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## Business Leadership in Consumer Protection

An OFT conference on self regulation and industry-led compliance

### **An international perspective**

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Good afternoon. I would like to thank the Office of Fair Trading for inviting me here to London to speak with you today. Washington DC is certainly an exciting city to live and work in, especially under our new administration, but I admit to being smitten by the rich history and culture and beauty of this incredible city, so I'm delighted to be here.

Being here inspires me to begin with words borrowed from Winston Churchill - 'If you have 10,000 regulations you destroy all respect for the law'. At first the wisdom of those words may seem less compelling in the wake of the current global financial crisis. It's true that our current economic struggles have made two things apparent, first, in good times and in bad, whether we like it or not, our economies are all inextricably intertwined and, second, there is widespread scepticism in both public and private sectors about the ability of business to police itself. The temptation is strong to look to government regulation for salvation, and there is no question that there are some aspects of our economic woes that should not be entrusted solely to industry solutions. I doubt anyone today would suggest that it's a good idea to have a £1 trillion hedge fund industry manage its own business. At the same time it would be a mistake to assume that the failure of self-regulation in some industries means that self-regulation will be a failure in all industries. Let's be careful not to throw the baby out with the bath water.

The United State Federal Trade Commission has a long history of promoting industry self-regulation, but only if it's structured in the right way, only if it brings all stakeholders into the process, and most importantly, only if it is subject to government oversight. Today I'd like to offer my own views for why I continue to believe that there is a place

for self-regulation, what advantages it can have over government regulation, and why an active government role is critical to the success of a self-regulatory programme. My focus is on the advertising industry because that's what I'm most familiar with and because it provides strong examples of what self-regulation can accomplish. I'm drawing from FTC workshops, official studies and reports, and formal recommendations of our agency, but the views I express today are my own and don't necessarily represent those of the FTC or any individual commissioner.

It may help to have a little bit of background about the Federal Trade Commission. Our mission is actually quite similar to that of the OFT. We are the only national agency in the United States that's empowered to protect consumers and maintain a competitive marketplace by enforcing both the anti-trust and consumer protection laws. Our statutory mandate is simple and broad, to prohibit unfair or deceptive acts or practices in commerce. And, like the OFT, we accomplish this through a combination of law enforcement, through consumer and business education and through the promotion of self-regulation. We are a small independent agency with a budget that's dwarfed by most other government agencies. This means we have to leverage our limited resources. We bring law enforcement actions primarily to stop business practices that cause significant injury or to obtain a financial remedy for consumers, and we rely on self-regulation to reduce the number of cases where government action is needed, and to promote good business practices in areas that don't necessarily involve law violations. This is especially true when it comes to advertising where our jurisdiction is largely limited to ensuring that claims are truthful and accurate.

An unfortunately worded sign in the window of a New York City drugstore, or chemist as you call it here, reads 'we dispense with accuracy'. The FTC certainly has its hands full with policing the market for inaccurate and sometimes downright fraudulent claims, but there are many social and public health concerns that can flow from irresponsible marketing practices that have little to do with whether the claims are truthful or not. Those practices may not be so clearly within the scope of the FTC's law enforcement authority, but they are still practices that raise compelling consumer protection issues that need to be addressed, and that is where self-regulation can shine.

The FTC actually has a long history of encouraging self-regulation in the advertising industry. Going back nearly 40 years, the FTC had supported the Council of Better Business Bureaus, and the National Advertising Division, or NAD, which acts as an industry tribunal in advertising cases. The NAD has succeeded in establishing itself as a credible and independent self-regulatory body. It enjoys a high level of participation by advertisers and has an impressive track record on compliance with its decisions. Over the years, the NAD has branched out with units and programmes focusing on children's advertising, infomercial marketing and dietary supplement advertising. Working with the NAD and with other self-regulatory initiatives has convinced me that self-regulation sometimes offers real advantages over government regulation.

First, industry action is often more nimble at addressing consumer problems. At least in the United States, developing and issuing new government regulations can be a time consuming, cumbersome process. It may require multiple rounds of notice and public comment and other procedural hurdles. Industry, on the other hand, can create standards more quickly and easily and has greater flexibility to change those standards as circumstances warrant. Second, self-regulatory standards have the benefit of buy-in by the industry members who help design them, and who have a vested interest in their success. Third, industry members bring technological knowhow, creativity, and a depth of understanding of their own industry that can lead to workable solutions with greater impact. And, fourth, the advantage I see as the biggest, self-regulation can address conduct that might be difficult or impossible for government regulation to address. In the United States especially, restrictions on truthful commercial speech are subject to rigorous free speech protections under the First Amendment to our Constitution, but there are sometimes public policy reasons for industry to restrain from even truthful, non-misleading advertising of certain products. We see that particularly in the area of marketing to children, for example, in the marketing of violent video games, junk food, or alcohol.

