

HOUSE OF LORDS

European Union Committee

3rd Report of Session 2007–08

Protecting the consumers of timeshare products

Report with Evidence

Ordered to be printed 11 December 2007 and published 18 December 2007

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 18

The European Union Committee

The European Union Committee is appointed by the House of Lords “to consider European Union documents and other matters relating to the European Union”. The Committee has seven Sub-Committees which are:

Economic and Financial Affairs, and International Trade (Sub-Committee A)
Internal Market (Sub-Committee B)
Foreign Affairs, Defence and Development Policy (Sub-Committee C)
Environment and Agriculture (Sub-Committee D)
Law and Institutions (Sub-Committee E)
Home Affairs (Sub-Committee F)
Social Policy and Consumer Affairs (Sub-Committee G)

Our Membership

The Members of the European Union Committee are:

Lord Blackwell	Lord Mance
Baroness Cohen of Pimlico	Lord Plumb
Lord Dykes	Lord Powell of Bayswater
Lord Freeman	Lord Roper
Lord Grenfell (Chairman)	Lord Sewel
Lord Harrison	Baroness Symons of Vernham Dean
Baroness Howarth of Breckland	Lord Tomlinson
Lord Jopling	Lord Wade of Chorlton
Lord Kerr of Kinlochard	Lord Wright of Richmond
Lord MacLennan of Rogart	

The Members of the Sub-Committee which carried out this inquiry (Social Policy and Consumer Affairs, Sub-Committee G) are:-

Earl of Dundee	Lord Moser
Lord Eames	Baroness Neuberger
Baroness Gale	Baroness Perry of Southwark
Baroness Greengross	Baroness Thomas of Walliswood
Baroness Howarth of Breckland (Chairman)	Lord Trefgarne
Lord Kirkwood of Kirkhope	Baroness Uddin
Lord Lea of Crondall	Lord Wade of Chorlton
Baroness Morgan of Huyton	Baroness Young of Hornsey

Information about the Committee

The reports and evidence of the Committee are published by and available from The Stationery Office. For information freely available on the web, our homepage is:

http://www.parliament.uk/parliamentary_committees/lords_eu_select_committee.cfm

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at

http://www.parliament.uk/about_lords/about_lords.cfm

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW

The telephone number for general enquiries is 020 7219 5791.

The Committee's email address is euclords@parliament.uk

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
FOREWORD—what this Report is about		6
Chapter 1: Setting the Scene	1	7
Why we did the Inquiry	1	7
How we conducted the Inquiry	8	8
Chapter 2: Historical Progress: the Timeshare Market, the UK and the EU	12	9
The timeshare industry in Europe	12	9
Box 1: What is “timeshare”?		9
Complaints and consumer satisfaction	15	9
Flaws in the 1994 Timeshare Directive	20	10
Chapter 3: Holiday Clubs and their Growth	24	11
Holiday Clubs	24	11
Box 2: What is a “Holiday Club”?		11
The Holiday Club “Web”	30	12
Chapter 4: Regulatory Issues	31	13
The Timeshare Directive and the Unfair Commercial Practices Directive	32	13
The review of the consumer <i>acquis</i>	37	13
Common Frame of Reference	41	14
The right type of legislation?	45	15
Conclusions and Recommendations	48	16
Chapter 5: Justification for Regulation	53	17
Timeshare and self-regulation	53	17
Scope for strengthening timeshare self-regulation	58	17
Holiday clubs and self-regulation	60	18
The EU dimension	62	18
Conclusions and Recommendations	64	18
Chapter 6: The right of withdrawal and the cooling-off period	69	20
Right of withdrawal	70	20
Charges where the consumer cancels	72	20
Harmonisation of withdrawal rights	73	20
Cooling-off period	74	21
Definition of a “day” in relation to the length of the cooling off period	80	21
Informing consumers of the cooling-off period	81	22
Conclusions and Recommendations	84	22
Chapter 7: Advance Payments during the Withdrawal Period	92	24
Conclusion and Recommendation	98	24
Chapter 8: Resale and Exchange	99	25
Introduction	99	25
Definition of resale	100	25
Cooling-off period for resale contracts	103	25
Proposed ban on advance fees for resale	104	25
Exchange schemes	108	26

Exchange schemes: cooling-off period and ban on advance payments	110	26
Fees paid by consumers for exchange services	116	27
Conclusions and Recommendation	117	27
Chapter 9: Provision of Information to the Consumer	122	29
What the Commission proposes	122	29
Language requirement (Article 3.4)	129	30
Long-term costs of ownership	130	30
Flexible timeshare points clubs	132	30
Conclusions and Recommendations	135	31
Chapter 10: Raising Public Awareness	139	32
Conclusions and Recommendations	143	32
Chapter 11: Enforcement and Sanctions	145	33
Experience to date and international co-operation arrangements	145	33
Injunctions Directive	151	33
Sanctions	153	34
A licensing scheme	155	34
Conclusions and Recommendations	157	35
Chapter 12: Redress	162	36
Judicial and administrative redress	162	36
Out-of-court redress	164	36
Conclusions and Recommendations	167	36
Chapter 13: Other Issues	170	37
Extension of scope to non-fixed properties	170	37
Extension of scope to shorter timeshares	171	37
Definitions	176	37
Multi-annual hotel reservations	178	38
Timeshare owners' rights	179	38
Termination and transfer of ownership	181	38
Review clause	183	38
Conclusions and Recommendations	184	39
Chapter 14: Summary of Conclusions and Recommendations	192	40
Regulatory Issues	192	40
Justification for Regulation	197	40
The Right of Withdrawal and the Cooling-Off Period	202	41
Advance payments during the withdrawal period	210	41
Resale and exchange	211	42
Provision of information to the consumer	216	42
Raising public awareness	220	43
Enforcement and Sanctions	222	43
Redress	227	43
Other Issues	230	44
Appendix 1: Sub-Committee G (Social Policy and Consumer Affairs)		45
Appendix 2: Call for Evidence		47
Appendix 3: List of Witnesses		49
Appendix 4: Glossary of Terms and Abbreviations		50
Appendix 5: Recent Reports		51

Oral Evidence

<i>The Timeshare Consumers Association</i>	
Written Evidence	1
Oral Evidence, 12 July 2007	3
Supplementary Written Evidence	12
<i>Organisation for Timeshare in Europe</i>	
Written Evidence	13
Oral Evidence, 19 July 2007	16
Supplementary Written Evidence	24
<i>Office of Fair Trading</i>	
Written Evidence	30
Oral Evidence, 26 July 2007	32
Supplementary Written Evidence	43
<i>Mr Gareth Thomas, Parliamentary Under-Secretary of State for Trade and Consumer Affairs, and the Consumer and Competition Policy Directorate</i>	
Oral Evidence, 18 October 2007	44
Supplementary Written Evidence (Department for Business, Enterprise & Regulatory Reform)	51
<i>Professor Geraint Howells, University of Lancaster, and Dr Christian Twigg-Flesner, University of Hull</i>	
Written Evidence	54
Oral Evidence, 25 October 2007	59
Supplementary Written Evidence	69

Written Evidence

Citizens Advice	72
Citizens Advice (Supplementary)	76
Group RCI	78
Andy Harris	81
Interval International	83
Local Authorities Coordinators of Regulatory Services and Trading Standards Institute	87
MEPs	92
Angus Murray	94
Tony Sedgwick	96
Shakespeare Classic Line Ltd	100
The Association of Timeshare Owners Committees	101
Timeshare Computer Link Ltd	106

NOTE: References in the text of the Report are as follows:
(Q) refers to a question in the oral evidence
(p) refers to a page of written evidence

FOREWORD—what this Report is about

Timeshare is especially popular amongst British consumers, and is a sector of the holiday market that has often come in for heavy criticism.

Through its 1994 Directive on timeshare, the European Community stamped out many of the worst excesses of the timeshare market by introducing a right of withdrawal, a cooling-off period and a ban on advance payments during the cooling-off period. The subsequent reduction in the level of complaints against timeshare illustrates clearly the success of the Directive in giving consumers some protection from aggressive and misleading sales practices, and thus making the timeshare market less attractive to rogue traders.

The 1994 Directive has not, however, been a complete success. It was open to some legislative loopholes that have been exploited by less scrupulous sections of the industry. New products have been developed to evade its provisions and the resulting cost to the UK consumer alone of such bad practice has been estimated at over £1 billion. There has also been a growth in fraud linked to the bogus resale of timeshare properties.

It is these issues, and others linked to scope and implementation, which the Commission is now seeking to address through its proposal for a broader directive, and in this report we consider that directive's strengths and weaknesses.

Our general view is that national legislation cannot deal adequately with the problems associated with the timeshare market and that EU-level legislation is therefore appropriate. While we make a number of recommendations relating to its detail, our conclusion is that the Commission has set out a good case for a new broader timeshare directive.

Protecting the consumers of timeshare products

CHAPTER 1: SETTING THE SCENE

Why we did the Inquiry

1. Timeshare is a worldwide phenomenon but it is one that has proved particularly popular with UK consumers as they seek holidays in warmer climates. Some 500,000 British families own a timeshare, of which around 20% are in the UK, and British residents represent one third of all timeshare owners in Europe (QQ 44–45). Moreover, the Commission’s impact assessment¹ noted that half of all timeshares in Spain are owned by UK residents.
2. There are no doubt many contented timeshare owners, both in the UK and elsewhere—although our witnesses disagreed about levels of satisfaction—but the history of the timeshare market has been far from a happy one. Indeed, before the adoption in 1994 of a European Community Directive² intended to provide timeshare consumers with protection, the sector was the largest single source of consumer complaints in the UK.
3. The number of complaints about timeshare has fallen substantially since the 1994 Directive was introduced. Numbers of complaints about long-term holiday clubs, however, have grown dramatically. The losses incurred by consumers are believed to be substantial, and the Office of Fair Trading (OFT) recently put holiday club fraud at the top of its priorities for investigation.
4. In order to address this problem, on 7 June 2007, the European Commission proposed to replace the 1994 EU timeshare legislation with a new directive which would improve the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange³.
5. Our inquiry had the aim of assessing, on the basis of evidence we received from a wide range of witnesses, how satisfactory the newly proposed directive is likely to be as a means of addressing the problems experienced by consumers.
6. The new directive is intended to close loopholes in the original Directive, increase the cooling-off period for purchases, provide better information for consumers, extend the scope to deal with new holiday products and address

¹ Commission staff working document: accompanying document to the Proposal for a Directive of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange: Impact Assessment SEC (2007) 743 07.06.2007, p. 13

² Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis. OJ L 280, 29/10/1994 p. 83–87

³ Proposal for a Directive of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange. COM (2007) 303, 07.06.2007

the problem of fraud associated with the resale of timeshares. The proposal also aims to harmonise the provisions in the 1994 Directive in order to improve the operation of the single market and to ensure greater consistency for consumers.

7. The proposed new timeshare directive would give consumers greater contractual rights. Consumers would be better equipped to deal with unsolicited approaches by sellers, some of which may involve misleading information and aggressive sales techniques. The new directive in itself does not, however, regulate the timeshare and holiday club industries or define what is, and what is not, good practice.

How we conducted the Inquiry

8. The Members of our Social Policy and Consumer Affairs Sub-Committee (Sub-Committee G) who conducted the inquiry are listed inside the front cover of the Report. In Appendix 1 we list the declared interests of Members in relation to the subject of the inquiry.
9. Our Call for Evidence is in Appendix 2. We are most grateful for the evidence that we received in response to this; and we thank, in particular, those witnesses who gave us evidence in person. Those who gave us evidence are listed in Appendix 3, and the evidence is printed with this Report.
10. We acknowledge with considerable thanks the expertise and hard work of our Specialist Adviser for the inquiry—Stephen Crampton—who played a key role in helping us to prepare the Report.
11. **We make this Report for the information of the House.**

CHAPTER 2: HISTORICAL PROGRESS: THE TIMESHARE MARKET, THE UK AND THE EU

The timeshare industry in Europe

12. The Organisation for Timeshare in Europe (OTE) told us that the industry is growing, albeit not as fast as in the 1990s, with the reduction in growth at least in part attributable to greater demand for second homes abroad (Q 45). Peter van der Mark, Secretary General, OTE, said that the number of timeshare owners in Europe had been fairly stable in recent years, with only one to two per cent annual growth overall. However, growth rates varied between countries (Q 51).
13. By contrast, Sandy Grey, Chairman of the Timeshare Consumers Association (TCA), told the Committee that there are 1.4 million timeshare ownerships in the EU and that ownership is declining at about 3% per annum, with resorts being closed for redevelopment as hotels and many timeshares becoming worthless: “For every one *How to Buy Timeshare* we send out, we send out 500 *How to Sell*, a clear indication of the lack of demand” (Q 1). The TCA said that there were eight or nine per cent fewer owners than five years ago (Q 13).
14. After strong and sustained growth in the 1970s and 1980s, the growth of the European timeshare market slowed down in the early 1990s, with the rate of increase in sales volumes falling further from 15% in 1996 to less than 5%: “this stands in strong contrast to the rest of the world” according to the Commission⁴.

BOX 1

What is “timeshare”?

Timeshare, as defined in the new directive, means a contract of more than a year under which a consumer acquires the right to use one or more places of accommodation for more than one period of occupation. It also covers “points clubs”, where “owners” hold points which entitle them to holiday accommodation from a pool of resorts.

Complaints and consumer satisfaction

15. Submissions to the Committee generally agreed that the 1994 Directive has, as the OFT told us, “put an end to the most problematic practices which were notorious in the timeshare industry” (Q 72).
16. The OTE said that consumer confidence had increased and that complaints had decreased (pp 13–16). It quoted a survey undertaken for it which said that 76% of respondents were happy or very happy with their timeshare (Q 57). Other witnesses, however, questioned whether consumers were as happy with their purchases as claimed. As the European Commission noted dryly, “Surveys purporting to assess the levels of consumer satisfaction in the timeshare industry tend to paint diverging pictures of market outcomes, usually depending on the source of the survey”⁵.

⁴ op.cit. p 14

⁵ op.cit. p 74

17. The OFT told us that complaints to trading standards departments and the OFT about timeshare peaked at over 11,500 a year in the early 1990s: by 2000, complaints to the OFT about timeshare had fallen to less than half of the peak levels.
18. From January to July 2007 there were 372 complaints or enquiries to Consumer Direct (the OFT's new advice line) about timeshare and 363 about timeshare resale (Q 72). Citizens Advice also reported a reduced number of timeshare complaints (pp 72–76). Tony Sedgwick (who for four years until 2006 was the CEO of the International timeshare resale association) referred to internet websites increasingly used by consumers with timeshare complaints, and which are not reflected in official statistics (pp 96–99).
19. The OFT pointed out that timeshare and holiday clubs are significant purchases, perhaps of £10,000 or more, and that consumer detriment could be high even though there are relatively small numbers of complaints (Q 72).

Flaws in the 1994 Timeshare Directive

20. Most submissions also agreed that the degree of prescription in the 1994 Directive had resulted in some negative consequences, in particular that some operators—described as “inventive entrepreneurs” (Q 72) but more often as “rogues” or “rogue traders”—had devised new products specifically intended to evade its provisions.
21. The word “rogue” was used widely in submissions and in oral evidence to the Committee to describe elements within the timeshare and holiday club industries. Gareth Thomas MP, Parliamentary Under-Secretary of State for Trade and Consumer Affairs, described these elements as “crooks and criminals” (Q 103). The forms of rogue trading discussed in this Report include misrepresentation, aggressive sales techniques and the defrauding of people of substantial sums of money.
22. The 1994 Directive only applies to timeshares of 36 months and over, leading to the development of so-called “trial period” timeshares of 35 months or less, as explained by Sandy Grey (Q 1). It also only covers immovable properties, thus excluding caravans, canal boats and cruise ship timeshares. The main unintended consequence of the 1994 Directive has been the development of long-term holiday products, sometimes known as holiday clubs. These are explored in the next Chapter.
23. Arlene McCarthy MEP, Chair of the Internal Market and Consumer Protection Committee of the European Parliament, said that her Committee “first raised the problems with existing timeshare legislation in November 2001”, leading to a hearing in the European Parliament and the adoption of a Resolution in June 2002 calling on the Commission to propose further legislation (pp 92–94). The Minister told us that the UK was “probably the lead nation pushing for a revised directive” (Q 97).

CHAPTER 3: HOLIDAY CLUBS AND THEIR GROWTH

Holiday Clubs

24. The OFT said that holiday clubs had been a growing market between 2000 and 2005, with five or six major players but dozens and dozens of marketing companies (Q 74).
25. Evidence to the Committee suggested that many of these schemes have been misrepresented, with consumers having been given an exaggerated picture of the availability of accommodation and travel discounts, and that consumers could in most cases have done better by shopping on the internet or through travel agents (Q 4).

BOX 2

What is a “Holiday Club”?

Holiday clubs, or long-term holiday products, as defined by the new directive, involve an advance payment by a consumer in return for the right to obtain discounts and other accommodation benefits, with or without travel or other services. They differ from timeshare in that the consumer does not pay for the right to occupy specific property: rather, the payment is in return for the promise of future services. Because they fall outside the scope of the 1994 Timeshare Directive, there is no right of withdrawal or cooling-off period for consumers.

26. As complaints about timeshare have fallen, so they have risen about holiday clubs. According to the Commission, there were 963 complaints to European Consumer Centres about these sectors in the first half of 2006. Of these, 117 were about timeshare and 846 concerned holiday clubs and resale⁶.
27. The OFT referred to independent research undertaken for it by a marketing company, which interviewed 11,500 people. It “found that only 5% of consumers who had a problem in this sector would report whether they had been ripped off”. By extrapolating the complaints data from those interviews, it estimated that the holiday club sector attracted a detriment of over £1 billion and that 400,000 people had been affected by these practices. The OFT put it at the top of its list of “scams” to be investigated, above problems in sectors such as home maintenance, furniture and personal computing (Q 72).
28. The OFT referred to the “vast gap between the promises that the salesman makes about the product and what it actually delivers. Examples would be that you can get cheap Club-class flights to Australia for £150 and that seems like an extraordinarily good deal to entice you in” (Q 78). Consumers might be asked for up-front payments of £10,000, with the inducement of the return of most of the money after a period of 50 months or so. The Minister also told us that substantial sums of money were involved “anything from £3,000 to £20,000 on occasion” (Q 97) and referred to the very high-pressure sales techniques used and the hugely exaggerated discounts sometimes offered (Q 98).

⁶ op.cit. p 30

29. The OFT also referred to high-pressure sales techniques, using venues which it was often difficult for consumers to leave because of their location. “The problem is that the sales staff are provided with very high financial incentives, maybe £1,000 or £2,000, on that day to make that sale and, therefore, it is very ripe for pressure tactics to be applied” (Q 78).

The Holiday Club “Web”

30. Mr Mike Haley, Head of Consumer Protection Enforcement at the OFT, described to us the complex web of companies (p 43) which may be involved in a holiday club operation (Q 78). In essence, the chain begins with the Fly-Buy operator, follows on to the marketer, possibly involving also a cash back operator, leading next to the club operator and finally to a travel agent. As the OFT summed it up, “All of that, we would say, a consumer could normally get via the Internet or via Ceefax or just by going into a travel agent, but the difference is that you have paid £10,000 for the privilege of a direct line to a travel agent” (Q 78).

CHAPTER 4: REGULATORY ISSUES

31. In considering the regulatory issues raised by traditional timeshare products and by holiday club products, we considered other related factors—the introduction of the Unfair Commercial Practices Directive⁷ (UCPD), the review of the consumer *acquis*⁸ which might lead to a possible future directive on consumer contractual matters, and the possible application to timeshare and similar products of existing EU consumer legislation. We also considered whether holiday clubs should be regulated together with timeshare, or separately.

The Timeshare Directive and the Unfair Commercial Practices Directive

32. The UCPD, adopted in 2005 and due to come into force by December 2007, is intended to tackle unfair, misleading and aggressive business practices, including misleading omissions and the use of harassment, coercion and undue influence.
33. The UCPD applies to commercial practices in general and is not specifically intended to target the timeshare and holiday club sectors. However, the Committee considered evidence presented to it that dealt with the relationship between the UCPD and the Timeshare Directive.
34. The view of Dr Christian Twigg-Flesner (University of Hull) was that the two Directives were complementary. While the UCPD was a regulatory tool which could be used by enforcement bodies to tackle businesses behaving badly or to get them to withdraw from the market altogether, the Timeshare Directive was intended to protect individual consumers by giving them key information and the right to change their mind and to withdraw from the contract (Q 139).
35. Dr Twigg-Flesner and Professor Geraint Howells (University of Lancaster) also told us that the UCPD introduced some additional obligations, including the regulation of misleading omissions, and that the OFT would be able to seek an undertaking from companies or an injunction in respect of future behaviour (Q 141).
36. Although one company argued that the UCPD meant that there was no case for European timeshare legislation (pp 100–101), Mike Haley of the OFT pointed out that the UCPD does not provide rights, such as a cooling-off period, which he said were essential to timeshare and holiday club purchases (Q 82). The Minister also told us that the UCPD will help to ban high-pressure selling but is not enough on its own (Q 127).

The review of the consumer *acquis*

37. The consumer *acquis*, which consists of eight EU consumer protection Directives, is currently being reviewed by the Commission, with a view to its simplification and greater consistency. The *acquis* covers Directives relating

⁷ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market. (OJ L 149 11.6.2005 p.22–39)

⁸ Green Paper on the Review of the Consumer Acquis, COM (2006) 744, 08.02.2007. The term *acquis* refers to the body of adopted Community legislation.

to: Injunctions⁹; Sales Away from Business Premises (sometimes known as the “Doorstep Selling” Directive)¹⁰; Distance Selling¹¹; Package Travel¹²; Unfair Terms in Consumer Contracts¹³; Consumer Guarantees¹⁴; Price Indication¹⁵; and the Timeshare Directive itself. The review in part follows from the adoption of the UCPD.

38. Professor Howells and Dr Twigg-Flesner warned that the timing of the proposed new timeshare directive was unfortunate in that the review of the consumer *acquis* could result in a new horizontal directive dealing with general contract laws which could harmonise rights of withdrawal and cooling-off periods. In their view, a new contract law directive would not preclude a new timeshare directive, but the two would need to be consistent (pp 54–59). Some of the provisions of the proposed timeshare directive might need to be amended or abandoned if there is a new horizontal directive or regulation on contractual issues (Q 132).
39. Professor Howells cautioned that the review may take several years to come to fruition and, therefore, whilst the broader context needs to be borne into account, one would not want real concerns to be delayed in being addressed (Q 131). The Minister also told us that “the timeshare industry has very specific needs and we wanted to get a revised directive agreed as soon as was possible” (Q 106). The OFT said that the Doorstep Selling Directive could be amended to tackle pressure selling in the holiday club and timeshare sector (Q 82). Citizens Advice and the OTE suggested that the Unfair Contract Terms Directive could also be used (pp 72–76, Q 66).
40. Professor Howells and Dr Twigg-Flesner were less convinced that there would be any additional benefit to consumers if the Doorstep Selling Directive were to be extended to cover timeshare contracts, as the Timeshare Directive provided essentially identical rights (pp 68–70). However, they did see a case for reviewing the current exclusion of flights and holidays in the Distance Selling Directive (pp 69–71).

Common Frame of Reference

41. The Commission is currently working with academic lawyers to produce a Common Frame of Reference (CFR). Its final form is yet to be decided, but Professor Howells told us that he expected it to be a “tool kit” and point of reference for the drafting of EU and possibly national legislation, providing greater consistency to the terminology and structure of such legislation. The academic group will submit a draft to the Commission by the end of 2007,

⁹ Directive 98/27/EC of the European Parliament and the Council of 19 May 1998 on injunctions for the protection of consumers’ interests (OJ L 166, 11.6.1998, p. 51–55)

¹⁰ Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ L 372 31.12.1985, p.31–33)

¹¹ Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p. 19–27)

¹² Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (*OJ L 158, 23.6.1990, p. 59–64*)

¹³ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (*OJ L 95, 21.4.1993, p. 29–34*)

¹⁴ Directive 99/44/EC of the European Parliament and Council of 25 May 1999 on certain aspects of the Sale of Consumer Goods and Guarantees (OJ L 171, 7.7.1999, p. 12–16)

¹⁵ Directive 98/6/EC of the European Parliament and Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27–31)

and a revised or extended draft will be submitted in 2008, to be considered by the Commission during 2009 (Q 131).

42. Professor Howells went on to explain that the CFR is a broad project, largely focused on consumer contracts. He told us that “it is envisaged that review of the consumer *acquis* will be based on the CFR principles, but, as the CFR principles are not yet in place and only in draft form, there is a difficult point of timing between those two projects”. He said that one possibility would be to have a broad horizontal directive on consumer contracts, which could include the modalities of withdrawal, and might be regulated in a common way for the whole plethora of consumer contracts; vertical legislation like the Timeshare Directive could stay in place (Q 131).
43. Professor Howells also referred to the Consumer Compendium “which is trying to map exactly what has been done in the area of the eight Directives which are under review in the Green Paper” and described the CFR, the Green Paper on the review of the consumer *acquis* and the possible horizontal directive, and the Compendium as “the three European pieces of the jigsaw into which this proposal has to fit” (Q 131).
44. Commenting on the relationship between the CFR and the *acquis*, the Committee concluded, in a report published in April 2005,¹⁶ that “We would be concerned were the CFR to delay the making of much needed improvements to the *acquis*. We urge the Government to make it a priority to ensure that any reforms which are not dependent on the CFR are taken forward without unnecessary delay”. While we believe, in line with this conclusion, that it would have been preferable to have had the reviewed *acquis* in place first, we do now recognise the need to move ahead urgently with a new directive to address the specific problems of timeshare.

The right type of legislation?

45. The industry and The Association of Timeshare Owners Committees (TATOC) generally supported measures to deal with holiday clubs but argued that holiday clubs should not be regulated under an expanded timeshare directive. The OTE said that problems with new products such as discount travel membership clubs should be dealt with through better enforcement of existing laws (pp 13–16). TATOC said that bringing the two under one legislative measure would be “detrimental to the genuine timeshare product and its owners” and commented that many of the problems around resale were due to poor enforcement of existing law (pp 101–106).
46. However, the OFT pointed to the complex relationship and “grey line” between the two, with some holiday clubs providing unused timeshare accommodation (Q 78). The TCA said that long-term holiday products “look similar to timeshare, smell similar to timeshare, are sold in an identical manner to timeshare and are priced the same as timeshare so the consumer is confused” (Q 1). The Minister also referred to “a whole series of similarities between the way in which holiday clubs are sold and the way in which timeshares are sold” (Q 98).

¹⁶ House of Lords European Union Committee, 12th Report (2004–05): *European Contract Law—the way forward?* (HL 95)

47. Professor Howells and Dr Twigg-Flesner noted that an industry that has attempted to clean up its act risks being damaged “by association with actors accused of tactics that their industry used to be known for” but concluded that on balance related actors should be regulated under the timeshare directive: they doubted whether the public’s opinion of timeshare would be affected (pp 54–59).

Conclusions and Recommendations

48. **We believe that the Commission has set out a good case for a new broader timeshare directive, and that existing horizontal EU consumer protection legislation including the Unfair Commercial Practices Directive is insufficient to deal with the specific problems associated with the timeshare and long-term holiday club sectors. (paras 34–36)**
49. **We conclude that, while timeshare and holiday clubs have different characteristics, they have many similar features and are marketed in a similar way, in similar situations and often to similar target groups. Both exhibit characteristics which require the same type of consumer protection measures, and we see no major difficulties in regulating both within the one directive as proposed by the Commission. (paras 45–47)**
50. **We believe that it would have been preferable for the Commission to have proposed a new timeshare directive together with other legislative proposals following from the review of the consumer *acquis*, but we recognise that changes to the Timeshare Directive are overdue and we urge the Council and the European Parliament to seek early agreement. (paras 39 and 44)**
51. **We recommend that the Commission, in considering any new proposal in the field of consumer contract law, bear in mind the need to keep consequent amendments to the new timeshare directive to a minimum. (para 38)**
52. **We recommend that the Commission have regard to the issues arising in the timeshare and long-term holiday product markets during its review of the various elements of the consumer *acquis*. (para 40)**

CHAPTER 5: JUSTIFICATION FOR REGULATION

Timeshare and self-regulation

53. We considered how far regulation in this area is justified and what might be achieved through self-regulation.
54. We received conflicting evidence on the coverage and effectiveness of the OTE's Code of Ethics¹⁷. The OTE said that it represents "70% plus of all timeshare sales conducted in the whole European Union" (Q 42) and that "through the application of the OTE code of conduct, the vast majority of timeshare operators in Europe have supported a self-regulatory scheme since OTE's formation in February 1998". It said that complaints about OTE members had been reduced by 60% since 2002, and that the vast majority were resolved within 14 days of receipt (pp 13–16).
55. However, Sandy Grey of the Timeshare Consumers Association told us that the OTE only represented a small fraction of traders, with 60 members out of an estimated 800 companies in the industry, that the Code was in many cases weaker than existing laws, and that the OTE had systematically failed to enforce the Code on its members (pp 1–3). He contrasted self-regulation in the EU and the US, arguing that a much stronger self-regulatory culture in the US had led to a high rate of growth (Q 1).
56. Arlene McCarthy MEP said that she had "received many complaints from timeshare consumers about companies that did not comply with the requirements of the OTE code of conduct" (pp 92–94). Tony Sedgwick said that voluntary compliance within the timeshare industry was not possible because of the nature of the people within it (pp 96–99), and other submissions also referred to the problems caused by rogue traders not in membership of trade associations.
57. Several submissions suggested that the timeshare industry would benefit from stronger self-regulation. The Local Authorities Coordinators of Regulatory Services (LACORS) and the Trading Standards Institute (TSI) called for membership of trade associations to be made compulsory (pp 87–92). Some industry submissions also wanted to see one timeshare association covering all the Member States, with compulsory membership (pp 100–101), applying sanctions and fines, and recompensing consumers through an insurance policy (pp 106–108).

Scope for strengthening timeshare self-regulation

58. The proposed new directive requires Member States to "encourage, where appropriate, traders to inform consumers of their codes of conduct" (Article 10). LACORS and the TSI proposed that the timeshare industry should be required to provide information relating to codes of conduct and consumer rights on company websites and in advertising (pp 87–92).
59. The UCPD, discussed above, includes a test of unfairness which is whether a commercial practice is contrary to the requirements of "professional diligence", defined as "the standard of special skill and care which a trader

¹⁷ http://www.ote-info.com/index.php?option=com_content&task=view&id=31&Itemid=30 The OTE's Code of Ethics establishes standards of practice, which ensure the fairness and propriety with which members of the OTE conduct their business

may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principles of good faith in the trader's field of activity". The UCPD also provides that traders who promote the fact that they comply with a code of conduct, but then do not do so, are acting in a misleading and unfair fashion. This provision reinforces the importance of codes, and presents both an opportunity and a challenge to the timeshare industry.

Holiday clubs and self-regulation

60. The OFT described to us its efforts to persuade holiday club operators to sign up to a code of conduct, and said that "they do not trust each other, let alone regulators" and that self-regulation in this sector was "really a non-starter" (Q 89).
61. Citizens Advice said that "the swiftness with which rogue traders managed to evade the initial Timeshare Directive supports the view that voluntary self-regulation will not be sufficiently robust" (pp 72–76). LACORS and the TSI also said that the problems of misrepresentation, the use of isolated sales venues and the prevalence of rogue traders meant that voluntary arrangements would not work and that legislation was necessary (pp 87–92).

The EU dimension

62. Most submissions, including those of LACORS and the TSI (pp 87–92) recognised that timeshare purchases were primarily made by consumers from one country in another country, that cross-border disputes were common in this trade sector, and that purely national legislation was inadequate to address what are EU-wide problems.
63. Arlene McCarthy MEP told us "Binding legislation is needed to safeguard consumers. Without a European-wide framework of legal rights and redress, the perception of the timeshare industry as a 'problem' will persist, and UK law cannot adequately cover problems in popular Member State destinations such as Spain, Portugal, and growing new markets such as Bulgaria" (pp 91–93). Professor Howells and Dr Twigg-Flesner said that the cross-border context made self-regulation more difficult (pp 54–59).

Conclusions and Recommendations

64. **We are disappointed that a substantial part of the industry remains outside the self-regulatory system. We urge companies in the timeshare sector to do more to raise standards. We regretfully conclude that there appears to be no reasonable prospect of self-regulation in the long-term holiday club sector at present. (paras 53–61)**
65. **We recognise the motivation of those who suggest that compulsory membership of trade associations should be considered further but we think it unlikely that this would be practical and effective. We consider it more appropriate for the Commission to pursue the concept of licensing as we recommend in paragraph 160. (para 57)**
66. **We recommend that traders should be obliged, rather than encouraged, to inform consumers of their codes of conduct (Article 10.1). (para 58)**

67. **We urge trade associations in these sectors to review and strengthen their codes of practice in relation to unfair, misleading and aggressive sales practices, and to increase compliance. (paras 54–56)**
68. **We conclude that national legislation cannot adequately deal with the problems associated with the timeshare market and that EU-level legislation is therefore appropriate. Inadequate enforcement of the current framework, however, does cause us some concerns and we have made some recommendations concerning future enforcement in Chapter 11. (paras 62–63)**

CHAPTER 6: THE RIGHT OF WITHDRAWAL AND THE COOLING-OFF PERIOD

69. The introduction of rights of withdrawal, a cooling-off period for consumers and a ban on advance payments during the cooling-off period has given consumers some protection from aggressive sales practices and misleading sales pitches, and made the timeshare market less attractive to rogue traders. The directive proposes the continuation of these rights for timeshare and their extension to cover long-term holiday products (Article 5).

Right of withdrawal

70. The OTE supported the right of withdrawal. Other industry submissions expressed different views. Shakespeare Classic Line argued that the right to withdraw had led to the disintegration of the timeshare industry and the emergence of holiday clubs (pp 100–101). Others proposed that there should be no cooling-off period at all, since “it encourages cancellation of what is a superb product” (pp 106–108) while another claimed that abolition would benefit consumers who would then be able to buy the product at a lower price (pp 81–83).
71. The OFT supported the requirement for the trader to draw the consumer’s attention to the existence of the right of withdrawal and the ban on advance payments, and proposed a requirement to provide a separate notice to the consumer setting out these rights (pp 29–31). Citizens Advice suggested that customers’ signatures should be in a box that contains wording that the contract is cancellable (pp 72–76). LACORS and the TSI also said that the prescribed information, particularly the rights of withdrawal, should be prominently displayed, with key information headings and a warning contained in boxes (pp 87–92).

Charges where the consumer cancels

72. The Commission proposes that companies be permitted to make charges where consumers cancel during the withdrawal period (Article 5.5). Citizens Advice, TATOC, LACORS and the TSI opposed this provision, arguing that such charges are sometimes excessive and thus a disincentive to cancel. LACORS and TSI suggested that, as with consumer credit legislation, there should be no financial charge imposed for cancellation within the cooling-off period (pp 87–92). The Minister told us that the UK and other Member States shared these concerns, and that the Presidency had agreed to withdraw the provision (Q 105).

Harmonisation of withdrawal rights

73. Much of our evidence favoured the full harmonisation of withdrawal rights and criticised the provisions which permit Member States to go further in this area (Article 1.2). However, as explained in paragraph 38, such harmonisation would pre-empt the outcome of the review of the consumer *acquis* and the possible introduction of a new horizontal directive on contractual rights.

Cooling-off period

74. The draft directive proposes a 14 day cooling-off period for both timeshare and long-term holiday products (Article 5.1), in place of the minimum period of ten calendar days for timeshare required under the 1994 Directive. The UK's Timeshare Act 1992 provides for 14 days.
75. Many witnesses favoured full harmonisation of the length of the cooling-off period, in order to give greater clarity for consumers and the industry about the precise start point and length of the right of withdrawal.
76. The OTE supported a cooling-off period of 14 calendar days. Group RCI said that consumers who cancel generally do so in the first few days after signing (pp 78–80). The Minister said that 14 days “was a reasonable timescale to allow people to genuinely pause to reflect on their purchase” and that he had not seen evidence to suggest that 21 days was necessary (Q 108).
77. The OFT suggested that a 21 day period might be preferable, now that people tend to take longer holidays, to allow prospective purchasers time to return home and seek legal advice (Q 72). It also argued that people are more reflective when they get home and think “Do I really want the product that I've signed up for?” (Q 76), and that timeshare and long-term holiday products differed from others in that consumers do not have the same opportunity to shop around and compare prices (Q 77). The Timeshare Consumers Association suggested that 28 days would help to “future proof” the new directive (pp 1–3).
78. Professor Howells said that there was an emerging consensus for 14 days as the cooling-off period across consumer legislation generally, during the discussions on the review of the consumer acquis, but he suggested that timeshare might be an exception given its special nature (Q 137, pp 54–59). He said that 28 days, as originally considered by the Commission, might have some sense “in that because if one flies off to the sun for a 14-day holiday, gets accosted by a timeshare salesman on your first night there, makes a decision rapidly to buy it or within the first few days, then by the time you have got back home you have a rather short time to react” (Q 137). Dr Twigg-Flesner said that there were two arguments in relation to the cooling-off period. If it just related to the pressure-selling element, then 14 days might be sufficient: if however the intention was to allow people a period in which to seek legal advice, which he regarded as “the real rationale”, then “a longer period might well be appropriate” (Q 137).
79. Dr Twigg-Flesner told the Committee that there is “a general lack of research on how consumers behave and that is one of the main problems we have. We do not know what consumers do; whether they understand what it means to have a right of withdrawal; why they exercise it, if they do; and why most of them do not exercise it” (Q 138).

Definition of a “day” in relation to the length of the cooling off period

80. Kevin Davis of the Department for Business, Enterprise and Regulatory Reform (BERR) told us that the precise definition of a “day” in this context is under discussion. The Commission proposed that, where the fourteenth day of the cooling-off period is a public holiday, the period shall be extended to the first working day thereafter (Article 5.1). At issue is whether the relevant public holiday is that of the consumer's country of residence, or that of the country where the contract is signed (Q 107). Dr Twigg-Flesner

recalled that the Community had in fact defined working days and calendar days by way of a Regulation adopted in 1971¹⁸ “but what has since happened is that people have forgotten about its existence, even if it remains in force, and there is legislation in place which deviates from that Regulation” (Q 136).

