

ANNUAL REPORT 2006



NCCC

NATIONAL CONSUMER COMPLAINTS CENTRE



NCCC annual REPORT 2006

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About NCCC

The National Consumer Complaints Centre (NCCC) is a centre established by the Education and Research Association for Consumers Malaysia (ERA Consumer Malaysia) and The Selangor and Wilayah Persekutuan Consumer Association with the cooperation of the Ministry of Domestic Trade and Consumer Affairs. The NCCC was officially launched by the Minister of Domestic Trade and Consumer Affairs, in July 2004.

Vision

To be an independent and respected organisation which provides a mechanism for consumer complaints and counseling to resolve problems arising from the purchase of goods and services.

Mission

To provide consumers with an objective and timely resolution of disputes, claims and complaints with regard to their purchase of goods and services.

Objectives

- Guiding consumers in finding solutions to problems related to the purchase of goods and services;
- Empowering consumers with information on consumer related matters;
- Facilitating consumers in filing claims and complaints against errant goods and Service Providers;
- Highlighting consumers' concerns in the media

Message



NCCC annual REPORT 2006



As Chief Executive Officer of the National Consumer Complaints Centre (NCCC), I am pleased to present our inaugural report on consumer complaints handled for the year 2006. Although the NCCC was established in mid 2004, this report represents our first comprehensive report in the service of consumers, specifically in assisting them to resolve the myriad of problems resulting from their purchase of goods and services

It is also heartening to note that in 2006 a total of 18,345 consumers from all walks of life from across the country have shown confidence in us by referring their problems to the NCCC and utilizing its guidance and counseling services.

Throughout my years of involvement as a consumer activist, I have come to realize that consumer complaints counseling has been a severely neglected area. There are very few

instances where such services exist in the public sector. Some business organizations have established consumer complaints units in their departments mainly to resolve problems concerned with purchase of their goods and services. The majority of Non Government Organizations (NGO's) do not have the resources to offer such complaints counseling services due mainly to financial constraints. As a result, many consumers especially those in the rural heartland have no one to turn to for advice and counseling when faced with problems connected with their purchase of goods and services.

With globalization gaining pace in the world economy, the opening up of several sectors in the local economy to competition has increased several benefits to consumers' in the market place. However, at the same time, they have been exposed to new forms of fraud and manipulation. In the aggressive promotion of the free market economy and economic liberalization, the rights and interests of consumers are often overlooked. Various factors have caused the imperfect functioning of markets in developing countries. As such, consumers are often left with little choice but to obtain goods and services in an environment of price manipulation and short supply. Additionally, in order to secure quick profits local traders are not averse to misleading and manipulating consumers thus giving rise to numerous consumer problems.

A pressing need therefore is needed for the setting up of a professional center with well trained staff that could offer guidance and counseling to consumers facing such problems. The challenge of establishing such a centre was taken up by the Education and Research Association for Consumers Malaysia (ERA Consumer Malaysia) and The Selangor and Wilayah Persekutuan Consumer

Association. Valuable financial support was provided by the Ministry of Domestic Trade and Consumer Affairs and the NCCC was launched in 2004. The NCCC thus functions as a referral centre where consumers can seek help including legal advice concerning consumer problems.

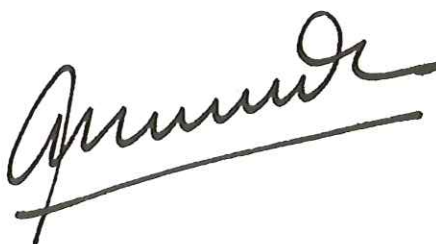
It is important that while consumer complaints are being handled professionally by the NCCC, an annual report should also be published to bring such complaints to the attention of industry and the enforcement agencies regarding the types of problems faced by consumers. This feedback will in turn help industry to identify areas of consumer dissatisfaction and lead to improvements in their products and services. Enforcement agencies on the other hand will benefit from this feedback in terms of revising policies, procedures and regulations which impact on consumers. This information also provides FOMCA with an opportunity to advocate policy changes in the relevant areas.

There is an urgent need for the government to handle a number of pressing consumer issues. Firstly due to the ever increasing prices of goods and services there is a need to establish a PRICE TRIBUNAL. Secondly an UNFAIR CONTRACT TERMS ACT is long overdue to protect consumers from unfair contract terms especially in standard form contracts. Thirdly it is important to promote fair trade to reduce artificial supply shortages, monopolies and price fixing by introducing a FAIR TRADE ACT. Fourthly the numerous types of credit and interest rates must be standardized by implementing a CONSUMER CREDIT ACT. Finally the Ministry of Domestic Trade and Consumer Affairs must revamp its ENFORCEMENT DIVISION. Enforcement officers need to be properly trained so that they are competent and able to understand and

enforce all consumer laws under the ministry. A PROSECUTION UNIT with competent legal personnel needs to be set up in the enforcement division.

A common problem with the majority of government enforcement agencies is to act only when complaints are lodged. The law also requires that proactive and preventive action to be taken to 'prevent' the offences from occurring in the first place. This therefore requires the preemptive monitoring of the areas of activity of the business sector where offences can commonly occur. One example is the need to monitor the existence of numerous advertisements in the media which tend to confuse and mislead the consumer.

I am confident that the National Consumer Complaints Centre will continue to serve the cause of consumers in the country in years to come and help raise the level of consumer awareness and protection in Malaysia. In addition we will also endeavor to make the annual NCCC report beneficial and relevant to both the public and private sectors as regular feedback for improvements in goods, services and delivery systems.



DATUK MARIMUTHU NADASON
President
Federation of Malaysian Consumer
Associations (FOMCA)



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2006

Introduction



The NCCC Annual Report 2006

The First Annual Report of the National Consumer Complaints Centre (NCCC) for the year 2006 contains a review and analysis of all consumer complaints which were lodged with it throughout the year. These complaints cover numerous areas of consumer grievance. To make this report meaningful and manageable the total complaints received have been coalesced to form categories of similar subject matter. A 'cut-off' figure of 300 complaints of a similar nature was used to select similar type complaints to form a 'complaint category'.

As can be noted from Table 1, a total of 18,345 complaints were received by NCCC for 2006. NCCC has sorted the total complaints received into 23 categories in descending order with the most number of complaints totaling 1,578 in the 'housing' category to the least number of complaints totaling 331 complaints in the 'satellite television' category. Each of the 23 categories of complaints has been analyzed and presented in greater depth in the section on 'category reports'. Each category report begins with an 'introduction', followed by 'consumer issues'; 'the law where applicable' and ends with 'recommendations'.

There are two annexures dealing with two important issues, namely the Tribunal for Consumer Claims and misrepresentation

Purpose of the NCCC Report

The purpose of the report is inform and provide feedback to all the relevant parties involved so that they may take note of the complaints and institute suitable remedial measures within their respective areas of responsibility.

Clearly, companies looking to remain profitable and relevant in a highly competitive environment will have to look at attaining operational excellence by delivering better goods and services to the satisfaction of the consumer. The crucial cutting edge is the extent to which industry understands consumer needs and is able to respond effectively to consumer complaints and feedback. This is where the NCCC Report would play its crucial role.

Consumer complaints and feedback have been analyzed and formatted into sector wide reports which would be useful reference material for industry and other organizations seeking to improve not only the quality of their goods and services but also the delivery systems.

Methodology

The majority of Malaysian consumers feel that someone else should solve their problems. This is not the primary function of NCCC. Instead it serves to empower consumers so that they can solve their own problems. The consumer is encouraged to first try and solve the problem that has arisen. Lead information on how to go about solving the problem may be obtained from the NCCC.

Consumers are encouraged to copy all communication with the individual trader or organization as the case may be to the NCCC office. This is important, because the information filed with the NCCC in the form of complaints, correspondence and feedback enables it to gather valuable data, which could be used for future policy advocacy. Where the consumer fails to address or solve the problem on his own, the NCCC will then step in to provide assistance in seeking a solution.

Currently consumer complaints and counseling is handled independently at the state level by State Consumer Associations which are affiliated to FOMCA. The National Consumer Complaints Centre (NCCC) however, handles all complaints which are referred to it by consumers from throughout the nation. Consumer complaints are referred to NCCC by telephone; letters and facsimile; email and through the NCCC website. A substantial number of consumers also visit the NCCC located at the FOMCA office in Bangunan SKPPK, Jalan SS/9A/17, Petaling Jaya.

Consumer Complaints Handling and Counseling

Each complaint received by the NCCC is logged into a database system. Important information about the complainant such as age, gender and race is collected. Complaints are then classified into two main categories



namely complaints on goods and complaints on services. The specific nature of the complaint and the organization involved is noted down to facilitate investigation.

The NCCC then counsels the complainant by making him aware of the nature of his complaint, the implications arising from the complaint, the various alternative dispute resolution methods available to him and the legal action that he can take should he be so inclined. The existence of the in-house legal team in NCCC greatly facilitates counseling the complainant on legal remedies.

The NCCC begins its work by investigating the complaint and issues an official letter within 48 hours of the complaint being lodged requesting the organisation involved to resolve

the dispute. A period of 14 days is allocated for the organisation to provide a response. If there is no response received reminders are sent out three times, each with a further period of seven days for a reply. Should the organization refuse to respond, the NCCC proceeds with the second step in forwarding the complaint to the relevant regulatory authority. If this too fails to resolve the dispute, then NCCC advises and assists the complainant in filing his claim with the relevant alternative dispute resolution mechanism. Should the complainant prefer to file a legal claim against the organization concerned, NCCC's in-house legal team will assist the complainant in taking this action.

If the complainant, after being guided by the NCCC to handle his problem is successful in solving the problem, he/she is encouraged to inform NCCC of the solution achieved which is then recorded against the complaint lodged. The NCCC on its own volition promotes Alternate Dispute Resolution Mechanisms which are available to the consumer because they are speedy, cheap and fair compared to the cost and time involved in litigation.

In this manner the NCCC since its inception has successfully enhanced the lives of consumers and it hopes to change the way business is done. While it is an accepted fact that businesses and consumers should exist in harmony, businesses are expected to conduct their affairs morally and ethically with the interests of consumers as their top priority.

Statistics on Consumer Complaints 2006

1. Number of Complaints Received

No. Category	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1 Housing Developers	69	79	98	128	185	142	114	118	124	152	226	143	1,578
2 Direct Sales	125	165	95	139	69	150	114	108	134	111	139	150	1,499
3 Private Higher Education	88	108	95	75	108	158	154	64	89	115	125	274	1,453
4 Property Management Companies	177	106	97	107	100	107	104	115	134	74	104	100	1,325
5 Telecommunications	75	82	99	92	123	179	112	148	99	83	106	99	1,297
6 Defective Products	32	95	84	97	173	102	86	45	74	74	97	73	1,032
7 Cheap Sales	160	99	75	66	49	42	160	74	97	76	59	46	1,003
8 Public Transport	44	99	65	118	98	109	36	81	54	73	64	84	925
9 Financial Institutions	55	48	54	51	50	62	69	64	71	102	101	82	809
10 Hypermarkets	60	58	53	76	64	84	74	45	74	94	64	54	800
11 Hire Purchase	50	55	73	55	68	54	56	42	79	56	55	60	703
12 Misleading Advertising	49	82	28	81	28	88	66	39	36	74	35	78	684
13 Time Share Facilities	64	35	64	64	49	84	54	43	34	54	29	70	644
14 Maid Agencies	52	48	50	48	52	35	52	48	50	48	52	35	570
15 Electricity Supply	40	33	33	48	80	70	22	25	31	53	51	64	550
16 Fitness Clubs	40	50	49	35	79	62	39	48	32	46	41	26	547
17 Pawn Broking	46	37	54	60	40	55	38	56	40	26	20	20	492
18 Insurance	20	42	37	67	53	66	22	32	31	51	41	26	488
19 Legal Services	45	56	70	34	36	69	21	14	23	31	18	25	442
20 Food	40	33	30	37	36	42	36	34	34	48	33	38	441
21 Travel & Tour Agencies	30	35	43	25	39	26	25	22	37	45	26	29	382
22 Water Services	25	58	29	38	24	69	5	18	19	24	21	20	350
23 Satellite Television	10	14	8	20	16	0	13	16	25	64	64	81	331
Total													18,345

Table 2 Ethnicity of Complainants

No.	Race	Total	%
1	Malay	12,402	67.6
2	Chinese	4,315	23.5
3	Indian	1,459	8.0
4	Others	169	0.9
Total		18,345	100

Table 3 Channels Used for Lodging Complaints

No.	Channel	Total	%
1	Walk-In	2,620	14.3
2	Letters/ Facsimile	3,976	21.7
3	Phone Call	7,323	39.9
4	Email	2,662	14.5
5	Website	1,764	9.6
Total		18,345	100

Table 4 Proportion of Complaints Handled by NCCC and those Channeled to Other Organizations

No.	Organization	No. of Complaints	%
1	Tribunal for Consumer Claims	2,076	11.3
2	Financial Mediation Bureau	435	2.4
4	Public Sector Bodies	2,110	11.5
5	National Consumer Complaints Center	13,724	74.8
Total		18,345	100

Summary Of Consumer Complaints By Category

HOUSING DEVELOPERS

- | No. | Types of Complaints |
|-----|----------------------------|
| 1. | Booking fee |
| 2. | Late Delivery |
| 3. | Abandoned housing projects |
| 4. | Shoddy Workmanship |
| 5. | Misleading Advertisements |

DIRECT SALES

- | No. | Types of Complaints |
|-----|---------------------------|
| 1. | Coercion |
| 2. | Nuisance |
| 3. | Inducement Selling |
| 4. | Telemarketing |
| 5. | Non-Performance and delay |
| 6. | Lack of information |
| 7. | Issues with transactions |
| 8. | Cooling-Off Period |

PRIVATE HIGHER EDUCATION

- | No. | Types of Complaints |
|-----|--------------------------------|
| 1. | Misleading Advertisements |
| 2. | Misleading Promotions |
| 3. | Misrepresentation |
| 4. | Unrecognized twinning programs |
| 5. | No LAN accreditation |
| 6. | MLVK |
| 7. | Unqualified Lecturers |
| 8. | Lack of Facilities |
| 9. | Issues on Refunds |
| 10. | Business Orientated |

PROPERTY MANAGEMENT

No.	Type of Complaint
1.	Unsatisfactory services
2.	Expensive service charge
3.	Disruption of water by management office/company
4.	No accountability/transparency in accounts
5.	Strata Titles application not done within time

TELECOMMUNICATIONS

No.	Types of Complaints
1.	Misleading Promotion
2.	Deposit Refunds Not Performed
3.	Misleading Advertisements – Telco's & Content Providers
4.	Misrepresentation Agents
5.	Untrue prepaid card
6.	Unsatisfactory Services
7.	Unethical Debt Collection
8.	Unsatisfactory Services - Streamyx
9.	Inefficient reply to the customer's complaints
10.	Spam SMS charges

SUB-STANDARD PRODUCTS

No.	Types of Complaints
1.	Warranties
2.	Rejection of goods
3.	Delay in repairs
4.	Unavailability of spare parts
5.	Product safety

CHEAP SALES

No.	Types of Complaints
1.	Misleading Advertisements
2.	Cheap Sale Guidelines not Followed
3.	Safety Standards of Products Sold
4.	Products not of Merchantable Quality
5.	Misleading Promotions

PUBLIC TRANSPORT

No.	Types of Complaints
1.	Frequency of Service
2.	Impolite/rude driver
3.	Unsatisfactory Condition of Vehicles
4.	Reckless driving
5.	Lost of luggage
6.	Passenger dropped earlier than intended destination
7.	Bus delayed the time of departure
8.	Expensive fares
9.	LRT overcrowded
10.	Taxi's not using meters
11.	Touting for Passengers

HYPERMARKETS

No.	Types of Complaints
1.	Misleading Advertisement
2.	Misleading Promotion Materials
3.	Sale of Expired Products
4.	Misleading Indication of Price
5.	Uncertified Products Sold
6.	Bad Customer Service / Complaint Resolution
7.	Misleading Indication of Product Weight
8.	Unsafe Products

FINANCIAL INSTITUTIONS

No.	Types of Complaints
1.	Hidden Charges
2.	Misleading Advertisements
3.	Misleading Promotions
4.	Unfair Loan Agreements
5.	Bad Customer Service – Untrained Staff
6.	Unlawful release of Information to 3 rd Parties
7.	Lack of Information
8.	Unlawful withdrawals from ATM
9.	Excessive Interest
10.	Unethical Debt Collection
11.	Cash Deposit Machines
12.	Complaints pertaining to Cheques
13.	Hire Purchase
14.	Unlawful Auction of Property

HIRE PURCHASE

No.	Types of Complaints
1.	Failure to Inform Hirer of Financial Obligation
2.	Hidden Cost
3.	Deposit Ruling
4.	Misrepresentation
5.	Late Delivery
6.	Defective Vehicle
7.	Half Cut Joint Car
8.	Unethical Vehicle Repossession
9.	No choice of insurance company
10.	Made to Sign Empty Hire Purchase Agreements

MISLEADING ADVERTISING

No.	Types of Complaints
1.	Misleading Advertisements

TIME SHARE FACILITIES

No.	Types of Complaints
1.	Time Share Resale Fraud
2.	Misrepresentation by Agents
3.	Misleading Advertisements
4.	Misleading Promotions
6.	Membership Exceeds Facilities Available
7.	Provision of Direct Sale Act 1993 not followed

MAID AGENCIES

No.	Types of Complaints
1.	Untrained maid
2.	Failure in following the rules on charges / unlawful charges
3.	Illegal Maid
4.	Medically unfit Maid
5.	Runaway maid
6.	Unlawful house maid taken from employer
7.	Misrepresentation as to the marital status and age of maid by agent
8.	Cancellation of agreement with agency – refusal of returning deposit paid
9.	Employer not provided with copy of agreement
10.	Excessive charges in process of replacing maid
11.	One sided agreements

ELECTRICITY SUPPLY

- | No. | Types of Complaints |
|-----|--|
| 1. | Billing Disputes |
| 2. | Overcharge |
| 3. | Bad Customer Service |
| 4. | Damage Caused By High Voltage |
| 5. | Tenants Bill Dispute |
| 6. | Overcharge due to the defects of meter |
| 7. | Frequent Power Disruption |

FITNESS CLUBS

- | No. | Types of Complaints |
|-----|--|
| 1. | One Sided Agreements |
| 2. | Agreement with no Exit Clause |
| 3. | Unsatisfactory Services |
| 4. | Lack of facilities / Facilities of Low Quality |
| 5. | Inexperienced Trainers |
| 6. | Misrepresentation by Sales Agents |
| 7. | Misleading Advertisement / Bait Advertising |
| 8. | Misleading Promotions |

PAWN BROKING

- | No. | Types of Complaints |
|-----|---|
| 1. | Unlawful Auction of Pledges |
| 2. | High Interest Rates |
| 3. | Items Skimmed |
| 4. | Issues on Compensation due to Theft or Fire |

INSURANCE

No.	Types of Complaints
1.	Misrepresentation by Agents
2.	Fraud by Agents
3.	Unfair Claims Settlement
4.	Unreasonable Delay In Settling Claims
5.	Lack of Professionalism
6.	Lack of Information

LEGAL SERVICES

No.	Types of Complaints
1.	Negligence
2.	Acting Contrary to Clients Instructions
3.	Excessive Fee
4.	Contingency fees
5.	Wrong Advice
6.	Misplacement of documents
7.	Non appearance in court
8.	Delay in issuing cost to client
9.	Misappropriation of Funds Belonging to Clients
10.	Touting
11.	Pressuring Clients into Settlement
12.	Failure to Refund Cost Awarded by Court

FOOD

No.	Types of Complaints
1.	Foreign Object in Food
2.	Expired Product
3.	Unhygienic Premises
4.	Adulterated Food
5.	Misleading Advertisement
6.	Lack of Information

TRAVEL AND TOUR AGENCIES

No.	Types of Complaints
1.	Last minute cancellation
2.	Misleading Indication of Price
3.	Misleading Advertisement
4.	Hidden Charges
5.	Lengthy period in returning cancellation deposits
6.	Change of Itinerary at Destination

WATER SUPPLY SERVICES

No.	Types of Complaints
1.	Dispute as to Bills
2.	Polluted water
3.	Defects on road due to works on water supply
4.	Back dated bills
5.	Water Interruption without proper notice

SATELLITE TELEVISION

No.	Types of Complaints
1.	Too Many Advertisement
2.	Service Interruption During Rain (Rain Fade)
3.	Excessive Repetition of Programs
4.	Monthly Magazines not delivered although billed
5.	Dispute on Bills
6.	Bad Customer Service
7.	Lack of Information
8.	Unfair Charges

Report On Housing Developers



1.0 Introduction

Housing is an area where many consumers have been shortchanged. The number of housing developers has mushroomed over the years and the lack of monitoring and enforcement by the Ministry of Housing and Local Government has resulted in many consumers suffering losses at the hands of some of these unscrupulous developers.

