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**Report to**

Scrutiny Co-ordination Committee  
Cabinet  
Council

14<sup>th</sup> September 2005  
20<sup>th</sup> September 2005  
1<sup>st</sup> November 2005

**Report of**

Director of City Services

**Title**

Response to the Hampton Review and the Creation of the Consumer and Trading Standards Agency (CTSA)

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**1 Purpose of the Report**

- 1.1 The purpose of this report is to provide Elected Members with the background to the Hampton Review, its aims and key recommendations. Also, for Elected Members to consider the CTSA, and its potential impact on the local authority Trading Standards service. The report also provides responses to the consultation on the proposed CTSA to the Department of Trade and Industry (dti).
- 1.2 The CTSA would have a number of functions and powers in order to help to achieve the Hampton Reviews key aims, specifically of reducing the burden on businesses, and co-ordinating regulatory activities. This report has listed those likely to have the most impact on Trading Standards Services within Local Authorities. The consultation document is concerned with authority perceptions of both the CTSA's proposed powers and function, but also its structure, set up and relationship to Local Authorities and Government Agencies.
- 1.3 Responses to the Department of Trade and Industry (dti) consultation document are attached as Appendix A of this report.

**2 Recommendation**

- 2.1 In order to facilitate wider Member consideration, Scrutiny Co-ordination Committee are asked to consider this report and to convey their comments as appropriate to Cabinet.
- 2.2 Having appropriately considered the comments made by Scrutiny Co-ordination Committee, Cabinet is requested to recommend to Council that it;
  - Notes the key recommendations of the Hampton Review and potential impact on Trading Standards Services.
  - Examines the suggested responses to the consultation and agrees the final response to be returned to the dti.

### **3 Information/Background**

- 3.1 In the Budget 2004, the Chancellor asked Phillip Hampton to identify ways in which the administrative burden of regulation on businesses could be reduced, while maintaining or improving regulatory outcomes. The final report – "Reducing Administrative Burdens: effective inspection and enforcement" provided 35 recommendations for meeting this goal.
- 3.2 The reviews scope included; the Environment Agency, HSC/E, Financial Services Authority, Rural Payments Agency, Food Standards Agency, English Heritage, Maritime and Coastguard Agency, VOSA, Driving Standards Agency, State Veterinary Service, Environmental Health and Trading Standards.
- 3.3 Recommendations can be split into 5 broad categories; improvements to risk assessment, improvements to advice, reductions in form filling, improvements to the penalty regime and changes to the regulatory structure, with consolidation of some national regulators and the creation of Consumer and Trading Standards Agency.
  - 3.3.1 Improvements to Risk Assessment; the report suggested that an effective system and use of risk assessment would ensure regulators take proper account of the nature of businesses, leading to a reduction in the requirement and number of inspections.
  - 3.3.2 Improvements to Advice; the report identified the need for proper advice, with benefits ranging from reducing the time taken for businesses to comprehend the regulations, to increasing the probability of compliance.
  - 3.3.3 Reductions in form filling; the report suggests addressing the amount of forms regulators pass to businesses and the time taken to fill in forms. Businesses, especially smaller ones, spend too much time and resources on form filling.
  - 3.3.4 Improvements to the Penalty Regime; the report provided recommendations with the view to ensuring businesses and regulators have an interest in proper sanctions against illegal activity, in order to prevent businesses operating outside the law to gain competitive advantage.
  - 3.3.5 Changes to the Regulatory Structure; the report recommends changes to the complicated regulatory structure, with the consolidation of some national regulators into groups with principle themes;
    - Consumer Protection and Trading Standards
    - Health and Safety
    - Food Standards
    - Environmental Protection
    - Rural and Countryside Issues
    - Agriculture Inspection; and
    - Animal Health.

The report also recommends the creation of the CTSA.

- 3.4 There may be further implications for other services across the City Council of the consolidation of national regulators. However, at this time, the specific implementation timetable of the recommendations, or their specific remit is not known.

