

# 處理違規與投訴殊非易事

## Handling violations and complaints no easy task

本刊記者 Staff reporter

### 美洲赤鹿的進化故事

**經**濟學家羅伯特·弗蘭克(Robert Frank)寫了一本暢銷書《經濟博物學家：為甚麼經濟學差不多能解釋一切》(The Economic Naturalist: Why Economics Explains Almost Everything)，裡面有一個引人入勝的進化故事，描述了個體利益和群體利益有時會怎樣產生衝突。根據達爾文的進化論，所謂物競天擇，是指那些對個體繁衍有利的特徵得以存留；即使那些特徵損害了群體，而只會使個體的狹隘利益受惠，但結果也都一樣。一個這樣的例子，是雄性美洲赤鹿都長了巨大的鹿角，在爭奪雌性時當作武器使用。鹿角越大的雄性，交配對象就越多，因此牠們鹿角的基因就越有可能在後代出現，結果就是有巨大鹿角的雄性會越來越多。另一方面，長了巨大鹿角的雄性，在長滿樹木的地方卻難以逃避狼群及其他猛獸的捕獵；這樣一來，美洲赤鹿整體的生存都會受到威脅。因此，過大的鹿角就是弗蘭克所說的「一己有利，群體有害」的特徵。

不用多說，雄性美洲赤鹿不可能扭轉上述的達爾文進化趨勢。可是，陷入類似趨勢的人類卻能阻止禍殃，方法是制訂法律和規章，以免有損群體利益兼且禍及自身的「軍備競賽」因個體不斷追求短期利益而出現。

### 為甚麼不能沒有議會

讓我們看看以下虛構的情景，以便大家瞭解上述的趨勢會怎樣影響整個旅遊業界。假設——只是假設而已——有一家旅行社刊登了稍為誤導的廣告，想藉此吸引顧客。它的短期利潤因此急升，其他旅行社於是也依法炮製。過了不久，這類廣告喪失了相對的吸引力，沒有了奇



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一頭長了巨大鹿角的雄性美洲赤鹿。  
A bull elk with huge antlers.

### The evolutionary story of elk

In economist Robert Frank's bestseller, *The Economic Naturalist: Why Economics Explains Almost Everything*, there is a fascinating evolutionary story, which describes how individual and group interests may sometimes be at odds. **According to Charles Darwin, natural selection favours traits that increase individual reproductive success, even if such traits may turn out to serve the narrow interests of individuals at the expense of the larger group.** One such example is the prodigious antlers of male elk, which are used as weapons in battles for access to females. As male elk with bigger antlers have more mates, their antler genes have higher chances to appear in the next generation, with the result that there will be more male elk with bigger antlers. On the other hand, big antlers make it harder for male elk to escape from wolves and other predators in densely wooded areas, which harms the survival of elk as a group. Thus **oversize antlers belong to such traits Robert Frank calls "smart for one, daft for all".**

Obviously, there is no way male elk could ever buck the Darwinian evolutionary trend. Human beings who are stuck in a similar disastrous trend, however, can stop it by having laws and regulations put in place to avoid the self-destructive "arms race" brought about by individuals incessantly chasing short-term interests that are against group interests.

### Why TIC cannot be done without

Let us now turn to a series of imaginary scenarios to see how a trend de-

效，於是有些旅行社刊登更加誤導的廣告，想藉此壓倒對手。這樣一來，又有其他旅行社依法炮製，結果就是大家都陷入了這樣的惡性循環裡去。另一方面，旅客對旅行社及它們的廣告越來越不滿，於是自己編排行程，自己向航空公司和酒店訂票、訂房，結果就是所有旅行社全都受損。這正是雄性美洲赤鹿無法察覺的「一己有利，群體有害」的情況。

前文說過，要打破這種短視而自毀的循環，需要監管機構制訂有效的規則和規例，使利益能持續久遠，人人受惠。這正是議會最為重要的職能之一，甚至說是議會的存在理由也並不為過。議會二十一年前獲政府授權，成為業界唯一的自律監管組織，多年來發出了不少指引、守則、規例，為的正是防止「一己有利，群體有害」的情況變成現實。

## 爭取信任的措施

這些年來，公眾和政府對議會的信任與日俱增，議會自律監管的範圍也因而不住擴大。議會現在負責監管外遊和入境旅行社、外遊領隊、導遊，以及接待入境團的登記店舖，並且設立了五個委員會去處理涉嫌違規或投訴的個案，即規條委員會、內地來港旅行團規條委員會、導遊及領隊審核委員會、購物事宜委員會、消費者關係委員會。此外，還有上訴委員會，負責處理不滿這些委員會的決定而提出的上訴。

