



THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

**Comment of Deborah Platt Majoras,
Chairman, United States Federal Trade Commission
on Proposed Consumer Trading and Standards Authority**

I write at the invitation of the Office of Fair Trading (“OFT”) to express my views, as Chairman of the United States’ Federal Trade Commission (“FTC” or “Commission”), on the issues raised by the United Kingdom’s Department of Trade and Industry (“DTI”) consultation document concerning the proposed Consumer and Trading Standards Authority (“CTSA”).¹ As Chairman of a national agency with complementary responsibility for enforcing competition and consumer protection laws in the United States, I strongly believe in the benefits of maintaining the “integration between consumer and competition policy that is essential for market-based regulation to be fully effective and proportionate.”² The FTC’s experience indicates that this integration is best achieved in a unified agency that views the maximization of consumer welfare as the touchstone for competition and consumer protection enforcement and policy.

I appreciate the opportunity to comment and to explain my views in more detail. This comment is divided into three sections. First, it provides background about the FTC’s mission, structure, and functions, and explains how, in the United States, the FTC carries out many of the functions envisioned for the CTSA within a mixed agency. Second, in response to questions 13-21 and 25-28 of the consultation paper, it provides a detailed discussion of the FTC’s experience with combining consumer protection and competition responsibilities within one agency. Finally, in response to questions 11-12, it sets forth the FTC’s views on the critical importance of ensuring that a consumer protection body has the authority to recover and distribute monetary redress to aggrieved consumers.

I. FTC BACKGROUND AND PROPOSED CTSA FUNCTIONS

The FTC’s mission is to maximize consumer welfare. The FTC accomplishes this mission through enforcement of competition and consumer protection laws in most sectors of the U.S. economy.³ The FTC has a strong market orientation, grounded in the important role that the complementary enforcement of consumer protection and antitrust laws have played in maintaining the competitiveness of U.S. markets. The FTC works to ensure that the nation’s

¹ The views expressed in this comment are my own. They do not necessarily represent the views of the Federal Trade Commission or any other Commissioner.

² See Office of Fair Trading, Companion document to the DTI Hampton Review consultation: Improving consumer protection – a vision for the future (“OFT Companion Document”), at 3.

³ The FTC shares responsibility for enforcing the U.S. antitrust laws with the Antitrust Division of the Department of Justice.

markets are vigorous, efficient, and free of restrictions that harm consumers. Such markets bring consumers lower prices and more choice. They also work to encourage businesses to disseminate accurate, non-deceptive information, allowing consumers to make informed choices in their purchases.

To ensure the smooth operation of our free market system, the FTC enforces competition laws that promote the exercise of consumer choice, and consumer protection laws that prevent fraud, deception, and unfair business practices from depriving consumers of that choice. The FTC views both missions as being equally important and complementary to each other, and this is reflected in the FTC's structure and legal and policy environment.

Structurally, the FTC is an independent agency headed by five Commissioners who are nominated by the President of the United States and confirmed by the Senate, each serving a staggered seven-year term. The President of the United States chooses one Commissioner to serve as the FTC's Chairman. Under the direction of the Commission, the Bureau of Competition and Consumer Protection, both supported by a Bureau of Economics, as well as an Office of General Counsel, are responsible for law enforcement and other initiatives in each area.

The FTC integrates its competition and consumer protection missions by focusing policy and enforcement in both areas on market-oriented outcomes. There is substantial coordination between the bureaus and the supporting offices at the senior staff level on agency priorities and activities. For example, the senior staff of the FTC meets weekly to discuss agency issues and shape the FTC's work. The Commissioners, with common legal and economic support from the General Counsel and the Bureau of Economics, ensure that both missions pursue complementary policy objectives. The Bureau of Economics, in particular, helps ensure that the FTC considers the economic implications of its actions on markets as they relate to antitrust, consumer protection, and regulation. In total, there are over 1,000 staff members at the FTC, including over 500 attorneys and 70 economists, divided roughly evenly between the competition and consumer protection missions, all promoting the interests of all American consumers by supporting and protecting the free market. Neither mission's role has tended to overshadow or crowd out that of the other.