## 4 Creation of the CTSA

- 4.1 The report recommends the creation of the CTSA on the following grounds;  
" In the area of Consumer Protection and Trading Standards, there is a multiplicity of local providers, and some major national interests, but no clear co-ordinating body. The lack of strategic focus on trading standards, outlined in the analysis of local authority performance, is partly attributable to this, as is the lack of joining up on issues such as the provision of generic advice to businesses and the general public. While there have been considerable advances in coordination in this area, led by the dti and the Local Authorities Coordinators of Regulatory Services (LACORS), the review believes that coordination can go much further." (The Hampton Review, p64, 4.47 - Final Report).
- 4.2 The review proposes the role of the CTSA to be as follows;  
"The review recommends that a new body should be created at the centre of Government, to coordinate work on Consumer Protection and Trading Standards. This body would have the lead policy responsibility for Trading Standards nationally. It would have the responsibility of overseeing the work of local authorities on Trading Standards issue, as the Food Standards Agency does in respect of food." (The Hampton Review, p64, 4.48– Final Report).
- 4.3 The review sees two possible structures for the new body, either a wholly new body could be created, or it could be based within the existing Office of Fair Trading. However, the review recommends further consultation (with authorities, consumer groups and the Office of Fair Trading) before a decision is made on the exact structure of the organisation.
- 4.4 A key believe of the review is that a lack of guidance and support from central government is responsible for inefficiencies in the current provision, and the burden of regulatory activity on businesses; "The review...also believes that a more strategic central role on trading standards will improve the quality of regulation and of risk assessment at local level." (4.64, p67).
- 4.5 Comparisons are also made with the Consumer Direct service, and the regional approach to consumer advice "...the review believes there is the case for greater central funding for advice services, as has happened (in consumer advice) with the dti's Consumer Direct programme."(2.62, p36).

### **Powers of the CTSA**

- 4.6 The CTSA would have considerable powers with regard to the coordination of performance frameworks to secure minimum standards for Trading Standards.
- 4.7 Currently the government envisages the CTSA having similar powers as the Food Standards Agency (FSA). The relevant powers of the FSA are;
- Require information from Local Authorities and publish the information
  - Set standards either generally for Local Authorities or for particular Local Authorities (enforcement issues)
  - Make a report to an authority relating to their performance including guidance on how to improve
  - Direct an authority to publish a report as indicated above and respond as to what action has been taken to improve
  - Inspect records and take samples of documents if applicable
  - Take over enforcement in a Local Authority if it believes that the Authority is failing in its duty. (This will only be for area's of legislation in which the CTSA has an interest.

- 4.8 In line with Hampton's recommendations, the CTSA will coordinate all aspects of the work of the Trading Standards Service previously overseen by the dti (relating to fair trading, product safety and weights and measures). It is anticipated that the CTSA will co-operate with the proposed Animal Health Agency, HSE and the Food Standards Agency to ensure that they are 'joined up' in their dealings with Local Government's Trading Standards Service. The dti accept that there will have to be local discretion to allow Local Authorities to respond to local issues.
- 4.9 Hampton's recommendations did not address work commonly carried out by the Trading Standards Service, which falls to the remit of a number of other key government Departments including the Home Office (underage drinking, doorstep crime) and the Department of Health (tobacco advertising). Their views will need to be considered along with those raised in 4.8 above if the CTSA is to achieve its' objective of providing a single, prioritised list from Central Government for the Trading Standards Service.