The NCCC received a total of 1578 complaints in this category for 2006. The following are the main problems faced by consumers with regard to housing developers.

2.0 Consumer Issues

2.1 Booking fee

Normally when there is a launch of a scheme of housing development, developers would hold promotional activities to market their houses. Should a particular person be interested to purchase such property they would be asked to pay a booking fee to lock in sale. There are many instances where prospective buyer would later change their

mind and would want to cancel their intention to purchase the said property. Most of the time developers would refuse to refund the booking fee paid mentioning that deposits are not refundable. Many consumer believing that to be true would not pursue the matter further oblivious to the fact that the law does not allow the collection of booking fees. If such fees have been collected they should be returned unconditionally to the purchasers.

Housing Developers (Control And Licensing) Regulations 1989

According to Regulation 11 (2) "No housing developer shall collect any payment by whatever name called except as prescribed by the contract of sale". In this instance a contract of sale would necessarily mean the Sale & Purchase Agreement. It is therefore illegal for any developer to collect any fees before the signing of the Sale & Purchase Agreement.

Even after the signing the sale & purchase agreement, the purchaser may terminate it by virtue of Regulation 5(3) of the above regulations which states that "if the purchaser fails to obtain a loan due to ineligibility of

income and has produced proof of such ineligibility to the vendor, the purchaser shall then be liable to pay to the vendor only 1% on the purchase price and the agreement shall subsequently be terminated. In such an event the vendor shall, within 21 days of the date of the termination, refund the purchaser the balance of the amount paid by the purchaser”.

For all complaints regarding such refunds the NCCC has recorded a 100% success rate.

2.2 Late delivery

This is a common complaint that the NCCC has been receiving from house buyers. Late delivery means, where a developer fails to complete the housing project and to handover the houses to the buyers within the stipulated time as set out in the Sale and Purchase Agreement.

Under the Housing Developers (Control & Licensing) Regulations 1989 when a developer delays in completing a housing project, the developer must pay liquidated damages to the purchaser. Despite the requirement under the law, there are many developers who refuse to pay late delivery compensation to the purchaser.

Regulation 23 (2) provides for the time for delivery of vacant possession where it states that “if the vendor fails to deliver vacant possession of the said building within the stipulated time limit, the vendor shall be liable to pay to the purchaser liquidated damages from day to day at the rate of 10% per annum of the purchase price from the expiry date of the delivery of vacant possession of the said building.

Regulation 23 (4) states that “for the purpose of claiming any liquidated damages in the

Tribunal for Homebuyers Claims such claim shall be made not later than 12 months from the date of issuance of the certificate of fitness for occupation; or the expiry date of the defect liability period”

2.3 Abandoned housing projects

This a very serious and reoccurring problem faced by Malaysian property purchasers. Housing projects are not completed due to a number of reasons including scams. In such cases the developer who cannot continue construction absconds leaving innocent purchasers with housing loans to be settled with the financial institutions. In most cases the developers would have wound up the companies and disappeared.

Although this problem has persisted for many years and affected countless consumers through the nation, the authorities are either unwilling or unable to apprehend the culprits, preferring to leave it as a matter of contract and for the consumers to pursue legal action. Of late the authorities have tried to revive some of the abandoned projects to help house buyers. Other than this approach the build and sell concept has been promoted to overcome this problem but there has been little interest shown by developers. In a society where everyone is required to carry an identity card and all businesses need to be registered, the inability of the authorities to protect house buyers is baffling.

2.4 Shoddy workmanship

Shoddy workmanship and the use of sub-standard material has also been a great problem facing consumers who purchase new houses from developers. Part of the reason

lies in the need to cut costs, maximize profits and provide for 'leakages' at various stages. It is not uncommon for purchasers to be faced with numerous defects on taking possession of their houses. The 18 month defects liability period is often spent getting a reluctant developer to remedy the defects in the property.

Housing Developers (Control And Licensing) Regulations 1989

Regulation 26 states that "Any defect, shrinkage or other faults in the said building which shall become apparent within a period of 18 months after the date of purchaser takes vacant possession of the said building to which water and electricity supply are ready for connection to the said building, and which are due to defective workmanship or materials or the said building not having been constructed in accordance with plans and description as specified in the 2nd and 4th schedule as approved or amended by the appropriate authority, shall be repaired and made good by the vendor at its own expenses within 30 days of its having received written notice thereof from the purchaser and if the said defect have not been made good by the vendor, the purchaser shall be entitled to recover from the vendor the costs of repairing and making good the same and the purchaser may deduct such costs from any sum which has been held by the vendor's solicitors as stakeholders for the vendor"

Further on Clause 2 of the said regulation states that "the purchaser shall, at any time after the expiry of the said period of 30 days, notify the vendor of the cost of repairing and making good the said defect, before the commencement of the works and shall give the vendor an opportunity to carry out the works himself within 14 days from the date

the purchaser has notified the vendor of his intention to carry out the said works."

2.5 Misleading Advertisements

Most consumers rely on advertisements for information before purchasing property. They have often complained that advertisements put out by developers in the local media were misleading and often compounded by marketers. Artistic impressions in brochures are often misleading and stated land use in the house project is later changed without consulting those who have purchased property in such locations.

Housing Developers (Control And Licensing) Regulations 1989

Regulation 5 to 9 governs advertisements. Regulation 5(2) states that "an application for an advertisement and sale permit shall submit his application and shall supply the following information : a copy of the approved building plans, 2 copies of the proposed advertisement including the brochure containing particulars as prescribed under Para (1) of regulation 6 and such other relevant particulars or information as may be required by the controller"

Regulation 5(3) states that "any misleading statement, false representation or description of the particulars above shall be an offence under these regulations"

Although there are regulations governing advertisements, The NCCC has continues to receive reports on misleading advertisements by developers. No developer to date has yet faced prosecution for publishing misleading advertisements.

3.0 Recommendations

- 3.1 The Ministry of Housing and Local Government should upgrade its enforcement capability and demonstrate to the people that it is capable of dealing with unethical housing developers.
- 3.2 The Minister of Housing and Local Government should use the sweeping powers at his disposal under S11 of the Housing Development Act 2001 to protect house buyers.
- 3.3 To overcome problems faced by consumers in the housing industry, it is time that the government seriously enforces a compulsory build-then-sell (10:90 variant) concept.

Report On Direct Sales and Scratch-Win Scams

1.0 Introduction

Direct selling has given rise to a range of serious and recurring consumer problems. The volume of calls received by NCCC on direct selling indicates that it is a major problem for consumers. In 2006 a total of 1499 complaints were lodged. Complaints lodged included those against time-share and scratch and win scams.

2.0 Consumer Issues

2.1 Coercion

High pressure sales techniques are widely used in direct selling. Consumers have been "forced" into purchasing unnecessary and low quality items in order to remove the seller from their homes. Sales people manipulate other friends and family members present to pressure the target into a purchase. The intrusion of a seller into the home is also a security issue which many consumers have raised.

2.2 Nuisance

Considerable nuisance can be caused by the intrusion of direct selling into people's homes. For many consumers the door knocking, the telephone calls, the endless stream of "literature" in the mailbox is a nuisance.

2.3 Inducement selling

Inducement selling involves the practice of offering prizes or "lures" to entice a buyer into a purchase. Such methods are common in the scratch and win scams. Typically, the consumer is visited or contacted by phone and told they have won a prize. To collect the prize



the consumer is pressured to purchase an item from the sellers catalogue. Usually sub-standard electronic items are offered.

Consumer Protection Act 1999 (CPA)

Scratch and win scams commonly violate S.14 of the CPA which provides that "no person shall offer any gifts, prize or other free items, with the intention of not providing it or with the intention of not providing it as offered". Scratch and Win proprietors lure consumers with gifts and prizes but such gifts and prizes are never delivered. These companies with immediately abscond after sales.

2.4 Telemarketing

Telemarketing is another form of direct sale aimed at consumers. Normally prizes are offered to lure the unsuspecting consumers and once these vulnerable consumers reach the shop, all types of products are offered. Pressure is mounted onto the consumer and products are sold. This method is also popular

among those selling hotel club memberships and time sharing memberships. Consumers often feel cheated because promised benefits are usually difficult to obtain. Consumers are also deceived into purchasing time sharing memberships on the promise of free vacations.

2.5 Non-performance and delay

Non-performance of the contract and delay in delivery of products purchased are some of the most common problems reported by consumers. Usually the consumer is cheated where the deposit is taken but the promised goods are not delivered and often the seller's address and contact number turn out to be false. This problem is also common in relation to mail order selling.

2.6 Lack of Information

In direct selling the lack of appropriate information appears to cause great concern and frustration for consumers. The main problems reported by consumers can be summarized as follows:

- misleading or inadequate description of the seller;
- misleading or inadequate description of the product;
- misleading or inadequate description of the terms of supply (including prices, credit, and delivery terms);
- contract terms which fail to meet legal requirements (e.g., concerning warranties, credit terms, rights to cancel).

Consumer Protection Act 1999 and Trade Description Act 1972.

Misleading Information and false description of product is governed by S10 of the Consumer Protection Act and S 3 of the Trade Description Act 1972.(TDA). S3 of the TDA clearly states that "any person who, in the course of a trade or business, applies false trade description to any goods or supplies or offers to supply any goods to which a false trade description is applied, shall be guilty of an offence.

2.7 Issues with Transactions

In direct selling transactions consumers are often asked to pay in advance of delivery of product or service.

Direct Sales Act 1993

S25 (4) of the Direct Sales Act clearly states that "no vendor or other persons shall accept any money or other consideration from a purchaser under a contract made under this Act before the expiry off the cooling-off period" but in all direct sale transactions the deal is often completed and payment collected within the first meeting itself.

2.8 Cooling-off period

This is a very important consumer protection provision. Cooling-off periods allow consumers an opportunity to reconsider their purchasing decisions. They are particularly appropriate for door to door sales and telemarketing where the consumer decides to buy in response to heavy sales pressure or on a sudden impulse. A major concern raised by consumers is the lack of notice given by sellers about cooling-off periods.

Direct Sales Act 1993 (DSA)

S23 of the Direct Sales Act 1993 (DSA) provides that "a contract in respect of a door-to-door sale for the supply of goods or services having such value as may be prescribed (RM300 and above) and a contract in respect of a mail order sale, shall be in writing, shall contain immediately above the place provided for the signature of the purchaser the statement "THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD TEN WORKING DAYS" and printed in upper case in type not smaller than 18 point Times and shall be signed by both the vendor and the purchaser"

Further on, S25 (4) DSA states that "no vendor or other person shall accept any money or other consideration from a purchaser under a contract made under this Act before the expiry of the cooling-off period" and S25 (5) DSA states that any contravention of this section shall be an offence.

3.0 Recommendations

- 3.1. To reduce the problems caused by direct selling, Direct Selling Associations should enlist the majority of direct selling companies as members to ensure that they follow ethical trading principles and have internal redressal systems.

- 3.2 There is a need for greater regulation of the direct selling market. The current Direct Selling Act 1993 does not provide enough protection for consumers. It merely provides regulations within which the industry should operate. It is high time that the provisions protecting consumers are incorporated in the Direct Sales Act 1993.

- 3.3 Enforcement has been seriously lacking in this area. The Ministry of Domestic Trade and Consumer Affairs should step up their enforcement and prosecute companies which violate the provisions of the Act.

Report On Private Education

1.0 Introduction

In 2006, the National Consumer Complaints Centre (NCCC) recorded 1453 complaints against private higher education institutions in the country. With the increasing demand for higher education, business oriented educational organizations have proliferated. The resulting scramble for students has resulted in these institutions making pledges which they later fail to honor due to a number of reasons. This has led to consumer dissatisfaction and complaints.



2.0 Consumer Issues

2.1 LAN Accreditation/Recognition by Public Services Department (PSD)

The non-accreditation of courses and the lack of recognition by PSD were among the main consumer grievances. Upon enrollment student are told that the courses which they were enrolling into were accredited by LAN and they were also recognized by the Public Services Department (JPA) for employment purposes only to later find out that there was no accreditation or recognition. When a student learns about this fact and wants to withdraw, these colleges would refuse to refund the fees already paid.

2.2 Twinning Programs

There were also complaints on twinning programs conducted by these private colleges, which eventually turned out to be ones which were not recognized by the Government. This has resulted in many frustrated students discovering, after a few years studying abroad, that their expenses and efforts were all wasted. Education has also become a very lucrative

business in Malaysia. The quality of twinning programs is also questionable. There were also complaints about the lack of details and explanation provided by the colleges regarding the courses available and provided to the students and certain general lack of consideration for the students' needs and interests.

2.3 Misrepresentation and Deceptive Advertising

Private Higher Education Act 1996

Misrepresentation and deceptive advertising has also been a problem. S 73 and S74 of the Private Higher Education Act 1996 (Advertisement Guidelines) makes misleading advertisements an offence where the offender could be imprisoned for 6 months and fined RM50,000 or both. Although there are strict provisions available, complaints indicate that students are misled into believing that a particular institution is well equipped, employs qualified lecturers, offers courses which are approved by the "Jabatan Perkhidmatan



Awam”, when this is not true. Institutions commonly advertise facilities, which usually do not exist.

2.4 Inadequate Facilities and Premises

The Trade Description Act 1972

Premises in which the Institutes’ operate in are often inadequate and in poor condition and do not provide for a suitable learning environment. Students are misled into believing that adequate facilities are available.

S15A of The Trade Description Act 1972 would be applicable in such situations. It states that “it shall be an offence for any person in the course of any trade or business to make a statement which he knows to be false, recklessly make a statement which is false or make any statement which is likely to deceive or mislead and person as to any of the following matters, that is to say inter alia:

- i. the provision in the course of any trade or business of any services, accommodation or facilities;
- ii. the nature of the services, accommodation or facilities provided in the course of any trade or business
- vi. the rates or charges for any service, accommodation or facilities so provided.

2.5 Lack of / Misleading Information on Courses

Students complain that marketing officials at colleges provide false or misleading information on courses offered. In some cases information is suppressed from the attention of prospective students. Relying on information provided by these officials, students enroll by paying enrollment fees and deposits. On discovering that information provided is

inaccurate students decide to cancel their enrollment. In such cases the college forfeits the fees the students have paid.

2.6 Unqualified Lecturers

There were complaints received that lecturers at some of these institutions were unqualified. Currently there is no minimum academic requirement conditions placed on lecturers who teach at colleges. Students further complained that these lecturers were also inexperienced and there is frequent change of lecturers. Many complained that it was not uncommon for lecturers to leave midway during semesters and new lecturers appointed. This change of lecturers frequently disrupts classes.

3.0 Recommendations

- 3.1 Part XII of the Private Higher Education Act 1996 (Advertisement Guidelines) provides powers to the Registrar General to inspect Institutes of higher learning registered under the Act. The Registrar General should interview students randomly to ascertain whether an educational institution is providing satisfactory service. Ministry officials should carry out regular visits to such institutions. Should there be violations, registration should be revoked.
- 3.2. The Government intends to transform Malaysia into an educational hub where local and foreign students can gain access to affordable quality education. If the problems stated above remain unresolved Malaysia may lose its niche

to other countries in the region. It is therefore important that the Ministry of Higher Education steps up its enforcement activities so that private education institutions do not exploit students and quality of certificates is maintained.

- 3.3 Premises in which the Institutes operate should also be inspected regularly. Frequent inspections by the Higher Education Ministry are required to ensure institutes provide a suitable learning environment. It is suggested that the Ministry regulates educational institutes as does the Ministry of Health, private healthcare premises under the Private Healthcare Facilities and Services Act.
- 3.4 As educational institutions, private colleges are under an obligation to ensure the welfare of their students are being protected. It is recommended that the Higher Education Ministry takes on a greater supervisory role in regulating how private colleges are being run.
- 3.5 Private colleges should also be more accommodating to students' feedback and try to minimize the amount of 'red tape' necessary for students to voice their concerns to the management and seek redress. Colleges should institute internal redressal systems which can conduct a fair and impartial hearing. This will help solve problems which students are forced to bring to the Tribunal for Consumer Claims for redress.

