



International
Competition
Network

Competition Policy Implementation Working Group

Subgroup 2 - Consumer Relations

- Consumer Outreach

- ❖ Report on Activities Undertaken and Lessons Learned
- ❖ ICN Consumer Outreach Workshop
- ❖ Video of Best Practices

- Effect of Institutional Structures

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- ❖ Report on Activities Undertaken and Lessons Learned
- ❖ Report on Consumer Outreach Workshop (Paris 2005)
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ICN Competition Policy
Implementation Working
Group: sub group 2 –
Consumer Relations



Consumer Outreach by ICN members

*A report on outreach undertaken and
lessons learned*

April 2005

Consumer Outreach by ICN members

A report on types of outreach undertaken and lessons learned

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Introduction

Consumers are the set of interests traditionally identified as beneficiaries of anti-trust enforcement. Indeed, consumers are not only the social and political bedrock of anti-trust, but the legitimacy that economic theory accords their interests is impressive, inevitably most eloquently articulated by Adam Smith's dictum that

Consumption is the sole end and purpose of production, and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.

And yet, the legitimacy of promoting and defending consumer interests resolves none of the practical difficulties entailed in engaging and mobilising this constituency.

[Extract from Competition Policy Implementation
Working Group - sub group 2 work plan]

This report seeks to illustrate a range of activities undertaken by ICN member agencies to reach out to and engage consumers and consumer representative organisations and to discuss the steps taken to overcome the 'practical difficulties' identified above.

The report is one of a number of tasks sub group 2 has undertaken in preparation for the 2005 ICN Conference in Bonn, Germany. The complete work plan of the subgroup appears in Appendix 1.

The examples of outreach discussed in the report were provided following the issue of a call letter to a targeted list of ICN member agencies. A copy of the 'call letter' appears in Appendix 2.

The report includes case studies from member agencies examining a wide range of consumer outreach efforts, together with members' views on challenges, lessons learned and why some initiatives were more successful than others.

Terminology

Competition: The terms 'competition' and anti-trust' are used interchangeably throughout the report and are intended to have the same meaning.

Consumer: In its broadest sense this word can denote any consumer of products or services, thus encompassing small and large businesses as well as individuals. For the purpose of this report, however, the word 'consumer' is used in a more limited sense – to denote individual citizens. The term 'consumer representative organisation' has the corresponding meaning.

Outreach: Unless otherwise indicated, the term outreach means outreach by a competition agency (as compared to outreach by a consumer representative organisation, for example).

Contributing Agencies

Contributions to this report were received from agencies in the following ICN member countries or blocks:

- Australian Competition and Consumer Commission
- Brazil's Secretary for Economic Monitoring
- Canada's Competition Bureau
- European Union's Directorate General for Competition
- Indonesia's Commission for the Supervisory of Business Competition
- Jamaica's Fair Trading Commission
- Japan's Fair Trade Commission
- Mexico's Federal Competition Commission
- Netherlands' Competition Authority
- Norwegian Competition Authority
- United Kingdom's Office of Fair Trading
- Zambia's Competition Commission

The responses illustrate a wide range of approaches to consumer outreach. The author and the sub group thank all the contributors - without your input this report would not have been possible.

Types of Outreach

Categories

The table below groups the types of outreach identified by contributing agencies into broad categories. Thus it does not purport to be an exhaustive list of outreach types. A more detailed explanation of each outreach category together with examples appears below the table.

Types of outreach	No. of agencies undertaking ¹
Capacity building for consumer representative organisations	4
Consumer surveys	1
Dedicated outreach functions	3
Educational institutions	3
General media	7
Other institutional frameworks for obtaining consumer input	3
Provision for consumers or consumer organisations to participate in processes	6
Publications, including electronic and web based and speeches	11
Regular consultative fora involving consumer presentative organisations	4
Targeted campaigns (media and multi-channel)	7
Other	11

¹ Note that the numbers appearing are subject to a number of important qualifications. First, the total number of outreach activities does not correlate to the number of responding agencies as most agencies undertake multiple forms of outreach. Secondly, some agencies may undertake the forms of outreach identified but did not identify them for the purposes of this report.

Capacity building for consumer representative organisations –

This category captures instances where agencies undertake work designed to build the capacity of consumers or consumer organisations to participate in processes, beyond the provision of publications. Identified examples include provision of training, workshops and involvement in conferences.

Consumer surveys –

This category captures instances where surveys of consumer attitudes or opinion are undertaken, whether in relation to competition law in general or a specific market issue.

Dedicated outreach functions –

This category captures formal programs or positions that have specific functions relating to consumer outreach or liaison that agencies have put in place. Examples include the position of Consumer Liaison Officer at the EC, the Consumer Liaison Section at the ACCC and Zambia's Local Consumer Advisers program.

Educational institutions –

This category captures instances where an agency is involved in outreach through educational institutions, whether at school, college or university level. Identified examples include sponsorship of essay competitions on competition/ anti-trust issues; internship programs for students and competition/ anti-trust focussed school classes.

General media–

This category captures instances of general outreach through the media whether publicity relates to a particular enforcement or compliance outcome or issues an agency wishes to educate the public about. Identified examples include media releases, media appearances, regular press conferences, video news releases.

Other institutional frameworks for obtaining consumer input –

This category captures a range of mechanisms in place in agencies to capture consumer input for consideration in agency planning or in particular investigations or actions. Examples include twice yearly presentations to the EU presidency by a major consumer organisation, the inclusion of a Consumer Impact Form as part of cases under examination by the EC; Japan's Consumer Monitoring System and the capacity for identified consumer organisations to lodge 'super complaints' with the UK OFT.

Provision for consumers or consumer organisation to participate in processes –

This category captures instances where consumers or consumer representative organisations are formally recognised as a relevant stakeholder group and where their input to processes is contemplated. Identified examples of processes that explicitly recognise consumers as a relevant stakeholder group include merger inquiries processes, authorisations; class actions (specifically allowed for in some competition laws), consultation when formulating policy and market studies.

Publications, including electronic and web based and speeches –

This category captures all publications produced by agencies, whether specific or general, electronic or hard copy, websites and speeches given by agency heads or personnel. Examples include general guides to anti-trust/competition law; guidelines on specific topics or issues, FAQs (frequently asked questions) and cartoons.

Regular consultative fora involving consumer representative organisations –

This category captures formal mechanisms whereby agencies engage in regular consultation with an identified group of consumer representative organisations. Participation may be funded and may provide a forum to discuss a range of relevant issues or particular markets. Examples include consumer consultative fora convened by the Australian ACCC and the EC's Directorate-General for Competition; Norway's cooperation forum and Canada's Competition Bureau meetings with major consumer associations utilising existing coalitions.

Targeted campaigns (media and multi-channel) –

This category captures particular campaigns undertaken by an agency whether via the main stream media or other channels. It contemplates a sustained focus on a particular issue as compared to a one off or short-term focus on an issue, outcome or market. Identified examples include campaigns focussing on particular educative messages, series of public service announcements and promotion of an annual day of awareness.