Informing consumers of the cooling-off period

81. The OTE said that written details of the cooling-off period should be included in the contract, together with the date of cancellation and details of where and how to cancel, but said that by providing three places for the consumer to sign it appeared more like a “health warning” (pp 13–16). Professor Howells said that “There are certain common things which can be harmonised and sensibly harmonised”, such as the definition of a “day” but he questioned whether there needed to be a standardised way of giving notice of the right of withdrawal (Q 134).
82. The draft directive proposes that the consumer’s withdrawal rights be extended by a further three months if the information provisions of Annex I, which include information on the right to withdraw from the contract, have not been met (Article 5.3). Citizens Advice said that this raised the possibility that rogue traders would not provide cancellation rights, since few consumers would be aware of their rights in the absence of the specified provision (pp 72–76).
83. We discuss the issues of the cooling-off periods for resale products and exchange schemes separately in Chapter 8.

Conclusions and Recommendations

84. **The introduction of rights of withdrawal and a cooling-off period have benefited purchasers of timeshares and the industry, and these rights should be maintained for timeshare and extended to cover long-term holiday clubs. (para 69)**
85. **Evidence that suggests that most consumers who cancel do so early in the cooling-off period gives only a partial picture. There may be many other consumers who return from their holiday and, on further consideration and perhaps advice, wish that they had cancelled but find that it is too late to do so. On this basis, we do not think that 14 days is an adequate period for reflection and obtaining independent advice and we therefore recommend that the cooling-off period be 21 days (Article 5.1). (paras 74–78)**
86. **We recognise that as a consequence of a longer cooling-off period more consumers may cancel purchases of timeshares and long-term holiday products but we suggest that, if this occurs to a significant extent, the problems lie with the products and the way in which they are sold. (paras 70–71)**
87. **We recommend that in setting cooling off periods, the definition of “day” as a working or calendar day should be clarified. (para 80)**

¹⁸ Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L124 8.6.1971)

88. **We conclude that there is scope for confusion, in the proposal that the cooling-off period be extended by one day, where the final day is a public holiday unless there is greater clarity for both parties about which public holidays apply. We recommend that the cooling-off period be extended by one day where the final day is a public holiday in the Member State of either of the contracting parties (Article 5.2). (para 80)**
89. **We recommend that the right of withdrawal should not expire after three months in the absence of the information provisions required in Annex I (Article 5.3). (para 82)**
90. **We recommend that information for consumers about rights of withdrawal be provided in a prominent and clear manner in the contract and in promotional material. (paras 71 and 81)**
91. **We recommend the deletion of the proposal that consumers reimburse expenses to traders where they cancel during the withdrawal period (Article 5.5). (para 73)**

CHAPTER 7: ADVANCE PAYMENTS DURING THE WITHDRAWAL PERIOD

92. The proposed new directive would continue the ban in the 1994 Directive on the taking of a deposit for a timeshare during the cooling-off period, and extend it to holiday clubs (Article 6). The proposal also prohibits demands for payments to be made to third parties, a practice that has developed in some Member States and which in effect circumvents the original ban.
93. The OTE told us that “we know of no other industry that is penalised with a cooling off period and a ban on deposits and a significant number of large hospitality brands, principally US based, will not operate in the EU under such punitive restrictions”. The OTE also said that “singling out timeshare without good reason puts the industry in a less competitive position compared with other tourism services and products” (pp 13–16). It proposed instead the use of independent third parties for deposit payments to encourage the growth of the industry (pp 13–16).
94. Shakespeare Classic Line argued that consumers should expect to pay a deposit for timeshare (pp 100–101). Interval International, a holiday exchange network, proposed that advance payments should be permitted for timeshare, provided that these payments were secured by independent third parties accredited by national law (pp 83–87).
95. The Minister rejected the idea of payments to third parties. He argued that the 1994 Directive had proved successful in this area and that a third party scheme would add an unnecessary level of bureaucracy for consumers and the industry (Q 100).
96. Consumer and enforcement bodies and TATOC welcomed the Proposal to tighten the ban on advance payments during the cooling-off period. The OFT noted that taking deposits “puts consumers under a psychological pressure to continue with the contract” (Q 72), a point supported by the TCA which said that “the prospect of failing to recover a deposit, or simply the complex mechanism that traders would place in the way of consumers trying to recover their deposit on a legitimate cancellation, is a strong incentive on consumers to continue with an agreement that they really want to terminate” (pp 1–3).
97. The Minister also told us that a ban on advance payments was justified “because of the particular circumstances in which these products are usually sold”. He said that consumers were normally overseas and away from sources of help and advice such as the Citizens Advice Bureau. They were therefore potentially susceptible to high-pressure sales techniques (Q 100).

Conclusion and Recommendation

98. **We conclude that the removal of the ban on deposits during the cooling-off period would be likely to lead to a recurrence of the problems that plagued the timeshare industry prior to the 1994 Directive. We therefore recommend the continuation of the ban on the taking of a deposit for a timeshare during the cooling-off period and its extension to holiday clubs, and we support the ban on demands for payments to be made to third parties, as proposed by the Commission. (paras 95–97)**

CHAPTER 8: RESALE AND EXCHANGE

Introduction

99. Resale and exchange both raise particular issues.

Definition of resale

100. Resale, as defined by the proposal, is a contract by which a trader against consideration helps a consumer to sell or buy a timeshare or long-term holiday product (Article 2.1(c)). The Commission indicated that this is intended to cover contracts concluded between a consumer who wishes to sell or buy a timeshare/long-term holiday product and a resale agent, who is acting as an intermediary. The Minister described a resale agent as fulfilling a role similar to that of an estate agent (Q 101).
101. The word “resale” can lead to some confusion, in that it can also mean what occurs where a trader buys a timeshare and then resells it to the consumer. The Commission made clear in the Explanatory Memorandum to the Proposal that where a trader does not act as an intermediary, but buys a timeshare and then resells it to the consumer, the contract will be on the same basis as if it were a first-time sale: that is, it would come within the scope of the new directive, including in respect of the withdrawal and cooling-off period provisions.¹⁹ The Minister also told us that he shared and supported this interpretation (pp 51–53).
102. The TCA said that on this basis it did not consider it necessary to legislate additionally for resales “except to ensure that a consumer wishing to sell his ownership to or through a trader should not be required to make any payment to the trader” (pp 1–3). The TCA also told us that issues concerning the resale of timeshare properties by consumers to traders needed to be dealt with separately within the new directive, and not together with sales by traders (Q 29).

Cooling-off period for resale contracts

103. The Minister took the view that a cooling-off period for resale was unnecessary (Q 123), since a consumer would not have to make an up-front payment to a resale agent, and that it might well delay the service to the consumer (Q 124).

Proposed ban on advance fees for resale

104. A number of submissions focused on fraudulent activity associated with resale, where timeshare owners are cold-called from so-called “boiler rooms”. These are often said to be located in Spain. The caller, who has a probably stolen list of timeshare owners, persuades the timeshare owner to pay an advance fee for the sale of their property to a buyer who is said to be ready and willing to pay a good price. Once the money has been paid, it disappears together with the caller (Q 91).
105. There was general support for the proposed ban on advance fees for resale (Article 6). The Minister said that it was impossible to stop rogues from

¹⁹ op.cit.

operating altogether, but by providing a “clear sense as to when money has to be paid and when it does not have to be paid, the consumer at least has the information to reach a conclusion as to whether or not they are dealing with someone who is reputable” (Q 101).

106. Interval International, a holiday exchange network, supported a ban on deposits for resales (pp 83–87). However, Shakespeare Classic Line said that there was no problem for consumers making advance payments for resale as long as the consumer has not been cold-called (pp 100–101). TATOC said that the timeshare industry and consumers needed an active and reputable resale market, and it was concerned that a total ban on all payments prior to completion of a sale would result in further stagnation. TATOC said that small, reasonable and detailed charges should be permitted to be made by registered companies (pp 101–106).
107. It was acknowledged that some genuine resale traders do currently request fees but, as the OFT pointed out, it is difficult for consumers to tell the genuine from the fraudulent. It suggested that genuine traders could operate like estate agents and ask for their fees after a sale (Q 91).

Exchange schemes

108. An exchange as defined by the new directive is where consumers pay to join a scheme which allows them to change the place as well as the timing of their timeshare through an exchange (Article 2.1(d), a definition which Professor Howells and Dr Twigg-Flesner suggested was “circular” (pp 54–59). The Minister also told us that the UK Government had proposed instead a definition based on the feature that exchange allows consumers to use the timeshare rights of others, in exchange for others using their timeshare rights, without modification of the rights of the owners (pp 51–53).
109. Interval International, a holiday exchange network, explained that a company dealing in timeshare exchanges would typically enter into a multi-year affiliation agreement with a company dealing in timeshares, under which timeshare purchasers would be enrolled in the exchange company’s network. The exchange trader would then provide the timeshare purchasers with the ability to exchange their timeshare accommodation for comparable accommodation at resorts participating in the network (pp 83–87).

Exchange schemes: cooling-off period and ban on advance payments

110. The new directive would provide a separate cooling-off period for exchange fees, and a ban on advance payments within that period.
111. The Commission argues that consumers are sometimes oversold the advantages and possibilities of timeshare exchange, and that additional charges may apply to some exchanges. It also points out that because membership is often included in the global price paid for the timeshare in the first instance, consumers may not be aware of the actual costs of membership²⁰.
112. Interval International said that, in contrast to the timeshare itself, payments for exchange schemes were “quite modest” and quoted an annual membership fee of £69 and an exchange fee of £99 for exchanges within

²⁰ op.cit. p.19

Europe. In most cases, the initial membership was paid by the timeshare trader. While it supported a 14 day cooling-off period for the main timeshare contract, it saw no need for the introduction of a separate withdrawal period for exchange (pp 83–87).

113. Several submissions queried whether the right of withdrawal (Article 5) should apply to exchange contracts, arguing that (under Article 7) the exchange contract automatically terminates if the consumer withdraws from the main contract (pp 83–87).
114. The Minister said that by far the greatest number of exchanges were operated by organisations that are separate from timeshare operators, and that they would therefore be unwilling to enter into contracts until the timeshare sale was completed after the end of the cooling-off period (pp 51–53). The Minister told us that, by definition, a consumer wanting to make an exchange had already bought a timeshare and would therefore have already had a 14 day cooling-off period: a further two week cooling-off period was therefore unnecessary and disproportionate (Q 122). However, he did acknowledge that there were concerns that timeshare sellers might masquerade as exchange companies (pp 51–53).
115. The Minister expressed the view that a more proportionate approach should be based on information requirements, which should also include details of restrictions on access to particular exchanges which might be the result of peak periods of demand for particular resorts, and that exchange operators should be obliged to inform the consumer about any additional charges for particular exchanges (pp 51–53).

Fees paid by consumers for exchange services

116. Professor Howells said that possible depletion in the amount of property available for exchange might mean that people did not get the property they were expecting (Q 164) and that if consumers paid to join an exchange service and the company was unable to provide the service requested, then they should not be required to pay the fees. “If there was a real incentive to get the fee to make sure the exchange was effectuated, that would probably solve lots of the problems, because there would be an incentive on the scheme to make sure there was an appropriate pool of properties” (Q 164).

Conclusions and Recommendation

117. **We support the proposed ban on requests for advance fees for resale. (paras 104–107)**
118. **We recommend that the objectives of the cooling-off provisions in relation to resale be clarified. We are particularly concerned that treating resales by timeshare traders and by independent intermediaries on a different basis could be confusing for consumers and could open up a loophole whereby rogue traders collaborate with, or pose as, intermediaries. (paras 100–102)**
119. **We believe that clarification is needed too in relation to the cancellation of exchange contracts (Articles 5 and 7). In that vein, we agree that consumers who pay to join an exchange scheme should be entitled to a refund of their fees if reasonable and timely requests for exchanges cannot be met and recommend that a right on these lines be added to the directive. (para 116)**

120. **We recommend that the definition of an exchange be amended to clarify that exchange allows consumers to use the timeshare rights of others, in exchange for others using their timeshare rights, without modification of the rights of the owners. (para 108)**
121. **We support the suggestion by the Minister that the information requirements should also include details of restrictions on access to particular exchanges and that exchange operators should be obliged to inform the consumer about any additional charges for particular exchanges. (para 115)**

CHAPTER 9: PROVISION OF INFORMATION TO THE CONSUMER

What the Commission proposes

122. The proposed directive sets out requirements for the trader to provide the consumer with written information.
123. Group RCI suggested that the proposal required too much non-material information for timeshare but too little for long-term holiday product contracts (pp 78–80). The OTE also wanted fuller disclosure of the precise nature of the accommodation offered by long-term holiday product companies, and of its ownership. TATOC said that the resale information provisions were excessive and that they would make worse an already difficult resale market (pp 101–106).
124. The TCA said that the proposed measures relating to disclosure and advertising lacked sufficient precision for traders and consumers, and called for more specific requirements. It also proposed that the main elements of disclosure should be clearly stated on the front page of the purchase agreement in print no smaller than the largest print on the page, as required by the UK Timeshare Act. It also wanted more information as to the current resale value, the right to a cooling-off period, current and recent annual charges, and on the availability of bookings for points and exchange schemes where appropriate (pp 1–3).
125. The Minister said that the new directive did not yet reflect the degree of proportionality that was needed for information requirements and that further clarity was needed (Q 120). Kevin Davis of BERR said that a balance needed to be struck between the pre-sales information requirements, where the government did not want to overburden business or consumers, and the important consideration that the information provided under the new directive becomes part of the contract (Q 120).
126. Dr Twigg-Flesner said that “the problem we have so far is that the items of information required ... are very unstructured. You have a lot of different items of information with some overlaps but there is no clear arrangement of these various information obligations” (Q 157). He suggested that thought be given to how the information was presented, before consideration of the detailed items of information which should be included. He cited research by Professor Howells on the ability of consumers to process information and the conclusion that consumers can really only process information that is given to them in no more than seven chunks.
127. Dr Twigg-Flesner went on to comment on the requirements about the supply of information to consumers that he felt should be introduced in the timeshare directive over and above those set out in the consumer *acquis*. “To us it seems important that the consumer gets information about what they are actually buying; some basic information about the property; what the property involves; what facilities are provided. Information about the price is very important. Information about key legal rights is important, including the right of withdrawal, and perhaps information about complaints procedures so that consumers can find redress where they need to if something has gone wrong”. Professor Howells said that it was important to ask “What do the

consumers need to know, when do they need to know it and how do they need to know it?” (Q 157).

128. Professor Howells and Dr Twigg-Flesner expressed concern that some information would only be provided if consumers requested it, and suggested that it would be better to require traders to offer a prospectus with the required information during first negotiations with the consumer (pp 54–59). Arlene McCarthy MEP said that information should also be provided on the calculation and evolution of management fees, and on the availability of long-term holiday products (pp 92–94). A holiday exchange network said that the contractual obligation to provide information on exchange should be placed on the timeshare trader, as the exchange trader is not present when the contract is signed (pp 83–87).

Language requirement (Article 3.4)

129. Industry submissions said that the provision that consumers may request certain key information in one of the official languages of the Community, as chosen by the consumer, would be unduly onerous. One exchange company said that, in place of its current succinct guide, it would need to produce a volume of over 3,000 pages if it were to describe in all of the Community languages the 3,300 resorts available for exchange (pp 78–81).

Long-term costs of ownership

130. Professor Howells said that consumers might not always understand the long-term annual costs involved in timeshare ownership, or how costs were controlled. “One way around that might be to have a very clear explicit warning, in red, that this is a long-term engagement which may cost you considerable sums of money on an annual basis, and make consumers realise that” (Q 161). He also suggested that it might be useful to have an information obligation on whether or not the timeshare owner had any control in the management of the scheme or whether the management and the charging of the scheme were exclusively in the control of the organisation selling the property.
131. TATOC also asked for a requirement to provide potential buyers with information about elected owners’ committees in resorts/clubs and how to contact them, and information on any constitution or other legal agreement binding the owners and suppliers (pp 101–106).

Flexible timeshare points clubs

132. TATOC made reference in its evidence to the growth of flexible timeshare ownership products. These can take the form of owning a period(s) at a range of resorts, or a number of holiday “points”, which can be used across a wide portfolio of holiday accommodation (pp 101–106). TATOC suggested that many of the paragraphs in the proposed directive, as currently drafted, did not cover these products and that it should be revised so that it did so.
133. Dr Twigg-Flesner noted that the definition of “timeshare” includes “one or more accommodations” and that therefore multiple resort deals were included, together with the information obligations for each of the properties. “The difficulty arises when it is never clear which kind of properties might be included in these multiple resort arrangements, if there are properties that might be replaced by other properties and so on, and then it might be very

difficult to be able to provide this information because they might not know which properties will eventually be covered by the agreement. To the extent that they say, ‘You can have a property in these 10 resorts, these are the types of properties we have,’ they would have to provide information on each of those in order to comply with the obligations” (Q 156). He saw a risk in overburdening consumers with a lot of information which they might not understand or need at that point.

134. Professor Howells said that many multiple resort deals had some of the characteristics of long-term holiday products. “I would be worried about: Do I know what my points are worth? How do I know what they will get me? How can those points not be skewed in the future to change my rights, so that I might need five points this year to get a villa with a swimming pool but seven points next year or whatever? Something like the obligation at Annex III(b)—which says ‘to state the exact nature of the right which is subject under the contract’—might be usefully included in timeshare contracts which were based on a points basis, to let me understand what rights I have” (Q 156).

Conclusions and Recommendations

135. **We conclude that the information requirements need to be reviewed to ensure that they address key consumer needs and are proportionate. (paras 122–128)**
136. **We recommend that a clear hierarchy of information provisions be established, setting out the relative importance to the consumer of each type of information and based on objective and independent research into consumer understanding. We suggest that one way forward would be for the Council and Parliament to agree on the overall information objectives, which should then be defined more closely through the comitology procedure²¹. (paras 126–127)**
137. **We recommend that, in the case of timeshare, the information requirements give fuller information about the longer-term costs associated with ownership, rights of withdrawal and owner representation. (paras 130–131)**
138. **We recommend that, in the case of long-term holiday clubs, more information should be provided about the precise nature of the accommodation offered and of its ownership, and the identity of the company or companies that will be providing the services offered. (para 125)**

²¹ The “comitology” procedure allows minor “implementing decisions” to be taken by the Commission, with the full involvement of the Member States, within the framework of broader legislation. It is governed by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred upon the Commission. (L184, 17,7,1999, p 23–26)

CHAPTER 10: RAISING PUBLIC AWARENESS

139. The draft directive requires Member States to inform the public of how the directive is transposed into national law (Article 10.1).
140. The OFT described its campaigns including the provision of information in airline ticket wallets, flight magazines and at airports to make potential consumers more aware of the misleading and sophisticated hard-selling techniques used by some operators and of outright “scams”, and suggested that the Commission could also play a role in providing information (Q 92).
141. The TCA told the Committee that “So far the Office of Fair Trading and trading standards have done a pretty good job” (Q 31). Arlene McCarthy MEP commended the OFT’s campaigns in airports and airline magazines: “I think this is an excellent initiative that could be extended to Europe, targeting the main countries involved” (pp 92–94). The Minister confirmed to us that the OFT was the lead body on consumer information and that his Department would be working very closely with the OFT once the new directive was in force, to publicise consumers’ rights (Q 103).
142. There is general support for initiatives to make members of the public more aware of their rights and more alert to possible “scams”. Witnesses variously wanted information to be provided by the timeshare business and holiday ownership clubs, the National Consumer Council, the OFT, BERR and the Commission. The OTE outlined its efforts to encourage consumer awareness through advertisements in timeshare exchange company magazines and through its members (pp 24–26).

Conclusions and Recommendations

143. **Raising public awareness is not a substitute for adequate consumer protection. However, potential timeshare consumers do need to be better informed about their rights and about potential “scams”, and to be much more wary when entering into major purchases of the nature discussed in this Report, particularly when doing so in another jurisdiction and in the absence of professional advice. (paras 141–142)**
144. **We believe that the UK has made a good start in this area and commend the activities to date of the Office of Fair Trading. We consider, however, that a requirement on Member States merely to inform the public of the national law transposing the directive is not sufficient. We recommend that the Commission work with the Member States to draw up a strategy to improve consumer awareness of “scams”, of aggressive and misleading selling practices in these sectors and of their rights in relation to withdrawal from the contract, focusing on key tourist destinations and encouraging regional and local authorities, local tourism associations, chambers of commerce and enforcement bodies to take part. (paras 140 and 142)**

CHAPTER 11: ENFORCEMENT AND SANCTIONS

Experience to date and international co-operation arrangements

145. The OFT acknowledged that in the past cross-border co-operation with other enforcement bodies “has not been great” but said that the structure provided by the new EU Consumer Protection Co-operation Regulation²² was starting to work, with Spain putting in place a specialist team to tackle complaints, 95% of which concerned Spain (Q 86).
146. Industry bodies also said that enforcement in some Member States had been poor or non-existent. Peter van der Mark of OTE said that “although the fraud is perpetrated often in Spain, it is often a Brit ripping off another Brit” (Q 59). However, Sandy Grey, for the TCA, told the Committee that Spanish police only seemed to be prepared to act when victims were Spanish (Q 26).
147. The Minister told us that he had seen real engagement in discussions on the draft directive by Spain and other Member States where timeshares operate: “for them there is a reputational issue in terms of their country as a tourist destination” (Q 113). The Minister said that the issue was not one of a lack of willingness on the part of the Spanish authorities to act: “it is simply that they do not have the powers to do so”, and the new directive would, by bringing holiday clubs into its scope, provide the authorities with the tools necessary to act (Q 117).
148. The OTE said that it had allocated €150,000 in 2007 towards enforcement and employed a full-time enforcement manager in Spain. OTE referred to its role in the Metropolitan Police’s Operation Sterling, a UK Travel Industry fraud forum (pp 24–26).
149. Several witnesses pointed out that the problems should be regarded as EU-wide, and suggested that the European Commission could monitor enforcement and fund a short-term task force of investigators and lawyers to crack down on known offenders (QQ 91, 92; pp 29–31). The Minister said that enforcement would remain predominantly the responsibility of the country where the offence takes place but he envisaged a possible role for the Commission in researching the extent of the problems (Q 113).
150. LACORS and the TSI considered that the powers of enforcement authorities were inadequate in this area and should include powers of entry and the power to make test purchases to ascertain whether offences had been committed (pp 87–92).

Injunctions Directive

151. The OFT outlined its powers under the Enterprise Act 2002 (in part stemming from the Injunctions Directive²³) which enable it to seek court orders, including in other jurisdictions, preventing a firm from committing further breaches of EU consumer protection legislation. However, it

²² Regulation (EC) 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (OJ L 364 9.12.2004, p. 1–11)

²³ Directive 98/27/EC of the European Parliament and the Council of 19 May 1998 on injunctions for the protection of consumers’ interests (OJ L 166, 11.6.1998, p. 51–55)

acknowledged the limitations of these powers. They do not involve fines for past action, or redress for consumers. In addition, in Spain the powers can only be used against companies, which may close down and start up again under another name, rather than against individuals (Q 85).

152. Professor Howells and Dr Twigg-Flesner also suggested rules on the disqualification of directors, which would have the effect of preventing rogue traders from establishing new companies in the timeshare industry (pp 54–59).

Sanctions

153. The OFT called for severe penalties across the EU for breaches of the directive, subject to Member States being free to determine the levels having regard to local market conditions (Q 94). TATOC suggested that sanctions should be “timely, punitive and rigorously enforced” (pp 101–106) as well as effective, proportionate and dissuasive (Article 11 of the draft directive).
154. In its Explanatory Memorandum²⁴, the Commission said that the effectiveness of the new consumer protection enforcement cooperation network established by the Consumer Protection Cooperation Regulation should be assessed before introducing a provision at EU level requiring Member States to introduce criminal sanctions²⁵.

A licensing scheme

155. Several submissions called for a licensing system for traders, on a similar basis to consumer credit licences, with Citizens Advice proposing that a licensing system should also involve suitable arrangements for the protection of consumers’ advance payments (pp 72–76, 87–92, 96–99). The TCA said that “a licensing scheme would also overcome the problems for consumers seeking compensation from traders registered outside the EU” (pp 1–3). The Commission did not take a view on this issue and indicated that, under the principle of proportionality, national provisions regarding authorisation regimes and licensing would apply²⁶.
156. For the OTE, Peter van der Mark told the Committee that a fully fledged licensing and bonding system was not appropriate for the timeshare industry because its product is guaranteed by real estate, but he supported a bonding system for long-term holiday products. The Minister also told the Committee that a licensing scheme was unnecessary, as it would impose an additional level of bureaucracy and expense, and would confuse consumers (Q 114).

²⁴ Proposal for a Directive of the European Parliament and of the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange. COM (2007) 303, 07.06.2007, Page 5

²⁵ The issues surrounding the imposition of criminal sanctions to penalise infringements of Community law were considered in the House of Lords EU Committee’s 42nd Report (2005–06): *The Criminal Law Competence of the European Community* (HL 227) and subsequently by EU Committee, 11th Report (2006–07): *The Criminal Law Competence of the EC: follow-up Report* (HL 63). On 23 October 2007, in C-440/05 *Commission v Council* (ship-source pollution), the European Court of Justice ruled that, “the determination of the type and level of the criminal penalties to be applied does not fall within the Community’s sphere of competence”. These issues are now being considered by the Committee in the context of a number of Proposals held under scrutiny.

²⁶ op.cit. page 7

Conclusions and Recommendations

157. **We agree that the establishment of appropriate sanctions is properly the responsibility of the Member States, but recommend that the Government and the Commission act speedily where there is evidence that implementing measures are not effective, proportionate and dissuasive (Article 11). (para 153)**
158. **We conclude that licensing could have merits. Although it may impose costs, these should be assessed in relation to the level of consumer detriment identified by the OFT. We recommend that the Commission study the costs and benefits of a licensing scheme for enforcement and redress. (para 155)**
159. **We agree that although enforcement is primarily a matter for the Member States where problems occur, there is a Europe-wide dimension and we recommend that further consideration be given to the idea of monitoring by the European Commission with a view to informing the actions taken by Member States to enforce the legislation. (para 149)**
160. **We recommend that the Commission review and report on progress in the enforcement of the directive and on the adequacy of sanctions by 2010. (para 154)**
161. **We recommend that the Commission review the provisions of the Injunctions Directive in relation to the powers to act against individuals as well as traders. (para 151)**

CHAPTER 12: REDRESS

Judicial and administrative redress

162. The proposed directive requires Member States to ensure that adequate and effective judicial and administrative means exist to ensure compliance in the interests of consumers, which may include allowing public bodies, consumer organisations or professional organisations to take action in the courts to enforce the provisions of the new directive (Article 9).
163. Several respondents referred to the difficulty, or in many cases impossibility, of individuals obtaining legal redress. Tony Sedgwick (who for four years until 2006 was the CEO of the International timeshare resale association) said that prohibitive costs discouraged legal action, giving a false picture of levels of satisfaction (pp 96–99). Sandy Grey (TCA) told the Committee that lawyers were reluctant to handle timeshare cases because of the aggravation involved and the nature of the industry (Q 20).

Out-of-court redress

164. Member States are also urged to encourage traders to inform consumers of their codes of conduct where they exist (Article 10(1)), and to encourage the setting up or development of adequate and effective out-of-court complaints and redress procedures for the settlement of consumer disputes under the new directive (Article 10(2)).
165. We were told that consumers may take timeshare complaints to OTE about its members, and there is an alternative dispute resolution scheme which has so far only been used once (pp 13–16), but we also heard that many companies are not members of the OTE. The OFT stressed that much of the problem with holiday club activity was outright fraud and that rogues “will not sign up to any informal redress scheme” (Q 93).
166. The TCA supported the idea of an EU-wide timeshare ombudsman scheme, on similar lines to the UK’s Financial Ombudsman Service: this would require a licensing system for companies but could “solve a lot of not only redress problems but also act as a deterrent” (Q 31).

Conclusions and Recommendations

167. **We conclude that the provisions on individual redress in the directive, although an advance on the 1994 Directive, are insufficiently robust. (para 165)**
168. **We recommend that the proposed directive be amended to entitle consumers to require that, in the first instance, an out-of-court settlement be sought through an independent arbitration or mediation scheme, without prejudice to the consumer’s right of judicial action. (paras 166–167)**
169. **We recommend that the Commission report to the Council and Parliament in 2010 on progress in the development of out-of-court redress schemes in these sectors. (para 166)**

CHAPTER 13: OTHER ISSUES

Extension of scope to non-fixed properties

170. Evidence for the inquiry generally welcomed the inclusion of non-fixed properties such as canal boats, caravans and cruise ships within the proposed directive (Article 2.1(a)).

Extension of scope to shorter timeshares

171. The minimum period for a timeshare agreement under the 1994 Directive is 36 months and this has led to the marketing of timeshares of 35 months or under, sometimes marketed as “trial” packages, in order to avoid its provisions.
172. The inclusion of timeshares of 12 months or more within the proposed directive (Article 2.1(a)) was generally welcomed, although OTE said that it could make timeshare trial packages uneconomic (pp 13–16).
173. However, Professor Howells and Dr Twigg-Flesner queried whether there was any need for a minimum duration of the contract, because of the risk of evasion. They noted that some Member States had removed the three year minimum duration period when implementing the 1994 Directive (Q 155). Professor Howells suggested that timeshares of 11 months with an automatic renewal might be offered to avoid the scope of the directive. Dr Twigg-Flesner said that Belgian Law applied the timeshare rules to contracts of less than one year duration where there is an automatic renewal clause in the contract (Q 155).
174. Citizens Advice also said that “the one year rule will doubtless lead to 51 week agreements which, like the 35 month ones, will be described as ‘trials’” (pp 72–76).
175. The Minister told us that the risks attached to products of under one year were substantially less, and that he was concerned that the lack of a minimum duration could catch package holidays (Q 99). However, Professor Howells considered that the provisions of the Package Travel Directive would not cover timeshare since the latter was simply the provision of accommodation and not a direct combination of services (Q 142).

Definitions

176. The OFT expressed concern about the definition of holiday clubs (Article 2.1(b)) as it could inadvertently catch legitimate bodies such as staff association clubs (Q 81). The OFT also suspected that in the longer term new products would be created to evade the new directive (pp 29–31).
177. The Minister said that he wanted changes to the use of the term “accommodation” in the definitions of timeshare and long-term holiday products (Article 2(1)(a) & (b)) to ensure that only arrangements incorporating overnight accommodation were included. There was a risk that other arrangements granting rights to periodic access to accommodation in a wider sense, such as seats in sports stadiums, could inappropriately be caught (pp 51–53).

Multi-annual hotel reservations

178. Professor Howells and Dr Twigg-Flesner queried the Commission's view²⁷ that multi-annual hotel reservations were outside the scope of the new directive because they were not contracts: booking a hotel room might well constitute a contract. They suggested that reserving a hotel room, whether it constituted a contract or not, should not be subject to the new directive (Q 150) and that this should be made clear in the Preamble of the new directive (pp 69–71).

Timeshare owners' rights

179. We heard some concerns about the lack of owners' rights at timeshare resorts and about the annual charges for occupying a timeshare. The Timeshare Consumers Association said that annual costs "are escalating at a rate some three times faster than inflation" (pp 1–3). Citizens Advice said that rising charges could be used to drive out owners who then had to sell for a low figure, and suggested that this was an issue that the Commission should address. Citizens Advice also said that it had complaints about aggressive collection of maintenance fees (pp 72–76). The Commission takes the view that the regulation of the management and maintenance of properties is an issue for the Member States and does not need to be regulated at Community level²⁸.
180. The Timeshare Consumers Association said that the new directive had not attempted to provide a legal structure for timeshare or to give owners rights, and that this needed to be addressed at least in relation to new resorts (pp 1–3, Q 17). Professor Howells and Dr Twigg-Flesner also suggested that problems associated with charges could be tackled by "democratising" managements of the resorts to the owners themselves (pp 54–59).

Termination and transfer of ownership

181. The lack of fair termination clauses for timeshare properties was highlighted in some submissions. Citizens Advice and TATOC referred to the need for clauses providing for termination and transfer of ownership and/or for relevant information (pp 72–76, pp 101–106). Citizens Advice also drew attention to the length of timeshare agreements and the lack of equitable clauses in contracts for termination (pp 72–76). Professor Howells and Dr Twigg-Flesner said that after a set period, of say five years, consumers should have the right to cancel the contract, and that penalty clauses for consumers seeking to sell should be prohibited (pp 54–59).
182. The Minister told us that the UK had some sympathy with views expressed about owners' rights, including information about the possibility for, and the consequences of, discontinuing the contract, and that these issues were under discussion in the Council working group (Q 121).

Review clause

183. The new directive requires the Commission to review and report on it no later than five years after it comes into force (Article 13).