The DTI consultation paper raises a concern that having a single agency with a dual focus might detract from consumer protection resources or initiatives. The Commission has found the contrary to be true: Combining the two functions enables the FTC's consumer protection mission to flourish, and has helped make the FTC a world leader on consumer protection issues.

Indeed, the FTC devotes substantial resources to many of the functions that are envisioned to become the responsibility of the CTSA. For example, the FTC provides advice to businesses, a key area for CTSA discussed in the Hampton report and the DTI consultation paper. One important initiative, begun in 2001, involves misleading advertising standards. The FTC has sponsored a series of seminars, "Green Lights and Red Flags: FTC Rules of the Road for Advertisers," all around the country, often in cooperation with business groups. Another example of an FTC function that will fall within the CTSA's mandate is the agency's consumer

education program. The FTC also has an extensive consumer education program run by the Office of Consumer and Business Education, which reaches millions of consumers each year. One recent initiative launched in this area is a new website, www.OnGuardOnline.gov, which contains comprehensive information about on-line security and threats to it, including spam and spyware, among other areas. The FTC continues to devote significant resources to educating businesses and consumers on emerging consumer protection issues within a mixed agency.

II. COMPETITION/CONSUMER PROTECTION LINKAGES

A. The United States' Experience

I wholly agree with the basic premise presented by DTI in the consultation paper. In particular, I concur that:

In many ways competition and consumer regulation is intertwined. For instance, effective competition relies upon consumers being well informed when making choices between different products or firms. Equally, consumers benefit from competition law, for example, by the prohibition of a price fixing cartel or anti-competitive merger.⁴

For the same reasons articulated by DTI, the FTC's experience has been that competition and consumer protection are two sides of the same coin. Maintaining both missions within a single agency ensures that competition principles form the foundation of a sound consumer protection program and, at the same time, assures that competition law enforcement keeps consumer interests in the foreground.⁵ Although it may be possible to achieve this result without maintaining a strong institutional connection between the two functions, an agency is more likely to maintain an integrated approach when there is a shared legal and policy environment dedicated to consumer protection and competition.

1. *Complementarities between competition and consumer protection*

The goal of U.S. antitrust law is to protect consumer welfare. Indeed, sound competition enforcement is good for consumers. Several years ago, for example, the Commission brought a

⁴ Department of Trading and Industry, Reducing Administrative Burdens – the Consumer and Trading Standards Agency Consultation, ¶ 85 (July 5, 2005).

⁵ See Interface of Competition and Consumer Policies, Note by the United States Federal Trade Commission (Organization for Economic Competition and Development, Competition and Consumer Policy Committees, Oct. 7, 2003), available at <http://www.ftc.gov/bc/international/ussubs.htm#2003>; Timothy J. Muris, The Interface of Competition and Consumer Protection, Prepared Remarks at The Fordham Corporate Law Institute's Twenty-Ninth Annual Conference on International Antitrust Law and Policy, New York City (Oct. 31, 2002), available at <http://www.ftc.gov/speeches/muris/021031fordham.pdf>; Neil W. Averitt and Robert H. Lande, Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law, 65 ANTITRUST L.J. 713 (1997).

case against an association of automobile dealers that conspired to prevent manufacturers from selling cars to a dealer that sold cars at a discount over the Internet.⁶ By protecting competition among car dealers, the Commission was able to preserve choice for consumers to buy cars over the Internet for less than they might pay at traditional dealerships.