Other –

This category is intended as a catch all for types of outreach not captured by the specific categories outlined above. It includes ad hoc meetings with consumer organisations, which are undertaken by all responding agencies.

Another interesting and important example of outreach was mentioned by a number of responding agencies. It is not an instance of consumer outreach directly by agencies but may be facilitated or encouraged by them – namely instances where consumer representative organisations pick up relevant competition decisions or initiatives and

issue their own media releases, explaining the relevance of the decision or initiative to consumers and in some cases, supporting the competition agency's decision or approach. This appears to occur on an ad hoc basis in some countries and more systematically in others.

A number of agencies also recognised the importance of market intelligence and evidence provided by consumers and consumer representative organisations. While the receipt of complaints is not a form of outreach per se, many agencies direct significant efforts at encouraging complaints. These efforts can properly be characterised as outreach. Examples include ad hoc and informal meetings between agencies and consumer representative organisations to encourage complaints, the promotion of dedicated complaint channels, particular campaigns directed not only to education but to reporting of problem behaviour and campaigns directed to improve numbers of complaints from particular consumer populations.

A number of points emerge from the outreach examples provided:

- Most agencies are involved in outreach to both individual consumers and consumer representative organisations;
- The types of outreach undertaken are varied - some approaches are relatively common, others are unique and innovative;
- No agency undertakes outreach across all of the categories discussed and each can therefore be informed by the efforts of other ICN members.
- Some agencies don't undertake outreach on the basis that they do not feel they have expertise in the area. They have welcomed the development of the report in this context.

Case studies

Consumer surveys – Case study – Fair Trade Commission of Japan

In spring 2001, the Cabinet Office of Japan conducted a public opinion survey on awareness of fair competition. The main results of this survey were as follows:

- a) To the question of what image respondents have of businesses competing with other businesses in price and quality of goods and services, in other words,

competition in economic activities, 73% of respondents indicated they have a positive image and 15% have a negative image.

- b) 66.2% of respondents considered the enforcement of competition authorities against bid riggings as insufficient and 13.6% considered action taken to be sufficient.
- c) 57.3% of respondents considered the enforcement of competition authorities against price cartels as insufficient and 14.1% considered action taken to be sufficient.
- d) 61.7% of respondents considered the enforcement of competition authorities against misleading representations as insufficient and 18.1% considered action taken to be sufficient.

The JFTC noted this survey implies that most Japanese people have a good impression of competition, but expect the competition authority to be more active in revealing and eliminating violations.

The research staff selected 3,000 consumers at random and conducted interviews with them between 22 February and 4 March 2001. Consumers were selected nationwide and were 20 years or older. 2,102 answers (70.1%) were successfully collected and 898 (29.9%) were not.

Note the survey has been undertaken only once. It was undertaken by the Cabinet Office of Japan following a request by the JFTC that a survey on the topic of competition be undertaken.

Dedicated outreach functions – Case study – European Commission

In its Directorate-General for Competition the EC has established a "Consumer Liaison Officer", appointed in December 2003. The function is designed to ensure a permanent dialogue with consumers and consumer organisations. Its other objective is to increase consumer awareness about the general benefits of competition policy for Civil Society. Like the Chief Economist, the Consumer Liaison Officer's role is not confined to the merger control area, but also concerns the antitrust field - cartels and abuses of dominant positions - as well as other competition cases and policies on liberalised network industries or control of State aid. The creation of the post is also designed to intensify contacts between Directorate General for Competition and other Commission Directorates Generals, most notably with the Health and Consumers Protection DG.

Tasks of the Consumer Liaison Officer include: a) Acting as primary contact point for consumer organisations, but also for individual consumers, by establishing more regular and intensified contacts with consumer organisations. Consumer organisations, as well as individual consumers, are able to contact the Consumer Liaison Officer directly on

competition-related issues by filling out a form located on our web page: http://europa.eu.int/comm/competition/forms/consumer_complaint_form.html, b) Alerting consumer groups to competition cases when their input might be useful, and advising them on the way they can provide input and express their views, c) Contacts with National Competition Authorities regarding consumer protection matters. The Consumer Liaison Officer also has a role in identifying broad horizontal themes relevant to consumers across various economic sectors.

Dedicated outreach functions – Case study – Zambia Competition Commission

The Commission is located in the capital city of Lusaka and most of the liaison work with other government agencies to encourage the referral of appropriate complaints has been restricted to the capital city. It was therefore necessary to find several other means of disseminating information to all parts of the country in order to reach a wide range of consumers. The Commission has drawn up a plan, targeting local authorities at district level, the police service, health inspectors and other stakeholders such as consumer associations, utility providers and other sector regulators, to highlight the rights of a consumer and incidences of unfair trading against consumers. Under the network of consumer advisors, local authorities (District Councils) through out the country have nominated officers (most of whom are public relations officers and health inspectors) as Local Consumer Advisors (LCAs). This position of LCA is held on a voluntary basis.

The LCAs are expected to act as the local link between the Commission and consumers in various districts of the country. The Commission is expected from time to time to liaise with LCAs on consumer matters and to devise information about how most of the cases of consumer violations can be resolved. The LCAs in turn are expected to give advice to consumers regarding their rights and traders on how to comply with the requirements of section 12 of the Act which outlines cases of unfair trading.

The Commission held National Consumer Awareness seminars in 2002 and 2003. At these seminars, all the Local Consumer Advisors (LCAs) from all the 72 districts of the country and a good number of stakeholders were invited to come and share experiences on issues affecting consumers. Also a number of provincial seminars have been held. From time to time, the Commission, through its directorate of Consumer Welfare and Education, undertakes sensitization tours to various provinces as a means of following up and supporting the Local Consumer Advisers' efforts. Local Consumer Advisors are expected to handle all cases of consumer violations at district level. However, all cases that have a national dimension are expected to be referred to the Commission.

General media– Case study – UK Office of Fair Trading

In August 2003, the OFT fined ten businesses a total of £18.6 million for fixing the price of Umbro replica football kit [uniforms] in breach of the Competition Act 1998. The case related to agreements between some of the parties setting the prices for the top selling short sleeved adult and junior shirt of the England team and for Manchester United. Other agreements involved Chelsea, Glasgow Celtic and Nottingham Forest shirts.

The announcement about the fines was one of the biggest of the year. As a number of the companies were listed on the Stock Exchange, it was market sensitive and so the media could not be alerted in advance and it was not possible to hold a press conference.

Before the announcement was made a press release was prepared. It highlighted the fall in prices of the shirts following the ending of price fixing – the OFT considered that such a vivid example of how football fans were affected would play an important part in getting the most positive messages across, illustrating how football fans had benefited from the OFT's action. Briefing and a Q&A, anticipating difficult questions were prepared and a dress rehearsal held to practice answering interview questions. Also soundbites such as 'giving price fixing of replica kits the red card' were agreed on.

In the space of a couple of hours 20 broadcast interviews took place – the Chairman did 11 TV (covering all the major TV channels) and three radio and the Director of Competition Enforcement did six radio. The story generated an enormous amount of coverage, which was overwhelmingly positive: 'Watchdog gets shorty with companies over strip price fixing' (Financial Times), 'We Wuz Robbed' (The Sun), 'Torn off a strip' (Daily Mirror) and 'Manchester United caught offside by OFT for fixing prices on replica shirts'.

