

Performance Audit

Department of Consumer Affairs

Report by the Auditor General

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Mr. Speaker,

This report has been prepared and is being submitted in terms of sub-paragraph 8(a)(ii) of the First Schedule of the Auditor General and National Audit Office Act, 1997 for presentation to the House of Representatives in accordance with sub-paragraph 8(b) of the said Act.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. G. Galea', with a horizontal line extending to the right and a small dot at the end.

J. G. Galea
Auditor General

The Hon. Speaker
House of Representatives
Valletta

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Executive Summary

Introduction

1. A performance audit of activities performed by the Department of Consumer Affairs pertaining to the Ministry of Economic Services has been undertaken during the period May – June 2000. The audit focused on the four main activities carried out by the Department during 1999, namely:
 - Investigating consumer complaints;
 - Assisting the Consumer Claims Tribunal;
 - Running a Freephone 120 service¹; and
 - Promoting consumer awareness.

Consumer Complaints Investigated by the Department

2. During 1999, the Department of Consumer Affairs received 766 complaints from consumers seeking redress in respect of the purchase or hiring of goods and services. 66 per cent of complaints received concerned purchases of goods whilst the other 34 per cent related to services. From a study of 476 concluded cases 62 per cent were settled in favour of the consumer indicating that the consumers generally have sound basis for lodging complaints. 13 per cent of cases were settled in

¹ This service receives complaints relating to the non-issuing of fiscal receipts, possible pricing abuses, particularly of medicinal products, public health, guarantees and possible abuse in weights and measures. Such complaints are investigated by the relevant Government entity.

favour of the trader. The remaining cases were either dropped (20 per cent) or settled amicably by the litigating parties themselves (5 per cent).

3. It was established that the average period taken by the Department to settle complaints lodged by consumers spanned 48 days. Although 55 per cent of cases are resolved in less than 30 days, 18 per cent of cases necessitated over 81 days of mediation. Current staffing constraints within the Department and lack of co-operation by the litigating parties are considered to be the main elements hindering the Department from resolving cases in a more expedient manner.
4. It is pertinent to point out that complaints lodged against public utilities required 90 days of mediation prior to settlement. Duration in such cases is more than the average case settlement period. Such a lengthy settlement period may indicate customer care inefficiencies on the part of public utilities.

The Consumer Claims Tribunal

5. During 1999, 370 cases were being processed by the Consumer Claims Tribunal. Of these, 171 cases were lodged with the Tribunal in previous years.
6. Out of a sample of 255 cases addressed by the Tribunal during the period January 1999 to May 2000, 151 cases (59 per cent) were decided in favour of the consumer while 20 cases (8 per cent) were decided in favour of the trader. 38 cases (15 per cent) were settled amicably. The others are still pending or were dropped. These rates are only marginally different from those registered in cases settled by the Department. This scenario further

reinforces the argument that consumers seeking redress have, in most cases, grounds for complaint.

7. It resulted that the average duration of case settlement amounts to 199 days. In this context, case duration is defined as the period from date of submission of “Notice of Claim” and the decision of the Tribunal. This does not include the preliminary case processing period taken by the Department of Consumer Affairs. The average case duration does not support the notion that consumers are entitled to redress within a reasonable period as contemplated in Section 23(2)(a) of the Act.

Complaints investigated by other Government Entities - Freephone 120

8. The Department receives complaints on its Freephone 120 service which are forwarded to relative government entities and departments for verification and settlement. Incoming complaints through the Freephone 120 service were received at a declining rate during 1999. During 1999, the Department registered a total of 1696 calls. Most of these calls (76 per cent) were registered during the first six months of the year. The remaining calls (24 per cent) were received during the latter part of the year. One reason for such a situation may be that consumers are increasingly using customer care facilities offered by the relative Government entities.
9. Only 49 per cent of all complaints received through the Freephone 120 during 1999 had been concluded by the entities concerned by end May 2000. This conclusion rate indicates that generally, Government entities may

not be allocating adequate priority to deal with these complaints.

Promoting Consumer Awareness

10. Most of the promotion was targeted at students and teachers. Although the benefits of disseminating 'consumer' information to young future consumers are acknowledged, other categories of the Maltese population are not being adequately targeted through departmental publications and lectures.
11. The eleven leaflets published by the Department during the period 1992 – 1999 is considered low. It is however improbable that the Department could, with the current staffing constraints, improve on its dissemination programme. In addition the current practice of distributing departmental information through Local Councils and the Department itself restricts such publications reaching a wider audience.

Cost Efficiency

12. The average cost incurred by the Department to investigate complaints amounted to Lm57.58 per case. The average cost to process complaints through the Consumer Claims Tribunal totalled Lm98.79. Complaints received on behalf of other Government entities through the Freephone 120 cost the Department Lm12.52 per case.
13. The average cost per function incurred by the Department to provide its various services is considered high. The major inflationary element leading to high costs are indirect ones (administration overheads). Moreover, the relatively low demand for the Department's services and output are other factors

contributing to high costs. However, this costly service also contributes social benefits in terms of consumer satisfaction and encouragement of a fair trading environment.

Other Matters

14. Due to lack of resources the Department of Consumer Affairs is not monitoring trading practices relating to the provision of goods and services to consumers as obliged to do in terms of Paragraph 2(b) of the Consumer Affairs Act 1994. This may be seriously diminishing the effectiveness of the Department.
15. The fact that staff lack experience and adequate training is hindering the Department from realising optimal staff utilisation.

Developments

16. As a result of an operations review within the Ministry of Economic Services, the Ministry has been reorganised as from January 2001. Functions previously performed by the Department of Consumer Affairs and the Office of Fair Competition have now been amalgamated.
17. Functions related to consumer complaints (including Freephone 120) and consumer awareness now pertain to the Information and Client Affairs Directorate. The Consumer Claims Tribunal and Monitoring of Trading Practices, emanating from Act XXVIII of 1994, have been taken over by other Directorates within the newly set up Consumer and Competition Division.

18. Despite such developments, comments in this report remain relevant and are to be addressed by the pertinent directorate within the Consumer and Competition Division.

Main recommendation

19. The newly set up Consumer and Competition Division should adequately train its staff and restructure itself in order to enhance promotion of consumer awareness and start performing the monitoring of Trading Practices. Higher efficiency, effectiveness and lower relative case cost should result following restructuring.

Part 1 - Introduction

1.1.1 A performance audit of activities performed by the Department of Consumer Affairs pertaining to the Ministry of Economic Services has been undertaken during the period May – June 2000. The authority for this study derives from the legal responsibility carried by the Auditor General in terms of subparagraph 8(a)(ii) of the First Schedule of the Auditor General and National Audit Office Act, 1997. The audit focused on the four main activities undertaken by the Department during 1999, namely:

- Investigating consumer complaints;
- Assisting the Consumer Claims Tribunal;
- Running a Freephone 120 service²; and
- Promoting consumer awareness.

1.1.2 Information presented in this report is as verified by the National Audit Office at end June 2000.

1.1.3 The NAO performed this audit since it is felt that issues related to consumer affairs and trading competitiveness are still in the development stages.