Likewise, sound consumer protection policies promote competition. One example stems from the growing awareness of consumers in the United States of the value of good nutrition. Firms have responded by making health claims for their food offerings in advertising. While in most cases these claims provided valuable information for consumers, there were some instances of deception.⁷ Instead of banning health claims entirely, the FTC promoted policies that permit and encourage health claims for food in advertising while prohibiting only those that are deceptive.⁸ Because of the FTC's policy, consumers obtained more information and demanded healthier products. This consumer demand, in turn, caused competitors to produce a broader array of nutritious products. Without advertising and competition, consumers would not have had as broad a range of healthy food options available as they do today.

The converse proposition is also true: consumer protection policy that is uninformed by competition concerns can undermine consumer welfare. Some countries, for example, prohibit comparative advertising in which firms specifically tout the superiority of their products over those of their competitors on the grounds that such advertising is somehow unseemly and confusing to consumers. Indeed, industry codes of conduct that banned comparative advertising were officially tolerated in the United States until the benefits of truthful comparative advertising were recognized by the FTC in the 1970s.⁹ It is now well-recognized that truthful comparative advertising provides useful information to consumers that allows them to choose more intelligently among competing firms and thus promotes competition among firms to provide consumers with better products.¹⁰

⁶ Fair Allocation Systems, Inc., FTC Docket No. C-3832 (Aug. 5, 1998), *available at* <http://www.ftc.gov/opa/1998/08/chrysler2.htm>.

⁷ *See* In the Matter of Tropicana Products, Inc., FTC File No. 0423154, *available at* <http://www.ftc.gov/opa/2005/06/tropicana.htm>, and In the Matter of KFC Corporation, Inc., FTC File No. 0423033, *available at* <http://www.ftc.gov/opa/2004/06/kfccorp.htm>.

⁸ *E.g.*, FTC Staff Comment Before the Department of Health and Human Services, Food and Drug Administration In the Matter of Request for Comments on Nutrient Content Claims Concerning Nutrient Claims (July 2004), *available at* <http://www.ftc.gov/be/V040020.pdf>.

⁹ FTC Policy Statement in Regard to Comparative Advertising, 16 C.F.R. § 14.15(b) (2005).

¹⁰ *See* Interface of Competition and Consumer Policies, Note by the United States Federal Trade Commission, *supra* note 5, at ¶¶20-23; Amended proposal for a Regulation concerning sales promotions in the Internal Market, COM (2002)585(01) ¶2 (Oct. 2002); R. Pitofsky, Beyond Nader: Consumer Protection and the Regulation of Advertising, 90 Harv. L. Rev. 661, 671 (1977) (discussing the advantages to consumers and competition that flow from comparative

Finally, competition policy that does not focus on consumer welfare can harm consumers. To cite one common example, competition enforcers receive complaints about predatory pricing, typically from smaller firms that are unable to match lower prices offered by larger competitors. The theory behind proscribing predatory pricing is if a dominant firm drops its price below its costs, the firm will be able to drive its competitors out of business, achieve a monopoly and subsequently raise prices to the detriment of consumers. In fact, such a pricing strategy is likely to harm consumers only in the rare instances where the dominant firm can maintain a sustained price rise for long enough that it can recoup its losses. Unless a competition agency is careful to limit enforcement to the rare cases where such recoupment is likely, the competition agency may lose sight of consumer interests and prevent the kind of aggressive discounting that benefits consumers with lower prices.¹¹

2. *Synergistic Application of Competition and Consumer Policy*

a. *Identification of Market Failures*¹²

Many issues involving consumer welfare have both competition and consumer protection components. Often, it is not immediately obvious how to approach a particular problem that is causing harm to consumers. Consumer complaints about poor product quality, or poor customer service could be symptomatic of a lack of competition, or it could reflect interference with consumer choice through deception or unfairness. An agency with responsibility over both competition and consumer protection enforcement and policy is in a good position to understand the true nature of the problem and employ the appropriate tools to address it.