Other institutional frameworks for obtaining consumer input – Case study – Fair Trade Commission of Japan

Since 1964, the JFTC has involved general consumers in the JFTC's administration of its law through the consumer monitors system. The main role of consumer monitors is to respond to surveys aimed at grasping consumers' views and providing information on various issues affecting consumers. Consumer monitors study the Antimonopoly Act and the Unjust Premiums and Misleading Representations Act through a training program and their awareness of competition policy is raised through their cooperation with the JFTC's activities and the study of related laws. The JFTC believes such activities will help increase the number of consumers who support competition policy.

Furthermore, some consumers have been actively involved in consumer activities in their local areas after finishing the role of consumer monitors.

The JFTC advertises for consumer monitors. Many consumers few are interested in the role and the application rate sometimes amounts to more than ten times the available places. In the 2004 financial year there were 1100 consumer monitors in place.

Publications, including electronic and web based – Case study – Jamaica Fair Trading Commission

In 2003, the year of the Commission's tenth anniversary, the JFTC commissioned the production and publication of a number of cartoons, including one portraying the offence of misleading advertising. The public response was very positive- in the JFTC's view because it depicted the consumer as a Rastafarian, a significant socio-cultural character in Jamaica.



The Fair Trading Commission (www.jftc.com)

Illustration by Kevin Day

Regular consultative fora involving consumer presentative organisations – Case study – Australian Competition and Consumer Commission

The ACCC convenes a number of regular consultative fora. The ACCC Consultative Committee is an overarching forum where a range of stakeholder interests is represented. There are also stakeholder specific committees for small business and consumer stakeholders – the Consumer Consultative Committee and the Small Business Advisory Group.

The ACCC's Consumer Consultative Committee (CCC) was established to:

- Provide advice on issues affecting consumers that fall within the scope of the Commission's administration of the Trade Practices Act;
- Discuss emerging issues or market developments that may be of concern to particular groups of consumers;
- Provide information regarding the ACCC administration of the Act and opportunities for the ACCC to more effectively meet its statutory responsibilities;
- Explore information dissemination strategies and appropriate external networks available to enhance communication with consumers and consumer groups; and
- Provide advice on issues as requested by the ACCC.

Current Members:

Australian Consumers' Association
Australian Financial Counselling and Credit Reform Association
Communications Law Centre
Consumer Law Centre Victoria
Consumers' Federation of Australia
Country Women's Association of Australia
Federation of Ethnic Communities' Councils of Australia
National Children and Youth Law Centre
National Council on Intellectual Disability
Public Interest Advocacy Centre
Tangentyere Council
Tasmanian Council of Social Service

The CCC meets four times per year for a whole day. Members' costs of attending are met by the ACCC. Agendas focus on a wide range of issues, including competition issues. The CCC provides an opportunity to inform members regarding current competition issues and to seek input in relation to ACCC processes or policy development.

For example, CCC meetings have been used to advise members of applications for authorisation for conduct that would otherwise infringe the competition provisions of the Trade Practices Act (with the result that members have made submissions to those

processes) and to seek member submissions in relation to policy issues such as the development of the ACCC's revised leniency policy.

Targeted campaigns (media and multi-channel) – Case study – Canada's Competition Bureau

This campaign provides a good example of a large coordinated campaign and also one that may be traditionally viewed as a consumer protection campaign being undertaken by a competition agency. The Bureau's reasoning for undertaking such a campaign was that "[The Competition Bureau] works to support a dynamic, healthy, innovative and competitive marketplace in which Canadians can enjoy the benefits of competitive prices, product choice and quality services. However fraud undermines Canadians' confidence in the marketplace."

In March 2004, the Fraud Prevention Forum launched an anti-fraud education campaign – the first international effort of its kind – to help people protect themselves against fraud. Chaired by the Bureau, the Forum is a concerned group of private sector firms, consumer and volunteer groups, government agencies and law enforcement organizations committed to fighting fraud aimed at consumers and businesses.

In order to renew attention and expand awareness, the Forum declared February 2005 "Fraud Awareness Month." Over the course of the month, more than 40 private and public sector organizations, and consumer and non-profit groups reached out to Canadians where they live, work and shop in an effort to educate them and eliminate fraud. Building on the "Fraud - Recognize it. Report it. Stop it." campaign with an increased partnership base, participating organizations committed to reaching as many Canadians as possible through activities such as airing public service announcements on both radio and television, distributing nearly 40 million bill inserts, posters and tip cards, buying newspaper ads, and displaying Web banners on their Internet sites.

Other campaign elements included a national launch; joint news releases by agencies and consumer representative organisations; and participation in panel's on local radio.

The results of the 2005 campaign are currently being evaluated and follow up surveys will be undertaken to measure whether consumer awareness levels have been raised.

Targeted campaigns (media and multi-channel) – Case study – Norwegian Competition Authority

The electricity market (and prices) was deregulated in Norway in 1991. After the deregulation, consumers were able to choose between a large number of suppliers, with

different price levels and different price terms. This presented a new challenge: The consumers needed market information suitable for making rational choices, such as information on prices and how to change supplier.

To reach the consumers with information on these issues, the Norwegian Competition Authority (NCA) employed several instruments: (i) During 1998 suppliers were directed to inform their customers of prices in a uniform way, so as to allow direct price comparisons by consumers. (ii) The suppliers were directed to inform the NCA whenever the prices changed. (iii) The NCA presented an overview of consumer electricity prices on its web-site. From 2002 this web information service was improved. The NCA constructed a price calculator, which helps consumers to find the lowest electricity prices available. The suppliers continually update the prices. The media has shown considerable interest in this, and has informed consumers about the prices and about the web-site.

The Norwegian Competition Authority registered a strong increase in the use of the web-site during the winter of 2002/2003, when electricity prices increased dramatically. Monthly traffic was 15000 per month in the summer of 2002, and more than 150000 in January 2003. Today 24.6 % of all consumers buy their electricity from another supplier than the one dominating in their area.

Challenges

Responding agencies identified a wide range of challenges relevant to consumer outreach. Some are common to almost all agencies, whereas some particularly affect agencies in developing or transition economies. It is likely that readers can identify still more.

With such a long list of challenges it is easy to get discouraged – it is all just too difficult? There are three comments to make about this. First, regardless of how difficult the task, we all know we don't have the option of putting consumer outreach in the too hard basket. The risk is too high – as an earlier project of this working group identified – a policy programme that impacts on the economic and social interests of citizens – of which competition/anti-trust is clearly an example – will only flourish with the active support of its beneficiaries – consumers.

Secondly, as is discussed further below, many of the outreach strategies already undertaken by responding agencies illustrate how the challenges can be overcome.

Thirdly, as agencies contributing to this project will testify, whilst outreach may be challenging, where successful, it has enormous potential to enable and enhance the work of competition agencies – through support, legitimacy and valuable market intelligence.

