類似協定能帶來特定的經濟利益，否則，競委會應採取審慎態度，對申請不予以豁免。

及後競委會公布了一份為期5年的「建議集體豁免命令」，列明需符合的特定條件。由於相關的「自願討論協議」行為，在同樣情況下並不符合提升整體經濟效率的豁免條件，因而不包括在該豁免命令內。

10 See Appendix 8 for the list of submissions during 2016-17. 於2016-17年度本會提交的意見書一覽表見附錄八。



The Council is a leading advocate for fair competition and good trade practices in the marketplace. In that pursuit, the Council undertakes research and studies of various aspects of market behaviour to ensure that consumers stand on responsible trade practices and a level playing field in their dealings with the traders. These all are conducive to ensuring better prices, broader choices and a higher quality of products and services.

作為公平競爭及良好營商手法的倡議者，本會深入研究不同的市場行為，確保消費者在負責任的營商手法和公平的營商環境下，與商戶交易，最終有助為消費者帶來更相宜的價格、更多的選擇，以及更優質的產品和服務。

Auto-fuel Price Monitoring

The Council addressed public concerns about the continuous decline in international crude oil prices while there was no equivalent reduction in local auto-fuel pump prices. The Council in its “2016 Auto-fuel Price Monitoring Report” revealed that the gap between the average price of imported auto-fuel and pump prices widened. Given no substantial increment in major cost of doing business items such as land costs for petrol filling service stations was found, the Council concluded that the trend served to disadvantage consumers, while likely increasing profits for oil companies.

The report also found that unless consumers paid special attention to various promotion details, the best discounts might elude them. The Council based its conclusion on the fact that discounts offered by the oil companies were complex and difficult for consumers to grasp. In this regard, the Council recommended the oil companies replace the current complicated discount offers with direct price reductions.

The Council also urged the Government to enhance market information disclosure, by publishing more data frequently on imported auto-fuel prices, and making available related trend analysis and the cost structure reports of the oil market. This would help the public to understand and monitor the fluctuation of fuel prices more clearly.



車用燃油價格監察

公眾關注國際原油價格持續下跌，但本地車用燃料價格未有相等幅度的下調。為跟進有關問題，本會發表了「2016年車用燃油價格監察報告」，揭示汽油平均進口價和牌價之間的差距進一步擴大。鑒於未有發現油公司在各項主要成本，例如油站地價等，有顯著增加的跡象，本會認為有關趨勢不利消費者，反之油公司則有機會賺取更豐厚的利潤。

報告同時發現，除非消費者格外留神各項宣傳細節，否則未必能享用最高的折扣優惠。歸根究底，油公司所提供的折扣優惠非常複雜，消費者難以掌握各項細節。因此，本會建議油公司直接下調牌價回饋消費者，以取代目前繁複的優惠折扣。

此外，本會亦促請政府增加市場資訊的披露，透過發布更多、更頻密的數據如車用燃油進口價、相關趨勢分析及燃油市場的成本結構報告，協助公眾了解和監察燃油價格的波動。

Online Retail Shopping

The Council conducted an in-depth study, entitled “Online Retail – A Study on Hong Kong Consumer Attitudes, Business Practices and Legal Protection”. The intent was to find ways to improve online shopping experiences and enhance digital security and consumer rights. The study covered results from a survey of consumer experiences and their satisfaction with online retail sales. Complaints received by the Council concerning online retail sales and sales practices were examined. The study also reviewed legislative changes made in other jurisdictions, in line with the ongoing development of online retail.

The consumer survey suggested that though the prevalence of online retail in Hong Kong was lower than in other comparable economies, the level of satisfaction of users was high. For those who had not tried online purchase, worry about leakage of personal data, no confidence in the product quality and lack of knowledge about online purchase were the key deterrent factors. Analysis of traders’ conduct and performances suggested that online retail transactions were markedly different from on-street ones. Online retail sales often had more stakeholders in the chain, leading to higher complexity in dispute resolution if it arises.

