EXPLANATORY MEMORANDUM TO THE

SPECIFIED BODY (CONSUMER CLAIMS) ORDER 2005

2005 No. 2365

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order designates the Consumers' Association (CA) as a specified body to bring proceedings for claims for damages before the Competition Appeals Tribunal (CAT), on behalf of a group of two or more named individuals.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

None

4. Legislative background

4.1 This Order is made under Section 47B of the Competition Act 1998, which was inserted by section 19 of the Enterprise Act 2002, and which allows the Secretary of State to designate a specified body in accordance with criteria published by the Secretary of State. These criteria, which were published on the DTI website on 31st March 2003, are:

i) The body is so constituted, managed and controlled as to be expected to act independently, impartially and with complete integrity;

ii) The body is able to demonstrate that it represents and/or protects the interests of consumers. This may be the interests of consumers generally or specific groups of consumers;

iii) The body has the capability to take forward a claim on behalf of consumers;

iv) The fact that a body has a trading arm will not disqualify it from being able to bring consumer group claims, provided that the trading arm does not control the body, and any profits of the trading arm are only used to further the stated objectives of the body.

5. Extent

This instrument applies to the United Kingdom.
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6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 The consumer group claim process has been set up with the aim of strengthening the voice of consumers. A specified body is able to bring proceedings for claims for damages before the CAT on behalf of a group of two or more named individual consumers.

7.2 Such claims may be brought before the CAT in respect of specific infringements (set out in the Act) which concern agreements, decisions and concerted practices which have the object or effect of preventing, restricting or distorting competition, and conduct which amounts to the abuse of a dominant position. Claims may only be brought before the CAT after the OFT or European Commission (or the CAT on appeal from the OFT) has ruled that an infringement has taken actually taken place.

7.3 For a specified body to take a claim to the CAT on behalf of a group of consumers, each consumer must give his or her consent to the claim being brought by the specified body, and the claims must relate to the same infringement of competition law. In particular, the infringement that is relied upon must relate to goods and services that were received (or sought to be received) by the claimant otherwise than in the course of a business. Provided these conditions are met, it is also possible for existing claims being taken by individual consumers to be taken over by a specified body and dealt with together.

7.4 Any damages awarded by the CAT will be ordered to be paid directly to the represented consumers individually. Where the CAT is satisfied that all the individuals and the specified body are in agreement, it may order the damages to be paid to the specified body who will then enforce the award on behalf of the represented consumers.

7.5 Bodies wishing to be designated as a specified body can submit their applications to the Department, which are then considered against the criteria. An application under section 47B(10) of the Enterprise Act 2002 may be made in the form of a letter addressed to the Secretary of State setting out the information required. Applications are posted on the Department's website for 12 weeks to provide a transparent process.

7.6 Public interest in the designation of CA is likely to be low.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies. A full Regulatory Impact Assessment however was prepared for the Enterprise Act, a copy of which was placed in the Libraries of the House of Commons and House of Lords.

8.2 There is no impact on the public sector.

9. Contact

John Madill (020 7215 2132), Consumer and Competition Policy, Department of Trade and Industry, can answer any queries regarding the instrument.