The challenges identified can be grouped under the following broad themes:

Internal challenges facing agencies

- Sustaining consumer interest.
- Addressing diverse audiences such as those with low literacy levels, minority groups and the disadvantaged.
- Monitoring the impact of outreach activities.
- Limited human and financial resources of competition agencies

Commentary: To overcome some of these challenges, some agencies have used surveys to measure the impact of their work. These results in turn can enhance public support for the competition work of the institution.

Whilst difficult to quantify, it seems that agencies with regular, or to a lesser degree ad hoc, consultative fora indicate improved levels of support for their work.

Challenges facing consumer representative organisations

- Limited budgets of consumer representative organisations
- Lack of capacity on the part of consumer or consumer representatives to comment on technical issues
- Consumer organisations are often expected to react to multiple issues on short notice
- Lack of well-organised consumer movement

Commentary: Whilst to some extent universal, the lack of resourcing of consumer organisations is much more acute in some member countries than others. Similarly, whilst lack of technical capacity was a reoccurring theme, in those countries where the consumer movement is more established and long standing, it appears greater in-roads have been made in terms of capacity building.

Again, consultative fora can be of assistance here. Regardless of the level of resource or capacity, such fora can encourage networking amongst existing groups, concentrating what capacity exists and facilitating the sharing of information and expertise. Capacity building exercises by agencies clearly also have an important role to play.

Challenges arising from consumer attitudes or knowledge levels

- Difficulties in 'selling' the message that competition law enforcement enhances consumer welfare
- Lack of knowledge of competition law can lead to unrealistic demands on the part of consumers and consequent disappointment in the absence of effective expectation management
- Viewpoint that competition will create burdens for consumers eg higher prices, problems with supply sustainability
- General consumer antipathy toward government and government agencies
- Information asymmetry

Commentary: Agencies engage in a range of activities designed to overcome these challenges, including publications and websites. Experience suggests that efforts of this kind work best when a consumer is already engaged with a particular issue or problem. They will be less successful in achieving broad public education or engagement. As the Working group has previously identified, short, sharp mass media grabs that tie a competition issue to the consumer experience are more likely to have an impact at the broad consumer level.

Providing avenues to take consumer issues into account in policy formulation can also help overcome negative perceptions or lack of connection with competition issues. Over time, media outreach and specific efforts through educational institutions will also help address consumer levels of understanding.

National or political challenges

- Lack of political will to set up institutions and policies that protect consumers
- Lack of communications infrastructure

Commentary: These challenges more than any other, tend to be beyond the control of competition agencies. Here perhaps outreach of a different kind, that of competition advocacy to governments and government agencies is the key tool at agencies' disposal. This issue was considered in a paper presented by the Capacity Building and Competition Policy Implementation Working Group, presented to the ICN Conference in Seoul, Korea, in 2004 *Competition Advocacy in Regulated Sectors: Examples of Success*.

Communications specific challenges

- Choosing the right media for the message
- Ensuring messages are simple clear and consistent
- Difficulty in effectively targeting messages

Commentary: These challenges are bread and butter challenges for communications staff the world over. Many agencies are responding in surprisingly sophisticated ways – perhaps learning lessons from successful marketing campaigns from the private sector. Focus group testing of campaign messages, surveys of consumer attitudes and learning from positive and negative public responses are just a few examples.

Lessons Learned

Agencies also reported a number of lessons they have learned through their outreach efforts:

- The importance of dialogue and working with stakeholders. Amongst other benefits, this enables an agency to broaden the reach of their messages beyond their usual audiences.
- The importance of targeting messages to account for a range of audiences.
- The importance of positive messages that empower consumers rather than making them feel helpless or overwhelmed.
- The importance of correctly identifying the problem as a pre-cursor to crafting the type of response eg problems of lack of information as compared to a difficulty in comparing prices will require a different kind of response.
- The need to target information and compliance strategies to account for the diversity of stakeholder interest, and also economic, geographic and cultural diversity.
- There is an element of luck involved. Sometimes even the best planned campaigns can fall foul of external events. As one agency found – all the planning in the world won't help get media coverage in the face of a major world event – in their case the start of the Iraq war.

Conclusion

It is clear that for most of us, successful consumer outreach, involves significant challenges. It is equally clear that competition agencies across the globe are rising to these challenges.

A number of points emerge from the information provided:

- Most agencies are involved in outreach to both individual consumers and consumer representative organisations;
- The types of outreach undertaken are varied - some approaches are relatively common, others are unique and innovative;
- No agency undertakes outreach across all of the categories discussed and each can therefore be informed by the efforts of other ICN members.
- Some agencies don't undertake outreach on the basis that they do not feel they have expertise in the area. They have welcomed the development of the report in this context.

About Sub group 2

The Consumer Relations subgroup forms part of the Competition Policy Implementation Working Group.

The mission of this working group is to identify key elements that contribute to successful capacity building and competition policy implementation in developing and transition economies.

The group consists of three subgroups focused on:

1. The Effectiveness of Technical Assistance;
2. Enhancing the Standing of Competition Authorities With Consumers
3. Competition Advocacy in Regulated Sectors.

Subgroup 2 is chaired by David Lewis from South Africa's Competition Tribunal and Sally Southey from Canada's Competition Bureau.

Subgroup Members:

Competition authorities:

Australia (ACCC- Australian Competition and Consumer Commission)

Hungary (Office of Economic Competition)

Jamaica (Fair Trading Commission)

Korea (Fair Trade Commission)

Pakistan (Monopoly Control Authority)

Senegal (Commission Nationale de la Concurrence)

United States (Department of Justice - DOJ)

United States (Federal Trade Commission - FTC)

United Kingdom (Office of Fair Trading - OFT)

Uzbekistan (State Committee of the Republic of Uzbekistan on Demonopolization and Competition Development)

International organizations:

Consumers International

European Commission

Consumers' Association (UK)

Non-governmental advisors:

Thierry Bourgoignie (Canada), Université du Québec à Montréal

Filippo Cammelli (Italy), Attorney, Antitrust & Trade Practices, Baker & McKenzie

Hisakazu Hirose (Japan), University of Tokyo

Iain Ramsay (Canada), York University

Bob Kerton (Canada), University of Waterloo

Professor Robert H. Lande (USA), University of Baltimore

Eleanor Fox (USA), New York University

INTERNATIONAL COMPETITION NETWORK
COMPETITION POLICY IMPLEMENTATION WORKING GROUP
2004-2005 SUBGROUP 2 WORK PLAN

MISSION:

Subgroup 2 seeks to enhance the interface between competition authorities and consumers.

BACKGROUND:

Consumers are the set of interests traditionally identified as beneficiaries of anti-trust enforcement. Indeed, consumers are not only the social and political bedrock of antitrust, but the legitimacy that economic theory accords their interests is impressive, inevitably most eloquently articulated by Adam Smith's dictum that

Consumption is the sole end and purpose of production, and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer.

