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## **Reducing Administrative Burdens – the Consumer Trading Standards Agency Response of the OFT**

### **INTRODUCTION**

We support the Hampton proposals to bring both best practice and greater national consistency and coherence to trading standards in a manner that avoids unnecessary red tape and regulatory costs for business. We believe that this can best be done by making CTSA part of a restructured OFT taking overall responsibility for using the full range of competition and consumer policy instruments to make markets work better. Separate institutions run the double risk of reducing public support for an effects-based approach to competition and of consumer enforcement becoming less market-based and more interventionist. The OFT is now ideally placed to give fresh impetus to a new and improved approach to trading standards.

Over recent years, and particularly following the adoption of the Enterprise Act reforms in 2003, the OFT has embarked on a major change programme. On the consumer side, this programme has already begun to bear fruit, most clearly in the development of improved working relationships between the OFT and trading standards partners and a genuine forward-looking collaboration that has delivered clear positive benefits for business and for consumers. Some of these changes were not fully developed when the groundwork for the Hampton study was being carried out; others are still in progress.

Under our leadership, the OFT is committed to continue and push forward vigorously this change programme, which we believe is in the best interests of both business and consumers as well as to the benefit of the UK economy.

This programme is part of a broader adaptation of the OFT's work and organisation that began with the creation of the Market and Policy Initiatives Division (MPID) within the OFT in 2001. We believe that the policy reasons that led to the market-based approach, with its focus on productivity growth and consumer welfare, adopted in the July 2001 White Paper remain as strong, if not stronger, today. The interests of the UK economy are best served by being able to consider the effects of both private and

public restrictions, as well as other market distortions, in the round within an integrated organisation.

With the creation of MPID and other initiatives, the OFT has moved towards a more integrated approach to competition and consumer work. This move will continue and accelerate, with a greater degree of cross-office work planning and team work. This will inevitably have an impact on the future development of the structure of the organisation and its culture. We intend to strengthen integration in ways that will improve the OFT's capacity to remedy ill-functioning markets using the most appropriate mix of consumer and competition instruments and remedies. This can best be achieved if the OFT continues to have the full range of enforcement, advocacy and educational tools on both the buyer (consumer) and seller (competition) sides of the market.

Competition and consumer policy in the UK could be weakened if separated. Competition policy that supports productivity growth and consumer welfare is effects-based and protects the process of competition, not competitors. It does not intervene to prevent employment and output from shifting towards more productive enterprises. For this reason, good competition policy is not always popular or well understood by the public. Consumers can identify more closely with and provide stronger support for, the work of an organisation that does both competition and consumer work.

We believe that the challenge in the debate on the "Hampton agenda" is to build on what has been achieved in the recent past whilst ensuring both that the CTSA activities remain firmly rooted in a market context and that the CTSA does not, quite contrary to what Hampton intended, become a resource-intensive regulator that imposes costly burdens on business, which ultimately are borne by consumers, and conflicts with the work of other regulators.

It appears that the debate about the future location of the CTSA has been influenced by past, rather than recent, history and experience and without taking account of the opportunity the Hampton report offers to create a world-class competition and consumer organisation in the UK, with a clear focus on improving consistency and raising standards in local delivery through the CTSA and trading standards partners.

The Hampton report and the consultation document have stimulated a diversity of views as to the role and the functions of the CTSA. For our part, we see the role and functions of the CTSA as a further logical development of the work already started between the OFT and our trading standards partners, though one which we recognise will require a step change in terms of leadership and governance to ensure delivery. Under the right leadership and with further skills and resources, the CTSA within a restructured OFT can best and most speedily deliver the results sought by Hampton.

The process of change within the OFT has been under way for some time and is now beginning to produce results. We are committed to driving the process forward. The Hampton report has produced undesirable uncertainty, and we hope that this can be resolved quickly. We are confident that rapid and significant progress can be made through collaboration with all other stakeholders.

This letter sets out our broad vision for the CTSA. **Annex A** summarises some of the main developments in our change programme. **Annex B** deals with the specific questions raised in the consultation document.

## **OUR VISION FOR THE CTSA**

The CTSA should be a modern, stream-lined, business and consumer focussed platform for:

- Helping compliant business across the UK;
- Empowering and protecting consumers; and
- Supporting the growth of productivity and consumer welfare through competitive markets.

This can best be achieved where there is a clear focus on markets, and a presumption for market-based solutions over regulation. Where enforcement is necessary, it should be undertaken quickly and effectively, in a manner that is proportionate. Greater reliance on targeted and proportionate regulation in the right areas, when combined with greater emphasis on compliance, education and self-regulation could substantially reduce the need for regulatory intervention. A single organisation whose central objective is to make markets work better is more likely to achieve this shift towards markets that need less intervention, and avoid excessive costs on business that would ultimately be passed on to consumers in higher prices.