Competitive markets can at times fail to protect consumers. Situations arise in which firms find it profitable to provide deceptive information to consumers despite competitive constraints. This can occur, for example, in markets for goods that have properties that consumers cannot easily verify. The promotion of such “credence” goods can lead to deceptive claims by firms because there is no easy way for buyers to distinguish between different quality levels for a good or service. In such markets, long-term reputational concerns may not constrain sellers, whose interest is in cheating consumers, grabbing revenues, and disappearing, only to reappear in another guise. When market mechanisms prove insufficient to protect consumers, the appropriate solution may be law enforcement or regulatory action that improves the flow of

advertising).

¹¹ *E.g.*, Letter from Directors of FTC’s Bureaus of Competition and Economics and Office of Policy Planning to Hon. Demetrius C. Newton, Speaker Pro Tempore, Alabama State House of Representatives (Jan. 29, 2004), *available at* <http://www.ftc.gov/be/v040005.htm>.

¹² *See generally*, Identifying and Tackling Dysfunctional Markets – Note submitted by the US Federal Trade Commission (Organization for Economic Competition and Development, Competition and Consumer Policy Committees, Oct. 5, 2004), *available at* <http://www.ftc.gov/bc/international/ussubs.htm#2004>.

information - either by prohibiting deception or requiring carefully designed disclosures that restore consumers' ability to make effective choices. In such cases, a consumer protection agency that is informed by competition principles will be more likely to impose flexible and proportionate regulatory measures that give consumers the information necessary to exercise informed choice.

An excellent example of the FTC's synergistic approach to a problem with both competition and consumer protection dimensions is ophthalmic goods and services. When concerns over the high cost of such goods and services first arose in the 1980s, the FTC decided to review whether private and governmental restraints with the purported goal of consumer protection were preventing the expansion of a more efficient segment of the industry. Consequently, the FTC conducted two in-depth studies, which showed that restrictions on the commercial practice of optometry reduced competition and increased costs to consumers, but did not affect average quality – the purported consumer protection justification for the rules.¹³

In response to evidence of restrictions on competition and choice, the FTC took action on three fronts. First, the FTC brought an administrative case against a state licensing board composed of practicing optometrists, charging that the Board unlawfully restricted advertising of truthful, non-deceptive information about the price and availability of eye care services. Significantly, the FTC complaint alleged that the Board's practices were both unfair methods of competition and unfair acts and practices. After a trial, the FTC ruled that the Board's ban on such affiliation advertising unlawfully impeded entry by retail optical stores and raised prices for eye care. The FTC prohibited the Board from restricting certain types of advertising and required it to repeal its prohibitions against advertising affiliations between optometrists and optical retailers.¹⁴ Second, using its consumer protection jurisdiction, the FTC proposed to amend an existing Trade Regulation Rule by declaring certain state restrictions on the commercial practice of optometry to be unfair acts and practices in violation of the FTC Act.¹⁵ Third, the FTC engaged in a vigorous campaign of competition advocacy to persuade state legislatures that anticompetitive regulations that excluded more efficient sellers of ophthalmic goods and services was bad public policy.

In the end, most of the positions advocated by the FTC prevailed. The courts struck down the restrictions on advertising by optometrists as infringing the commercial speech rights of non-traditional optometrists. Discount sellers of ophthalmic goods began to enter the

¹³ FTC Bureau of Economics, Staff Report on Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980); FTC Bureau of Economics and Consumer Protection, A Comparative Analysis of Cosmetic Contact Lens Fitting by Ophthalmologists, Optometrists, and Opticians (1983).

¹⁴ *Mass. Bd. of Registration in Optometry*, 110 F.T.C. 549 (1988).

¹⁵ *Ophthalmic Practice Rules*, 54 Fed. Reg. 10285 (1989). The rules were later invalidated by the courts on federalism grounds. *California State Board of Optometry v. FTC*, 910 F.2d 976 (D.C. Cir. 1990).

marketplace and compete vigorously with more established sellers. In some cases, restrictions were repealed, and in others the sellers found ways to minimize their effects.