² This service receives complaints relating to the non-issuing of fiscal receipts, possible pricing abuses, particularly of medicinal products, public health, guarantees and possible abuse in weights and measures. Such complaints are investigated by the relevant Government entity.

1.2 Audit Objectives

1.2.1 The objectives of this audit include establishing whether:

- targets as set out by the Department are being met;
- the Department is functioning at acceptable levels of efficiency;
- operations undertaken are leading to increased consumer awareness.

1.3 Scope

1.3.1 In order to attain the above objectives, NAO evaluated:

- whether the Department (and the Consumer Claims Tribunal) have performance measurement criteria against which to assess performance in investigating complaints and providing redress to aggrieved consumers;
- the average settlement period for case resolution;
- the average cost per case and/or function incurred by the Department and Tribunal;
- the outcome of complaints investigation;
- whether educational and awareness initiatives undertaken by the Department to advise consumers and traders of their rights and responsibilities are bearing the desired results.

1.3.2 The Consumer Affairs Council was not included in the scope of this audit since it is concerned with policy.

1.4 Methodology

1.4.1 The performance of this assignment entailed holding meetings with the Director of Consumer Affairs and other officials within the Department. Data utilised for the purpose of this exercise was provided by the Department of Consumer Affairs.

1.4.2 Consumers' complaints and Consumer Claims Tribunal files and data were also reviewed.

1.5 Background

1.5.1 Act XXVIII of 1994 provides the legal framework which regulates operations undertaken by the Department of Consumer Affairs.

1.5.2 Expenditure incurred by the Department during 1999 amounted to Lm134,021³. The Department, headed by the Director of Consumer Affairs, employs eleven personnel. An Arbiter presides over the Consumer Claims Tribunal in terms of the Act⁴.

1.5.3 Part II, Section 4(1) of the Consumer Affairs Act 1994 provides for the establishment of the Consumer Affairs Council. The role of the Council is to act as an advisory body to the Minister responsible for Consumer Affairs.

³ Treasury Records.

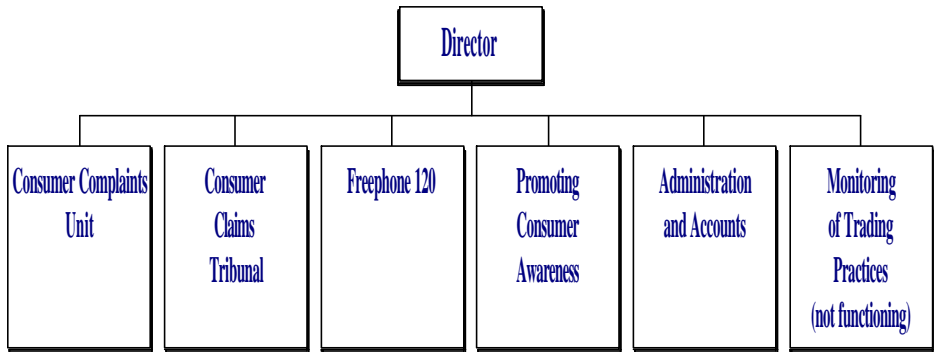
⁴ Part 3 refers.

1.5.4 The functions of the Department, as outlined in Paragraph 3(2) of the Act, are:

- to provide information and guidelines to the public on matters effecting the interest of consumers;
- to monitor trading practices relating to the provision of goods and services to consumers, and to take measures for the suppression and prevention of any practices which may be detrimental to the interests of consumers;
- to investigate complaints from consumers relative to the supply of goods and services and to take such action to redress any justified grievance within reasonable time;
- to assist the Consumer Affairs Council in the performance of its functions and duties and to furnish such information as may be required by the Council in relation to the exercise of its duties; and
- to perform any other function or duty that is, or may be assigned, to the Department under the provisions of this Act or any other law.

1.5.5 The above functions are carried out by five units supported by the Administration and Accounts Section. An overview of functions performed by each unit is illustrated in Chart 1.

Chart 1 - Department of Consumer Affairs Organisation Chart



1.5.6 **Consumer Complaints Unit:** This Unit, on receipt of complaints arising out of the purchasing or hiring of goods and services, takes the initiative to investigate and mediate on behalf of aggrieved consumers to obtain redress. The Department registered 766 complaints during the year 1999. In addition the Department estimates that a further 2400⁵ enquiries were received and settled over the telephone during the year. A complaint is deemed official and registered when a form with details on the case is filed.

1.5.7 The Unit is also responsible for the monitoring of trading practices through surveillance and the enforcement of laws intended to promote a fair trading environment. The Director is empowered to initiate the process with the Courts of Law to issue Compensation Orders where grievances are a result of an offence against any regulation made under section 7 of the Act. Due to lack of qualified personnel the Department did not carry out these duties since the enactment of the Act.

⁵ These enquiries are considered distinct from enquiries received through the Freephone 120 service.

1.5.8 The Unit also issues licenses in respect of Door-to-Door Salesmen and collecting the prescribed fees. During the year 1999 the Department issued 49 licenses.

1.5.9 **Consumer Claims Tribunal:** Consumers may opt to refer their case to the Tribunal if, after 15 working days of mediation, the Department fails to reach a solution. The Arbiter settled 258⁶ of the 370⁷ cases being processed by the Tribunal during 1999. An assistant principal officer, assisted by a clerk, has been assigned the duties of Tribunal Secretary. This post entails the answering of queries and other administrative duties relating to the Consumer Claims Tribunal.

1.5.10 **Consumer Complaints investigated by other Government Entities – Freephone 120:** Through Freephone 120 facilities, the Department of Consumer Affairs receives complaints on services provided by government entities. Such complaints are then forwarded to the respective Government entities (departments and corporations) for further investigations. During the year 1999 the Department registered 1696 such cases. An official form containing details on the complaint is filed.

1.5.11 **Promoting Consumer Awareness:** This function entails:

- educating and advising consumers, traders and providers of services as to their rights and responsibilities by means of leaflets, press releases, seminars, talks, lectures and audio/visual media;

⁶ Table 9 refers.

⁷ Source – Monthly Reports, Department of Consumer Affairs.

- publishing a quarterly newsletter and other articles in various printed media.

1.5.12 **Administration and Accounts:** The administration and accounts unit supports operations and functions undertaken by the Department.

1.6 Developments

1.6.1 As a result of an operations review within the Ministry of Economic Services, the Ministry has been reorganised as from January 2001. Functions previously performed by the Department of Consumer Affairs and the Office of Fair Competition have now been amalgamated.

1.6.2 Functions related to consumer complaints (including Freephone 120) and consumer awareness now pertain to the Information and Client Affairs Directorate. The Consumer Claims Tribunal and Monitoring of Trading Practices functions, emanating from Act XXVIII of 1994, have been taken over by other Directorates within the newly set up Consumer and Competition Division.