The OFT's recent experience suggests the following key principles should guide the debate about the future and location of the CTSA.

- **Market context**  
Just as competition promotes customer focus within firms and encourages innovation, choice and value, so confident and demanding consumers drive competition between firms and higher standards by seeking out new products and best value. Strong competition and open markets assist in providing good information flow to inform and protect consumers. When confident and demanding consumers meet efficient and customer-focussed sellers, there is less need for regulatory intervention. A balanced and integrated approach to consumer and competition policies can best encourage such well-functioning markets and reduce the need for regulation and enforcement over time.
- **Deregulation and effective compliance**  
Intervention, inspection and enforcement actions must be timely, proportionate and based on assessment of risk and of consumer detriment as well as overall benefit to the economy. In some cases effective compliance can only be achieved through enforcement action, such as cases that raise important points of principle or involve flagrant or persistent breaches of the law. But enforcement is only one of the available tools. Education, training, advocacy and self-regulation are also effective tools in encouraging businesses to trade fairly and to enable consumers to shop wisely. As these other tools build consumer confidence in market-based solutions, there will be less need for public enforcement.

- **Culture**  
The culture of the organisation must be open, flexible, collaborative and market friendly, recognising its role in serving both consumer and business interests and in encouraging effective compliance. It must stimulate close working relationships with trading standards partners to ensure that services are delivered to the appropriate level locally, and with other stakeholders in business, consumer groups and in local and national government. International experience suggests that consumer enforcement is more likely to have a strong market-orientation if it is fully integrated with competition policy and can draw on internal competition expertise. We are committed to ensuring that the OFT realises these efficiencies through a more integrated approach to our work.
  
- **Skills and resources**  
A broad base of skills, drawing especially on those with proven expertise in business (both large and SMEs), trading standards, consumer affairs, competition, performance management, communications, information management and training is required. Sufficient technical and financial resources are needed to enable the network that is already in place to be further developed. Over time, there should be sufficient flexibility to allow resources to move towards providing broader support for self-regulation, compliant businesses, demanding consumers, and private remedies.
  
- **Effective Leadership**  
The work of co-ordinating and enhancing trading standards must be led by a dedicated senior management team, working in close partnership within a restructured OFT. This team must encourage and develop best practice, in ensuring effective compliance and in measuring performance to utilise scarce resources efficiently as well as providing an effective interface between local and national interests. This dedicated management team should provide clear leadership and market-oriented vision for trading standards, develop and foster best practice in all its activities, ensure the most effective interface between local and national interests, define and measure performance in terms of enforcement that is fully aligned with effective compliance, and ensure that resources are used most effectively.
  
- **Clarity in objectives and priorities**  
A small number of objectives and priorities is required, rather than a broad remit, with the main focus being on consistency, compliance, efficiency and performance. Priorities should be developed at both national and regional/local level to reflect the different regional economies and interests in the UK.

In practice, the application of these principles should result in a CTSA that will:

- Support compliant business by reducing the burden of regulation and red tape, and ensuring that enforcement is targeted, risk-based, proportionate and consistent across all parts of the United Kingdom.
- Reduce the need for regulatory intervention by encouraging and supporting greater compliance through clear guidance, education, advocacy, publicity campaigns and other tools.
- Support consumers with the skills and knowledge they need to function confidently, effectively and responsibly, and constantly devising better ways to

assist and protect consumers, especially those who are vulnerable, and making best use of Consumer Direct, the national consumer helpline.

- Champion trading standards nationally, and providing leadership and practical support to local trading standards offices so as to ensure efficient, effective and consistent application of consumer laws.
- Adopt best practice in public sector performance management, transparency and accountability, undertake research and develop evidence on the causes of consumer detriment to inform its work, and share the OFT market-based vision for how a coordinated and integrated approach to consumer and competition policy can make markets work better.

Even in the short period since the enactment of the Enterprise Act, the OFT has taken a number of measures that clearly indicate its preparedness to deliver in all of these areas. Relevant examples include:

- work in LABREG towards a consistent approach to risk-based regulation in consumer law building on work we have already done in preparation for the Consumer Credit Bill;
- the OFT's recently launched Consumer Codes Approval Scheme;
- simplifying existing guidance and ensuring that new guidance – for example on the forthcoming Unfair Commercial Practices Directive – is clear, succinct and practical;
- innovations such as the Consumer Education Alliance to coordinate consumer education and leadership of the planning group which has drawn up a national strategy for consumer education;
- an increasing emphasis on developing evidence to inform our work such as research into consumer detriment and mapping the effectiveness of consumer education; and
- a consistent record of recommending deregulation to Government and of taking enforcement action only where necessary.