The Council’s review of overseas legal practices suggested that some jurisdictions had introduced mandatory rights of return, to allow consumers a short period to return goods. Mandatory information requirements had also been introduced in some overseas jurisdictions, requiring that online traders displayed certain information prior to the consumer’s purchase. Online dispute resolution was becoming more available in North America and Europe, but yet to be developed in Asia.

The Council made some important recommendations to businesses, calling for improvements in customer services, information disclosure and compliance with regulatory requirements. The Council also suggested that the Government consider new legislations which would include a statutory right of withdrawal, regulation of information disclosures in online sales, and

clarifications of the rights and protections for digital content products. Making reference from overseas experience such as the European Union, the Council put forward a series of recommendations to the Government and the business sectors to mitigate the problems and to foster a fairer online marketplace to consumers.



網上消費

本會深入調查網上消費，並出版主題為「網上消費—香港消費者態度、營商手法及法律保障的研究」報告，藉此尋求方法改善網上消費的經驗、提升電子交易的保安及消費者權益。此研究包括一項有關消費者在網上消費的經驗及滿意程度的意見調查，同時分析本會曾接獲有關網上消費及銷售手法的投訴個案，探討其他地區因應網購發展而在法例上作出的改變。

該項消費者意見調查顯示，雖然香港的網上消費較其他地區發展得較慢，但消費者對其滿意程度頗高。至於從未嘗試網上購物的受訪者則指出，主要障礙是擔心個人資料外洩、對產品質素缺乏信心，和欠缺網上消費的知識。而從商戶銷售行為及表現分析顯示，網上消費與實體商店截然不同，由於網上的銷售鏈中往往牽涉較多持份者，因而增加了調解消費爭議的複雜程度。

本會亦檢視了海外的相關法例，發現某些司法地區已經引入退貨的法定權利，讓消費者可於短時間內退貨。此外，有部分司法地區的法例要求網上商戶必須在消費者付款前向其展示指定的資料。另北美及歐洲亦已有機制解決網上消費糾紛，然而亞洲地區仍有待發展。

本會呼籲網上零售商戶加強改善客戶服務、資訊披露，及遵守現行法律下的規定。同時建議政府考慮訂立新法例，包括取消交易的法定權利、規管網上銷售的資料披露，以及闡明有關購買數碼內容產品的權利和保障。參考海外如歐盟的經驗，本會向政府及業界提出連串建議以減輕網上交易的相關問題，為消費者建立一個更公平的網上交易市場。

為醫療美容服務引入新規管制度

隨著2012年一所美容院發生靜脈輸液事故，以及其他涉及消費者安全及健康風險的致命或永久創傷事件，加上眾多涉嫌有問題的銷售手法，本會深入研究香港的醫療美容服務，形式包括電話訪問、街頭訪問、聚焦小組討論、以至由本會職員喬裝消費者作出查詢，並搜集海外司法地區的相關規管模式。

此項研究題為「醫療美容服務的消費保障 - 引入新規管制度」，報告揭示了因本港現時欠缺「醫療美容」的清晰定義和全面性監管，以致業內充斥着大量問題。潛在的問題涉及多個層面，包括產品及服務的內在風險、醫療儀器的監管、從業人員的資歷、銷售手法的認證要求、資訊披露，以至申訴機制等。

New Regulatory Regime for Medical Beauty Services

Following a scandal and tragic consequences related to intravascular infusion at a beauty centre in 2012, and other cases affecting consumers' safety and well-being, including dubious sales practices, the Council conducted an in-depth study on medical beauty services in Hong Kong. The study was carried out through consumer research, including telephone surveys, on-street interviews and focus group discussions, market enquiries by Council staff posing as consumers, and desktop research into the regulatory approaches that were being taken in selected overseas jurisdictions.