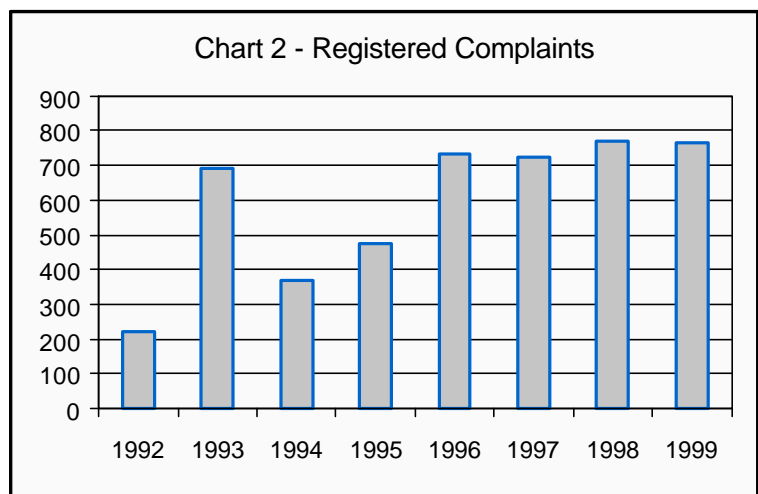
1.6.3 Despite such developments, comments in this report remain relevant and are to be addressed by the pertinent directorate within the Consumer and Competition Division.

Part 2 - Consumer Complaints Unit

2.1. Consumer complaints

2.1.1. According to the Consumer Affairs Act XXVIII of 1994, Part II 3(2)(c), the Director of the Department of Consumer Affairs has the function and responsibility “*to investigate complaints relative to the supply of goods and services and to take such action as is in his power to redress any justified grievance that may come to his notice.*”

2.1.2. The Department is empowered through Part II of the Act to investigate cases relating to consumer grievances. Generally the case is resolved through mediation between the trader and consumer. In instances where such mediation proves unsuccessful the consumer has the option to refer the case to the Consumer Claims Tribunal in terms of Part III of the Act. In cases where the amount disputed is above the Lm500 limit (recently increased to Lm1500), the consumer is advised to seek redress through the Civil Courts.

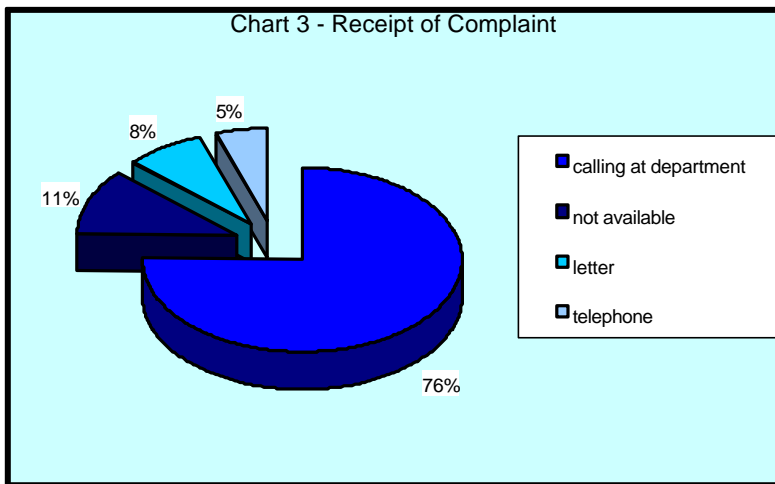


Source: Department of Consumer Affairs

2.1.3. During 1999, the Department received 766 complaints. This amount of registered complaints is consistent with that received by the Department during recent years (Chart 2).

2.2. Receipt of Complaints

2.2.1. The Department receives complaints either by telephone, through the post or in person by the consumers at the Department. The complaint is documented on the relative departmental form and is duly registered. The case is then forwarded to the Director and is consequently dealt with by clerks.



Source: Results derived from 688 files reviewed by NAO

2.2.2. Chart 3 illustrates how the 766 complaints received by the Department were addressed through 688 files. Most complaints reach the Department through consumers calling personally at the Department. Such a scenario indicates that consumers are not utilizing more convenient methods to lodge their complaints. This is inevitable since the Department encourages consumers to call personally and submit documented evidence related to the case which the Department must have in

hand to decide whether the complaint is *prima facie* justified, particularly when facing a defaulting trader/service provider.

2.3. Categories of Complaints

2.3.1. The Department classifies incoming complaints into 16 categories. During 1999, 66 per cent of complaints received concerned purchases of goods whilst the other 34 per cent related to services. Table 1 below illustrates a breakdown of complaints by category received during this year.

Table 1 – Complaints by categories received during 1999⁸

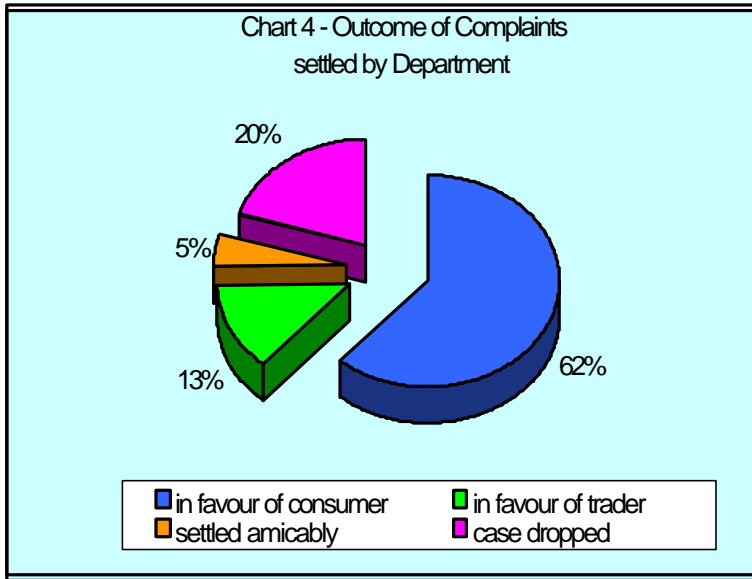
Category	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total	%
Baby Goods	1	0	2	0	1	0	0	0	1	2	1	0	8	1.04
Building/Construction	5	3	2	7	2	0	0	3	5	2	0	4	33	4.31
Computers	4	4	7	1	2	1	2	1	2	4	4	1	33	4.31
Door-to-Door	3	0	0	0	0	0	0	0	0	1	0	0	4	0.52
Dry Cleaning	1	0	0	3	2	4	1	1	2	5	3	0	22	2.87
Footwear	1	2	0	0	2	3	2	1	0	0	3	2	16	2.09
Furniture/Woodwork	3	2	2	2	3	4	3	4	1	3	1	2	30	3.92
HiFi/TV/Radio	3	4	1	8	2	1	4	2	5	3	4	1	38	4.96
Household Goods/Appliances	11	9	23	14	5	11	18	12	23	19	10	13	168	21.93
Insurance	0	0	1	4	0	1	0	0	0	1	0	1	8	1.04
Public Utilities	1	4	5	2	3	2	3	4	2	4	1	6	37	4.83
Travel	3	73	1	2	7	8	6	1	7	8	4	1	121	15.80
Vehicles	7	2	3	2	4	4	7	2	3	5	3	1	43	5.61
Video Cameras/Recorders	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Wearing Apparel/Textiles	6	3	8	5	4	7	8	7	5	6	6	4	69	9.01
Others	2	6	10	9	9	12	15	15	11	18	18	11	136	17.75
Monthly Total	51	112	65	59	46	58	69	53	67	81	58	47	766	100.00

Source: Department of Consumer Affairs

⁸ The Department of Consumer Affairs included complaints in respect of guarantees.