The CTSA within a restructured OFT will be able to provide additional specific synergies in addition to the general ones we have outlined above. In particular:

- By encouraging businesses to join the OFT's Consumer Code Approval Scheme, the CTSA would encourage self-regulation by responsible businesses and enable consumers to gain redress. It will also play a role in the redress measures that will be introduced as part of the Government's Consumer Strategy.
- The CTSA will lead in protecting UK consumers who make cross-border purchases, drawing on OFT's experience of working closely with international partners.
- Information from CTSA work will provide important evidence and data to identify problematic areas and inform the OFT's work on market studies and competition enforcement, and assist the OFT in choosing the best instrument to deal with poorly performing markets.

## **CONCLUSION**

We welcome the CTSA and are committed to its success. We believe that placing it within the OFT offers the best chance of providing a reformed trading standards environment efficiently and effectively. It would deliver a new and distinctive structure without losing the advantages of an integrated approach to competition and consumer policies.

The overall strategic direction of both the CTSA and the OFT would be integrated at Board level. This would ensure consistent and coordinated policy implementation. Resources and expertise would be shared to maximise effectiveness and market understanding.

We do not underestimate the challenge. We recognise that we need to take further our current process of transformation, and to encourage further the development of ideas to further enhance the effectiveness and efficiency of our operations. The CTSA would give an added incentive to our staff development programme, to our recruitment of talented people from a range of backgrounds, and to streamlining our operations.

We believe that the CTSA, as envisaged in the Hampton report, is a natural extension of and complement to the work for the OFT as it has developed over recent years. We are confident that the OFT can deliver on the Hampton objectives, without damaging our existing competition and consumer work, and provide what both business wants and consumers need.

We are copying this letter to the Chancellor of the Exchequer, Alan Johnson and to Andy Cormie, Consumer and Competition Policy DTI.

Yours sincerely

Yours sincerely

**Philip Collins**  
Chairman

**John Fingleton**  
Chief Executive

**OFT's Change Programme**

1. Since 2000, and particularly since the coming into force of the Enterprise Act in 2003, the OFT has been changing, recognising the need for a more coherent, targeted and efficient approach that delivers a better outcome for consumers while reducing unnecessary business costs. The steps we have been and are taking can be grouped under the following headings:
  - Market-based working;
  - Intelligence-led, coordinated and proportionate enforcement;
  - Compliance focused regulation;
  - Improving consultation with business;
  - Empowering consumers; and
  - Improving delivery of our consumer functions.
2. Even before the Enterprise Act, our enforcement approach was broadly risk-based in the sense of being generated by evidence of actual detriment such as complaints, not technical breaches. We do not undertake routine inspections, nor require form-filling except to the extent necessary to operate a consumer credit licensing system<sup>1</sup>.
3. Similarly our policy has always been to avoid creating unnecessary entry barriers to the business sectors we regulate individually, namely consumer credit and estate agency. We allow those against whom we have no adverse evidence to trade, notwithstanding demand in certain quarters for a "positive vetting" approach.

**Market-based working**

4. We have developed a coherent theme to our activities – the goal of making markets work well for consumers and fair-dealing businesses – taking a strategic approach to market problems rather than seeking to enforce each piece of legislation for its own sake.
5. In 2001 we established the Markets and Policy Initiatives Division, to support this strategic approach; it has enabled us to develop a better understanding of how markets operate and a more coordinated approach to making them work better, via market studies and consideration of supercomplaints. We have conducted 20 market studies in total. Of these, half covered issues generally regarded as consumer and competition/regulation related. Of the others, 7 were purely competition/regulation issues and 3 were purely consumer-related issues.
6. For the first time, in our 2005-06 Annual Plan, we have identified priority areas for action across the marketplace, without reference to artificial consumer or competition demarcations - namely, credit markets, housing and construction, mass-marketed scams, health markets and the interaction of Government with markets.

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<sup>1</sup> Note that we are developing a paperless application procedure.

### Intelligence-led, coordinated and proportionate enforcement

7. We are rolling out an integrated and outcome-focused approach to consumer enforcement designed to realise the full potential of Part 8 of the Enterprise Act. An important feature of Part 8 is that the enforcers first seek resolution of a problem by consultation with the business (except in rare cases that warrant immediate action). The enforcer's aim during consultation is to persuade the business to sign an undertaking to cease breaching the law. If consultation fails then the enforcer may proceed to court and seek an enforcement order.
8. We are developing a systematic approach to risk-based enforcement, based upon clearly defined and transparent criteria which focus on the nature and level of, or potential for, detriment. This approach – on which we will consult fully with business and consumer stakeholders – will be adopted for the consumer credit licensing regime following the passage of the Consumer Credit Bill. In addition, further to enhance our ability to prioritise on the basis of detriment, we are undertaking research into the causes, effects and consequences of detriment, and into whether there are particular consumer susceptibilities that might be effectively addressed.
9. We have developed a closer relationship with trading standards partners and others – in particular delivering a major training programme for the Trading Standards Service to help them to adopt the Enterprise Act approach and to enable them to apply the civil law effectively, rather than the criminal law. Over 3,000 members of the Trading Standards Service – from nearly all local authorities - have received training on OFT courses held throughout the UK and their feedback has been very positive. We have recently launched a new generation of advanced Enterprise Act training to deepen their understanding of the civil process. In addition, three interactive CD-ROMs have been produced for distance-learning by our trading standards partners.
10. We have established a web-based coordination system for Enterprise Act investigations and action. The Consumer Regulations Website (CRW) is a secure reporting and information-sharing environment for enforcers and now has 85 per cent of Trading Standards Departments signed up. To date they have recorded 532 new investigations on the system. In conjunction with CRW the OFT also provides substantive advice and case support advice to trading standards staff using the Enterprise Act. Over 100 authorities have benefited from this service.
11. We have committed ourselves to taking on responsibility for, and are in the course of planning the integration and management of Consumer Direct, which will radically improve our access to market information and engagement with local enforcement.