²⁷ op.cit. page 9

²⁸ op.cit. page 7

Conclusions and Recommendations

184. **We welcome the proposed inclusion of non-fixed properties such as canal boats, caravans and cruise ships within the directive (Article 2.1(a)). (para 170)**
185. **We support the proposed reduction of the definition of a timeshare from 36 to 12 months (Article 2.1(a)). However, we note that some Member States set no minimum period for a timeshare and, provided that the removal of the minimum period does not lead to the application of the new timeshare directive to holidays more properly covered by the Package Travel Directive, we see no reason for any minimum period. (paras 171–175)**
186. **We recommend that, if a timeshare is to be defined as one of 12 months or more, the new directive should include an anti-avoidance provision to deal with contracts purporting to be of a shorter duration. (para 173)**
187. **We recommend that the definition of holiday clubs (Article 2(1) (b)) be amended to exclude arrangements not involving accommodation and those which are provided as an incidental benefit to their members rather than as their primary commercial purpose. (para 176)**
188. **We recommend that multi-annual hotel reservations be explicitly excluded from the scope of the new directive. (para 178)**
189. **We agree that fair and balanced rights of termination and transfer of ownership must be central to the contract and recommend that the proposal be amended to provide them. (paras 181–182)**
190. **We recommend that the Commission consider further the issues of timeshare owners' rights and representation and that, meanwhile, the industry itself address the need for improvements in these areas. (paras 179–180)**
191. **We support the proposed review of the new directive five years after it comes into force (Article 13), but recommend earlier reviews in relation to enforcement and redress as discussed previously. (para 183)**

CHAPTER 14: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Chapter 4: Regulatory Issues

192. We believe that the Commission has set out a good case for a new broader timeshare directive, and that existing horizontal EU consumer protection legislation including the Unfair Commercial Practices Directive is insufficient to deal with the specific problems associated with the timeshare and long-term holiday club sectors. (para 48)
193. We conclude that, while timeshare and holiday clubs have different characteristics, they have many similar features and are marketed in a similar way, in similar situations and often to similar target groups. Both exhibit characteristics which require the same type of consumer protection measures, and we see no major difficulties in regulating both within the one directive as proposed by the Commission. (para 49)
194. We believe that it would have been preferable for the Commission to have proposed a new timeshare directive together with other legislative proposals following from the review of the consumer *acquis*, but we recognise that changes to the Timeshare Directive are overdue and we urge the Council and the European Parliament to seek early agreement. (para 50)
195. We recommend that the Commission, in considering any new proposal in the field of consumer contract law, bear in mind the need to keep consequent amendments to the new timeshare directive to a minimum. (para 51)
196. We recommend that the Commission have regard to the issues arising in the timeshare and long-term holiday product markets during its review of the various elements of the consumer *acquis*. (para 52)

Chapter 5: Justification for Regulation

197. We are disappointed that a substantial part of the industry remains outside the self-regulatory system. We urge companies in the timeshare sector to do more to raise standards. We regretfully conclude that there appears to be no reasonable prospect of self-regulation in the long-term holiday club sector at present. (para 64)
198. We recognise the motivation of those who suggest that compulsory membership of trade associations should be considered further but we think it unlikely that this would be practical and effective. We consider it more appropriate for the Commission to pursue the concept of licensing as we recommend in paragraph 160. (para 65)
199. We recommend that traders should be obliged, rather than encouraged, to inform consumers of their codes of conduct (Article 10.1). (para 66)
200. We urge trade associations in these sectors to review and strengthen their codes of practice in relation to unfair, misleading and aggressive sales practices, and to increase compliance. (para 67)
201. We conclude that national legislation cannot adequately deal with the problems associated with the timeshare market and that EU-level legislation is therefore appropriate. Inadequate enforcement of the current framework,

however, does cause us some concerns and we have made some recommendations concerning future enforcement in Chapter 11. (para 68)

Chapter 6: The Right of Withdrawal and the Cooling-Off Period

202. The introduction of rights of withdrawal and a cooling-off period have benefited purchasers of timeshares and the industry, and these rights should be maintained for timeshare and extended to cover long-term holiday clubs. (para 84)
203. Evidence that suggests that most consumers who cancel do so early in the cooling-off period gives only a partial picture. There may be many other consumers who return from their holiday and, on further consideration and perhaps advice, wish that they had cancelled but find that it is too late to do so. On this basis, we do not think that 14 days is an adequate period for reflection and obtaining independent advice and we therefore recommend that the cooling-off period be 21 days (Article 5.1). (para 85)
204. We recognise that as a consequence of a longer cooling-off period more consumers may cancel purchases of timeshares and long-term holiday products but we suggest that, if this occurs to a significant extent, the problems lie with the products and the way in which they are sold. (para 86)
205. We recommend that in setting cooling off periods, the definition of “day” as a working or calendar day should be clarified. (para 87)
206. We conclude that there is scope for confusion, in the proposal that the cooling-off period be extended by one day, where the final day is a public holiday unless there is greater clarity for both parties about which public holidays apply. We recommend that the cooling-off period be extended by one day where the final day is a public holiday in the Member State of either of the contracting parties (Article 5.2). (para 88)
207. We recommend that the right of withdrawal should not expire after three months in the absence of the information provisions required in Annex I (Article 5.3). (para 89)
208. We recommend that information for consumers about rights of withdrawal be provided in a prominent and clear manner in the contract and in promotional material. (para 90)
209. We recommend the deletion of the proposal that consumers reimburse expenses to traders where they cancel during the withdrawal period (Article 5.5). (para 91)

Chapter 7: Advance payments during the withdrawal period

210. We conclude that the removal of the ban on deposits during the cooling-off period would be likely to lead to a recurrence of the problems that plagued the timeshare industry prior to the 1994 Directive. We therefore recommend the continuation of the ban on the taking of a deposit for a timeshare during the cooling-off period and its extension to holiday clubs, and we support the ban on demands for payments to be made to third parties, as proposed by the Commission. (para 98)

Chapter 8: Resale and exchange

211. We support the proposed ban on requests for advance fees for resale. (para 117)
212. We recommend that the objectives of the cooling-off provisions in relation to resale be clarified. We are particularly concerned that treating resales by timeshare traders and by independent intermediaries on a different basis could be confusing for consumers and could open up a loophole whereby rogue traders collaborate with, or pose as, intermediaries. (para 118)
213. We believe that clarification is needed too in relation to the cancellation of exchange contracts (Articles 5 and 7). In that vein, we agree that consumers who pay to join an exchange scheme should be entitled to a refund of their fees if reasonable and timely requests for exchanges cannot be met and recommend that a right on these lines be added to the directive. (para 119)
214. We recommend that the definition of an exchange be amended to clarify that exchange allows consumers to use the timeshare rights of others, in exchange for others using their timeshare rights, without modification of the rights of the owners. (para 120)
215. We support the suggestion by the Minister that the information requirements should also include details of restrictions on access to particular exchanges and that exchange operators should be obliged to inform the consumer about any additional charges for particular exchanges. (para 121)

Chapter 9: Provision of information to the consumer

216. We conclude that the information requirements need to be reviewed to ensure that they address key consumer needs and are proportionate. (para 135)
217. We recommend that a clear hierarchy of information provisions be established, setting out the relative importance to the consumer of each type of information and based on objective and independent research into consumer understanding. We suggest that one way forward would be for the Council and Parliament to agree on the overall information objectives, which should then be defined more closely through the comitology²⁹ procedure. (para 136)
218. We recommend that, in the case of timeshare, the information requirements give fuller information about the longer-term costs associated with ownership, rights of withdrawal and owner representation. (para 137)
219. We recommend that, in the case of long-term holiday clubs, more information should be provided about the precise nature of the accommodation offered and of its ownership, and the identity of the company or companies that will be providing the services offered. (para 138)

²⁹ The “comitology” procedure allows minor “implementing decisions” to be taken by the Commission, with the full involvement of the Member States, within the framework of broader legislation. It is governed by Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred upon the Commission. (L184, 17, 7, 1999, p 23–26)

Chapter 10: Raising public awareness

220. Raising public awareness is not a substitute for adequate consumer protection. However, potential timeshare consumers do need to be better informed about their rights and about potential “scams”, and to be much more wary when entering into major purchases of the nature discussed in this Report, particularly when doing so in another jurisdiction and in the absence of professional advice. (para 143)
221. We believe that the UK has made a good start in this area and commend the activities to date of the Office of Fair Trading. We consider, however, that a requirement on Member States merely to inform the public of the national law transposing the directive is not sufficient. We recommend that the Commission work with the Member States to draw up a strategy to improve consumer awareness of “scams”, of aggressive and misleading selling practices in these sectors and of their rights in relation to withdrawal from the contract, focusing on key tourist destinations and encouraging regional and local authorities, local tourism associations, chambers of commerce and enforcement bodies to take part. (para 144)

Chapter 11: Enforcement and Sanctions

222. We agree that the establishment of appropriate sanctions is properly the responsibility of the Member States, but recommend that the Government and the Commission act speedily where there is evidence that implementing measures are not effective, proportionate and dissuasive (Article 11). (para 157)
223. We conclude that licensing could have merits. Although it may impose costs, these should be assessed in relation to the level of consumer detriment identified by the OFT. We recommend that the Commission study the costs and benefits of a licensing scheme for enforcement and redress. (para 158)
224. We agree that although enforcement is primarily a matter for the Member States where problems occur, there is a Europe-wide dimension and we recommend that further consideration be given to the idea of monitoring by the European Commission with a view to informing the actions taken by Member States to enforce the legislation. (para 159)
225. We recommend that the Commission review and report on progress in the enforcement of the directive and on the adequacy of sanctions by 2010. (para 160)
226. We recommend that the Commission review the provisions of the Injunctions Directive in relation to the powers to act against individuals as well as traders. (para 161)

Chapter 12: Redress

227. We conclude that the provisions on individual redress in the directive, although an advance on the 1994 Directive, are insufficiently robust. (para 167)
228. We recommend that the proposed directive be amended to entitle consumers to require that, in the first instance, an out-of-court settlement be sought through an independent arbitration or mediation scheme, without prejudice to the consumer’s right of judicial action. (para 168)

229. We recommend that the Commission report to the Council and Parliament in 2010 on progress in the development of out-of-court redress schemes in these sectors. (para 169)

Chapter 13: Other Issues

230. We welcome the proposed inclusion of non-fixed properties such as canal boats, caravans and cruise ships within the directive (Article 2.1(a)). (para 184)

231. We support the proposed reduction of the definition of a timeshare from 36 to 12 months (Article 2.1(a)). However, we note that some Member States set no minimum period for a timeshare and, provided that the removal of the minimum period does not lead to the application of the new timeshare directive to holidays more properly covered by the Package Travel Directive, we see no reason for any minimum period. (para 185)

232. We recommend that, if a timeshare is to be defined as one of 12 months or more, the new directive should include an anti-avoidance provision to deal with contracts purporting to be of a shorter duration. (para 186)

233. We recommend that the definition of holiday clubs (Article 2(1) (b)) be amended to exclude arrangements not involving accommodation and those which are provided as an incidental benefit to their members rather than as their primary commercial purpose. (para 187)

234. We recommend that multi-annual hotel reservations be explicitly excluded from the scope of the new directive. (para 188)

235. We agree that fair and balanced rights of termination and transfer of ownership must be central to the contract and recommend that the proposal be amended to provide them. (para 189)

236. We recommend that the Commission consider further the issues of timeshare owners' rights and representation and that, meanwhile, the industry itself address the need for improvements in these areas. (para 190)

237. We support the proposed review of the new directive five years after it comes into force (Article 13), but recommend earlier reviews in relation to enforcement and redress as discussed previously. (para 191)

APPENDIX 1: SUB-COMMITTEE G (SOCIAL POLICY AND CONSUMER AFFAIRS)

The Members of the Sub-Committee which conducted this Inquiry were:

Lord Eames (from November 2007)
 Earl of Dundee (until November 2007)
 Baroness Gale
 Baroness Greengross (until November 2007)
 Baroness Howarth of Breckland (Chairman from November 2007)
 Lord Kirkwood of Kirkhope (from November 2007)
 Lord Lea of Crondall (from November 2007)
 Baroness Morgan of Huyton
 Lord Moser (until November 2007)
 Baroness Neuberger
 Baroness Perry of Southwark (from November 2007)
 Baroness Thomas of Walliswood (Chairman until November 2007)
 Lord Trefgarne
 Baroness Uddin
 Lord Wade of Chorlton
 Baroness Young of Hornsey (from November 2007)

Declarations of interest

Lord Eames

No relevant interests

Earl of Dundee

No relevant interests

Baroness Gale

Commissioner for Wales, Women's National Commission

Baroness Greengross

President, Pensions Policy Institute

Chief Executive, International Longevity Centre UK

Vice-President, Age Concern England

Commissioner, Commission Equality and Human Rights

Chair, Advisory Board English Longitudinal Study on Ageing

Chair, Advisory Board New Dynamics of Ageing

Patron, several organisations including Share Community, Ransackers,

Beginnings and Greater London Forum

Trustee, The Resolution Foundation

Member of Board, The Pfizer Foundation (UK)

Honorary Ambassador, Help Age International

Baroness Howarth of Breckland

Deputy Chair, CAFCASS (Children and Families Court Advisory and Support Service)

President and Trustee, Grooms Shaftesbury (Chair) (disability charity)

Secretary, All Parliamentary Group for Children

Patron and Trustee, Little Hearts Matter (health/care charity)

Member, British Association of Social Workers

Associate, Association of Directors of Social Services

Lord Kirkwood of Kirkhope

No relevant interests

Lord Lea of Crondall

No relevant interests

Baroness Morgan of Huyton

Non-Executive Board Member of Carphone Warehouse PLC

Advisor to Board of a charity (ARU), (one of whose areas of work is deinstitutionalisation in Romania and Bulgaria)

Non-Executive Board Member of Southern Cross Healthcare PLC

Member Advisory Panel Lloyds Pharmacy

Board Member Olympic Delivery Authority

Lord Moser

Board of Governors, LSE

Board of Governors, Open Universities of Israel

Board Member of National Research and Development Centre for Adult Literacy and Numeracy

Trustee, Rayne Foundation

Trustee, Hamlyn Foundation

Board Member, Menuhin School

Board Member, Jerusalem Foundation

Baroness Neuberger

Member/Trustee of the British Council

Non-Executive Director, VHI (Irish health insurer)

Advisory, Sainsbury Centre for Mental Health

Member, Central Ethical Compliance Group, Unilever

Advisor, Clore Duffield Foundation

Patron, Greater London Forum for Older People

Member, Advisory Board, Centre for Reform

Vice President, 'Attend'

Baroness Perry of Southwark

No relevant interests

Baroness Thomas of Walliswood

No relevant interests

Lord Trefgarne

President, METCOM

Baroness Uddin

No relevant interests

Lord Wade of Chorlton

No relevant interests

Baroness Young of Hornsey

Chair, Nitro Theatre Company

Board of Directors, South Bank Centre

Non-Executive Director, The National Archives

Patron, Josephine Wolf Trust

Patron, Post Adoption Centre

Patron, Action Space, visual arts and learning disabled people

Chair, Arts Advisory Committee, British Council

APPENDIX 2: CALL FOR EVIDENCE

EU Sub-Committee G (Social Policy and Consumer Affairs) is conducting an Inquiry into the issues raised by the European Commission's proposed replacement of the Timeshare Directive. The Commission's Proposal for a Directive concerning the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange was published on 7 June 2007. The relevant Commission document COM(2007) 303 final and other pertinent documentation are accessible on the Commission website at:

http://ec.europa.eu/consumers/cons_int/safe_shop/timeshare/index_en.htm

The Commission indicates that a replacement is necessary because of a number of flaws uncovered when reviewing the current Directive³⁰.

The Proposal seeks to: expand the scope of the directive to cover new products such as discount holiday clubs and "timeshare-like" holidays on cruise ships and canal boats; extend the Directive to include timeshare resale; and clarify aspects of the existing Directive.

The purpose of the Committee's Inquiry is to assess the need for a new Directive, analyse the content of the proposed text and draw conclusions that will be linked into the EU's decision making process.

Issues

Against this background, the Committee hereby invites you to submit written evidence to the Inquiry. The Committee would find it helpful if, in addition to any general issues you may wish to raise, you would focus on a number of specific issues. It is recognised that those submitting evidence will not necessarily have an interest in all the questions and may therefore wish to be selective. The issues are:

Overview

With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?

In this policy area, what do you consider to be the respective roles of EC law and national law?

What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?

Scope and Definitions

What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?

Information Provision

On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?

How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?

³⁰ op.cit.

The Right of Withdrawal

How satisfactory, from the consumer's perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?

One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2) which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?

Advance Payments

How can consumers best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?

How significant a problem for consumers have advance payments been in the resale market (Article 6(2))?

Redress

What are your views on the provisions relating to judicial, administration and out-of court redress (Article 9 and Article 10(2))?

Sanctions, Monitoring and Enforcement

The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by Member States for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?

With particular relation to enforcement, do you consider that the relationship between the proposed new Directive and the provisions of the Unfair Commercial Practices Directive³¹ is sufficiently clear?

Outstanding issues

Are there any significant issues in the timeshare market that the proposed new Directive has failed to address?

We also would welcome views on any other aspect of the Commission's Proposal.

Interested parties are invited to submit a concise statement of written evidence to this Inquiry by Friday, 14 September 2007. Guidance for the submission of evidence is set out on the following page

³¹ op.cit.

APPENDIX 3: LIST OF WITNESSES

The following witnesses gave evidence. Those marked with * gave oral evidence.

Citizens Advice

- * Mr Gareth Thomas MP, Parliamentary Under-Secretary of State for Trade and Consumer Affairs, Department for Business Enterprise and Regulatory Reform

Group RCI

Andy Harris

- * Professor Geraint Howells, University of Lancaster

Interval International

Local Authorities Coordinators of Regulatory Services and Trading Standards Institute

MEPs from the Internal Market and Consumer Protection Committee of the European Parliament

Angus Murray

- * Office of Fair Trading
- * Organisation for Timeshare in Europe

Tony Sedgwick

Shakespeare Classic Line Ltd

The Association of Timeshare Owners Committees

- * The Timeshare Consumers Association

Timeshare Computer Link Ltd

- * Dr Christian Twigg-Flesner, University of Hull

APPENDIX 4: GLOSSARY OF TERMS AND ABBREVIATIONS

Advance Payment	Equivalent to a Deposit
BERR	UK Government Department for Business, Enterprise and Regulatory Reform
CFR	Common Frame of Reference
Consumer <i>Acquis</i>	The body of Community consumer legislation (see paragraph 31)
Cooling-off period	The period of time during which a purchaser can cancel the purchase contract without penalty.
Exchange	The right to use someone else's timeshare, in exchange for others having the right to use your timeshare, without affecting the ownership rights of the parties
Fly-buy	A resort marketing programme in which potential consumers are brought to a resort, accommodated at the resort and given a sales presentation. The cost of the flight may be borne in part through the resort marketing budget ³² .
Holiday Club	see Long term holiday product
Horizontal Directive	Legislation which cuts across a range of sectors
LACORS	Local Authorities Coordinators of Regulatory Services
Long term holiday product	Arrangement under which a consumer is offered future discounted travel and/or accommodation in return for an initial payment
OFT	Office of Fair Trading
OTE	Organisation for Timeshare in Europe
Points Clubs	A timeshare-like arrangement where "owners" hold points which entitle them to holiday accommodation from a pool of resorts.
Resale	A contract by which a trader helps a consumer to sell or buy a timeshare or long-term holiday product.
Right of Withdrawal	The right to withdraw from the contract during the cooling-off period (see above)
TATOC	The Association of Timeshare Owners Committees
TCA	Timeshare Consumers Association
Timeshare	A contract of more than a year by which a consumer acquires the right to use one or more accommodation for more than one period of occupation
TSI	Trading Standards Institute
UCPD	Unfair Consumer Practices Directive
Vertical Directive	Legislation which is sector—specific

³² OTE *The European Timeshare Industry in 2001*, Glossary of Timeshare Industry and Terms, Page 118.

APPENDIX 5: RECENT REPORTS

Recent Reports prepared by the EU Select Committee

Session 2006–07

Evidence from the Minister for Europe on the June European Union Council and the 2007 Inter-Governmental Conference (28th Report, Session 2006–07, HL Paper 142)

Evidence from the Ambassador of Portugal on the Priorities of the Portuguese Presidency (29th report, Session 2006–07, HL Paper 143)

The EU Reform Treaty: work in progress (35th Report, Session 2006–07, HL Paper 180)

Annual Report 2007 (36th Report, Session 2006–07, HL Paper 181)

Recent Reports prepared by Sub-Committee G (Social Policy and Consumer Affairs)

Session 2006–07

Proposal to establish the European Institute of Technology (25th Report, Session 2006–07, HL Paper 130)

Modernising European Union labour law: has the UK anything to gain? (22nd Report, Session 2006–07, HL Paper 120)

“Improving the mental health of the population”: can the European Union help? (14th Report, Session 2006–07, HL Paper 73)

Proposal to establish the European Institute of Technology: Interim Report (13th Report, Session 2006–07, HL Paper 69)

Cross Border Health Services in the European Union (8th Report, Session 2006–07, HL Paper 48)

Minutes of Evidence

TAKEN BEFORE THE SELECT COMMITTEE OF THE EUROPEAN UNION
(SUB-COMMITTEE G)

THURSDAY 12 JULY 2007

Present	Dundee, E	Moser, L
	Gale, B	Thomas of Walliswood (Chairman)
	Greengross, B	Wade of Chorlton, L
	Howarth of Breckland, B	Uddin, B

Memorandum by The Timeshare Consumers Association

This response is based on the information and views expressed by the 10,000 or so consumers who contact the Timeshare Consumers Association (“TCA”) each year.

[Paragraph numbering is as the numbering in the “call for evidence”]

1. There is a powerful rationale for binding legalisation rather than a voluntary agreement because the existing voluntary arrangements, based on the Code of Ethics of the timeshare trade body, Organisation for Timeshare in Europe (“OTE”), are ineffective:

- (a) The OTE only represent a small fraction of the traders in the industry having 69 trade members out of an estimated 800 companies in the industry.
- (b) The Code of Ethics lacks any substantial consumer protection over and above that already provided by statute law. In many cases the Code is weaker than existing laws.
- (c) OTE have systematically failed to enforce the Code on its members who now routinely breach the Code with impunity.
- (d) The Code does not have the endorsement of the Office of Fair Trading.

We therefore see no prospect of a voluntary agreement system becoming effective within the EU.

2. Timeshare and Long Term Holiday Products are almost universally bought by consumers on holiday in a country other than their country of domicile—generally north Europeans buying in southern European countries. It is therefore essential that legalisation should be harmonised throughout the EU to ensure that consumers are quite clear as to their rights wherever they buy. Currently there are at least six different variations of law resulting from the “minimum” requirement of the current Directive which provide dishonest traders with opportunities to confuse consumers.

3. The existing Directive has provided a reasonable degree of consumer protection but has been overtaken by new products and practices, many designed to circumvent the protective nature of the Directive. Typically:

- (a) “Holiday clubs” (Long Term Holiday Products) appear to have been created simply to avoid the current Directive. These are now incorporated in the proposed Directive as are other circumventions such as canal boats and periods of less than three years.
- (b) With more consumers now taking holidays lasting for more than one week the existing 10 day cooling off period is insufficient. This is discussed later at paragraph 7.
- (c) Both the existing Directive and the proposed Directive fail to address the problems now confronting *owners* of timeshare where annual costs, which are mostly outside their control, are escalating at a rate some three times faster than inflation. Not only does this put timeshare at a financial disadvantage with readily available accommodation rental but places a financial hardship on those consumers on fixed incomes such as retired couples.

4. The scope and definitions of the proposed Directive are generally acceptable. However the following amendments, together with others mentioned elsewhere in this response, would improve consumer protection:

- (a) We believe that full harmonisation of all aspects of the Directive is essential for best consumer understanding of their rights. We therefore would like to see Article 1, Clause 2 removed. This is commented upon later under paragraph 8.

- (b) There is some muddled thinking in the wording of Article 2, Clause 1c where the concept of a “resale” appears not to be fully understood by the Commission. See paragraph 14(a) below.
5. The proposals relating to disclosure and advertising lack sufficient precision to assist traders or give comfort to consumers. For example the word “exact” (clause 2 of Annexes I, III and V) is used. “Exact” is a word that will almost certainly be interpreted differently by salesmen and by consumers. We believe that the disclosure requirements should be laid down in detail, preferably in the form of a regulation which can be swiftly amended in the light of changing trader practices. All the main elements of disclosure should be clearly stated on the front face of the purchase agreement in print no smaller than the largest print on the page. [This is the requirement in the amended Timeshare Act 1992 which appears to work well]. The main elements to be disclosed (in addition to those normally required within a contract) are:
- (a) The current resale value (to the consumer) of the product being purchased. Many purchasers are encouraged to believe that the value of their purchase will improve over the years. This is not the case as timeshare periods, when eventually sold by the consumer, are only worth a fraction of what they originally cost and many are entirely worthless. All holiday club memberships are totally worthless in the secondary market.
 - (b) The right to a cooling off period and the absolute ban on the taking of a deposit.
 - (c) The current annual charges of using the product together with a four year history of these charges and a statement that owners/members have the ultimate say in the level of future annual charges.
 - (d) For schemes which involve booking accommodation each year (ie floating weeks, points and exchange) a list of concrete examples of availability covering all geographic regions and all months of the year should be provided, not just for exchange as required by Annex V.
6. Consumers can best be informed by national governments about their rights through specifically targeted promotions. Typically this would be leaflets distributed through travel agents; advertisements in in-flight magazines and notices in airport areas.
7. The terms of the right of withdrawal are satisfactory for consumers except in respect of the period, which is proposed as 14 days. In the UK we have had a 14 day cooling off period for 13 years and it is now too short as many consumers take 14 day holidays and are caught early in their holiday and do not get a chance to check out their purchase until some days after their return. A cooling off period of 21 days would provide those consumers with a much better chance of obtaining the information they need to make a rational decision. However, as the Commission has indicated that it wants to “future proof” the new Directive, we consider that a 28 day would satisfy this objective.
8. The Directive fails to provide a fully consistent regime by allowing national governments to apply more stringent provisions in respect of the cooling off period. We are strongly of the view that the length, start point, modularity and effects of exercising the rights to cancel should be the same throughout the EU otherwise consumers will be left in the same uncertainty as present where at least six different rules apply depending on the country of purchase and/or the country of domicile.
9. Consumers can best be protected from any demand for advance payments by having the ban on deposits clearly disclosed on the purchase agreement alongside where they sign. See paragraph 5(b) above.
10. The taking of a deposit will become a major problem for consumers if it is allowed under the proposed Directive (it is already banned under the current Directive):
- (a) The prospect of failing to recover a deposit; or simply the complex mechanism that traders would place in the way of consumers trying to recover their deposit on a legitimate cancellation, is a strong incentive on consumers to continue with an agreement that they really want to terminate.
 - (b) The importance of a total ban on taking of a deposit is reinforced by the very strong campaign by rogues in the industry to have the ban removed as they perceive the retention of a substantial sum as a means of locking-in purchasers to an unwanted agreement.
11. The Commission have failed to take the opportunity to establish an effective sanctions, monitoring and enforcement regime. A licensing system with a Timeshare Ombudsman empowered to fine, order compensation or, in the ultimate, to withdraw the licence from a trader, would be an economically effective means of ensuring that the Directive works. And a licensing scheme would also overcome the problems for consumers seeking compensation from traders registered outside the EU.
12. Failure to penalise breaches of the current Directive in Spain (and, to a lesser extent, Portugal) encourage us to believe that sanctions should be established at EU level which would provide a more powerful voice to persuade the Spanish authorities to act. Additionally we believe that the new Directive, because it mostly applies to “cross border” transactions, should be harmonised as far as it is possible to do so.

13. [It is not clear what is the purpose of this question].
14. We have further comments on the proposed Directive:
- (a) The Directive completely excludes any protection for timeshare *owners*. This is an important omission as ownership is now the major area where consumers are suffering detriment. We consider that the proposed Directive should be extended to provide detailed rights for owners (and club members) in respect of the quality standards of their resorts and the annual costs of ownership. However, as shown above at paragraph 5(c), we believe that some protection for owners can and should be included within the disclosure requirements.
 - (b) We do not consider it necessary to legislate for “resales” except to ensure that a consumer wishing to sell his ownership to or through a trader should not be required to make any payment to the trader. Our understanding of the proposed Directive is that all sales by traders “in the course of business” to consumers would be regulated by the Directive, so “B > C” transactions would be already be covered. We suspect that the Commission has failed to understand the word “resale” and have added complications which are unnecessary.
 - (c) The proposed Directive makes no attempt to legislate on the legal structure of timeshare. Whilst weaknesses in the existing system are now becoming apparent as resorts are closing (making owners “homeless”) we consider it impracticable to impose a legal structure on existing resorts but all future resorts should have a structure—probably based on public registration of individual owners rights where that is lawful—that provides security of tenure for timeshare owners.
 - (d) Article 5, Clauses 2 and 3 do not include the extension of the cooling off period for the purchase of Long Term Holiday Products (Annex III). This omission has been recognised by the Commission who intend to correct it.
 - (e) The proposed Directive is imprecise about the effect of a trader failing to provide the information (Article 5, clause 3) as required by the Annexes. We believe that failure to provide the required information within the 3 months and 14 days should automatically render the agreement null and void.
 - (f) Article 5, clause 1 extends the cooling off period by one day if the fourteenth day is a public holiday. This is confusing as each state has different public holidays and it is not clear whether the relevant public holiday is that of the country of purchase or country of domicile of the purchaser. This extension should be removed for clarity.
 - (g) There should be no penalty of any sort on a consumer who cancels in a timely and proper fashion, as indicated by Article 5, clause 5.
 - (h) Finally, the Directive should be reviewed every five years to avoid anti-consumer practices becoming enshrined within the industry.

13 September 2007

Examination of Witness

Witness: MR SANDY GREY, examined.

Q1 Chairman: Welcome to the Committee and thank you very much for coming to give evidence. We are very grateful to you for agreeing to come and speak to us about the European Commission’s proposal to replace the directive relating to timeshare and similar holiday products. We know that there have been many problems for UK residents and other people regarding the purchase of holiday products in general and the new directive is intended to improve the protection of the consumer with a wider range of products. There are just a few housekeeping points. We have got an hour available to us for this discussion. The session is open to the public although there are, as it happens, no members of the public here but it will be recorded for possible public broadcasting or web casting. A verbatim transcript

will be taken of your evidence and will be sent to you shortly after this session. If you feel you need to alter it, please could you do that as soon as possible so that we know we are putting the right evidence out. You may submit supplementary evidence after the session. Sometimes we do not fully explore the points that we have raised and the witness wants to add something to what he or she has said and it is very useful to us to have any further thoughts you might have if we have not been able to cover everything during our hour. I would like you to start by stating your name and your official title for the record. You may also wish to begin by making a statement and, if so, we would be happy to hear that.

Mr Grey: My name is Sandy Grey and I represent the Alliance of Timeshare Consumers in Europe which is

*12 July 2007**Mr Sandy Grey*

a group of five independent timeshare organisations: Greece, Germany, France, Sweden and the UK. I am also chairman of the Timeshare Consumers Association in the UK which has been going for about nine years now so we have a fair degree of experience in the industry. I would like to make a five or six minute preliminary statement which will attempt to answer I think the first question which is the issue that was raised in the European Parliament a fortnight ago. A Member of the European Parliament stated very recently that timeshare is a criminal industry. I do not entirely accept that generality. There are some good people in the industry and there are some happy timeshare owners but unfortunately we have rather more than our fair share of rogues in the industry. These rogues got into the industry, or attempted to get into the industry, in the very profitable 1970s and 1980s but the response to their intrusion into the industry was totally different either side of the Atlantic. The industry leaders in America, which is a strong trade body formed in 1969 and supported by major hotel groups, evolved a strategy to control the rogues and to create a good long-term future for their own industry. That strategy included two key issues: one which was a very strong self-regulatory regime and, secondly, they encouraged and promoted legislation to give consumer protection believing that will give a long-term strength to the industry. In contrast, we in Europe, and mainly based in the UK in those days, have been through a series of six trade bodies with almost no support from the major hotel groups and have failed to follow the US lead. Even now they appear to lack the will to have a long-term plan to develop the industry and let it grow. For example, they have a very ineffective code of conduct and it resists every single attempt to legislate on behalf of consumers. The results of those differentials between the Americans and the UK are quite stark. Americans claim to have 4.4 million timeshare owners and it is growing at about 10% per annum. In Europe, with a bigger population than America, we have only 1.4 million owners and it is declining at about 3% per annum. The lesson we have failed to learn from the States is that the grab-it-and-run philosophy runs out in time and I believe that time has probably already arrived. The consumer problems that are caused by these rogues fall into three basic areas: the buying of timeshare; the owning of timeshare; and the selling or getting out of timeshare. Let me give some quick examples of all three. Most sales are made to consumers whilst they are on holiday in a country not of their residence. For UK citizens it is usually in Spain or Portugal or the Canaries. In many cases they sign to get out of that very intense hot-house atmosphere, hard sell, three or four hours of intensive highly structured presentation, lies told by sales people, failing to put

the key benefits of the purchase in writing so they are just verbal. For example, they will say that the purchase is a good investment, you will get all your money back when you are selling, which we will find out later is certainly not true. They say "Yes, you can go on holiday in August guaranteed." Perhaps yes, but only if you do not mind sharing your bed with nine strangers. Then there is the development of loophole products where there is no cooling off period and no ban on taking of a deposit. The best known of these is what the Commission called long-term holiday products, we call holiday clubs, which look similar to timeshare, smell similar to timeshare, are sold in an identical manner to timeshare and are priced the same as timeshare so the consumer is confused. The other loophole was the 35 month trial package which was invented by the industry in 1997 when the new directive became effective. It produced a lower cost avoidance of the law designed to get the consumer in the hands of the sales people when they went on holiday for the next 35 months to try and persuade them to buy the full-blown timeshare. The second area is the owning of a timeshare. There have been excessive fee increases. Two of the largest organisations in the industry both have increased their fees by double in less than 10 years at a time when inflation has only gone up by 35%. With the declining number of owners, resorts are being closed for re-development as hotels, shopping precincts or whatever. There is a general squeeze to get rid of owners where the resorts are starting to decline. The final area where there are problems for consumers is what we call getting out. There is hardly any natural demand to buy timeshare. We produce a series of help sheets: one is called How to Buy Timeshare and one is called How to Sell Timeshare. For every one How to Buy Timeshare we send out, we send out 500 How to Sell, a clear indication of the lack of the demand. Many time shares, as a result, are worthless. These are the problems we believe this new directive should be addressing. What I have not mentioned, and do not intend to do so unless you wish me to, are the frauds that are operated within the industry and on the periphery of the industry which are not addressed and the directive has no intention of addressing.

Q2 Chairman: We will come to that point later on in our discussion. I want to start the questions by asking you to what extent you think the situation in Europe was improved by the 1994 Timeshare Directive and what have been the strengths but particularly the weaknesses, following on what you have been telling, us of that directive.

Mr Grey: The main changes of the directive, I am sure you already know, are to introduce a cooling off period.

12 July 2007

Mr Sandy Grey

Q3 Chairman: You mean the current directive, the proposed directive? I was asking about the effect of the 1994 directive.

Mr Grey: I was going to come on to that. The 1994 directive did not become law until 1997 which was a trigger point for quite a lot of action within the industry. It introduces a cooling off period, which we already had under UK law of 14 days. It introduced a ban on the taking of a deposit and it introduced a modest level of written disclosure of the purchase. From the point of view of the old directive, as we will call it, the ban on the deposit and the cooling off period gave very good improvement to consumer protection. It may be an odd way of putting it but the industry itself claims that its decline started from that very day. It was suffering something like 50 or 60% cancellations so obviously it was working. The weaknesses of the existing directive are three-fold: first of all, the loophole that was invented by the industry, the 35 month trial package which got below this three year directive limit on the law, is now the most intensively marketed timeshare product as opposed to long-term holiday product. It is still a major problem to us where people are buying with no cooling off period and no ban of deposit. The other loophole is the holiday club, which I mentioned already, using exactly the same techniques as timeshare and promising some marvellous availability of accommodation, marvellous availability of holidays, which simply do not exist. In some cases they are figments of somebody's vivid imagination. The negative side of the existing directive were developments of new products. In the days before the directive the basic product in timeshare was a fixed week of accommodation. You bought week 36, which is the last week in August, and you knew you had that last week in August in perpetuity. The new products were floating periods where you bought a choice in a red band, which is a high season band, but you had to book it each year so it was subject to availability. I am sure this will come up a number of times later this morning. The points scheme works in a similar way where the purchaser acquires points and uses that as currency to book accommodation year by year, again the problem subject to availability. A final downside or weakness of the directive was it has encouraged much more aggressive selling techniques.

Q4 Baroness Greengross: You have mentioned holiday clubs. I think I know what a holiday club is but it would help me if you could explain the term precisely. You have mentioned some of the problems that that 1994 directive threw up regarding those definitions. If you could clarify that it would help me.

Mr Grey: Would it help if I gave you a definition for timeshare and a definition for long-term holiday products in a simple way? Timeshare is effectively an

acquisition of a legal right of use of accommodation. It is usually held in trust or by some form of real estate registration or public register as it is in Spain and Portugal. Technically once you have it, it cannot go away; it is certain. It is only certain in respect of the fact that you have to carry on paying the annual management fees to keep the rights maintained. Timeshare has a certainty about it and a feeling, a pseudo feeling, of real estate ownership, hence the word timeshare owner. Holiday club is a promise to book accommodation or a whole package through an agent. It is no different in any way from going to the high street or going to Thomas Cook and saying "I would like to go to Tenerife." The only difference is that the sales people promise, when you join this club which gives you access to the booking system, you are getting very good choice, you are getting very good quality and you are getting big discounts, none of which are true. The holiday club is only offering the same as is available off the internet, teletext or the high street.

Q5 Baroness Greengross: Why "club"? What is the club bit?

Mr Grey: It is simply an organisation which you join when you pay the money. A holiday club is where you phone or write or email to book your accommodation. It is rather like a Christmas club in some peculiar way.

Q6 Baroness Greengross: There are no membership benefits at all?

Mr Grey: No, none at all.

Baroness Greengross: That is extremely helpful to me, thank you.

Q7 Baroness Gale: You have already talked about the present cooling off period of 10 days and the proposal to take it to 14 days. You have said you think it could easily be changed to the 28 days. Could you tell us what are the problems with 10 days? Could you say why you think it would be better 28 days and do you think that could have a detrimental impact on the future development of timeshare?

Mr Grey: Can I go back to the beginning of the history of the cooling off period. The first law to introduce a cooling off period was the Timeshare Act 1992 introduced in the House down the corridor. It gave a 14 day cooling off period and that was 1992. The 1994 Directive, which became the 1997 law in Europe which is the current directive, went backwards to a 10 day period at a time when it was quite clear people were taking longer holidays. It is now becoming apparent people are taking even longer holidays. Point number 1 is that we must protect people not only today in the current holiday time pattern to give them time to come and think about it—and I will come back to that in a minute—

12 July 2007

Mr Sandy Grey

but the Commission did say they wish to future-proof the new directive. Future-proofing must allow for longer holidays which people are taking throughout the whole of Europe. Coming back to the point I made earlier, the purchase of timeshare is almost always made overseas. It is nearly always made on the first or second day of someone's holiday: white knees, red face, recognised very quickly as having just arrived. There is a long time before their brains are back in gear and back home and able to do research and ask us or other people questions about what they bought. That time now is quite clearly not enough. We get a number of inquiries from people who say "I signed up on so-and-so a date" and I say "You have passed the time". "Oh dear, we did not know." 14 days is already inadequate and will become more and more inadequate as the years go by. In the Commission's proposals last year a range of periods were proposed: 14; 21; 28 days, which is what we proposed; one or two people proposed 30 days; and one person actually said one year but that is a bit impractical.

Q8 Baroness Gale: Do you think you will build up support for the 28 day proposal?

Mr Grey: I would like to think the Commission would move from 14 at least. The further they move the more beneficial it will be in the longer term. An issue that may come up later on is that the existing directive should have been reviewed five years ago. If we delay reviewing the new directive by a further five years, making it 10 years, we are well into longer holiday periods which 28 days would cover but not 21 or 14.

Q9 Baroness Greengross: What does the United States do about that?

Mr Grey: The United States has different laws in each State: five days, 10 days, and I think one is 13. As the bulk of the people in the United States are from the United States they are nearer home and do not have this problem of going away for a fortnight and coming back again so it is less of a problem to them.

Q10 Baroness Howarth of Breckland: I am not clear why the industry are so fiercely against the extension except that it gives people time to withdraw on reflection.

Mr Grey: If you asked the question what is the effect of a longer cooling off period going to be, the answer is for the timeshare industry it will have a detrimental effect short-term. If they can revise their policies and practices for selling so that people use a longer cooling off period as a marketing tool and people are comfortable with this, it will have a beneficial effect. As far as long-term holiday products are concerned, the cooling off period will kill them with sighs of relief all around.

Q11 Lord Moser: On the withdrawal period point as part of the cooling off point, I now picture this poor family in Tenerife or somewhere and there is a cooling off period, how can they possibly get out of it or perhaps they are not even there yet. They got into it because of the problem organisations that you pictured so well and demand is declining like mad. In asking about the withdrawal period I also want to ask you in general. Listening to you, my inclination would be the best thing would be to close the whole thing down and not to have timeshare any more because of all these problems. There is a very steep decline, wealth is increasing all over the place so people might buy things in total rather than time sharing, but presumably you are arguing that timeshare is a good thing if only it were properly regulated. Could you talk a bit about the bits of the withdrawal period other than cooling off which you have dealt with in giving information and all that but in the context of why it is necessary to rescue this whole business?

Mr Grey: I do not think I agree entirely with Lord Moser's view. May I state a view on timeshare. My view is that it is a valid holiday product. It offers a facility for people to get good quality accommodation at prices lower than they would normally have to pay through owning their own villa or whatever. The principle is right but the problem has been the people in the industry. There are too many rogues in Europe. If by legislation and other means we can discourage the rogues, perhaps ending up with a smaller industry than we currently have but providing the original image of the product, quality of accommodation, just pay for the bit of time you wanted to use, I would fully support that. How you tell people about the cooling off period I think was your question.

Q12 Lord Moser: How they can withdraw.

Mr Grey: The UK Act has a very good piece in it, only amended five years ago, which required the cooling off period to be clearly disclosed in print no smaller than the largest print on the paper on the front face of the purchase agreement next door to where people sign which says very clearly you have until X, Y, Z date to cancel the agreement. That is an excellent idea and the directive should adopt that as well. At the same time, if we are going to say in the purchase agreement that there is a cooling off period we should also say in the purchase agreement there is a total ban on the taking of a deposit. These are the two key lock-in issues for purchasers. If they are disclosed clearly to them in the purchasing point they will have much more ability to choose what they want to do.

Q13 Lord Moser: On the more general point, you talk about a smaller industry across Europe. Is that what you have in mind, having got rid of the problem organisations?

12 July 2007

Mr Sandy Grey

Mr Grey: I am trying to project what I see is happening in the current industry. It is in decline. There is about 8 or 9% less owners now than there were five years ago.

Q14 Lord Moser: You attribute that to the problem organisations?

Mr Grey: To a great extent, yes.

Q15 Lord Moser: Not to social trends, financial trends.

Mr Grey: No. If you look at America, it is really growing. It can be done but we are just doing it wrong.