即使在二零零八年理事會推行改革措施以前，這五個委員會中的四個就已有一半委員來自業外，餘下一個的業外委員也接近一半；至於召集人方面，五個中的兩個由獨立理事擔任。二零零八年初，理事會為了使處理違規及投訴的委員會更具公信力，更能贏取公眾的信任，於是決定推行三項措施：第一，這些委員會的召集人全部由獨立理事擔任；第二，業外委員的人數必須多於業界委員；第三，委員會處理個案的小組會議必須有一半以上是業外委員。至於上訴委員會的組成，由於一向都規定每次會議的業外委員必須超過一半，因此無須

scribed above may hurt the whole travel industry. Suppose, just suppose, a travel agency tries to lure customers by placing slightly misleading advertisements. Its short-term profits will shoot up, which will encourage other agencies to copy what it has done. After a while, this kind of advertisement loses its miraculous power because its relative strength has gone. Some agencies will then try to place more misleading advertisements to gain an edge over their rivals, which will encourage others to follow suit, and the whole cycle repeats itself. On the other hand, the anger of travellers at travel agencies and their advertisements will escalate, and they may even try to assemble their own itineraries by booking direct from airlines and hotels. As a result, all travel agencies suffer. This kind of situation is exactly what male elk might have found out: "smart for one, daft for all".

As is said earlier, **to break such a myopic, self-destructive cycle, a regulatory body has to be around putting in place effective rules and regulations so that long-term, sustainable benefits will be available to everyone. Here lies one of the most important functions, or even the raison d'être, of the TIC**, which was entrusted by the Government 21 years ago to be the only self-regulatory body of the travel industry and which has since issued many directives, codes of conduct and rules to prevent the "smart for one, daft for all" scenarios from coming into being.

## Measures to win trust

With the trust of the public and the Government growing, the TIC has taken up more duties as a self-regulatory body over the years. It now regulates outbound and inbound travel agents, outbound tour escorts, tourist guides and registered shops for inbound tour groups, and has set up five committees to handle cases of suspected violations or complaints (the Compliance Committee, Mainland China Inbound Tour Compliance Committee, Tourist Guide and Tour Escort Deliberation Committee, Committee on Shopping-related Practices and Consumer Relations Committee), and the Appeal Board to deal with appeals against decisions made by these committees.

Even before 2008 when reforms were introduced by the Board of Directors, four of these five committees had already had a majority of non-trade members and the remaining one had also had close to half of its members from outside the trade; and the convenors of two of them had been independent directors. **At the beginning of 2008, the Board of Directors decided to implement three measures in order to ensure greater credibility and attain a higher level of public trust. First, each of them would have an independent director as its convenor. Second, the number of non-trade members serving on each of them would exceed that of trade members. Third, panel meetings formed by these committees to handle cases would have a majority of non-trade members.** As for the Appeal Board, there was no need to make any change to its composition because all its meetings had already had more non-trade members than trade members since the beginning.

改變。

## 二零零八年的統計

上述措施於大約一年前公佈時，無論是公眾還是政府，都視之為議會加強監管機制的重要一步。下表列出了二零零八年這五個委員會及上訴委員會處理個案的統計數字，有兩點值得一提。第一，消費者關係委員會合共處理了一百二十五宗投訴個案，當中超過一半不成立。這或許顯示出旅客有點過份熱中於投訴，因而有不少個案都因理據不足而無法成立。

第二，在關乎紀律事宜的個案中，餘下的四個委員會認為大多數個案都成立，而上訴委員會也維持那些委員會的大部份決定。這證明議會辦事處在處理這類個案時小心翼翼，務求文件齊備，證據有力，而那四個委員會處理個案時則考慮周到，不偏不倚，因此議會辦事處、四個委員會和上訴委員會的判斷，才能在大多數情形下並無二致。

## 委員會召集人的看法

上述爭取公眾信任的新措施已經實施了一年，

## Statistics for 2008

When the above measures were announced about one year ago, both the public and the Government took them as an important step on the TIC's part to enhance its regulatory regime. The table below shows the statistics concerning the five committees and the Appeal Board for 2008, and there are two points that deserve to be mentioned. First, more than half of the complaint cases, out of a total of 125, were deemed by the Consumer Relations Committee to be unsubstantiated. This may indicate that the travellers were perhaps a little too eager to file complaints, with the result that a significant number of cases could not be substantiated because of a lack of grounds.

Second, a significant proportion of cases concerning disciplinary issues were found to be substantiated by the remaining four committees, and most of their decisions were also upheld by the Appeal Board. This shows that the TIC Executive Office always handled such cases with great caution by carefully preparing necessary documents and submitting strong evidence, and the four committees deliberated such cases thoroughly and impartially, hence the judgments made by the Executive Office, the four committees and the Appeal Board always in unison.