### Compliance focused regulation

12. We have developed the Consumer Codes Approval Scheme as a new system of monitored self-regulation for business that promotes good practice going beyond mere compliance with the letter of the law. The scheme is based on verifiable standards, and in return offers the marketing advantages of a well-established

brand, including a recognised OFT Approved code logo. Code sponsors complete Stage One of the process by demonstrating that their code conforms to the scheme's core criteria and during Stage Two we expect them to provide evidence that their members comply with the code and that consumers benefit. To date five codes have been approved – in estate agency, direct selling, travel agency and in two parts of the retail motor industry. We are currently working with a total of 30 codes.

13. We have pioneered guidance-led initiatives to securing business compliance in such areas as unfair contract terms regulation, where 99% of cases handled by OFT have been resolved by negotiation rather than resorting to litigation, and debt management, where guidance issued in 2001 was subsequently found to have resulted in a 70% drop in complaints.

#### Improving communication with business

14. Since initiating our National Liaison Strategy in 2003, we have engaged more actively with all stakeholders, including businesses and trade bodies, particularly seeking their input in the process of setting our objectives through a yearly round of consultation, including events around the country, associated with the preparation of the OFT's statutory Annual Plan.
15. We have developed our regional "road-show" programme as a means of spreading OFT's message on both consumer and competition issues, and to learn how local markets are working: 8 road shows were held in 2004-5. We have also been a leading participant since 1999 in the annual programme of business advice open days organised by HM Customs and Excise.

#### Empowering consumers

16. The Enterprise Act gives us powers to provide – and support others in providing – consumer education.
17. We published a strategy and framework for consumer education in 2004. This sets out a strategy for coordinating consumer education activity across the UK through a new Consumer Education Alliance. Priority themes have been set and Alliance membership now stands at 100-plus, including public and private organisations from across the UK. The Alliance has its first conference in November 2005.
18. This conference will be chaired by John Fingleton and will mark the end of the planning phase, and the start of our coordination of work across the public and private sectors to deliver demonstrable results. The conference will focus on how we can help consumers to gain the skills they need to operate effectively in markets and ensure that alliance members are targeting (and thus reinforcing) their work to common themes.
19. Consumer empowerment is the driver to this work. Consumers have not been well served by a plethora of organisations (at least 600 from DTI figures) providing consumer education. This has resulted in waste of resources, duplication of effort and a lack of clear focus. By coordinating effort and providing quality tools and

support we plan to raise delivery standards and the level of consumer skills across the UK.

#### Improving delivery of our consumer functions

20. We have recognised the need to improve the delivery of our consumer functions. Following a review, which began in 2004, we are overhauling completely the way in which we operate and are structured. The main concern was that we were not sufficiently focused, and tried to do too much across too broad a spectrum with too few high-impact targets. The changes are leading to improved priority setting, better targeting of resources on cases involving actual detriment, clearer focus on outcomes and more efficient working practices.
21. To this end we have created a ten-strong team to combat the most prevalent and harmful mass marketing scams, such as bogus prize competitions. The team has adopted a multi-faceted approach to reduce consumer detriment and restore confidence in mass marketing through targeted enforcement and disrupting scammers' routes to market.
22. To improve intelligence gathering and coordinate enforcement activity we have launched a Scams Enforcement Group with representation from local trading standards from every region and nation in the UK. Working in partnership with trading standards the 'Scambuster' team has already notched up several successes and closed down various highly misleading and deceptive marketing schemes, including a deceptive mass mailing operation targeting the UK from Belgium.
23. Inevitably it will take some time for the benefits to flow through. However, we can already see improvements in our work on international scams, for example. These reflect the fact that the changes now being rolled out to the whole of our Consumer Regulation Enforcement Division were anticipated in the area of international enforcement – particularly a cross-cutting approach to the use of enforcement legislation, and co-operation with other enforcers.
24. Much of what we have described is work in progress. It shows an appetite for change that, while its origin predated Hampton and the consumer strategy, has resulted in a developing approach that complements them both:
  - Intervening in markets only where necessary to prevent/address market failures that harm consumers/fair-dealing businesses;
  - Prioritising our activities, focusing our efforts where can make greatest difference to consumer benefit; and
  - Bringing together tools from consumer and competition perspectives in support of the priorities.