The FTC remains involved in protecting consumers in this area. In 2004, the FTC issued its final rule implementing the Fairness to Contact Lens Consumers Act, 15 U.S.C. §§ 7601-7610. The purpose of this law was to give consumers greater freedom in choosing the seller from whom they purchase contact lenses. As with previous efforts, in promulgating the rule, the FTC examined benefits to consumers from both a competition and consumer protection perspective.

Another example of the utility of the synergistic approach arose from the practices of the funeral industry. In an extensive study begun in the 1970s, the FTC found that the funeral market was characterized by a virtual absence of price information. Given the stressful time in which consumers typically purchased funerals, the absence of such information made the exercise of consumer choice especially difficult. Regulatory barriers included state law provisions allowing only licensed funeral directors to sell caskets – generally the single most expensive component of a funeral. This requirement had little bearing on the ability or qualifications of a person to sell caskets and inhibited others from entering the market. This and other regulatory barriers were adopted on the basis of purported consumer protection justifications. For example, the industry asserted that consumers could suffer from fraud or other abuses if they bought caskets from independent sources. The industry also argued that licensing in general promotes health and safety because proper disposal of human remains affects the environment and the public. Restricting casket sales to licensed funeral directors, however, did little or nothing to fulfill these purposes.¹⁶

To address these issues, the FTC applied complementary consumer protection and competition analyses and tools. On the consumer protection side, the FTC determined that consumers would benefit from a regulation that would require more price transparency in the funeral industry. As a result, the agency promulgated the Funeral Rule, which was designed to reduce barriers to consumers' ability to choose between competing providers.¹⁷

On the competition side, the FTC brought enforcement actions against state entities for their regulations on funeral advertising. Indeed, the FTC recently investigated and settled a case against the Virginia funeral regulatory authority, which had issued a regulation prohibiting funeral directors from advertising discounts for pre-need funeral services.¹⁸ The regulation,

¹⁶ See, Identifying and Tackling Dysfunctional Markets, ¶¶46-71, *supra* note 12.

¹⁷ The Funeral Rule became effective in 1982 and was amended in 1994. See 16 C.F.R. Part 453.

¹⁸ See In the Matter of Virginia Board of Funeral Directors and Embalmers, Analysis of Proposed Consent Order to Aid Public Comment, <http://www.ftc.gov/os/caselist/0410014/0410014.htm>.

which was written by industry members but enforced by the state, deprived consumers of the benefits of price competition and allegedly resulted in some consumers paying higher prices for funeral services than they would have otherwise. The settlement resulted in the board's agreeing not to restrict truthful price advertising or to enforce any rule that would have that effect.

The FTC has also engaged in advocacy campaigns against state funeral regulations that decreased competition without benefitting consumers. For example, the FTC filed an amicus curiae brief in a federal lawsuit brought by a group of funeral directors against the Oklahoma funeral regulatory agency, which required sellers of funeral goods to be licensed funeral directors. The FTC argued that the Oklahoma licensing scheme limited consumer choice of funeral merchandise providers, which in turn insulated the funeral service industry from competition that could lower prices.¹⁹ Other FTC advocacy efforts have focused on broadening the types of business structures within which funeral providers may operate (e.g., permitting funeral homes to be owned by corporations and limited liability companies) in order to reduce barriers to market entry.²⁰

These efforts presents excellent illustrations of how an integrated view of competition and consumer protection can lead to a more complete and effective solution to a market problem than could occur if the problems were viewed as distinct a competition or consumer protection problem.

b. Industry codes of conduct

The OFT companion document identifies a classic situation that our experience shows requires a coordinated view of competition and consumer protection considerations. Industry self-regulation often offers a more efficient way to protect consumers from fraud, deception, and confusion than government regulation can provide.²¹ At the same time, self-regulation, if not administered with an eye to sound competition principles, can restrict competition and harm consumer welfare.¹⁹

¹⁹ See Memorandum of Law of Amicus Curiae, *Powers v. Harris*, Case No. CIV-01-445-F (W.D. Okla. 2002) at 15.

