

LCQ11: Introduction of mandatory cooling-off period to protect consumers

Following is a question by the Hon Shiu Ka-fai and a written reply by the Secretary for Commerce and Economic Development, Mr Edward Yau, in the Legislative Council today (May 30):

Question:

Last month, the Consumer Council (CC) recommended to the Government the introduction of a mandatory cooling-off period targeting certain industries (including the beauty industry) and specific transaction modes. Regarding the reply of the Secretary for Commerce and Economic Development on the 9th of this month to my question concerning the recommendation, will the Government inform this Council:

(1) as CC's study on the introduction of a mandatory cooling-off period does not cover cooling-off arrangements offered on a voluntary basis by traders in other jurisdictions, of the reasons why the authorities did not request CC to conduct a study that covers such arrangements;

(2) whether it has assessed if CC has a predetermined stance before conducting the aforesaid study, and whether the outcome of the study is objective and fair; of the reasons why the authorities did not in the first place assign the study to a professional consultant with a neutral stance;

(3) of the amount of public money that the authorities allocated to CC for conducting the study; whether it knows the manpower deployed for and the number of man-hours involved in the said study;

(4) as the aforesaid reply to the question has not given a direct answer as to whether currently there are jurisdictions which have introduced a mandatory cooling-off regime for the beauty industry, whether the authorities know if CC has actually identified any jurisdiction which has introduced such a regime;

(5) given that CC does not have the power to conduct investigations to ascertain if the complaints received are substantiated, whether the authorities know the basis on which CC made the remark that "operators in the beauty industry have adopted various types of unfair trade practices in recent years"; whether they have assessed if such a remark made by CC has tarnished the reputation of the beauty industry, and whether it is a responsible way of doing things;

(6) given that CC will only take up the role of a conciliator in handling consumer complaints and it does not have the power to conduct investigations, whether the authorities have assessed if CC has gone beyond its statutory

functions by repeatedly and publicly stating, under the circumstances of not having grasped information on the number of substantiated cases, that sales practices which seriously damage the rights and interests of consumers have emerged from time to time in certain industries;

(7) as CC considers that, in respect of legitimate traders in general, the imposition of a mandatory cooling-off period will not result in a large number of consumers cancelling their contracts, and therefore the impact should be limited, whether the authorities know the basis on which CC made such a remark; whether CC had conducted any study and gained an understanding of the real situation from the industries concerned before making such a remark; if CC had not conducted any study and consultation, of the reasons why CC has made such a remark;

(8) as CC has indicated that since it has formulated its recommendation after making reference to the experience of other jurisdictions, it believes that the recommendation has struck a balance between protecting consumers' legitimate rights and interests and maintaining a business-friendly environment, whether the authorities know how CC ascertains if the practices of such jurisdictions are applicable to Hong Kong; the reasons why CC has not made reference to the experience of those jurisdictions that allow traders to offer a cooling-off period on a voluntary basis;

(9) as CC, having considered the general level of the relevant charge, has recommended that an administrative fee of not more than 3 per cent of the credit card transaction value may be deducted by traders from the refund if consumers have paid by credit cards, whether the authorities know what data or study outcome is held by CC in support of its remark that "3 per cent is the general level of the relevant charge";

(10) as CC considers that issues concerning acquiring banks/companies increasing their administrative fees for refund for transactions made by credit cards or delaying payment to traders are commercial arrangements between the acquiring banks/companies and traders, and not directly related to the imposition of a cooling-off period, whether the authorities know if CC had duly consulted the local banking and beauty industries to gain an understanding of the real situation before making such a remark; if CC had, of the details; if not, the reasons why CC has made such a remark;

(11) as CC has recommended that a mandatory cooling-off period be applicable to contracts of not less than six months for beauty services, whether the authorities know if CC had conducted any study and duly consulted the industry concerned to gain an understanding of the real situation before putting forward such a recommendation; if CC had not conducted any study or consultation, of the reasons why CC has put forward such a recommendation;

(12) of the reasons why the aforesaid reply to the question has not given an answer to the question as to whether CC had discussed its recommendation with the banking industry to ascertain the feasibility of the recommendation;

(13) whether it knows the respective numbers of banks which (i) have ceased providing Point of Sales terminals and acquiring service to new clients of

beauty service companies, (ii) imposed in the past five years the following measures on existing clients of beauty service companies: limiting the credit card transaction value; increasing the deposit required and delaying payment to traders (such as extending the period from 30 days to five months), and (iii) in providing acquiring service, charge those beauty service companies which apply for cancellation of credit card transactions (including purchase-by-installment transactions) an administrative fee equivalent to 4 per cent to 10 per cent of the total transaction value;

(14) whether it knows that after CC published its recommendation, quite a number of beauty service companies have immediately been notified by banks that the refund handling fees for customers' purchase-by-installment transactions will be further increased and repayment to traders will be delayed (such as extending the period from a month to 90 days), and even those clients who have collateral with the banks are also treated in the same way;