And yet, the legitimacy of promoting and defending consumer interests resolves none of the practical difficulties entailed in engaging and mobilising this constituency. The paramount difficulty is that consumer interests are notoriously poorly organised particularly relative to their counterpart producer interests. There are exceptions to this rule usually manifest in consumer mobilisation centred on particularly dramatic and hard-felt issues - the mobilisation around the provision and pricing of AIDS drugs is one such example - although some countries, the United Kingdom for example, appear to exhibit high levels of general consumer mobilisation and awareness.

There are a variety of reasons why consumers are difficult to inform, mobilise and organise. Of course, key amongst them is the fact that most consumers are simultaneously also producers defending their jobs against a flood of cheap imports or efficiency enhancing (and job-reducing) innovations that would serve their interests qua consumer but that might conflict with their more focused producer interest. Or the consumer activist espousing the cause of low-priced groceries or pharmaceuticals may, at other times, don the mantle of the community activist defending her long standing high street grocer and pharmacy retailer from 'unfair' competition from the super-market and

the drug store. These complex interests are inevitably easily manipulated by producer interests and in the public debate it is often the anti-trust enforcer who emerges as hard-hearted and doctrinaire, as willing to sacrifice jobs and communities at the altar of some abstract concept called 'competition.' This subgroup's objective is to explore and present ways that competition agencies can more effectively articulate the message that competition benefits consumers.

WORK PLAN:

This subgroup will attempt to address some of the complex issues raised by the interface between competition or anti-trust enforcement and consumer interests.

The work will be divided into three themes:

A) Consumer outreach and Practical Techniques:

Lead Responsibility: Australian Competition and Consumer Commission and Canada's Competition Bureau.

- How are competition agencies reaching out to consumers?

The Australian Competition and Consumer Commission and Canada's Competition Bureau lead the group examining how different jurisdictions reach out to consumers.

1. Case studies

The call letter (sent 13 November) seeks case studies from a targeted selection of member agencies focussing on the following issues:

- examples of the agency's involvement in both a successful and unsuccessful consumer outreach activity;
- analysis of the reasons for success or lack thereof;
- challenges the agency faces (and doesn't face) in undertaking consumer outreach; and
- example(s) of a TV, print or radio example (or other interesting use of media) featuring the agency.

These case studies will be reviewed, collated and analysed. Depending upon level and quality of information received through case studies, a list of 'do's and don'ts' will be developed.

Proposed timetable:

January 2005 Begin drafting Part 3 report

28 February 2005 Draft report to sub-group

March 2005 Finalise report

6-8 June 2005 Bonn conference

(ACCC not to participate in presentation of report –this will done by Canada)

2. Workshop - February 16, 2005:

Canada's Competition Bureau is organizing a half-day workshop on consumer outreach to be held in Paris just before the OECD's Global Competition Forum on February 16, 2005. Representatives from several jurisdictions and journalists will discuss different approaches to consumer outreach, messaging, research and evaluation and other practical techniques.

3. Video Montage

All ICN member jurisdictions have been asked to submit radio, television, print and Internet examples of their outreach activities and media successes. In order to demonstrate good practises, Canada's Competition Bureau will produce a 15-minute video outlining some of this work. This video will be presented at Bonn. Deadline for submission has been extended to January 31. Video will be edited and final by March 31.

4. Presentation at Bonn – TBD

B) Interaction between competition authorities and consumer organisations.

Co-chairs: UK's Office of Fair Trading and Which? (Formerly the Consumers' Association)

Preparing a report drawing on the UK's experience, to highlight how competition authorities and consumer bodies can engage effectively, and the processes involved.

The study will include:

- a catalogue of the various interactions between the UK's OFT and Which? To illustrate the potential for developing effective relationships between competition authorities and consumer bodies;
- a number of case studies, including infringement decisions and market studies, to illustrate instances where interactions between the OFT and Which? have worked most effectively and identify areas where there is still room for improvement.

The OFT and Which? have a distinct relationship, and an assessment of which may provide some interesting lessons for other authorities looking to develop, or enhance, their dealings with consumer bodies on antitrust work.

C) Bringing a “consumer welfare” perspective to antitrust enforcement: the effect of institutional structure.

Lead Responsibility: US FTC, Eleanor Fox

Although antitrust and consumer protection are clearly delineated fields of law and policy, they are also synergistic in their overall goals and orientation, and many of our member agencies are charged with the administration of both. As the ICN is a body of antitrust, not consumer protection, agencies, this sub-group will focus on how consumer protection concepts can contribute to antitrust enforcement -- in particular, by helping to create a “consumer welfare” perspective for antitrust enforcement.

In the near term we will examine what effect alternative institutional arrangements may have on developing such a consumer welfare perspective. We will identify and examine agencies that combine antitrust and consumer protection, and jurisdictions in which these areas are separated. There are a number of potential candidates with varying institutional structures, including, evidently, some who have already made adjustments to their organizational structure on the basis of their experiences. Two or three representatives from such agencies could make short presentations at the Bonn conference.

Among the questions to consider are: does experience gained in the consumer protection function provide useful information for addressing competition issues; do consumer protection activities enhance the credibility of the agency with the public and improve public understanding of the agency’s antitrust mission; and how do antitrust agencies develop a consumer welfare focus that makes appropriate distinctions between generally “unfair” conduct and conduct that harms the competitive process.

Appendix 2

November 10 2004

Dear ICN Consumer Relations Sub Group - Consumer Outreach: medium and message

As you may be aware, the ICN Consumer Relations subgroup has committed to undertake a number of tasks in the lead up to the ICN Conference in Bonn 2005. Two of these tasks are to examine and report on competition agencies' consumer outreach efforts, and in the process to further the work of the Practical Techniques Subgroup which is posted on the ICN website at

http://www.internationalcompetitionnetwork.org/toolkit_intro.html.

There are several parts to this work:

1. A written report that draws together and analyses cases studies of successful and unsuccessful consumer outreach;
2. A practical presentation at the Bonn conference designed to assist heads of agencies in their outreach to consumers;
3. Conduct a workshop in February immediately prior to the Global Competition Forum on how to reach consumers with compelling messages; and
4. Compile a video of various methods used to reach consumers including print, television and radio coverage of competition matters from around the world.

Outreach report

We would like to include in the report case studies from member agencies.

As you have had a number of concerted efforts to reach consumers, we hope you could provide a summary of several examples including both successful and unsuccessful projects, and importantly, your views on why they worked or did not work.

For the purpose of this exercise 'consumers' means individual citizens and consumer representative organisations.

Consumer outreach - some of the challenges

For most of us, successful consumer outreach, involves significant challenges, such as poorly organised and/or resourced consumer interests; complex debates; the high

degree of technical knowledge that may be required to participate in competition debates; information asymmetry; legitimacy for consumer organisations (i.e. who do they represent and how); consumer cynicism i.e. we can't just say 'competition is good for you'; particular issues for disadvantaged or vulnerable consumers; and competing interests for consumers (i.e. as employees, business owners, property or shareholders)..

We look forward to your views on which of these issue have been most relevant to your agency's efforts and what other challenges you have faced.