²⁰ E.g., Letter from Susan Creighton, Director, Bureau of Competition, FTC to Joanne C. Benson, Maryland House of Delegates (Apr. 2, 2004) <<http://www.ftc.gov/os/2004/04/0404mdfuneralhomes.pdf>>; <<http://www.ftc.gov/opa/predawn/F93/michiganf5.htm>>..

²¹ Deborah Platt Majoras, Self Regulatory Organizations and the FTC, Address to the Council of Better Business Bureaus (Apr. 11, 2005), *available at* <http://www.ftc.gov/speeches/majoras/050411selfregorgs.pdf>.

¹⁹ Thomas B. Leary, "Self Regulation and The Interface Between Consumer Protection and Antitrust," informal seminar remarks, (Jan. 28, 2004), *available at* <http://www.ftc.gov/speeches/leary/040128deweyballantine.pdf>.

In the United States, we have seen numerous examples of self-regulatory initiatives by associations of real estate agents, dentists, and others that have had the effect of unreasonably excluding competition for the incumbent firms represented on the self-regulatory organization. At the same time, there are countless examples of innovative, robust self-regulatory programs that benefit consumers through voluntary codes of practice, including such well-known programs as the National Advertising Division of the Better Business Bureau, which is analogous to the Advertising Standards Authority in the United Kingdom. With its institutional understanding of competition and consumer protection issues raised by self-regulation, the FTC has been in a unique position to work with self-regulatory programs to ensure that they realize their full potential to maximize consumer welfare.

c. Workshops

The FTC holds public workshops to bring together stakeholders, including government, industry, and consumer representatives, to learn about and discuss current issues affecting consumers and to provide stakeholders with the opportunity to make their views known to the FTC outside of the law enforcement and rulemaking processes. These workshops often have a dual competition and consumer protection focus. Having a single agency examine emerging policy issues from a competition and consumer protection angle can lend considerable credibility to policymaking efforts.

For example, in December 2004, the FTC held a public workshop to examine consumer protection and competition issues associated with the distribution and use of peer-to-peer (“P2P”) file-sharing technology, which enables individuals to share files, including music, video, or software. The workshop was the latest chapter in the Commission’s efforts to assess the impact of new technologies on consumers and businesses. Panelists discussed legal and policy challenges presented by P2P technology including how to protect property rights, consumer privacy, and the competitive process while still allowing creativity and innovation to thrive. Other recent workshops with a dual focus include programs on consumer interests in class actions and electricity regulation. Joint analysis of competition and consumer protection concerns has proven essential to the success of the workshop process.

B. Creating an Effective Institutional Structure

For competition and consumer protection missions to complement each other effectively, it is essential that they share a common legal and policy environment that recognizes the importance of one to the other. While the day-to-day work of competition and consumer protection enforcers might well differ, a shared value that free competition is a cornerstone of consumer welfare and that consumer protection is an essential bulwark against market failures will help ensure that neither goes astray.

It is all too easy for well-intentioned but misguided consumer protection officials to equate the rough bumps and turbulence that a vibrant market economy inevitably produces as evidence that competition is inimical to consumer interests. Likewise, it is easy for competition

officials to dismiss the importance of market failures that injure consumers and undermine public confidence in the free market. The OFT makes this point succinctly in its companion paper: “Markets – provided they work well – serve customers and drive productivity far better than regulators can. Unless competition policy is properly consumer-oriented, and consumer policy understands the importance of competition in making markets work well, regulation risks becoming uncoordinated and interventionist.”²⁰

In the FTC’s experience, the effective coordination of competition and consumer protection requires a strong degree of institutional linkage between the two policies. It is not enough that separate institutions agree to consult and coordinate with each other, because they may not share a common legal and policy environment and because they will inevitably respond to different external constituencies and pressures. In our view, a failure to institutionally join competition and consumer protection in a way that will lead to a shared legal and policy environment that values both competition and consumers is more likely to result in error than one that does not. Accordingly I believe that the proposal of the Office of Fair Trading to carry out the work of the CTSA as an executive agency within the OFT will result in strong and effective consumer agency.