## What the convenors think

Now that the new measures to gain public trust are one year into their implementation, some member agents are concerned that the five committees are dominated by non-trade members. **Compliance Committee Convenor Mr Alvin Wong, an accountant by career, remarked that all cases are handled by non-trade members with objectivity and**

表：二零零八年五個處理違規及投訴的委員會及上訴委員會處理過的個案

Table: Cases deliberated by five committees handling violations and complaints and by Appeal Board in 2008

名稱 Names	召開會議數目 No. of meetings held	處理個案數目 No. of cases handled	個案成立數目 No. of substantiated cases
規條委員會 Compliance Committee	6	18 (外遊 outbound) 49 (來港 inbound) 6 (領隊 escorts)	18 (外遊 outbound) (100%) 48 (來港 inbound) (98.0%) 4 (領隊 escorts) (66.7%)
內地來港旅行團規條委員會 Mainland China Inbound Tour Compliance Committee	3	8	8 (會員 members) (100%) 5 (導遊 guides) (62.5%)
導遊及領隊審核委員會 Tourist Guide and Tour Escort Deliberation Committee	5	76	68 (89.5%)
購物事宜委員會 Committee on Shopping-related Practices	3	4	4 (100%)
消費者關係委員會 Consumer Relations Committee	12	125	55 (44.0%)
上訴委員會 Appeal Board	4	16	14 (87.5%)

有些會員旅行社擔心這五個委員會被業外委員把持。規條委員會召集人黃德偉先生是會計師，他認為所有業外委員都以平常心和常識來處理個案，個案有疑點的話委員會就會認為不成立，絕不會偏幫任何一方。本身是律師的梁家駒先生是內地來港旅行團規條委員會的召集人，他認為委員會單是處事公正還不夠，要使人看到它處事公正才行；目前業外委員佔多數的安排就能達到這個目標。消費者關係委員會召集人李國英先生也是律師，看法也差不多。

雖然處理違規和投訴的五個委員會以業外委員為主，但制訂規則、然後向理事會呈交建議的委員會卻以業界委員佔大多數。對於這種情況，擔任培訓顧問的導遊及領隊審核委員會召集人朱樂生先生認為，業界需要甚麼標準，只有業者自己才清楚，業外人士無法斷定，也不會把標準強加在業者身上；不過，業界要更加專業化的話，就要訂出更高的標準。李國英先生則相信制訂規例的委員會應增加業外委員的人數，這樣制訂規例時才能兼顧業界和公眾的利益；即使業者目前不接受大幅增加業外委員的安排，但也應抱開放態度，與時並進。

航空政策專家羅祥國博士是購物事宜委員會的召集人，他認為議會各個紀律委員會都已上了軌道，而且還有上訴機制給業者提出上訴，因此現在的監管機制可算是運作良好；反而好些違規個案都是前線員工的無心之失，因此業界需要加強對新入職員工甚至管理層的培訓，使他們清楚明白議會訂立的規例，並且切實執行。關於這個從業員素質的問題，朱樂生先生和黃德偉先生都認為需要提高入行的門檻，以提升業者的素質。黃先生甚至指出，旅行社從業員也好、領隊導遊也好，往往對工作欠缺熱誠，比較短視，只想賺錢而已。

最後值得一提的，就是議會的監管權力。雖然梁家駒先生認為，以監管權力來說，議會不會比不上香港律師會等專業團體，但李國英先生卻表示，長遠來說，政府應認真考慮把議會改為法定機構。✎

common sense, and the benefit of the doubt is always given to the suspected parties, thus eliminating any possibility of bias. Mr Johnny K K Leung, who is a lawyer and the Convenor of the Mainland China Inbound Tour Compliance Committee, took the view that these committees must not only be acting impartially, but be seen to be acting impartially, which can be achieved through the current arrangement of having a majority of non-trade members attend their meetings. Himself also a lawyer, Consumer Relations Committees Convenor Mr Li Kwok Ying shared a similar view.

Although the five committees which deal with violation and complaint cases currently have more non-trade members than trade members, the composition of those committees which formulate rules and then make recommendations to the Board of Directors has a reverse arrangement. Regarding such a situation, **training consultant Mr Antonio Chu, Convenor of the Tourist Guide and Tour Escort Deliberation Committee, pointed out that only the traders themselves know what standards the trade needs, and people outside the trade cannot decide on such standards and will not impose any on the traders.** Having said that, higher standards are necessary if the trade wants to become more professional. **Mr Li Kwok Ying believed that those committees responsible for formulating rules should also have more non-trade members in order to strike a balance between interests of the trade and the public.** He added that even though traders do not accept a big increase in the number of non-trade members at the moment, they should be open-minded about it and keep pace with the times.

**Aviation policy expert Dr Law Cheung Kwok is the Convenor of the Committee on Shopping-related Practices, who believed that the existing disciplinary regime functions properly since all disciplinary committees are well established and there is also an appeal channel for the traders to appeal.** On the other hand, he remarked, quite a number of violations were committed by frontline staff inadvertently, which reflects a need for the trade to provide better training for new staff and even management so that they fully understand rules of the TIC and strictly comply with them. When asked about this issue of the quality of traders, both Mr Antonio Chu and Mr Alvin Wong stated that the entry requirements of the trade need to be raised in order for the quality of traders to be enhanced. Mr Wong even pointed out that it is quite often that travel agents, tour escorts and tourist guides show a lack of passion and are short-sighted with moneymaking always sticking in their mind.

The last point worth mentioning is the regulatory authority of the TIC. Although Mr Johnny K K Leung thought that the TIC has as much regulatory power as other professional bodies such as the Law Society of Hong Kong, **Mr Li Kwok Ying believed that the Government should seriously consider turning the TIC into a statutory body in the long run.** ✎