Report On Property Management Companies

1.0 Introduction

The problems faced by residents of high rise accommodation and their management companies forms a significant number of total complaints lodged with NCCC. In 2006 a total of 1325 complaints were recorded by the NCCC.

Residents have always complained that their management companies do not provide satisfactory service while the management company would counter that the residents do not pay their monthly dues on time. This often leads to arm twisting tactics in order to recover their dues such as disconnection of water supply to the residents' units.

2.0 Consumer Issues

2.1 Performance of Management Companies is unsatisfactory

The Management companies are not discharging their duties effectively and this is evident from the complaints filed. There is no transparency in accounts. However while residents have a right to demand satisfactory services from their management companies, they would also have a responsibility to pay their maintenance fees on time. This is important as the management company would rely on funds paid by residents to carry out their duties effectively.

2.2 Financial Accountability

Housing Development (Control and Licensing) Act 1966.

Withholding of accounts from residents is a violation of the Housing Development (Control and Licensing) Act 1966. S19 of the Act states



that the developer shall provide the purchasers with a copy of the annual audited accounts for the expenses incurred for the provision of services, while S20 provides for the sinking fund accounts to be made available to the purchasers.

Some management companies are collecting management fees illegally. Only a company registered with the Board of Valuers, Appraisers and Real Estate Agents are allowed to charge professional management fees. Most of these condo management companies are not registered with the above body thus making it illegal for them to collect such fees.

2.3 Security Services

Lack of security of individual premises is a common grievance of consumers. Here the management corporation/company employs security guards to overlook the common facilities. They act merely for the management corporation/company and therefore they would not be held liable for occurrence of theft. They merely provide surveillance. The deed of mutual covenants, which unit owners sign with the management corporations do not contain provisions guaranteeing security of individual premises.

2.4 Strata Titles

The developer normally sets up a company and manages the condominium first until strata titles are issued and only after that the residents will establish a Management Corporation (MC).

Strata Titles Act 1985

The NCCC believes that most of the problems can be avoided if the Strata Title application is done within time. S 8 of the Strata Titles Act 1985 states that developers must apply for strata titles within 6 months of receiving the certificate of fitness. If they fail to do so then they could be fined not less than RM 10,000 and not more than RM100,000. They are also subject to a further fine of not less than RM100 and not more than RM1000 for each day the offence is continued. Yet not a single developer has been penalized by the Natural Resources and Environment Ministry for flouting the law.

Most developers delay in applying strata titles because there is a lot of money to be made in managing these buildings. Managing condominiums and apartments is a cash cow

for these developers as there is little scrutiny over the accounts. To sell a property the resident would have to obtain consent from the developer and here again a fee is levied.

Because of the delay in applying for strata titles there are residents who wait for almost 20 years. This is a problem because until they get their titles they cannot prove ownership. In cases where developers become insolvent the lending institutions will often institute legal action to sell the building to recover their loans. This will result in the purchasers losing the units they have purchased.

3.0 Recommendations

- 3.1 The Strata Titles Act 1985 has enough provisions to overcome the problems faced by residents and their Property Management Company. What is lacking is enforcement. The authorities should strictly enforce this legislation and prosecute errant Property Management Companies.
- 3.2 The Natural Resources and Environment Ministry should enforce the provisions of the Act in terms of the developers obligations to apply for strata titles. The fact that no developers have been prosecuted although strata titles are given out in many cases after 20 years of waiting is an indictment of the seriousness of the ministry in resolving this problem. In addition the mechanism at the respective Land Offices' needs to be overhauled to overcome this problem.

Report On Telecommunications

1.0 Introduction

The Malaysian Communication and Multimedia Commission (MCMC) regulates the telecommunication industry in Malaysia. In 2006, a total of 1297 complaints were recorded by the NCCC. The bulk of the complaints were regarding SMS spamming.

2.0 Consumer Issues

2.1 SMS Spamming and Related Problems

In simple terms, SMS spamming means SMS which are received without the user requesting for it. There are two types of SMS spamming. One where advertisement text is sent to users without charge (i.e. free of charge). The other is where SMS spamming comes with a charge namely the users who receive these SMS will be charged by having their prepaid balance deducted or their postpaid account billed. The second type is outright "money snatching". The Service Provider gets away with it, while the culprits are not reported to the police.

This is because it is difficult for subscribers to know if their pre paid credits has been deducted, as normally a person does not keep track of the prepaid account. Even for the post paid subscribers, they normally ignore such billings as they consider them to be negligible.

Service Providers normally carry out such spamming and when a complaint is forwarded they would immediately blame it on technical problems, and in most reported cases, complaints are always dealt with by a refund. As such, the only regulator of the industry which is the Malaysian Communication and Multimedia Commission (MCMC) would never

know the magnitude of the problem.

In Malaysia consumers are unaware that by receiving an SMS, one can be charged. The problem has been compounded in Malaysia, as these Service Providers will send SMS in various languages, e.g. Chinese, English Malay and in most cases consumers will ignore these SMS as they may think that it is free.

The defense of Service Providers when caught spamming, is that the user had signed up for a ring tone, wallpaper subscription club and so on. In these cases, it is up to the TELCO to investigate and provide evidence to show that the user did send in the SMS to request. Again, the SMS request may not be conclusive proof as these SMS requests can be fabricated via International gateways using mobile number masking.

2.2 MCMC Guidelines do not protect consumers

The MCMC has been promoting self-regulation among Telco's and Service Providers. Because of the enormous revenue generated by such billing activity, Telco's and Service Providers have not responded well. Guidelines are in place, but dependent on Service Providers compliance. Also guidelines do not have the force of law. Errant Service Providers should be penalized by MCMC. In most cases, consumers complaints are forwarded to the services providers who will give a refund to obscure the complaint. MCMC should suspend the operating licenses of these companies would they be caught repeatedly but this is not done.

Furthermore it is physically impossible for MCMC to monitor all media advertisement,



which lure users to join subscription schemes. Even if users are charged, they will not know immediately about their prepaid balance being deducted. MCMC does not have the manpower or resources to handle these investigations and collect the corresponding evidence. Hence the Service Provider gets away with it. The current guidelines are only good on paper and for publicity. The MCMC to date has not carried out any awareness program among consumers or directed the industry players to install or create any preventive system in order to protect the consumers.

In other countries Telco's are required to build in internal prevention to prevent Service Providers from having the ability to send any charges, unless and until there is corresponding request from users. Subscription schemes are controlled for example through 'Double Confirmation' when subscribing to services with only a monthly charge of maximum amount with one brand per short-code so that consumers are not confused. This is not happening in Malaysia, as consumers can be billed for up to RM8 per

sms, multiple times a day and multiple times a month. There is no maximum billing limit per short-code per user unlike in many countries when it is stipulated that each short-code can only billed up to certain amount per month per short-code.

MCMC and Telco's, on the other hand had not been doing enough to prevent this except to say that they will monitor and penalize whoever is violating regulations. But, if complaints do not reach MCMC, they would not know the exact situation. There are many ways in which the MCMC and Telco's could protect consumers from abuses. Guidelines and Codes of Conduct would be of no use if they are not implemented. To prevent this industry from preying on consumer ignorance a strong prevention system should be put in place.

2.3 Mobile Billing

The NCCC has recorded 100 complaints on mobile billing disputes. Agents of Telco's who provide false information to prospective customers is the main cause of this problem.

Many promises are made such as no access fee and deposits but once bills are received all there items would be charged. Misleading advertisements is also a common problem. Packages are offered to lure customers but once subscribed, different rates would be charged. This is common amongst pre-paid users as they are not able to verify their bills.

2.4 Broadband Service

On the above-mentioned service, the common problem is frequent breakdown. Consumers complain that there is no prompt resolution to their grouses. The Multimedia Act 1999 does provide that all consumer complaints should be resolved within 14 days.

3.0 Recommendations

SMS Spamming and Related Problems

MCMC Guidelines do not protect consumers

- 3.1 The only way to protect consumers is, by way of Telco's implementing control systems whereby their customers can be protected and prevented from receiving these SMS.
- 3.2 The Telco's should bear the responsibility of notifying prepaid users via itemized prepaid credit that a certain amount has been deducted from their account. New credit balance notification should be brought to the subscriber's attention. This will prevent unauthorized charging by any party. This would also act as a form of receipt.

- 3.3 To temporarily suspend Subscription for Club for Rich Content until the Telco's has built up Preventive Control System to ensure that all consumers are not billed for services which they did not subscribe. .
- 3.4 Build in a Preventive Control System with the following features.
 - i. Subscribers need to Double Confirm before they become members of a Club
 - ii. Ensure that all previous subscribers to re-OPT IN to all subscription. NOT OPT OUT
 - iii. Provide cooling-off period of 72 hours before any subscription is confirmed
 - iv. Enforce a maximum of RM10 per month per short code
 - v. All subscription charging can only be charged by Telco's themselves Service Providers should not have the ability to charge subscription fees
 - vi. The make it a requirement that all business models are submitted to MCMC for approval before they are allowed to go on air. Currently, once the Application Service Provider (ASP) license is issued, the content provider is free to offer any service to the public.
 - vii. Only one short-code should be issued for one brand. Currently there is no control on the issuance of short codes. If one short code is suspended companies can always jump to another short code and carry on with their activities.

- viii. Services such as Friendship chat, Romance Chat, Sex Tips, Gambling should be immediately banned.
- ix. MCMC has to set up an effective complaints handling mechanism. The current system of referring complaints to Service Providers for resolution should be immediately stopped. If the current policy is carried on, MCMC would never know the problems which consumers face.

3.5 Mobile Billing

- 1. It is therefore important that the MCMC being the regulator of the telecommunication industry, enforce the law and established guidelines to protect the consumers.

3.6 Broadband Service

- 1. The MCMC should play an important role in making sure that the provisions on the Act are complied with. The current policy of directing all complaints to the Service Provider for should be stopped immediately. The MCMC should set up a complaints handling department and reprimand Service Providers should there be a problem.
- 2. Employ technicians 24 hours around the clock, including on public holidays and weekends.
- 3. Schedule repair crew visits centrally and give the phone support staff access to the system. This means that when a caller has a fault, they can be given a

fixed time and date for the technician's visit, and the technician will be there.

- 4. Employ enough technicians so that customers don't need to wait if they have a fault. Dispatch and repair times should not be more than an hour from the fault report.
- 5. Do not grant leave to support staff or technicians if it means you will be short of staff. That means keeping a full staff during festive seasons and during big football matches, 24 hours a day 7 days a week.
- 6. If any customer has a fault for more than 24 hours, dispatch an emergency-service technician immediately and give the customer a one-month refund as goodwill.
- 7. Change the Streamyx customer support line to a free-phone number or use a 'call me back' facility. Of course, this wouldn't be needed if the phones were answered promptly

Report On Sub-standard Products

1.0 Introduction

In 2006, the National Consumer Complaints Centre (NCCC) received 1032 complaints on sub standard products. The majority of these were regarding electrical and electronic goods. The common complaints were on product replacement issues, inordinate delay in repairs, issues on warranty, non availability of spare parts, imitation products and safety issues..

2.0 Consumer Issues

2.1 Warranties

There have been many occasions where consumers had complained that they were denied the right to reject goods even though the fault was of substantial nature. This is rampant in the case of vehicles as consumers commonly fail to get redress.

The Sale of Goods Act 1957 (SOGA)

S12 of the Sale of Goods Act 1957 (SOGA) refers to Condition and Warranty.

S12 (1) "a stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

S12 (2) "a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

S12 (3) "a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated. Therefore by looking at the above section, consumers must understand that they do not have a right the

goods at the first instance when fault is detected on a product.

2.2 When can a person reject goods?

Consumer Protection Act 1999 (CPA).

Part 5 of the Consumer Protection Act 1999 provides for guarantees and S 41 provides for remedy of failure to comply. S41 CPA states that "where a consumer has a right of redress against the supplier under this part in respect of the failure of any goods to comply with a guarantee under Part V, the consumer may exercise the following remedies:

- (a) where the failure is one that can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time in accordance with S42;
- (b) where the failure is one that cannot be remedied or is of a substantial character within the meaning of S44, the consumer may subject to S43, reject the goods in accordance with S45 or obtain from the supplier in compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

What constitutes a *failure of substantial character* is defined under S44 CPA and how much time is reasonable to remedy failure would have to be interpreted by the Tribunal for Consumer Claims or the Courts.

S46 CPA provides that the consumer has an option of refund or replacement if the decision is taken to reject the goods. It provides that "where a consumer exercises the right to reject goods conferred under this Act, the consumer

may choose to have, a refund of any money paid or other consideration provided by a consumer in respect of the rejected goods; or goods of the same type and of similar value to replace the rejected goods where such goods are reasonably available to the supplier as part of the stock of the supplier.

2.3 Delay in Repairs

Consumers have reported to the NCCC that businesses take a very long period to carry out repairs to products which are faulty. Consumers complain that repairs sometimes took months and consumers are denied usage of these products. Often the warranty period is 'eaten-up' by such delays.

The Consumer Protection Act 1999 (CPA)

S 41 of the CPA provides that faulty products should be rectified by the supplier within a 'reasonable time'.

2.4 Unavailability of Spare Parts

Traders commonly use this excuse in justifying the delay in rectifying faulty products. Some even deny repairs blaming it on the unavailability of spare parts.

The Consumer Protection Act 1999

S37 CPA states that "where imported or locally manufactured goods are supplied to a consumer, there shall be an implied a guarantee that the manufacturer and the supplier will take reasonable action to ensure that facilities for the repair of the goods and the supply of spare parts for the goods are reasonably available for a reasonable period after goods are so supplied. Again traders

exploit the above provision. The term reasonable time is subject to interpretation.

2.5 Product safety

The Malaysian market is currently being flooded with sub-standard electrical and electronic products from China. As such the safety of these products is questionable. The NCCC has received complaints that such products are not safe.

The Consumer Protection Act 1999

Part 3 of The CPA 1999 provides for safety standards of products. S19 provides wide powers to the Minister of Domestic Trade and Consumer Affairs to prescribe the safety standards of products by way of regulations. The safety standards in relation of goods may relate to any or all of the following matters namely the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods; the testing of the goods during or after manufacture or processing or the form and content of marking, warnings or instructions to accompany the goods.

3.0 Recommendations

- 3.1 The NCCC urges the Minister of Domestic Trade and Consumer Affairs to formulate regulations to effectively implement Part III of the CPA regarding the Safety of goods and services. Consumers today are exposed to numerous electrical goods which carry neither the SIRIM logo nor are approved by the National Electricity Board Inspectorate.



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- 3.2 The NCCC believes that the Ministry of Domestic Trade and Consumer Affairs has a role to play in carrying out inspections to identify unsafe goods and services in the market to safeguard consumers. Goods lacking the approvals of safety as above should be identified and reported to the relevant organizations for action.
- 3.3 The Tribunal for Consumer Claims should consider the possibility of compensating the consumer where the supplier has delayed rectifying products within a reasonable time or due to the unavailability of spare parts.

Report On Cheap Sales

1.0 Introduction

The National Consumer Complaints Center, in 2006 recorded a total of 1003 complaints on issues pertaining to cheap sales. Complaints were high during festive seasons. Cheap sales in Malaysia are regulated by the Trade Description (Cheap Sale) Regulations 1987. Under these regulations “cheap sale price” means the price of goods which, in the ordinary course of trade or business, is indicated in any manner to be less than the price at which the goods or goods of the same description were previously supplied or offered to be supplied. Consumer grievances were concentrated in the following issues.

2.0 Consumer Issues

2.1 Misleading Indication as to Price

Consumers complain that traders mislead them by using false indication as to price. Commonly price of goods are first increased and then a discount is offered where the reduced price would be the same as it was before the sale. Some consumers even complain that prices charged during a sale are higher than normal presale prices.

Trade Description (Cheap Sale) Regulations 1987

The law clearly states that the “cheap sale price” should be less than the price previously sold at. There were also traders who carry out “cheap sales” without the necessary approvals from the ministry as required under the regulations as no notice is displayed.

Regulation 6 (1) requires that during the “cheap sale” there should be an indication of



the price at which the goods were previously supplied or offered to be supplied by the trader and the current price. Although this regulation clearly indicates that the previous and current price during ‘cheap sale’ is to be displayed, traders commonly use the percentage symbol when indicating reduction. This has confused consumers as they are unable to figure out the reduced amount.

Regulation 6 further states that the goods must be at the premises for a minimum of 30 days prior to the intended “cheap sale” but observation indicate that new products were offered for sale and “cheap sale” even continued after the permitted duration of 30 days.

The Consumer Protection Act 1999

S12 of the Consumer Protection Act 1999 (CPA) makes misleading indication as to price an offence. S12 (1) CPA states that “a person commits an offence if he gives to a consumer an indication which is misleading as to the price at which any goods or services are available; or if an indication given by him to a consumer as to the price at which any goods

or services are available becomes misleading and he fails to take reasonable steps to prevent the consumer from relying on the indication.

Trade Description Act 1972

Even under the Trade Description Act 1972 (TDA), misleading indication as to price of goods is not allowed. S14 (2) states that "if any person offering to supply goods gives, by whatever means, any indication likely to be taken as an indication that the goods are being offered at a price less than that at which they are in fact being offered, he shall be guilty of an offence"

2.2 Sale of Sub-Standard Products

Many traders import cheap products from China and India and immediately display them as cheap sale items. Consumers are often misled into purchasing them thinking that these items are genuinely on sale. Consumers had also complained that a lot of products put on "cheap sale" are of sub standard quality, which could be hazardous to health and safety. Consumers face difficulty in obtaining a refund or a replacement. Items which are not of merchantable quality, are often found on shelves. Hazardous electrical and electronic goods without SIRIM certification and verification by the Energy Commission are sold to consumers.

The Consumer Protection Act 1999

S20 CPA states "no person shall supply, or offer to or advertise for supply, any goods or services which do not comply with the safety standards determined under section 19. S19 CPA states that the Minister may by regulation prescribe the safety standards in respect of,



goods or class of goods and any service or class of services, and may prescribe different safety standards for different goods or services, or classes of goods or services".