## **5 Potential Impact on Trading Standards Services**

- 5.1 Currently the information available does not give detailed information on either the structure of the CTSA (stand alone or within the OFT) or it's precise remit. Therefore it is difficult to know the potential impact on local authority Trading Standards, however, we are generally supportive of the creation of an appropriate performance framework and the creation of minimum standards, which the CTSA should deliver.
- 5.2 If the function of the CTSA will be to provide leadership and coordinate and prioritise the work of Trading Standards, we would need to assured that there will be a close working relationship between other government departments and agencies whose work falls outside of the remit of the CTSA, in order to ensure that bureaucratic burdens in terms of priorities and reporting arrangements are not passed to Local Authorities.
- 5.3 There would need to be close working relationships between the CTSA and local authorities. An appropriate performance framework and setting of minimum standards would rely upon input from Local Authorities. Also, if the CTSA were to become involved in enforcement of activities, close attention would have to be paid to the interface between the CTSA and the consumer in order to ensure consumer participation, local accountability and responsiveness is not lost.
- 5.4 The reference to the agencies ability to intervene and take over local authority functions raises some cause for concern. Clear guidance about how this would be operated would need to be put in place. This would need to include evidence of the local authorities total failure and not merely a preference for other methods of working. There would also need to be clarity regarding how the CTSA would interface with consumers if it were to intervene and take over functions.
- 5.5 Further clarity is necessary with regard to the CTSA and the Home Authority principle. Currently, we feel option 3 would be best at achieving increased consistency. However, we feel that this option, that the CTSA would undertake the same role as carried out by Home Authority could create a two tier inspection regime, due to the CTSA not having the remit for all an authorities enforcement powers and increase the inspection burden on businesses. It would also be very difficult for the CTSA to ensure the consistency of all inspectors. Crucially though, the proposal again reduces local accountability and limits the access and potential redress of consumers.

5.6 The precise functions and therefore ability for the CTSA to deliver Hampton's recommendations are not known. The benefits of an enabling leadership body, as the Environment Agency is a national co-ordinating body for environmental crime issues, would have advantages to the Trading Standards service, businesses and consumers. However, the report raises concerns over the scope of the CTSA to deliver services and be involved with enforcement activity. Local accountability and responsiveness, combined with national standards will give the best service to both businesses and consumers.

## 6 Proposal and Other Option(s) to be Considered

6.1 Cabinet should note that the response may be published by the dti.

## 7 Other specific implications

7.1

	<b>Implications (See below)</b>	<b>No Implications</b>
Area Co-ordination		✓
Best Value		✓
Children and Young People		✓
Comparable Benchmark Data	✓	
Corporate Parenting		✓
Coventry Community Plan		✓
Crime and Disorder	✓	
Equal Opportunities		✓
Finance	✓	
Health and Safety		✓
Human Resources		✓
Human Rights Act		✓
Impact on Partner Organisations	✓	
Information and Communications Technology		✓
Legal Implications	✓	✓
Property Implications		✓
Race Equality Scheme		✓
Risk Management		✓
Sustainable Development		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

The creation of the CTSA could potentially have the following implications;

## 7.2 **Comparable Benchmark Data**

Part of the proposed remit of the CTSA would be the implementation of a performance framework and minimum standards for Trading Standards services. This would lead to increased benchmarking ability between authorities.

## 7.3 **Crime and Disorder**

The creation of the CTSA could have a positive impact on enforcement, specifically with regard to its role as distributor of recovered assets; also any work to improve the penalty regime would be welcomed. However, it is not yet clear how the CTSA would exercise this role, especially with regard to a new incentive scheme operated by Trading Standards officers 06/07 which is unrelated to the CTSA, and it is difficult to speculate on its impact on trading standards at this time.

## 7.4 **Finance**

Again it is difficult to speculate on financial implications until the role and exact functions of the CTSA are specified. However, there is the potential for the CTSA to impact on the amount of resources necessary within the Trading Standards.

## 7.5 **Impact on Partner Organisations**

In effect, the CTSA will add another tier to the regulatory system, and could impact on the work of LACORS and potentially the Central England Trading Standards Authorities Partnership (CEnTSA), possibly, to further consolidate their role. The CTSA will also impact on organisations like Citizens Advice, it is hoped this will be a positive impact and give Citizens Advice and others a louder voice.