The study, entitled "Consumer Protection of Medical Beauty Services – A New Regulatory Regime" revealed a host of problems besetting the industry, due to the absence of a clear definition of what constitutes a "medical beauty" service and the lack of comprehensive regulatory oversight. Potential problems spread over a wide spectrum, ranging from inherent risks involved in products and services, to control over medical devices; to qualifications of staff, accredited sales practices; and information disclosure to aid a complaints resolution mechanism.

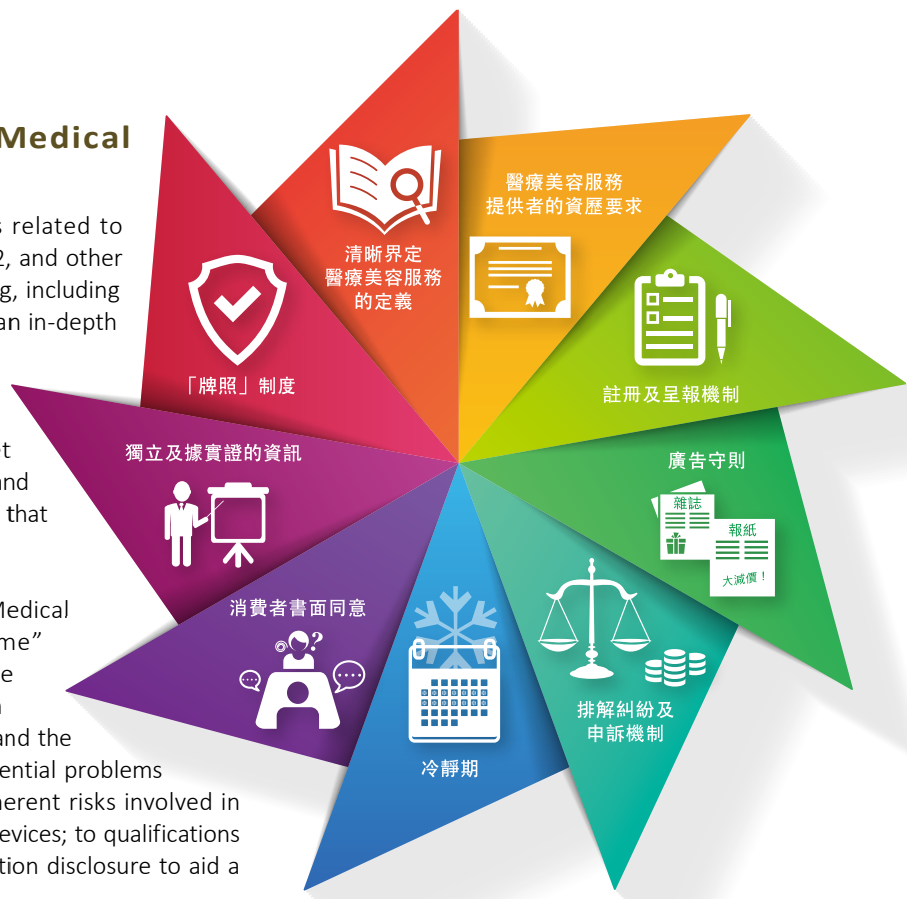
The Council also found that over 90% of users surveyed during consumer research were firmly supportive of Government action enhancing regulatory oversight in respect of the usage of the medical devices, qualifications of the industry practitioners and the sales practices, etc.

The strong desire and expectation of improvement in both the quality and safety of "medical beauty" services from consumers prompted the Council to make recommendations that the Government give consideration to introducing new legislation. The recommendation called for clear definition of the elements that constitute "medical beauty" service, and the establishment of a licensing system to strengthen the regulation of service standard, to regulate the use of treatment devices and facilities, together with oversight of marketing practices and information disclosure.