2.4. Mediation by Department

2.4.1. NAO analyzed the outcome of complaints received and dealt with by the Department. Evaluation focused on 476 settled cases out of the 766 cases received during 1999. These cases were concluded or required no further action by the Department as described in Chart 4.



Source: Department of Consumer Affairs

2.4.2. **Result of Departmental Mediation** - Chart 4 shows that 292 (62 per cent) of the 476 concluded cases evaluated are settled in favour of the consumer. This implies that generally consumers have sound basis for registering complaints with the Department. This is further supported by the fact that 5 per cent of cases are settled amicably and that only 13 per cent of cases are settled in favour of traders. The remaining 20 per cent of complaints were dropped at some stage of mediation.

2.4.3. **Duration of Mediation** - On the basis of the same study the average period taken by the Department to settle a complaint was 48 days. This would decrease to 42 days should one exclude cases which were dropped. The 1994 Act does not stipulate a definite time frame for case settlement. However, a party involved in the litigation may, at the lapse of 15 working days, request that the claim be referred to the Tribunal. Table 2 below provides a breakdown of settlement time for the sample under study.

Table 2 – Duration of mediation by the Department

Duration (Days)	Cases settled in favour of consumer	Cases settled in favour of trader	Other means of settlement	Dropped cases	Total Cases
0 to 10	68	29	9	14	120
11 to 20	51	13	3	19	86
21 to 30	40	5	2	10	57
31 to 40	25	4	2	3	34
41 to 50	28	2	1	5	36
51 to 60	8	4	1	6	19
61 to 70	11	1	3	6	21
71 to 80	12	0	2	3	17
81 to 90	10	0	0	1	11
91 to 100	9	1	0	2	12
over 100	29	5	1	27	62
Not available	1	0	0	0	1
Total	292	64	24	96	476
Average days	45	32	34	70	48

Source: Files reviewed by NAO

2.4.4. **Cases resolved by the litigating parties themselves**– 5 per cent of cases (24 cases), as against the 75 per cent (292 + 64 cases) concluded directly by the Department as indicated in Table 2, were resolved by the litigating parties themselves. The average period

for such settlement amounted to 34 days which is 29 per cent less than the average time taken by the Department to settle claims. Consumers, traders and service providers appear reluctant to settle cases cordially between themselves. The fact that only 5 per cent of cases are settled amicable may also indicate a general lack of awareness by the litigating parties of their rights and obligations.

2.4.5. **Dropped Cases** - 20 per cent of consumers in the study decided not to continue proceedings. Such cases were dropped after an average of 70 days of unsuccessful mediation by the Department. This implies that in such instances the consumer may have decided not to follow-up the complaint lodged since the outcome of most of these cases was not decided by the Department within a reasonable period. In the absence of benchmarks, a reasonable period in this context may be defined as the average period taken by the Department to settle disputes (48 days).

2.4.6. The Department of Consumer Affairs contends that other factors leading to situations where consumers decide not to follow-up the case include the lack of co-operation between consumers and traders, consumers opting not to refer their case to the tribunal and complaints lacking a solid ground for redress.

2.4.7. **Public Utilities** – 37 complaints were lodged against public utilities during 1999 (Table 3). Of these 23 were settled through mediation by the Department during the same year⁹. On average, these cases required 90 days of mediation which is substantially more than the average case settlement period. This

⁹ 12 cases were referred to the Consumer Claims Tribunal

may indicate shortcomings on the part of public utilities to settle disputes in a more timely manner. Table 3 indicates the distribution of complaints lodged against public utilities.

Table 3 – Complaints against public utilities

Public Utility	No. of Complaints
Maltacom	17
Water Services Corporation	9
Enemalta	9
Maltapost	1
Not Available	1
Total	37

Source: Files verified by NAO

- 2.4.8. **Complaints Database** - Complaints received at the Department are currently registered manually. Up to January 2000, incoming complaints were also registered electronically which was however stopped due to software problems. The Department claims that all electronic data was lost. Plans to introduce a new computer programme to cater for this function of the Department are in hand. Nevertheless, such a situation is hindering the Department from evaluating statistical data emanating from consumer issues in a more efficient manner.
- 2.4.9. In addition, the Department did not explain why other databases and/or spreadsheet programmes installed in computers available to the Department were not utilised as an interim measure.

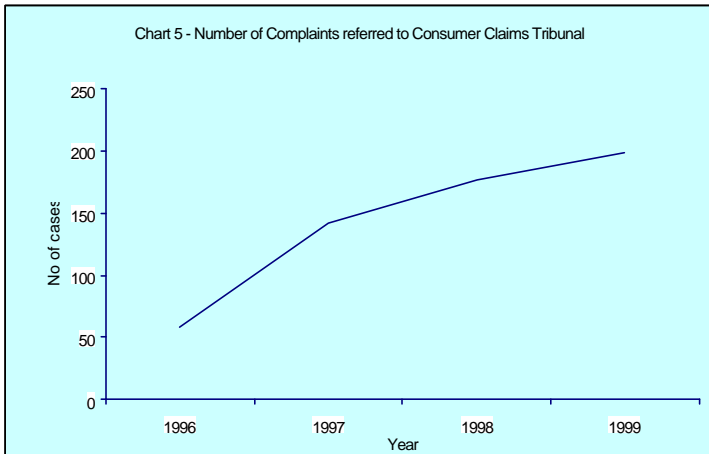
Part 3 - Consumer Claims Tribunal

3.1. Complaints referred to the Consumer Claims Tribunal

- 3.1.1. Part II, Section 16 of the Consumer Affairs Act provides for the establishment of a Consumer Claims Tribunal. The Tribunal fulfils one of the basic consumer rights - the right for redress. Consumers are awarded adequate compensation for just claims, which include compensation for inferior products and services or when the consumer has been misled. The Tribunal hears and determines claims where the value of the claim, exclusive of interests and costs, does not exceed five hundred Maltese liri.¹⁰
- 3.1.2. A complaint may be referred to the Consumer Claims Tribunal if the Department fails to reach a solution within fifteen working days from lodgement of complaint as provided by Section 23(4)(b) of the 1994 Act.
- 3.1.3. A consumer is required to fill in the “Notice of Claim” form in order for the case to be referred to the Tribunal. This is done against a nominal fee (Lm0.60 to Lm3.50) that varies according to the value of damages being claimed.

¹⁰ The Lm500 limit imposed by the Consumer Affairs Act 1994 on cases referred to the Consumer Claims Tribunal was seen as a factor restricting consumer redress and increasing the work-load at the Courts of Law. In fact the recent amendments to Act XXVIII of 1994 by Act XXVI of 2000 acknowledged the consequent restricting factors and increased the limit to Lm1,500.