Response to consultation document questions

**Chapter 3 - Powers of the CTSA**

**Question 1: Do you think the powers listed in paragraph 39 are the right powers to carry out effective performance framework co-ordination? Are any of these powers unnecessary?**

1. The powers listed are generally of the right kind to provide an effective framework for ensuring that the CTSA can manage and deliver the provision of core local standards of delivery.
2. However, we do not support a power for it to step in where authorities are "failing" and comprehensively take over the duties of those authorities. A system exists for intervention in the activities of local authorities which are assessed to be failing in certain of their functions. We urge caution about creating a new system which could overlap or conflict with that regime.
3. Instead we consider that the CTSA should selectively invite other local authorities to provide the necessary services (with appropriate funding). This seems better to fit the co-ordination and standards role envisaged for the CTSA, and to be more feasible in terms of likely availability of resources.

**Question 2: Do you think the application of these powers will be sufficient to achieve the efficiencies/reduction in burdens on business envisaged by Hampton? Do you think they will increase burdens on Local Authorities? If yes, please provide supporting evidence.**

4. The ability to apply last-resort sanctions will not suffice to achieve the outcomes envisaged by Hampton. That will require a different approach on the part of trading standards partners. The CTSA must work collaboratively with a range of partners, particularly trading standards partners and the proposed Local Government Inspectorate, within the wider framework of the relationship of central and local government. As indicated in the consultation document, the framework is due to be changed and developed. Further clarification of respective roles and functions will inevitably be essential.
5. Regulatory coherence will be essential to ensure that business does not face multiple requests or approaches from different regulators. Separating the CTSA from the broader remit of the OFT would increase the risk of such incoherence. This is a key point which must be addressed.

**Question 3: If you do not think the proposed CTSA powers are sufficient (Q2), what additional or alternative role/powers can be given to allow the CTSA to effectively co-ordinate the performance framework?**

6. The CTSA should deliver targeted funding to encourage high standards, excellence in delivery and performance and to foster collaboration and consistency across the

UK. We recognise that the funding of local authorities is a matter for agreement across government. However, at the very least, the work of the DTI that has been based hitherto on targeted funding needs to be developed by the CTSA. The contract arrangements surrounding the provision of the Consumer Direct service could serve as a template for a wider approach as could the use of modernisation funding to support regional initiatives. We would note that targeted funding is already likely to be a feature of consumer credit regulation, once the Consumer Credit Bill becomes law.

7. Also, it would be helpful for the CTSA to act as a centre of advice, training and policy/legal expertise for trading standards partners. It should provide training on the law and risk-based regulation, producing guidance on each. It should also provide market intelligence and enforcement information. These functions are currently part of the OFT's approach to regulatory co-ordination which we have developed successfully over the last five years. Creation of the CTSA allows for its further development within a broader co-ordination remit.

**Question 4: Do you think this is the right approach for the CTSA to take in using its powers? If not, what would be better?**

8. Subject to what is said above, we agree that collaboration with other agencies within a modernised performance framework for Local Government is the right approach.

### **Chapter 3 - Priority setting for the Trading Standards Service**

**Question 5: Do you think this is the best process for identifying Central Government priorities for the Trading Standards Service?**

9. The mechanism for setting priorities must be flexible to allow national priorities to dovetail with those identified at a regional and local level; we need to start from a position of consensus before the CTSA can undertake its monitoring and co-ordinating role. We therefore need to focus on a limited number of key objectives and provide support (training, guidance and advice) to trading standards partners to achieve these. If the process is overly bureaucratic, fails to achieve consensus, or if too many priorities are identified, the benefits sought by Hampton will not be realised.

### **Chapter 3 - Consistency of Inspection and Enforcement**

**Question 6: Can you suggest a definition for the type of business that the CTSA might cover for Home Authority work? What criteria could be used to assess whether a business falls within the definition?**

**Question 7: Do you agree that Option 3 would be the most effective in achieving the increased consistency the Government is trying to achieve?**

**Question 8: Do you agree that Option 3 would be the most effective in achieving the efficiencies for business proposed by Hampton?**

10. Evidence suggests that in some Local Authorities the current Home Authority system which operates on a voluntary basis, works well, particularly if contractual arrangements are in place. We see real value in maintaining the provision of this service at a local level. We therefore suggest that consideration should first be given to how the efficiencies for business proposed by Hampton can be, and already are in some cases, addressed in the current system of local provision.
11. We do not agree that Option 3 will deliver increased consistency or achieve the efficiencies for business proposed by Hampton. Instead, the CTSA should play a coordinating role. For example, rather than trying to define the type of business to which the centralised arrangements might apply, companies could simply apply to the CTSA to receive certain forms of compliance support as a paid-for service. Delivery of some or all of these services could be co-ordinated at a regional level where this will achieve efficiencies and/or improved consistency. In return, the CTSA would ensure that such companies contracting for this service would not receive routine inspection visits. Such a funding arrangement would help demand management, ensuring the CTSA was not swamped by requests for services, and ensure that the activity was self-supporting.