Bonn Presentation

As noted above, it is proposed to present a 'how to' session on consumer outreach at the ICN Conference in Bonn 2005. We are compiling a dynamic and interesting presentation which, ideally, would include examples of from your agency. If you have any radio cassettes of competition issues or messages, television footage, examples of brochures, or newspaper clippings and headlines, we will incorporate them in the video presentation. Creating this video will be time consuming. Consequently, I would appreciate it if you could send me your examples by December 15th.

I hear you did something with a soap opera that would be a great addition to our ICN Video. Please send me a tape.

Summary

In summary, we would like your agency to contribute to the work of the subgroup by providing:

- * examples of your agency's involvement in both a successful and unsuccessful consumer outreach activity;
- * analysis of the reasons for success or lack thereof;
- * challenges your agency faces (and doesn't face) in undertaking consumer outreach; and
- * example(s) of a TV, print or radio example (or other interesting use of media) featuring your agency.

Please send the media and message examples by December 15, 2004 to Sally Southey in Canada and your case studies by January 15, 2005 to Catriona Lowe in Australia.

If you would like to discuss this further, please don't hesitate to contact either of us.

Yours truly,

Sally Southey
Commissaire Adjointe aux communications
Assistant Commissioner, Communications Branch
Téléphone / Tel (819) 994-4994 Télécopieur / Fax (819) 997-1352
southey.sally@cb-bc.gc.ca
Bureau de la concurrence | 50, rue Victoria Gatineau (Québec) K1A 0C9
Competition Bureau | 50 Victoria St. Gatineau, Quebec K1A 0C9
Gouvernement du Canada | Government of Canada
www.cb-bc.gc.ca

Catriona Lowe
Australian Competition and Consumer Commission
GPO Box 520J
Melbourne, Victoria
Australia 3001
catriona.lowe@accc.gov.au
Ph: + 61 3 9290 1825
Fax: +61 3 9290 3699

Competition Policy Implementation Working Group

Subgroup 2 - Consumer Relations

- ICN Consumer Outreach Workshop
February 16, 2005 (Paris)

The Consumer Outreach Workshop¹, attended by representatives from 23 competition authorities (see Appendix A) and media representatives, builds on the work of the Practical Techniques Advocacy Subgroup presented at the 2nd ICN Annual Conference in Merida, Mexico, particularly the Toolkit for Effective Advocacy², and the work of its successor Working Group, the Competition Policy Implementation Subgroup on Consumer Outreach and Practical Techniques.

The report from the Merida Annual Conference identified consumers as one of the five key stakeholders whose support, or at the very least, respect, is considered critical to the success of a competition regime and explored how competition authorities should go about securing it.

The Toolkit for Effective Advocacy identifies practical techniques on how to promote competition and gain the support of stakeholders, including consumers. These techniques include distributing publications, using strategic communications, creating education and compliance programs, educating decision makers, including government bodies, business and consumer groups, and individual citizens, attracting and dealing effectively with the media, and extending the reach of a Web site.

The 2005 Workshop, co-chaired by Ulf Boge, President of the German Federal Cartel Office and Sally Southey, Assistant Commissioner of the Canadian Competition Bureau, provided an opportunity for competition authorities and representatives from the media to share best practices and experiences on the means they use to gain support from consumers. They also discussed experiences and ideas about how to measure success in communicating messages to consumers.

The Workshop began with some generally agreed upon basic assumptions. First, competition policy is complex and difficult to explain. As a result, competition agencies need to ensure that consumers, as the prime beneficiary of competition and greatest source of support, understand competition policy. Second, enforcement of competition laws is important but not enough to obtain support on its own; it must be complemented with advocacy. The challenges for competition authorities are to develop key messages and to find effective methods to convey those messages.

The following are several best practices and themes that emerged from the Workshop on how competition agencies get their messages across to the public and how they measure success:

1. Messages should be targeted to the appropriate audience, at the appropriate time and in the most appropriate manner. An agency must recognize that it cannot communicate with every person about every decision or outcome. It also needs to choose the medium that it will use to convey its message carefully to ensure the message is heard. An agency needs to ensure the message has an effect on the intended audience and that it is understood, through using specific and relevant examples.

¹ The agenda and materials from the workshop are available on the ICN Web site at XXXX.

² http://www.internationalcompetitionnetwork.org/toolkit_intro.html

2. Agencies should leverage their limited resources for communications by obtaining assistance from other organizations, both public and private sector. Building partnerships with others who share common or complementary interests and goals can be an important source of resources, and they can also provide access to consumers.
3. Measuring the success of communications is closer to an art than a science. The number of stories about the agency or a particular topic and whether or not the media report exactly what is written in a press release are not necessarily good indicators of success. What is important is the impact of the communications. Did media reports effectively capture the key messages? Did the communications attract attention from and provoke a response from the target audience? What were the outcomes (for example: an increase in the awareness of the work of the agency, an increase in the number of inquiries, an increase in the number of complaints, demands for improvements, changes in regulations, etc.)?
4. Messages should be simple, to the point and presented in concrete, practical terms that can be easily understood by and are relevant to the target audience.
5. Transparency promotes better understanding and more accurate reporting by the media. This can be accomplished by making decisions and reasons publicly available, providing background information to media under embargo prior to the release of decisions, and creating opportunities for reporters to question relevant agency heads and staff.
6. Success stories need to be shared with other competition agencies around the world so that each can learn from the experiences of others. Competition agencies have problems in common with one another and they can join resources to combat some of them. Also, success stories can be used to support advocacy efforts of newly established agencies that do not have specific experiences to draw on when trying to illustrate the benefits of competition.

The following summarizes the presentations and discussions during which the Workshop presenters represented a range of experiences and perspectives.

George Lipimile, Executive Director of the Zambian Competition Commission (ZCC), described the challenges he faces leading a very young agency in a country and continent with a relatively undeveloped competition culture. He expressed a view common to many newly established authorities: advocacy is generally more effective than enforcement as a means of promoting a competition culture for newer authorities. In fact, according to Mr. Lipimile, the ZCC dedicates approximately 40 percent of its budget to advocacy and outreach.

He explained the various methods used to reach consumers who might otherwise be unaware of the competition agency. For example, they have produced three documentaries about the roles and functions of the ZCC. Given that broadcasting in Zambia is quite expensive, the ZCC ensures the documentary is broadcast on national television at a time when it will be viewed by the largest possible audience – during soccer games. At the same time, officers from the ZCC make appearances in public places

where the match is being shown, such as at golf clubs and in pubs, to speak with viewers. Mr. Lipimile acknowledged that without outside financial support from private, non-business donors and UNCTAD, the ZCC would have difficulty airing the documentary. The ZCC also receives assistance from foreign competition authorities for this and other advocacy activities.

Other outreach methods used by the ZCC include making radio and television appearances, being covered in newspaper articles, participating in the decision making of sectoral regulators, hosting seminars and workshops for judges, consumer associations, journalists and government officials, attending annual meetings of trade and professional associations, contributing to speeches for the President and Ministers about the competitiveness of the Zambian economy, and promoting the adoption of compliance programs by dominant firms. When an activity by the ZCC will have a broad impact on the public, such as intervening in the poultry and maize sectors to open up the markets, the ZCC ensures the media covers it.