If there's one point I'd like to convey today it's this; even where the FTC supports self-regulation we do not abdicate our responsibility to protect consumers. Self-regulation works best when it's coupled with strong oversight. In fact, it strikes me as a mother, that figuring out the best role for government and self-regulation is a little like parenting. You have to strike a delicate balance between allowing enough freedom to grow

and mature while still setting clear boundaries backed by consequences. Like a good parent, government should play an active role in guiding business self-regulation and holding industry accountable. Having government involvement from the outset can be a key to success. The FTC has found that we can make a valuable contribution at the very beginning of the process by bringing all interested stakeholders to the table to define a problem and discuss solutions. We've seen new self-regulatory initiatives launched as a direct result of an FTC workshop or other government forum. To guarantee success, however, government cannot stop there. We need to ensure self-regulation is not just window dressing designed to placate critics and avoid government action. Industry needs to be held accountable and that means government should actively monitor self-regulatory programmes, report publically on their progress, and push for improvements where needed. And finally, we should not underestimate the power of persuasion we have as law enforcement officials. Avoiding legal action or legislative intervention can be a strong incentive for business to prove that self-regulation can work.

I'd like to highlight a few successes the US has seen in the advertising industry, particularly in the area of marketing to children, but before I describe specific experience in the US, I want to acknowledge the impressive strides in advertising self-regulation here in Europe. The rapid expansion of participating countries and self-regulatory organisations like EASA, the European Advertising Standards Alliance, is a testament to that success. EASA members are tackling the same public health and social challenges that we're facing in the US, most notably how the food industry should respond to the childhood obesity epidemic. They're dealing with the same challenges as we face with how to apply traditional advertising standards to new and evolving media. There's no question that EASA has been fortunate to have an effective champion of self-regulation in its Director General, Dr Oliver Gray. His work over the past 16 years has helped win over many sceptics. By forging a strong international coalition of self-regulatory organisations, Dr Gray and EASA have created a model that works well in our global economy.

My first example of self-regulation success in the US illustrates very well the impact that government can have in spurring self-regulatory initiatives. It also illustrates the advantages of a self-regulatory approach on issues not easily regulated by government. For the past four years the FTC has been urging the food industry and its partners in the media to improve the

nutritional profile of foods marketed to children and to change the way they market those foods to children. The progress since our first workshop on childhood obesity, food marketing and self-regulation that we held in 2005 has been substantial. Even those most critical of the industry and most sceptical of self-regulation have called the progress huge. It's clear to me that industry has accomplished more in a shorter period of time than any government programme could, at least in the US where there are considerable constitutional barriers to government regulation.

Shortly after the FTC and the US Department of Health and Human Services brought together industry, government and consumer stakeholders at our first workshop, the Council of Better Business Bureaus responded to the call for industry action by launching its Children's Food and Beverage Advertising initiative. The programme's goal is to shift the mix of advertising messages directed to children under 12 and encourage healthier dietary choices. As of this year 15 of the largest food, beverage and restaurant companies have signed onto the programme. These companies represent 80% of the food advertising directed to children under the age of 12 in the US. Each company has pledged to make specific and significant changes to how it markets food to kids. Some companies have stopped child-directed advertising altogether. Others have pledged to limit their advertising only to those foods that meet specific nutrition standards. The FTC has been encouraged by this progress, but we know it's as important as ever that we stay involved in this effort.

Last summer we completed a comprehensive study of the full extent and variety of marketing to children by this industry. Our study looked at exactly how and where 44 of the largest food, beverage and fast-food companies have spent almost \$2 billion in promoting their products to children. We found that the foods most heavily promoted to children were soft drinks, fast-food and cereal. What was most striking was the fully integrated nature of marketing campaigns. A single campaign typically included TV ads, product packaging, toys and premiums, internet games and contests, and even word of mouth marketing by peers through send-a-friend e-cards. The study also revealed extensive tie-ins and cross promotions between the television and movie industry and the food industry. And while our study noted the progress industry had made

toward more responsible marketing, our findings led us to make several new recommendations for even stronger industry action.

The FTC, for instance, called on all companies that market food to children to adopt meaningful nutrition standards for foods promoted to children. We also urged industry to apply those standards to all forms of child-directed marketing, not just traditional TV and print, in all media and venues. And, finally, we called on the media and entertainment companies to do their part by restricting licensing their popular TV and movie characters to promotions for healthier foods. Our report has been met with consternation by some in industry that the FTC continues to push so hard. Given that our children's health is at stake, however, we continue to keep the pressure on. I believe that industry is committed to their efforts and with prompting they will continue to make self-regulation work. I know there was a similar effort in EU countries other than UK, where I understand Ofcom has put in place some regulations on advertising to children on TV and radio, which are not easily available to us in the US because of the First Amendment, as I mentioned. It would certainly be interesting I think to evaluate the results of different approaches, the regulatory versus self-regulatory, after each has been in place for a few years and see what change there has been in how and what foods are marketed to kids. At the FTC we will be doing a follow up report to see what changes have taken place in advertising in the US, and whether the recommendations that we made have been heeded.