2.3 Misleading Advertisements

Consumers had also complained that traders use misleading advertisements as a bait to attract customers to their cheap sales.

S13 CPA states, "no person shall advertise for supply at a specific price goods or services which that person does not intend to supply or does not have reasonable grounds for believing can be supplied". This section therefore makes it an offence for traders to use bait advertisements.

Furthermore S3 of the TDA states that, “any person who, in the course of a trade or business applies a false trade description to any goods or supplies or offers to supply any goods to which a false trade description is applied, shall be guilty of an offence”.

3.0 Recommendations

- 3.1 The Ministry of Domestic Trade and Consumer Affairs (MTDCA) should strictly enforce laws such as the cheap sale regulations, the CPA and the TDA during cheap sales by traders. Surprise enforcement visits should be carried out at premises carrying out cheap sales. Traders flouting the law should be penalized and such news carried in the media as a deterrent.
- 3.2 Consumers are being exposed to a wide range of cheap and low quality goods from overseas which are not SIRIM certified or inspected by the Energy Commission. These could be hazardous to consumers. MTDCA owes a duty of care to consumers, to ensure that they are not exposed to unsafe goods and services. This is all the more important as it is the custodian of safety of goods and services under Part III of the CPA.

- 3.3 SIRIM Certification is voluntary and Energy Commission Verification is hampered by lack of manpower. MDTCA must therefore take on the responsibility to implement strictly the provisions of Part III of the CPA on the safety of goods and services. There have been many instances of deaths and injuries to consumers due to unsafe goods and services. The MDTCA must take responsibility and respond to these occurrences instead of leaving them to the supervisory agencies.

Report On Public Transport

1.0 Introduction

Public transport has always been an issue with Malaysian consumers. Problems related to public transport have been affecting consumers for a long time. In 2006 there were 925 complaints filed with the NCCC. Public transport includes city buses, taxis, inter state express buses, train services and light rapid transport (LRT). Among the complaints received were regarding frequency of services, not adhering to time schedules and delays; rude and undisciplined drivers; lack of infrastructure and bad customer service.



2.0 Consumer Issues

2.1 Frequency of Service

Frequency of service has been a major contributor towards consumer complaints. Consumers have complained that buses arrived late and did not adhere to the timing schedules. In some cases buses did not appear at all. Many consumers complained that their jobs were at stake due to reporting late for duty. There are also cases where employers had terminated the services of staff who frequently reported late for duty.

2.2 Rude and Undisciplined Drivers

Consumers complained that customer relations of the bus operators was bad and often they made rude remarks when consumers attempted to lodge complaints against them. This has resulted in a general feeling of antipathy towards bus operators.

2.3 Lack of Infrastructure

Consumers complained that there was a severe lack of infrastructure. There were

insufficient buses and train coaches which often led to uncomfortable overcrowding especially during rush hour in the morning and evening. Buses, train coaches and taxis were old and poorly maintained. There was little fleet renewal and consumers had to put up with damaged seating and facilities on these transport vehicles. The shortage of adequate and covered bus stops is another consumer complaint. Consumers are concerned that transportation services are not well integrated with one another.

2.4 Bad Customer Service

This is one area, in which the NCCC has received many complaints. Consumers complain that whenever they try to report any incident they seldom receive any response. Customer service officials are also rude and most of the time offer no assistance. Consumers' complaints would always fall on deaf ears, as the operators would always fail to respond. Consumers also feel that it is too much of a hassle to lodge a complaint with the enforcement authorities. SMS short codes for complaints provided on taxis and buses usually do not function and those sending the

sms's are not called to give details of the incidents.

2.5 Unethical Taxi Drivers

Consumers complain that taxi drivers very often refuse to use meters to determine taxi fares. Instead they would demand flat rates based on the destination. Many of them get into arguments with consumers using their taxis as a result of exorbitant fares charged. At bus and railway stations consumers disembarking are asked to pay flat rates which are often double or triple the normal fare based on metered charges. Many consumers have complained to the authorities, however the situation has not improved.

and poorly thought out enforcement schemes should be avoided to prevent problems to the public.

- 3.5 Enforcement must be done on a sustained basis to nab the culprits especially taxis which seem to operate above the law.

3.0 Recommendations

- 3.1 The authorities have to seriously plan an implement an effective transportation system for large urban areas. This can be facilitated if there is a central transportation authority with powers of planning, implementation and enforcement. The current system where the functions are allotted to a few agencies does not perform well.
- 3.2 All transport systems should be well integrated for the convenience of consumers. Information about public transport especially time schedules, fares, routes and locations should be easily available.
- 3.3 An effective complaints handling system should be established with clear procedures, minimal bureaucracy and a well planned public feedback and response system.
- 3.4 Ad-hoc planning of transport solutions

Report on Financial Institutions

1.0 Introduction

The NCCC recorded 809 consumer complaints against the banking sector in 2006. Complaints which the NCCC received could be categorized as excessive fees, interest and penalties; hidden charges; unfair loan agreements; blacklisting by CTOS & CCRIS; unauthorized usage of credit cards; misleading advertisements; and promotions; electronic banking; bad customer service and lack of information; right to information; non dispensation of monies by the ATM machine, unauthorized withdrawals of money from ATM machines, problems with cash deposit machines; excessive legal fees; unfair auction of property; complaints pertaining to Cheques; release of information to third parties and unethical debt collection.

There is a growing trend among banks to sideline small deposit account holders and to encourage big account holders. Some banks no longer issue savings account books but insist that the consumer opt for monthly account statements at RM5.00 per month. Bank Negara being the regulatory body, has more often upheld the interest of banks rather than the rights of consumers.

2.0 Consumer Issues

2.1 Hidden Charges

Hidden charges were not heard off before the merger and consolidation of the banking sector. Once the merger exercise was completed, consumers were unfairly charged for services which were provided free initially. While the number of banks has reduced significantly, consumer rights have been increasingly abused. In today's environment



banks had resorted to collusion and levied all kinds of hidden charges against the consumers.

The problem is that consumers are not informed of the charges at the outset to enable them to make an informed choice whether or not to apply for a particular service. For example, banks seldom inform a consumer applying for a Bankers Cheque that a charge of RM5 per Cheque is charged for Bankers Cheques worth less than RM10,000-00 but it is free if the amount exceeds RM10,000-00. Another example is where banks charge RM50 to endorse and verify the signatures of account holders for submission to Treasury Malaysia. The obtaining of the form and the filling in of the details is all done by the account holder. The bank officer just places his signature and the bank's stamp. Banks also charge for ATM transactions exceeding the limit set.

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2.5 Unfair and excessive credit card charges,

High interest on credit card purchasers and other charges have also been an area of grievance of consumers. Consumers had complained that there were many hidden charges levied against them. An interest rate of 18% per annum is already high and as such, additional late payment charges, charges on lost cards and annual membership charges are seen as increasing the burden of consumers.

2.6 Aggressive credit card promotions

Consumers complained that aggressive promotion of credit cards by banks have resulted in many of them being burdened by debt. The hawking of credit cards on street corners, shopping complexes, training venues and by post on very easy terms is a cause for concern for the NCCC. In the rush to cash in on high income banks are using unscrupulous and unethical methods such as issuing pre-approved cards' consumer loans and increased spending limit. Many consumers complained of receiving approved credit cards and cheques for personal loans without any application on their part.

2.7 Misleading Promotions / Advertisements

Increasingly local banks are employing marketing agents to promote their products. These marketers are usually paid a small basic salary and the major part of their income is derived from sales. Consumers have complained that in order to lock in sales, these agents misrepresent their products to consumers, usually omitting terms and

conditions which impact on consumers. Consumers sign agreements, which naturally they do not read. Consumers who try to rely on representations made by these agents would fail and be bound by agreements.

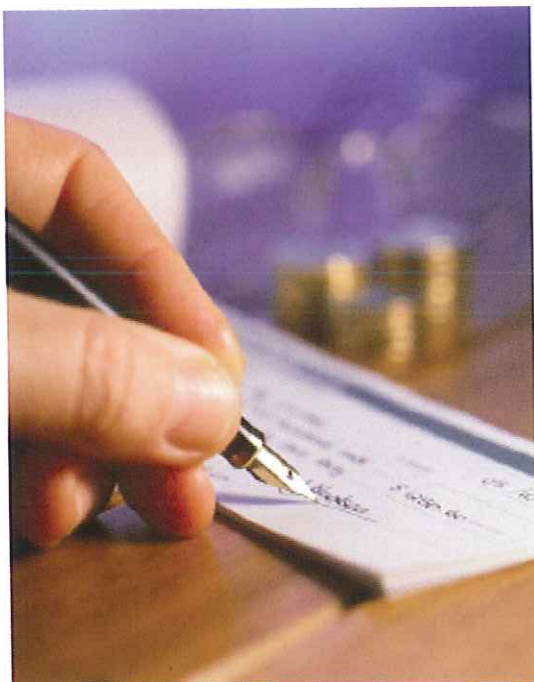
Misleading advertisements is also an area of great concern to the NCCC. Banks advertise their products without making all details clear. The increasing use of the statement "terms & conditions apply" without actually stating them has disadvantaged consumers. Very often such vital details are put in fine print which cannot be read easily. Banks can also unilaterally change their terms and conditions without prior notice to the consumer.

The Banking and Financial Institutions Act 1989 (BAFIA)

S35 of BAFIA provides that "if the bank (Bank Negara) is of the opinion that any statement made in an advertisement issued by a licensed institution is false, deceptive, offensive or misleading, the bank may by notice in writing direct the institution to do all or any of the following:

- cease issuing the advertisement
- modify the advertisement as may be required by Bank Negara
- cease the issue of any advertisement which is, wholly or substantially, a repetition of such advertisement;
- take all practical steps to withdraw the advertisement from each and every publication or display of it;
- publish a statement in like manner as the advertisement issued earlier to retract or modify such advertisement.

The bank may also vary, add to, revoke or otherwise amend any directions issued



subsection 1 by a notice in writing to the institution concerned.

It must be noted that S2(1) of the Act which defines the term “advertisement” gives it an all encompassing meaning. Advertisement for the purpose of the Act

“means the disseminating or conveying of information, invitation or solicitation by any means or in any form, including by means of:

- a. publication in a newspaper, magazine, journal or other periodical;
- b. display of posters or notices;
- c. circulars, handbills, brochures, pamphlets, books or other documents;
- d. letters addressed to individuals or bodies;
- e. photographs or cinematograph films; and
- f. sound broadcasting, television or other electronic media.

The powers conferred by the above section are extremely wide. Bank Negara may direct that a licensed institution cease, modify, not repeat and even withdraw an advertisement that is false, deceptive, offensive or misleading.

2.8 Electronic Banking

With banks adopting a 5 day working week, consumers have to depend on Automated Transaction Machines (ATMs). Although the usage of ATMs allows consumers to do banking transactions at their convenience, ATMs have their own set of problems. Access to these machines is limited as not all branches of banks have installed them. ATMs are frequently out of service and inconvenience customers who have to seek out other functioning machines. As for cash deposit and ATM machines, consumers have complained that these machines on occasions fail to dispense or accept cash but the transaction would already have been recorded. Consumers would have to go through a great deal of inconvenience when seeking for an investigation. Banks normally delay in refunding monies and there have been occasions where banks have refused to provide a refund.

3.0 Recommendations

- 3.1 In order to protect consumers and promote ethics and truth in banking, Bank Negara should strictly enforce the provisions of BAFIA 1989. Currently Bank Negara seems to condone the financial institutions abuse of consumers. Morality and ethics should be promoted in all forms of business.

- 3.2 Misleading advertisements are rampant in the banking sector. Anyone responsible in Bank Negara will be able to ascertain this by examining advertisements that are published in the local media. The supervisory role of Bank Negara should be enhanced to protect consumers.
- 3.3 It is common knowledge that years of low saving interest rates have left banks flush with money with which they want to earn greater profits. Therefore there is a scramble by banks to sell their credit cards to as many customers as possible. Sadly this has been done without ethics or morality with credit cards being offered on the easiest of terms to young consumers who can hardly manage their expenditure. Many consumers are encouraged to have multiple cards. NCCC is concerned with the burgeoning credit card debt of consumers. Bank Negara, the banking system and consumers are equally to blame for this situation. Bank Negara should control the banking sector effectively to prevent this situation from deteriorating.
- 3.4 To prevent credit card fraud, Bank Negara should make it mandatory for merchants to check the identity of users before approving transactions. Merely checking and verifying signature alone is insufficient to curb fraudulent use of credit cards.



Report On Hypermarkets

1.0 Introduction

The National Consumer Complaints Centre (NCCC) has received numerous complaints regarding hypermarkets. In 2006 consumers lodged 800 complaints revolving around five main issues namely expiry dates, indicated price different than scanned price, misleading advertisements and promotions and unsafe products. It is a policy of the government to encourage the setting up of hypermarkets as they are seen to be able to offer lower prices for consumer products and at the same time function as a conduit to market Malaysian products, locally and overseas. There is however a downside to this. Small retailers and small scale village industries may be victims in addition to the loss of valuable foreign exchange.

2.0 Consumer Issues

2.1 Expired products

The selling of expired products by hypermarkets is a common problem encountered by consumers. When such cases are brought to the attention of the hypermarket it is conveniently attributed to human error. This is unacceptable as such products may pose a health hazard to consumers. Expiry date is important for food products as it indicates the shelf life and therefore their suitability and safety for consumption.

The Food Regulations 1985

Regulation 14 of the Regulations provides that the expiry date is required to be stated on the product. However, only food items listed in the Fifth Schedule of the Regulations falls under this requirement. Regulation 9 (a) of

Regulations also prohibits anyone from selling any food contained in packages that does not bear any label containing all the relevant particulars required under this Regulation.

The Penal Code

Section 273 of the Penal Code states that whoever sells any food or drink with the knowledge that it has become expired, shall be punishable with imprisonment for a term up to six months, or a fine not more than RM2,000 or both.

2.2 Misleading Indication of Price

One major problem faced by consumers when purchasing products at hypermarkets is misleading indication as to price. Commonly complaints are filed where a product's shelf price does not tally when scanned for payment. Again the hypermarket officials would blame this on human error and immediately refund the balance. The NCCC believes that in this way hypermarkets shortchange consumers. How many of us would normally check our bills when we walk out after purchasing? Most consumers would even not be able to remember the price seen on shelf.

The Consumer Protection Act 1999

Section 12 of the CPA states that a seller is deemed to have committed an offence if he had indicated to a consumer a price in relation to available goods and services that is misleading.

Section 25 (1) of the CPA provides that the offender (seller) is liable to a fine of not more than RM250,000.00 for the first offence and not more than RM500,000.00 for the second and subsequent offence(s). In addition to this provision, Section 25 (2) of the CPA provides



that the offender is also liable to pay RM1000.00 for each day or part of a day during which the offence continues after conviction.

The Trade Description Act 1972

S14 of the TDA states that "if any person offering to supply goods of any description gives, by whatever means, any false indication to the effect that the price at which the goods are offered is equal to or less than the recommended price, he shall be guilty of an offence" (check)

2.3 Bait Advertising

Currently hypermarkets heavily advertise their discounted products through newspaper advertisements and through flyers, which are placed at consumers' premises. Consumers have complained that attractive prices indicated on the promotional material is often not available or different than the price offered at the hypermarket. Various terms and conditions are attached when low prices are offered. Prices vary according to specific days and some differ between morning and evening sales. The net effect is that such advertising misleads and confuses the consumer into thinking that one or the other hypermarket is offering a lower price for its consumer

products. Such bait advertising is prohibited by law.

The Consumer Protection Act 1999

Bait advertisement is prohibited under Section 13 (1) of the CPA. It prohibits a seller from advertising discounted goods and services which he does not intend to sell or have no reasonable means to supply. Therefore the seller has a responsibility to indicate in the advertisement whether stocks of certain goods and services are limited or by stating the actual number available for sale including the selling price and also the time period for which the goods and services are available for sale at the advertised price.

2.4 Weight of items

This problem is particularly rampant when consumers purchase pre packed items. Where such items are broken down and sold in small quantities the accumulated price per kilogram would always be higher than the indicated maximum retail price per kilogram. It is known to the hypermarkets than a consumer would not bother to weigh each and every product before purchase. Checks made by NCCC have revealed consumers are often shortchanged in this way.

The Trade Description Act 1972

S3 of the TDA 1972 provides that "any person who, in the course of a trade or business, applies a false trade description to any goods; or supplies or offers to supply any goods to which a false trade description is applied, shall be guilty of an offence" Under this Act, a false trade description would include quantity, size and gauge. Quantity under this Act would include length, width, height, area, volume, weight and number. Violators could be jailed

for not more than 3 years and a fine of RM100,000.

3.0 Recommendations

3.1 The Ministry of Domestic Trade and Consumer Affairs which is responsible for retail trade and consumer protection has a duty to protect small retail businesses from unfair price competition from hypermarkets. Experience of other countries shows that the promotion of hypermarkets adversely affects small retail businesses and forces many to close as they cannot compete with the prices offered by these retail giants. Consumers too, are at a disadvantage as they are unable to monitor prices with all kinds of confusing advertisements from these hypermarkets. The Ministry must carry out proper evaluative studies and consultations with relevant groups before making major decisions which affect important segments of the economy.

3.2 Despite the existence of legislation the NCCC finds that enforcement in this area like in many other areas, is seriously lacking. Consumers are not in a position to do such minute checks during purchases. The only way to overcome such exploitation of consumers is for regular checks by those in the enforcement divisions of the relevant authorities.

3.3 The entry of hypermarkets into the retail chain has enabled consumers to benefit from lower prices resulting from bulk purchases by the hypermarkets. However since consumers do not pay



attention to minute details, hypermarkets are in a position to exploit consumers through misleading weight, misleading price and misleading advertisements. Therefore hypermarkets should pay particular attention to these problematic areas.

Report On Hire Purchase Of Vehicles

1.0 Introduction

The hire-purchase industry in Malaysia is governed by the Hire Purchase Act 1967. The NCCC had received 703 complaints in 2006. Majority of complaints were regarding the purchase of new and used vehicles. Complaints were concerning issues such as misrepresentation as to delivery date, types of accessories provided and year of make of vehicle, defective product, cut and welded vehicles, unfair hidden charges and repossession.