3.2. Tribunal Case Load



Source: Department of Consumer Affairs

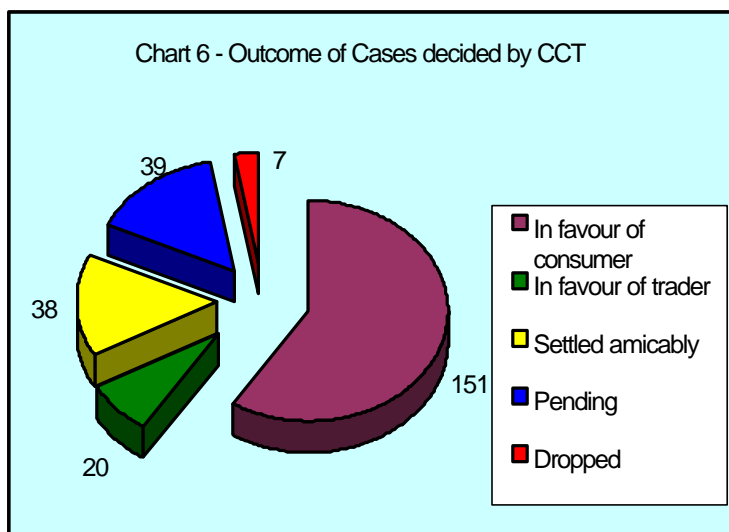
3.2.1. Although the number of complaints received by the Department has remained fairly stable between 1996 and 1999 (see Chart 2), the number of claims brought before the Consumer Claims Tribunal has increased from 58 in 1996 (the year when the Tribunal was initially set up) to 199 in 1999 (Chart 5 refers). This increase may be attributed to:

- i) an increase in the number of cases where the Department failed to find a solution that is satisfactory to both parties; or
- ii) an increased awareness and higher expectations on the part of the consumers to obtain compensation if deemed justified.

3.2.2. Departmental records available however, did not provide sufficient evidence to establish the actual factors contributing to such consistent rise in referral to the Tribunal.

3.3. Outcome of cases referred to the Consumer Claims Tribunal

3.3.1. During 1999, 370 cases were being processed by the Consumer Claims Tribunal. Of these, 171 cases were initially lodged with the Tribunal in previous years. NAO analysed the outcome of a sample of 255 cases. Results are reproduced in Chart 6 hereunder.



Source: Department of Consumer Affairs.

3.3.2. Chart 6 indicates that:

- (a) 151 (59 per cent) of cases settled by the Arbitrator were decided in favour of the consumer while 20 cases (8 per cent) were decided in favour of the trader. Such rates are only marginally lower than those registered in this study (discussed in the previous chapter) on cases settled by the Department (62 per cent and 13 per cent respectively). Such a scenario further reinforces the argument that consumers have, in most cases grounds for complaint;

- (b) the relatively low cases decided in favour of traders implies the need for increased awareness of consumers' rights by traders.

3.4. Sittings of the Consumer Claims Tribunal

3.4.1. The Consumer Claims Tribunal sittings are generally held on weekly basis. About 7 cases are heard during a sitting. During 1999, 44 sittings were held. Table 4 below refers to the number of Tribunal hearings necessary to conclude 171 cases decided in favour of the consumer or trader out of the sample of 255 cases under survey.

Table 4 – Number of hearings per case

No. of hearings	Outcome		Total	%
	in favour of consumer	in favour of trader		
1	101	13	114	66.66
2	33	3	36	21.05
3	14	2	16	9.35
4	0	0	0	0.00
5	2	1	3	1.75
6	1	1	2	1.16
Total	151	20	171	100.00

Source: Consumer Claims Tribunal

3.4.2. The above Table indicates that:

- (a) 114 (66.6 per cent) of the cases brought before the Tribunal were decided during the first hearing and a further 36 complaints (21 per cent) in the second hearing held. However cases are not necessarily heard during consecutive sittings.

(b) The average duration of case settlement amounts to 199 days¹¹. In this context, case duration is defined as the period from date of submission of “*Notice of Claim*” and the verdict given by the Tribunal. This delay is attributable to:

- lack of co-operation by the litigating parties;
- a considerable period between the receipt of notice submitted by the consumer and the scheduling of the Tribunal’s hearing; and
- a further delay between the final hearing of the Tribunal and the pronouncement of the sentence.

3.4.3. The average case duration does not support the notion that consumers are entitled to redress within a reasonable period as contemplated in Section 23(2)(a) of the Act. In addition, the preliminary case processing period taken by the Department of Consumer Affairs is not included.

3.5. Moral Damages

3.5.1. The only Maltese legislation that contemplates the right for moral damages is the Consumer Affairs Act. In fact, the Tribunal may award the consumer up to Lm100 compensation for “*moral damages*” caused by any pain, distress, anxiety and inconvenience suffered. During 1999, the Tribunal awarded moral damages of Lm100 in a case brought against a public utility company and Lm30 in another case against a furniture-manufacturing company.

¹¹ NAO working papers

3.6. Right of Appeal

- 3.6.1. Any party to the dispute has the right of appeal against a decision given by the Tribunal. The appeal should be lodged in a Court of Appeal within 18 working days from the date of the Tribunal's decision. Three appeals were lodged during the year 1999. The appeals are heard by the Courts of Law. No records are held by the tribunal or the Department of Consumer Affairs of appeal outcome.

Part 4 - Freephone 120

4.1. Complaints received on behalf of other Government Entities

4.1.1. Two clerks input a total of 3640 man-hours during 1999 to administer the Consumer Complaints Unit. This unit is responsible for receiving consumer complaints through the Freephone 120 on behalf of Government service providers/departments (Table 5). The objectives of the freephone are to increase consumer affairs awareness and register consumer complaints through this 'one stop shop' initiative. Subsequently, complaints and enquiries are referred to the relative Government entity for further investigation. Complaints received through this service relate to the following:

- the non-issuing of fiscal receipts on goods and services;
- possible abuse in prices quoted by traders;
- medicinal product pricing;
- public health issues;
- guarantees;
- abuse in weights and measures.

4.1.2. Government entities are obliged to follow-up cases referred to them, deal with the consumer, and report the outcome of the complaint to the Consumer Affairs Department. Since February 1999, the Freephone 120 has been fully computerised. The system offers on-line

facilities with the VAT Department, Office for Fair Competition and the Department of Trade.

4.2. Freephone cases received during 1999

4.2.1. Table 5 below shows the number of Freephone 120 cases referred to other Government entities for follow-up action during 1999.