## 7.6 **Legal Implications**

If the CTSA did assume a service delivery role, especially with regard to enforcement there are possible legal implications as local authority Trading Standards could potentially lose inspection and enforcement powers.

## **8 Timescale and expected outcomes**

- 8.1 The consultation period ends on the 12<sup>th</sup> October 2005. However, dti are aware that due to the political process Elected Members will not have had opportunity to comment on the consultation until 1<sup>st</sup> November 2005 and are willing to except amendments and further views on the consultation.

## List of background papers

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### Papers open to Public Inspection

Reducing Administrative Burdens: effective inspection and enforcement. March 2005. Philip Hampton.

Reducing Administrative Burdens: the Consumer and Trading Standards Agency. Consultation Document. 05 July 2005. dti

## Appendix A

Consultation response to the questions issues in the dti consultation "Reducing Administrative Burdens – the Consumer and Trading Standards Agency (CTSA)"

### Chapter 3 - Powers of the CTSA

**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 the powers unnecessary?**

We recognise that powers listed are necessary in order to develop a more flexible and effective performance framework co-ordination at local, regional and national level. We also recognise that variations in service quality do exist, and that an appropriate performance framework could address this. We would hope that this would entail raising of standards, the strengthening of local Trading Standards Service and stronger local accountability, rather than weakening local participation and accountability and, consequently, service standards.

An effective performance framework and introduction of minimum standards should enable improved consistency and should offer benefits to both business and consumers. Such a framework and development of minimum standards should be developed in conjunction with local authorities, LACORS and the LGA. A partnership approach to the setting of minimum standards should ensure that the local authorities are not increasingly burdened with bureaucracy due to such a measure, and have clear guidelines as to their role in relation to enforcement and advice.

With regard to the final power; "(to) take over enforcement in a Local Authority area if it believes that the Local Authority is failing in it's duty", whilst the authority accepts that in exceptional circumstances this may sometimes be necessary, we would wish to have further clarification of what "failing" would entail, the process of deciding a failing authority, who would be responsible (and the possibility of peer review) and what would be grounds for appeal/regaining control of enforcement activity. We would expect such information would clarify that such powers would only be used sparingly. Also, if such an incidence was to occur, what would be the impact or interface with consumers and the CTSA, and how would this impact on local accountability?

**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.**



There would need to be further clarification on the role of the CTSA with regard to delivering the reduction in burdens on business and delivering efficiency before detailed comment. However, as stated above, the introduction of minimum standards would improve consistency.

There are certain key areas of Trading Standards work that do not fall under the remit of the CTSA, i.e. under age sales, community safety and tobacco advertising, which currently fall under the remit of other central government departments. Also, there are differences with the remits of different types of authorities, for example, metropolitan authorities are not responsible for petroleum licensing and explosive storage and licensing, this falls to the Fire Authorities, therefore the CTSA would have no power over this in certain authorities.

There would need to be coordination of priorities and reporting arrangements between the CTSA and the Home Office for example, in order to reduce demands placed on Local Authorities and facilitate improvements to delivery. There would also need to be room within such a framework for the prioritisation of local issues within authorities, otherwise we would be very concerned at a reduction in participation and local accountability, which would negatively impact on the service.

In the short term, with regard to requirements for information and the establishment of standards, there will be an increased bureaucratic burden on Local Authorities. The failure of government agencies to co-ordinate priorities and demands on local authorities would increase this burden.

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

This question is not applicable.

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

We envisage the CTSA employing the power to take over enforcement duties in an area only as a last resort. The new agency should seek to work with and through local authorities at local and regional level, through local government and trading standards groups, in the first instance to address emergent issues and problems.

## **Priority Setting for the Trading Standards Service**

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

This issue requires further clarification, as at this time, the coordination between central government departments and the CTSA in setting priorities and demands on local authorities is not known, and we are concerned that the process does not allow sufficient ownership to local authorities, and local people.