2.0 Consumer Issues

2.1 Failure to Inform Hirer of his Financial Obligation

The Hire Purchase Act 1967(HPA)

Section 4(1) of the Act requires the 2nd Schedule notice to be given to potential hirers to inform them of their financial obligation should they enter into the hire-purchase agreement but in many cases the notice is not given. Potential buyers are rushed into signing the agreement, thus giving them little opportunity to study the notice or the agreement. Often the owner cover themselves by inserting a sentence in the hire purchase a sentence in the hire purchase agreement to the effect that the hirer has received the written statement under S4(1) HPA'67.

2.2 Hidden Costs

S4(C)(1)(c)(viii) deems the inclusion of any other charges in the total amount payable as term charges. It is a common malpractice to include fees such as agreement fees, service charges, and postage charges under the



liability sum, on which interest is charged. Though the Act prohibits this, including these items as part of the price of goods circumvents the law.

2.3 Tea Money

The charging of additional money commonly referred to, as 'tea money' is a common practice. No receipt is provided for such payments.

2.4 Deposit Ruling

S31 (1) HPA makes it an offence for an owner to enter into a hire-purchase agreement without first obtaining from the proposed hirer a deposit payment of a minimum of 10% of the cash price of the goods. In practice the minimum deposit requirement in a large number of hire purchase transaction is met by a loan arranged by the owner, which is itself prohibited by S32 (1)(a)(iii) or by the owner raising the cash price to accommodate the



deposit sum. When the cash sum is raised, the hirer ends up paying term charges for the inflated cash value of goods.

The minimum deposit requirement is not less than 10% of the cash price of the goods. This means that the parties can agree to a deposit of more than 10%. This deposit requirement is no longer adhered to currently. Dealers openly offer cars at 0% down payment.

2.5 Misrepresentation on delivery date / Late delivery

Late delivery of vehicles has been one of the major problems faced by consumers when purchasing cars. This normally happens when a particular model is a hot seller.

Dealers would normally promise delivery of cars within a specific date when they very well know that delivery would not be possible and this is normally done without the knowledge of the manufacturers. This is because majority of sales agents work on commission and they would misrepresent purchasers in order to lock in sales. Dealers normally bind purchasers by collecting a booking fee. When the delivery date is not met and the purchasers intend to cancel the transaction, the booking fees is forfeited by invoking the no refund policy. A purchaser would have been deemed to breach the contract by not performing his part of the bargain where in actual fact it would have been the dealer who had failed to deliver as promised. There is a particular problem here, as the promised delivery date is not recorded in the Vehicle Sales Order (VSO).

The Hire Purchase Act 1967

On the question of misrepresentation S8 (3) HPA states that "without prejudice to any other rights or remedies to which an owner may be

entitled, an owner shall be entitled to be indemnified by the person who made that representation, warranty or statement, and by any person on whose behalf the representation, warranty or statement was made against any damage suffered by the owner as a result of any such representation, warranty or statement".

In this the purchaser would have relied on the promised delivery date and disposed his earlier vehicle. He would have had to use public transport and that would have caused inconvenience and cost. Although S8 (3) HPA '67 provides for remedy against misrepresentation, it is difficult to exercise this right, as it is always difficult to prove misrepresentation. The whole transaction normally happens verbally and therefore it is very difficult to prove misrepresentation. There is no requirement under the HPA which makes it compulsory that the promised delivery date is recorded. Consumers find it difficult to seek a refund of deposits paid.

2.6 Defective Vehicles

The NCCC had continued to receive complaints on faulty vehicles. Many complaints are filed on vehicles that are not of merchantable quality. S7 (2) HPA'67 clearly provides that a vehicle has to be of merchantable quality and S7 (3) provides that the vehicle must be fit for its purpose. Both these warranties are implied in the hire purchase agreement but purchasers would not normally institute legal action against the owners as the process involved is lengthy, time consuming and costly. Whenever a fault is reported, the manufacturer usually requires the hirer to send the car for repairs and this is most of the times take a long period. There is no provision in the HPA of compensation to be paid for loss of use of the vehicle.

2.7 Cut and welded cars

Cut and welded cars was a problem but now there is a requirement by the financial institutions that before a loan is issued for a particular vehicle the vehicle has to be certified road worthy by PUSPAKOM. This problem with cut and welded cars occurs mostly with second hand vehicles.

The Road Transport Act makes half-cut joint cars illegal and the Road Transport Department may seize the vehicle. It is clear that illegal contracts are not enforceable in law and in order for a contract to be termed illegal the object of the contract would have to be illegal and in this instance a cut and welded car is specifically made illegal by an Act of parliament.

2.8 Misrepresentation

Misrepresentation is rampant among sales agents. The most common type of misrepresentation would be on delivery dates, accessories, year of make and trade in. Sales agents normally work on a small basic salary and bulk on their income is derived from commissions. These agents would therefore misrepresent to consumers in order to facilitate sale of vehicles. The dealers commonly avoid liability by blaming the sales agent who made such the representation or they would say that the sales agent has been dismissed as they were to many complaints against him. Purchasers here do not know that these dealers are vicariously liable for the acts of their agents.

Many complaints have also been received where dealers or their sales agents mislead purchasers on the year of manufacturer of a particular vehicle. Purchasers would only find

out when they check the registration card of the vehicle. Most of the time it is very difficult to prove misrepresentation as it would normally be done verbally.

2.9 Unethical Vehicle Repossession.

The NCCC has received reports where vehicles are repossessed by financial institutions without adhering to the guidelines and regulations under the Hire Purchase Act 1967. Thugs are used to terrorize hirers before vehicle is repossessed. Hirers are stopped on the road by repossessors who then communicate with the relevant financial institutions to verify if the said stopped vehicle is on the repossession list.

The Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976

These regulations require that 'when taking possession of goods to be repossessed, the owner, his servants or agents have to show the hirer or the occupant of the hirers premises, his identity card before repossessing the goods. These regulations are never followed. Repossessors trespass into houses in order to take possession of a particular vehicle. Vehicles are towed away without the knowledge of the hirers. Hirers are not given a chance to clear the vehicle of their belongings and many hirers claim of losing valuables left in the car. The regulations provide for a monetary penalty should these procedures be ignored.

Auction procedures are also neglected. While second hand car syndicates buy off such vehicles at a fraction of the original market value, the hirers are left to pay the balance sum. Once the vehicle has been repossessed, the Act provides that the hirer has an option of



either paying the arrears or pay balance under the agreement but in most cases the owners demand full payment and the hirers are usually not informed of their rights under the law. A high repossession and storage cost is charged on the hirer, which could be as high as RM2500.00.

2.10 Hire purchase agreements

Hirers are made to sign empty hire purchase agreements by dealers before submitting to the relevant financial institution. Here, many hirers are misled on the price of the vehicle and interest rates. Hirers are normally left with no recourse as they had already signed such agreements. The legal effect of such an action is unsettled for the Act is silent on this point. The Act merely provides that certain information must be contained in the agreement and that the agreement must be in writing (S4A (1)) and signed by or on behalf of all parties (S4B (1)). The law is now settled – it requires that the form must be duly completed at the time it is signed by both

parties (S4B (2)). Although the law seems to be settled the practice of signing empty documents is still rampant.

2.11 Insurance

Section 26 (3) of the HPA clearly states that an owner shall not require a hirer to insure the vehicle with any particular insurer but in practice the owners would insist that the hirer insures with an insurer of the owners choice. The practice goes on further when the hirer wants to renew the first year road tax and insurance. The owner normally refuses to release the vehicle registration card. The problem has been further compounded by the amendments to the Hire-Purchase Act. The amendment permits the owner to keep 'legitimate agency commission' where the owner is also a bona-fide agent of the insurer.

3.0 Recommendations

- 3.1 First and foremost the Ministry of Domestic Trade and Consumer Affairs



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must take full responsibility and effectively implement the Hire Purchase Act 1967 and Regulations made under it as these come under its purview. The ministry should not only wait for complaints to be made but take proactive action to protect consumers such as carrying out *preventive supervision* of Hire Purchase Companies to ensure that they always comply with the provisions of the law. In cases of unlawful repossession it is the duty of the ministry to take action instead of advising hirers to lodge complaints with the police for intimidation and trespass. After all, repossessioners are the agents of financial institutions governed by the HPA and its Guidelines in their hire purchase transactions.

- 3.2 Hire Purchase Companies should immediately stop the practice of nil deposits and follow the law. This step

will encourage financial prudence among potential hirers who have to raise a minimum of 10 percent of the value of the hire purchase sum. By so doing the hirer would know his financial capability and the company reducing the possibility of a loan defaulter.

- 3.3 It should be made compulsory that all relevant details regarding the vehicle including the delivery date be recorded in the VSO and the purchaser be given a right to terminate the purchase if the delivery is not met. Late delivery charges may also be incorporated in order to compensate the purchaser. This will provide better protection for the consumer. It is suggested that provision for compensation for late delivery be introduced into the law so that consumers would be protected against late delivery of vehicles similar to the Housing Developers Act where compensation for late delivery is provided.
- 3.4 Where vehicles experience recurring problems the law should examine the approach taken akin to the Lemon Law in the United States where if there is a reoccurring problem in a particular vehicle it would have to be replaced or money refunded.
- 3.5 In the case of cut and welded vehicles the original owners should be made to bear liability for their vehicles. However since the sale of such vehicles is illegal in the first place both the owner and the dealer can be held liable.
- 3.6 Repossession of vehicles from defaulters has remained a problem for consumers. The act of accosting the hirer in public and snatching the vehicle by thugs hired by the financial institution



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and the subsequent trauma of losing valuables and paying high storage charges is an injustice to consumers. As stated in 3.1 above the Ministry of Domestic Trade and Consumers Affairs should not shirk its responsibility in this matter and let the police handle such cases under criminal law. It should carry out its responsibility by investigating each case and bring to book the financial institution flouting the law.

- 3.7 Hirers who are asked by dealers to sign empty hire purchase agreements are often misled on the price of the vehicle and interest rates. To prevent such an occurrence and to be sure of their commitments, hirers should be provided with the letter of offer by the financial institution concerned so that the dealer is prevented from adding on other charges in his own interest.
- 3.8 Unlike the purchase of houses where the banks charge interest on the reducing balance, vehicles purchased are charged on the full sum for the full term even though the hirer reduces progressively through installments the sum loaned to him by the financial institution. The hirer is therefore made to pay a higher interest rate than that advertised for the purchase of vehicles. It should be made compulsory for the financial institution to inform the hirer before hand of the Actual Percentage Rate (APR) that he will be charged throughout the full term of the hire purchase. This will enable consumers to understand their full liability.

Report On Misleading Advertisements

1.0 Introduction

Deceptive advertising is referred to as any misleading information provided by any sellers to the consumers on the availability of goods and services in lieu of making a comparison and evaluate the relative merits of each product presented before him prior to purchasing it. Advertising is fast becoming a major area of complaint amongst consumers. In 2006, 684 consumer complaints were filed with the NCCC.

2.0 Consumer Issues

2.1 Misleading advertisements

Misleading and deceptive advertising falls under the legal area of trade descriptions and the principal Act governing it is the **Trade Description Act 1972 (TDA) and The Communication and Multimedia Commission (MCMC)**. The MCMC regulates advertisements content in the Electronic Media.

According to the TDA, 'advertisements' includes all forms of advertising a particular goods and/or services either by way of verbal or written and through any means of publication such as catalogues, labels, cards, exhibition of photographs, broadcasted by television, radio and others. Thus in simple terminology deceptive advertisement involves misleading information conveyed by the trader of goods or services to consumers which leads the consumers purchasing those items based on the misleading information.

2.2 Victimization of consumers

The Act aims to ensure that sellers of goods



and services do not victimize purchasers with misleading and false information as it in an offence under the Act to do so. It also falls under the category of bait advertisement. Bait advertisement is explained as follows: -

- Where the consumers are baited to buy discounted goods and services.
- Where a seller does not intend to sell whatever goods and services that has been initially offered in the sale advertisement.
- Where a seller does not have any reasonable grounds to believe that a particular goods and services would be available at the agreed price, time and quantities.

Although advertisements containing comparison between two or more products is permissible by law, it has been a custom among advertisers to observe the principles of fair competition so as to eliminate the likelihood of consumers being misled as a result of unhealthy rivalry between two proprietors. Therefore advertisers, proprietors

and sellers are bound to be honest and truthful to the consumers.

who had been misled by advertisements by sellers.

2.3 Deceptive and unfair advertising

Advertising becomes deceptive in the following situations: -

- a) it contains misleading statements
- b) It omits information which would then mislead consumers
- c) the misleading statements or omission of material information affects consumers' decision when purchasing.

Likewise, advertising becomes unfair if it causes or likely to cause substantial damages to the consumers who could not possible avoid the damages.

In order to determine a deceptive advertisement, NCCC looks at the term '*reasonable consumer*' which means any normal and typical consumer without looking at his background, purchasing power and economic status in the society. We look at how a reasonable consumer would respond to such advertisement and also the express and implied claims inserted either literally or inferred in the advertisement itself.

For example, some of the deceptive advertisements circulated in our country included slimming treatment packages and health food products, housing, cars, financial services, telecommunication and so an.

In reality, the Act itself is merely a statute that only discourages any false and misleading descriptions of goods and services by way of imposing criminal sanctions. This is proven by non-existent of any provisions in the Act for compensation to be awarded to consumers

3.0 Recommendations

NCCC would therefore recommend that in order to overcome this problem, the following should be considered: -

- 3.1 provide for civil and criminal sanctions;
- 3.2 rules and regulations are backed by a rigorous system of self-regulation;
- 3.3 the law must be formed on a strong platform so as to ensure that the rules and regulations imposed are implemented;
- 3.4 the respective bodies must be able to the bear the responsibilities to ascertain that the advertisers, proprietors and sellers abide by the rules and regulations imposed on them so as to ensure its effectiveness in the industry;
- 3.5 the degree of sanctions imposed must be equal to the monetary gains which the sellers have illegally obtained through deceitful advertisements;
- 3.6 the Ministry should be empowered to terminate false, misleading or deceptive advertisements without having obtain the Court's permission; and
- 3.7 the Ministry should also be empowered to require advertisers to deposit technical information in order to substantiate claims and this information should then be released to the public.
- 3.8 The enforcement division of the Ministry of Domestic Trade and Consumer Affairs should strictly enforce the Trade Description Act 1972 and also The



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Consumer Protection Act 1999. The penalties imposed on violators should be strictly enforced.

- 3.9 The industry should also look into self-regulation. The NCCC believes that self regulation would help in overcoming this issue of misleading advertisements.

Report On Time-Sharing Holiday Schemes

1.0 Introduction

Time Share holiday schemes have of late become very popular in Malaysia. Due to their nature of providing affordable holiday accommodation, many consumers are becoming members of such schemes. Many properties developers have also ventured into this very lucrative business. In 2006, the NCCC received 644 complaints on such schemes. The complaints are regarding misrepresentation by agents, non-compliance with the provisions of the Direct Sales Act 1993, unfair packages and unavailability of accommodation, pressure selling, misleading promotions and lack of information.

2.0 Consumer Issues

2.1 Pressure Selling / Cooling Off Period

One sales method employed by companies which market time share membership is highly questionable. Prospective customers are approached in shopping complexes or through the post and invited to a seminar. To induce attendance free holidays are offered and prospective clients are requested to bring their spouses. Once at the seminar, those attending are forced to listen to lengthy sales talk and pressured to purchase memberships. Since the spouse is present the husband cannot escape on the excuse of having to consult his wife. The holiday offer is reluctantly given with many conditions where no sale could be made. If there is a sale, consumers wishing to terminate the contract would not be able to do so as their communications would be ignored in order to beat the cooling-off period requirement.



The Direct Sales Act 1993 (DSA).

The sales method of time-share club memberships is governed by the DSA. One of the most important provisions which protects consumers is the 'cooling off period' and for all sales above RM300 to have a written contract as in S23 of the DSA which provides that:

'.. a contract in respect of a door-to-door sale for the supply of goods and services having such value as may be prescribed, and a contract in respect of a mail order sale –

- (a) shall be in writing
- (b) shall contain immediately above the place provided for the signature of the purchaser the statement "THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF TEN WORKING DAYS" printed in upper



case in type not smaller than 18 point Times; and

- (c) shall be signed by both the vendor and purchaser.

Complaints filed indicate that this requirement is often violated. Consumers are not told of the existence of the ten cooling-off days provision. Consumers are often made to sign contracts on the spot and payments are collected. This is in further violation of S25(4) which states that:

"no vendor or other person shall accept any money or other consideration from a purchaser under a contract made under this Act before the expiry of the cooling-off period".

2.2 Misrepresentation

Misrepresentation by sales staff has always been a big problem in all type of sales activities and time-share sales are no exception. All types of misleading information is provided to consumers who rely on such information and sign contracts. Consumers for example would be told that they can sell their memberships back to the company if they so desire; that the company will rent their allotments at attractive rates if consumers cannot use them; that the company will help them find buyers to whom they can sell their memberships at a higher price; that the company intends to develop resorts at other holiday locations and similar representations. All these are of course sweeteners and seldom carried out in reality.

2.3 Time-Share Resale Scams

A recent problem which has surfaced to cheat existing time-share members is the time-share resale scam. Companies acting as agents for other time-share developers manage to obtain full particulars of existing time-share members

with inside help no doubt, of other time share schemes. They then proceed to telephone members using different persons, and carry out scams offering to purchase existing memberships often at inflated prices for sale to foreigners. If accepted the consumer is faced with a scam whereby he is persuaded to purchase another time-share membership as part of the package to sell his existing membership. Unsuspecting consumers end up having two memberships. The resale does not materialize and the consumer is burdened by further financial payments for the new membership.

2.4 Availability, quality and location of membership facilities

Consumers complain that accommodation units are often unavailable unless booked well in advance; accommodation units are usually located on the outskirts of towns, without easy access to transport or food outlets; with few other facilities such as cafes; and units are poorly maintained. Consumers feel that they do not get value for money where they have spent between RM30,000-RM60,000 for a single membership in addition to a yearly maintenance charge of around RM400.00. NCCC is of the opinion that these problems arise because developers' try to reduce overhead costs and sell more memberships without a corresponding increase in accommodation units. Further developers have resorted to renting a few units in condominiums on the outskirts of towns as accommodation units instead of investing in and building new resorts as promised during their promotions.



