



Comments on the Timeshare Vacations Act

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November 2012

We have reviewed the captioned proposed legislation and comment as follows:

The Timeshare Vacations Act (TVA) is intended to be, or will amount to, a later specific legislation covering a specific subject for which there is likely to be some overlap with the Fair Competition Act, 1993, regarding obligations on those engaging in business.

One such obligation is that against false or misleading advertising contained in section 37 of the Fair Competition Act (FCA). A possible overlap in obligations is in respect of section 6 of the TVA. Section 6 refers to the second schedule regarding information to be provided to the purchaser of a time share. It is conceivable that the required information pursuant to the second schedule could be provided and yet there is a false or misleading representation.

In this event the person providing the information or under the obligation to provide said information could raise as a defence the fact that all relevant information as required by the TVA was provided, and that the TVA as the later specific legislation should take precedence to the earlier general FCA, in which event, this may result in the jurisdiction of the Fair Trading Commission (FTC) being pre-empted.

We note that there is provision for the application of the Consumer Protection Act (and by extension the Consumer Affairs Commission) in the third schedule, as an additional right available to purchasers of a time share, that is, additional to the right of withdrawal from the agreement. There is, however, no reference to the FCA either as an additional or alternative legislative recourse. We suggest that there be provision for the application of the FCA, preferably in the body of the Act, as opposed to, or in addition to the relevant schedules of the TVA.

To the extent that anti-competitive practices may result from such agreements contemplated in the TVA we suggest as well that provision be made for the application of the FCA, to be referred to in the body of the legislation, and in the schedules where relevant (this could involve words such as ‘...without prejudice to the application of the Fair Competition Act...’ or any similar wording to communicate the intention that the FCA applies to timeshare agreements both from a consumer and producer perspective.

Please do not hesitate to contact us regarding any clarifications of the above or proposed further reviews of the TVA.