III. REDRESS AUTHORITY

The DTI consultation paper also asks for comments on the redress authority of the new agency. I recommend that the CTSA, whether it is structured as an executive agency within the OFT or becomes an independent agency, be given new powers to recover and redistribute the proceeds of fraud to affected consumers. In the FTC’s experience, governmental redress authority is a critical component of an effective system to protect consumers from fraud. Although injunctive relief protects the public from future harm, it does not remedy the injury to consumers caused by a defendant’s past actions or deprive a defendant of monetary gains from illegal conduct. By depriving wrongdoers of their wrongful gains and distributing them to wronged consumers, monetary consumer redress serves a compensatory function as well as a deterrent one. It is an important tool to alleviate consumer injury and restore consumer confidence in the marketplace. In addition to the U.S., many other countries have begun to recognize the importance of monetary redress for an effective consumer protection system. In the last few years, several countries in Europe and elsewhere have begun to give their consumer protection agencies authority to obtain monetary redress on behalf of aggrieved consumers.

Over the years, the FTC has developed a considerable consumer redress program. In the 2004 fiscal year, the FTC filed 83 actions to halt unfair and deceptive trade practices in federal district court. It obtained 110 judgments ordering defendants to return more than \$380 million in redress to consumers and distributed \$294.1 million to all consumers in and outside the U.S.

²⁰ OFT Companion Document, *supra* note 2 at 5. See also Fernando Gomez Pomar, EC Consumer Protection Law and EC Competition Law: How related are they? A Law and Economics perspective. *InDret 2004*, available at http://www.indret.com/rcs_articulos/eng/113.pdf.


Preliminary figures for the 2005 fiscal year (calculated through mid-September) indicate that the FTC has filed more than 76 actions in federal district court and obtained more than 99 orders requiring defendants to pay more than \$805 million to consumers. As these numbers demonstrate, monetary redress is an important part of our overall consumer protection system.

The need for governmental redress authority is particularly strong in the cross-border fraud context. Although there are other mechanisms that can be used to provide redress to consumers domestically and across borders (e.g., alternative dispute resolution/online dispute resolution, payment card chargeback mechanisms, small claims courts, and private collective/class actions), such mechanisms are not feasible for cases of fraudulent practices affecting large numbers of consumers such as sweepstakes and lottery scams, pyramid schemes, and Internet-based frauds. In these types of cases, government agencies may have a unique ability to bring complex lawsuits against fraud operators who have harmed large numbers of consumers. In addition, it may be more efficient to obtain redress for consumer claims, which are often small, through government action than through private lawsuits. The magnitude of the FTC's redress program shows the need for a cross-border redress component in a global economy. From September 30, 2001 through June 30, 2005, the FTC has distributed more than \$7.3 million to approximately 100,000 consumers in approximately 107 foreign countries.

To make any grant of redress powers to the CTSA effective, the agency should have adequate resources, investigative and enforcement powers, relationships with foreign counterparts, and abilities to track and freeze assets. In addition to granting the CTSA its own redress powers in domestic law enforcement actions, it is important that the U.K. consumer protection agency have the authority to receive and distribute any redress monies obtained by consumer protection and other law enforcement agencies overseas directly to U.K. consumers. We are aware of at least one cross-border telemarketing matter where the OFT's lack of authority to distribute funds obtained by Canadian law enforcement officials has created difficulties in providing U.K. consumers with restitution. By providing the new CTSA, whether an executive agency within OFT or an independent agency, with redress authority, the U.K. government can ensure that U.K. consumers who are victimized by foreign traders receive appropriate monetary redress when available.

Thank you once again for providing the opportunity to comment. I would be pleased to provide any additional information that would be useful to DTI as it considers the options for the proposed CTSA.

Respectfully submitted,


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Chairman