3.0 Recommendations

3.1 The NCCC is of the opinion that the time-share industry is largely an unregulated business in the context of consumer protection. The current applicable law is the Direct Sales Act 1993 under the Ministry of Domestic Trade and Consumer Affairs which is clearly inadequate to address the numerous problems in this industry. This law only regulates the process of direct sales to customers. There are many other areas of the time-share industry which should rightly be regulated by the same ministry to afford greater protection to consumers. Legislation akin to the time-share industry act in the United Kingdom should be introduced by the ministry to safeguard consumer interests.

3.2 The time-share industry is responsible for a large number of complaints lodged with the NCCC yearly. The provisions of the Direct Sales Act 1993 are often ignored by players in this industry. The Ministry of Domestic Trade and Consumer Affairs should take proactive action by attending sales talks by promoters or ask consumers who have been invited to seminars and sales talks or those offered free vacations to lodge information with them so that enforcement officials can see for themselves how the law is ignored.

3.3 The Ministry of Domestic Trade and Consumer Affairs should develop a research and investigative capability to seek out and identify problem areas where consumers are being shortchanged for example in the time-share industry so that new laws and

proactive enforcement action can be taken. It must investigate and identify potential areas where consumer interest could be adversely affected. Such a proactive role is expected of the ministry tasked with protecting consumers.

3.4 A new law to regulate all aspects of the time-share industry should be legislated to give the ministry powers to examine all aspects of the provision of facilities to consumers under time-share memberships. The ministry should have powers to visit and examine the condition of accommodation units provided to members and other facilities which may be available to them.

Report On Maid Agencies

1.0 Introduction

The hiring of foreign maids to do household chores has become an integral part of Malaysian society. However the bringing in of an increasing number of maids for domestic employment has also generated a lot of problems. Consumers complain of being overcharged maid employment agencies. In 2006, 570 complaints were lodged with the NCCC. The main grievances were concerning untrained maids, illegal maids, maids with disease, runaway maids (most common complaint), misrepresentation by agency, exorbitant charges, unfair contract terms and fraud.



2.0 Consumer Issues

2.1 Misrepresentation and Misleading Information

Misrepresentation and misleading information has been the main contributing factor towards complaints. Normally a person intending to hire a maid would visit a main recruiting agency. The agency would show biodata of available maids to the prospective employer. It is at this stage that misrepresentations would be made. The employer only realizes the maid's shortcomings once the maid is delivered. There would be significant variations in issues such as age, marital status and work experience.

2.2 Runaway Maids

This is a major problem facing employers. In some cases the employer is a contributory factor for the maid absconding. This is due to some employers having high expectations on their maids to perform their duties the way they want it to be and this causes pressure and

stress on the maids, especially if they are first timers. Pressures can be in the form of a heavy workload, mistreatment by the employers and also long working hours without rest and this prompts the maids to run away. There are also maids who in order to get into the country disguise as maids. They would normally abscond within a few days of work. The agency will normally get a replacement maid but at a cost to the employer. Maid employment contracts are usually in favor of the maid agency.

There are some maids who in collaboration with their unscrupulous maid employment agencies abscond within a few weeks or after the three month replacement period only to be recycled and offered to other employers at the original cost. This modus operandi has proved to be very beneficial to both the maid and her agency. This is one tactic used to cheat consumers.

2.3 Maids with disease

While FOMEMA is entrusted to screen foreign labor that includes maids, the NCCC had

continued to receive complaints on maids with contagious diseases being declared fit for employment. It is sometimes surprising that such persons could pass through medical vetting of FOMEMA. Maid agencies should also make sure that maids that are brought in the country are free from diseases. This could be particularly dangerous and all other people in the family could also be affected.

2.4 Overcharging

Another common complaint regarding maid agencies is overcharging. Consumers claim that maid agencies were openly charging more than the scale of fees set by the Home Affairs Ministry. It is surprising how maid agencies can ignore the government guidelines and continue to charge around RM6000.00 per Indonesian maid despite the government set limit of RM2415.00 which comprises the following:-

- RM635 - for agent's fee;
- RM500 - for airfare from Indonesia;
- RM360 - for Government levy;
- RM190 - for medical examination;
- RM60 - for work permit;
- RM15 - for re-entry visa;
- RM10 - for processing; and,
- RM645 - for miscellaneous costs such as lodging, transport from airport and Airport charges.

3.0 Recommendations

3.1 The first and foremost area of action should be for the government to make all maid employment agencies follow the guidelines on maid wages as set out above. Presently none of the agencies

follow these rates and charge as much as RM6000.00 per maid in direct contravention of the RM2415.00 limit set by the government. This not only makes a mockery of the government rates but erodes consumer confidence in the ability of the government to control maid employment agencies. Consumers are well aware of a number of previous failed attempts by the government to get maid agencies to follow rates for employing maids from Indonesia.

3.2 The Malaysian Association of Foreign Maid Agencies (PAPA) should take action to register all maid employment agencies as members which can then be regulated by a code of conduct and business ethics. This would help to eliminate unregistered agencies and illegal agencies from cheating consumers. Action should also be taken by the authorities to revoke the licenses of errant maid agencies in addition to fines and jail terms for the directors concerned.

3.3 A standard contract between maid employment agencies and employers should be implemented by the government. Agencies should be made to bear a greater responsibility over problematic and runaway maids. Currently the agencies only provide a limited indemnity for only the first three months. The current contract places the burden on employers should the maid pose problems or if the maid runs away. The Malaysian Government should hold discussions with their Indonesian counterparts to prevent Indonesian maid agencies from charging exorbitant rates for maids sent to Malaysia.

Report On Electricity Supply

1.0 Introduction

In 2006, the National Consumer Complaints Center received 550 complaints on electricity supply provided by Tenaga Nasional Berhad (TNB). Complaints on electricity supply can be categorized as disputes on billing; power surge; failure to disconnect electric supply; backdated bills; slow response on complaints and power failure.

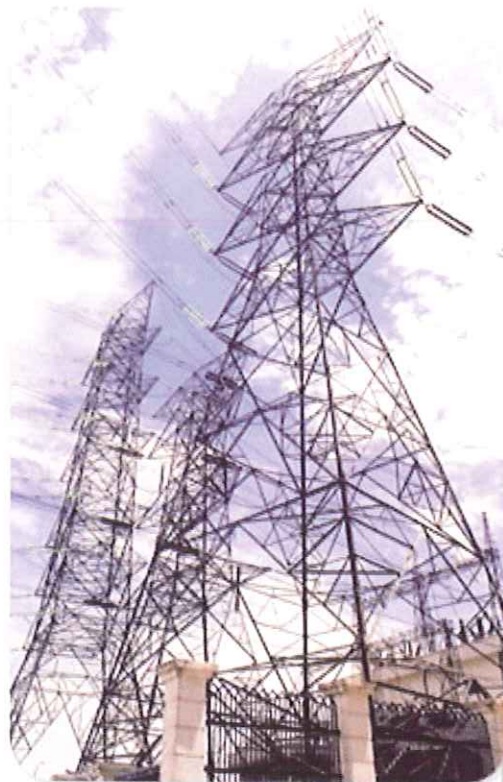
2.0 Consumer Issues

2.1 Dispute on Bills

Consumption Bills: Disputes on electricity consumption bills was a common area of complaint. Consumers were dissatisfied that meter readers employed by TNB had continuously provided them with estimated bills, which were not accurate. This had caused huge sums being demanded by TNB, which consumers disputed. In order to collect such bills TNB has resorted to disconnecting power supply.

Disconnecting Supply to Tenants: Consumers who rented their properties out were also unhappy that TNB failed to disconnect power supply to their premises when asked to do so or when outstanding bills by the tenant were way beyond the deposit amount paid. This caused them difficulties as they had to pay bills incurred by tenants who had left without paying the their bills.

Changing of Electricity Meters: Another common problem was where TNB officers had inspected and changed electricity meters with the excuse that these meters were faulty or tampered with. Once meters are changed bills are normally backdated and the new bill would



be an accumulated amount, which will commonly run into the thousands. Consumers are then forced to pay or the electricity supply would be disconnected. Consumers have to rely on inspection results of TNB officers and do not have a chance to get a second opinion.

2.2 Power Surge

There were complaints from consumers that sudden power surges caused electronic products in their premises to malfunction and this had caused severe financial loss. TNB on the other hand had denied liability blaming it on the external factor, which is theft, which according to them is beyond their control. In this case TNB should bear liability and compensate those who are affected as it is incumbent upon TNB to secure their premises.

TNB should employ security guards so that such incidents do not occur.

2.3 Slow response on complaints

Consumers have filed complaints stating that they could not reach TNB easily when there are problems with electricity supply. There was also slow action on complaints lodged. This has led consumers to be dissatisfied with the services of TNB.

2.4 Disconnection of Electricity Supply

This problem is particularly common where consumers have rented out their premises. Often tenants abscond leaving behind hefty electricity bills to be paid by the owners. Consumers are unhappy that TNB failed to take proactive action to disconnect supply when it should have been done where the amount exceeds the deposit for electricity supply. TNB claims that it is the right of TNB whether they choose to disconnect or not. This allows unpaid bills to accumulate to be eventually borne by the owner.

supply to them when outstanding bills are equal to or exceed the amount of deposit paid for connecting supply. This is required by TNB procedures but is not uniformly practiced. Owners should not be left with the burden of paying the bills of absconding tenants.

3.0 Recommendations

- 3.1 Currently all complaints and disputes are handled by TNB themselves. It is suggested that the Energy Commission set up a Consumer Complaints Board in order to resolve consumer disputes. The Board should have consumer NGO representatives as members to give it credibility.
- 3.2 TNB should be fair to owners who have rented out their premises. This can be done by issuing warning letters to premise occupiers and disconnecting

Report On Fitness

1.0 Introduction

The number of fitness and health centers (health clubs) in country today has greatly increased since their first emergence. The purpose of health clubs is to provide exercise training facilities to the public for a fee. The NCCC received a total of 547 complaints in 2006 with regard to health clubs. These were concerning cancellation provisions in agreements; inexperienced trainers; inadequate equipment and misleading promotions.

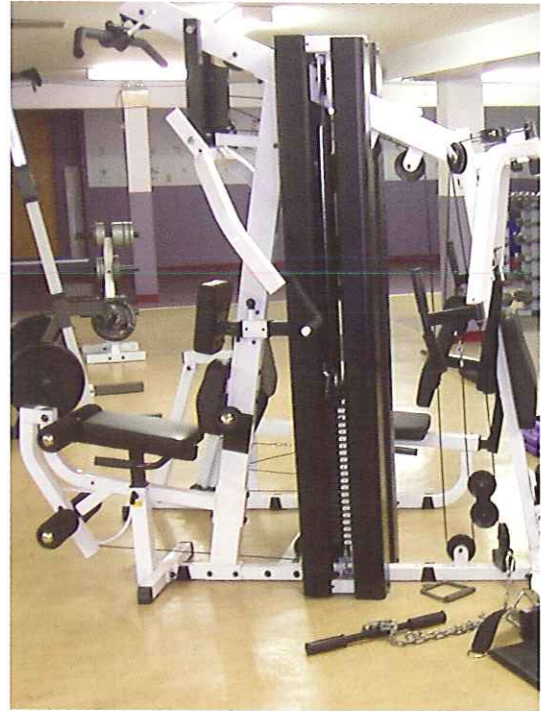
2.0 Consumer Issues

2.1 Lack of Cancellation Provisions in Agreement

The most common problem highlighted by complainants was on termination of agreements which consumers had signed with the health clubs. There were complaints that these agreements did not contain exit clauses. Many complainants wanted to cancel such agreements due to work transfer, job loss, and medical reasons but were unable to do so as there was already a contract between the parties. When the consumer refuses to carry on paying, legal notices are issued demanding payments and threatening legal action.

The Consumers Protection Act 1999 (CPA)

This type of agreement is known as future services contract as provided in Section 17 of the Consumers Protection Act 1999 which is defined as a contract for consumer services that will be provided on a continuing basis. Section 17(5) of the said Act also states that the contract can be cancelled or terminated by either verbal communication or conduct or



both which would indicate the intention of the consumer to cancel the contract. Section 17(2) of the Act lays down three types of charges that a supplier (in this situation, the health clubs) can charge the consumer. These are:-

- a) 5% of the full contract price;
- b) the cost of any goods the consumer used or is keeping; and
- c) the portion of the full contract price representing services received by the consumer.

Thus based on the law above, it is apparent that consumers have the right to cancel the agreement and they are not obligated to pay the remaining sum of the contract. Consumers who have made lump-sum payments, are entitled to claim the balance for services which have not been provided yet, within 14 days of canceling the contract.

2.2 Misleading Advertisements and Promotions

Misleading advertisements and misleading promotions is also a common complaint against health clubs. As the competition between health clubs intensifies their advertising, marketing and promotion departments have come out with various packages which misleading consumers thus affecting the rights of consumers.

The Trade Description Act 1972 (TDA)

S15A of The Trade Description Act 1972 states that "it shall be an offence for any person in the course of any trade or business to make a statement which he knows to be false, recklessly make a statement which is false or make any statement which is likely to deceive or mislead and person as to any of the following matters, that is to say inter alia:

- i. the provision in the course of any trade or business of any services, accommodation or facilities;
- ii. the nature of any services, accommodation or facilities provided in the course of any trade or business
- vi. the rates or charges for any service, accommodation or facilities so provided.

2.3 Inexperienced Trainers

Consumers had also complained that trainers employed at these centers were inexperienced and they fail to measure up to the member's expectations. Again when members want to cancel such agreements they would be denied the right to do so.

2.4 Inadequate Equipment

When marketing their packages, these health clubs would make false claims on the equipment available at their clubs. Consumers normally sign on the dotted line without first inspecting their premises. Very often the representations by the clubs turns out to be false.

3.0 Recommendations

- 3.1 The Ministry of Domestic Trade and Consumer Affairs should fully enforce the provisions of the Trade Description Act 1972 and the Consumer Protection Act 1999. Licenses of these centers who continuously violate the law and short change consumers should be revoked. It is about time the ministry recommends to the government to enact an Unfair Contracts Act to protect consumers from unfair Standard Form Contracts, as is the practice in many other countries.
- 3.2 The ministry should also be aware of the problems and rectify the deficiency in the Consumer Protection Act where due to its supplementary nature the Contract's Act 1950 would take precedence thus making the contract between a health club and the consumer a valid document. This negates the protection afforded the consumer in the CPA.

Report On Pawnshops

1.0 Introduction

Pawn Shops are licensed under the Pawnbrokers Act 1972 and they are a quick and convenient source of credit to consumers who are poor and not very highly educated. Although it provides immediate financial assistance to consumers, there are quite a number of problems related to pawn broking. In 2006, there were 492 complaints filed by consumers with the NCCC.

The interest rate, which is allowed, is 2% per month or 24% per annum, which is rather high considering the fact that loans given out are more than covered by the value of the collateral. Under the Pawnbrokers Act 1972 only those with license may do business as pawnbrokers and the Ministry of Housing and Local Government issues licenses. The Pawnbrokers Act 1972, does not apply to loans over RM5000. S 3(2) of the said Act further states that it is not applicable to loans of between RM1000 to RM5000 where the interest rate is less than 10% per annum.

2.0 Consumer Issues

2.1 Auction Procedures

The NCCC has received complaints that proper auction procedures were not being followed by the pawnshops. In all the complaints received it was clear that such procedures were not followed and the items were disposed. Written notices were also ignored. Even when auctions are carried out it is only done as eyewash. This is because the Act allows the pawnbroker to buy the goods, which are not redeemed from him and they do this at a minimal price so that there is no remainder to be paid to the borrower. Items



for auction are not normally displayed and are normally auctioned by description only. The Act does not require that the items be displayed.

The Pawnbrokers Act 1972

S 23(1)(a) & (b) of the Act states that only a licensed auctioneer can carry out auction of pawned items. The pawnbroker must inform the borrower by post of the date, time and place of the auction of his pledges. An announcement that an auction will be held must be publicized. The pawnbrokers and borrowers are allowed to buy the articles sold. Auction articles become the property of the buyer (Pawnbrokers Regulation 1972). If the borrower is not present, the pawnbroker must inform the borrower if the article has been auctioned for more than the amount borrowed. The notice must be sent by registered post and according to S25 (1) it must be made within a week from the time of the article sold. After 4 months the pawnbroker is no longer obliged to show his auction records to the borrower as provided by 24 of the Act.

2.2 Compensation for Lost Items

The NCCC had also received complaints on compensation to the borrower if his pawned articles are damaged in a fire or lost while under the pawnbroker's care is unfair to the borrower. It does not reflect the current market

value of the items. (S22 (3) PA'72. For compensation of lost due to theft, robbery or fire, the pawnshop owner is only liable to pay compensation of the pawned sum plus another 25% of the pawned sum. This is grossly inadequate compensation considering the original purchase value of the object. However, the pawnshop owner's action is legal because the Pawnbrokers Act provides for it. The compensation sum has to be looked into and must be increased and reflect the current market value. There might be cases where pawnbroker would stage the robbery as they stand to gain a big sum.

2.3 Items skimmed

Consumers also complain gold objects such as gold chains and gold bangles when pawned are not weighed or measured and hence the weight or length of which is not recorded in the pawn ticket or receipt. Subsequently when the objects are redeemed there are complaints that the gold objects are shorter in length or lighter in weight insinuating that the pawnshop owners had skimmed gold from the objects. Due to the length or weight of gold objects not being initially recorded there is no way of verifying the truth of the complaints.

3.0 Recommendations

3.1 The NCCC has identified that the redress mechanism for aggrieved consumers is rather weak in this area. Consumers do not know where to lodge complaints should they feel shortchanged. The Police have been given the responsibility to look into such cases but with the workload, which the police force already has, they had failed to provide assistance to the complainants. Consumers also fear to

go to the police because of its perception. The NCCC recommends that this area should be transferred to the Ministry of Domestic Trade and Consumer Affairs so that consumers would be adequately protected.

- 3.2 The period of six months to redeem the articles is also too short, especially for loans of more than RM500 (S18 PA'72). This has to be amended as most borrowers are from lower income group.
- 3.3 Pawn Shops are commonly visited by the poor for credit. Most of these people are not highly educated and thus would be subject to exploitation. It is therefore important for the regulators to enforce the laws to ensure that consumers are well protected. Provisions on compensation would have to be reviewed and amended if necessary so that consumers would be protected.