Table 5 – Freephone 120 Cases referred to other Government Entities - 1999

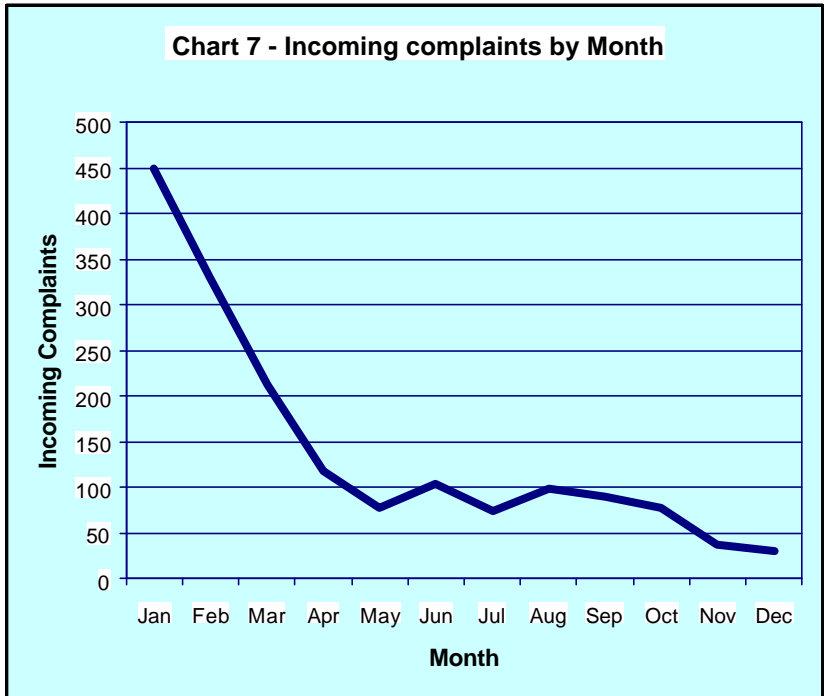
No. of Cases in 1999	Department of Consumer Affairs	Department of Health	Malta Standardisation Authority	Office for Fair Competition	Department of Trade	Department of VAT	Total
Jan	1	5	0	59	161	223	449
Feb	3	6	0	36	113	172	330
Mar	0	8	1	22	67	114	212
Apr	0	12	0	15	25	66	118
May	1	8	3	4	19	42	77
Jun	0	3	0	8	40	52	103
Jul	3	5	0	2	26	38	74
Aug	1	4	0	7	34	53	99
Sep	1	3	0	3	36	46	89
Oct	0	6	1	6	25	40	78
Nov	0	1	1	0	20	15	37
Dec	0	2	0	1	10	17	30
Total	10	63	6	163	576	878	1696

Source: Department of Consumer Affairs.

4.2.2. Table 5 indicates:

- 52 per cent and 34 per cent of complaints through freephone registered by the Department of Consumer Affairs concerned the non-issuing of VAT fiscal receipts and pricing-related (Department of Trade) complaints respectively.
- During the last six months of 1999, the number of incoming complaints decreased substantially. During

the first six months a total of 1289 calls were registered. This amounts to 76 per cent of the total. The rest (407) were registered during the last six months (Chart 7). There is no apparent reason for this trend. This decline was not noticeable in other categories of complaints received by the Department.



Source : Department of Consumer Affairs

- It appears that the 3640 man-hours allocated to the Freephone 120 service is in excess of requirements even when unregistered enquiries with this Unit are taken into consideration. This assumption is based on the fact that the number of registered complaints averages seven daily. In addition, departmental input in respect of registered complaints is minimal.

4.3. Concluded Freephone Cases (1999)

- 4.3.1. The Department considers a freephone complaint as concluded once it transfers the complaint to the relative government entity and updates its records accordingly.
- 4.3.2. The Department of Consumer Affairs is however, informed by other Government entities of cases concluded. Table 6 provides a breakdown of the 826 cases received during 1999 and concluded during period January 1999 and May 2000¹². The May 2000 cut-off is being adopted since it provides a reasonable time frame for cases registered late during 1999 to be followed up and concluded.

Table 6 – Concluded Freephone 120 Cases by Government Entities/Departments in respect of complaints received in 1999

Concluded Cases received in 1999	Department of Consumer Affairs	Department of Health	Malta Standardisation Authority	Office of Fair Competition	Department of Trade	Department of VAT	Total
Jan	2	1	0	38	54	30	125
Feb	2	0	0	29	0	22	53
Mar	0	2	0	14	6	72	94
Apr	0	1	0	21	49	132	203
May	1	14	2	2	18	45	82
Jun	0	3	1	12	22	60	98
Jul	1	11	0	0	9	23	44
Aug	0	2	0	7	2	23	34
Sep	1	0	0	3	5	10	19
Oct	0	1	0	3	21	11	36
Nov	0	0	0	3	14	3	20
Dec	0	4	0	1	13	0	18
Total	7	39	3	133	213	431	826

Source: Department of Consumer Affairs

¹² This total does not take into consideration cases pertaining to previous years and which were concluded during 1999.

4.3.3. The results in Table 6 raise the following issues:

- Only 826 (49 per cent) of 1696 complaints received through the Freephone 120 during 1999 have been concluded by the entities up to the first five months of the year 2000.
- The Department of Trade and the VAT Department have the lowest conclusion rates at 213 (37 per cent) and 431 (49 per cent) cases of enquiries received respectively. On the other hand, the Office for Fair Competition had, during this period, concluded 82 per cent of complaints received during 1999. Such a range of efficiency indicators may be the result of the complexity of cases received and/or priorities allocated to complaints by the different government entities.

4.4. Quality Service Charter

4.4.1. Presently the Department has no Quality Service Charter for the Freephone 120 service. During 1999 meetings were held between the Department of Consumer Affairs and the MEU about the possibility of setting up the Charter within this Unit. The Department's management is of the opinion that this Charter will be problematic to implement since the Department of Consumer Affairs is dependent on other Government entities for the provision of part of its service.

4.4.2. However, NAO is of the opinion that this should not hold back the Department from generating a Quality Service Charter on the other functions on which it has control.

Part 5 - Promoting Consumer Affairs

5.1. Initiatives

5.1.1. One of the functions of the Department is to educate the public about their rights as consumers. Even in the most competitive markets the consumer can suffer harm through the lack of information needed to make informed decisions. In addition, the National Programme for the Adoption of the Acquis advocates that the Department is to extend further its consumer education campaign¹³.

5.2. Consumer Education

5.2.1. The Department performs this function through a number of initiatives namely:

- departmental publications and leaflets;
- articles in various publications and newspapers;
- lectures;
- television and radio programmes.

5.2.2. **Departmental Publications**– ‘*Fair Deal*’ is a quarterly, four page departmental publication which is distributed to consumers through local councils. ‘*Fair Deal*’, which has been published since 1994, presents informative

¹³ National Programme for the Adoption of the Acquis; Ministry of Foreign Affairs – Malta, February 2000, p 163.

articles on a number of consumer related topics, as well as departmental news and activities.

5.2.3. The NAO opines that the publications produced by the Department are a useful means of providing information to consumers. However, publications produced are available either from Local Councils, the Department of Consumer Affairs or on request (mainly by students). Such a situation is not tantamount to ensure a greater distribution of publications and widen the spectrum of readership since visits by the public to the above mentioned sites tend to be minimal.