As a result of its efforts, the ZCC, now well known to the business community and the general population, has received more complaints than it can handle. Mr. Lipimile indicated that the average business person would even be able to direct someone to the ZCC from the airport if asked.

David Lewis of the South African Competition Tribunal also shared his experiences. He said the Competition Commission and the Tribunal have very high profiles in South Africa even though that they are relatively new agencies and have minimal communications resources. He attributed this to the significant amount of media coverage they receive due to the transparency of decisions, the independence of the agencies and their respect for the media.

Cecile Kohrs, a lawyer with the US Federal Trade Commission (FTC), set out three main principles agencies should follow for effective communications: simplicity, clarity and dialogue. To illustrate simplicity, she referred to the FTC's Do Not Call Registry and their message to the public as part of a national campaign: "Call us, we will help you." On the first day of the campaign, the FTC received 10 million calls and now has 60 million registered on the Do Not Call Registry.

With respect to clarity, Ms. Kohrs suggested that messages should be conveyed in a precise manner, targeted and boiled down to a few key points. She described the FTC's recent Health Care Report as being written in a way so that readers could find what interested them without reading the entire report. The idea behind this method is that everyone does not need to know every aspect of the report, nor do they want to.

The third principle, dialogue, requires the agency to be able to engage in two-way communication with reporters because they are the best way to reach consumers. Effective dialogue requires not only communication but also understanding. Agencies must take the time to educate reporters to make it easier for them to convey information to consumers about competition policy.

Generally, consumers are only interested in the ways competition issues affect them, such as receiving lower prices or being offered better quality goods. These benefits of

competition need to be explained through the media. Since competition can be difficult to explain in an abstract sense, illustrations and specific examples are the best ways to convey messages to consumers. Sally Southey described a Canadian example where, to illustrate the effect of a cartel involving the animal feed additive lysine, the message given to the media was the cartel had increased the price of every McDonald's chicken McNugget, a product familiar to many.

It was generally agreed that an agency cannot reach consumers on every important competition case and, therefore, should be selective when deciding what to communicate and with whom.

David Lawsky, a journalist with Reuters, offered some insight into the life of a reporter covering competition policy issues. He pointed out there are times when reporters are looking for something from competition agencies and others when competition agencies are trying to sell reporters what they do not want. In the former situation, he used the analogy that reporters are like lions, and as long as an agency gives them a little bit of red meat each day they are pussycats. If not, they will eat the agency. In the latter situation, the competition agency faces the challenge of packaging what is essentially a complicated topic to make it of interest to editors and audiences.

Given the competition among media sources and the nature of the news cycle, time is of the essence when putting together stories. Reporters are measured by how far ahead or behind they are in reporting events. Competition agencies can assist reporters by preparing timely, factually correct stories and by providing as much information as possible under embargo prior to the release of announcements. In addition, news conferences and regular meetings with reporters are more useful means to educate reporters than telephone calls and press releases. Question and answer sessions with relevant agency officials are insightful for even the most experienced reporters.

Mr. Lawsky suggested that authorities should not measure the success of their communications by the degree to which reporters parrot what they say. If reporters simply re-wrote press releases, there would be no need for them. Since reporters will ultimately write their story from their own angle and given that competition policy is a complex issue, the more accurate background information reporters have, the better chance there is they will write an accurate story.

Sally Southey described some of the Canadian Competition Bureau's communications initiatives, particularly the Fraud Prevention Forum. The Forum is a group of over 40 private sector, consumer and volunteer, government and law enforcement organizations committed to fighting fraud aimed at consumers and businesses. Its objectives are to inform and educate the public on the dangers of fraud and to encourage people to report fraudulent activities when they occur. The Forum reviewed existing publicly available information and undertook quantitative and qualitative research to develop new compelling tools and information products to empower Canadians to combat fraud.

Most recently, the Forum designated February 2005 as Fraud Awareness Month, a month-long campaign aimed at educating Canadians on how to protect themselves from fraud. In particular, the campaign focused on four major types of fraud: Internet fraud, identity theft, telemarketing fraud and mail scams.

Over the course of the month, members of the Forum reached out to Canadians where they live, work and shop in an effort to educate them and eliminate fraud. Building on the "Fraud - Recognize it. Report it. Stop it." campaign the Forum launched in February 2004, participating organizations committed to reaching as many Canadians as possible through activities such as airing public service announcements on both radio and television, distributing nearly 40 million bill inserts, posters and tip cards, buying newspaper ads, and displaying Web banners on their Internet sites.

Similar campaigns took place simultaneously in several jurisdictions around the world, as Fraud Awareness Month was also adopted by the International Consumer Protection and Enforcement Network (ICPEN), representing 30 nations. These countries agreed to participate in the awareness campaign through their local enforcement bodies. In particular, to conclude the month's activities, ICPEN members performed a special two-day Internet surveillance and enforcement program targeting Internet scams and spam.

Early lessons learned from the 2005 campaign include the need for extensive coordination with partners, early planning, and more contact with local media.

Mike Ricketts, Director of Communications for the United Kingdom Office of Fair Trading (OFT), briefly described the UK's Scam Awareness Month and how they also coordinated with a voluntary network of consumer associations.

Mr. Ricketts also spoke about the OFT's experiences in conducting research to evaluate outreach activities. He feels research is important because it assesses whether the OFT's messages are actually reaching people and whether the work of the agency is making a difference in the market and changing behaviour. Research allows the agency to gauge business and consumer awareness of its laws and mandate.

When undertaking research, Mr. Ricketts suggested that agencies should ensure they know precisely what they want to measure, the research is consistent with other work in the organization, and they draw from the experiences of other agencies. Finally, he said agencies should recognize that OFT's results are based upon perceptions and not economic data.

Allan Fels, former head of the Australian Competition and Consumer Commission, shared some of his experiences in implementing a successful communications program. He emphasized the importance of working with consumer groups, both general and sectoral, which have knowledge of the market and consumer concerns, and which can give publicity to the competition agency's actions and to general complaints. He also highlighted the importance of gaining support from the small business community, which is quite large and generally sides with competition agencies. Political support is also important; however, having the support of stakeholders such as consumer groups generally has a greater effect on the agency.

The Workshop chairs would like to thank Shelley Rowe and Leslie Levere of the Canadian Competition Bureau for this report.