Report On Insurance

1.0 Introduction

Services provided by insurance companies are another area which has continued to generate complaints. In 2006, 488 complaints were recorded. Over the years, NCCC has received numerous types of complaints concerning the insurance industry.

According to Bank Negara's Annual Insurance Report, in 2005 the Customer Service Bureau handled a total of 2,628 complaints, an increase of 10.6% from 2,376 complaints received in 2004. As in the previous years, motor insurance remained as the sector with the highest number of complaints accounting for 51.8% (2004: 50.7%) of total number of complaints received. Complaints relating to life insurance in 2005 totaled 696, an increase of 43.5% from 485 complaints received in 2004. The bulk of the complaints were related to the conduct of agents and repudiation of liability. The Financial Mediation Bureau, on the other hand, handled a total of 1,326 insurance cases during 2005 compared with 1,105 insurance cases handled in 2004. A total of 66.7% (2004: 55.8%) of the cases were related to general insurance. The most common complaints handled by FMB were related to personal accident/disability and hospitalization/medical insurance policies.

As newer and more innovative products emerge in the market, consumers are flooded with various options. Insurance policies of today incorporate the element of investment. Focusing its market at young working consumers, more and more people are attracted by the idea of using premiums to invest, which offers monetary returns. As newer products appear we would also most likely to see newer types of complaints to surface. Among the typical complaints received regarding insurance includes:

2.0 Consumer Issues

2.1 Misrepresentation by agents

Unethical insurance agents are a major problem in the insurance industry. Misrepresentation of material facts is common. One common problem faced by consumers is where agents would promise their clients that if they pay a certain amount of premiums for a certain period of time, the policy would automatically finance itself afterwards. However this is often not the case and consumers are required to pay for the period set or for life as in the case of life insurance.

2.2 Unreasonable delays in settling claims

The issue of unreasonable delay in claims settlements is also common in the insurance industry. Procrastination by agents and lengthy investigation by insurance companies has resulted in policy holders going through tedious claim procedures and unnecessary delays (sometimes up to years) before they could settle their claims. Insurance companies often appear reluctant to settle claims.

2.3 Unfair claims settlement

Unfair claims settlements are among the most common types of complaints reported by consumers. Such cases occur mostly due to unclear or ambiguous policy terms, uninformed policy updates and empty promises made by unethical agents. A common scenario in Malaysia is on auto insurance involving tow trucks and auto mechanics. NCCC has recorded cases where insurance companies have refused to honor the claims for its client based on the grounds



that the workshop was not in their panel list. However, there is either no list of panel workshops given with the original insurance contract nor the consumer informed, who then assumes he is free to repair at any workshop.

2.4 Low surrender value of policies

Local insurance companies have high operational costs and profit margins. One indication is the low surrender value of policies. In Malaysia a policy must be in force for a minimum period of three years to have some surrender value. The surrender value is less than 10 percent of the premiums paid. If the duration is less than three years then it has no surrender value at all and all the premiums paid will be forfeited.

2.5 Method of claim approval not standardized among insurers.

Different outcomes are given by different insurance companies on similar cases. NCCC has received cases of claims where different companies views and approve claims differently. Though the industry is overseen by

Bank Negara Malaysia, regulation is minimal particularly when it comes to claim approvals, whereby policy terms among different companies can vary significantly. As such, consumers are still skeptical of buying insurance in fear that their claims will not be upheld when they truly need it.

2.6 Resorting to pressure selling

Unscrupulous insurance agents are known to resort to pressure selling in order to achieve their sales target and increase their revenue. Instead of promoting the benefits and advantages of insurance, they resort to using various tactics such as incessant phone calls and follow-ups which cause frustration and nuisance to consumers. Under such harassment, some consumers are unwillingly being coerced into buying an insurance policy they don't need or duped into signing unfavorable policy terms and agreements.

2.7 Lack of professionalism

Generally the agents are not well trained on legal principals and interpretation of clauses,

tables, terms and conditions in the insurance agreements. Further, some of the terms in the agreements are not clear and therefore lead to ambiguity and uncertainty. When problems arise, insurance companies interpret terms their advantage. Insurance companies must instill discipline in their agents and ensure they adhere to the code of ethics.

3.0 Recommendations

3.1 Right to information

In today's era of information overload, consumers are increasingly faced with the problem of making the right choice in purchasing suitable insurance. Consumers are overwhelmed by the abundance of information the validity of which they cannot verify. Access of credible information is crucial to consumers. New innovative products such as investment-linked schemes are turning conventional insurance into investment opportunities. Having purchased insurance consumers place their trust in insurance companies to safeguard their goods and even their lives in case of mishaps. As such, insurance companies must make terms and conditions of their policies clear to consumers. Policies that are clear, simple and understandable will undoubtedly protect consumers against unethical advertising in the promotion of insurance to the general public.

3.2 Right to consumer education

The right to consumer education means the right to acquire knowledge and skills to be an informed consumer when making decisions. Apart from training their own agents, insurance companies should actively work together with NGOs to develop and implement educational

programs for the public such as public talks and workshops on the fundamentals of insurance, as well as updates and developments in the insurance industry.

3.3 Right to choose

Choice does not only mean a variety of options to choose from, but it also means that the choices available to consumers are of quality and can be reasonably accepted within certain standards at competitive prices. With over 40 insurance companies in the country offering an extensive range of products, consumers are overwhelmed by the myriad of schemes and packages. Besides government regulations, insurance companies themselves must exhibit self-regulatory efforts to enhance discipline and professionalism. Such efforts will promote good business ethics which will enhance the image of insurance companies and protect consumers in addition to promoting the concept of insurance to the public.

3.4 Right to redress

Consumers have the right to be compensated for misrepresentation, shoddy goods or unsatisfactory services. Consumers, particularly vulnerable groups such as senior citizens, are facing numerous problems with the insurance industry, and they must be able to channel and solve their problems speedily through effective redress mechanisms. Besides redress mechanisms such as the Financial Mediation Bureau, insurance companies themselves should strive to improve and focus on their customer service to cater for consumer grievances. Consumer complaints should speedily be resolved at the company level without the need to go through mediation bureaus or civil courts.



As insurance is generally a service industry, more attention and priority must be given to satisfying and protecting the interest of its clients.

3.5 Corporate social responsibility

Many businesses are beginning to incorporate Corporate Social Responsibility (CSR) in their operations. CSR is a commitment by businesses to behave ethically and to contribute to the economic development and well being of the nation and people. The practice of CSR by companies will give the public, consumers and all elements of the civil society some assurance that companies are addressing issues of importance to society. It is also a way of ensuring that organizations are meeting obligations that are beyond profit making. The implementation of CSR will enable consumers and the civil society to engage directly with corporations to ensure that the balance between profit making and consumer welfare is always maintained. This approach should be adopted by the insurance industry.

Report On Legal Services

1.0 Introduction

In 2006 the NCCC received a total of 442 complaints pertaining to legal services. Consumers have been complaining that lawyers are failing to discharge their functions professionally, providing wrong advice, acting contrary to clients instruction. Other issues are the charging of contingency fees; excessive fees; touting; loss of client's documents; failure or delay in refunding costs awarded to clients; inadequate preparation; delay in conveyancing work, insisting on full payment before commencing work, forcing clients into settlement and negligence. The major issues are discussed below.

2.0 Consumer Issues

2.1 Contingency Fee

Contingency fees can be defined as fees received for services performed on behalf of a client asserting a claim payable to the lawyer if, and only if some recovery is achieved through the lawyer's efforts. Its distinguishing characteristic is that, if no recovery is obtained for the client, the lawyer is not entitled to a fee. Consumers complain that lawyers were charging excessive contingency fees. Some legal firms were charging up to 40% of the award and this did not include the 10% of costs which is paid by insurance companies. There were also complaints that lawyers charged excessive interest rates on monies advanced to clients. This high return has encouraged touts to collaborate with lawyers in securing cases. This has severely affected consumers who at the end of the day become victims of touts and unethical lawyers.



The Legal Profession Act 1976 (LPA)

Currently contingency fee is not allowed in Malaysia. S112(1)(b) of The Legal Profession Act 1976 (LPA) states that :

"No advocate and solicitor to purchase interest of client"

- (1) Except as expressly provided in any written law, or by rules made under this Act, no advocate and solicitor shall -
 - (a) purchase or agree to purchase either directly or indirectly an interest or any part of the interest which is the subject matter of his client or that of the other party in the same suit, action or other contentious proceeding brought or to be brought or maintained
 - (b) enter into any agreement by

which he is retained or employed to prosecute any suit or action or other contentious proceeding brought which stipulates for or contemplates payments only in the event of success in any such suit, action or proceeding.

According to Rule 27 Legal Profession (Practice and Etiquette) Rules 1978 (LP(E&P)) – *“An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested”*

It is therefore clear that the charging of contingency fees is illegal in Malaysia but the NCCC continues to receive such complaints. It appears that the Bar Council is unable to control its members thereby putting consumers in a difficult position.

Furthermore Rule 52 of the LP(P&E) Rules states in clear terms that it is unprofessional for an advocate and solicitor to divide or agree to divide either cost received or the profits of his business with any unqualified person. Even S94(3)(h) LPA 1976 states that accepting employment through a tout is considered as a misconduct.

2.2 Delay in Conveyancing Work

This particular problem is rampant in real estate matters, especially in the purchase of houses. Very often the delay by lawyers in completing documentation work would result in interest payments being levied against their clients. Clients would normally accept the delay and pay the interest charged.

2.3 Lost Documents

Consumers have complained that lawyers frequently misplace documents belonging to them which results in severe inconvenience. There is no redress available to consumers. Lawyers should be made more responsible for documents belonging to their clients.

2.4 Absconding with clients money

Consumers have complained that monies belonging to them are misused by their lawyers. Very often the lawyers abscond with such monies and it is difficult for consumers to trace them. Lawyers are expected to observe standards of conduct and code of ethics set for the legal profession.

3.0 Recommendations

- 3.1 The Bar Council has to implement, monitor and evaluate the professional conduct of lawyers through a system of ethical standards to ensure that services are rendered professionally. Evaluation of complaints against lawyers should be handled in a fair and transparent manner with the consumer interest in mind. A system of ethical standards is an important means of ensuring the continued confidence of the consumers in the profession and will also ensure that the legal profession is committed to the principles upon which the law and legal system is based such as ascertaining the truth; fair and impartial administration of justice and upholding the rule of law.



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- 3.2 The Bar Council should legalize and strictly regulation the collection of contingency fees. A cap on the percentage chargeable should be introduced. Contingency fees would also provide access to justice for poor consumers who might not be able to pay high legal costs. With this the Bar Council would also be able to overcome the problem of touts who terrorize consumers. Lawyers who violate such provisions should be barred from practicing.
- 3.3 Transactions regarding the purchase of property should be handled speedily with the consumer interest in mind. Clients who lose money in interest payments due to delay on the part of the lawyers should be able to lodge complaints with the Bar Council.
- 3.4 The NCCC believes that the Bar Council should do more to protect consumers from errant members. If The Bar Council can make it illegal to provide discounts to consumers in order to

protect its members, we believe that it can also do more to protect consumers. Errant lawyers should be hauled up for misconduct and be barred or suspended from practice.

Report on Food

1.0 Introduction

There were a total of 441 consumer complaints in the food category received by the National Consumer Complaints in 2006. The common grievances were, foreign objects in food such as insects and metal pins; sale of expired food products; unhygienic premises; adulterated food; misleading advertisements and lack of information. In Malaysia the primary legislation regulating food is the Food Act 1983 and Food Regulations 1985. These laws fall under the jurisdiction of the Health Ministry. To ensure that places which deal with food are hygienic, the local authority is also vested with the necessary power to enforce the Food Act 1983 and Food Regulations 1985.

2.0 Consumer Issues

2.1 Foreign Objects Found in Food / Excessive

The Food Act 1983 and Food Regulations 1985

S13 of the Food Act 1983 states that "if food contains substances, which are poisonous, harmful or otherwise injurious to health" the person committing such offence shall be liable to a fine not exceeding RM100,000 or imprisonment not exceeding 10 years or both. S13A of the Food Act 1983 further makes it an offence to prepare and sell food which is unfit for human consumption. If any such incidence is reported and proved, the proprietor can be fined RM30,000 and/or imprisoned for 5 years.

2.2 Unhygienic Premises

Consumers have complained that restaurants and eateries they frequented were often dirty,



unhygienic and unsanitary. S10 of the Food Act 1983 provides that the "director may order food premises or appliances to be put into hygienic and sanitary condition." S11 of the said Act further gives power to the director to close down unsanitary premises.

2.3 Sale of expired food products and products without an expiry date

Many complaints have been received in this area. This problem is particularly common in the hypermarkets as most complaints received referred to products purchased from the hypermarkets. There were also complaints that products did not carry the expiry date label.

S 4 Part IV of the Food Regulations provides that food products have to carry the expiry date

label without which it would be illegal to retail such products. It would also be illegal to retail in products where the expiry date had lapsed.

2.4 Adulterated Food

There were a large number of complaints recorded by the NCCC in the area of adulterated food. Complaints were mainly regarding the use of chemicals which are dangerous such as the excessive use of boric acid in bean curd and formalin to preserve food. These chemicals are known to cause critical illness in humans.

3.0 Recommendations

- 3.1 Consumers generally have difficulty in lodging complaints regarding problems with food items. This is because of the lack of a clear mechanism where consumers can lodge complaints. Neither the Health Ministry nor local authorities have a mechanism which is easily accessible to the public. Even if the correct authorities were located, the whole process would consume a lot of time. A clear and simple complaints mechanism should be set up by the health and local authorities. Public information programs should be carried out to explain the mechanism and procedure to the public.
- 3.2 With restaurants and eateries mushrooming all over town, enforcement officers should carry out inspections at random to ascertain the conditions of places, which prepare food for sale. Inspections should be carried out on regular intervals, as most of these places would neglect cleanliness. Relevant local authority enforcement

officers should also regularly carry out checks on such premises in order to ensure that relevant laws are complied with.

- 3.3 The Health Ministry often takes samples of food items for testing. However the results are seldom released to the public. Additionally tests done by consumer organizations vary with similar tests done by the health ministry. The public is inclined to believe consumer organizations rather than government agencies. It is important that the Health Ministry builds up credibility among consumers.
- 3.4 The Health Ministry should work with local authorities to rid street side vendors who operate unsanitary eating stalls. The government should strictly implement the concept of 'food courts' where waste disposal and water supply is available. Currently numerous streets in town have street vendors operating in unhygienic conditions.

Report On Tour Agencies



1.0 Introduction

There have been many complaints filed by consumers who claim to have been shortchanged by tour agencies. In 2006 the NCCC received 382 complaints. Common grievances were misleading information by agents, misrepresentation; misleading promotions; misleading advertisement; last minute cancellations, last minute change of itinerary; hidden charges; mistreatment by agents at destination and failure to refund deposits. In Malaysia the tourism industry is regulated by the Tourism Industry Act 1992.

2.0 Consumer Issues

2.1 Last Minute Change of Itinerary / Mistreatment by Agents at Destination

The NCCC has received many complaints from consumers complaining that they were mistreated by agents at destination and there were major itinerary changes. Consumers felt

shortchanged. The NCCC carried out its investigation and found out that tour groups were sold to agents at destination with a zero reception fee. This was particularly rampant with tourists visiting China.

2.2 Misleading Advertisements

Misleading advertisements have been an issue in all areas of complaints. Complaints in this area are particularly high during MATTA Fair promotions. Consumers complain that what was offered in the advertisements were not made available. Consumers would only realize all the shortcomings after paying for the tour.

The trade Description Act 1972

S15A of The Trade Description Act states that "its shall be an offence for any person in the course of any trade or business to make a statement which he knows to be false; recklessly to make a statement which is false; or to make and statement which is likely to

deceive or mislead a person inter alia the nature of any services, accommodation or facilities provided in the course of any trade or business. The penalty for violating the above provision is set under S18 of the said Act, where a person can be imprisoned for a term not exceeding 3 years and/or fined not more than RM100,000.

2.3 Untrained Tour Guides

Untrained tour guides has also been an issue. Consumers had complained that guides were not aware of information at destinations. This has resulted in consumers not benefiting completely from tours. Some of these tour guides were not licensed.

The Tourism Industry Act 1992

According to S21 of The Tourism Industry Act 1992 "no person shall act, or hold himself out, as a tourist guide unless he is licensed under this part and those who violate this provision would be liable to punishment of a fine of not more than RM7,000 or imprisonment for a term not exceeding 2 years.

2.4 Market structure and improper trade practices

An investigation carried out by the NCCC revealed that problems in the tour industry in Malaysia arise because of market structure and improper trade practices. The findings can be listed as follows:

- 2.4.1 The number of outbound travelers from Malaysia especially to Mainland China has greatly increased in recent years and likewise complaints lodged by tourists in relation to shopping arrangements during tours have also risen. Many complained that they were

taken to designated shopping places and were forced to make purchases so that tour guides could get rebates.

- 2.4.2 It is not uncommon for travel agencies which recruit consumers to get all the tour fees and then pass the tour group to another agency, often up to several times. This results in "zero reception fee" as the reception agency receiving the tour group at the destination very often gets no money to cater for food, accommodation and transportation expenses at all. There are even "negative reception fee" tours as the reception agencies sometimes have to "buy" tour groups from the recruiting agencies. In this case, the reception agencies have to rely on rebates from tourists' purchases and fees for optional tours to make up for all land reception expenses. This leads to tourists being pressurized by tour guides to spend money on shopping.

- 2.4.3 Under the current system, consumers are unable to make a right choice since the tour fare paid by consumers may have no direct relation to the quality of reception. Tour agents at recruiting and receiving ends sell and buy travelers without regard to consumer welfare. Under the zero fare arrangement, there is no guarantee of service quality even if tourists had paid high tour fares

2.5 Last Minute Cancellation

Many consumers had complained that the tours which they had registered for are cancelled during the last minute. The common reason cited by tour agencies is the shortage of participants. Since consumers would have made all preparations such last minute



cancellations are not only unethical but they also cause severe inconvenience and financial loss to consumers.

1.0 Recommendationss

3.1 Tourism regulatory authorities should :

3.1.1 Strengthen regulation of outbound tour operators.

3.1.2 Ensure that all travel agencies sign a model contract devised for optimum consumer protection with reception agencies at outbound destinations.