Q16 Lord Wade of Chorlton: Clearly the reason why there is decline is the industry in this country is not even controlling itself. It is not taking any action to try and make the industry more acceptable so that it would grow. Why is that? Is it an industry that attracts unscrupulous people or is it an industry that has not actually got within the hands of honourable companies who can see the growth opportunities and want to run it effectively? Normally if there is a business that can make money for somebody, generally they want to run it well because by running it well it grows and you get consumer confidence in it. It is rather odd that people should want to run an industry in such a way that people want to use it less and less.

Mr Grey: That is absolutely right. The problem comes back to the fact that the industry has never got itself together in a coherent, strongly led organisation. It has had six trade bodies. It has not got the support of the big powerful medium which is the hotel groups in Europe where it has in the States. Nobody has taken the industry by the scruff of the neck and said "If you want to be here in 10 years time earning decent profits, you have to do it this way." It seems to be short-term-ism, that is rogue-ism, that is grab-it-and-run-ism. I do not see any solution to it other than legislation to wrap the knuckles so hard they have to change their policies. That is why I am hopeful the directive will do exactly that.

Q17 Lord Wade of Chorlton: I wanted to raise points on the information provision of the directive. Could you explain how the information obligations in the proposed new directive differ from those in the existing directive and would you choose to add any items of information or to consider any to be superfluous for the consumer?

Mr Grey: The new directive introduces a little bit more requirements on disclosure of benefits but not very much; it is a marginal move. Our view is that there should be much more profound precise defined disclosure. For example, there are no requirements in

the new directive to say precisely what a person is purchasing. The word "exact" is used in the new directive. "Exact" is a phrase which is interpreted by traders in a totally different way than by consumers. What I would like to see is guidance notes by the directive to state that the following items should be included in the disclosure. Availability is a big issue. I joked earlier on about sharing a bed with nine other people if you go in August because everybody wants to go in August and there is not the capacity. It should be precisely spelt out in the document whether you can or cannot go in any high season. Secondly, I think there should be a disclosure as to the current value of what is being purchased. I know it is an odd thing to do. If you buy a motor car you do not have to say that it is only going to be worth 70% less tomorrow morning but with timeshares now worth sometimes 5% of what they were when originally bought, sometimes worth nothing, I believe consumers must be given that information. The third area is drifting into another area which I hope we will be discussing later on and that is ownership rights. I believe the directive should state very clearly that owners do have control over the standards and operations and costs of their club or resort. They do not at the moment and that is one of the main reasons why there is this distress amongst owners, massive increase in fees and owners just walking away.

Q18 Lord Wade of Chorlton: Do you think that the government, through the Office of Fair Trading, could have been successful in informing consumers of their rights in the existing directive? What further things could the UK government do to get more information on these issues across to the consumer?

Mr Grey: The Office of Fair Trading and the DTI before them made reasonably good efforts to educate consumers about their rights within the timeshare business. The old story of financial constraints keeps coming up of course. My own belief is that the targeting of education should be done very precisely and the best place to do it is when people are flying away to Benidorm, Tenerife or wherever, with adverts on the back of flight magazines, leaflets in the airports and so forth. That was done to a limited extent but it was done only as a campaign and, as you know, campaigns last four or six weeks and then die. If the OFT would operate a campaign over two or three years, maybe lower key, aimed precisely at that area I believe the education would improve quite considerably. We could look at how the Swedes do it. They have half an hour a week of school education on your consumer rights.

Q19 Lord Wade of Chorlton: Across a whole range of issues.

12 July 2007

Mr Sandy Grey

Mr Grey: Yes, it is a broader issue I know.

Chairman: They seem to be reforming the education curriculum at the moment so maybe you should make your input to the correct department.

Q20 Baroness Howarth of Breckland: Do you have relationships with other consumer organisations? Have *Which*, for example, run anything on this in their magazine? It maybe quite middle class but it does have a circulation.

Mr Grey: We work quite closely with *Which*. In fact I am helping at the moment with an article they are producing for next February on timeshare. I have helped them with the previous articles over the past four or five years. *Which* decided about two months ago that their legal advice service, which is an excellent service, would not touch timeshare. I inquired as to why and the word “aggravation” came up. The problem being that a single consumer, with a single timeshare problem worth £3,000 or £4,000 requires an immense amount of effort to battle against the rogues who will not answer letters, not respond honestly and not to respond directly. *Which* legal services found out to their cost it was not worth their while. It is a frightening thought. On a similar parallel basis with some lawyers if you walk into a law firm and say you want to talk about timeshare your feet do not touch the floor as you go out. It has a reputation.

Q21 Earl of Dundee: Returning just for a moment to the rights of withdrawal, what is your view of the facility within the directive which allows Member States to apply their own more stringent national provisions?

Mr Grey: We believe that the new directive should be harmonised totally throughout Europe: totally in countries and totally in its terminology. The only area where the harmonisation is not in existence so far in the proposed directive is in the form of the cooling off period, how it is described, how it is defined and how you make the application to cancel—modularity as they call it. I see no reason why it should not be harmonised but let me give you a reason why it should be. At the moment the consumer has a mismatch of timeshare laws. In most countries there is a 10 day cooling off period, in the UK there is 14, in Belgium it is 15. The consumer does not know what cooling off period would apply to his situation. As most consumers buy outside their country of residence, we believe that everybody should know exactly what their rights are wherever they are. That is my belief on harmonisation. I do not see any reason why the directive should not define, first of all, day one of the cooling off period. I am suggesting, a bit tongue in cheek, it should be the day that the consumer receives a counterpart copy of the agreement at his home address, i.e. it starts from the

point at which he gets home; secondly, that the cancellation can be in any written form which has proof of posting, which could be fax, email or registered letter; thirdly, provided it is posted within the 14 day, preferably 28, period that would satisfy the cancellation and the agreement would be null and void. It is quite simple.

Q22 Earl of Dundee: I hear what you say about the case for harmonisation, nonetheless that is not going to happen. With the new directive when it comes into force there will not be harmonisation. The United Kingdom, for example, within the context of the new directive can choose to apply its own more stringent national provisions. Is that the case?

Mr Grey: Yes. I am treating the directive as a draft not as a final product. I have had information from within the Commission that they will hear and attend to suggestions such as these, hence I am sure this is the purpose of the hearing today. I am not entirely convinced I agree with you. I believe the Commission could be persuaded to go for total harmonisation. They believe in it themselves and it is not very clear as to why they have tolerated one element within the whole directive that is not harmonised.

Q23 Earl of Dundee: At the same time, would you perhaps adopt, and correctly so, a paradoxical position? On the one hand, as you have explained to us, you would favour harmonisation and what you would like to see, as you have also drawn to our attention, is a package of changed measures. You would like at least 28 days for the right of withdrawal. You would like a clear and unambiguous ban on paying deposits. You would like things put down clearly in writing so that the consumer is properly protected in a way in which he is not at present. In the paper you write and what you have been telling us today, these represent some of the defects of the 1994 directive perhaps. So in context, you begin by saying let us have harmonisation, yet within harmonisation let us address the current defects which subsist within all countries in the European Union. Then, however, you recognise that this plan will not work therefore, you advocate a compromise or an improvement, which is better than nothing but which falls short of a proper solution. This happens when good practice from some other EU states perambulates to others. This conformity to good practice, say within Germany and France, might cause a form of harmonisation by the back door or at least some improvement for all by the front door.

Mr Grey: Our plan A is total harmonisation with all the goodies built in. We recognise, exactly as you say, that is possibly not going to happen. Plan B is exactly as you say, that if we can persuade the DTI, who are the authority in this matter, to introduce superior consumer protection in the area where they are

12 July 2007

Mr Sandy Grey

entitled to do so and perhaps use that as argument throughout the rest of Europe. That is plan B if we do not win plan A.

Q24 Chairman: I do not know how much you know about the different attitudes of different Member States. It might be that some Member States are quite keen to get a high level of conformity and a high level of standards, as it were, of how to conduct this business and others might be influenced by internal pressures to be less keen on these high levels. Do you think there is a problem about that?

Mr Grey: Yes, there certainly is. Can I put some perspective on this situation. The largest number of timeshare owners in Europe are in the UK, the second largest are in Germany, the third largest are in France and then the numbers decline around the various other countries. The largest area of purchase of these owners is in Spain, and I include the Balearics and the Canaries within that; secondly, Portugal; and then generally throughout the rest of Europe. In the Commission meeting in July of last year it was interesting to see who turned up and who did not turn up. We were very disappointed to see neither anyone from the Spanish government nor the Portuguese government attended, as if they were disinterested. To support that point, the 1994 directive was introduced on the 30 April 1997 throughout the whole of Europe except in Spain who took 21 further months to introduce it and even then amended it, contrary to the statement in the directive, by allowing a deposit to be taken by a third party. The biggest problems we have are with Spain failing to enforce the law, creating their own softening of the impact of the law and clearly, at the moment, not showing a lot of interest in consumer affairs in respect of timeshares in the future.

Q25 Chairman: It is a conflict between the consumer populations, like our own northern populations, and the supplier populations which, in the case of Spain and Portugal, are less willing to limit the freedom of the supplier to supply what he or she wants. That is the contrast, is it not?

Mr Grey: Yes.

Q26 Lord Moser: Does that imply that the problem organisations are not evenly spread throughout Europe?

Mr Grey: May I have two minutes to answer that question. Can I talk about fraud because that puts rogues right in perspective. The two largest fraudulent operations are the resale scam which is where a timeshare owner is telephoned from Spain by somebody who says "We can sell your timeshare for £5,000 or £6,000" when it is only worth £500 or £600, and then asking the owner to pay them some money,

anything up to £1,000, and he hears no more. That has been going on for seven years. There are about 1,300 companies, to our knowledge, in the business and the police in Spain take no action whatsoever. Interestingly the police announced in October last year they had arrested eight people for running 300 of these resale scams. I phoned up the policeman I know in Malaga and said if you give me the names of the 300 companies I will give you a long list of their victims. "No, I cannot do that" he says. It later transpired that the victims were all Spaniards. The police are taking action on behalf of their own natives but do not seem to be interested if a Brit or a German or a Frenchman gets caught. I think thereby lies a big problem. That is right the way through not only the fraud side of the industry but also the rogue where it is perhaps not a fraud but breaking of the law, the Timeshare Act for example.

Q27 Lord Moser: Are there problem organisations in this country?

Mr Grey: A few but not very many.

Q28 Baroness Gale: I have two questions on the advance payments. How best do you think consumers could be protected from demands of advanced payment before the cooling off period? What extent have the demands caused a problem for the consumers? Could you explain how resale works in the timeshare market? Do you think there has been a big problem for consumers who made advance payments in this aspect of the market, the resale side?

Mr Grey: The first question is how can consumers be protected in respect of making advance payments? I believe that by making it very clear on the purchase agreement, as I suggested earlier, no advance payment of any sort, and the directive is pretty good in the phraseology they use in that respect, may be taken during the cooling off period. I can see no other way, in the way in which the directive is couched, to enable that to happen.

Q29 Baroness Gale: How does the resale market work?

Mr Grey: There is confusion on the subject of resale and that confusion has drifted into the Commission. I hate to say this but I do not think they fully understand it. There are two transactions that we talk about. The first transaction is the sale by a trader to a consumer of either a timeshare right or a long-term holiday product. The bulk of those transactions are now of a product which has been pre-owned. Most timeshare weeks have been owned by somebody beforehand and they are now being sold for a second, third or fourth time by a trader to a consumer. The confusion arises by the fact that the trader may call that a resale, possibly is a resale, but our view is that

*12 July 2007**Mr Sandy Grey*

any transaction, irrespective of the age or definition of the product, should be covered by Annexes 1 and 2 which cover trader-to-consumer products. The other side of the coin is where a timeshare owner wishes to sell his timeshare to either a trader or through a trader as a broker. That should also be covered but separately under Annex 4. At the moment the directive muddles those two together and I have written the Commission to say please explain.

Q30 *Baroness Gale:* What you are suggesting is a first time sale of a timeshare would be covered under the legislation and then the resale should be covered by the same legislation?

Mr Grey: No. Can I explain it in a slightly different way? The concept of a timeshare week is presumably fully understood around the table. Most timeshare weeks have been bought before, maybe twenty years ago, and the owner has either gone away, handed it back to the resort or whatever and so it is sold again by the trader to a consumer. It is rather like a second-hand car to be sold on and on. I am arguing that the transaction where a trader sells a timeshare or holiday product to a consumer, irrespective of whether it is new or well used, is covered by Annexes 1 and 2. The word "resale" is only applied to the other side of the coin where the owner is selling to or through a trader; it is consumer-to-trader transaction.

Chairman: I am sure we will get more familiar with these ideas as our inquiry continues. You have met us when we are just starting to understand these matters. We also have an excellent adviser who will be able to explain if we have any further questions.

Q31 *Baroness Howarth of Breckland:* I want to talk about enforcement. I was very struck by the way you described the industry and its incapability of developing a voluntary code of any sort. In the light of that, there is enforcement proposed in the new directive which is crucial to its success. We all agree with that. What are your views on the provisions relating to judicial administration and out-of-court redress in the context of how you describe the industry? At the same time maybe I can ask the next question as they are linked. How effective do you think the various competent authorities have been in enforcing the existing timeshare directive in countries of particular concern to your association, which links again to the issue you raised on fraud I believe?

Mr Grey: There are three questions there. Can I deal with the last one first, which is how effective the existing authorities have been. The Office of Fair Trading and the Trading Standards Office are the primary authorities within the UK for the Timeshare Act and directive and, in our view, have been pretty

successful. We know of very few cases where the Timeshare Act in the UK has been breached within the UK. It is universally breached outside the UK and it does apply to a UK citizen in the EEA countries. So far the Office of Fair Trading and Trading Standards have done a pretty good job and I do not see any reason why that should change in the future. As far as the judicial side for the future is concerned, coming back to Lord Dundee's comments about lack of harmonisation, there is not enough precision as to what a breach of the law should incur in the forms of fines or whatever. We would like to see a menu system, a menu of events and fine, quite clearly stuck up on the wall so people know if they tread over that line that is what it will cost them. It will be a knuckle wrapping exercise I hope it will work. That is missing and that should be introduced. An out-of-court settlement is an interesting exercise. A lot of people commented that we ought to have an EU-wide timeshare ombudsman. We have a very good example of an ombudsman service working effectively in the UK and that is the financial ombudsman service. It works very well, in our view, and its strength is that they act quite quickly, they seem to have a clear understanding of their obligations within the laws that work, primarily the Consumer Credit Act, and it does not cost the consumer anything. If we could introduce a similar type of ombudsman service throughout Europe, that would be an excellent move. The problem would be enforcement. The financial ombudsman service can enforce it through the fact that there is now enforced registration with the service. From a timeshare point of view that would require licensing so that the ombudsman can either threaten to withdraw a licence or penalise a company on the threat of withdrawing a licence. We know that the Commission is not very keen on the idea of licensing. I know it is complex and expensive but it might well solve a lot of not only redress problems but also act as a deterrent and replace the judicial problem.

Q32 *Chairman:* Thank you for those answers. I have one more question on our list which is coming back to the level of sanctions imposed by Member States for infringements of the current directive. It seems to me from what you have been saying that the situation is a little wider than that. It is a question of how you get justice for citizen A who has bought or not bought something in country B. We are now talking about cross-border justice of some sort or another. Could you expound a bit more on these problems? You have told us quite a bit about it. I must confess I was on Laws and Institutions, the other sub-committee of this select Committee some years ago. I am no lawyer

12 July 2007

Mr Sandy Grey

but what I did get was a clear understanding that cross-border judicial pursuit of people who are deceiving you if it is a civil case is not that easy even today in the European Union. That is the problem in this respect: getting a case or getting compensation across a boundary is much more difficult. Is there an approach in the proposed legislation that would sort that out or would the consumer have to start learning about how these cross-border efforts to get justice work in the broad sense before they could tackle in the particular sense?

Mr Grey: I would hate to think the consumer would have to do it himself in Spain or Portugal. The Office of Fair Trading have set up arrangements now, a working liaison—and I am sure Mike Haley will tell you about it—with the Madrid police which means that the problem area, which is Spain, can now be addressed from Central London and that might well help. The Office of Fair Trading do not deal with individual situations but only with groups but at least that is a move in the right direction and does take the power of the consumer in the UK across into the Spanish area. The other interesting thing is that a number of consumers have grouped together to take action themselves at their own expense. In the John Palmer case, when he was locked up in 2001, we set up a group action to claim compensation and were rewarded with a very substantial sum, which has not been paid yet but we will wait and see on that. Secondly, a group of owners in a resort in Lanzarote, called the Lanzarote Beach Club, have initiated a criminal action in Lanzarote against eight people who they believe were acting fraudulently with the intention of following that up with a compensation claim when the case comes to court. The third example is in Paris, France, Club Systeme Vacances, which was a fraud run interestingly by a Brit in France. Our French colleagues did exactly that: they set out to make a compensation claim in the Paris courts on behalf of the victims.

Q33 *Baroness Howarth of Breckland:* I thought it would be very useful if we had hard examples. It is going to be quite sensitive in terms of our evidence in relation to other EU partners. If we had examples they would be extremely helpful.

Mr Grey: Would you like me to put this bit of information in writing to you?

Q34 *Chairman:* Yes, that would be very helpful. It might have to be anonymised in some way. We will have to think about that. It is evidence we want of what can happen and how group action can help to assist individuals in this kind of thing. Another question has come to my mind. Is there a huge

difference in the fines, or whatever it is, that can be applied across the European Union because of the existence of separate legislative provisions as well as the European directive?

Mr Grey: I am afraid I do not know. As it happens so seldom, we have no experience of it.

Q35 *Chairman:* The difficulty is getting anyone punished is what you are really saying?

Mr Grey: Yes. The Office of Fair Trading has a process of frightening the rogues off and it usually works in the first part of the process.

Q36 *Lord Wade of Chorlton:* Going back to the point you were making about the decline in the industry, when you are talking about decline do you say there are less people now out of the UK or across Europe who own timeshares or are there fewer people going into the timeshare, in other words is the rate of growth down or the actual number of people who own timeshares down?

Mr Grey: In simple terms timeshare has a finite life for an individual. They may own it for 15 or 20 years, often buying at 50 and getting out at 70, so we have wastage, and wastage for many other reasons as well. There is always about 10 or 15% of the population of timeshare owners going away. Up until about five years ago that wastage was being replaced by sales. As sales have declined that wastage is not being fully replaced and we now have a discrepancy of 2, 3 or 4% between people walking away and being topped back up again by sales.

Q37 *Lord Wade of Chorlton:* There are fewer people now interested in investing into a timeshare of any kind?

Mr Grey: I would not like to say that is the case but certainly there are fewer people involved as owners of timeshare than there were five years ago.

Q38 *Lord Wade of Chorlton:* Are you a timeshare owner?

Mr Grey: I was until about six months ago.

Q39 *Lord Wade of Chorlton:* Did you come to a period where you did not want to do it or did you come to a decision?

Mr Grey: A rogue took over my timeshare resort and I did not want to get involved.

Chairman: We have had an extremely interesting and very useful introductory session with you. You have told us a lot of things that some of us knew but I do

12 July 2007

Mr Sandy Grey

not think any of us knew all of it. It has been very helpful and thank you very much for coming before us. We are already going to get something from you, the cases that you drew to our attention, but if anything else should occur to you within the next few days which you think would be helpful, bearing in mind the trend of our questions, we would love to hear from you. That would be very welcome.

Q40 Lord Moser: Any statistics on the whole industry I think we would appreciate.

Mr Grey: I brought with me our report of September 2005, copies for all of you, which does contain the statistics you need and if there are any missing please ask and I will provide them.

Chairman: Thank you very much for coming before us.

Supplementary memorandum by The Timeshare Consumers Association

Following the hearing of the Select Committee last Thursday I promised to provide you with further, written, information.

Our views on the provisions in the new Directive relating to judicial, administrative and out-of-court redress.

The general statement in the Directive in respect of judicial and administrative requirements by national governments is vague and little better than the existing directive leaving each state to act as it feels fit without any form of harmonisation.

- (a) We believe that clear guidance should be provided by the Directive on penalties for specific infringements otherwise the “soft” countries such as Spain will continue to provide a *lassie faire* environment in which traders can continue to operate outside the law with impunity.
- (b) Our suggestion is that a “menu” of offences and fines be included within the Directive (or as an annex) to provide traders and consumers with clear guidance on effect of breaches of the law throughout the EU.

We believe that an EU wide out-of-court settlement scheme would not only provide redress for consumers but would also act as a deterrent to discourage traders from breaches of the law—reducing the work of enforcement authorities. The Financial Ombudsman Service in the UK provides a good model for such a scheme by providing:

- (c) Easy consumer access.
- (d) Speedy resolution of disputes.
- (e) No cost to consumers (traders pay £405 for each referral to the Service).

However enforcement of decisions of this “Timeshare Ombudsman Service” would require a system of licensing (or similar) which the European Commission has already informally indicated lack of enthusiasm for.

And think the Committee may be interested in reasonably recent statistics relating to the overall size of the industry in Europe which are on our website at www.timeshare.org.uk/stats.html

17 July 2007

THURSDAY 19 JULY 2007

Present	Dundee, E Gale, B Howarth of Breckland, B Morgan of Huyton, B Moser, L	Neuberger, B Thomas of Walliswood, B. (Chairman) Trefgarne, L Wade of Chorlton, L
---------	--	--

Memorandum by Organisation for Timeshare in Europe

As the trade body for the timeshare industry in Europe, OTE (The Organisation for Timeshare in Europe) is pleased to be given the opportunity to respond to the questions posed by Sub-Committee G, the Select Committee on the European Union. This paper has been written on behalf of OTE members, who form the larger part of active operators in Europe.

1. BINDING LEGISLATION VS A VOLUNTARY AGREEMENT

Through the application of the OTE code of conduct, the vast majority of timeshare operators in Europe have supported a self regulatory scheme since OTE's formation in February 1998. The code covers not only the sale and marketing of timeshare products, but also resale, exchange and other holiday options which are not covered by the 1994 European Timeshare Directive, such as trial timeshare packages. The code is regularly reviewed to adapt to changes in the marketplace and is extremely effective—complaints about OTE members have reduced by 60% since 2002 and the vast majority are resolved within 14 days of receipt. To further strengthen consumer protection, an Alternative Dispute Resolution Scheme, developed and independently administered by the Chartered Institute of Arbitrators, was introduced in 2005. To date, only one case has been taken to arbitration, the success rate of resolving complaints being so high that the service is seldom called upon.

OTE is in full support of voluntary codes of conduct and also supports principle based legislation which grants consumers firm and effective rights, such as the Unfair Commercial Practices Directive. It is the combination of principle based legislation and clear codes of conduct that provide good consumer protection. The advantage of codes of conduct is that these can be swiftly amended to reflect new market practices or the introduction of new products and services thereby ensuring that the requirements found in the principle based legislation are clarified to also apply to the new practices or products and services.

OTE acknowledges that the 1994 Timeshare Directive has been a success for timeshare products and services, that levels of consumer protection are high, particularly when coupled with the OTE code and, as a result, consumer confidence has increased and complaints have decreased. In view of the success of the existing Directive and the lack of evidence (no significant volume of timeshare complaints), to back up any claims that it is not functioning effectively, OTE does not support the European Commission's proposal to introduce a new Timeshare Directive which focuses heavily on re-regulating the timeshare industry. Where it concerns new products or services such as Discount Travel Membership Clubs, OTE calls for enforcement of existing laws to target those operators that are the real cause of consumer detriment. Finally, if new legislation is necessary, it should follow the same format of the Unfair Commercial Practices Directive, focussing on general principles rather than tying consumer protection to specific services or products, which will be obsolete once new services have been developed with the aim of circumventing the requirements of the new Directive.

2. THE RESPECTIVE ROLES OF EC LAW AND NATIONAL LAW

It is clear that the EU has the role to ensure that consumers benefit from a high level of consumer protection throughout the EU. As such it is also in the interest of consumers and businesses for consumer rights to be the same across the EU. This benefits cross-border purchasing and allows British consumers to feel as protected when buying overseas as when purchasing at home.

At the same time the EU should leave to Member States rules that dictate how, in practice, such consumer protection is achieved. In the case of timeshare, the EU should not decide how timeshare usage rights are secured and guaranteed, but it should merely state that this should be the case.

3. STRENGTHS AND WEAKNESSES OF THE EXISTING DIRECTIVE

OTE believes that the existing Directive has, in general, worked well and that the decrease in complaints has been as a result of the introduction of legislation combined with the OTE code of conduct.

However, we know of no other industry that is penalised with a cooling off period and a ban on deposits and a significant number of large hospitality brands, predominantly US based, will not operate in the EU under such punitive restrictions. At present, nine EU Member States have allowed for third party deposits and OTE strongly advocates that this system is extended to all other Member States. By allowing deposit payments to independent third parties, this will stimulate the development of timeshare and encourage operators to start business in Europe, whilst at the same time protecting monies paid by the consumer. OTE believes that singling out timeshare without any good reason puts the industry in a less competitive position compared with other tourism services and products.

Finally, the current Directive and the proposed new Directive, being “vertical” will always need regular updating to reflect the introduction of new products that regulators believe should be sold with a cooling off period and deposit ban. This inherent weakness can only be overcome by moving away from vertical legislation to horizontal principle based legislation.

4. SCOPE AND DEFINITIONS OF THE DRAFT PROPOSAL (ARTICLES 1 AND 2)

It is clear from the European Commission’s Impact Assessment that the real problems do not lie with timeshare, but with other holiday products that bear little resemblance to timeshare, namely Long Term Holiday Products/Discount Travel Membership Clubs. With this in mind, OTE fails to understand why the Commission chose to review the Timeshare Directive prior to, and outside of, the consumer Aquis, when timeshare is not the cause of major consumer detriment.

Whilst OTE supports the inclusion of canal boats, caravans and cruise ships in the Proposal, there is concern that by extending the definition of timeshare to cover products of one year or more, this will adversely affect timeshare trial packages—a cost effective and successful means for consumers to stay at timeshare resorts and mix with owners before going on to make a purchase. The additional costs to the operator will, however, make these economically unviable and it is likely that these products will no longer be marketed, depriving consumers of an opportunity to “test drive” the timeshare product.

5. INFORMATION PROVISION AND ADVERTISING (ARTICLE 3 AND ANNEXES)

Whilst OTE supports the majority of the requirements outlined in Annex 1, which by and large ensure further transparency on the part of timeshare operators, too much information, including non-material information, is required to be incorporated into the timeshare contract. This will lead to an exceptionally high number of pages to be read by the consumer.

Annex III, relating to Long Term Holiday Products, does not go far enough and may leave consumers exposed rather than better protected. The club operators should be required to disclose the precise nature of the accommodation within their portfolio, whether the accommodation is owned direct or forms part a rental scheme and if so, the duration of the contract with each supplier.

OTE is concerned that the provisions for exchange companies (Annex V) are unduly onerous and at times confused. For example, the Proposal states that exchange is an ancillary contract and should be cancelled automatically if the consumer cancels the timeshare agreement. However, the Annex requires that exchange companies indicate how a consumer can cancel the exchange contract—this is irrelevant as the consumer does not need to take any action. Furthermore, the requirement for exchange companies to disclose the cost of running resorts, including management and repairs is irrelevant to an exchange guest, who does not contribute towards these services. Finally, to require that all resorts and accommodation available are disclosed in all languages could, in the case of one exchange company alone, result in the inclusion of up to 3,300 resorts plus all apartments in these resorts—some 3,000 pages for consumers to review.

The ban on any fees for resale companies (Annex IV) will serve merely to restrict the practices of bona fide resale agents who currently charge perfectly legitimate fees for an upfront service which is directly requested by the consumer, such as advertising. Furthermore, as the proposal clearly states that this Directive applies only to business to consumer transactions, any requirements on a timeshare owner selling their timeshare (such as the need to follow the Annex I for Traders of timeshare) are therefore contradictory and should not be included in the Directive.

6. INFORMING CONSUMERS ABOUT THEIR RIGHTS IN RELATION TO THIS DIRECTIVE

OTE would add its support to a Europe wide information campaign, working closely with partners such as the European Consumer Centres, the DTI and the OFT.

7. THE RIGHT OF WITHDRAWAL (ARTICLE 4(3) AND ARTICLE 5)?

OTE is in full support of a cooling off period and believes that to avoid confusion, this should be harmonised throughout Europe. However, evidence points to the fact that the majority of consumers who cancel do so during the first few days of the cooling off period. As a result, extending the period from 10 to 14 days will not lead to an improved environment. This aside, however, OTE supports a 14 calendar day cooling off period which is far easier to calculate—and less open to confusion—than, for example, 14 working days.

OTE believes that written details of the cooling off period should be included in the contract, together with the date of cancellation and details of where and how the consumer should cancel. However, by including three places for the consumer to sign, this appears more like a “health warning” and OTE advocates that just one place to sign is sufficient. Too much documentation and too many places to sign merely serve to confuse the consumer and a short, clear and concise contract is better for the industry and better for the consumer.

8. ESTABLISHING A MORE CONSISTENT REGIME ACROSS MEMBER STATES

OTE is concerned that as the proposed requirements of the new Directive would impose further restrictions on the timeshare industry, if individual Member States elect to exceed the provisions, this would undoubtedly have a negative impact on timeshare. In the UK, timeshare is a vital economic contributor to the small rural communities in which resorts are based and to place them at a disadvantage with their European counterparts would be damaging to the area in terms of year round employment and the benefits to local businesses.

9. ADVANCE PAYMENTS

OTE does not support the proposed full ban on advance payments and, as outlined previously, believes that the use of independent third parties for deposit payments would encourage the growth of the industry. As there is no evidence of a significant volume of complaints relating to difficulties in obtaining refunds of deposit payments, OTE is calling for the Commission to review this proposal.

10. RESALE AND ADVANCE PAYMENTS

Under the requirements of the OTE code, resale agents are not permitted to take a registration fee but may make a charge—paid for in advance of the sale by the timeshare owner—for advertising. These reputable agents form an important part of the industry and the Commission’s proposal will impede on their business practices and, ultimately, could make the selling process more difficult for the timeshare owner.

The fraudulent practice of contacting a consumer by phone and persuading the owner—generally by making a false promise that a buyer has been found—to part with a significant sum of money, is outright fraud and should be dealt with under existing laws.

11. VIEWS ON THE PROVISIONS RELATING TO JUDICIAL, ADMINISTRATION AND OUT-OF COURT REDRESS

OTE believes that the requirements laid out for judicial, administrative and out of court redress are perfectly satisfactory and is pleased to note the proposal to set up out-of-court complaints and redress procedures.

12. SANCTIONS AND ENFORCEMENT

Without effective enforcement, there is a substantial risk that consumer protection is weakened and OTE is in full support of sanctions to deal with companies which consistently fail to follow the Directive. In terms of sanctions applicable across the EU, it is clear that this is an area which reflects national culture and custom. In OTE’s view it should be up to the Member States to decide which sanctions and remedies are applicable in the case of non compliance with national implementation laws.

13. UNFAIR COMMERCIAL PRACTICES DIRECTIVE

OTE is pleased to note the direct reference to the UCP Directive in the Explanatory Memorandum and is confident that, with proper enforcement, the UCP Directive will go a long way to tackle aggressive and misleading practices carried out by the companies that cause consumer detriment.

14. ADDITIONAL ISSUES THAT THE DIRECTIVE FAILS TO ADDRESS

As previously stated, OTE believes that the current Directive has worked well and there is no evidence to suggest that a new Directive is required. There are no issues relating to timeshare that the Proposal has failed to address. OTE does not, however, support the proposals covering exchange and resale.

In the case of Long Term Holiday Products it is clear that the Proposal would not regulate these travel related services as rigorously as timeshare. With this in mind, the Proposal should be significantly improved upon for such products.

30 August 2007

Examination of Witnesses

Witnesses: MR PETER VAN DER MARK, Secretary General, OTE, and Ms SUE McNICOL, Head of UK Operations, OTE, examined.

Q41 Chairman: Good morning. Thank you for coming before us. We are thinking about the European Commission's proposal to replace the directive relating to timeshare and similar holiday products. That is the scope of our enquiry. We are aware that your organisation has the aims of improving the representation of reputable companies in the timeshare sector, promoting fair trading and growth in the timeshare industry. We would be particularly interested to hear from you how you think the new Directive will assist you in that matter. Could you start by stating your names and official titles for the record and after that you are welcome to make an opening statement as to how you see your role in assisting this Committee.

Mr van der Mark: My name is Peter van der Mark. I am the Secretary General of OTE, the Organisation for Timeshare in Europe, in which I have worked now for the last eight and a half years. We will forfeit the opening statement to allow as many questions from the Committee as possible.

Ms McNicol: My name is Sue McNicol and I head up OTE's operations in the UK. I am employed by the Timeshare Council, which is the UK chapter of OTE, and I have worked for the Timeshare Council for the last 11 years.

Q42 Chairman: I am going to start by asking the obvious question which is if you could explain briefly the role and composition of your organisation, how representative it is of the industry and, looking more broadly at the timeshare industry organisations, why do you think the industry has found it difficult to maintain consistent organisations?

Mr van der Mark: OTE was formed in February 1998 on the foundation of the European Timeshare Federation. The European Timeshare Federation was a federation which brought together the

National Timeshare Associations but in a federated structure. The Board of OTE (then ETF) decided to transform the trade association into a direct membership organisation, meaning that members from our organisation are directly members of the European entity, not through the national entities. As such, we have not had a discontinuation or a plethora of trade associations in timeshare; it has just been a continuation where the trade associations have been reformed to reflect the realities of the day. My colleague will explain in more detail how this works in the UK. Throughout Europe we have national trade associations which are sometimes there for 15–16 years in their current format and they are still part of OTE now as an additional chapter. Our organisation has direct membership. This means that companies, including Hilton and de Vere, are direct members of our organisation and we represent timeshare developers, so the people who build timeshare resorts, timeshare management companies, timeshare trustee companies, we hold the timeshare titles in trust on behalf of the timeshare owners, and exchange companies, the companies who allow timeshare owners to actually exchange their week for a week in another resort at another time, finance institutions such as GE Capital, as well as resale companies, companies who actually assist timeshare owners with reselling their timeshare which they bought in the past and would like to sell on. The weight of the association is that overall we represent a large majority of the timeshare industry; the large majority meaning that in certain of those sectors in the vertical chain which makes up a timeshare holiday we are representative of 100% of the companies; in others we are representative of 50%, but if you express it in terms of timeshare sales, we would represent 70 plus per cent of all timeshare sales conducted in the whole European Union.

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

Ms McNicol: In the UK before the Timeshare Council we had the Timeshare Developers Association and a decision was made to expand the membership and form the Timeshare Council. The TDA really just represented eight large developers. The Timeshare Council, as OTE, represents the entire industry. That was formed in 1990 and so the Timeshare Council has actually been going for approximately 17 years. I was a little confused by the question because we only know one trade association that formed and came to nothing and that was called Trust Timeshare. Sandy Grey is actually a director of Trust Timeshare and there is an actual proposal to strike off Trust Timeshare due to non-compliance. That is the only trade association we know of which has had problems.

Q43 Lord Wade of Chorlton: I would like to understand two issues more clearly: (1) how does the UK industry compare with other countries' industries within the EU, and (2) how does the US industry compare to the EU industry? Could you give us a rundown as to how you see the UK industry and the players within the UK different or similar to those in other European countries?

Ms McNicol: In the UK we have a number of very significant players; for instance, we have de Vere and they have the Cameron House Resort on Loch Lomond in Scotland. They have just put £60 million into a new development two miles north of that. We also have Hilton, Gleneagles, and you may well have heard a couple of weeks ago Butlins launched a resort in Minehead in Somerset. That has been very well received by the media and is already half sold out. In the UK where we differ on the legislative front compared with the rest of Europe, or more than any other countries in Europe, is that we have a complete ban on upfront deposits. We also have a trust system which essentially means that when you as a purchaser buy your timeshare that unit then goes into trust on your behalf and then of course the cooling off period is 14 days, whereas in many other EU Member States it is ten days. Timeshare in the UK is very important to the economy. If I may give an example, in Ballater on Deeside the town was pretty much dying. Hilton then built a 98-unit resort there and since then what we now see is a thriving community where shops, cafes, restaurants have opened and even the village school has remained open because of the number of people coming to the area to work at the resort. It is a very important part of rural life in Britain.

Q44 Lord Wade of Chorlton: Are timeshare customers in the UK likely to be UK people or are they Europeans who own timeshare in the UK?

Ms McNicol: There is a mixture. A good percentage of British people actually own in Britain because the quality is high and a lot of Brits buy fairly local to

them so that they can go and use the facilities there. About 20% of British people that own timeshare own in the UK, but we also have owners from Germany, which is quite an important market, and the Americans also like coming over here as well.

Q45 Lord Wade of Chorlton: Could we look at this issue between the EU industry and the US industry. We base this question very much on what we have heard so far which is that in fact the EU industry is declining and the US industry is growing. How do you see those issues relating to the way that the two industries are managed within their respective areas?

Mr van der Mark: If you make a comparative analysis, it is clear that the US industry is definitely growing. That does not necessarily mean that the EU industry is declining. As a general statement, I would say that it is very much in the EU an Anglo-Saxon-driven industry within an Anglo-Saxon model and with 500,000 British families owning a timeshare making up a third of all timeshare owners. It is very much a concept which the British customer very much appreciates. In the EU the core destination market is Spain where the majority of the resorts are built, or at least the units are built. There are 300 plus resorts there with lots of units and that is where 50% of the British actually own. Other markets are quite large and indigenous as well—Hungary, Finland—and those markets are continuing to grow. What we see is a diversification in the market-place with resorts now being built outside the EU because tourists want to go outside of the EU, such as in Turkey, Egypt, Croatia and that is a trend which is progressively happening in Turkey. It is wrong for anyone to assert that the EU timeshare industry is struggling or not growing; that is not true. It is growing, not as much as it was in the 1990s when there was really unbridled growth, often as a result of an unregulated environment. It attracted a lot of people who wanted to make a quick buck in our industry, which was very unfortunate, but it also attracted a lot of developers. Developers normally built either hotels or holiday apartments and the use plan, as we call it, as to how the apartments or the holiday complex is used is then up to the management company to decide. In the 1990s a lot of them decided to use it as a timeshare because of a slump, particularly in Spain, of the real estate market. Only a couple of years ago we saw suddenly that the Brits wanted to buy second homes in Spain and so the developers switched to developing second homes because that is where there was demand and that has dented growth. In general, economic conditions such as, for example, the Germans having much less disposable income are no longer buying as they did in the past and no longer holidaying as they did in the past, but that is all cyclical and you cannot really point to a trend. There is still growth, although the

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

growth is much less than it was in the 1990s, but that compares quite starkly with the growth in Mexico, the US and in Asia. The international companies now bypass Europe and do not invest in Europe in developing resorts, but go directly to the Middle East, Asia, China or in the US itself for pure economic business reasons. It is cheaper to build, labour is cheaper and it is also a demand question as lots of Europeans and Americans still go on long haul holidays. Americans go less to Europe these days and less to the Middle East, and therefore there is a growth in the US itself because they take their holidays in the US itself. There is no growth, as is suggested as well, in the ten new Member States of the European Union. There is only one where there is a lot of timeshare which is Hungary, but that dates back to the 1980s. We do not really understand on what these statements are based by the European Commission itself in this instance saying that there is a lot of growth. There is one small, but important reason why international companies are not investing in Europe and that is simply because the regulatory framework for timeshare itself is rather complicated, diverse throughout Europe and less friendly to business than the models in the US, whereas we in the EU have a 14 day cooling off period and a ban on deposits, as Sue explained in the UK, in the US there is an average three to ten day cooling off period and deposit-taking is allowed through third parties. It is a very simple business decision. We know that probably the difference makes up 15% in sales and anyone like Hilton or Hyatt wishing to invest, or Donald Trump, who has announced that he would want to invest in the UK resort in Scotland for 500 units and three golf courses, is thinking twice again with what is happening in the legislation and whether that would be good.