**Question 9: Do you think there are better options not identified here for improving consistency of enforcement by the Trading Standards Service?**

12. The CTSA should seek to improve consistency across all functions - advice and education as well as enforcement - to all businesses. The focus therefore needs to be on improving working relationships with businesses at local and national level. The CTSA and trading standards partners should not be seen solely as enforcement bodies; they have a broader remit, which is to deliver improved compliance, using a variety of tools.
13. Existing links to business can be developed by using technology to improve accessibility and by working more closely with existing providers of business advice. For example, a regional element to the delivery of trading standards services would enable a stronger relationship to be forged with DTI's Business Link initiative, to provide practical advice and support for small business.

**Chapter 4 - Quality assurance of third party alternative dispute resolution (ADR) schemes**

**Question 10: Do you agree that recognition of good quality ADR schemes would be an appropriate role for the CTSA?**

14. Signposting of good quality ADR schemes would be an appropriate role for the CTSA. However, its role should not primarily be to promote the setting up and use of dispute-resolution mechanisms. Schemes that involve reference of disputes to third parties inevitably entail costs and burdens for all those involved. Efficient markets minimise the incidence of serious problems between traders and consumers. The overall aim of the CTSA should be to encourage businesses to offer improved consumer service, thus reducing the need for these 'Third Party Schemes'.

15. The OFT has valuable experience in this area since it is a condition of approval of Codes under our Consumer Codes Approval Scheme that consumers are given access to low-cost dispute resolution that meets certain specified criteria including independence.

#### **Chapter 4 - Cross border scams**

##### **Question 11: Do you agree that distribution of these recovered assets would be an appropriate role for the CTSA?**

16. We agree that this would be an appropriate role for the CTSA in cases where a Court has decided what compensation or restitution individual consumers should receive. Presently we lack power to enable us to return monies to consumers who have been victims of cross border scams. For example, in the case of First National British Holdings, a deceptive telephone marketing company located in Canada, we have been unable to return some \$400,000 (Canadian) to 100 consumers that have been victims of a lottery scam.

17. However, it is also essential that the CTSA is given equivalent powers regarding comparable domestic actions in order to ensure consistency internationally. Unless this is addressed alongside the issue of cross-border recovered assets, there is the risk that UK residents may be targeted if the UK is considered to be a 'softer target' than those countries which have these powers. Also, we have recently experienced similar difficulty in a UK case where a trader was prepared to make restitution and the court wished OFT to undertake the distribution of the funds involved. However it is important to stress that the CTSA would not be able to make a decision as to amounts of compensation for individuals, as this would require consideration of issues that can only properly be undertaken by a court.

18. It is important that the CTSA has discretion over when it uses these powers. It will need to provide guidance to business and consumers in order to give greater transparency to its decisions. This area is one example where an international benchmarking exercise would prove invaluable in order to learn lessons from other regulators such as the ACCC and consider the practical and cost-effective measures that would lead to the CTSA taking this action.

#### **Chapter 4 - Representative action**

##### **Question 12: Do you agree that the CTSA should be designated as a third party to bring proceedings on behalf of a group of consumers?**

19. The CTSA should have a role when a representative action is brought on behalf of a group of consumers. However, consideration will need to be given to how this litigation function sits with enforcement work and how the two should be kept at 'arm's length'. This will be necessary in order to safeguard against prejudicing work in either sphere. Again, looking at other jurisdictions will help inform us of the most appropriate structure and role for the CTSA.

20. Any representative action should, however, be subject to a test, under which the CTSA would be required to balance the costs of any action against the benefit in

terms of likely reduction of consumer detriment or risk to consumers. The use of clear criteria should act against the risk of fuelling a 'compensation culture' as well as ensuring that the CTSA's resources are not diverted from protecting consumers generally into assisting particular groups of consumers.

## **Chapter 5 - Option 1 – the CTSA as a wholly new body**

**Question 13: Do you think that forming the CTSA as a separate body would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are the reasons for your views?**

21.No. Separate institutions run the double risk of reducing public support for an effects-based approach to competition and of consumer enforcement becoming less market-based and more interventionist. We see value in establishing the CTSA as a modern, stream-lined, business and consumer focussed platform that would play an important role in promoting competitive markets and improving UK productivity and competitiveness. This will require a market-based and de-regulatory mind set. A new approach to improving and supporting trading standards partners needs to be combined with the market-based, integrated approach to competition and consumer policies put into place with the Enterprise Act. Without this, there is a risk that the CTSA would have too narrow a focus and business could face conflicting regulatory agendas and an increase in regulatory interfaces and demands. A coordinated, market-based approach is critical if regulation is to take fully into account the needs of both consumers and businesses and hence act to increase, and not lower, productivity and consumer welfare.