3.1.3 Prohibit the practice of "selling" tour groups. Recruiting agencies should choose reputable destination agencies and make proper arrangements in accordance with terms and

conditions stated on the signed contract.

3.1.4 Forbid improper practice of "zero" or "negative" reception fee which leads to unfair competition and prohibit commercial bribery and misleading advertisements.

3.1.5 Request from time to time from licensed tour operators details of business activities carried out by them including the charges for and the terms and conditions of such activities. This is provided under S15(2)(C) of the Tourism Industry Act 1992. It is also important that the Ministry of Tourism makes continuous checks on tourist guides so that consumers are not shortchanged.

3.1.7 Enforce the provisions of the Tourism Industry Act 1992. Strict punishment should be imposed and the operator license should be revoked or suspended.

3.2 The travel industry should:

3.2.1 Adopt responsible trade practices and adhere to high standards of business ethics.

3.2.2 Enhance self-regulation. The offer of lower prices and special services to the elderly and children by some tour operators should be commended and encouraged. Accurate details such as a detailed itinerary, including sightseeing spots, transportation and accommodation arrangements including star-rating of hotels should be provided to tour

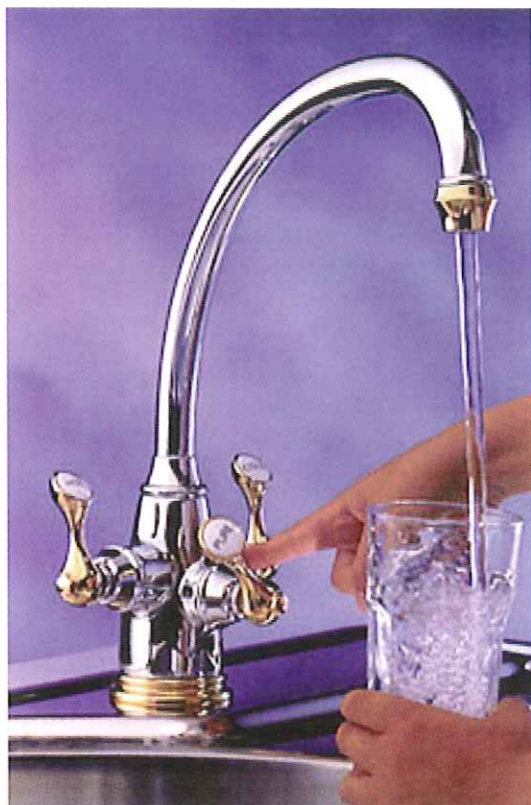
participants.

3.2.3 Prohibit tour guides from pressurizing tourists to make purchases or join optional tour items. Prices of optional tour items should not be raised without prior notice.

3.2.4 Take good care of all members of the tour group and take proactive steps to mediate with consumers should disputes arise.

3.2.5 The Malaysian Association of Tour and Travel Agents (MATTA) should make sure that their members comply with the code of ethics of the industry. It is important that members behave ethically. MATTA should also be more concerned with complaints filed by consumers. The NCCC had found that MATTA has not paid much attention towards consumer complaints. The NCCC has never received any reply on complaints forwarded to MATTA for resolution.

Report On Water Services



1.0 Introduction

The NCCC has received many complaints on water supply and 95% of these complaints has been received from Selangor and Kuala Lumpur. In 2006 the NCCC received 350 complaints. Consumers' complaints were mainly about unclear water supply, high water bills, lack of response from the water management company, bad customer service and damage to roads due to water works repairs.

2.0 Consumer Issues

2.1 High Water Bills

This is an area of particular concern. Consumers frequently complain that the water bills they received were extremely high. When

checks were made with the water management company, the common excuse given to justify the high water bills is the occurrence of water leakage. Consumers are told that pipes in the house or the toilet itself may be leaking. Being the sole water supplier in would be incumbent on the company to prove that there was a leakage but the consumer is always left to suffer the consequences. Should consumers refuse to pay, legal action is instituted against them by the supplier. There is no independent redress mechanism to handle such issues.

2.2 Damage to roads

Consumers have complained that repair work carried out by the water management company often damages roads where such work is done. This is mainly due to unskilled subcontractors who carry out shoddy work and lack of supervision. Such roads with uneven surfaces and subsequent potholes pose a danger to vehicles and the public.

2.3 Water disruption without adequate notice

Water supply is frequently disrupted without sufficient notice. Consumers have complained that this has caused severe inconvenience to them.

2.4 Faulty Meters

Water meters were changed when the water management company felt that it was faulty. Subsequently backdated bills were issued to consumers stating that readings in the previous meters were faulty. This has been unfair to consumers as they are asked to pay higher bills or face prosecution.

3.0 Recommendations

- 3.1 Complaints resolution is an area which should be improved by the water management company. As water supply is a monopoly it is important that consumer grievances are attended to quickly and handled transparently. It would be helpful to have an independent group handle consumer complaints regarding water supply in totality.
- 3.2 Dirty water supply is often because of old rusty underground pipes. Consumers have been forced to install expensive water filters to purify water. The water management company is currently replacing old pipes. This should be commended. All the old pipes should be replaced as this is the responsibility of the company.
- 3.3 High water bills is a constant complaint from consumers. While it is important to use pricing of water to prevent water wastage, the management company should at the same time reduce 'non revenue water' namely water which is lost to leakage and theft. This the company has failed to do, but terms in the privatization agreement allow it to increase the price of water every 3-5 years. Monitoring, enforcement and prosecution should also be a function of the water management company.
- 3.4 It is strongly recommended that an independent utilities pricing and redressal system be established to enable independent evaluation of requests for price increases and the resolution of consumer disputes.

Report On Satellite Television

1.0 Introduction

In 2006, the National Consumer Complaints Centre (NCCC) received a total of 321 complaints on satellite service provided by Astro. Most of the complaints were concerning the following issues:-

1. Pricing and billing of service
2. Frequency of advertisements
3. Too much repetition of programs
4. Service disruption during rain
5. Non delivery of Astro Magazine
6. Disconnection commonly done during weekends



programs without interruption as they were paying for the service but advertisement slots had become frequent. Consumers were therefore paying for advertisements. A string of advertisements were repeated every ten or fifteen minutes. Oddly the advertisements were mainly about Astro's other programs. Consumers are puzzled why Astro keeps on advertising its own programs.

2.0 Consumer Issues

2.1 Pricing and billing of service

Astro has also increased the prices of its programs a number of times. A virtual monopoly with an expanding consumer base should actually result in lower prices. However Astro consumers pay more, watch more advertisements and repetitions with a deterioration in quality of some of its programs. Consumers complained that there were also discrepancies in their bills. There were many instances of overcharging and the redress was slow. This had caused unnecessary problems to consumers. Many had to seek redress in the Tribunal for Consumer Claims. Special programs are charged an additional rate for example boxing or golf tournaments.

2.2 Frequency of Advertisement

Frequency of advertisement was also a concern. Subscribers expected to enjoy

2.3 Too Much Repetition

Frequent repetition of programs was also an issue. Complainants claimed that programs were repeated too often and they were not getting value for their money.

2.4 Quality of Programs

Consumers have complained that some of the new vernacular programs such as MTV in Tamil are of poor quality with too many phone-ins and long winded conversations by the deejays. There is little creativity in this program. In addition there are too many drama shows, frequently repeated while some are abandoned halfway. There is no attempt by Astro to get any feedback from its viewers, and letters to Astro mostly go unanswered.

2.5 Service Disruption During Rain

This is one major area of complains. There was always a disruption whenever it rained. The common complaint was on the loss of usage. As consumers pay for the service they expected to enjoy service without disruption. Even though Astro had upgraded its services, this disruption continued to occur.

2.5 Non-Delivery of Astro Magazine

Many subscribers complained that the Astro monthly magazine was not delivered to them as promised although they were billed for it.

2.6 Disconnection Commonly Done During Weekends

Consumers had also complained on the actions of Astro in disconnecting service due to non-payment of bills over the weekends or eve on public holidays. This had caused problems to subscribers as they were not able to immediately pay the bill and had to wait for the next working day before bill could be paid.

3.0 Recommendations

3.1 Astro has a monopoly over pay per view TV in Malaysia as the other two channels recently set up are no match for Astro. This being the case Astro should undertake a serious review of its programs through a suitable customer feedback program.. Astro should improve its overall service so that consumers do not feel shortchanged.

3.2 Malaysia Communication and Multimedia Commission should regulate the services provided by Astro and ensure that minimum standards are complied with.

3.3 Astro should institute a serious dialogue and feedback session with its customers, so that consumers can air their problems regarding services provided.



Annexure 1

Tribunal For Consumer Claims

1.0 Introduction

The best thing, which has happened to consumers since 1999, is the establishment of the Consumer Claims Tribunal (CCT). Consumers are now able to seek redress against errant traders cheaply and expeditiously. If previously consumers would shy away from taking action in civil courts because of the high cost and time, they would now be able to do so as it would only cost them RM5 per dispute and disputes are resolved within 60 days. The CCT was brought into existence by the Consumer Protection Act 1999 (CPA). Although it took the Malaysian government close to twenty years to enact the legislation and set up the CCT, its establishment has given great hopes to consumers in seeking redress. However some consumers are dissatisfied with its decisions and operation. Amongst problems highlighted by consumers are the following:

2.0 Consumer Issues

2.1 Uniformity of Decisions

The tribunals were established to speedily dispose of cases filed by consumers. As such Tribunal Presidents are not bound by the 'doctrine of precedence'. Each case is examined on its own merits. While this is the procedure legally, the NCCC feels that there should be some form of uniformity of decisions in similar cases. There have been occasions where identical cases were judged differently. This has affected the credibility of the decisions.

2.2 Credibility of Awards

This is by far the most common area of

complaint. Consumers have complained that the respondents did not comply with Tribunal awards. Enforcement of these awards by the Enforcement Division of the Ministry of Domestic Trade and Consumers Affairs has also been lacking.

S117 CPA '99 provides for criminal penalty for failure to comply. S117(1) of The CPA states that "any person who after 14 days fails to comply with an award made by the tribunal commits an offence and shall on conviction be liable to a fine not exceeding 5 thousand Ringgit or to imprisonment for a term not exceeding 2 years or both" and S117(2) of The CPA states that "in the case of a continuing offence, the offender shall, in addition to the penalties under subsection (1), be liable to a fine not exceeding one thousand Ringgit for each day or part of a day during which the offence continues after conviction"

There have also been cases where Tribunal Presidents have allowed up 3 months for respondents to comply with awards. The CPA '99 quite clearly points out that these awards must be complied within 14 days from the day the award is issued. This is clearly not within the spirit of the Consumer Protection Act 1999

The above provisions clearly spell out the punishment for non-compliance with tribunal award but to date this provision has never been applied. Consumers continue to complain on non-compliance.

2.3 Reason for Decision

S114 CPA '99 provides that "the tribunal shall in ALL proceedings give its reasons for its award in the proceeding" but Tribunal Presidents do not comply with this provision. Claims are either upheld or rejected. When a claim is rejected, the consumer would naturally

want to know the reason for rejection but they are just left to wonder. Providing for reasons is particularly important as Tribunal awards are subjected to judicial review. Only if reasons were provided, would the consumer be able to assess his chances of succeeding. It is therefore important for Tribunal Presidents to comply with S114 of The CPA and provide reasons for their decisions.

2.4 Appointment of Presidents

Currently there are ten Tribunal Presidents who preside over tribunal cases. Four such presidents (which includes the Chairman) are permanent and the other six are appointed for a three year term. The NCCC believes that in order to maintain independence, all such presidents should be employed on a permanent basis. Tribunal Presidents make important decisions on a daily basis and doing it on a part-time basis may be open to abuse.

2.5 Fire-Fighting Measures

Currently, the Tribunal makes decisions as and when there is a case. The root cause of problems is not resolved. It is suggested that the Tribunal should analyze cases which it determines and make regular reports to the Ministry of Domestic Trade and Consumer Affairs for proactive action through its enforcement division or via new regulations. The Enforcement Division should enforce the all the relevant laws so that problems could be resolved permanently. For example in the case of Scratch & Win scams, tribunals have continued to hear and determine cases but such scams and their perpetrators have continued their work unabated.

2.6 Tribunal Staff Rejecting Claims

Consumers have complained that Tribunal staff have refused to accept cases filed in by consumers. These staff pre-empt decisions by the Tribunal and advices consumers not to waste their time. This is completely unacceptable. Consumers are being denied the right to redress.

2.7 The Role of the Tribunal

The NCCC is of the view that currently tribunals perform a very limited role which is not coordinated with other relevant divisions of the Ministry of Domestic Trade and Consumer Affairs. Firstly the tribunal should publish for public usage an annual report of its activities, containing material such as data on cases heard, case summaries, decisions and awards. Such a report should also be submitted to top management of the ministry. Secondly the tribunal can work with the Consumer Affairs Division (CAD) using its case material to develop training modules for consumer awareness programs jointly with the CAD. Thirdly the tribunal should pick up recurring problems in cases that it hears and develop new laws and regulations to tackle the root problems. Finally the tribunal must have a strong working relationship with the Enforcement Division so that the latter sees itself as a vital component in solving consumer problems.

3.0 Conclusion

The Tribunal has been established to provide easy excess to justice and it is therefore important that the above problems are addressed. If all the above problems continue to exist, then tribunals would soon lose their credibility. Although it is an accepted fact that

precedents should not bind tribunal decisions, there should at least be uniformity of decisions in similar cases. Currently there are many identical issues which are decided differently. Additionally issues such as the quantum of deposits businesses can collect from the consumer should also be standardized. The Tribunal for Consumer Claims was set up to provide a cheap and effective method for consumers to seek redress. Consumer confidence is therefore important to ensure that the Tribunal remains credible, accepted and relevant to consumer needs.

Annexure 2

Misrepresentation

1.0 Introduction

The NCCC has identified that one of the major areas of consumer complaints is misrepresentation. Malaysian businesses are increasingly relying on sales persons and sales agents to market their products. These sales persons are normally paid a small basic salary and the bulk of their income is derived from sales. Due to this, in order to lock in sales they would rely on misrepresentation. Relying on such misrepresentation consumers would sign agreements, which then become binding. This has resulted in consumers being shortchanged and companies would not entertain such complaints as they know that there is a valid and binding contract.

The following is a short discussion of the law applicable to misrepresentation. It is important for businesses to realize that there are provisions in several laws which govern misrepresentation. Businesses therefore stand to lose if they blatantly disregard the law and more so if an aggrieved consumer decides to take legal action against them.

2. The Law

2.1 Contracts Act 1950

S18 of the Contracts Act 1950 (CA'50) provides that "misrepresentation" includes (meaning it is not exhaustive):

- (a) any positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true
- (b) any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading

another to his prejudice, or to the prejudice of anyone claiming under him; and

- (c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

S18 (a) CA'50 appears to cover the subject of innocent misrepresentation at common law. Innocent misrepresentation – where the maker of the statement believes that the statement or representation is true although it turns out to be false.

2.2 Consumer Protection Act 1999

The area of misrepresentation falls within Part II of the Consumer Protection Act 1999 (CPA 99). This part is termed 'Misleading and deceptive conduct, false representation and unfair practice'. S.8 of the CPA 99 provides that 'false, misleading or deceptive' in relation to conduct, representation or practice includes conduct, representation or practice which is capable of leading a consumer into error.'. S.9 expands on the types of action which will constitute 'misleading conduct'. S.10 provides twelve types of 'false or misleading representation' which are forbidden. S.11 states the types of representation and misleading conduct that is prohibited in relation to land. S.12 states the conduct of a person which can constitute as misleading in relation to the price of a product or service. One can therefore surmise that the area of 'misrepresentation' is very thoroughly covered in the CPA 99, with the main purpose of preventing consumers from being exploited by businesses. Trading enterprises in Malaysia should take note of these injunctions to prevent losses to their trading activities.

3.0 Examples of misrepresentation

- 3.1 A, intending to deceive B, falsely represents that 500 kilograms of indigo are made annually at A's factory and thereby induces B to buy the factory. The contract is voidable at the option of B.
- 3.2 In *Tan Chye Chew v Eastern Mining & Metals Co Ltd (1965)* – the Federal Court on the facts that there had been misrepresentation by the second appellant but concluded that the respondent company had the means of discovering the truth with ordinary diligence. They had entered into the contract without checking the true position of the mining land despite having the faculties to do so and realized the risk that was involved in taking the unusual course of entering into the contract without further check. Therefore the contract was not voidable because of misrepresentation.
- 3.3 In *Segar Oil Palm Estate Sdn Bhd v Tay Tho Bok & Anor (1997)*, in a sale and purchase agreement of land which was being used by the public authority and Tenaga Nasional Berhad, the defendant told the plaintiff that the land was free of encumbrances. The court held that there was fraud under S. 17 and misrepresentation under S. 18 as the defendant had misled and had deceived the plaintiff to enter into a contract.

4.0 Examples of misrepresentation which may mislead consumers

4.1 Sale of Time Share Facilities

Consumers are often sent letters about winning a free holiday on some flimsy excuse. They are asked to bring their spouses. Once at the company's premises the hard sell begins whereby the consumers are pressured to purchase a time share package. Consumers are given a rosy picture of well maintained units strategically located in major towns and tourist areas. Assurances are given that unused units will be bought up by the company at attractive rates. Consumers are also told that the company will help them sell off the remaining term of their package should they wish to. The time share package is presented to appear as an investment scheme that will generate regular income to the purchasers. Alas most of these assurances turn out to be not true. Consumers end up parting with money amounting to between RM30,000-60,000 for a time share package lasting up to 30 years. Consumers have made a decision based on misrepresentation.

4.2 Cheap Sales

Cheap sales are virtually held throughout the year in Malaysia. Compared to genuine cheap sales, the local cheap sales are sometimes dubbed as 'cheat sales' by consumers. There is a good reason for this perception though it may not always be true. Despite the Cheap Sale Regulations it is quite difficult to prevent errant traders from manipulating materials and prices during cheap sales. Traders are known to dispose old stocks during these sales. They are also not averse to raising prices of items

and then giving discounts, appearing to sell at a cheaper price, but not in reality. They are some who are able to sell at a higher price during cheap sales. It is impossible to know the true value or price of the items on sale. Quality of materials and prices are misrepresented to consumers who are then misled into making purchasing decisions.



NCCC

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