



**DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY**

COM/DAFFE/DSTI/CP/WD(2003)90
For Official Use

INTERFACE OF COMPETITION AND CONSUMER POLICIES

-- Note by the US Federal Trade Commission --

This note is submitted by the US Federal Trade Commission FOR DISCUSSION at the joint meeting of the Competition Committee and the Committee on Consumer Policy on 16 October (starting at 3 mp).

JT00150898

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

1. We appreciate the opportunity to submit this paper in preparation for the upcoming joint session of the OECD Competition Committee and OECD Committee on Consumer Policy. We believe it is important for delegates of the two Committees to have an ongoing dialogue because competition policy and consumer protection policy share a common goal: enhancing consumer welfare.

2. Competition policy and consumer protection policy are key to the American economic system. These disciplines should enhance consumer welfare by fostering a vigorous, competitive marketplace that gives consumers greater choice and leads to greater availability of products with the qualities desired by consumers at the lowest prices. Strong competition benefits consumers by encouraging new market entrants and creating incentives for innovation. It also benefits consumers by motivating sellers to provide more truthful, useful information about their products and driving them to fulfil promises concerning price, quality, and other terms of sale.

3. At the same time, robust competition alone is not enough to maximize consumer welfare. Consumer willingness to participate in the marketplace also depends on their confidence in a marketplace that is safe and will provide them with value. Whether these conditions exist in turn depend on the ability of institutions to enforce the basic rules governing transactions, and on the ability of consumers to make informed choices. For example, consumer decisions may be affected by deceptive or incomplete information that even a competitive marketplace will not completely deter. Consumer protection policy

seller to satisfy consumer preferences. Competition does more than simply increase choices for consumers, however. It motivates sellers to provide truthful, useful information about their products and drives them to fulfil promises concerning price, quality, and other terms of sale. Consumers can punish a seller's deceit or failure to fulfil a promise by voting with their feet - and their pocketbooks. This punishment is usually swift for sellers of products purchased frequently whose qualities purchasers can readily evaluate.

7. For products purchased infrequently, for which an individual consumer cannot usually rely on personal experience to evaluate a seller's truthfulness, private institutions can help provide the information that augments or substitutes for such experience. For example, third-party evaluations, such as Consumer Reports or Test d'Achats magazine, provide information on cars and appliances, which an average consumer may buy once every five, ten, or even twenty years. In addition, rivals may emphasize the gap between a competitor's promises and the product it delivers. Reputation is also important to sellers, and items like company brands and logos implicitly convey quality and other important product information.

8. Sometimes robust competition alone will not punish or deter seller dishonesty or renegeing. For products called "credence goods," consumers cannot readily use their own experiences to assess whether the seller's quality claims are true. Typical consumers know whether a food product "tastes great;" they cannot judge whether consuming the same product reduces the risk of cancer or whether the cost of a car repair included items not necessary to restore the vehicle to its full capacity. Private rating systems help. The concern of national firms that their reputations would be severely damaged through exposure of deceit or fraud also helps. Nevertheless, when information is costly to produce and to use, these market mechanisms will not correct all problems. Moreover, in certain circumstances, competing firms may not have strong incentives to identify their rivals' misrepresentations if it would highlight a deficiency common to all such products.

9. For credence goods, the market may not identify and discipline a deceptive seller because the product's qualities are so difficult to measure. Legitimate companies care about how consumers regard them. They count on repeat business and word-of-mouth endorsements to increase sales. By contrast, the commercial thief loses no sleep over its standing in the community and is unconcerned about repeat business. Those committing fraud cheat consumers, grab the revenues, and disappear from sight, often to

consumers of their honesty. Even if honest suppliers take such precautions to show their trustworthiness, some consumers may avoid purchases that otherwise would improve their well-being. By striving to keep sellers honest, consumer protection policy does more than safeguard the interests of the individual victim - it serves the interest of *consumers* generally and facilitates competition.