**Question 14: What would be the most effective means of achieving the cultural change needed to create a successful CTSA?**

22. See our answer to question 13. Establishing the CTSA within a restructured OFT would be the most effective means. It must have a market-based and de-regulatory mind set. This will entail agreeing appropriate objectives and corporate governance, and new recruitment at all levels, including those with proven expertise in business (large and SMEs), trading standards, consumer affairs, competition, performance management, communications, information management and training. The necessary cultural change will most likely be realised if the CTSA has effective leadership, works to the appropriate targets, and enjoys sufficient budgetary, operational and administrative freedoms.

**Question 15: Can you see any other advantages/disadvantages of this approach?**

23. A completely separate CTSA would have a number of drawbacks, some of which are identified in the consultation document. Establishing it within a restructured OFT would address these, without losing the advantages of creation of a new body.

24. Maintaining the link with OFT would:

- remove the need to embed in law cumbersome procedures to ensure performance of cross-cutting functions such as supercomplaints, market studies and Codes;

- It would allow a free flow of information between OFT and CTSA, (including particularly Consumer Direct information rightly identified in the consultation document at paragraph 29 as necessary to competition work) without hindrance of the disclosure constraints that will inevitably exist between legally separate bodies;
- It would preserve the value of the major investment made in achieving public awareness of the OFT-branded Consumer Codes Approval Scheme.
- It would achieve ongoing cost savings (see answer to the next question).

**Question 16: Do you agree with the estimates of the costs of forming the CTSA as a separate body, set out in paragraph 78? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.**

25. We are unable to comment on the specific numbers but set-up costs of a wholly new regulator are likely to be considerable. On-going costs are also likely to be higher than for Option 2 unless means are found to exploit the economies of scale that would flow from sharing expertise, resource and back office support functions with the OFT. This would be easier to achieve in the context of a restructured OFT.

26. The OFT is widely recognised by consumers and business. This will be strengthened by the national Consumer Codes Approval Scheme. To generate an equivalent level of awareness of an entirely new agency would be expensive and take several years to accomplish.

27. If separate from the OFT, an element of bureaucracy would also be required to administer the formal mechanisms of OFT/CTSA consultation. We also believe that a wholly independent CTSA would, through increased regulation resulting from the separation of consumer protection functions from those of competition, raise costs to business.

**Question 17: Are there any other relevant factors that we should consider?**

28. None of which we are aware

**Question 18: Do you agree with our recommendations on the likely effectiveness of these measures?**

29. These measures are likely to be less effective than if the CTSA was established within a restructured OFT. The measures proposed are likely to create time delays as recognised in the consultation document. Supercomplaints would be particularly adversely affected. The dynamism achieved in OFT's recent responses on Northern Ireland Banking and Home Credit could be lost in future cases.

**Question 19: What combination of these measures do you think would be most effective in embedding the consumer/competition link in the CTSA?**

30. The benefit of market studies (and supercomplaints) is that they look at consumer and competition issues in tandem, because problems and solutions to them can not

necessarily be categorised as solely 'competition' or 'consumer' related. What begins as a 'competition' issue may turn out to be more susceptible to 'consumer' remedies, and vice versa. It would undermine the effectiveness of the work to begin 'compartmentalising' aspects of it.

31. As recognised in the consultation document, a general obligation for the CTSA to consider both the consumer and competition effects of its actions may be difficult to implement effectively, due to the likely lack of competition expertise in a consumer-focused organisation. Whilst secondments between the separate organisations could initially promote the market-based approach they will be difficult to maintain over time.
32. A formal obligation on the two bodies to consult would be necessary to guarantee some form of competition/consumer link. It is inevitable that this would become less effective as they increasingly focus on their separate objectives. As recognised in the consultation document, there will be an impact on market studies and investigations, publication of guidance and the OFT's Consumer Codes Approval Scheme.
33. Regarding the proposal of designating the CTSA with concurrent duties to receive supercomplaints, it will be difficult to identify to which organisation – CTSA or OFT - the complaint should be made. The current concurrency arrangements are relatively clear between the OFT and the sectoral regulators; it would be less clear between the OFT and a separate CTSA. Indeed, the same issue could be looked at from the consumer/competition perspective by the CTSA or OFT, perhaps resulting in different outcomes. None of the measures currently proposed would fully address this concern.
34. The final measure proposed of imposing an obligation on the OFT and regulators with concurrent duties (in relation to supercomplaints) to consult the CTSA with regard to the consumer element might allay some confusion over the process. But given that there is a statutory deadline and that formal consultation takes time, there would inevitably be an adverse impact on both efficiency and timing.

