

CONSUMER PROTECTION (FAIR TRADING) BILL

2nd CONSULTATION PAPER

INTRODUCTION

1 Public consultation was conducted on a draft Consumer Protection (Fair Trading) Bill from 18 October to 15 November 2002. MTI has reviewed the feedback received from the Consumer Association of Singapore (CASE) and other members of the public and proposes to make further changes to the draft Bill.

2 This paper highlights certain of these changes that have been made and invites comments from the public on them.

GUIDING PRINCIPLES AND FRAMEWORK OF THE DRAFT BILL

Guiding principles of the Draft Bill

3 In making the changes, MTI was guided by the same principles on which the draft Bill is based:

- 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 suppliers or consumers to have a regime which creates onerous burdens on suppliers, or which binds them with a host of regulations. Amongst suppliers, those who engage in unfair 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 suppliers 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 such as the Consumer Protection (Trade Descriptions and Safety Requirements) Act, the Penal Code and the Miscellaneous Offences (Public Order and Nuisance) Act. As such, the draft Bill will focus on holding suppliers accountable for unfair practices by making them liable for civil restitution.
- d *Increase information available to consumers* – The principle of *caveat emptor*, which has been a key cornerstone of commercial transactions, remains. Nevertheless, a stronger degree of disclosure on

the part of suppliers is needed for the benefit of small consumers. Suppliers 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 will be placed on suppliers to disclose relevant information to consumers.

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

4 An evolving approach will continue to be taken in developing consumer protection. MTI will work closely with CASE to educate consumers and encourage the development of alternative dispute resolution mechanisms. Such an approach will allow for more fine-tuned and balanced improvements. Consumers will have time to become more aware of their rights and to become more savvy in their purchases; and businesses, time to improve their standards.

Framework of the Draft Bill

5 While the framework of the draft Bill also remains unchanged, the provisions have been further clarified and new provisions allowing voluntary compliance agreements and injunctions have been added to strengthen and improve the framework.

6 The draft Bill will apply to consumer transactions involving goods and services as defined in s 2, except for certain excluded transactions listed in the First Schedule. It applies to consumer transactions involving the rental of residential properties but not to the purchase of such property. The Bill will also not cover transactions and activities already regulated by specified legislation administered by the Monetary Authority of Singapore or certain other government agencies (generally, those relating to investment products or financial services).

7 Under s 4 of the Bill, it is an unfair practice for a supplier, in relation to a consumer transaction-

- (a) to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim;
- (c) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer –

- (i) is not in a position to protect his own interests; or
- (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; or
- (d) without limiting the generality of paragraphs (a) to (c), to do anything specified in the Second Schedule.

8 A consumer who has entered a consumer transaction involving an unfair practice may bring an action against a supplier under s 6 in the Small Claims Tribunal (subject to its jurisdictional limits) or other courts. Under s 7, where the court finds that a supplier has committed an unfair practice, it may (amongst other things) order the return of any money or property given by the consumer or award the consumer damages for any loss of damage suffered by the consumer because of the unfair practice. In considering the appropriate order to be made, the court must consider whether the consumer made a reasonable effort to minimise any loss resulting from the unfair practice and resolve the dispute with the supplier before commencing the action.

KEY CHANGES TO THE DRAFT BILL

9 As announced in Parliament in March this year, the draft Bill will allow claims up to \$20,000 instead of being applicable to transactions where the value of the goods and services does not exceed \$20,000. Besides this change, there are a number of other amendments to provide more clarity for both consumers and suppliers as well as to afford better consumer protection:

- (a) ***Claims will now be allowed so long as the goods and services are obtained “otherwise than exclusively in the course of a business” by the consumer, subject to the \$20,000 cap on the value of claim – s 2, 6, 7***

This means that the scope of coverage under the Bill includes any goods and services that may have been purchased for dual purposes i.e. both business and non-business usage; however, relief will only be available for the latter as the intent of the Bill is to protect consumers. Hence, while a consumer may commence an action relating to an indivisible good used for dual purposes (for example, a car used for business and private transport or a computer used for business and private purposes) or to services provided for dual purposes (for example, air travel on a business-cum-leisure trip), the court may apportion the use of goods and services between business and non-business purposes and grant relief only for the latter;

- (b) ***Proof of loss will not be required for a consumer to commence action so long as he enters 'a consumer transaction involving an unfair practice' – s 2, 6, 7***

This means that proof of loss will only be needed for award of damages by the court and will not be needed for situations where other remedies, like restitution, are sought. This is in recognition of the fact that there may be circumstances where it would be difficult for a consumer to prove loss¹ as a result of an unfair practice, and that proof of loss is not relevant for certain remedies other than damages²;

- (c) ***Declaration and Injunction– s 9***

This provision allows CASE to apply to court for a declaration and injunction against a supplier engaging or likely to engage in unfair practices. This is in response to calls for tougher action against errant suppliers, especially those that have been the subject of numerous complaints by consumers. The intention is to restrain such suppliers from further engaging in unfair practices against other consumers;

- (d) ***Provision for voluntary compliance agreement (VCA) – s 8***

This provision allows CASE to offer an alternative for errant suppliers before the suppliers face an injunction application from CASE in court. A VCA is a voluntary agreement between CASE and the supplier, whereby the supplier agrees not to engage in an unfair practice. The supplier is free to turn down the option and instead face the injunction application in court.

The Bill also provides for publicity for declarations and injunctions granted and for the VCA undertakings by the supplier, or by CASE. The intention is to inform other consumers and enhance the deterrent effect for other suppliers; and

- (e) ***Reduction of the limitation period for claims to one year from two years – s 11***

As most claims are expected to be brought to the Small Claims Tribunal which has a one-year limitation period, the period has been aligned accordingly. This will also give more certainty to all, especially for transactions involving goods with a relatively shorter shelf life

¹ Difficulty of proving loss arises when the 'loss' suffered consists only of injured dignity, emotional outrage or other intangible losses.

² For example, a consumer may be deceived by a supplier holding a bogus 'closing down' sale. The consumer might have purchased a good product below the market price from the supplier. Despite not having suffered actual loss, the consumer should have the right to restitution (i.e. get refund for his purchase) if he wishes since the supplier had engaged in an unfair practice.

10 The draft Regulations for cancellation of timeshare and direct sales contracts have also been amended to provide greater clarity in the process and information requirements. The cooling off period of 3 days (excluding Saturday, Sunday and Public Holidays) remains unchanged.

MODE OF CONSULTATION

11 MTI seeks public feedback on the changes to the draft Bill and Regulations as highlighted above. Where feasible, parties should identify the specific sections of the draft Bill and Regulations on which they are commenting. Parties that choose to suggest revisions to any of the sections of the draft Bill and Regulations should clearly indicate the way in which their proposals differ from the provisions in the draft Bill and Regulations and provide a reasoned explanation for their proposed revisions.

12 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 : 6338-3782

13 All submissions should be made before 12 noon, 31 July 2003. Submissions received by MTI may be made available to the public unless confidentiality is expressly requested.