Review of the MTR Fare Adjustment Mechanism

The Council submitted its views to the Transport and Housing Bureau's consultation on the Review of the MTR Fare Adjustment Mechanism. The Council noted that the current approach to the Fare Adjustment Mechanism was transparent and simpler than other alternative approaches such as rate of return. The Council however recommended that the Government and the MTR Corporation Limited should determine a better productivity factor, keep the public informed of the key financial data and allowing public engagement in the negotiation process, and to introduce new, key performance indicators to improve the service quality. For example, the mechanism could take into account the frequency of service disruption and incorporate customer satisfaction into the service performance evaluation.

Compared with other jurisdictions, such as Singapore, the existing affordability gap in Hong Kong failed to take into account the incremental effects of fare increases on the transportation expenditures of passengers in different districts, who might have different Median Monthly Household Income. The Council urged the Government to adopt a more geographically orientated approach to establish the average public transport user profile in Hong Kong and design a mechanism more closely to monitor fare affordability for the public.



同時，相關消費者調查顯示，超過90%受訪用家認同政府應從醫療儀器、從業員資格及銷售手法等多方面加強監管。

鑑於消費者對改善「醫療美容」的質素和安全性存在強烈訴求，本會促請政府考慮引入新法例，包括清晰界定構成「醫療美容」服務的元素、建立一個牌照制度以加強規管服務水平、管制相關儀器和設施的使用，以至規管推銷手法及資料披露。

檢討港鐵票價調整機制

本會就檢討港鐵票價調整機制向運輸及房屋局提交了意見，指出現時的票價檢討機制較其他替代做法(如管制回報率機制)更簡單和具透明度。然而，本會建議政府與港鐵可在檢討機制上加入一些新元素，包括訂立更佳的生产力元素、向公眾發布重要財務數據及讓公眾參與商議過程，以及引入新的表現指標以改善服務質素，例如將服務受阻頻率和乘客滿意度納入服務表現評估中。

相比其他國家如新加坡，現時香港採用的負擔能力上限，並沒有考慮票價增長為不同地區乘客所帶來的影響，然而，不同地區的乘客之家庭入息中位數可能有別。本會促請政府採取一個以地區為本的做法，找出香港公共交通乘客的概況，以設計一個更準確評估公眾負擔能力的票價機制。

Regulatory Framework for Medical Devices

In its submission to the Panel of Health Services of the Legislative Council, the Council expressed support for the Government's proposed regulatory framework for medical devices. The intention was to impose compulsory registration of medical devices, licensing of traders, and a requirement that adverse incidents be reported. The plan also sought to set controls for specific medical devices.

Nevertheless, the Council considered that there were additional issues to be deliberated to provide greater protection to consumers in the use of medical devices in cosmetic treatments. For example, the Council suggested that existing devices which may be parallel-imported or copycat devices should be included under the pre-market controls. There should also be guidelines for exit arrangements for traders, as well as for re-sale of medical devices. A licensing approach should be applied to service providers. For effective implementation of post-market controls, there should be clear enforcement guidelines and deterrent sanctions in place. For control of usage, all users including registered healthcare professionals should be mandated to acquire the necessary skills and expertise to use the devices correctly. The Council also called for a clear definition on "home-use" devices.

Medical Registration (Amendment) Bill 2016

The Council welcomed the legislative proposals for amending the "Medical Registration Ordinance" intended to increase lay participation in the Medical Council of Hong Kong (MCHK) and its committees. Further recommendations called for change in MCHK's complaint investigation and disciplinary inquiry mechanism; and extension of terms of registration for medical practitioners with limited registration from not exceeding 1 year to not exceeding 3 years.

Concerning the threshold of public membership, the Council recommended that the proposed ratio of lay people at 25%, should be reviewed from time to time and be increased further.

Asset Management Regulation and Point-of-sale Transparency

The Council provided views to the Securities and Futures Commission on proposals to enhance asset management regulation and point-of-sales transparency.

To enable better understanding among investors, of relevant risks and exposures to market funds, the Council supported proposals requiring fund managers to make disclosure to investors of information relating to securities lending, repurchase agreements, similar over-the-counter transactions and risk management policies. The Council also welcomed to state clear in the requirement that fund managers must act in the best interests of clients, when deciding whether or not to aggregate house orders with client orders.