Q46 Chairman: One of the arguments that we have heard is that if you are living in the United States, although you might be buying in a different state, nevertheless you are still within your own country, you can still ring up your lawyer, you can operate as though you were at home, whereas if you are going to Yugoslavia, Portugal or Spain, then you are not in that same situation. You have a different legal system, you are on holiday, you are not at home, you do not have your advisers around you and therefore you need a longer cooling off period. Do you understand that difference?

Mr van der Mark: I do understand the difference and I liken it with putting parachutes into aeroplanes. If you look at the reality in our industry we see that people cancel within the first three to five days; that is what they do. They do not cancel up to 14 days; they did not like the presentation, they did not like

the salesman, they did not like the product, they did not like how it went and they cancel. They feel pressured and they cancel the contract immediately. I think it would be very rare for a consumer to seek legal advice on what he has just bought, whether it is a car of £20,000 or whether it is a timeshare of £20,000. It just does not happen.

Q47 Chairman: If that is so, what is wrong with 14 days? If you are going to cancel anyway, giving them a bit more time to think is not going to make any difference to the business, is it?

Mr van der Mark: It is making a difference to the business because it means that we have to hold that unit and we need to act as if that has been sold subject to the cooling off period, but if that is 14 days, you will not hear us complain about 14 days, we think that is a good period, but it is nothing to do with being abroad or asking your advisers because people simply are not doing it. They do not do it. We would like them to understand and have clear and concise information so that they can make an informed purchase decision. That is not the issue. The reality is that customers just do not read any contracts you give to them. People think that if you provide a good thick contract with lots of information and lots of disclosure that people actually read it. When you buy a mobile phone and you contract to have the contract for the next year, no-one reads the ten or 20 pages there. It is the same here; they just do not do it. The more concise information is, the better it is explained, the more uniform it is throughout Europe, the better it is for customers to understand.

Q48 Lord Trefgarne: You say that people never read the contract, and no doubt you are right, but it is not much good reading it because if I read the contract and say I do not like paragraph 27, you would not change it anyway, it is a standard contract.

Mr van der Mark: Exactly, then they just do not buy it.

Q49 Lord Wade of Chorlton: You have given us a rather rosy picture, but that is not in line with what we have heard from you consumers which give us a much more negative view of the view of consumers of your industry. What surprises me is that you have an industry that clearly, so far as many customers is concerned, is not controlled to in such a way as to maintain the standards, because we hear an awful lot of true stories of people who have been seriously let down, particularly in Spain, where they have been unbelievably ripped off. Clearly your organisation has not been able to control that. Do you accept that? What are you going to do about that? If you cannot deal with it yourself, then clearly some other directive or law has got to deal with it.

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

Mr van der Mark: That is a very valid question but we simply look at the facts and the facts are, for example, very clearly explained in the Impact Assessment of the European Commission which accompanies the proposal. There are 250 complaints about timeshare in the European Union lodged with the European Consumer Centres of which the UK Citizen's Advice Bureau is one—250 complaints out of seven million people who took a timeshare holiday last year and 80,000 timeshare contracts which were concluded. That said, people complain a lot about products which are not regulated which we liken to travel services or discount travel membership clubs. There are so-called consumer associations or representatives who claim that they understand how this industry works and what the real complaints are. We simply have to say that the official consumer organisations we are working with, such as the European Consumer Centres and the Citizen's Advice Bureau, simply sustain what we have said. The first Timeshare Directive has done its work and we see not only low complaint levels but also high satisfaction levels. That is totally in contradiction with what you heard last week or what you will hear sometimes in the media but those simply are not the facts. 250 complaints is 250 complaints too many but, putting it into perspective, we are actually quite proud of the work that we as a trade body have done in the timeshare industry itself which has overcome quite a negative image, not so much in the media, but definitely with our owners and also particularly with bringing complaints down and resolving those complaints as well.

Q50 Lord Moser: It is the same point with the facts and the statistics. I understand the figures you have given us of 500,000 British families, etc, mainly in Spain and quite a lot of other countries involved. You referred earlier, in answering Lord Wade, to some emerging countries. I do not want to waste more time on that, but what you were telling us about the overall picture is diametrically different from what we heard last week. We really must, for the purpose of this enquiry, be clear about the facts. What I am referring to is not so much the relative position in the States as here, the question is about Europe, and we were given some figures last week showing that timeshare is in decline in Europe in actual figures. I was very interested in the possible reasons for that. There seem to be two possible reasons: the obvious one is that there are a lot of people in the business who are not behaving very well, and we were told quite a lot about that, and presumably one can argue about how many of these there are; the other possibility which I am interested in is that there is a trend because there is more wealth more people might be buying properties not with timeshare. However, without spending too much

time on that, we do need to know who is giving us the right figures.

Mr van der Mark: That is a very valid question. We will supply this Committee with the studies which we have commissioned over the past years through renowned research companies which has cost us a lot of money to do but they give an accurate picture of the size, depth and the breadth of this industry. No-one else has done such studies. We do not know how these figures have come about or how they have been arrived at by this particular consumer group; we simply know what we have commissioned to independent consultancies, particularly here in the UK, asking them to find out what the depth and breadth of the industry is and also the socioeconomic impacts of this industry, how many people do we employ? On the consumer complaints, I can simply point to the figures.

Q51 Lord Moser: I do not want to pursue the complaints business. There must be some simple facts. Is the number of timeshare owners in Europe going up or going down, or is it level?

Mr van der Mark: It is level. In the 1990s we saw a steep increase from 300,000 owning families all the way up to 1.4 or 1.5 million owning families and we now see that stabilising. That means that 80,000 contracts are being concluded, which on average is probably 120,000 timeshare weeks, but also 80,000 timeshare owners one way or another are selling on their timeshare. 23% of the current timeshare owners are successfully selling their timeshare on to someone else to buy and the other part is made up by sales of the timeshare industry. It is a 1 to 2% growth industry at the moment in Europe, but that differs per country. What we see today is consolidation in our industry, consolidation meaning that smaller developers and smaller marketing companies, but on the developer side first—the people who built the resorts—do not actually exist any more because they have other economic reasons to build a resort and sell it in another way, as you said perhaps as second homes. The smaller marketing companies who are helping the sales process have simply been regulated out of business. What you see because of the new rules coming into force in 1994, but actually in application in 1997, is that it has driven rogue companies out, which we applaud very much, but it also unfortunately had the effect on small/medium sized enterprises throughout the EU, but particularly in Spain but also in the UK, and that of course takes a bit of the dynamic out of the industry. Today if you wanted to start a timeshare business the threshold costs of entering into the business is much higher than it was pre the Timeshare Directive of 1994.

Chairman: We look forward to getting the statistics and reports that you are providing for us.

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

Q52 Lord Trefgarne: My question rather follows on from what we have been discussing already. If the Commission are looking in terms of a new directive, they have presumably concluded that the existing directive is not sufficient. Would you agree with that proposition and, if so, where would you identify the weaknesses in the present arrangements or, for that matter, the strengths that you would like to see continue?

Mr van der Mark: Yes, the Commission has concluded after one and a half years of review that the present 1994 Directive was in need of modernisation, simplification and actually with an eye to developing better regulation, all in line with the eight directives which made up the consumer acquis. It decided, secondary, to deal with the Timeshare Directive pre any conclusions of the review of the consumer acquis in general on the basis of complaints about non-regulated products and services. What the Commission after one and a half years has clearly established is that complaints on timeshare are low, but there are lots of complaints on what they call long-term holiday products and that a lot of consumers complain about resale fraud. For us it is very simple: they are entirely correct, but these two areas, particularly resale fraud, is fraud and should already have been dealt with. Discount travel membership clubs or long-term holiday products in our view are also fraud. The Directive never set out to regulate these products, so it is not that something has gone wrong, but something appears in the market and now we have to catch up again. There are potential weaknesses.

Ms McNicol: We think that one of the greatest weaknesses is a lack of enforcement by the authorities, particularly on the fraudulent side. Resale fraud is really rife and on the discount travel membership clubs they are continuing to rake in the money and really precious little is done about it, particularly in Spain. The OFT does a lot in the UK. The OFT did a report last year and concluded that 400,000 consumers are affected by fraudulent discount travel membership clubs every year and that is £1.2 billion which is a huge amount of money.

Q53 Lord Trefgarne: These are travel clubs who pretend to be part of some timeshare scheme but in fact they are nothing of the sort. Is that right?

Ms McNicol: They do not necessarily pretend to be part of a timeshare scheme. When they sell their product one of the selling points is they say, "Don't worry, we are not timeshare" but really for us that is when the alarm bells should be ringing because they do not own the accommodation or the holidays that they are selling; they just perhaps use a third party and try to get a discount for the person who has bought into the club, but the discounts are not guaranteed and, more often than not, the consumer

can actually get a similar holiday and when they get back home if they go on the Internet they might find that they have paid £3,000 or £6,000 just for the right to book accommodation which is not discounted or it simply is not available. We are concerned that what they are buying is thin air. Our other major concern is what is happening with these people 30 years down the line when they are still contracted into the scheme? Will that discount travel club still be able to offer them holidays? We suspect not.

Q54 Lord Trefgarne: There has long been an industry, has there not, of cheap travel? It goes back to the old air transport licensing days when there was strict fare regulation and if you included a holiday it was cheaper and the accommodation was just thrown away and you were able to get a cheap flight and made your own arrangements to stay in your own villa or somebody else's and ignored the accommodation. Is that part of this?

Ms McNicol: No, it is not. They pay a substantial joining fee and that is one of the problems that it really is money down the drain.

Q55 Lord Trefgarne: That will be taken care of by the new Directive, will it? That is the hope and expectation, is it?

Mr van der Mark: That is the idea behind it. Unfortunately we have some issues with how the definitions have been drafted, but more a problem of principle with the process. We are realistic enough to understand that today there is a directive on the table which has been submitted to the Parliament and to the Council of Ministers, but in the overall review the European Commission has missed a major opportunity to really make some good and better legislation and disassociate consumer protection from products, but focus it correctly on what we consider to be aggressive and misleading sales practices and ensuring that when a vendor, a trader, a company initiates a sales contracting process that as a result of that initiation a cooling off period applies, a ban on deposit applies and further disclosure requirements apply. Our fear, very simply, is that the rogues who are currently selling long-term holiday products today are working on developing a new product or service which will simply not fall within the definition.

Q56 Chairman: They will bypass it.

Mr van der Mark: That is what they did the first time in 1994 and that is what they will do. When we look at the people involved in this business there are five companies operating probably with 30 odd marketing companies, often in Spain; it is not a large number of people. According to the European Consumer Centre in Spain they are already fraudulent. Our question is if that is so, who is doing

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

something about it? We operate and cooperate with the Office of Fair Trading and police authorities to ensure that something is done. We would like to stress that the view that this Directive is going to solve the problems of those consumers is not the reality.

Q57 Lord Trefgarne: Why has this business attracted so many rogues and so much roguery?

Mr van der Mark: In the past any business which is successful, particularly in the real estate business, attracts people you would rather not see in your business. Luckily, and this is part of the misconception, yes, there has been high pressure sales, even misleading sales, pre the Directive and pre legislation, but the timeshare owners always got their timeshare. The resorts were always there. This is not a case of nothing was built; they always had their timeshare. If we ask timeshare owners, what you often hear is that they are extremely happy with their timeshare, and sometimes you hear that despite the fact that they had to go through the sales process.

Ms McNicol: If I may tell you about consumer satisfaction levels because they are very surprising. We did a survey last year and we had 30,000 timeshare owners throughout Europe responding to it. It was independently done on the Internet and it was all done through Survey Monkey, which means it was not coming back directly to us and we could not have fiddled the figures or anything. I was very anxious about doing it because I just assumed that satisfaction levels would be so low that it would be something to sweep under the carpet, but that was not the case at all. 76% of the people who responded said they were happy or very happy with their timeshare and well into the high 90s people were saying the accommodation and facilities are better than other self-catering resorts and are as good as or better than hotels. It was an incredibly positive result and I think it really goes to demonstrate that, despite the problems the industry had undoubtedly in the 1980s and 1990s before the legislation was brought in, what we now have are owners that are really pleased with what they have and can go and enjoy their holidays year after year.

Q58 Chairman: What I think you are saying is that traditional timeshare, as ordinarily understood, i.e. a week or a fortnight in a certain size of accommodation in a specified location is working okay—people have a good holiday, they enjoy it, they are not hassled in any way and the accommodation is successful—but that there are other products, like these slightly shady “I’ll get you a cheaper holiday than you can get yourself”, that kind of thing is not working so well. You are making a distinction between different products.

Ms McNicol: That is right. Timeshare and the discount travel clubs or the long-term holiday clubs are two separate product types: one has a real estate link, that is timeshare, and you know what you are buying into; the other is the opportunity to buy holidays at a promised discount.

Q59 Chairman: Would you agree that some of the problems of getting redress or not being able to challenge somebody who has defrauded you are complicated by the fact that you are doing this cross-boundary? You may be living in England but, for the sake or argument, the fraud has happened in Spain, does that make life more difficult?

Mr van der Mark: Yes, 100%. I need to make this important point that although the fraud is perpetrated often in Spain, it is often a Brit ripping off another Brit, and it is often a German ripping off another German in 100% of the cases.

Q60 Baroness Howarth of Breckland: I want to come to the timeshare part. I do not doubt that there have been a lot of people who have been asking a number of anecdotal rather than Lord Moser-type statistical questions about what it is that makes people anxious about their timeshare, separating out the other products which we recognise need more legislation. First of all, why did you think, when you started your survey, that the satisfaction levels would be so low, because that says something about your view of your industry before you undertook the survey? Secondly, the thing that worries people most is a lack of clarity of what your code would be. Can we see your code? I have been a regulator myself and codes have always been transparent. The problem about your organisation is that you say you are regulating but in fact you are industry so where is your independence of any kind in terms of regulation? The key issues that really worry people are buying something that appears to immediately lose value the next day they have bought it but they are never told that at the point of purchase and do not have enough time to discover that because the timeframes are too short and then discovering there is no exit strategy; that they cannot sell on because it has no value and they are continuing to pay. My last question is you have talked about redevelopment and the fact that the industry is going into other areas because it is more profitable. There are a number of Spanish resorts as we know where people have been frozen out of their timeshares, beach hotel or whatever it is, in Lanzarote because the company wishes to redevelop it as a lucrative hotel and that, as you know, is now subject to legislation. I just wonder how you fit what you said previously into that rather bleak scenario? That does not mean I do not think there are some people with good timeshares because I have family who do.

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

Ms McNicol: In respect of the consumer survey, for me a lot of it was because of the media perceptions of timeshare. Although they are improving, one does still tend to read quite a lot of negative stories in the press about timeshare. I did go into it with a slight feeling of anxiety but I was very pleased with the outcome.

Mr van der Mark: I had the same fears for similar reasons but we also deal with a lot of consumer complaints and if you deal with complaints a lot you actually think that the whole world is about complaints. It was good for us to see the other side. On the question of our Code of Ethics, our Code of Ethics is publicly available; we have nothing to hide. It has been developed in conjunction with the European Consumer Centres and the European Commission, not in any official process as you have in the UK with the Office of Fair Trading where you have the official application system, but yet they make 90% of the comments which were made by the European Commission and the European Consumer Centres were taken on board in our code. Secondly, we developed an alternative dispute resolution system upon request of the European Commission and the European Consumer Centres which we asked the Chartered Institute of Arbitrators to develop and administer for us. It is widely available. The ADR system has not been used simply because we resolve 83% of the complaints from our members, which are 121 complaints, to the satisfaction of the customer. The independence of our code is not there; it is a voluntary code. In the UK, however, we will go to CCAS, the approval system of the Office of Fair Trading, which means that we would have to build independent elements into the code and for the UK we will definitely do that. On the value propositions of timeshare, unfortunately we see in the media that the people either believe that they have bought real estate which will grow in value and then they can sell it on, or they have been led to believe that during the sales process; other people tell us that they believed it was an investment with a financial return, but what our members understand—we asked 5,000 timeshare purchasers directly after their purchase of what they thought about their purchase, did they have purchase hesitations and what were their purchase motivations. Their hesitations were that they did not like the salesman, high pressure, they did not understand the contract very well or exactly what is exchange. Then we asked them for their motivations and they bought anyway. Consumers understood very well at the sales process what their purchase hesitations and motivations were and they went ahead with the purchase anyway. They also understood the value of the timeshare being a consumer durable. You consume it, you use it over time. To give a recent example, a timeshare owner who bought in the Costa del Sol 12 years ago for

£5,000 and sold it for £3,000, went on 17 holidays, is a very happy customer and feels they had value out of it. If the customer is expecting, because of house price increases, that therefore his timeshare will have increased in value that is just not happening. The reality with buying a timeshare is that it is like buying a car: you drive it out of the garage and 20% of the value drops straightaway. It must not be thought of as an investment. It is a consumer durable; you use it and you have happy holidays.

Q61 *Baroness Morgan of Huyton:* One of the issues we wanted to raise, and which we have already talked about, is holiday clubs. You were clearly supportive in broad terms of the 1994 Directive and you are supportive of further action on holiday clubs. Do you think it is right that they are included under this Directive? If you think it is right that they are included under this Directive, do you think that this Directive is going to be satisfactory and, if it is not, what else should be done to make sure that the rogues are covered properly? It may be that you want to write to us in more detail about what should be included the Directive that is not. Where are the gaps going to be?

Mr van der Mark: We think this is not the right Directive to regulate long-term holiday products. It is the right directive to regulate sales and marketing activity in general, but then in general much broader than just timeshare. What we have suggested to the Commission is taking the Doorstep Selling Directive, the Distance Selling Directive, the Timeshare Directive and merging them to develop in principle a sales or fair trading directive on how you actually contract with customers, whether it is the salesman who initiates the sale. That would be the perfect situation but that is not the situation we are in. We would accept this directive, particularly if it focused rightly on regulating long-term holiday products. However, what we are surprised about is that it is very flimsy on the long-term holiday product, it does not have enough body to it, it does not ask for the right disclosure elements which need to be disclosed to a customer to understand, for example: We do not own anything. Can we now have your £20,000? We think if that is disclosed then no-one will actually buy into it. What we also find very strange is that 80% of this new Directive is about timeshare, regulating exchange, regulating resale, regulating timeshare further. We do not understand that because there are not really complaints. We would support it if it had been modernising, simplification and it would lead to a better Timeshare Directive—we have asked for more things to be included—but it is more of the same. Will this Directive work? To cut a long story short, it will have exactly the same problems as the 1994 Directive because of circumvention, the definitions will always be circumvented and it does

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

not deal with enforcement because it cannot deal with enforcement because it is Member State competence.

Q62 Chairman: Can you give us an example of the other things that you would like to have included in the new Directive?

Mr van der Mark: I will give you a good example of what is in the Directive which we find very strange which is not good for consumers but it seemed to have been put in to help the timeshare industry. We now seem to be able to ask a person who has signed a contract and if we make it very clear in the contract that there is a cost to it and if they cancel the contract that we can claim those costs, such as for example notary costs. If you would like to give a hand to rogue traders then that is the right way of doing it. We are not in the business of signing contracts and getting £500 for costs; we are in the business of selling people a timeshare holiday. This is an element in the Directive which we do not understand. In terms of disclosure, the disclosure elements are very simple—people have to pay electricity and all kinds of things—that is not really material information for the customer. The customer needs to get a real material understanding of how the system works, what it does for the customer, and we would therefore suggest that either the disclosure documents are seriously updated in conjunction with the industry, because we know what the material information is and we would like to see more elements of disclosure, and what we would also particularly like as a timeshare industry is that regulation is put in place that we can take deposits. That is something in the UK which is not in the Timeshare Act and it is not a wish of the UK authorities, but it is a wish of the timeshare industry at large to be allowed to take deposits through third parties because we are the only industry in Europe who is not allowed to take deposits. We understand that that is probably a bridge too far and we will definitely not say anything more about that.

Q63 Lord Trefgarne: You have put your finger on the matter there. Your business has been regulated, both by Directives and by national legislation, over a series of years because there were in the past some serious problems. In respect of the taking of deposits, which you have referred to, there was a time, as you were just saying with the travel clubs, where they take deposits and run for the hills. You are relying on your Code of Practice, which is no doubt admirable, but you are rather coy about what it contains. Could we see it?

Mr van der Mark: Yes, no problem.

Q64 Earl of Dundee: If this legislation is going to work properly then of course in the first place there must be clear information for the consumer.

Compared with the existing Directive, do you think that the new provisions will necessarily cause an improvement in accuracy and clarity?

Mr van der Mark: No. Unfortunately if we were to take the advice that we currently have from our legal counsel it would probably mean that for a multi-destination timeshare resort, for example, Hilton which has more than one property, they would have to disclose accurately and appropriately all of the properties the customer has the right to visit either through an exchange system or directly through Hilton. That means in our view that the current Directive would tell us that probably four or five volumes of yellow pages have to be made available to the customer detailing literally everything in every resort. That is not helpful and not material. In other areas, for example, the disclosure of the management fees, no-one really cares about the electricity price but someone cares about how the management fee can increase and that should be in the disclosure requirements, not simply electricity prices, rates and all the different taxes which apply. People are interested in the bottom line figure and how that can change.

Q65 Earl of Dundee: How, then, would you revise the new provisions as proposed in a user-friendly manner? Clearly there are these important items which are left out. There could even be others which are superfluous to the information needs of the consumer. What would you do about those? And how would you restructure and express in a more helpful way what is there now?

Mr van der Mark: A good example is how we have worked with the Department of Trade and Industry and the Department of Business Enterprise in regulatory reform in the past in amending the Timeshare Act in the UK when it came to the disclosure statements, particularly the cancellation notices. For a customer to understand and to read something it probably needs to be a contract of two or three pages and then very clearly pointed out in that contract the four or five categorical points which the trader needs to point out to that customer, perhaps with reference to the more detailed disclosure statements, but it would be helpful if we are not forced to put in the contract all the information that we now have to do, which is literally four volumes, and we should be allowed to put it as an annex to the contract.

Chairman: We have some important queries that are coming up now, including questions which Lady Howarth is particularly interested in, and then there are a couple of questions about the new Directive.

Q66 Baroness Howarth of Breckland: I have asked the bulk of my questions but we still need to know whether there should be a requirement for timeshare

19 July 2007

Mr Peter Van Der Mark and Ms Sue McNicol

and holiday club traders to register and how the Commercial Practices Directive will function. If I could have an answer to those two things as I have covered the other things.

Mr van der Mark: In our view a fraudulent operator can only be dealt with by the good application of legislation. The Unfair Commercial Practices Directive was a directive which we as an industry had really good support from our industry because it is principle-based legislation. It sets out very clearly what is misleading and aggressive. It has a black list attached to it of practices you may not work with. If you could make sure that the new Timeshare Directive was linked in with that directive then that would be a very good thing. On top of that we would also like to see a Fair Trading Directive. Next to an Unfair Commercial Practices Directive it would be a good idea to have a Fair Trading Directive also detailing how to interact with a customer. In terms of available legislation, there is a whole plethora of laws already in action which can be used today to stop rogue traders, including the false resale promises or the long-term holiday product. That is unfair contract terms, because their contract terms are always unfair, misleading advertising legislation they have breached, the Distant Selling Directive they have breached, the doorstep selling they have breached, and sometimes they also fall within the Timeshare Directive as it is. There is quite a significant amount of available legislation which simply is not used.

Q67 Chairman: What you are saying is that there is a lot of general legislation which should also be applied by regulatory authorities, or the police, whoever is the correct person according to the situation, applied to the timeshare and similar product sales. That is what you are saying.

Mr van der Mark: Yes, indeed. The second question was a normal business licensing system which we have in Belgium and in Hungary and it works quite well. It works in Belgium so well that we have no timeshare operators left because they always get visited by the inspectors rather than looking at the ones who do not have the licences and operate in the market. A licensing system is a good way, if it is a normal business licence system, where you for example deposit your contract and you say this is the contract I am going to work to, that is the one I give to the customer and if the customer then complains

they can check whether that was the one that was deposited with the authorities. To go to a fully fledged licensing and bonding system, as for example is applicable to the travel industry, for the timeshare industry would simply not make any sense because our product is guaranteed by the real estate which is no longer in their hands, the product has changed hands, but for long-term holiday products I would suggest that a bonding system would be quite good because what they offer is discounted travel.

Q68 Baroness Gale: When we have the written response could you elaborate on why you think it is so important to have a deposit or an advance payment and why you think there should be a shorter cooling off period and what are you suggesting?

Mr van der Mark: We think the cooling off period is fine. We will definitely do that. The question is to ask any other industry why they like to take deposits?

Q69 Baroness Gale: Because you are tied in, are you not? You cannot withdraw as easily once you have parted with your money.

Mr van der Mark: We know that but we think it has a lot to do with the commitment of the customer on the day.

Q70 Chairman: If I can sum up what you have been saying, you have been saying you are not objecting to regulation. It is not the regulation in itself which is objectionable; but you would want to see a regulation which will (a) cover some of the more difficult to control aspects of the sales of holidays and (b) make sure that the ordinary processes of the law or consumer protection—different countries have different ways of handling these things which apply to every industry are also successfully applied to your industry. You feel the European Commission should be looking at bringing all this together and applying it to your industry rather, than trying to find special legislation which is particularly directed at your industry. I think that is the point you are trying to make to us.

Mr van der Mark: Indeed.

Chairman: We will take that away with us and we will look at it and think again. Meanwhile, thank you very much for being with us today. When you read the evidence there may be some odds and ends which we did not quite cover because we had to skip around rather fast towards the end, so if you do want to add to that you are most welcome to do so.

Supplementary memorandum by Organisation for Timeshare in Europe

Peter van der Mark and I wished to thank you for giving us the opportunity to respond to your questions about the proposed changes to the European Timeshare Directive at yesterday's meeting. We found the session extremely useful and it was a pleasure to meet you and the other members of Sub-Committee G.

As agreed when the meeting concluded, we are pleased to provide you with supplementary information that we did not have the time to discuss during the meeting and to expand on a number of specific issues that Committee members raised. We have already emailed a number of documents to Mr Barry Werner for distribution amongst the Committee.

Why does OTE argue that a shorter cooling off period would be workable?

Evidence points to the fact that the majority of consumers who cancel do so during the first few days of the cooling off period. As a result, extending the minimum period from 10 to 14 days will not, we believe, lead to an improved environment for consumers and OTE has no report of purchasers complaining that the cooling off period is not long enough. This said, however, OTE is in full support of a harmonised cooling off period throughout the EU and its own code currently provides for a 15 day cooling off period.

It should be noted that in the US, the standard cooling off period is five to seven days and our counterparts in the States, ARDA (the American Resort Developers' Association) have indicated this is an accepted practice and does not cause consumer detriment.

OTE'S code of ethics

OTE was informed that a comment was made at the previous week's meeting with Mr Alexander Grey that OTE is secretive about its code of conduct and that it is not readily made available to consumers and others who request it. This is categorically not the case as a number of meetings have taken place with the European Commission and the European Consumer Centres to discuss how to improve the code. As the TCA is not an officially recognised consumer organisation, it was not invited by the European Commission to take part in these meetings. I would add that the code and ADR scheme, which has been developed and is now administered by the Chartered Institute of Arbitrators, can both be downloaded in their entirety from OTE's web site.

Why does OTE support the taking of 3rd party deposits?

It is a widely accepted and standard business principle from an accounting perspective that a "sale" is only a sale when accompanied by a signed contract and a deposit payment. For many purchases, whether for furniture, cars, package travel bookings etc, it is normal practice for the buyer to make a down payment on conclusion of the sale.

It should also be noted that timeshare companies have not only to reserve the specific apartment and week allocation for the duration of the cooling off period, they are also exposed afterwards until the full and final payment is made as no financial commitment is "felt" by the purchaser.

In Europe, timeshare is the only sector that has a full ban on deposits in combination with a cooling off period, excepting in nine EU Member States that have allowed for third party deposits. We are not aware that this has led to consumer complaints. In other jurisdictions worldwide, however, timeshare companies can accept a deposit and, as a result, the industry is thriving and many internationally renowned hospitality companies are active and successful in those countries. It is of great concern that several major hospitality companies are deterred from starting new businesses in Europe because of what they consider to be double jeopardy—a long cooling off period and a ban on deposits.

Rather than having an outright ban, OTE advocates that deposit payments should be paid to an independent third party, such as an escrow agent, which holds the payment under specific rules and is obliged to return the deposit swiftly if a contract is cancelled within the cooling off period. This is a system that works well in the US and few complaints are reported.

OTE believes that decisions made by governments to ban practices should be a last resort, rather than a standard response.

What are OTE's views on the Directive's other provisions relating to the scope and definitions?

OTE is concerned that the proposal to extend the definition of timeshare to holiday options of a one year duration or more (currently timeshare is defined as a minimum of three years' duration) may result in the end of highly successful and cost effective timeshare "Trial Packages"—often purchased by consumers who wish to try out a timeshare holiday before making a commitment to buy timeshare. These are very popular and the large majority of customers in fact later go on to purchase timeshare.

Trial Packages are travel/holiday rental contracts whereby a consumer purchases the right to book a certain number of nights in holiday accommodation with the booking window being limited to a certain time period, often 35 months. Unlike timeshare, there is no transfer of ownership of real estate and/or no specific right is established on the consumer's part to a dedicated portfolio of holiday accommodation.

Our own research indicates that one of the hesitations of timeshare purchasers is making a same day decision about a product with such a large financial outlay. However, the existence of a cooling off period and the fact that consumers can try out timeshare through these Trial Packages—staying at the resorts and mixing with other timeshare owners—can only be good for consumers and good for the industry.

By proposing to bring these Trial Packages into the scope of the Directive, this will result in additional costs to the operator, making them economically unviable, and it is highly likely that these products would no longer be marketed, robbing consumers of a perfect “test drive” of timeshare.

OTE reports extremely low complaints about Trial Packages and does not support the Commission's proposal in this regard.

What is the industry doing to tackle fraud?

- OTE has allocated €150,000 this year towards enforcement and has employed a full time enforcement manager in Spain, where the majority of fraudulent activities against UK citizens take place. OTE provides evidence to help enforcement agencies to take appropriate action and, for example, has seen 41 resale companies closed down. Court action is also being taken against a reportedly bogus Discount Travel Club.
- OTE takes an active role in the Metropolitan Police's Operation Sterling, a UK Travel Industry fraud forum.
- OTE works to educate the public and regularly advertises in the timeshare exchange company magazines, read by approximately 500,000 owning families, about the dangers of falling prey to bogus resale companies.
- OTE encourages its members to warn their timeshare owners about being approached by fraudulent operators.
- OTE issues regular press releases about fraud and has held widely attended press conferences on this subject.

20 July 2007

SUMMARY POSITION PAPER ON THE PROPOSAL FOR A NEW DIRECTIVE
“ON THE PROTECTION OF CONSUMERS IN RESPECT OF CERTAIN ASPECTS OF
TIMESHARE, LONG-TERM HOLIDAY PRODUCTS, RESALE AND EXCHANGE
COM (2007) 303 FINAL

INTRODUCTION

This summary Position Paper has been written by the Organisation for Timeshare in Europe to assist member state experts in evaluating the European Commission Proposal for a new Timeshare Directive.

It is by no means the full and definite position on the proposal but focuses on the reasoning for a new Timeshare Directive, whether it is a targeted and proportionate Proposal and whether it will achieve its stated objectives.

The OTE has available for all stakeholders independent (socio-economic) studies on the timeshare industry, consumer satisfaction studies, independently audited complaints statistics as well as detailed legal studies.

The OTE will provide further more detailed positions in preparation of the Competitiveness Council.

1. *Problem definition*

(a) Long-term Holiday Products

- The Green Paper on the review of the consumer *acquis* states that a proposal for a revised Timeshare Directive is justified on the grounds of a high number of complaints resulting from long-term holiday products (LTHPs). The European Commission correctly states that LTHP are not timeshare products but rather Discount Travel Membership Clubs (DTMCs).
- The five known LTHP providers according to the ECC Madrid and the UK Office of Fair Trading (OFT) breach existing laws including Doorstep Selling, Unfair Contract Terms and Misleading Advertising legislation.
- The real problem faced by consumers is that enforcement of existing legislation is at best weak and at worst completely lacking.

(b) Resale Fraud

- Another problem are for timeshare owners is fraud perpetrated on timeshare owners resulting from false resale propositions. In practice, fraudsters cold-call timeshare owners promising to sell their timeshare interest and demanding a heavy fee without ever selling the timeshare interest. This illegal practice constitutes fraud upon both timeshare owners and timeshare companies.

(c) Timeshare-Like Products

- The European Commission also identifies so-called “timeshare-like products” as a problem. In fact, the proposal refers to timeshare in boats and caravans, which was simply not covered by the 1994 Timeshare Directive.
- The proposal incorrectly uses the term “timeshare-like” to identify timeshare trial programmes. Timeshare trial programmes are in fact nothing other than rental programmes in timeshare resorts allowing consumers to experience timeshare holidays prior to committing to a full timeshare purchase. Although the Commission identifies these as a problem, they only cause a very minor number of complaints.

2. *The Facts*

The European Commission states in its Regulatory Impact Assessment (RIA) that the European Consumer Centres (ECCs) received 2,256 complaints in 2006. This figure also includes requests for information. Complaints can be broken down as follows:

(a) Timeshare:

- 117 for the first six months of 2006, for an estimated yearly total of 250 complaints. The estimated 250 complaints on timeshare relate to 7 million consumers taking a timeshare holiday every year.

(b) Long-term Holiday Products:

- 494 in the first six months of 2006, for an estimated yearly total of 988 complaints. According to the European Commission, 87.8% of the complaints relate to LTHPs and resale. Complaints about LTHPs are caused by only a handful of rogue companies.

(c) Resale:

- 237 for the first half of 2006 for an estimated yearly total of 474. Complaints attributed to resale transactions originate from fraud, and not from legitimate resale activity.

(d) Timeshare-like products:

- No data available.

(e) Timeshare exchange:

- No data available. Although the European Commission assumes that significant complaints originate from timeshare exchange, it is unable to provide specific figures and therefore these are included in the 250 timeshare complaints figure. 500,000 European families use exchange platforms every year.

3. *The Solutions*

(a) Enforcement of existing legislation

- There is broad agreement that enforcement of existing legislation can overcome the detriment currently experienced by consumer.

(b) The Unfair Commercial Practices Directive (UCPD)

- The entry into force of the UCPD will provide further tools to protect consumers.

4. *EC Proposal*

(a) Is this a targeted proposal?

- Despite having correctly identified LTHPs as the cause of most consumer detriment and acknowledging that LTHPs (and not timeshare) are the main reason to revise the existing Directive, the proposal fails to provide effective consumer protection from LTHPs. Instead the proposal further restricts the timeshare industry without enhancing benefits for consumers.
- The definition of LTHPs is so wide and ambiguous that it can be easily circumvented.
- The Annex detailing disclosure requirements for LTHPs does not provide consumers with material information needed to make an informed purchase decision.
- As the problems with resale are caused by fraud, the proposal cannot make fraudulent activity any more illegal than it already is.

(b) Is this a proportionate proposal?

- The European Commission justifies a revised Timeshare Directive on the grounds of problems caused primarily by LTHPs and fraudsters, yet proceeds to focus on further restricting legitimate timeshare companies.
- The new definition of timeshare is now so broad that it also includes products and services which in fact have nothing to do with timeshare, such as rental and hotel bookings for more than one time over more than 12 months.
- The Annex containing disclosure requirements for timeshare is now so complex that it will result in the consumer being overloaded with non-material information at the time of purchase. Furthermore, timeshare trial programmes will now qualify as a timeshare purchase, and thus require in certain Member States the intermediary action of notaries and registrars for a service which amounts to little more than a holiday rental booking.
- Timeshare exchange is a contract ancillary to timeshare, ie it cannot exist in the absence of a timeshare contract. Although exchange is correctly characterised as an ancillary contract in the section of the proposal that addresses ancillary contracts, the proposal also treats exchange as a primary contract by way of introducing a separate withdrawal period which may not run concurrently with the withdrawal period for the main timeshare contract. This will create confusion for consumers and undue administrative burdens for exchange operators.
- The disclosure Annex for exchange requires exchange companies to provide information which they are not privy to and which is not material for the consumer. The Exchange disclosure Annex should therefore be tailored to the specific services provided by exchange operators.
- On the basis of the points outlined above, the measures proposed are disproportionate to the problems identified.

(c) Further questions one might pose:

- Is this a simplification or modernisation exercise as per the Commission Work Programme?
- Is this future-proof legislation or will rogue traders circumvent the new Directive as they have the existing one?
- How will this proposal interact with the general review of the *acquis*, the contract law process and other existing legislation?
- Is this proposal using the correct legal basis (art 95 v Art 153 of the EU Treaty)?
- Will the proposal truly enhance consumer protection?

