

CONSUMER PROTECTION (FAIR TRADING) BILL CONSULTATION PAPER

INTRODUCTION

1 The need for consumer protection legislation has been the subject of discussion in Parliament on a number of occasions. In response to the discussions, and representations by CASE, the then Senior Minister of State for Trade and Industry, Mr Peter Chen proposed in Parliament on 8 March 2001 that a task force co-led by CASE and MTI be formed to study the need for a fair trading act in Singapore.

2 The Task Force was formed in March 2001, and comprised members from the government promotion and regulatory agencies, the private sector and business associations. MTI has studied the report of the Task Force and has accepted substantially its recommendations. A draft Consumer Protection (Fair Trading) Bill ('draft Bill') has been prepared.

3 MTI invites comments from the public on a draft Consumer Protection (Fair Trading) Bill.

GUIDING PRINCIPLES

4 The draft Bill is based on the following guiding principles:

a *Protect the small consumer* – The primary focus of the draft Bill is to protect small consumers who lack the expertise or resources to protect themselves against unfair practices.

b *Minimise regulatory compliance costs* – It is not in the interests of either traders or consumers to have a regime which creates onerous burdens on traders, or which binds them with a host of regulations. Amongst traders, those who engage in unfair trade practices are a minority. It will be unfair to impose undue regulatory costs on the majority who do carry out ethical business practices. It would also be bad for consumers, for such costs will in the end be passed back to them.

c *Not to penalise traders but to hold them accountable* – Unethical trading conduct of sufficient seriousness to warrant criminal sanction, such as false labelling, unlawful confinement, touting, intimidation and cheating have already been criminalised in existing legislation in the Penal Code and the Miscellaneous Offences (Public Order and Nuisance) Act. As

such, the draft Bill will focus on holding traders accountable for unfair trade practices by making them liable for civil restitution.

d *Increase information available to consumers* – The principle of *caveat emptor* has been a key cornerstone of commercial transactions and should remain so. Nevertheless, it is recognised that a stronger degree of disclosure on the part of traders may be needed for the benefit of small consumers. Traders may withhold material information about goods and services from consumers or put out misleading information to raise their bargaining power. This limits consumers' ability to make sound purchasing decisions. To improve market transparency in such instances, a greater burden should be placed on traders to disclose relevant information to consumers.

e *Empower consumers by providing recourse to civil remedies* – Consumers who encounter unfair practices should be empowered to obtain civil remedy themselves, without having to rely on or wait for the government's protection. Besides allowing for quick redress, this approach of self-reliance will encourage greater consumer responsibility and pro-activity.

5 The draft Bill will complement existing consumer protection legislation such as the Consumer Protection (Trade Description and Safety Requirements) Act, which prohibits false trade descriptions, and requires that goods carry informative markings and comply with safety requirements.

6 An evolving approach will be taken in developing consumer protection. Immediate needs would be consumer education and the development of alternative dispute resolution mechanisms. This will allow for more fine-tuned and balanced improvements. It will give consumers time to become more aware of their rights and to become more savvy in their purchases. It will also give businesses time to improve their standards.

APPLICATION OF THE ACT

7 The draft Bill applies to consumer transactions or proposed consumer transactions involving goods and services, as defined in s 2. By virtue of s 3 and the First Schedule, it does not apply to any consumer transaction or proposed consumer transaction involving the purchase of residential property. Such transactions are already extensively governed by conveyancing law and related legislation. The draft Bill also does not apply to financial investments which are regulated by specific legislation administered by the Monetary Authority of Singapore.

8 The draft Bill does not apply to transactions where the value of the goods and services exceeds \$20,000. The intent of the draft Bill is to protect consumers who lack the expertise or resources to protect themselves. Consumers of expensive goods and services are in less need of the protection offered by the draft Bill. They tend to be more sophisticated. They have more financial resources, and are able to get legal advice before entering into the transaction, as well as pursue different ranges of legal remedies to enforce their rights. Further, by making it easier to bring civil claims against traders, the draft Bill imposes costs on businesses. Such costs should be limited to situations where it is truly necessary for consumer protection.

FRAMEWORK OF THE DRAFT BILL

9 Section 4(1)(a) of the draft Bill states that it is an unfair practice for a supplier, in a consumer transaction or proposed consumer transaction involving goods or services, to either:

- (a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim;
- (c) take advantage of a consumer if the person knows or should reasonably be expected to know that the consumer –
 - (i) is not in a position to protect his or her own interests; or
 - (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or proposed transaction or any matter related to the transaction; or
- (d) do anything specified in the Second Schedule, which contains a list of 20 unfair practices.

10 Most of the representations which could constitute an unfair practice are generally spoken as opposed to written. The general rule of evidence is that the court will only consider terms set out in the written contract. It will disregard terms which are not in the written contract, such as spoken representations. Section 14 allows spoken representations to be considered by the court, even if it contradicts the written contract.

11 A consumer who has suffered loss as a result of an unfair practice may bring an action in the Small Claims Tribunal or the Subordinate Courts against a

supplier. Where the court finds that a supplier has committed an unfair practice, it may under s 7 of the draft Bill, amongst other things, order the return of any money or property given by the consumer.

12 In considering the appropriate order to be made, the court shall under s 7(2) of the draft Bill, consider whether the consumer has made a reasonable effort to (a) minimise any loss resulting from the unfair practice; and (b) resolve the dispute with the supplier before commencing the action. Factors to be taken into consideration under s 7(2)(b) will include whether the consumer has seen the supplier about the unfair practice, and whether efforts have been made to resolve the dispute by way of alternative dispute resolution mechanisms such as mediation.

13 Under s 9 of the draft Bill which deals with limitation periods, a consumer must bring proceedings no later than two years from the date of the 'last material event on which the proceedings are based'. In most circumstances, this will mean that the consumer must bring an action within two years of the occurrence of the unfair practice. The usual limitation period for contractual claims under the Limitation Act is six years. A shorter limitation period of two years is proposed to allow for greater finality in consumer transactions.

14 A cooling off period of 3 days (excluding Saturday, Sunday and Public Holidays) is proposed for door to door sales and time share sales. This will provide consumer protection for transactions where there are often complaints of high pressure tactics. The draft regulation on cooling off period is enclosed for comments.

MODE OF CONSULTATION

15 MTI seeks public feedback on the draft Bill. Written comments may be sent through the following means:

Email : MTI_CPFTA@mti.gov.sg

Normal mail : Ministry of Trade and Industry
100 High Street #09-01
The Treasury
Singapore 179434

Fax : 6332-7260

16 All submissions should be made before 15 November 2002. Submissions received by MTI may be made available to the public unless confidentiality is expressly requested.