Another area where we are seeing impressive self-regulatory progress, both in the US and in Europe, is in the reduction of teen exposure to alcohol marketing. Like childhood obesity, alcohol abuse by teens is a significant concern to the FTC and our national government as a whole. Our agency has been subject to fierce criticism by many who believe that government regulation is the only viable way, to prevent alcohol from being promoted to minors. Of course, it is illegal to directly market alcohol to minors, but the law does not so obviously cover the grey area of marketing that is not targeted to teens but still reaches them. By advocating for voluntary industry measures the FTC has seen a reduction in children's exposure to alcohol ads beyond what government could likely achieve without provoking a prolonged constitutional battle in the courts.

As with food marketing, our reliance on industry action does not mean government inaction. Over the past ten years the FTC has issued three reports on alcohol marketing and self-regulation. These ongoing efforts help to keep the industry accountable. In response to FTC recommendations we have seen all three sectors of the alcohol industry, beer, wine and spirits, agree not to place ads in media where more than 30% of the audience is under the legal drinking age. All three sectors have also established review boards to hear complaints about advertising, and our latest report shows compliance for 92% of all TV, radio and print ads for alcohol. That success is not unique to the US. Last December EASA presented the results of its 2008 Compliance Monitoring of Alcohol Advertising in 19 European countries. EASA reported 94% of all beer, wine and spirits ads on TV and in print complied with national advertising codes and applicable laws. The strikingly similar success rate in the US and Europe suggests that self-regulation has a legitimate place in the global economy.

The FTC has also favoured self-regulation as the preferred way to curb the marketing of violent movies, video games and music to children. We certainly do not believe that it's the appropriate role of government to restrict the artistic freedom of filmmakers, game developers or musicians. We do think, however, that it's appropriate to expect the entertainment industry to market its products in a manner consistent with its own voluntary parental rating systems. As in the case of food and alcohol marketing, the FTC has used studies and public reports to persuade the entertainment industry to market responsibly. Since we first began reporting on this issue in 2000 we have seen significant movement by the industry to restrict the advertising for R rated movies and M rated video games, which are classifications meaning that no one under age 17 may buy a ticket or purchase the product without a parent or guardian. Several movie studios, for example, have adopted guidelines restricting the advertising of movies rated R on television to shows where the under 17 audience is more than 35%, and the video game industry has taken similar steps.

We've also seen progress in restricting the sale to children of violent entertainment products. For example, in 2000 we conducted an undercover or mystery shopping study that revealed that 85% of underage teens were able to buy M or mature rated video games. In 2008 that figure had dropped to 20%, so it fell from 85% to 20%.

Retailers should be commended for their increased commitment not to sell these products to children but I doubt we would have seen this kind of dramatic improvement had not the FTC been monitoring and reporting on this effort. Since 2000, in fact, we've conducted five undercover shopping studies and issued five follow up reports in this area. Each time we've highlighted industry progress and made suggestions for continued improvement. I would say overall we've seen qualified success and are not yet satisfied that industry is doing its best so we'll continue to push in this area, and we expect to issue another follow up report by the end of this year.

I'd like to close with one last example of government oversight prompting voluntary industry action. Behavioural advertising, which is the targeting of online ads based on consumers' web surfing and browsing history, has come under scrutiny recently both in the US and in the United Kingdom. It's clear that there needs to be a better balance struck between consumers' online privacy and maintaining the commercial viability of the internet. In November 2007 the FTC hosted a behavioural advertising townhall meeting to examine the privacy concerns in this area. From that public discussion the FTC staff developed a set of proposed guidelines to encourage and guide self-regulation. The principles generated much comment from both industry and consumer privacy advocates, and last month FTC staff issued a report refining its guidance to industry.

We are seeking the same basic consumer protection measures that your government seeks. First, greater transparency; consumers deserve clear and prominent and understandable notice when their online activities are being tracked. Second, consumer control; the ability of consumers to choose whether to have their information collected or not. Third, reasonable security for any data collected. Industry is already responding. Four marketing and advertising associations including the Interactive Advertising Bureau are now working together to implement standards for online behavioural advertising. We will be monitoring their efforts closely. Our Chairman has warned online advertisers that if they fail to adequately protect consumer privacy they will be inviting legislation by Congress and a more regulatory approach by the FTC.

"We have learned through this market downturn that markets should be free but never values free." Those are the words that Prime Minister Brown spoke to the US Congress a few weeks ago. In both the United

States and in Europe government is recognising that free markets require supervision to make sure they behave responsibly. At the same time we are seeing that giving the market some freedom to self-regulate has the potential to address challenging consumer protection issues not easily tackled by the government, and our role is to make sure industry fully realises that potential.

The EC's DG SANCO Director, Robert Madelin, led a thorough examination into the potential for self-regulation, particularly in the food industry, as part of the 2005 Advertising Round Table. He identified two core preconditions for credible self-regulation. First, an open dialogue between business and non-business players and, second, adequate monitoring and accountability. Active government involvement in the process can ensure both. Government workshops can bring all stakeholders to the table, define the problem, and start a dialogue on solutions. Regular public reports from the government can highlight industry progress and identify areas for improvement. And, finally, targeted law enforcement and the prospect of government regulation can provide powerful incentives for self-regulation to succeed and a backup if it fails. Thank you.