醫療儀器的規管架構

本會向立法會衛生事務委員會提交意見書，支持政府建議的醫療儀器規管架構。建議主要包括規定醫療儀器必須強制註冊、對貿易商設立牌照制度、在發生醫療事故時訂立呈報機制，以及對特定醫療儀器設立使用管制。

雖然如此，本會認為政府應進一步考慮加強消費者在使用醫療儀器進行美容程序時的保障，例如在推出市面前的管制中，應涵蓋現時在市面已使用、包括平行進口（即水貨）及複製的醫療儀器。另亦應在註冊貿易商撤離市場及轉售醫療儀器時的安排訂立指引，及對醫療儀器使用者設立牌照制度。為讓各項規管得以有效落實，相關監管部門應設有明確的執法指引及具阻嚇力的違規懲處措施。在使用管制方面，所有使用者包括已註冊的專業醫護人員，均必須具備正確使用醫療儀器的相關技能及經驗。除此之外，本會希望當局能清楚訂明「家用」醫療美容儀器的定義。

2016年醫生註冊(修訂)條例草案

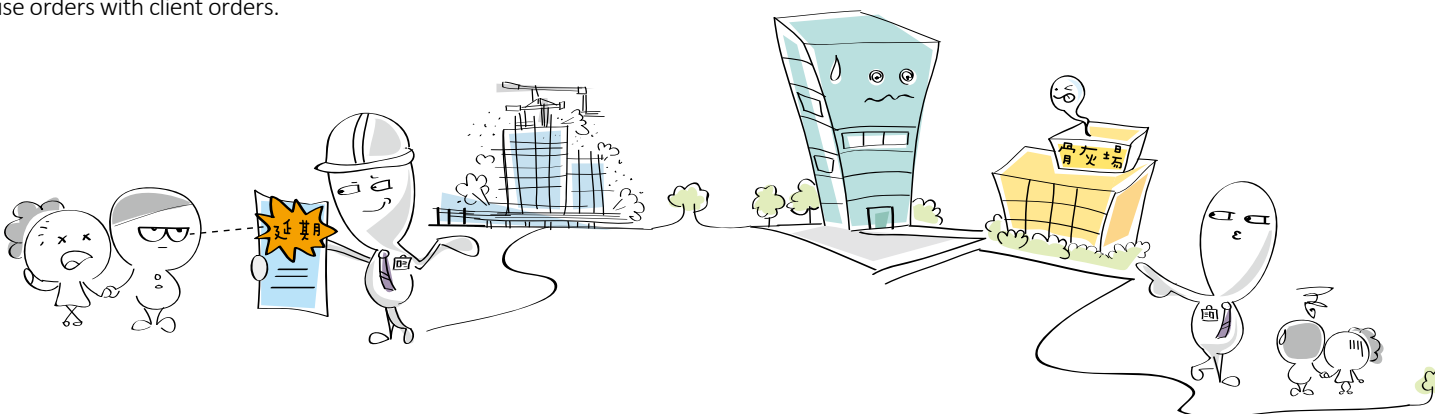
本會歡迎修訂《醫生註冊條例》的立法建議，委任更多業外人士參與醫務委員會(醫委會)及其屬下委員會的工作。其他建議包括改善醫委會投訴調查及紀律研訊機制，並將有限度註冊醫生的註冊年期由不多於1年延長至不多於3年。

關於業外委員的數目，本會認為現時25%之建議比例應不時檢討，最終進一步增加。

資產管理業之規管及銷售透明度

本會就加強資產管理業規管及銷售透明度的建議，向證券及期貨事務監察委員會提供意見。

為令投資者對基金相關風險承擔和投資回報有更佳理解，本會支持要求基金經理就證券借貸、回購協議、場外交易及風險管理作出披露。本會亦歡迎在準則要求中清楚訂明，基金經理在決定是否集合公司買賣盤與客戶買賣盤時，必須根據客戶的最佳利益行事。



Whilst supporting proposals for restricting use of the term “independence” and for enhancing disclosure requirements on receipt of non-quantifiable monetary benefits in relation to sales, the Council added that the enhanced disclosures should be made at the onset of the investment recommendation or solicitation process.