5. *Recommendations*

- (a) Due to a less than sound Regulatory Impact Assessment, and in the interest of consumers, businesses, and enforcement authorities, it is essential that more correct, reliable, and up-to-date data is collected.
- (b) Greater analysis of the impact of the current proposal on consumers, timeshare owners, timeshare businesses and finally rogue traders is also needed.
- (c) Finally, the impact of enforcement of existing legislation on the problems outlined should also be assessed.
- (d) If, following a thorough and in-depth analysis of correct and relevant data, revision is still regarded as the best solution, legislators will at that point have the necessary tools at hand to develop targeted, proportionate and future-proof legislation which will protect consumers, stave off rogue traders and allow legitimate companies to flourish.

THURSDAY 26 JULY 2007

Present	Gale, B Greengross, B Howarth of Breckland, B Moser, L	Neuberger, B Thomas of Walliswood, B (Chairman) Trefgarne, L Uddin, B
---------	---	--

Memorandum by Office of Fair Trading

INTRODUCTION

1.1 The Office of Fair Trading (OFT) is the UK's competition and consumer authority. Our mission is to make markets work well for consumers. Our vision is for competitive, efficient, innovative markets where standards of consumer care are high, consumers are empowered and confident about making choices and where businesses comply with consumer and competition laws but are not overburdened by regulation.

1.2 The OFT welcomes the new proposals in respect of timeshare, resale and exchange systems, and together with the Unfair Commercial Practices Directive we believe this will provide significantly increased protection for consumers.

1.3 However, we are less certain that in the longer term the proposal will effectively control the sales process which is the main area of concern here. Our view is that new products are likely to be created that will evade the law as holiday clubs were invented to evade the Timeshare Directive, so the proposal may not provide a future proofed solution.

1.4 A revision to for example the Doorstep Selling Directive to cover situations where the trader makes an unsolicited approach to a consumer away from their business premises but then completes the negotiation of the contract on business premises would help avoid the need for further revisions of the product definition under the directive should such new products be introduced. The definition of "business premises" would however need consideration to avoid traders circumventing the requirements.

OVERVIEW

2.1 Historically there has been a disproportionately high level of consumer complaints, particularly relating to high pressure selling, within the timeshare industry. One of the major successes of the existing Timeshare Directive has been to drive the rogue traders out of the market and it is unlikely that such traders would either have signed up to a form of self-regulatory agreement or would have been bound by it. There is insufficient incentive when there are such high levels of profit to be made from poor trading practices. The timeshare industry is now a much more mature market and would benefit from self regulation which would raise standards still further, but this would need to be in addition to legislation, not in place of it.

2.2 With regard to holiday club operators we have tried to influence them to set up a voluntary code, but without success. One operator signed up, but as the others did not this put them at a competitive disadvantage and the initiative failed. We have seen no evidence that the holiday club industry is willing or able to police itself effectively. Levels¹ of consumer detriment in this industry are significant both collectively and for individuals as a result of the high pressure selling mechanisms of bogus holiday clubs. In our view this requires a legislative response to ensure these poor practices are eliminated from this market. If legislation was withdrawn there is no guarantee that the levels of complaint would not rise again.

2.3 The majority of transactions in timeshare and holiday clubs are cross border and it is essential that consumers have EU wide protection when making such purchases. We consider that a harmonised approach to, for example, information requirements, cooling off periods and so on is required across the EU in order for consumers to be confident of their rights wherever they make a decision to purchase timeshare or holiday club benefits.

2.4 We consider that the existing directive has had a positive effect on reducing consumer detriment within the timeshare industry. In particular we note the following:

¹ Estimated £1.17 billion, affecting 400,000 consumers—*Research on impact of mass marketed scams*, OFT December 2006 (OFT 883).

Strengths

- Introduction of a cooling off period which has protected consumers from pressure selling.
- Information provisions which have allowed consumers to make an informed choice.
- The regulatory framework has been successful in pushing fraudulent operators out of the market and protected consumers.

Weaknesses

- The definition of timeshare has been found lacking, for example, the lack of inclusion of products of less than three years duration so that entry programmes of 35 months were invented. Timeshare in non-fixed property such as canal boats was not covered. Most importantly it did not cover other long term holiday products that do not offer the right to a fixed property—so called holiday clubs or discount travel membership clubs.

SCOPE AND DEFINITION

2.5 We welcome the removal of the three year element of the definition of a timeshare although our preference would be for no minimum time period to define the length of the contract. We would also have preferred Article 1(2) to be harmonised in order to provide certainty for consumers and for businesses. We also welcome the inclusion of resale of timeshare, long-term holiday products and timeshare exchange.

INFORMATION PROVISION

2.6 We welcome the expansion of the information to be provided in the contract for timeshare and holiday clubs and in particular for the resale of timeshare when it is resold by a trader.

2.7 The OFT has run a number of campaigns to alert consumers to their rights. We believe this information is most effectively delivered for this market at the point where consumers are most likely to be approached by a marketer, that is, in the resorts themselves.

RIGHT OF WITHDRAWAL

2.8 We welcome the 14 day cooling off period as it reflects our own national requirements and will provide much greater certainty for consumers. However, given that the length of holidays is now increasing, a 21 day cooling off period for this sector could be more appropriate.

2.9 We are very supportive of the requirement for the trader to draw the consumer's attention to the existence of the right of withdrawal and the ban on advance payments. We consider that this could go further and require the trader to also provide a separate notice to the consumer setting out these rights.

2.10 Maximum harmonisation will assist to ensure consumers are better protected wherever they live and purchase timeshare. We would prefer Article 1(2) to be harmonised to provide clarity and certainty for consumers wherever they make their purchase in the EU.

ADVANCE PAYMENTS

2.11 Most of the problems we have encountered on advance payments have been due to fraudulent activity where the agent will require an upfront fee with no intention of reselling the property. However, there are other genuine traders who take up front fees to cover marketing costs which makes it difficult to identify the fraudsters. Our advice to consumers has always been to avoid paying any monies up front and we welcome the ban in the proposal.

2.12 We welcome the idea of providing easily accessible out of court redress for consumers, although any statutory system could be expensive and would need effective monitoring and penalties in place. It would not provide a solution to dealing with the rogue elements within the industry.

SANCTIONS, MONITORING AND ENFORCEMENT

2.13 The OFT has had some success using its powers under the Enterprise Act 2002 to stop businesses breaching consumer protection law but we have no powers to administer fines or penalties under this legislation. Under the proposal we would want the level and range of sanctions to be proportionate to the market sector within each member state so that the enforcement is effective in targeting the worst offenders within each locality. We would want the level of sanctions to be proportionate and provide an effective deterrent for cases where traders deliberately do not provide consumers with their rights and adequate information. Within the UK, the government is committed to providing the OFT with criminal sanctions, powers of inspection and search in the Consumer Protection from Unfair Trading Regulations that come into force next April. This together with the Macrory review of penalties² for regulators should assist us to deal with bogus holiday club marketers in a proportionate way.

2.14 The Consumer Protection from Unfair Trading Regulations will be a very useful tool for dealing with aggressive sales practices and misleading advertising. The new timeshare proposal sets out specific additional rights for consumers and we believe the two will complement each other effectively.

ADDITIONAL ISSUES

2.15 We believe that effective enforcement of the current law would go a long way towards addressing the detriment which exists. For this reason we would welcome a broader role for the EU to monitor and ensure the enforcement of consumer law protection for the timeshare and long term holidays markets.

10 September 2007

Examination of Witness

Witness: MR MIKE HALEY, Head of Consumer Protection Enforcement, Office of Fair Trading, examined.

Q71 Chairman: Good morning, Mr Haley, and welcome to the Committee. I do not know whether you have given evidence here before to any of our committees, but we do have one or two points which we need to explain before we go further. We are very glad that you could make the time to come and talk to us while we are doing this inquiry which is of course into the proposed new Directive on timeshare and related holiday products. We know about your business and what you do and we also know that you have been active in protecting consumer interests in the area of timeshare and similar products, so it would be very useful for us to hear your views, as a regulator, as it were, and protector of consumer interests. We have an hour, the session is open to the public and it will be recorded for possible broadcasting or webcasting. You will get a verbatim transcript of the session and, if you feel the need to correct what you have said, please do so, but do so as quickly as possible. We sometimes get to the end of our hour and we perhaps have not finished the discussion or there are further points which have arisen and we always welcome an additional piece of written correspondence where you can lay out what you would have liked to have said, had you had the time to say it. Can you start by stating your name and your official position and then, if you want to, you can make an initial statement relating to what we are talking about today, and welcome once again to the Committee.

Mr Haley: My name is Mike Haley and I am Head of Consumer Protection at the Office of Fair Trading. My introductory comments are very brief, just to explain the role of the Office of Fair Trading and to put into context the answers to the questions which you may pose. The Office of Fair Trading is the United Kingdom's lead consumer protection and competition enforcement agency and our role is to make markets work well for consumers and we see that markets work best when there are well-informed consumers who can make choices from honest businesses who are in competition. Our powers are to protect the economic interests of consumers and, more generally, the collective interest of consumers; we do not act for individuals and we do not seek redress for individuals. Our powers are entirely civil in terms of timeshare enforcement and they arise from the Enterprise Act 2002, but the Injunctions Directive, which is a piece of European legislation from which the Enterprise Act powers arose, does give us the locus to approach businesses in other Member States of the European Union whose activities harm the collective interests of UK consumers. Previous to my job as Head of Consumer Protection, I was Head of European Enforcement at the Office of Fair Trading, so I have some experience of using those cross-border powers. As part of my presentation, we have brought a pack of information which we hope that your Lordships will find useful which it may be useful to hand round and I will be

² *Regulatory Justice: Making Sanctions Effective* Professor Richard Macrory
http://www.cabinetoffice.gov.uk/regulation/news/2006/061128_mr.asp

26 July 2007

Mr Mike Haley

referring to that from time to time if it assists in explaining some of the answers to your questions.

Q72 Chairman: Thank you for that. I think we had better start by asking what beneficial effects you feel, if any, have resulted from the existing Timeshare Directive and, in particular, do you have any evidence in terms of level of complaint or whatever it might be which can serve to support your feeling about how well it is working? In the light of the problems experienced with the current Directive and aside from holiday clubs, what is your view of the proposed new Directive? That is a rather general question to start off with.

Mr Haley: I thank you for that. In our opinion, the Directive has put an end to the most problematic practices which were notorious in the timeshare industry. To give you an example of how effective it has been, complaints to the Office of Fair Trading and Trading Standards declined from a peak of over 11,500 a year in 1990, 1991 and 1992, before the Directive came into play, to under half of that amount by 2000 and in 2006 enquiries and complaints to the Office of Fair Trading and Consumer Direct, which is our new advice line where consumers can get advice about consumer problems, had declined to under 1,000, so there has been a reduction from over 11,500 to 1,000 in that period of time, which I think is a mixture of the Directive itself and better enforcement of the Regulations. In 2006 though, we have had twice as many complaints to the Office of Fair Trading about holiday clubs compared to timeshare and a smaller, but, I would say, significant number of complaints regarding timeshare resale. To put it in perspective, although that is a significant problem, the number of complaints is small compared to other sectors that the Office of Fair Trading regulates. From January to date, Consumer Direct recorded 372 complaints or enquiries about timeshare, 696 about holiday clubs and 363 about timeshare resale, but during that same period we had over 40,000 about the home maintenance sector, 30,000 about furniture and 17,000 about personal computers. I would put a caveat on that because it sounds that it is rather small in comparison to the everyday purchases, but I think there is a qualitative difference in the type of complaints. A timeshare or holiday club purchase is a very significant purchase, could be £10,000 or more, so the consumer detriment is rather high even though there is a relatively small number of complaints compared to other purchases. We also know that bogus holiday clubs and scams are rather rarely complained about. We had some independent research that an independent marketing company did for us about the extent of scams which interviewed over 11,500 people and they found that only 5% of consumers who had a problem in this sector would

report whether they had been ripped off and they found also, by extrapolating the complaints from those interviews, that the holiday club sector attracted the largest amount of detriment of over £1 billion and that 400,000 had been affected by these practices which put it at the top of our list of scams to be investigated. Moving on to your question about the strengths and weaknesses of the existing legislation before moving on to the new legislation, the main strength of the Timeshare Directive and why we think it has been effective has been the introduction of the cooling-off period. I think it is essential that consumers have that right to reflect on a purchase which has been made often on holiday and in a situation where they are unprepared to compare prices or enter into contracts, and I think that has protected consumers from the situations of pressure that they might have been in when they made the purchase. Secondly, pre-contractual information provisions have been required in the Directive so that consumers know more about what they are buying and what services are associated with the timeshare, and we think that that has been successful in pushing fraudulent operators out of the market and for largely cleaning up legitimate or traditional timeshare purchases. The main weaknesses have been that the definition of "timeshare" has been found to be lacking. It has been circumvented in a number of ways, for example, in what they call 'entry programmes' which are programmes for under three years, and the existing timeshare law defines a timeshare contract as 36 months or more and some inventive entrepreneurs have invented products which are 35 months and, therefore, are quite clearly designed to evade the law. It did not encompass timeshare products in non-fixed properties, such as canal boats, and it does not cover these long-term holiday products, so that is where we have seen the major issues occur which is around the fringes of what the definition of "timeshare" is. Moving on to the new Directive, we particularly welcome the ban on upfront fees for resales, which is a particular issue of fraudulent conduct, and we do believe that it addresses the remaining timeshare issues, in particular, the introduction of a common 14-day cooling-off period left and that is the cooling-off period in the UK timeshare law and we find that that is clear to consumers. We would have preferred, I think, at the time of the first consultation for it to be a 21-day period and that is because people's holidays are much longer now and we do believe that people need to come back with the contract, consult a lawyer and also make sure that they have all the information to hand which they can check on the Internet, which are things they might not be able to do when they are still on holiday. We do know that timeshare operators and holiday club operators look for people with white legs which means that, as soon as you

26 July 2007

Mr Mike Haley

come off the plane and before you have talked to other people in the resort, they will try to sell these products and, therefore, you may only have one day of that 14-day cooling-off period by the time you get home. However, it is an improvement and we welcome that. We also welcome the removal of the three-year element of the definition, as I said. We found that they have created these entry programmes which are basically programmes of less than three years in which you are put in resorts and you have then to go to further presentations and pressure sales to sign up to a longer contract, so once in and without a cooling-off period, you are then put under further pressure during that period, so that again we very much welcome. It does extend to non-fixed properties, such as canal boats, which again we welcome. As to the clarity on the prohibition of taking deposits, the law at the moment does put a ban on taking deposits within the cooling-off period, but in reality that has been circumvented by businesses asking for deposits to be made to a third party rather than to the vendor, so in almost all cases businesses continue to take deposits, and I think that puts consumers under a psychological pressure to continue with the contract; they have already given their credit card details, they have already had money taken off them and they are more committed to the purchase. Also, the improved information provisions within the new Directive are all very welcome.

Chairman: Thank you. There are some interesting points which you have made, but I do not think I am going to go straight into those, but I think we will take questions in the order we have them.

Q73 Lord Moser: You gave some interesting figures about the numbers of complaints, et cetera. Do you have in your head a sort of broad picture of the size of the industry, whether it is declining and whether the proportion between holiday clubs and timeshare is changing, just a quick overall picture?

Mr Haley: I think there are something like 400,000 owners of timeshare in the UK and probably 1½ million across Europe, so we are one of the largest purchasers of timeshare. That has been a stable number for a number of years and I think it is a maturing figure.

Q74 Lord Moser: It is fairly stable?

Mr Haley: Yes. Holiday clubs we kind of look at as a different sector because there is no immovable property. That has been growing between 2000 and 2005 and I think that again has stabilised with five or six major players who provide holiday clubs, but many more, dozens and dozens of marketing companies, all with different names. If you go to resorts in Tenerife, like Playa de las Americas, you

will come across holiday clubs much more frequently than you will timeshare because of the marketing methods that they use, so I think at the moment they are both stable, although holiday clubs are probably increasing slightly and it is certainly more visual to the consumer in that they are more likely to encounter a holiday club now than a timeshare.

Q75 Lord Moser: And on the whole there is more trouble with the holiday clubs than with the timeshare?

Mr Haley: Absolutely, yes.

Q76 Baroness Gale: You mentioned the cooling-off period and we have had two conflicting views on this from the Consumer Group witness we had two weeks ago, Sandy Grey, who would prefer a 28-day cooling-off period and last week the OTE who felt that a shorter cooling-off period would be more beneficial and they did not see much purpose at all in having a longer one. You have suggested 21 days as a preferred option, so do you think there is any chance of it coming to 21 days?

Mr Haley: I do not believe there is a consensus across Europe on the 21 days. Because the Directive says ten days at the moment, to increase it to 14 days, I think, probably is a consensus. I suppose our view is trying to balance consumer and business interests and we come somewhere in the middle, but I think ours is rational on the basis that the purpose of the cooling-off period is to give consumers the opportunity to reflect, and I think you can only do that when you are out of the situation when you first went into that contract. I think you are a bit more reflective when you get home from a holiday and you think, "Do I really want that product that I've signed up for?" and, if you do, fine, sign the contract and return it, but I would not think that a shorter cooling-off period would achieve that level of consumer protection which is needed in this sector.

Q77 Chairman: On the upfront payment, the point was made to us that when you buy a fridge or a motorcar, you very often make an upfront payment, so what is the difference? This is a consumer good that somebody is buying.

Mr Haley: I think the difference is that the consumer can shop around. If you want to buy a car, you can go from showroom to different showroom, you can take a test-drive, you can compare whether you are getting the best deal and the best car and then, to secure the particular car that you know you want because you have experienced the product, I think it is fair enough to be asked for a deposit to secure that.

26 July 2007

Mr Mike Haley

With timeshare and long-term holiday products, you do not have the opportunity to try that and you might not try it for a year in a timeshare situation, so you need to be in a situation where you can compare, and you will not be able to go from one resort to another or compare within resort, so you might need to go to other sources of information which could be consumer groups or the Internet and make some further research into the wisdom of a sizeable purchase.

Q78 Baroness Greengross: I am just fascinated by all the ingenuity of the scams, from what you were saying. Can you tell us a bit more about how these scams affect the holiday clubs and the different role in that, the providers of the holiday clubs that have agents that sell membership of those clubs and the relationship between them.

Mr Haley: Yes, I think I will take it in two parts, firstly, to explain how they operate and how consumers are entrapped or enticed into that situation before moving on to the complex relationships between the different businesses in the sector. A typical scenario is where consumers in a resort in Spain or the Canary Islands are approached while they are in a high street or on the promenade at the front of a beach by what is called an 'outside premises canvasser', an 'OPC' in the trade, and it has another name, the 'on-site pavement canvasser', but somebody you might think of as a tout, often using a ruse, such as a winning scratch-card competition. A young, attractive person jumps up in front of you and says, "Free scratch-card competition", and the first one will inevitably be a loss, but for your partner, because they will usually pick couples, it will be a winning scratch-card. To collect the prize, which could be a bottle of champagne, a CD player or a holiday, you would attend a presentation which they would say would be for a short period. They would then organise a taxi ride perhaps to some distance away from where you were to begin with in order to collect that prize, so that immediately puts the consumer at some psychological disadvantage that they are in a situation where they do not know where they are and, to get back, someone else has to organise the transport. Then the consumer is taken into a marketing suite, known as the 'sales deck', and these are generally very professionally run, and I have visited many of them, with banks of computer terminals, glossy posters and brochures. They are then subjected to an intensive three- to four-hour sales pitch and passed from one person to another and kind of softened up to begin with. They go through a questionnaire about their details to sift for people who can afford it because they are looking for a particular type of customer. Then it moves to someone who will go through the product with you

and ask questions in such a way that the consumer can only say yes, so, "Do you like taking holidays?", "Do you think it is a good deal if you can get savings on your holidays?" I think these are sales techniques which are common, but I think they have honed them into a particular sales pitch which is quite expert. The problem has really been with that process and then after three or four hours they have an expert 'finisher' who will come in to close the deal and then the contract will be signed on the day. The problem is that the sales staff are provided with very high financial incentives, maybe £1,000 or £2,000, on that day to make that sale and, therefore, it is very ripe for pressure tactics to be applied. These tactics often take the form of a vast gap between the promises that the salesman makes about the product and what it actually delivers. Examples would be that you can get cheap Club-class flights to Australia for £150 and that seems like an extraordinarily good deal to entice you in. Of course there is nothing like the cooling-off period and the terms and conditions in the contract are often so ill-defined that any promises that they have made to you would not be delivered within the contract. Various incentives are also used, for example, cashback schemes, so they try to reduce the risk. At the end, they say, "It's a rather sizeable sum", but they never tell you that it is going to cost £10,000 upfront, but by the end of the process they keep that cost and go for what they call the 'pencil pitch' of working out how much you spend on each holiday every year in order to come to a figure where, after ten years, you may, say, have spent £2,000 per year, so that will be £20,000, so £10,000 to get those holidays is saving you £10,000. It is quite difficult sometimes to understand why somebody would sign up to a contract for £10,000 unless they have been through that whole process. An incentive such as cashback is where 10% goes into the scheme and after 50 months or so you will get most of your money back and usually there is a promise made to get all of your money back so, therefore, it seems that this is a very low-risk deal, that you pay your money upfront now and you get your money back, plus you get this access to holidays. The complex relationships between the various parties we have tried to map out, and in your pack I will refer to a document. As you can see from the document, it looks rather complex and to try and explain it in words would probably take longer than the hour, but, if I take you quickly through this, in the bottom, left-hand corner is the OPC, the outside premises canvasser, or what we call the 'fly-by operator', which is another way you can be taken to a presentation for timeshare or holiday clubs where companies have incentives for you of free holidays from some direct marketing campaign and, if you sign up, they will take you out to resorts, so to some of these you might think, "Wonderful", but in fact it is free holidays on the proviso that you will go to a

26 July 2007Mr Mike Haley

presentation, so they are the two main ways of attracting a consumer to a presentation. Then, if you go to the top, left-hand side, which is the marketing company, the marketing companies are authorised sales agents. In our view, they are agents of the holiday club operator, but they often believe themselves to be very independent and in almost like a retail wholesale situation. All they provide is the sales pitch, they do not provide you with anything, and we find often that the contract you are signing through the marketer cannot provide you with any service. The cashback scheme is an ancillary product provided by yet another company, so you then have a second contract here with the cashback operator. Cashback operators tend to be registered in places like Gibraltar, marketing companies in places like Panama. Once they have taken the upfront fee from you, usually a deposit of £500 or £1,000 and then they chase you further on for the other amounts, you are put in touch with the club operator, which is here at the middle top. The club operator puts the pack together. That can be the right to accommodation, maybe four weeks' accommodation at £72 a week over a year, plus other incentives, like access to golf links and to cheaper air travel, and you pay them an annual membership fee. However, in order to actually get your holiday, you then have to call through a booking agent. Now, the booking agent is another company and it is usually a registered travel agent in Spain and that is where you would actually have a contract for your holiday. Therefore, having spent £10,000, £1,000 going to another company which is the cashback operator, and £75 to the club operator, you then have to pay for your holidays through a travel agent and this is where they often say they are ABTA-bonded and give the impression that it is a very legitimate business. All of that, we would say, a consumer could normally get via the Internet or via Ceefax or just by going into a travel agent, but the difference is that you have paid £10,000 for the privilege of a direct line to a travel agent. The consumer is then put into the timeshare resort and this is where there is a grey line between holiday clubs and timeshare resorts because the holiday club is based on the premise that there is excess inventory, unused weeks in timeshare resorts, so they have either engaged with timeshare companies to purchase those weeks in bulk or they have obtained people's timeshares which often are on a kind of part-exchange basis, so, if you want to join a holiday club or have them take your timeshare off your hands, holiday clubs cost £10,000 and they give you £5,000 for your timeshare and they take £5,000. We have had one case where someone did that and then, when they were put on holiday, it was back in the same timeshare resort and the same timeshare apartment which they had given up in part exchange, so it is a complex relationship.

Q79 Chairman: I wish I was as clever as that!

Mr Haley: Some of these people are very rich and you can see why. It is a complex arrangement and I think that the key issue in order to understand the business is that the holiday club provider, the pack operator, there are only five or six real companies who actually put a pack together, but there are dozens of, maybe even 100, different marketing companies, all with different names, so we can get complaints about XYZ company and really they are coming back to a rather small amount of people who put the packs together, and that is trying to put in a nutshell how the relationships work.

Q80 Baroness Gale: How many complaints do you get of these holiday clubs?

Mr Haley: We had to Consumer Direct nearly 700 in the first six months of this year. To the Office of Fair Trading directly, I think it was 300 in this past six months, but we think that is the tip of the iceberg, particularly when consumers know that we cannot get individual redress. Most consumers will complain and say, "Can you put a stop to this so that other people don't get taken in?" and many consumers of course just want to get their money back and, since we cannot act on their behalf individually, it can be quite frustrating for the consumer and they may not then continue with a formal complaint because we need all the documents, the contracts and everything else, to be able to take the case on.

Q81 Chairman: That has been an absolutely fascinating explanation, but I wonder if you could just explain, therefore, why you think that the OTE did not think that this particular Directive should be used to regulate that holiday club aspect of the whole thing. You presumably take a slightly different view from that, or maybe not.

Mr Haley: We are not entirely convinced that the problem of holiday clubs will be addressed by the inclusion of a definition of a long-term holiday product in a new Directive. I think we would like to see some further consideration of the definition which has been put forward of a holiday club because we think it will inadvertently have the potential to include clubs, such as the Civil Service Motoring Association, the trade union holiday clubs and other staff association clubs which help people get discounts on accommodation and holidays in the future and it might be an unintended consequence that those legitimate businesses, which do not cause us concern, then face further regulation and will be the only ones who actually obey the law. We do accept, and I have outlined the fact, that there does need to be some regulation of holiday clubs, but the main problems arise in the sales practices rather than the actual nature of the service. I do not think there is anything fundamentally wrong with a club that says,

26 July 2007

Mr Mike Haley

“We will use the purchasing power of a number of members to form contracts with timeshare operators for their excess weeks and we will pass on that discount to you”, which is the basis of the holiday club service.

Chairman: That then leads on to Lord Trefgarne’s questions and I think that will take it one step further because we are going to talk about unfair commercial practices.

Q82 Lord Trefgarne: I am wondering to what extent the Unfair Commercial Practices Directive addresses some of the concerns that you have been describing to us, like pressure selling and the aggressive sales practices which you referred to. The OTE rather thought that there were other pieces of European legislation which could be relied upon. I think there is the Doorstep Selling Directive or the Distance Selling Directive and indeed we are even told that there may be a new overarching Directive, so it is a question of whether there is not a raft of existing European legislation which might, in their view, be sufficient.

Mr Haley: The Unfair Commercial Practices Directive, which will be brought in as the Consumer Protection From Unfair Trading Regulations next April, will be, we believe, a very useful tool to deal with these types of sales practices, aggressive and pressure selling and also misleading omissions, which is one of the major issues of any sales practices, what you are actually getting for your money. We very much welcome that and think that it will help us to sort out within the UK those who are selling products, but it does not provide what is essential in this situation, which are further rights, such as the cooling-off period, so it would help us to tackle some of the most problematic practices, but the consumer would not have any further rights and that is why, in our view, the new Directive will put a challenge to those businesses who are selling holiday clubs legitimately which they also confess they want to sell legitimately and, therefore, we would say that it would be a good challenge to have a definition which included them, and they will give cooling-off rights, to see if they can honestly sell their products by obeying consumer law. If they fall foul of the aggressive and persistent selling, pressure selling, we can deal with it under unfair commercial practices. With regard to the doorstep selling, more properly known as the Contracts Concluded Away From The Business Premises Regulations and which are set to deal with situations where you are sold in the home, so on the doorstep, we have argued in the UK and in Spain that the situation that people face when they are on timeshare or holiday club presentations is similar to being doorstepped. You are taken by surprise and you are not prepared for contract negotiations, so it needs some extensions and tinkering with that law to ensure that its purpose was

not just restricted to sales in the home, but for all the types of situations where you might be put under pressure. We do think it could be a vehicle for addressing similar situations and would not be reliant on a definition of a long-term holiday product where, in our view, the most creative entrepreneurs will very quickly come up with a product which falls outwith the new definition, so this would be looking at arming the consumer protection agencies with a tool which applies in a far wider range of situations where consumers are caught by surprise, so I think there is some scope there. I do not understand the point about distance selling. We do not see these sold over the Internet or by mail order, so I am not sure what the OTE’s position is on that. As for some other overarching sales and marketing directive, I think the Office would support a principled directive which gave consumers some fundamental rights which would complement the Unfair Commercial Practices Directive which deals with practices regardless of the market, so I think that would be a longer-term solution for the transformation that these businesses will come through. The purpose of these businesses is not to sell holiday products, in my view, it is to get a large, upfront fee by some ruse, so at some stage they will sell something else, and we have examples already where they are starting to pre-empt the changes in this Directive by looking at products they can sell in the same way, but which fall outwith the new definition.

Q83 Chairman: So it is quite a broad spectrum of consumer protection that you are hoping that the consumer will acquire across the European Union, not just through the Directive that they are working on now, but through a series of other directives, including new directives possibly?

Mr Haley: Yes, I think that you can look at the existing directives, like the one on doorstep selling and that might be able to be changed rather more quickly than a new directive to deal with these types of situations rather than the products, and the Sales and Marketing Directive which gives fundamental rights would future-proof so that we are not here in another five years, saying that there is another product, not long-term holiday products, but X, “How has the market changed?”, and we would say, “Well, we have tidied it up”, as the Timeshare Directive has, “for those who were genuine about selling timeshare, and those who were genuine about selling long-term products, these holiday clubs, will obey this law and will continue, but there will always be these rogues and scammers who will look for the chinks in the armour that we are setting up”, and that is why something more horizontal will give us a much easier way in a very fast-changing market, not just in holiday clubs and timeshare, but other sales practices which arise.

26 July 2007

Mr Mike Haley

Chairman: That is a new point, I think, for us.

Q84 Baroness Gale: What enforcement powers do you have at your disposal to deal with problems in the timeshare and holiday club sector and how far do you think you can use those, and what new powers, if there are any, would you hope to see as a result of the adoption of the new Directive? The other question is: how would you assess the current overall co-operation arrangements between enforcement bodies in the Member States, including under the Regulation on Consumer Protection Co-operation adopted in 2004 and, in particular, could you describe how the Office of Fair Trading works with the authorities in Spain and Portugal?

Mr Haley: Currently, the powers we have are restricted to a civil injunction. It is an enforcement order under the Enterprise Act. It is an order where we could go to the High Court to make a business stop breaching existing consumer protection law in the future, so it is a prohibitive order and it says, "You are misleading people. That is a breach of the Control of Misleading Advertising Regulations. Stop lying to people", or, "You are not giving the cooling-off period which you are required to under this legislation. You must stop not giving that and, therefore, in the future you should comply with the law", so it is solely a power to stop breaches of consumer protection legislation.

Q85 Baroness Gale: That is for the future, not what has already happened?

Mr Haley: That is right. It does not punish any business or trader for breaching consumer protection legislation in the past and it does not have any scope to seek redress collectively for individuals or to fine or to impose any other punishment. It is really there to regulate a market and to say, "You're breaking the law". If we cannot persuade them to stop, and that is always our first step, within the Enterprise Act we have to give a business 14 days minimum of consultation and we think that is fair as a proportionate way to go about trying to regulate the industry, and in most cases we can come to what we call an 'undertaking' where the business promises the Office that in the future it will not breach consumer protection legislation. If they breach that undertaking, we can take them to court to get an order. If they break the order, that will be a contempt of court and that does have far more sanctions to be applied, such as imprisonment or a fine, until you purge your contempt, so there is a kind of hard end if you breach an order. We have used those powers widely across different markets and successfully to stop practices which harm consumers, including with the timeshare and holiday club operators both in the UK and overseas. One of the problems with that power though is that, whereas in the UK we can go

against the individual, in Spain it can only be against a company, so we face the problem of businesses which we have approached, even obtained undertakings from and even got to the foot of the court in closing down the company and then they are starting up another one and it is the legal entity which the order must be taken against, so that is the existing power. As to the new powers that we might want to put in the Directive, well, in fact the Government is arming the Office of Fair Trading and other consumer protection agencies with a whole range of new powers from next April within the Consumer Protection Regulations, which implement the unfair commercial practices, and that will give the Office powers to look at criminal sanctions, powers of inspection and powers of search to gather the evidence to prove these offences. We think that those powers are adequate and there is nothing more that we would want within the Timeshare Directive, plus we know that there is the McCrory Review of regulator sanctions which came from the Hampton Review and that is looking to arm all regulators with a suite of sanctions and administrative fines through from undertakings to criminal, so I think the Government has given us exactly what we need from next April in terms of enforcing all of the consumer protection law that we need.

Q86 Chairman: What about the cross-border co-operation with other enforcement agencies?

Mr Haley: To be honest, in the past it has not been great and we have struggled, particularly in places like Spain, to get the local authorities, and it is the autonomous authorities which implement the law rather than central government, it is a very federal state in Spain, but since 1 January the Consumer Protection Co-operation Regulation was introduced across Europe and we have already seen early indications that Spain in particular had risen to the challenge of this new Regulation. They have put in place a specialist team with an energetic leadership, they have already met us and they have agreed a plan for the exchange of information for dealing with complaints and we think that this new Regulation, although it is quite early to say that it is going to be effective, the early indications are that it will greatly improve cross-border co-operation. We have already undertaken some joint consumer education initiatives with the Spanish authorities, the *Instituto Nacional de Consumo*, which is the OFT's equivalent, and they also now intervene on behalf of the individuals where we forward complaints which is what we are not able to do, but they are able to under their legislation, and we find that is very helpful. The test will be over the next few months when we make a formal referral to them for enforcement action under their law and we fully intend to do that with the worst players in the holiday club market. If they take

26 July 2007

Mr Mike Haley

action, as they are obliged to under this Regulation, then we should see some enforcement action and better regulation in the marketplace, so I am very hopeful. With regards to Portugal, we have not had cause to make contact with the Portuguese at present. The complaints are 95% in Spain and we are concentrating our resources on ensuring that those relationships with the Spanish are good and that the evidence we are getting together will assist them to take action.

Q87 Baroness Gale: So there is not a big problem in Portugal?

Mr Haley: Not at the moment. There have been in the past in particular resorts, but at the moment it is not at the top of our agenda and we have not given it priority.

Q88 Lord Moser: This, in a way, goes back to things you have already talked about and it relates to ways of regulating the industry better, given all the horrors that we keep on hearing about; I will never go on holiday again after having had this conversation! Some people like the idea of an ombudsman, but that always happens whenever there is a series of problems and somebody says, "Let's have an ombudsman", but maybe there is a case across Europe, but then, to me, what is more interesting is self-regulation. One would really like to think that the industry, given sufficient pressure from governments, et cetera, would regulate itself, so those are the two issues I would like to hear from you about.

Mr Haley: I think that perhaps my expression gave it away that I probably agree with you with regards to the ombudsman situation, that it is sometimes a call for some action, an ombudsman. I think it is worth further consideration, but it would not either be a quick or a cheap fix. I think that if the scheme was statutory, then maybe we need to look at processes for monitoring and how it will be enforced, and the real issues are with those companies which probably would not respond to any overtures by an ombudsman. I think that really goes on to the whole issue of: is this an industry which is mature enough to self-regulate?

Q89 Lord Moser: Sorry to interrupt you, but when you say "the industry", are you thinking of both timeshare and holiday clubs or not?

Mr Haley: No, I was going to go on and say that I always think of these as basically two different sectors within the holiday market. The Organisation of Timeshare in Europe is a recognised authority and trade body and it does exercise a degree of self-regulation. We have worked with them when we had one problematic timeshare operator, a rather large business, and we approached them with the

assistance of the OTE and had a satisfactory resolution. I think their code of conduct does seem to work well for those who are members, so there is a more mature industry within timeshare. With the holiday club situation, and the Office of Fair Trading believes in self-regulation and we have our own OFT-approved codes of conduct to encourage self-regulation, and we think it is a good, flexible way for businesses to have a light-touch regulation, but we put in a lot of effort with the major holiday clubs, the five or six we have talked about. We brought them to London to talk through the issues, we have been to Spain to talk to them around the table like this and we produced a code of conduct. That only had limited success and only one company said that they would sign up to it. Our view is that they do not trust each other, let alone regulators, and that lack of trust between businesses means that self-regulation in this sector is really a non-starter, in my view. Some of these businesses have no intention of complying with the law, although some have when they have been forced to, so that is my point earlier about perhaps having a definition within the Directive which will give those who are serious that opportunity to differentiate themselves, but they need to be forced. I say to them, "Well, if you are honest and you obey the law now, give the cooling-off period voluntarily, don't lie to consumers and give fair contracts, you don't need to be self-regulated and you don't need to have a law to be fair to consumers", but the challenge we have given has not been taken up by any of the companies. It was by one for a period of time until they found that they could not make any money by continuing with the cooling-off period and then they reneged on the deal they had with us, so my view is that self-regulation of holiday clubs at this moment is a non-starter, but for the OTE it is developing and it is major businesses, Marriott, Hilton and others who are now selling timeshare and it does offer a degree of self-regulation and co-operation with authorities, so they are very different sectors to look at.

Q90 Lord Moser: Does the Spanish Government take part in the discussions on these matters?

Mr Haley: Only since the end of last year and the beginning of this year with the new Regulations coming into play. Before then, it was very difficult to get engagement, but now they are at the table and they were at the table at the last summit which we had with these businesses, but, as an aside, the Director of the European Cross-Border Department within the *Instituto Nacional de Consumo* thought it was like sitting around the set of *Godfather III* when they had to deal with those businesses, so I do not think there is much trust in the Spanish authorities about self-regulation.

26 July 2007

Mr Mike Haley

Q91 Baroness Howarth of Breckland: Just so that you are clear, we are going to take resale and the consumer information and awareness issues, but, in view of the time, I am going to be a bit succinct in the way I ask the question. We are interested in fraudulent resale and it is interesting that, whereas both our previous witnesses disagreed with each other fundamentally in many other ways, the OTE and the consumer people agreed that there were issues about fraudulent resale, so we would be interested to know what the issues are around that. Also, you have talked a bit about the rights deriving from the current Directive and you have talked a little about what is to be amended in relation to the new Directive, but the one thing you have not mentioned in all of that is one of your suggestions in your document about a small task force. You seem to imply that the effort that might need to be engaged in order to get information to this huge body of consumers, a very small number of whom might purchase one of these products in the general population, is difficult. Now, I would like you to expand on that in relation to information and to talk a bit about how you see this task force functioning because that might be something we are interested in thinking about. Then, perhaps you could say something about redress and how people can get some understanding about that and whether the establishment of an out-of-court complaints and redress scheme should be mandatory under the Directive and, bearing in mind what you just said about the Regulation, we are particularly interested in that bit of the question.