Appendix A

1. Competition Commission, Zambia
2. Office of Fair Trading, United Kingdom
3. Competition Council, Belgium
4. Competition Authority, Netherlands
5. Direction Générale de la Concurrence de la Consommation et de la Répression des Fraudes, France
6. Competition Authority, Portugal
7. Norwegian Competition Authority, Norway
8. Secretary for Economic Monitoring, Brazil
9. Administrative Council for Economic Defense - CADE, Brazil
10. Public Service for the 21st Century (PS21), Singapore
11. Commission for the Supervision of Business Competition, Indonesia
12. Competition Authority, Ireland
13. Office of Economic Competition, Hungary
14. Federal Antitrust Office, Germany
15. Competition Commission, South Africa
16. Competition Tribunal, South Africa
17. Federal Trade Commission, United States
18. Department of Justice, United States
19. Fair Trade Commission, Japan
20. Estonian Competition Board, Estonia
21. Office for Competition & Consumer Protection, Poland
22. Competition Commission, India
23. Competition Bureau, Canada

Competition Policy Implementation Working Group

Subgroup 2 - Consumer Relations

- Video of Best Practices

Competition Policy Implementation Working Group

Subgroup 2 - Consumer Relations

- Effect of Institutional Structures

Outline of a Workplan for Sub-Group 2(C):

The Effect of Institutional Structure on Enhancing Consumer Perspectives of a Competition Agency

Within the general mission statement of Sub-Group 2, to enhance the interface between competition authorities and consumers, the goal of our project is to consider whether combining a “consumer protection” function with competition functions within a single agency can enhance the competition mission. Commentors have frequently urged that government authorities consider competition and consumer protection goals together, in a manner that strives to maximize outcomes in both respects, in the interest of ensuring markets operate most effectively.¹ Conversely, enforcement authorities should be alert to avoid taking actions in one area, competition or consumer protection, that may have potentially adverse consequences in the other. Further, it has been suggested that consumer protection activities can increase public awareness and approval of the agency’s activities, with potential derivative benefits for competition enforcement.

The case for seeking synergies between the two functions was recently stated by John Vickers, Chairman of the Office of Fair Trading of the United Kingdom:

“[C]ompetition and consumer law should be seen as one subject, not two. . . . Competition is pro-consumer for the simple reason that rivalry among suppliers to serve customers well is good for customers. In such rivalry, the suppliers who serve customers best will prosper and those that serve them poorly will not. . . .

¹ See, e.g., Louise Sylvan, “Activating Competition: the consumer-competition interface,” (2004) 12(2) CCLJ 191-206; Tim Muris, “The Interface of Competition and Consumer Protection,” address to 29th Annual Fordham Conference on International Antitrust Law and Policy (Oct. 31, 2002), *available at* www.ftc.gov; John Vickers, “Competition is for Consumers,” address to the Social Market Foundation (Feb. 21, 2002), *available at* www.offt.gov.uk; see generally N. Averitt & R. Lande, “Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law,” 65 Antitrust L. J. 713 (1997).

Competition cannot work effectively unless customers are reasonably well informed about the choices before them. Uninformed choice is not effective choice, and without that there will not be effective competition. Informed choice has two elements ! knowing what alternatives there are, and knowing about the characteristics of alternative offerings. In particular, what matters is the ability of customers to judge the prospective value for money, for them, of the alternatives on offer.”²

There is a range of opinions on how to approach those goals as a matter of institutional structure, and we believe some useful insights could be gained by exploring the experiences of different agencies around the world. The comments in this preliminary overview reflect a canvas of a small number of ICN members. This sample revealed some benefits and some costs of combining consumer protection and competition functions in a single agency. Some observers considered the combination beneficial, leading to a deeper understanding by government officials of consumer interests and how to enhance them. Jorge Jaeckel of the Columbian agency describes this phenomenon as follows:

[T]he thematic, conceptual and practical relation that exists between the subjects of restrictive practices to competition, unfair competition and consumer protection, allows a harmonic and complete vision of the realities to be evaluated when they are handled by one entity, therefore leading to decisions that take into account and regard the effects that they may generate in the market, in competition, and in the consumer.

Under this “synergistic” view, combining the two functions can lead to a deeper, more nuanced understanding of how particular markets work and the steps necessary to improve their effectiveness.³ If the two functions are put into a single agency, these synergistic effects could presumably be accomplished most efficiently, with minimal political intra-agency conflict or

² J. Vickers, “Economics for Consumer Policy,” British Academy Keynes Lecture 4-5, October 29, 2003, available at www.oft.gov.uk.

communications issues.

Similarly, information developed in a consumer protection investigation can form the basis for the development of a competition case, as was the case in Panama with respect to airline code-sharing, which began as a series of consumer protection-type complaints and eventually became a competition investigation.⁴ Panama also reports lower administrative overhead and other operational convenience in having a single unified agency.

Finally, a number of agencies have experienced a cross-over benefit of goodwill developed from consumer protection initiatives, the benefits of which are readily apparent to the public, to make up for the often relatively low visibility of the benefits of antitrust enforcement. For example, in the United States, the Federal Trade Commission's "Do-Not-Call" initiative to reduce phone calls from telemarketers to consumers' homes has been extremely popular and has enhanced the agency's name-recognition and standing with the public.

There are costs, however, of combining functions, particularly if the same staff is assigned to both types of cases. There is a significant danger that the competition caseload will be swamped by the need to respond to consumer complaints. This could also have budgetary implications if resources intended for competition work are diverted to consumer protection enforcement. Indeed, the Hungarian authority, GVH, started out dividing its staff by sectors, with each unit taking all kinds of cases within each sector. (Several other countries also follow this organizational approach). In September 2004, GVH set up a special consumer fraud section and transferred all non-competition matters to that section, in part because consumer protection

³ See Muris, note 1, *supra*.

⁴ See also Averitt & Lande, note 1, *supra*, at 746 (a single agency with complete jurisdiction can adjust to changes in the nature of the case as evidence is gathered).

cases were taking such a high share of the caseload. With EU modernization and decentralization, GVH felt it needed to make this change to be able to devote sufficient resources to competition work. GVH also believes that specialization will help develop more expertise in these kinds of problems. (Italy has evidently gone in the other direction, taking its consumer protection office and distributing its work to the antitrust offices).

The workload problem could be offset by setting up an effective screening mechanism, such as the “ombudsman” function in Poland, to sort out the large number of routine complaints and prioritize those with potential broader marketplace significance. The U.S. Federal Trade Commission has a similar procedure, using specialists in a Consumer Response Center to receive complaints and enter them in a database for further evaluation. Such mechanisms could help manage the consumer protection caseload so that it does not overwhelm the agency. The problem may be more difficult in those jurisdictions where every complaint must be investigated.

Finally, even among those agencies that are assigned both competition and consumer protection functions, there are different ways to staff the functions internally. Some agencies, including the US FTC, maintain separate competition and consumer protection offices at the staff level within the agency. This arrangement allows some degree of specialization and development of expertise, but may weaken the “synergies” identified above that are significant potential benefits of a unified structure. At some level, of course, presumably near the top of the agency, the functions will converge and the ultimate decisionmakers will have to take the broader consumer welfare perspective. At a lower level, however, there has been some consideration of ways to “introduce” specialists in these two areas to one another, and several agencies cross-train their employees to recognize both competition and consumer protection issues. Japan has a particularly simple and direct approach. Pursuant to the general public service personnel system

in Japan, JFTC attorneys rotate every two or three years. Accordingly, a considerable number of staff have both competition and consumer protection experience.

We hope to have a brief opportunity to discuss these issues at the upcoming annual conference, and then determine what additional steps may be useful to shed further light on this topic.

John Graubert and Russell Damtoft
Federal Trade Commission, Washington, D.C.

(The views
expressed here are those of these individuals
and not necessarily the Federal Trade
Commission or any particular Commissioner
or the United States government)

Eleanor Fox
New York University School of Law

April 2005