(15) of the reasons why the aforesaid reply to the question has not given an answer to the following question: whether, before making its recommendation (i.e. the trader can deduct from the refund the value of the service used and the amount shall be calculated pro rata to the total consideration stipulated in the contract), CC has considered (i) the fact that the trader's cost of providing a single unit of goods or service to the customer is usually higher than that of providing a batch of such goods or service, making it very likely for the trader to eventually bear the relevant differences in the cost, and (ii) if this recommendation will induce many people to exploit the loophole to enjoy part of the services at a lower average price through the purchase of packages;

(16) of the reasons why the aforesaid reply to the question has not given an answer to the following question: whether the authorities know the justifications for CC to recommend that consumers may request for a refund without any reasons, and whether it has considered if this recommendation may lead to abuses or even be exploited as a strategy to undermine competitors in the business arena, which may eventually throw the market into chaos;

(17) whether it has considered, instead of introducing a mandatory cooling-off period, reminding consumers through public education that they may choose to patronise beauty service companies which offer a cooling-off period on a voluntary basis, and with reference to the banks' current practice of keeping audio recordings of the selling process, requiring beauty service companies to make audio or video recordings of the selling process as a proof that no unfair trade practices have been employed; and

(18) whether it has studied the contributions made by the beauty and related industries to the economy of Hong Kong and in providing employment opportunities; if so, of the details; if not, whether it will conduct such a study?

Reply:

President,

A consolidated reply to the 18 parts of the question is provided below:

The Consumer Council (the Council) is an independent statutory body. According to the Consumer Council Ordinance (Cap. 216), the functions of the Council include collecting, receiving and disseminating information concerning goods and services, receiving and examining complaints by consumers of goods and services, as well as taking such action as it thinks justified by information in its possession, including tendering advice to the Government, so as to protect and promote consumer rights. The Council has studied numerous consumer issues over the years, and is experienced in this regard. The Government provided \$6.3 million to the Council in the year 2016-17 to support the Council in undertaking a number of new studies on individual consumption markets and legal protection for consumers, including the study on cooling-off period. It is difficult to quantify the manpower expenditure for individual studies separately.

The Council's "Report to Advocate Mandatory Cooling-Off Period in Hong Kong" aims to recommend to the Government the imposition of a mandatory cooling-off period, and suggests principles for a legislative proposal. Besides drawing references from other jurisdictions' legislative arrangements and implementation experience, the Council also looked into and studied the situation of the local market, including the operation of credit card schemes, factors that may affect the administrative fees charged on credit card usage, the general level of such fees etc. In formulating the proposals on operational arrangements (including the applicable contract duration, calculation of deductible amount etc.), based on its experience in handling complaints and understanding of the trades' operation, and having considered the feasibility of various options and all relevant factors such as how to minimise the chance of abuse, and objectively analysing and balancing between consumer rights and impact on business operation, the Council put forth the proposal that it considers to be the most practical and suitable for Hong Kong.

In recent years, both the Hong Kong Customs and Excise Department and the Council have received numerous complaints where consumers entered into beauty or fitness services contracts involving large amount of pre-payment and/or long contract duration under high pressure sales tactics, and there have been calls from the Legislative Council (LegCo) and the community for the Government to impose mandatory cooling-off period on these contracts by way of legislation. For example, at the meeting of the LegCo Panel on Economic Development (ED Panel) on May 23, 2016, members passed the following motion – "That this Panel urges the Government to introduce legislation on imposition of mandatory cooling-off periods, and accord priority to implementing a statutory cooling-off period for pre-paid services involving a lot of complaints and large amount of payment, such as those provided by fitness centres and the beauty industry, so that consumers may unconditionally receive a refund of the paid fees and cancel the contracts during the cooling-off period with a view to protecting consumers' rights, thereby indirectly dampening the incentive to engage in unfair and high-pressure marketing practices, and ultimately safeguarding practitioners of

the relevant trades as well." In addition, several LegCo members wrote to the ED Panel, urging the Government to conduct relevant study and legislative work proactively, with a view to imposing a cooling-off period on contracts involving pre-payment, such as those for beauty and fitness services, in order to further protect consumer rights.

The Council has submitted its recommendations to the Government, and the Commerce and Economic Development Bureau (CEDB) would need to consider the recommendations in detail and make specific policy decisions. We are working with relevant Government departments to study various issues relating to legislating on cooling-off period arrangement, including the scope of application; definitions of sectors; implementation details; redress mechanism; and exemptions, etc.; and will consider the appropriate implementation arrangements. We thank the Honourable Shiu for conveying his concern on the issue of legislating for cooling-off period and relaying the beauty trade's opinion on the Council's report. Our goal is to submit the Government's proposed framework to LegCo within this year, and consult the public thereafter. We will listen to the views of and fully consult the community, including the stakeholders.