Mr Haley: Taking those in order, on fraudulent resale, the typical scenario for that problem is that a timeshare owner is cold-called from, what we call, a 'boiler room' in Spain and often their details have been stolen from a legitimate timeshare company where someone who works there takes the details. The caller offers a high, and often unrealistic, price for someone's existing timeshare and many people who own timeshare do not know how much their timeshare is worth, but, because there is the kind of link in people's minds that it is property and property prices are always going up, there is an expectation that they will get the money back, whereas in fact it is a product for having holidays year after year, and there is not a mature resale market and the resale price is very, very low. It is more like buying a car in that you know, as soon as you go out of the showroom, £2,000 or £3,000 goes off the price and ten years later it is only worth a fraction of what you bought it for because there is the use element. Therefore, when you have a timeshare that you want to get rid of and someone calls you and offers a reasonably good price for it, a high price, it is attractive for the timeshare owner. The issue we have is that the businesses ask for an upfront fee, an

advance fee fraud is basically what this situation is. The agent then takes the fee, normally about 800 euros, which is quite significant, but it is worth it if you are going to get 10,000 euros back, and the agent disappears with the fee and no purchaser ever materialises. This is nearly always outright fraud. We deal with it by referring it to our contacts in the Malaga police fraud squad and they have had some successes in raiding premises, taking computers and arresting individuals. It is a continuing battle because it is so easy to set one of these boiler rooms up, and I think it is indicative of the type of people who are in the industry of timeshare that it is so easy to get lists, to set yourself up and to contact other owners, so this is a fraud perpetrated against a specific group of timeshare owners. Therefore, we welcome very much the clarity in banning upfront sales. We are aware that there are certain businesses which are genuine resale agents who offer the service for a rather small upfront fee, but it is such a prevalent issue that the only clarity for consumers is that they know that, if they are asked for an upfront fee, it is likely to be fraud. That is our public position and we have said that to the legitimate businesses. We think it is more akin to an estate agent. An estate agent will market your property, sell the property and then ask for the fee and we cannot see any difference between that and your timeshare. That will be additional protection for consumers and will almost overnight eradicate the problem because it will be an offence and it is so clear in our consumer protection messages that we can get through. If I can move on to the task force issue and information, we do believe that, because it is a concentrated and rather small number of businesses who, in our view, control the other marketing agents, these five or six companies who have a network and agency basis, an enforcement project which ensures that we enforce the law against those will fundamentally change the market. They are based in a small geographical area, either in the Canary Islands or around Malaga, we know where they are, they are not in hiding, they just are able to go about their business, thinking they are untouchable, and a small and time-bound task force, whereby in the UK and other northern European countries, the cold countries that want to go to Spain, taking statements and evidence with a lawyer or two in Spain to lay this information before the courts against these five companies to make them obey the law. I say that that would be an effective way because it is a small, concentrated market, we know their practice now and we have a lot of experience of what they are doing and experience of the law, but the problem about cross-border enforcement has been about our lack of knowledge of Spanish legislation, the fact that we cannot go after individuals and that it is costly for the UK taxpayer to be spending money on Spanish lawyers to stop Spanish companies, so some sort of cross-border project would be welcome.

26 July 2007

Mr Mike Haley

Q92 Baroness Howarth of Breckland: This is a real function which the EU could carry out?

Mr Haley: Absolutely, I think so, that the European Commission and the European Parliament could have a real role there of funding a short-term project which would be effective with some professional investigators and lawyers to sort the issue out once and for all. Also, in the meantime, if you like, because court cases can take many years sometimes, if they fight any court case, there is still the issue of the encouragement of consumers to be more aware about their rights, but it is more dispersed, and it could be any consumer who goes on holiday from any European country. We have been active in informing consumers of their rights and within the pack there is information about the brochures and leaflets we have produced and there are also the press releases that we have issued, and there have been 12 over the last three or four years. It has also been part of our annual 'scams awareness month' where in the last two years we have featured holiday clubs as a specific issue. We had a specific campaign with Esther Rantzen as a consumer champion fronting this and as someone that people trust to warn them about these issues. We have also been quite innovative in that we have put information in ticket wallets, so when people go on holiday, they want this information at the time when it is going to be most appropriate, and we put ads in airline magazines, like Easyjet's, so that people on the cheap flights out to Spain can see this information repeated, so we provide a lot of information in an innovative way and we will continue to do so. For example, this autumn we will be putting warnings in the light boxes at airports, so, when you go to the baggage carousel and you stand around waiting for your bag, you will see the advertisements and they will be warning about holiday clubs and what to look out for. Again, like targeting the enforcement activity, you can target the consumer education information at the right time, when people are on holiday, just before they might be attracted to, or approached by, one of these holiday clubs. Again, I think the European Commission could play a role there because we put that in for UK consumers, but the Finnish consumers and the German consumers are arriving at those same airports, but, if they do not read English, they are not getting the warnings and we do not see it as our ultimate aim to put it in the other languages; we are there to protect British consumers. There is lots more that can be done and I think we are being innovative and I think it is high-profile for us, but always more can be done. If I had the choice, if we had £X00,000, to run an enforcement project or further consumer education, I think we could crack it with an enforcement project, but that could be because that has been my background of course, that I am an enforcement officer.

Q93 Baroness Howarth of Breckland: What about redress and out-of-court complaints?

Mr Haley: Redress, I think, similarly. Of course I think it needs further consideration, particularly for the timeshare industry where we have businesses which are responsible and will listen and could agree to sign up to a redress scheme. Perhaps through the OTE, there is pressure for them to have a formal redress scheme for their members. The problem will come again with the rogues who will not sign up to any informal redress scheme and I believe that their interest is not to give money back to consumers. We sometimes call them 'deposit-takers' as well because they are not even interested in following through the whole of the contract, but, if they can take £500 from someone on the first day, that is £500 for nothing and they do not even go through to the contract. I think redress for the mature timeshare industry should be looked at, but I do not think it is an appropriate response for the rogue trader element.

Q94 Chairman: Well, I think that was a remarkable run-through and I think we have pretty well covered everything, except for the possible matter of sanctions. Do you think that the other Member States in general are putting a sufficient level of sanctions in effect and what do you think about the sanctions proposed in the new Directive, so that is the punishment side of it?

Mr Haley: I think some of this activity is so close to fraud or is fraud that severe penalties across Member States should be encouraged, either criminal sanctions or other severe penalties for serious breaches, such as not giving a cooling-off period or for taking deposits when they are banned from doing so, so depending on the seriousness of the offence, but I think it should be looked at, what the consumers should have as their fundamental rights and, if they are denied, then there should be some serious penalties, so we welcome some commonality across the European Union. The one thing I would add though as a caveat is that Member States should still be free to determine that level of sanction because market conditions can differ. In the UK, we do not have issues to the extent they have in Spain and the sanctions that we should have applied to us should be proportionate to the problems that we face. We would also not want some European legislation to water down the sanctions that we are getting next April to deal with aggressive and persistent practices and pressure selling because they are appropriate and have been well argued.

Q95 Chairman: That is under the other Directive?

Mr Haley: Yes, under the other Directive, so it just could be that there might be issues there about reducing inadvertently the consumer protection we have here, which is something we would not favour,

26 July 2007

Mr Mike Haley

but absolutely some common, serious sanctions need to be applied and the deterrent needs to be in place to protect consumers in the future.

Chairman: Well, thank you very much indeed for an extremely interesting session. I think some of us were truly shocked and surprised by your description of the pressure salesmanship that one can be subjected

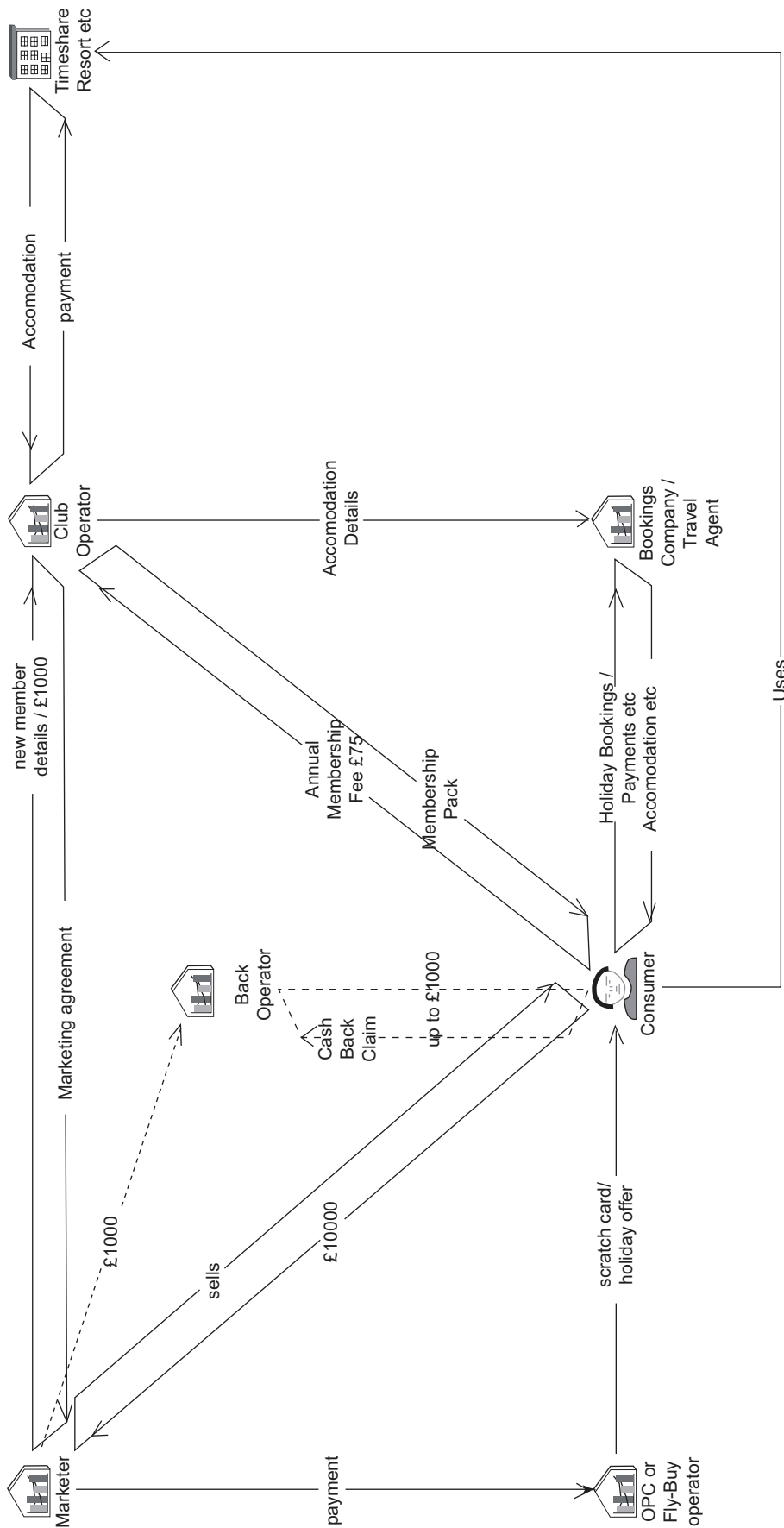
to while one is on holiday. I think we have learnt a lot and we are very grateful to you for coming before us. If you do have other things which you wish you had said or whatever it is, do not hesitate to write to us, but I think you have pretty well covered the questions we wanted to ask you. Thank you very much indeed once more for appearing before us.

26 July 2007

Mr Mike Haley

Holiday Club Business Model Overview

All figures are illustrative only



THURSDAY 18 OCTOBER 2007

Present	Gale, B Howarth of Breckland, B Morgan of Huyton, B Moser, L	Thomas of Walliswood, B (Chairman) Trefgarne, L Wade of Chorlton, L
---------	---	---

Examination of Witnesses

Witnesses: MR GARETH THOMAS, a Member of the House of Commons, Parliamentary Under-Secretary of State for Trade and Consumer Affairs, MR KEVIN DAVIS, Policy Manager, Consumer and Competition Policy Directorate, and Ms BERENICE NAPIER, Assistant Director, Consumer and Competition Policy, Department for Business, Enterprise & Regulatory Reform, examined.

Q96 Chairman: Welcome to you all, and thank you for coming. As you know, we are considering the Commission's proposal to replace the Directive relating to timeshare and related holiday products. We have heard from representatives of industry, and so your evidence about the Government's views on the Commission proposals will help us put that evidence into context. I think you are aware of the housekeeping points but, just for the record, we have an hour until 11 o'clock. The session is open to the public and it will be recorded for broadcasting or broadcasting. A transcript is taken of your evidence and that is put on the public record in printed form and on the parliamentary website. Your office will be sent a copy of that evidence within a few days. If you do have changes you wish to make for accuracy, please make sure that is done as quickly as possible. If we do not get through the full programme during the hour and/or you want to submit supplementary evidence, that is always most welcome to the Committee. You are very welcome to send in anything else that you feel you have somehow glossed over or not got through to us at a later date. For the record, could you start by stating your name, official title and those of your officials and, if you wish, after that you are very welcome to make a short opening statement. Otherwise we will go straight on to the questions. Thank you once again for coming.

Mr Thomas: Baroness Thomas, thank you very much. My name is Gareth Thomas. I am the Minister for Consumer Affairs. Kevin Davis to my right is Senior Policy Adviser on Timeshares within the Department of Business and Enterprise. On my left is Berenice Napier, who is also a senior official working on timeshares in the Department for business and enterprise. I do not plan to make an opening statement and I am very happy to go straight into your questions.

Q97 Chairman: The first question concerns the UK's role in reviewing the 1994 Timeshare Directive. Both the Government's explanatory memorandum to Parliament and its recent briefing to MPs highlighted

lobbying by the UK Government as being an important part of the process leading up to the publication of the new Directive. Could you outline what has driven the Government in this lobbying process, including the key issues on which you have focused, and how successful you feel that the Government has been so far? I ask that in the context of the fact that citizens of the UK are very important in terms of this particular timeshare proposal because so many of them are Britons.

Mr Thomas: Indeed, Baroness Thomas. We think that the Directive has been a success to date. It has seen the end of the worst excesses in the timeshare industry from the Eighties and Nineties, which members of the Committee will be very familiar with. What has happened since the Directive took effect is that a number of new timeshare products have emerged which are not currently covered by the existing Directive and, unfortunately, a number of other products where rogues and criminals are operating and where scams are taking place and which we want to bring under the scope of a revised Timeshare Directive to try and eliminate those practices. There are three particular areas, if I may. Firstly, just around definitions, the current Timeshare Directive in our view needs to be extended to include non-fixed accommodation, so cruises, boats and yachts. We think the Directive needs to be extended to cover holiday clubs. These are essentially long-term discount opportunities that are touted at people in similar situations to timeshares, while they are abroad, often using very high-pressure techniques, and often involving substantial sums of money—anything from £3,000 to £20,000 on occasion. Lastly, we want to bring resale contracts into the process as well. How successful have we been? We were probably the lead nation pushing for a revised Directive. The Commission and indeed other Member States all accept that the definitions need to be revised and indeed that holiday clubs and resale agents need to be brought within the terms of the Directive. We are obviously continuing to discuss the details of those areas but we think we have been

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

reasonably successful to date in making our case for change. We are expecting an update at the next Competitiveness Council and we hope that we will be able to complete agreement next year on a revised Directive with a view to implementation beginning in 2009.

Chairman: That was very concise. Thank you.

Q98 Baroness Morgan of Huyton: You have partly covered the first question I was going to ask, which was related to holiday clubs. A lot of the concern we have had in the end has related to holiday clubs. I just want to push you a little bit further on that. You are sure that we are right to try cover that in the one Directive rather than to tackle it separately?

Mr Thomas: I think so. I think there are a whole series of similarities between the way in which holiday clubs are sold and the way in which timeshares are sold. They often take place abroad. With holiday clubs we are seeing very high-pressure sales techniques used, hugely exaggerated discounts on occasion, and this was what we saw in the timeshare industry during the Eighties and Nineties. The Directive has helped to eliminate those and we think application of some of the particular requirements under the Timeshare Directive will help to eliminate the same practices under holiday clubs.

Q99 Baroness Morgan of Huyton: The other thing I wanted to ask you was about the minimum period. Obviously, at the moment the suggestion is that contracts of one year and over would be covered by the Directive. At the moment it is three years. One of the things that we were concerned about was whether or not there should be any minimum period because, in a sense, whatever period you set, there will then be a loophole that people are going to use. Where is your thinking around that?

Mr Thomas: Our sense is that the risk connected to any agreement that is less than 12 months will be substantially less than agreements over the one-year period. We also, frankly, have a concern that, if we were to have no minimum period, you would catch things like package holidays under this Directive, which we do not think would be appropriate as they are a substantially different product and the levels of abuse are simply not there in the same way. We think the extension down from three years to one year is appropriate. There have been problems with some of the so-called trial packs that have been on offer and we think lowering it to one year will help to deal with those particular problems but going below that I think would just be a step too far.

Q100 Lord Wade of Chorlton: I wanted to ask some questions pertaining to advance payments because clearly, there is a different view in the industry as from the consumer groups. The timeshare industry

claims that it is unfairly penalised with a cooling off period and a ban on deposits and proposes instead the use of independent third parties for deposit payments. Consumer debt and enforcement bodies have told us that they welcomed the proposal to tighten the ban on advance payments during the cooling off period. Clearly, there is a different view there and I wondered what position the Government take on this matter.

Mr Thomas: We support keeping a ban on advance payments, and we do so because of the particular circumstances in which these products are usually sold. The consumer is normally overseas, away from their normal support networks, away from, for example, in the case of UK consumers, Citizens Advice Bureaux, access to Trading Standards Officers, etc. You are therefore more susceptible potentially to high-pressure sales techniques, so a ban on advance payments and a cooling off period gives people the chance to pause and reflect on the decision they have taken. Many people go ahead with their decisions—I think, Baroness Thomas, you gave the figure of 500,000 consumers. So we think it is sensible to keep the ban in place because it continues to help eliminate the rogues from the business while allowing reputable owners to continue to tout their products with success. I did not answer your question about this idea of third parties. Given the success of the Directive, we do not think there is a need to go down that particular road and, frankly, it would add a level of bureaucracy and expense for consumers, and indeed the industry, which we just do not think is necessary.

Lord Wade of Chorlton: I must admit, I did understand that from when you answered the first bit but that clarifies the position. Thank you very much.

Q101 Baroness Howarth of Breckland: I wanted to ask a question about resale because this is an area where we have found there is a great deal of confusion. Sandy Grey felt that any purchase by consumers would be considered a new sale, and others thought that a resale had to be a sale that had already gone through the system. You understand the confusion that there is about this. Could you explain the Government's interpretation of "resale" as defined in the Directive and could you expand on the Government's views in relation to the application of the Directive to resale? I know in your recent letter you talked about the issue of exchange contracts. We have not had time to digest the letter but it might be helpful if we understood the relationship between this question and your recent letter on it and whether or not there is enough in the Directive to deal with the extensive fraud. This is where we found people were really concerned about fraud and did not understand whether they could sell, what happened on resale, whether they got any value—the idea that a

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

timeshare was like a car that was depreciating in value was not understood by them.

Mr Thomas: Let me start where you started. We would see a resale agent as someone who is facilitating for timeshare owners the sale of their timeshare to another person, so effectively they act a bit like an estate agent would act. Again, we want to see a ban on payments before a sale takes place. We think that is key to eliminating the fraud and the sense of confusion that consumers are experiencing at the moment when they are approached by resale agents because then the consumer will know that, if they are asked for money up front, before a sale takes place, that here is someone operating outwith the law and they should have nothing further to do with them. You are never going to completely stop rogues from trying to operate but at least by having that clear sense as to when money has to be paid and when it does not have to be paid, the consumer at least has the information to reach a conclusion as to whether or not they are dealing with someone who is reputable.

Q102 *Chairman:* If I can interrupt, these changes are very much directed towards consumers. This whole Directive is to protect the consumer. Would it be the intention of the Government to publish a sort of guide to best practice? Yes, we can pass a Directive which does improve the law but it all happens in Europe and nobody knows what happens in Europe. How does anybody actually get simple information about what their rights, their new rights under the Directive are?

Mr Thomas: We actually think it is going to be good for industry too because there are some genuinely good businesses operating in this area.

Q103 *Chairman:* I take that point.

Mr Thomas: I think they are being undermined by the activities of a small number of crooks and criminals, frankly. In terms of information, the OFT lead on consumer information and we will obviously be working very closely with them once the revised Directive comes into force to get out the details of how the Directive is going to operate and the new rights that there are for consumers. There are also consumer bodies who, no doubt, from the discussions we have had with them, would want to be part of that process of getting information out. The OFT already run information campaigns. I am told they were at Bristol Airport very recently, warning people flying out to the Canaries in terms of what to look out for and what to avoid. So there is that process in hand but obviously, a new Directive coming in provides another opportunity for us to get messages out about the existing rights as well as obviously to get out details about new rights.

Q104 *Lord Trefgarne:* I would like to ask you about the right of withdrawal. There are three different aspects of that and I can either take them together or take them one by one. The three different aspects are the prospect of a separate, what is described as a "horizontal" Directive from the EU which would cover much wider issues than just timeshare, how that might impinge upon this and whether maybe some of these proposals are anticipating that Directive, the question of charging consumers expenses, which may have been said to be incurred as and when they seek to withdraw and finally, what that withdrawal period might be, whether it should be 14 days, which I think is what is now proposed, and how indeed you actually define a day in arriving at the defined period. Would you like to deal with those all together or maybe one by one?

Mr Thomas: Let me deal with the expenses to start off with, because you are right in saying that there was and there is concern with the initial Commission idea that there should be scope for people to be able to charge expenses if someone withdraws from a contract. Our concern with that has been that, if that is written into the small print, there is a real opportunity for rogues to exploit that.

Q105 *Lord Trefgarne:* It would be a very novel innovation, would it not? I cannot think of a case. There may be some.

Mr Thomas: Indeed, and it is a concern that other Member States have shared. I can tell the Committee that this is a point we have made in the Council working groups looking at this issue and the Presidency have recently agreed to withdraw that requirement without opposition from any other Member State and I think that is a welcome development.

Q106 *Lord Trefgarne:* So that has gone.

Mr Thomas: It has gone, yes. On the question of the harmonisation of the consumer acquis, we welcome the fact that the review is taking place. There are about eight or nine different Directives that make up the consumer acquis and anything which can simplify consumers' rights and make it easier for consumers to understand what their position is has to be sensible. Our sense, frankly, has been that we should wait for that review to take place, that the timeshare industry has very specific needs and we wanted to get a revised Directive agreed as soon as was possible and have been pressing the Commission to implement now a revised Directive and get on with the discussions around that Directive whilst at the same time that much broader and much wider review is taking place. On the question of 14 days, it is ten days at the moment in the Directive. In our law it is 14 days and, frankly, we welcome the fact that the Directive suggests increasing it to 14 days.

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

Q107 Lord Trefgarne: Is that working days?

Mr Thomas: Kevin, would you like to come in on what constitutes a day.

Mr Davis: Yes. There has been some clarification in the working groups that this should mean calendar days. Also, there is a proposal that where the last day falls on a bank holiday, then that should not count as a day and there should be a day added. There is now some debate as to which bank holiday, whether it is the bank holiday where the consumer is based or where the contract was signed. We favour the option for where the consumer is based because, after all, it is the consumer's activity of withdrawing from the contract that they need to establish, when they did that, if it were to be contested, and a postmark on a letter, if it came down to that, would be that kind of evidence. I think we can be fairly sure that there will be clarity at the end of this on days.

Q108 Baroness Gale: One of the consumer groups we met was pushing for 21 days and the argument was that people are on holiday and by the time they get back home the 14 days may have gone and perhaps 21 days would give people more opportunities of considering the contract and withdrawing if they wish. Had you considered the 21-day limit rather than the 14 days?

Mr Thomas: We have heard that suggestion from consumer groups ourselves as well. What we have seen happen with the existing timeshare industry is that when people change their minds, they generally do so within the first few days and we therefore thought that 14 days was a reasonable timescale to allow people to genuinely pause to reflect on their purchase. Given the scale of money involved, people will get into thinking about it pretty quickly, so our sense has been that there is not a need to extend it to 21 days. We have not seen the scale of evidence to suggest that there is such a problem that it needs to be extended to 21 days.

Q109 Lord Wade of Chorlton: The evidence that we had from consumer groups said that what is happening is that people are going on longer holidays and as it is generally when they return home that they think again—that was their argument, that really, the 14 days, when people are going away for maybe three weeks or maybe even a month's holiday, becomes a bit restrictive. The tendency is for people to have longer holidays. I do not know if you have any comments on that. I am not putting a view myself; I am just saying what we have received in evidence on this matter.

Mr Thomas: There is always a balance to be struck in these things. Given that our experience to date has been as I described, that the vast majority of people who do change their mind do so within the first few days, at the moment—

Q110 Lord Wade of Chorlton: While they are still on holiday, are you saying?

Mr Thomas: Potentially, yes, or when they have come back but it is usually within that first few days that they do change their minds afterwards. So our sense at the moment is that the case for an extension to 21 days has not been made. We welcome the fact that the Directive is extending it from ten to 14 days and that is in line with UK practice under the 1992 Act but no, I do not think we should extend it to 21 days at this stage.

Q111 Baroness Howarth of Breckland: The research seemed to all be based on experiential evidence as to what had happened. I just wondered if there had been any look at people who did confirm and who might have wanted to withdraw had they not got themselves into a situation where they felt that they could not, because that is the experience I have of people I have spoken to, that they felt they could not even talk about it because they had got themselves into a situation, they had bought it, they had got home, the days had gone, they had paid for it and then they had gone on with the purchase. That is why an extension to 21 days might be helpful. I do not think that is the group of consumers that we have heard from in any depth, the ones who really feel not happy about what has happened to them but have not been subject to fraud. Do you see what I mean?

Mr Thomas: I do see what you mean. I hear what you say, Baroness Howarth. I have to say that the vast number of representations that we have received about the case for a revised Directive have not been around an extension to 21 days. They have been about the problem of holiday clubs, frankly. The evidence that we have seen from the Office of Fair Trading has backed up the concern in the minds of many that the key opportunity with a revision to the Directive is to tackle holiday club problems—resale agents too but holiday clubs in particular. I suppose there will always be consumers who would have liked a longer period. I think there is an issue of balance here and, as I say, at the moment, on the basis of the representations that are being made to us, we think 14 days continues to be a reasonable period.

Q112 Lord Trefgarne: However long you put it, somebody will always want longer.

Mr Thomas: No doubt that is true.

Q113 Baroness Gale: I have two questions on enforcement and redress so I will put the two together. From the evidence we have been taking, it seems that at present the UK and Spanish authorities shoulder the burden of dealing with rogue traders and warning consumers of the problems. If this is the case, what sort of role might there be for the

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

Commission to play a more proactive role? There has been a suggestion that perhaps they could fund a task force to tackle known offenders and any other outstanding obstacles to effective enforcement. Bearing all this in mind, and the alleged limitations of the Enterprise Act, how else could enforcement be improved? Would you like to answer that one first?

Mr Thomas: We think enforcement has to stay predominantly the responsibility of the country where the offence takes place. In terms of the UK, we are not aware of substantial problems within the UK timeshare industry and our enforcement authorities, Trading Standard Officers, we are not expecting to see placed under huge additional burdens as a result of the revision to the Directive in terms of working overseas. One of the things that is very striking about the process of revising the Directive is just how engaged Spaniards and indeed other Member States where timeshares do operate have been in the discussions because for them there is a reputational issue in terms of their country as a tourist destination. We have seen increasing appetite to engage in the detail of the revision to the Directive and that continues to give us confidence that there will be cross-border co-operation in taking enforcement action. The Office of Fair Trading does have the power under the Injunctions Directive to work cross-border and it has sought formal assurances about the behaviour of particular companies in the past and there is ongoing work taking place there. I think there may be a role for the Commission in a sense to research just how great the problem is. I think we need to keep that in view, and we will do, but I do not think there is an additional role for the Commission in enforcement. I think that still has to be a matter for national authorities and I have to say we continue to have good co-operation. That does not mean that every rogue has been eliminated but it does mean, as I say, that we do get good co-operation.

Q114 *Baroness Gale:* The other question is that it has been suggested to us that a licensing scheme would be an effective way of regulating the timeshare and long-term holiday product market and that a licensing scheme might provide consumers with some certainty over redress. What is the Government's view on licensing and on redress?

Mr Thomas: We think the success of the existing Directive means that we do not need to go down a licensing route. We think licensing would be a bit like the point on third parties; it would just create an additional level of bureaucracy and expense and confusion for consumers and industry alike. We do not think it is necessary, we think the Directive works well, and it is not something we have therefore looked at with any degree of enthusiasm.

Q115 *Chairman:* Could I just follow that up a minute? Is that the case despite the fact that some of the other products that are going to be included are rather different from the timeshare product? If you buy a timeshare, you buy, as it were, the right to go back to a certain location and sometimes you can share timeshares with other timeshare owners but it is a very solid thing, a timeshare. It is something that is easy to understand. Is the same thing true? Are the new products as easy to understand as the original timeshare product and is the lack of licensing also virtuous with respect to these newer products?

Mr Thomas: Some of the types of new products that are emerging have slightly less degrees of solidity but nevertheless are still pretty solid in that sense—boats, cruises, yachts, etc, are perfectly reasonable things in our view to cover under the Directive, in the sense that they share many of the same characteristics as the fixed timeshares you are referring to. We do think they are appropriate for bringing under the terms of the Directive.

Q116 *Lord Wade of Chorlton:* As I understand it, the purpose of this Directive is to protect people against fraud, not to interfere with the normal business operations. It is not necessarily to protect people from what they might not want to do any more than we try to protect people from buying a house they cannot afford. So when you talk about the enforcement of the Directive, clearly, there are different views in the various countries of Europe on fraud, how important different levels of fraud are. The laws are different. We see that from cases often in the newspapers. How satisfied are you that this Directive actually creates one position across Europe so that what we could consider as an Englishman is a fraud we know the Spanish authorities will also see as a fraud? I am not quite clear just how that is going to happen in practice.

Mr Thomas: There has been agreement not only with the Commission but with other Member States as to how the revised Directive should be extended in terms of coverage, so holiday clubs, resale agents, exchange contracts. We have not met substantial opposition from other Member States or the Commission in those areas. What we are engaged in is a discussion about the detail of how they work in practice but in general terms there is broad agreement as to what areas the Directive needs to be extended to. What we are trying to do in a sense is to maximise the harmonisation across Europe that we can do under this Directive so that every consumer in every European country has a sense of what their rights are under this Directive. We think we are on course to get agreement with other Member States relatively soon. The discussions are going well, we are positive and, as I said in answer to earlier questions, in those countries where UK consumers in particular want to

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

see timeshares operate there has been a particularly high level of co-operation because they are worried about reputational damage if these people continue to operate.

Q117 Lord Wade of Chorlton: Yet anecdotal evidence is that a large number of people who feel they have been defrauded, and it has generally been in Spain or those countries, are finding it very difficult for the authorities to take the action which would certainly have happened had it been in this country. How is this Directive going to change that position?

Mr Thomas: Let me give you an example in the sense of evidence that has been collected by the Office of Fair Trading in 2006. They carried out research into the problem of holiday clubs and estimated that there are potentially 400,000 holidaymakers who could have been victims of bogus holiday clubs and those people would have lost a total of £1.2 billion. That is the research that they indicated. Bringing holiday clubs into the Directive will give the coverage and give the protection to those consumers which at the moment they do not have if they go off to Spain. It is not an unwillingness to act by enforcement authorities in Spain in this case; it is simply that they do not have the powers to do so. That is why we want to bring holiday clubs into the Directive to actually help the authorities have the tools that they need to take action.

Q118 Lord Trefgarne: Is it not the case, of course, that a Directive once it comes into force has to be reflected in national legislation and if the national legislation falls short and does not properly implement the Directive, the nation concerned is taken to task first by the Commission and afterwards by the European Court?

Mr Thomas: That is correct.

Q119 Baroness Howarth of Breckland: One of the concerns that we had from some of the witnesses was whether or not this Directive would be future-proofed against other ideas that rogue traders would come up with. I just wondered whether we were pressing the Commission to think imaginatively about other products that would then slip outside of the Directive.

Mr Thomas: We are always pressing the Commission to think imaginatively and the Commission are being imaginative in the discussions we are having with them. That is one of the reasons why we are spending as much time at official level in looking at the definitions that are used in the Directive, to try and minimise the opportunities for imaginative rogues to operate further down the line. I do not think you can ever completely prescribe for situations but we are trying to draw the Directive as widely as is reasonable to minimise the scope for new scams.

Q120 Baroness Howarth of Breckland: You gave a very clear answer to the Chairman about information generally but I just wondered if I could hone down on the requirements to be “proportionate and relevant” because there may be areas in which the Commission are being a little too imaginative. In the issue about information, the specific details that are required by the Directive include things like access to saunas. Do you think that someone in the Commission should be looking at that list and asking whether the things that are included are necessary and proportionate and whether there are things that also might have been missed out in terms of information? One of the issues about being a consumer is that too much information for some consumers leads to confusion and the real point that they want to know, about cooling off periods, might be just lost in the list of other very exciting stuff like “Can I get in the sauna?”

Mr Thomas: You are tempting me down a route I am not sure I particularly want to go. Let me deal with the substance of your point. We do not think the revised Directive as yet properly reflects our views, and clearly yours, Baroness Howarth, about the degree of proportionality there needs to be. That is one of the issues that we are continuing to take forward in the Council working group sessions which officials take part in. There are a series of information requirements where we think further clarity is required and we continue to make the case for them. Kevin, any more information on saunas?

Mr Davis: Yes. I think the important thing, and it is certainly our intention, is to ensure that consumers have enough information so that they know what they are getting into and what their entitlements would be. I think the mention of saunas is in the context of giving an example of the kinds of things which are emblazoned in the sales technique to say how wonderful this product is going to be, and if something is said within the sales process, which is what the Directive is about really, then that should become part of the contract. It is getting a balance between the pre-sales information, which we do not want to go over-burden business with, or consumers, but also bearing in mind that that information under the Directive becomes part of the contract and that is very important. That is an important element of this Directive because it directly transposes what is said in the sales process into the contracts and I think we take the view that that is an important element to retain but we do need to take a lot of time over getting the information correct.

Q121 Lord Wade of Chorlton: I have a question about timeshare owners’ rights post purchase. A number of witnesses have expressed concern about an omission from the Directive of any provisions relating to timeshare owners’ rights after the

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

purchase has taken place. I wonder what view the Government have on this matter.

Mr Thomas: We have some sympathy with some of the concerns in this area. I do not think it is true to say that there are no provisions in terms of timeshare owners' rights after purchase but there does have to be clarity about ongoing costs and how those costs are arranged. One of the particular points where we have sympathy is the idea that there need to be details about the possibility for and the consequences of discontinuing your contract. That is one of the things that we are continuing to press, again, in the Council working groups at the moment.

Q122 Chairman: We have some questions about cooling off periods arising out of your letter. Our specialist adviser has had the opportunity to read the letter and he is an expert on the subject and understands it immediately. The first point was the view that the case has not been made for applying a separate cooling off period to exchange contracts. It would be helpful if we had a little clarification on that. It is not clear whether this is something that is being deliberately proposed by the Commission or whether it simply follows on from the drafting. It would be very helpful to have clarification on that. The second point was about the case for the cooling off period in respect of resale contracts and whether that was also a drafting matter or whether there was a separate issue there which we are not fully aware of.

Mr Thomas: Just on the exchange contracts, if you think about it, when you want to take part in an exchange contract, you have to have something to exchange in the first place so you will have had to have bought a timeshare in order then to be in a position to take out an exchange contract so you will by definition already have had a two-week, 14-day cooling off period. Our view is that to have then a further two-week cooling off period is unnecessary, is disproportionate. Has the Commission just made a mistake? They have certainly transposed the existing Directive into this scenario and we are continuing to highlight this to them. Forgive me, just tell me the second question about resale again.

Q123 Chairman: It was about the cooling off period in respect of resale contracts. It just needed a bit of amplification as to what the issue is there and what the point of debate in the Council working groups was.

Mr Thomas: Again, in terms of the cooling off period, if you go to a resale agent, you will not have to put any money up to the resale agent up front. No money will be exchanged until the timeshare is solved, so again, we do not think there is a need for the two-week cooling off period because no money will have changed hands at the point at which the contract is signed.

Q124 Chairman: Just to follow up, is that view is shared by other Member States or is there a discussion going on about it at the present time?

Mr Thomas: There is a discussion going on about it.

Mr Davis: Just one other point on that. Given that there is no money required for resale services up front, it is also quite possible, in our view, that a 14-day cooling off period might well delay the service to the consumer because the traders will not want to do anything until they know there is a contract in place, irrespective of whether they have got their hands on any money and in terms of resale, which is all about taking the opportunity to find a buyer on behalf of the consumer, that might work against the consumer's interests potentially.

Q125 Chairman: So it is really an appreciation of what you might call the market and how it operates—I do not mean the Common Market; I mean the market in property. That is what is leading your view on this matter?

Mr Thomas: Yes.

Q126 Chairman: The last thing we would like to hear from you is what is the progress of negotiation at the EU level, both at the Council and the European Parliament, and what are the major outstanding issues of dispute, if any?

Mr Thomas: I do not think there are any major issues of dispute. I think we have succeeded in our objectives of getting agreement that holiday clubs should be brought into the Directive, that there is a need to broaden the definitions and also bring resale agents in. We are still in discussion about the detail. I am expecting to go to the Competitiveness Council, where we are expecting the Commission to give us an update on progress. We hope that the Council will be able to reach a view shortly thereafter. The European Parliament has to look at this too. We are expecting at the moment that the European Parliament will give their view roughly around April, so the timescale that I gave you initially of hopefully 2009 for implementation is where we are at but I would propose to continue to keep the Committee informed of progress and we can tell you whether that timetable speeds up or slips.