## **Consistency of Inspection and Enforcement**

### **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?**

There is a necessity for a definition and clarity about what is being implied. The practical, financial and accountability implications of the CTSA adopting an enforcement approach to "national" businesses raises concerns.

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

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

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

Combined answer to questions 7, 8 and 9

Whilst we agree that of all the options Option 3, would be the most effective in achieving increased consistency, we feel the proposal, in effect would create a National Trading Standards Service, albeit with services outside of the remit of the CTSA still belonging to Local Authorities, for example under age sales, and tobacco advertising. This could increase the number of inspections businesses are subject to, because an increased number of agencies (not reduced as the Hampton Review proposes) are required to inspect them subject to issue. There is also the concern that such a two tier system of inspection and enforcement could lead to a negative system of priorities, i.e. the CTSA placing more importance on the standards within their remit to inspect and would it would be difficult to achieve consistency between inspectors.

Crucially though, the proposal again reduces local accountability and limits the access and potential redress of consumers. How would the CTSA propose to interface with local consumers? Is it envisaged that local Trading Standards advice officers would still deal with local branches of national/regional companies. The ability of Consumer Direct to enable consumers to pursue redress will not be sufficient. Local responsiveness could also be lost.

Central co-ordination of Trading Standards services, and an effective performance management framework could achieve the stated outcomes of improving consistency, efficiency and enforcement, subject to an agreed definition of national businesses. Local accountability and responsiveness, combined with national standards will give the best service to both businesses and consumers.

### **Quality Assurance of third party alternative dispute resolution (ADR) schemes**

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

Yes.

### **Cross border scams**

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

Yes.

### **Representative action**

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

Yes.

### **Option 1- The CTSA as a wholly new body**

**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?**

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

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

**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.

17. Are there any other relevant factors that we should consider?
18. Do you agree with our recommendations on the likely effectiveness of these measures?
19. What combination of these measures do you think would be most effective in embedding the consumer/ competition link in the CTSA?
20. Are there other measures you can identify that could be effective in maintaining this link?
21. How far do you think the link between consumer and competition issues should be embedded within the organisations? Is a link at senior level sufficient, or should there be links between the CTSA and the OFT at all levels?
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?

#### Option 2- the CTSA as part of the OFT

23. Do you think the link between consumer and competition enforcement is made satisfactorily in the OFT at present? Is it working effectively?
24. Can you think of ways in which this link might be strengthened if the CTSA were to be formed within the OFT?
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 your reasons for your views?
26. What would be the most effective means of achieving the cultural change needed to create a successful CTSA?
27. Can you see other advantages/ disadvantages of this approach?
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 costs and benefits that you may incur as a result of these proposals.
29. Are there any other relevant factors that we should consider?

Combined answer to questions 13-29

We believe that there would be many benefits to Trading Standards Services of a body such as the CTSA, and see that it potentially could facilitate recommendations of the Hampton Review, and improve the efficiency and consistency of Trading Standards enforcement and advice, especially through the creation of a robust and appropriate performance framework and minimum

standards. However, at this time there is no clarity of the overall role of the CTSA, or key principles that should guide its functions and dealing with local authorities. Without this, we find it difficult to comment on proposed structures, and costs.

We need further clarity of the exact remit of the CTSA; is it a leadership body, giving clarity of standards and prioritisation, liaising with other Government departments and agencies to ensure prioritisation and co-ordination, and promoting Trading Standards throughout Government and to business and consumers? Or will it be a service delivery body, with enforcement powers?

We would also need clarity on its key aims, and for the protection of consumers to be central to these aims. There is a need for the CTSA to be guided by some central principles, including;

- Strong partnership focus – both within government and with local authorities
- Limits and clear guidelines on the use of powers
- To be consulting and inclusive
- Ensure the high profile of Trading Standards within Government
- Ensure prioritisation of consumer participation, local accountability and local responsiveness.
- Ensure that consumers and the protection of consumer's guides key policy and strategic decisions.