5.2.4. **Leaflets** - Since its establishment in 1992, the Department has published eleven leaflets. These leaflets deal with following:

- The Consumer Affairs Act
- The Door-to Door Salesmen Act (Act VII of 1987)
- Consumer rights
- A guide for Consumers
- The Consumer Claims Tribunal
- Guarantees
- Clothing Labels
- Malpractices in Advertising
- Heaters
- Toys
- Preservation of Tomatoes

5.2.5. The following issues relating to leaflets published by the Department emerge:

- i) The availability of leaflets is limited since they are only available from Local Councils, the Department of Consumer Affairs or on request (mainly by students).
- ii) Leaflets published generally cater for consumer issues in a generic manner. It is acknowledged that this approach constitutes an important milestone towards increasing consumer affairs awareness. However, consumer education and information also entails that leaflets or other printed material increasingly promote consumer awareness in respect of specific products or topics. To date, the Department has only given marginal attention to this approach since only a limited range of products featured in leaflets.
- iii) The number of leaflets published by the Department during the periods 1992 - 1999 is considered low. It is however improbable that the Department could, with the current staffing constraints, improve on the number of leaflets issued.

5.2.6. **Articles in Publications** - During 1999 the Department has also prepared articles for inclusion in other local publications. However, 73 per cent of articles featured in teachers' and/or students' publications. Such a target audience however, indicates that the Department is mainly promoting consumer awareness through its articles to young and future consumers. Departmental efforts in this regard have only marginally catered for other consumer categories.

5.2.7. **Newspaper Articles** – Newspaper articles constitute an important medium to enable the Department to further promote consumer awareness. The Department's involvement in this regard is however limited in scope since:

- i) the Department is not adequately utilising this medium to promote consumer awareness thus the opportunity to reach mass readership is lost;
- ii) although newspaper articles promoting consumer affairs appear regularly in local newspapers, the Department claim that it is not in any way involved.

5.2.8. **Lectures** – During 1999, the Department has delivered a number of lectures amounting to a total 45.5 hours duration. The lectures dealt with various issues relating to consumer affairs. Table 7 indicates target audiences.

Table 7 - Lectures delivered during 1999

Target Audience	Duration (hrs)	%
Teachers	15.00	33
Primary Students	13.00	29
Secondary Students	13.50	30
Post-Secondary Students	1.25	3
Others *	2.75	6
Total number of lecture hours	45.50	100

* Ladies Circle / International Wives

Source: Department of Consumer Affairs

5.2.9. NAO acknowledges the benefits to be reaped by directing the Department’s resources towards providing lectures to students and teachers since education and information is being provided to future consumers. It is however felt that:

- i) The total duration of lectures delivered during 1999 amount to just over one hour per week during the scholastic year¹⁴. This amount of lectures is not considered as adequate to reach most students in Malta.
- ii) The Department was only able to deliver 1.25 hours of lectures during 1999 to post secondary students implying that only a small number of this category of students was reached.
- iii) The Department is not delivering lectures to a wider spectrum of target audiences.
- iv) The low lecture hours delivered and the lack of diversity in targeted audiences is a direct result of the staffing constraints experienced by the Department (vide Paragraph 7.1.1).

5.2.10. **Audio and Visual Media** – The Department also utilises audio and visual media to promote consumer rights awareness. Generally the Department is invited by local television and radio stations to provide consumer information. The Department does not incur extra costs or receive payment related to these programmes.

5.2.11. During 1999, the Department had the opportunity to utilise 75.8 hours of radio airtime and 21 hours of television airtime. These total represent 1.46 hours and 25 minutes of radio and television time per week respectively. 59 per cent of programmes were broadcasted during the morning (Table 8).

¹⁴ A scholastic year is being considered to comprise of 36 weeks between October and June.

Table 8 - Educational Programmes carried out during 1999

Radio	am (mins)	pm (mins)	Total	Television	am (mins)	pm (mins)	Total
Malta 2	0	330	330	TVM	655	20	675
RTK	0	315	315	Super 1	0	425	425
RadjuMas	570	0	570	Channel 22	0	40	40
Malta 1	1620	165	1785	Channel 12	0	120	120
Super 1	560	0	560				
Universita'	0	988	988				
Total	2750	1798	4548	Total	655	605	1260

Source : Department of Consumer Affairs

5.2.12. NAO feels that the Department is adequately exploiting audio and visual media given its resources which could carry out such function. Although more audio and visual exposure is desirable, it is felt that the Department cannot increase its efforts in this regard unless more human resources are allocated to this function.

5.2.13. **Promotion by the Department's Mascot:** During 1999, the Department of Consumer Affairs officially launched its mascot 'Konsu the Lion' to promote consumer educational programs. Mostly the mascot participated in activities relating to primary school students as well as during educational activities aimed at the elderly and television programmes.

5.3. Trader Education

5.3.1. The Department's Business Plan for years 1999-2001 stipulates that the Department is obliged to educate traders on their rights and responsibilities in line with current legislation and the adoption of European Union directives.

- 5.3.2. During 1999, the Department of Consumer Affairs did not target educational initiatives at traders. Indirect awareness was however provided through the Department's contact with traders during follow-up of consumer complaints and enquiries.
- 5.3.3. It is felt that traders who are not fully conversant with consumer rights are not conducive to create a fair and stable trading environment.

Part 6 - Cost Efficiency

6.1. Cost of Operations

6.1.1. One approach to efficiency appraisal involves measuring the cost per unit output. The Department of Consumer Affairs however, has to-date not established indices relating to such efficiency measurement. The National Audit Office, on behalf of the Department and on the basis of information supplied by the Department itself, established cost indicators which can contribute towards evaluating the efficiency of operations undertaken by the Department of Consumer Affairs.

Table 9 – Costs incurred by the Department during 1999

	Complaints	Tribunal	Freephone 120	Promotion of Consumer Awareness	Total
	(Lm)	(Lm)	(Lm)	(Lm)	(Lm)
Direct Costs:					
Personal Emoluments ¹⁵	14,687.43	8,558.00	6,189.75	4,090.00	33,525.18
Direct Overheads	0.00	2,099.00	2,065.00	9,428.00	13,592.00
Indirect Costs:					
Administrative Costs	30,741.32	14,832.07	12,977.26	5,188.36	63,739.01
Total Cost per Function	45,428.75	25,489.07	21,232.01	18,706.36	110,856.19
Number of cases					
Jan '99 Open.WIP	164	171			
New Cases 1999	766	199			
Dec '99 Close.WIP	141	112			
Cases settled	789	258	1696¹⁶	N/A	
Average Cost per Case	57.58	98.79	12.52	N/A	

Source: NAO working papers; Department of Consumer Affairs; Treasury records

¹⁵ 2400 informal consumer enquiries received and settled over the telephone by the Department are excluded from the costings. Relative man hours (1200) and subsequent direct costs (Lm2020) required to deal with these calls have been deducted from workings.