**Question 20: Are there other measures you can identify that could be effective in maintaining this link?**

35. None of which we are aware.

**Question 21: How far do you think the link between consumer and competition issues should be embedded within the organisation? Is a link at senior level sufficient, or should there be links between the CTSA and the OFT at all levels?**

36. Any attempts to link consumer and competition issues between entirely separate organisations will inevitably be less effective than in an integrated model. However, if the CTSA is to be entirely separate from the OFT, communication and coordination will be essential at both the operational and strategic levels. Due to the nature of market studies, these links will be required in order for the OFT to continue to undertake this work although it will be more problematic to deliver effective and timely outcomes.

**Question 22: If the CTSA is formed as a new body, how close do you think the relationship between that new body and Government Ministers should be? What are the reasons for your views?**

37. The OFT understands that Government Ministers will be involved in agreeing national priorities formulated within LABREG, but not involved in the implementation of policy in the form of decisions in enforcement cases. This approach is in keeping with the Government's moves towards consistent institutional independence for economic regulators so as to avoid short term shifts in policy implementation or enforcement and give business a stable regulatory environment in which to invest and make commercial plans.

38. It is important that the CTSA is flexible and has the ability to respond quickly to market developments, particularly in response to developments amongst and within trading standards partners, but this should be undertaken within the broader policy framework agreed by central government.

#### **Chapter 5 - Option 2 – the CTSA as part of the OFT**

**Question 23: Do you think the link between consumer and competition enforcement is made satisfactorily in the OFT at present? Is it working effectively?**

39. Since the introduction of the Enterprise Act in 2002, the OFT has adapted and developed its focus on market problems in order to consider both competition and consumer issues. See our cover letter and Annex A.

**Question 24: Can you think of ways in which this link might be strengthened if the CTSA were to be formed within the OFT?**

40. We need to achieve a balance between ensuring the CTSA has relative autonomy to deliver its objectives while retaining the undoubted benefits of maintaining (within the OFT overall) a market-based approach to competition/consumer policy and enforcement in the UK. Cross-membership between the OFT and CTSA governance structures and leadership teams would be one means of strengthening the link. Strong operational links would also be required to deliver the desired results.

41. One key advantage of maintaining the links in a single organisation is the sharing of market intelligence, both from complaints and the new, added value of Consumer Direct. This, together with the introduction of a new high-level strategy group reporting to the OFT Board whose remit it will be to identify and co-ordinate priorities across the OFT/CTSA should facilitate a more cohesive approach to market problems across competition and consumer areas.

**Question 25: Do you think that forming the CTSA within the OFT would be most likely to achieve the benefits to business and consumers outlined by Hampton and to support the Government's objectives in this area? What are reasons for your views?**

42. Establishing the CTSA as part of a restructured OFT would achieve both Hampton's and the Government's objectives. The autonomy which the CTSA would have

within the OFT would enable it to deliver its objectives, while being within the OFT would ensure that a market-based, coherent approach would be maintained.

43. Greater co-ordination of market intelligence used in the setting of priorities would ensure that appropriate risk assessment is undertaken ahead of enforcement by both the OFT and CTSA. In addition, with its own relative autonomy, the CTSA would work with trading standards partners to develop greater consistency in advice and enforcement to business and consumers.

**Question 26: What would be the most effective means of achieving the cultural change needed to create a successful CTSA?**

44. As mentioned earlier, the OFT is already undertaking a change programme in order to improve its market understanding and effectiveness. These changes began well before the Hampton Report. They demonstrate our ability to adapt in order to deliver a better service to business and consumers.

45. Sufficient autonomy could be given to the CTSA within a restructured OFT so as to give consumers and businesses confidence that the CTSA would adopt its own culture. The organisational structure would allow CTSA to focus on working with other key stakeholders, including trading standards partners, to establish the appropriate culture and deliver the anticipated benefits to consumers and businesses.

46. Senior leadership appointments would also give CTSA greater credibility with the public that the culture will reflect a consumer focus whilst the presence within the OFT would assure that a market-based approach would be maintained.

**Question 27: Can you see any other advantages / disadvantages of this approach?**

47. None that we can see.

**Question 28: Do you agree with the estimates of the costs of forming the CTSA within the OFT? Where possible please provide evidence for any costs and benefits, including details of any costs or benefits that you may incur as a result of these proposals.**

48. We have no comment to make on the specific figures quoted but agree that establishing the CTSA within the OFT is likely to incur lower setup costs than if the CTSA was a fully independent organisation. It would also be established more quickly, ensuring that delivery could begin even before primary legislation was passed.

49. Nevertheless, we consider that establishing the CTSA, regardless of whether it is independent or not, will be a significant task because of its new role and broader remit. In order for it to fulfil this role, new personnel, with different skills, at both a strategic and operational level will need to be recruited.

**Regulatory Impact Assessment**

50. No Comment.