It is difficult, other than perhaps cost and structural implications to see how different, or effective the CTSA would be dependent on being a stand-alone agency or part of the OFT. There would perhaps be increased inference of how seriously the government takes Trading Standards issues if the CTSA would be stand-alone. Also, the CTSA would need to have a close relationship with government, and a strong ministerial link. We would question the link between the OFT and government currently, but feel there should be no reason why an effective link could not be established with either option one or option two.

In order to comment in detail on both options, we would need further detail on the roles and functions of the CTSA and OFT, both if the CTSA were to sit within OFT, or they were separate bodies. Both options have advantages and disadvantages, and both could potentially achieve the recommendations of the Hampton review. However, at this time we do not have enough information to state a preference or comment in detail. The benefits of an enabling leadership body, as the Environment Agency is a national co-ordinating body for environmental crime issues, would have advantages to the Trading Standards service, businesses and consumers. We would wish to reiterate our preference of principles that should guide the functions of the

CTSA, particularly strong partnership working and, most importantly, the fact that the consumer and consumer protection (linked to competition) should be the key concern, and any changes made to Trading Standards services positively impacting businesses, should be passed to the consumer.

### **Annex C- Partial RIA**

#### **30. Do you agree with the costs and benefits of the options for setting up a new CTSA? Where possible, please provide quantifiable evidence.**

As stated above, we do not feel we have enough information at this time to comment on proposed benefits, and particularly feel we are not qualified to comment on proposed financial costs, although agree setting up the CTSA as part of the OFT will probably cost significantly less.

We would, however, like to comment that in both Option 1 and Option 2 consumer benefits are reliant on consumers receiving trickle down benefits from businesses (i.e. the easier identification of rogue traders), better prioritisation of Trading Standards work loads and reliance on Consumer Direct and technologies to ensure increased reactions to potential areas of consumer detriment. We feel that currently the only interface between the CTSA (in either option) with the consumer, in order to set priorities, is through Consumer Direct. Whilst we are fully supportive of this initiative and feel it could be of great benefit to government, businesses and consumers, we believe this is a great reliance on an initiative that is not yet nationally launched. In addition a number of large authorities (Glasgow and Birmingham for example) are currently not fully engaged with Consumer Direct. In both options the CTSA is in danger of losing vital consumer participation, and local accountability.

#### **31. Do you agree with the costs and benefits of the options for a redress function within the CTSA? Where possible, please provide quantifiable evidence.**

As stated in questions 10, 11 and 12 we are generally supportive of the CTSA's proposed role with regard to consumer redress. Again, although we agree that such a role would be costly, we do not feel qualified to comment on proposed costs. We would like to add that such a consumer redress role, especially with regard to representative action, needs to be combined with the CTSA ensuring cohesive, coordinated and better consumer advice, and ensuring a robust interface with consumers.

#### **32. Do you agree with the costs and benefits of the options for improving the consistency of inspection? Where possible, please provide quantifiable evidence.**

Again, we would like further information before commenting in detail. However, in general we feel the benefits/costs for improving the consistency of inspection with regard to the Home Authority principle do not sufficiently address the potential for businesses facing increased inspection (sub option iii) due to inspections taking place outside of the CTSA's remit. The potential impact on Local Authority Trading Standards services; all options are reliant on coordination and prioritisation in order to ensure burdens are not passed to Trading Standards services; there are also resource implications. Finally, and most importantly, we do not feel the options adequately address the need for consumer interface and local accountability.

**33. Do you agree with the costs and benefits of the options for maintaining the consumer/competition link? Where possible, please provide quantifiable evidence.**

We would agree that the link between consumer and competition must be maintained, and feel that creation of a separate body may undermine the balance currently maintained, satisfactorily, by OFT. The costs and benefits outlined would seem to adequately reflect the advantages and disadvantages.