¹⁶ Received and processed during 1999

- 6.1.2. Table 9 provides a breakdown of costs incurred by the Department in the provision of its various services to consumers. In order to be in a position to apportion costs, NAO utilised, after verification, information provided by the Department of Consumer Affairs and Treasury records. Average costs per unit case or service are also given in the Table.
- 6.1.3. **Direct Costs** – Personal emoluments constitute the major element of direct costs. Direct overheads comprise costs associated with publications, advertising, telephone expenses and allowances paid to Arbitrator. These costs have been charged to Promotion, Freephone 120 and Consumer Claims Tribunal respectively.
- 6.1.4. **Administrative Costs** - Administrative costs constitute the indirect overheads incurred for the running of the Department. Such costs were apportioned to the various sections according to staff allocation ratios per function. Administrative costs include costs incurred in respect of utilities, contractual expenses, transport costs, and training. Salaries and wages of support and minor staff have also been included as administrative costs.
- 6.1.5. Table 9 indicates that the total administrative costs for the year amounted to Lm63,739 and represented 53 per cent of total expenditure. These costs are considered as relatively significant and are contributing substantially to a high average cost per unit service.
- 6.1.6. **Average cost** per case for 1999 works out as follows:
- (i) Lm57.58 per case settled by the Complaints Unit;
 - (ii) Lm98.79 per case concluded by the Tribunal;
 - (iii) Lm12.52 per serviced case arising out of Freephone 120.

Costs for Freephone service do not include costs incurred by the investigating entity. The decreasing trend of incoming complaints is increasing processing cost of each complaint. The Department has reacted to this situation by reducing manpower allocated to this function.

- 6.1.7. **Education** - The costs incurred in connection with educational activities undertaken by the Department during 1999 amounted to Lm18,706 and represent 17 per cent of total departmental costs.
- 6.1.8. High average costs of services provided by the complaints, tribunal and freephone sections (Table 9) indicate inefficiencies resulting either from having a larger department than demand for its services warrants or else the department is badly structured and is underutilising its resources. There is lack of data for previous years or for similar operations against which comparative analysis could be carried further. However, this costly service also contributes social benefits in terms of consumer satisfaction and encouragement of a fair trading environment.

Part 7 - Staff Constraints

7.1. Staff Constraints

7.1.1. The Department of Consumer Affairs employs twelve personnel including the Director. Apart from the Director, training and development of the other members of staff in disciplines related to consumer affairs has, to date been limited. Staffing constraints are hindering the Department's efficiency and effectiveness since staff utilisation is not optimised. The Department is restrained from exercising staff flexibility since generally, personnel are not qualified to perform specialised tasks such as providing legal representation to consumers, promoting consumer affairs awareness and monitoring trading practices.

7.1.2. The Department has sponsored an employee to undertake professional training in the United Kingdom but other departmental efforts to enable staff to participate in a course leading to a diploma in consumer affairs has to date not materialized.

7.2. Monitoring of Trading Practices

7.2.1. Paragraph 2(b) of the Consumer Affairs Act 1994, stipulates that the Department of Consumer Affairs is obliged to monitor trading practices and to take measures for the suppression and prevention of any practices that may be detrimental to the interest of consumers.

7.2.2. The performance of this task entails that the Department enforces legislation intended to promote a fair trading

environment. It ensures product safety and compliance with product information made available to the consumer (on product labeling) through scientific testing. The Department is also obliged to ensure that a product conforms to its trade description in accordance with the relative Trade Descriptions Act.

- 7.2.3. Despite the legislative requirement to perform this function, the Department of Consumer Affairs has not performed any monitoring or surveillance of trading practices to date. The Department claims that lack of staff with adequate experience on the subject have not permitted the performance of this function.

7.3. Legal Representation

- 7.3.1. In the event that, despite the departmental mediation, agreement between the consumer and trader is not reached, the Department of Consumer Affairs is obliged to institute legal proceedings against traders and conduct prosecutions in the Magistrates Court. NAO was informed that, due to the lack of qualified personnel, the Department is currently not in a position to undertake such responsibilities.

7.4. Developments

- 7.4.1. Staff constraints and limited services supplied by the Department should be addressed following the recent developments and operations review within the Ministry of Economic Services as explained in paragraph 1.6 of this report.

Part 8 - Conclusions

8.1. Conclusions

- 8.1.1. The Consumer Affairs Department has an important role to play in the improvement of relations between traders and consumers. This relationship is considered as fundamental to fair trading. The main functions of the Department are to provide information and guidelines to the public on matters effecting its interest as consumers and to investigate and mediate on behalf of aggrieved consumers.
- 8.1.2. This audit sought to assess the efficiency with which the Department executes its functions. A performance appraisal of this Department entailed focusing on the financial aspect of operations undertaken by this Department. The average cost of services by the Department seems high. Low demand for services and output are contributing to the high average costs of services provided. Another factor conducive to high average costs are the seemingly excessive high administrative overheads of the Department. However, this costly service also contributes social benefits in terms of consumer satisfaction and encouragement of a fair trading environment.
- 8.1.3. The absence of quantitative objectives and clearly defined goals related to the various operations undertaken by the Department constrained the National Audit Office from assessing some issues related to the Department's effectiveness. The effectiveness of the Department's role intended to provide a timely redress to consumers through investigating complaints and mediating on their behalf is questionable. The

Department's results in this respect did not generally provide consumer redress within a reasonable time frame. Consumers opting to refer their case to the Consumer Claims Tribunal were also denied timely redress since on average each case required 199 days to be concluded.

- 8.1.4. The effectiveness of programmes undertaken by the Department to promote consumer awareness is less than optimal since the opportunity to reach a wider spectrum of consumers through printed mass media and information leaflets was not fully exploited.
- 8.1.5. The Department is rightly exploiting every opportunity to promote consumer awareness through audio and visual media. These initiatives are considered as crucial to enable the Department to broaden its target audience. Staffing constraints, however, restricts the Department from increasing the current level of such activities.
- 8.1.6. Since the enactment of the Consumers Affairs Act 1994, the Department has not performed any monitoring of trading practices as provided for in the Act. This situation deviates from the departmental objective of contributing towards a fair trading environment and effectiveness is further diminished.
- 8.1.7. The Department is impaired by staff lacking experience and necessary training in the subject. The Department has to date not been in a position to extend formal 'consumer affairs' training to most of its staff. This fact restricted the Department from optimising staff utilisation and achieving a higher level of activity and efficiency.
- 8.1.8. Safeguarding and upholding consumer rights demand that the Department of Consumer Affairs is in a position

to enforce consumer legislation, advice consumers and enable redress where appropriate. Recent amendments to the Consumer Affairs Act 1994 seek to encourage such objectives. However, these aims are more likely to be attained if consumers are continuously provided with the relevant information to enable them to look after their own interests. Consumers willing and able to safeguard their own interests will directly contribute towards enhancing a fair trading environment.

- 8.1.9. Following the operations review at the Ministry of Economic Services (para. 1.6), consumer and fair trading matters raised in this respect could be addressed more effectively.

Part 9 - Recommendations

9.1.1. On the basis of the audit the National Audit Office recommends that:

- i) The newly set up Consumer and Competition Division takes initiatives to substantially reduce current case settlement period for both consumer complaints and Tribunal cases to enable timely consumer redress.
- ii) The Division encourages and stimulates other Government entities to expedite action taken in respect of consumer complaints lodged through the Freephone 120.
- iii) The Division extends its programmes related to the promotion of consumer affairs and takes measures to encompass a broader target audience including traders.
- iv) The Division revises the current distribution practices of its publications to enable more effective dissemination of information.
- v) The Division should train its staff to enable it to deliver and improve on all services contemplated in the Act, including monitoring of trading practices, and to facilitate staff flexibility conducive to higher efficiency.