19. Under the FTC Act and similar laws enforced at the national, state, and local level, enforcement agencies seek to stop unfair or deceptive acts or practices, thereby helping to reinforce the legal rules of exchange. Simply stated, the core of modern consumer protection policy is to protect consumer sovereignty by attacking practices that impede consumers' ability to make informed choices, such as fraud, unilateral breach of contract, and unauthorized billing. As discussed above, resort to courts for enforcement against harmful consumer transactions often does not work well when many consumers suffer small injury. While private class actions can provide some relief for class members, public enforcement action can be undertaken in the interest of all consumers, free from the conflicting incentives in current class actions. In addition, administrative agencies like the FTC have developed areas of expertise, such as interpreting implied claims in advertising, that provide an advantage over courts when ruling on consumer matters involving certain complex issues. The Commission also can go beyond enforcing a particular contract provision to provide "rules of the game" that reduce consumer harm in the future. The Commission can establish new default rules and procedures for transference of rights when it is otherwise difficult to do so.

II. Examples of the Intersection of Competition and Consumer Protection

A. *Comparative Advertising*

20. Comparative advertising provides a clear example of how advertising can implicate both competition and consumer protection issues. A company engages in comparative advertising when it claims that its own product is superior in price or other attributes to the products of its competitors, *e.g.*, "A is 10% cheaper than B," or "Brand X has fewer calories than Brand Y." Up until the late 1970s, many trade associations in the United States prohibited or discouraged the use of comparative advertising.

21. In 1979, after conducting an extensive study, the FTC concluded that:

Comparative advertising, when truthful and non-deceptive, is a source of important information

The use and communication of sales promotions contribute to the growth and development of all businesses in the Community; they are particularly important tools for small and medium-sized enterprises who rely on such affordable practices as inputs and outputs to develop their cross-border activities; such promotions therefore stimulate competitiveness in the European economy and accordingly allow consumers to benefit from greater choice and competitive prices.¹¹

27. Similarly, the Communication from the Commission introducing the Proposed Regulation states that

As regards distortions in competition, certain general bans on types of sales promotions may give rise to appreciable distortions of competition. For example, the fact that premiums are prohibited in some Member States and authorised in others prevents certain businesses, notably in the area of direct marketing, from entering these markets, with considerable repercussions on the competitive conditions for undertakings associated with such operations.¹²

28. Conversely, the pitfalls associated with lack of price advertising have been pointed out in a recent study conducted by the U.K. Office of Fair Trading on competition in the dentistry industry.¹³ The study reported that, among problems that the U.K. Consumers' Association identified with the dentistry industry

competition agencies realized they had to work together, on a bilateral and multilateral basis, to fight the proliferation of international cartels. Competition authorities endorsed an OECD Recommendation against hard-core cartels.²⁰ This step, among others, encouraged legislative reform and spurred enforcement by myriad jurisdictions, and improved cooperation and information sharing among enforcement authorities.

36. In consumer protection, the rise of cross-border fraud necessitates similar cross-border cooperation. In cross-border fraud cases, we face many of the same challenges we faced in our international cartel program at its inception. To stem the tide of cross-border fraud, we can borrow many tools used to enhance international cooperation against hard-core cartels and other anticompetitive practices. These tools include legislation to allow greater cooperation and information sharing, increased enforcement cooperation, more bilateral agreements, and more multilateral initiatives. A prominent example of an initiative in the cross-border fraud area that tracks our work in the anti-cartel area is the OECD Guidelines on Protecting Consumers From Fraudulent and Deceptive Practices Across Borders.²¹ Just as the OECD Recommendation on Cartels set forth a commitment to enforce anti-cartel laws, the Guidelines express a commitment among OECD member countries to cooperate on combating fraudulent and deceptive practices. In the United States, we have begun to implement these Guidelines to ensure that the FTC has the tools it needs to combat cross-border fraud. In June, the FTC proposed legislation to Congress that would make it easier for it to share information and cooperate with its counterparts abroad.²²

III. Conclusion

37. We believe that competition and consumer protection policies should have the same goal of improving consumer welfare. There may be multiple ways to ensure that competition and consumer protection policy work together. (the)10.9(r)-2.3(Exp)12.6(e)0(r)8.6(i)-2.9(en)12.6(ce ha)10.9(s sh)12.6(o)12 Borders, C (2003)116 (June 2003), *available at* <<http://www.oecd.org/sti/crossborderfraud>

²²

See S. 1234, 108th Cong. (2003); H. 3143, 108th Cong. (2003).