Industry Code of Practices

In encouraging business and professional associations to establish codes of practice for enhancing service quality and consumer protection, the Council has collaborated with different industries, to review and develop relevant codes of practices.

Following the release of the Code of Practice for the Laundry Industry in July 2015 and the subsequent establishment of an independent Complaints Review Committee by the industry, the Council has worked with the Hong Kong Jewellers & Goldsmiths Association and the Kowloon Pearls Precious Stone, Jade, Gold and Silver Ornament Merchants Association. These efforts are structured toward a clear code of practice for the jewellery retail sector and promotion of self-regulation.

Sales of First-hand Residential Properties

Despite the fact that the “Residential Properties (First-hand Sales) Ordinance” (the Ordinance) came into effect 3.5 years previously, the Council has, from time to time, continued to receive complaints about the sales of first-hand properties, especially in arrangements arising from delayed completion.

Under the existing Ordinance, the estimated completion date for a development, specified by the developer in the sales brochure and advertisements may be extended. The Council was of the view that, in face of delayed delivery of any development and extra expenditures for consumers, amounting to tens to hundreds of thousand dollars, consumers were placed in a disadvantage, since they could do nothing but wait for the vacant possession date announced by the developer.

References were drawn from overseas examples for giving further protection to purchasers. For example, the right for purchasers to refuse an extension request from developers in the event of delays and the dispute resolution mechanism to handle the matter have been embraced in some jurisdictions. In addition, the Council urged the monitoring of disclosure on unconfirmed information and related sales tactics, to prevent the possibility that consumers may be misled. There was a further proposal to regulate developers, requiring that they clearly disclose their responsibilities in the property management and arrangements of common facilities and services.

Regarding the estimated completion date, the Sales of First-hand Residential Properties Authority updated the relevant advice note which required developers to state in the sales brochures the possible reasons for granting an extension of completion date and that there may be more than once of such an extension.

本會亦支持限制使用「獨立」或其他有類似意思用語的建議，及加強與交易有關但不能量化的收益披露，本會進一步認為有關披露應在提出投資邀請或建議時作出。

行業營商守則

為鼓勵營商者及專業團體制訂營商守則，以提升服務質素及加強對消費者的保障，本會與不同行業合作，審視和訂立相關行業的實務守則。

繼2015年7月推出了《洗衣業營商實務守則》及之後成立的洗衣業獨立投訴審查委員會，本會再與香港珠石玉器金銀首飾業商會和九龍珠石玉器金銀首飾業商會合作，共同制定一份清晰的珠寶零售業營商守則以推廣行業自我規管。

一手住宅物業的銷售

《一手住宅物業銷售條例》（《條例》）施行至今已3年半，然而，本會仍不時接獲有關一手樓銷售的投訴，尤其是有關發展商處理延期交樓時的安排。

現時《條例》容許發展商把在售楼說明書及廣告內所提供的預計完工日期延期，本會認為面對發展項目的延誤，消費者動輒要承擔數萬元或數十萬元的額外開支，完全處於被動的不利位置，只能等候發展商通知交吉日期。

本會認為監管當局應參考海外的例子，以加強買家保障，例如在一些海外地區，買家有權不接受發展商的延期要求，然後交由當地調解糾紛機制處理。除此之外，本會亦促請當局監管業界披露未落實資訊和宣傳銷售手法，避免消費者被誤導。同時，要求發展商清楚披露其在物業管理方面的責任，及有關公共設施和服務的安排。

就預計完工日期方面，一手住宅物業銷售監管局其後更新相關指引，要求發展商在售楼說明書內述明法例下可批予延期的原因及可多於一次批予延後的情況。