Q127 Chairman: I am sure the Committee would be grateful for that. Is there a discussion still going on or has there been such a discussion on the linkage between this proposal and other consumer legislation? That is one of the subjects which crops up every now and again.

Mr Thomas: There is a much broader review taking place, as we have touched on. Obviously, we are keeping in view what will come through that review process but we have always held the view that a Timeshare Directive was necessary because

18 October 2007

Mr Gareth Thomas, Mr Kevin Davis and Ms Berenice Napier

timeshare has particular problems and it has a combination, or has had in the past, of particularly unsavoury marketing practices and the need for consumers to have particular individual rights. We have always believed that a specific Directive would best capture that. That does not mean to say that other Directives will not be useful. The Unfair Commercial Practices Directive, for example, will help to ban high-pressure selling and in that view will be useful but it is not enough on its own, in our view, and that is why we have wanted to retain the Timeshare Directive and indeed revise it and improve it.

Chairman: Thank you, Minister. Does anybody have any more points they wish to raise?

Q128 Baroness Howarth of Breckland: I wondered in what way our Report might be helpful to you because obviously we shall produce a Report with our own

recommendations and you are making what sounds like quite a lot of progress. In what way might we be helpful in terms of taking the issues forward?

Mr Thomas: Broad support for the Government's view is always appreciated, Baroness Howarth. I am sure the European Parliament will read with interest the comments of this Committee and, indeed, the Committee in the other place, but any support for the broad thrust of what we have described would genuinely be helpful.

Chairman: Certainly the view of the European Parliament is one which is very important because they are clear decision takers. I always think it is quite difficult to predict how they are going to respond because it is such a different sort of parliament. Minister, you have been, as always, concise and helpful. Thank you very much for coming before us today and congratulations on getting an awful lot of information across and we still have not got to 11 o'clock.

Supplementary memorandum by Department for Business Enterprise & Regulatory Reform

Thank you for your letter of 23 October 2007 which followed the evidence I gave to the Chairman and members of EU sub-Committee G at their meeting on 18 October.

This letter addresses your questions following the points covered in my letter to you of 16 October.

DEFINITION OF TIMESHARE—"OVERNIGHT ACCOMMODATION"

The intent behind the Commission's proposed amendment to the definition of timeshare in Article 2 is to extend the coverage of the current directive to timeshare contracts which relate to more than accommodation in real property, as is currently the case. For example, the Timeshare Act 1992 went further in this respect and included caravans.

However we are concerned that other arrangements which grant rights to repeated periodic access to accommodation, in its widest sense, over a period of more than one year should not be inadvertently caught. For example, access to boxes in theatres or seats in sports stadiums. It would not be appropriate that these arrangements should be considered timeshare agreements and subject to the requirements of the directive. Another element of the proposed change is that the qualifying period of occupation of at least seven days is gone, which would have discounted the arrangements we have in mind.

We are also concerned that the definition should be broad enough to take into account accommodation of the type which we know is currently the subject of timeshare arrangements, for example, caravans (already covered in the UK) and accommodation in boats, such as canal boats, cruising yachts or cruise ships. The element which all of these different arrangements have in common, in terms of timeshare contracts, and which those arrangements which we do not believe should fall within the directive do not share, is that they incorporate overnight accommodation.

The Presidency has now proposed using the term "overnight accommodation" in the definition.

DEFINITION OF EXCHANGE

We are concerned that the currently proposed definition does not properly describe the nature of exchange contracts, relying as the proposal does on the concept of modification of a timeshare owner's contractual rights.

In our view, and the view of the two main exchange companies who have their European bases in the UK, the service can be far more accurately expressed, and, as currently drafted, the definition would not catch exchange services as we understand them.

We have therefore proposed a definition which is based on the feature that exchange allows the consumer to use the timeshare rights of others (or sometimes other benefits) in exchange for others using their timeshare rights. We believe this captures what actually happens. It will be appreciated that there is no modification of timeshare owners' rights; it is simply that the timeshare owner makes his rights available for the use of other participants in the exchange system.

It is also important to ensure that the definition does not tie the system just to overnight accommodation which is the subject of other consumers' individual timeshare rights. A proportion of the accommodation in an exchange system's portfolio might well consist of unoccupied or unsold timeshare weeks which are deposited by resort operators as a means of providing for higher occupation rates in their resorts. This is an additional service to enable the timeshare owners in their resort access to an exchange system via mechanisms such as "points" purchase without depositing their own rights.

EXCHANGE CONTRACTS

An exchange contract is, by its nature, an ancillary contract to a main timeshare contract. Without a timeshare contract a consumer has nothing to deposit into an exchange system and so cannot exchange.

As currently drafted, the proposal imposes a cooling off period on exchange contracts separately from a main timeshare contract. In my letter of 16 October I outlined the circumstances that have been identified as the source of consumer detriment and the relatively low costs associated with exchange contracts. This detriment has been identified in relation to the promises about the possibility for exchange within a system during the sales process.

You ask about the issues of principle underlying our approach to the coverage of exchange. The principle we are seeking to apply is that of proportionality; to ensure that the provisions provide consumers with adequate protection against the identified nature of detriment while not imposing unduly onerous or unnecessarily complex provisions on the exchange systems.

The proportionate approach to dealing with this detriment is not in our view by applying a separate cooling off period to these contracts, but by applying the information requirements in the proposal, which in turn applies that information to the contract. These seek to ensure that consumers are provided with accurate descriptions of how the system works and what their individual membership will entitle them to in terms of exchange possibilities in the system. In addition, we are proposing that the information requirements should also include details of restrictions on access to particular exchanges which might be the result of peak periods of demand for particular resorts, and that the exchange operator should be obliged to inform the consumer when any particular exchanges which they might apply for attract any additional charges over and above the exchange fee, for example for the use of facilities.

In our view, the rationale for imposing a ban on payment before the completion of a separate cooling off period does not apply to the exchange situation. As an ancillary contract, the proposal ties the cooling off period for a timeshare purchase to an exchange contract agreed at the time of the timeshare sale. The exchange companies advise us that the consumer is provided with a copy of the exchange contract at the same time as they agree a timeshare contract. Under the proposal, the consumer will have been provided with the required information at this time, and that information will be included in the contract. If they withdraw from their timeshare contract within the cooling-off period, the exchange contract will automatically fail. It should be noted, however, that, while the exchange contract is provided to the consumer when they agree their timeshare contract, that contract is rarely concluded at that stage in case the consumer withdraws from their timeshare contract. The exchange contract is generally concluded once the cooling-off period has passed so that the consumer then owns something they can exchange. It will be appreciated therefore, that a separate cooling off period for exchange would only begin when the timeshare cooling off period has been completed—effectively doubling the period during which a consumer might withdraw from an exchange contract in circumstances where we doubt that a cooling off period is justified by the evidence of detriment in any case.

The issue of possible demands for advance payments for exchange contracts at the point at which the consumer signs a timeshare agreement and whether that might produce a loophole has not been raised in Council Working Group discussions. Of course, advance payments for timeshare contracts are already banned under the current directive, the proposal seeks to clarify and tie down this ban more thoroughly because I understand that in some countries payments into trust-type accounts have been permitted. Those arrangements have been criticised by the Commission in terms of implementation. At the same time, exchange contracts have not been regulated and have not been subject to that ban. To our knowledge exchange contracts have not been exploited as providing an alternative means of achieving up-front financial commitment from consumers for timeshare purchases in the way you have described.

While we understand that there are some small exchange systems operated between groups of resorts, the main systems, accounting for by far the greatest number of exchanges, are separate organisations from timeshare operators. As mentioned above, the exchange contracts are unlikely to be entered into without something to exchange and the companies are unwilling to enter into contracts until the timeshare sale is completed, post cooling-off period. Any contractual arrangement for payment for exchange membership would not therefore generally apply until the completion of the associated timeshare contract and subsequent conclusion of the exchange contract. In these circumstances an advance payment for the exchange contract would not therefore appear to carry any benefit from the “tying-in” effect for a timeshare company because the consumer would already have had the “no-strings” opportunity to withdraw within the cooling-off period for the timeshare contract. We have no evidence, therefore, which suggests that exchange contracts have been or would be used as described.

In discussion, the Commission have raised a different concern; that timeshare sellers might somehow masquerade as exchange companies to benefit from the lighter regime. Our view on that is that, if the end result is that a consumer owns a timeshare, then, irrespective of what it looks like, the seller is selling timeshare and will be caught under the rules which apply to selling timeshare, not exchange. The Commission’s comment is an argument for seeking to ensure that the enforcement authorities keep abreast of developments in this market and remain alert to opportunities to deceive.

RESALE CONTRACTS

The definition in the Commission proposal covers contracts where a trader helps a consumer to buy or sell timeshare or long-term holiday products. In our view this does not cover the situation where a trader might acquire a timeshare contract from a consumer and then chooses to sell that timeshare contract on. It covers the services of an intermediary who undertakes, on behalf of the consumer, to identify a buyer and arrange for the sale by the consumer of the timeshare contract, in much the same way as a real estate agent acts for the seller of real property.

I can confirm that it is our view that where a trader acquires a pre-owned timeshare contract for onward sale on his own behalf to a consumer, then he will be selling a timeshare contract as a trader and will be subject to the provisions of the directive as they apply to timeshare sales, including in respect of the cooling-off period. We support this position.

The Committee is not quite correct in concluding that the Government’s objection to a cooling-off period in respect of resale contracts applies only to the sale of a timeshare by a consumer to a trader. Rather, our objection is to a cooling-off period applying to the arrangement between the consumer and the resale “agent” whose role is as intermediary between the consumer and the buyer, be that another consumer or another trader. We support that the proposal denies any payment to the resale “agent” before a sale is concluded or the agency contract is otherwise terminated.

I hope this helps to clarify the Government’s approach to the matters you have raised, and look forward to your Committee’s report in due course.

10 November 2007

THURSDAY 25 OCTOBER 2007

Present	Dundee, E Gale, B Greengross, B Howarth of Breckland, B Morgan of Huyton, B	Moser, L Neuberger, B Thomas of Walliswood, B (Chairman) Trefgarne, L
---------	---	--

**Memorandum by Professor Geraint Howells (University of Lancaster) and
Dr Christian Twigg-Flesner (University of Hull)**

GENERAL OBSERVATIONS

This proposal has come at a rather unfortunate time. The Timeshare Directive forms part of the on-going *Acquis Review*. This may be primarily concerned with the purchase of goods by consumers in a crossborder context (hence the focus of the recent *Green Paper on the Review of the Acquis* on the directives on unfair terms, consumer sales and distance selling, in particular), but the *Green Paper* does include a number of general issues, such as definitions common to all the consumer directives, as well as a streamlined right of withdrawal. One possible outcome is a horizontal directive dealing with general contract law issues, but any decision will await the work on the draft *Common Frame of Reference on European Contract Law* (CFR) which has yet to be completed. That document should provide both common definitions and coherent model rules. A horizontal directive need not preclude the continued existence and reform of vertical directives, like that of the Timeshare Directive currently under consideration, but clearly any such measures should build on the horizontal directive and use consistent terminology.

There are obvious gaps in the current Timeshare Directive that need to be addressed (holiday-clubs and contracts of a duration shorter than 36 months), and these may justify reforms occurring before the major review of the *acquis* is completed, but it should be borne in mind that eventually the concepts may need to be reformed again to bring them into line with any horizontal measure. Indeed the Art 1(2) derogation from the full harmonisation is said to be justified (at p 9 of proposal) because of the possibility of having to conform with the horizontal directive (although it actually would not be needed for that purpose). The horizontal directive is far more likely to tinker with definitions, and, as acknowledged by the Commission (p 37 Commission Staff Working Document), to deal with common approaches to matter such as impact of failure to disclose pre-contractual information and modalities for exercising the right to withdraw.

Furthermore, the *Green Paper* has mooted the possibility of more extensive “full harmonisation”, ie, harmonisation without a minimum clause, removing the scope for Member States to deviate from the standard set by a directive by providing greater protection for consumers. Inevitably, there is a danger of needing immediate revision if the proposed ‘horizontal instrument’ were to materialise and suggest different solutions than adopted in this Directive. Equally, the experience of this Directive may be that some sectors need different solutions and indeed that some national experimentation with rules above the European level have been useful experiences for the general reform process. We expand on this, where appropriate, in our replies to the specific questions raised by the Committee.

SPECIFIC QUESTIONS RAISED BY THE SUB-COMMITTEE

OVERVIEW

1. *With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?*

Self-regulation works where an industry is generally willing to take responsibility for its own actions and to adopt a standard of performance which treats consumers fairly. At a national level, this can work well. The Office of Fair Trading initially had bad experiences with the use of codes, but has revamped its “Approved Code” scheme and this has the potential to bring real advantages to consumers. However, in a cross-border context, achieving agreement between businesses is likely to be more difficult. Furthermore, in a sector where

the proportion of “rogues” appears to be high, any voluntary agreement is likely to cover only a limited proportion of players, leaving a significant section of the market uncovered. Adopting binding legislation would cover the sector as a whole, and could make cross-border policing and enforcement more effective.

2. *In this policy area, what do you consider to be the respective roles of EC law and national law?*

The Timeshare market is largely a cross-border market, and it seems appropriate that EC law creates the general framework setting out the obligations of timeshare providers, as well as rights and duties of consumers.

The current framework is of a minimum character and contains gaps. In many Member States, national law provides a higher level of consumer protection (see the findings of the *EU Consumer Law Compendium—Comparative Analysis*), and the experience in those countries should influence the development of a stronger EU-wide framework. There may be scope for harmonising some rules at a maximum level fixed by the Directive in order to promote certainty in the market for both traders and consumers.

3. *What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?*

We have no practical experience with the operation of the Directive. We are aware that limitations to its scope (eg, three-year minimum) have resulted in market practices seeking to evade the scope of the legislation. There have also been reported problems in post-sale areas such as maintenance fees and reselling.

SCOPE AND DEFINITIONS

4. *What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?*

Article 1: (Para (1), 3rd part) We noted earlier that the CFR has not yet been adopted. As the CFR proposes model rules, and the *Green Paper* moots the introduction of general remedies for breach of consumer contracts, this provision may be overtaken by developments.

(Para 2): This effectively applies a minimum harmonisation standard to many aspects of the right of withdrawal. However, as the *Green Paper* proposes a “horizontal instrument” with general rules on the right of withdrawal (and the CFR will contain detailed rules on this matter) which will probably be of a full harmonisation standard, this provision may soon become redundant. It remains open for discussion whether the nature of timeshares justifies differentiation from a general norm, which is likely to be fixed at 14 days (see below).

Article 2: We note the use of the word “consideration” in various definitions, without itself being defined. It is used here in a sense which is akin to the technical meaning of the word in English contract law. Intuitively, this may seem like something that we would welcome, but we have several reservations: (i) terminology in EU measures has to be given a European meaning—and subsequent interpretation by the ECJ may result in a meaning given to “consideration” at odds with domestic law; (ii) the term “consideration” is peculiar to English law, and likely to be unfamiliar in most other EU jurisdictions; and (iii) if a term reflecting the notion of “consideration” is needed, the outcome of the CFR project should be awaited.

We welcome the reduction to one year rather than three years in the length of contract regulated, but wonder whether there is the need for any minimum duration of the contract. This reduces the possibility of evasion, but does not remove the risks associated with “trial packs” entirely.

We appreciate the concerns of the legitimate timeshare industry in having timeshare-like products regulated in the same legislation. An industry that has attempted to clean up its act risks being tarred by association with actors accused of tactics that their industry used to be known for. On balance, however, we do think it is the best practice to regulate these related actors under the Timeshare Directive and doubt the general public’s opinion of timeshare will be affected simply because the various products are dealt with in the same legislation.

The explanatory memorandum suggests that “multi-annual” reservations of hotel rooms are not covered if they are merely “reservations”—but that assumes that a reservation is not a contract. Whether or not that is the case may well depend on the terms of the “reservation agreement”, and this strikes us as a grey area.

At a more technical level, the definitions of “exchange” appears to us to be circular. The definition of “exchange” defines the noun in terms of a verb which is left undefined.

The *Green Paper* has consulted on the appropriate general definition of “consumer” and “business” that should be adopted at the European level. We notice that in this proposal, a decision has already been taken which opts for the narrower of the two alternatives presented in the *Green Paper*.

We are not sure if the term “ancillary contract” is broadly enough defined. The trouble lies in the word “subordinate”. Would for example contracts to upgrade or obtain cash-back be subordinate or merely ancillary or related? These latter terms may be a better way of defining such agreements.

INFORMATION PROVISION

5. *On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?*

We do not have direct experience with the practical application of the current information duties. However, we have both undertaken research into the provision of information as a legal tool generally. In our view, careful thought needs to be given to the number of items of information that are given to a consumer. In particular, consumers may find it difficult to absorb all this information unless it is structured in a more logical manner, and breaks the information down into clearly identifiable chunks. The nature of the timeshare contract means that extensive information may be necessary. The CFR will contain a general provision that would assist with the restructuring of the individual items of information under broader headings (main characteristics, price, etc) that could make this information more accessible. We are concerned that the provision of information still depends upon a request being made so that the first time a consumer sees all the terms is in the contract s/he signs. A better approach might be to require traders to offer a prospectus containing all the information during their first negotiation with the consumer.

6. *How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?*

Any information should be given to consumers in a manner and at a point in time when they are most likely to understand this information. Information targeted at consumers in resorts and at airports and seaports can be particularly useful.

THE RIGHT OF WITHDRAWAL

7. *How satisfactory, from the consumer’s perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?*

Art. 4(3): This seems to be a sensible provision. It may, however, be beneficial if guidance issued by the relevant government department could suggest a suitable form of words, to minimise the risk of providing imprecise information to consumers.

The requirement that consumers should sign the relevant contractual clauses can be beneficial, provided that these clauses are presented in plain and intelligible language.

Art. 5: We notice that this proposal fixes the withdrawal period at 14 days, whereas the *Green Paper* has raised this as a matter for consultation. One can debate whether a 14-day period is any better than a seven-day period: arguably, after a fortnight, the consumer will have returned home and should be in a better position to rethink his decision. It has been mooted that a longer period, say 21 or 28 days, might even be appropriate and we think timeshares might be an exception to any general rule. There may be an argument for a period of reflection between offer and sending the agreement for signing (as applies under section 58 Consumer Credit Act 1974 for withdrawal from prospective land mortgages).¹ The act of withdrawing from a contract can be difficult for consumers who feel morally bound by the contract. A positive affirmation of consent when they have returned home or even a week after the initial encounter with the trader when on holiday is more likely to ensure that the decision is a measured one.

However, a consumer will not really know whether the decision was a good one until he has made use of the property. A major problem is the lack of a resale market, which is often hampered by penalty clauses of consumers seek to sell. Such clauses should be prohibited. More fundamentally we agree with the idea that after a set period (say five years) consumers should have the right to cancel the contract. Otherwise they can be fixed with having bought the right to be charged ever escalating maintenance and management fees for the rest of their life.

¹ French law implementing the period requires offers to be maintained for seven days, but this is not a reflection period as the consumer can accept the offer at any time it simply regulates the period during which the seller is bound by his offer.

The time-period in Article 5(1) suffers from the same problem as many others: the lack of clarity as to what is meant by “days”—is it working days or calendar days? Presumably, reference can be made to Regulation 1182/71 (3 June 1971), a little-known Regulation determining the rules applicable to periods, dates and time-limits ((1971) O.J. L 124/1), which suggests that “days” includes weekend days and public holidays (Art.3(3) of the Regulation), so “days” in this proposal must mean “calendar days”. Again, greater clarity is expected from the CFR, once adopted. But the uncertainty over the meaning of “days” could be problematic.

Nothing is said about the formalities for exercising the right of withdrawal, although the CFR and the possible Horizontal Instrument are likely to provide more detailed rules on this. These provisions may therefore need to change before the final Directive is adopted/implemented.

The provision in Art.5(6) is obscure: paragraph (3) does not provide for a separate right of withdrawal; rather, it extends the right of withdrawal in certain circumstances. This is a drafting matter, rather than a substantive problem, although it reflects once more the fact that European legislation is not always drafted with sufficient care.

8. *One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2) which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?*

As stated above, it seems to us that the apparent flexibility in Art.1(2) may soon be overtaken by whatever emerges from the *Green Paper* on the review of the consumer acquis. Experience shows that Member States do adopted different rules, with some specifying clear formalities for the exercise of the right of withdrawal. That being the case, there is a risk that the most potent right given to consumers could be rather difficult to exercise in practice—at least until there has been greater harmonisation. Herein lies one of the paradoxes of the maximal harmonisation debate. Those in favour of total harmonisation would only allow withdrawal by the manner specified in the Directive. However, there is no telling how flexible that standard will be. It would of course be unacceptable to the United Kingdom if the restrictive approach of some states requiring a notary was followed, but so long as the directive specifies certain minimum standards consumers cannot be harmed by more favourable rules and traders cannot be disadvantaged if they receive notification by equivalent means. Incidentally the UK Government requires the contract to set out precise wording on the right of withdrawal and this may be threatened by the maximal harmonisation approach.

ADVANCE PAYMENTS

9. *How can consumers best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?*

An outright prohibition, combined with strong sanctions (including the criminal law), are the best way forward. The question of whether the EU can require criminal sanctions is currently the matter of much debate and ongoing litigation in the European Court of Justice.²

Unfortunately, it is unlikely that rogue traders can be prevented entirely from acting in breach of the law. A high-profile advertising campaign timed to co-incide with implementing legislation coming into force may help to make consumers more aware of this prohibition.

10. *How significant a problem for consumers have advance payments been in the resale market (Article 6(2))?*

We do not have any information to comment on this point.

REDRESS

11. *What are your views on the provisions relating to judicial, administration and out-of court redress (Article 9 and Article 10(2))?*

These provisions are found in many consumer law directives. The injunction procedure is now becoming an established alternative to criminal prosecution. So long as criminal sanctions remain as the ultimate deterrent and trading standards are given audience rights and properly trained to appear in the county court this is a welcome development.

² Case C-440/05 *Commission of the European Communities v Council of the European Union*.

Out of court redress mechanism should be encouraged. We are not aware of how effective such mechanisms are in the timeshare sector.

SANCTIONS, MONITORING AND ENFORCEMENT

12. *The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by Member States for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?*

We are not aware of any statistics on the penalties invoked or have knowledge of enforcement practices. As a rule for economic consumer offences the fines are not at a deterrent level. Perhaps as important are the rules on director's disqualification to prevent rogue traders simply establishing new companies.

13. *With particular relation to enforcement, do you consider that the relationship between the proposed new Directive and the provisions of the Unfair Commercial Practices Directive³ is sufficiently clear?*

The Timeshare Directive largely deals with contractual issues, whereas the UCPD is expressed to be without prejudice to contract law (Art 3(2) UCPD). The UCPD will be useful for traders whose advertising campaigns and selling techniques amount to an unfair commercial practice (applying the criteria of that measure). An obvious overlap arises with regard to a failure to provide the information required by Article 3 of the Timeshare proposal. Such a failure would have an effect between the parties to the contract as the withdrawal period would be extended. It would also constitute an unfair commercial practice, because this information is regarded as material information and not providing this is a "misleading omission". As the UCPD is not intended to have any impact on the specific contract, the relationship between the two measures seems reasonably clear.

OUTSTANDING ISSUES

14. *Are there any significant issues in the timeshare market that the proposed new Directive has failed to address?*

The original Directive did a good job of tidying up the marketing of timeshares and this Directive effectively extends that to analogous products. However, we sense there continue to be problems in the post-sale situation where dissatisfied consumers or those whose position has changed are left with a product of little value that is hard to sell and the risk of long term and ever escalating costs. We have already noted the idea of a right to cancel after say five years; but if management of the resorts was democratised to the consumer owners with no (or only administrative) involvement of developers some of the problems may resolve themselves.

On exchanges, problems arise with availability (with the allegation being that some banked property is let to known owners reducing the choice for them in the scheme). Would one way of ensuring this is not encouraged to be to allow refunds of exchange fees if reasonable requests cannot be satisfied? Also there are suggestions that points needed to exchange are not always clearly set out or values can be changed. This seems a problem common to all schemes based on points and greater clarity on how points are allocated and how they can be amended (say as a property becomes older) need to be devised in consultation with consumer bodies and consumers informed.

The idea of a holiday in the sun is particularly appealing to those of us who enjoy the United Kingdom climate and whose citizens form the largest market for timeshares. Timeshares have diminished in popularity in part due to the growth of overseas ownership and the rise of cheap package travel options. It is important that these products represent value for money consumers, but also that consumers are assured of minimum legal security or else—like "Akerlof's lemon"⁴—they will be shunned by consumers. In other words a fair legal environment is needed by the reputable industry as much as by the consumer. This proposal goes a long way towards regulating a market that is very attractive to those who seek to exploit aspirations and dreams of

³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market. OJ L149 11.06.05 p 122–139.

⁴ Akerlof, G. (1970). "The market for 'Lemons': Quality Uncertainty and the Market Mechanism", 84, *Journal of Law and Economics*, 488–500.

continuing the holiday spirit. Our concerns are mainly that as far as possible its content should be aligned with general EU developments in consumer contract law. However, we appreciate the good will in seeking to reform the law at the earliest opportunity to address real consumer concerns that call for intervention at the European level.

12 September 2007

Examination of Witnesses

Witnesses: PROFESSOR GERAINT HOWELLS, University of Lancaster, and DR CHRISTIAN TWIGG-FLESNER, University of Hull, examined.

Q129 Chairman: Welcome to the Committee, Professor Howells and Dr Twigg-Flesner. We are very grateful to you for taking the time to come and speak to us about the Commission's proposal on the Timeshare Directive and the way it is going to affect other products as well. So far, we have heard from representatives of timeshare consumers and the timeshare industry, as well as from the Office of Fair Trading and the relevant minister—who was with us last week, in fact. We do find some of the aspects of the proposed new directive quite complicated and we are looking forward to hearing your legal views to assist us with our own understanding. I have just a few housekeeping points: we are scheduled for an hour, so we should stop at 11 o'clock, and the session is open to the public and will be recorded for possible broadcasting or webcasting. A verbatim transcript will be taken of the evidence that you have given us and it will be put into public record in printed form attached to our report and on the Parliamentary website. A few days after this meeting, you will receive a copy of this transcript. If you feel you need to correct it, please do so as rapidly as possible. If we get to the stage where we feel or, alternatively, you feel there are other things you would have wished to say, we are always very happy to receive supplementary evidence—we find that very helpful, in fact. Could you start for the record by giving us your names and your official titles, please? Then, if you wish to make an opening statement we would be very happy to listen to that, otherwise we will move directly to questions. Welcome once again to our Committee.

Professor Howells: Thank you for inviting us here today. My name is Geraint Howells. I am Professor of Law at Lancaster University. I am also a barrister in Gough Square Chambers in London, but the views I express are my personal views.

Dr Twigg-Flesner: My name is Dr Christian Twigg-Flesner and I am a senior lecturer in law at the University of Hull. I am also very grateful to have been given the opportunity to speak to you this morning. Thank you.

Q130 Chairman: Do you wish to make an opening statement, or shall we go straight into the questions?

Professor Howells: I think the questions are very helpful.

Q131 Chairman: Let us do that, then. As we know, there is this review of the Consumer Acquis going on. Your evidence seems to suggest that this particular proposal has come at a rather unfortunate time. Could you elaborate on the scope of the review of the Acquis and its likely timing and can you expand on the relationship between the Timeshare Directive and work on the draft Common Frame of Reference on European Contract Law? In other words, there is one small thing and two big things, how do they interrelate?

Professor Howells: It can be rather confusing. I think we should start off by clarifying that, when we say it is an unfortunate time, we do not mean that this activity should not be taking place at this time, just that it should be borne in the context of the general review. That review may take several years to come to fruition. Of course one would not want real concerns to be delayed in being addressed just because of the legal niceties and technicalities, when people might suffer in the meantime; we just wanted to say that the broader context needs to be borne into account and that broader context is quite complicated. There is a project, which has been an academic project driven by the Commission, to produce something called the Common Frame of Reference; the CFR, as it is commonly known now. Quite what that will become is still to be seen in the future. At the very least, one expects it will be a "tool kit", by which one means it will be a point of reference for the drafting of European and hopefully national legislations, so that the terminology and structure of the various laws can be brought into greater harmony and consistency. Under the contract, the academics in that group, of which Dr Twigg-Flesner and myself are members, have to submit a draft of that by the end of this year to the Commission. I think it is anticipated that there will be further work after that and that a revised draft or an extended draft will be submitted in 2008, with the Commission looking to give its consideration to it during 2009. At least that is my understanding of the timetable.

Dr Twigg-Flesner: That is correct, yes.

Professor Howells: That CFR is a broad project, not restricted to consumer contracts. There has been some movement within the Commission because the driving force behind that project is DG-SANCO, the Consumer Protection Directorate, to say that the work of that CFR should be focused more in on

consumer contracts of more relevance to the Directorate-General spearheading that proposal, and so there has been a political reorientation within the Commission to focus it back on the consumer context. At the same time, the Commission has issued a Green Paper reviewing the Consumer Acquis. Of course, it is envisaged that review of the Consumer Acquis will be based on the CFR principles, but, as the CFR principles are not yet in place and only in draft form, there is a difficult point of timing between those two proposals. That general review of the Consumer Acquis, which one suspects will lead to some form of horizontal directive in the consumer contracts area, has to be put in place with vertical legislation. I think the Commission is not envisaging that this will be an omnibus consumer code, that there will be a broad consumer contracts directive, and vertical legislation like the Timeshare Directive will stay in place, but certain issues, like, for example, the modalities of withdrawal, will be regulated in a common way across the whole plethora of consumer contracts in a horizontal directive and then the specifics of the vertical legislation will add on to that. Just to add to the picture a little bit further, there is also something called the Consumer Compendium. That is another project—and Dr Christian Twigg-Flesner was more directly involved in that than myself: I was merely an adviser—which is trying to map exactly what has been done in the area of the eight directives which are under review in the Green Paper. We may refer you at various times to that compendium. So you have the CFR, the Green Paper—the possible horizontal directive, and the compendium, which are the three European pieces of the jigsaw into which this proposal has to fit.

Q132 Chairman: Let me see if I can clarify that a bit from my own point of view. Does that mean that there may come a time when, after the Timeshare Directive having been dealt with in this current effort other codes or more general assemblages of consumer law are put together and, as a result, it might be necessary to go back to the Timeshare Directive to make sure that the two things correlate?
Professor Howells: Yes.

Dr Twigg-Flesner: That is a very real risk. If you look at the Green Paper itself, that raises issues of what are commonly called horizontal application—so the regulation of a generic right of withdrawal, the regulation of generic pre-contractual information obligations—and quite what shape these will take will not be clear until later on next year, when the Commission intends, I understand, to propose a formal revision of the legislation. There will be a new directive dealing with aspects of withdrawal, consumer sales, potentially, revision of contract terms, and all these broad horizontal issues that have been regulated already at the European level. This

directive, of course, has been a classic example of a combination of pre-contractual information obligations, on the one hand, and a right of withdrawal. If that is going to be regulated in this horizontal directive, or horizontal regulation, as it might even be—it does not have to be a directive, of course—there is a strong likelihood that whatever is decided may in fact be superseded by a different proposal coming through next year and there might be a need to either amend the directive or simply abandon some of the provisions in this directive in favour of the more horizontal approach.

Q133 Chairman: Our impression from the Minister the other day was that he did not agree with that approach at all. He felt there were specific characteristics of the timeshare market; in particular, the fact that the potential purchaser is approached when he or she is not at home but, on the contrary, in some other legal jurisdiction and therefore more exposed, as it were, to malpractice, than if you were to go down to your local car agent and buy a car or even, for example, buy a house, where you are doing it within a body of law which you understand. Do you feel that that argument makes sense?

Dr Twigg-Flesner: It does make sense. I understand the rationale for granting the right of withdrawal in the first place, but the same rationale applies in other contexts. For example, in the general distance selling context, in the doorstep selling context, there are also rationales for giving the right of withdrawal in those circumstances.

Q134 Chairman: That is true.

Dr Twigg-Flesner: We have the same for the more specialised contracts; for example, life insurance. There is a right of withdrawal for that which can range between seven and 30 days depending on which each Member State decides. If there is a proposal to harmonise this entire withdrawal system for all EU areas, then of course this will be affected in much the same way. Whether it should be is a different question, of course.

Professor Howells: There may be justifications for the specific approach to the timeshare problem, but is there, for example, the justification for having a different definition of “a day” for example, in each of these directives. There are certain common things which can be harmonised and sensibly harmonised. Equally, one of the things which disturbs me about one of the points of review in the general review of consumer law is the idea that seems to be coming forward that there must be a standardised way of giving notice of the right of withdrawal. If there is a European way in which you have to notify the right of withdrawal and that is specified in a horizontal directive—which I would not agree with—would there be any reason for not specifying that same

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

notice requirement in timeshare as opposed to distance selling or whatever? So there are certain issues which, once you have decided the policy, can then be implemented in a harmonised way across the range of directives.

Q135 Chairman: You have made a very useful point. I am not sure how the Committee will deal with it in its report, but I think it is something we ought to take note of. Thank you very much for that.

Dr Twigg-Flesner: May I add one point?

Q136 Chairman: Yes, of course.

Dr Twigg-Flesner: On this a question of defining days and what are working days and what are calendar days, back in the mists of time the European Union, or the European Economic Community, as it was then, adopted a regulation which is of general application—in 1971, I believe—that tries to resolve this issue but what has since happened is that people have forgotten about its existence, even if it remains in force, and there is legislation in place which deviates from that regulation. So we have very odd circumstances, where, in the current timeshare directive, as it is in force, the time period is regulated differently from what has been the generic approach under this regulation of 1971. I think there needs to be greater coherence in adopting what is already there and not trying to do something else.

Chairman: I do not think we can afford the time now, and I know it is in your written evidence. Thank you very much for that. I am going to ask Lady Gale to ask the next question.

Q137 Baroness Gale: There is quite a lot of debate going on as to how long this cooling off period should be. I think the Minister last week felt it should be 14 days and we have had the consumer groups saying 28 days. From reading your evidence, perhaps your mind is still open as to what it should be. I would like to ask if you could elaborate on that view and whether the nature of timeshare is different from other contracts. Do you have a view on the ideal length of period? Could you offer your view on whether any further clarification is needed on the cooling-off period to be measured in calendar days and working days. I can see the difficulties, if you like, Europe-wide, because there are the bank holidays and differences in what is a working week and so on which are different in different countries.

Professor Howells: Somebody once told me that a working day was a day on which the Post Office was open, but I do not think that really helps you very much! My view is that there is a sort of consensus coming around that 14 days as a general cooling-off period is a sensible compromise between lots of different positions. Across the whole range of withdrawal periods, that seems to be my impression.

But there may be specific instances relating to timeshare. I noted when the original proposal was made, the Commission, I think I am right in saying, had proposed that there should be a 28-day cooling-off period when the timeshare was sold in another country than the consumer's own state. You might think there is some sense in that because if one flies off to the sun for a 14-day holiday, gets accosted by a timeshare salesman on your first night there, makes a decision rapidly to buy it or within the first few days, then by the time you have got back home you have a rather short time to react. We all know the feeling of getting home, with the post on the front doormat, and the way it takes you time to get back into work. It may be quite hard before you sit down and reflect on the decision and take the steps to do it. There may well be an argument for that and one has to ask whether there will be any greater loss of certainty for the industry. Will those extra 14 days really be an impediment to an industry moving forward with their marketing strategy and their policies and their certainty? Will there be any great increase in the number of people using the cancellation item? Will that be a good or a bad thing? The industry obviously think it will be a bad thing but consumers might say it as a good thing if more people use the right to cancel. I think it is a difficult issue. My feeling is that it will politically quite hard to move beyond 14 days, but there may be arguments for that.

Dr Twigg-Flesner: It really depends on whether the reason for the withdrawal right, the cancellation right, is the pressure selling element—the consumer is pushed into a room and gets this PR presentation and has to sign on the dotted line to escape—or whether it is more a case of giving the consumer chance to think it through. If it is based on just the pressure element, then 14 days might be okay, because even during those 14 days whilst you are on holiday you might realise that really did not want to do this and you can withdraw. But if you want to go away and go back home and seek legal advice, for example, on the implications of having signed up to the timeshare contract, 14 days, as Professor Howells says, might not be long enough because you will still be on holiday when this period expires. I think it must be the latter that is the real rationale: giving people just the chance to think it through properly and to seek advice. In that case, a longer period might well be appropriate. In the Green Paper, there was the issue mooted of having two separate cooling off periods: one standardised period of 14 days and then a derogation for specific situations where a longer period might be justified. It is interesting to see that in this proposal, obviously the Commission has already settled on the 14 days.

Q138 Baroness Gale: The evidence we have had from some groups is that if somebody is going to withdraw they do it in the first few days so there is no need to

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

have a longer period. I do not know if there is strong evidence on that.

Dr Twigg-Flesner: There is a general lack of research on how consumers behave and that is one of the main problems we have. We do not know what consumers do; whether they understand what it means to have a right of withdrawal; why they exercise it, if they do; and why most of them do not exercise it.

Professor Howells: If you look at consumer psychology, most people like to think they have made good decisions, so most people when they have bought a timeshare like to go home and convince themselves and their friends that they are going to have great holidays in the future. It is very rare for consumers to take that step and withdraw. There needs to be something seriously worrying and of concern to them. Maybe their financial situation, if they get home and see they have lost their job or whatever, would make them take that step. Most people like to think they have made sensible, informed consumer decisions. As I understand it that is the evidence there is.

Chairman: The psychology of it. Would anybody else like to come in on this, otherwise will move on to Lady Howarth's question?

Q139 Baroness Howarth of Breckland: I think we are back where we started in this complicated set of different procedures that are going on at the moment. Here is another one: the Unfair Commercial Practices Directive and the review of the Consumer Acquis. I love that word "Acquis"—I do wish we could use English, but there you are. You mentioned this in section 13 of your written evidence. We have understood that this might address some of the issues that we have been discussing. Could you say how great you think the role of this directive is going to be, particularly in the holiday club sector, because this is one that really does worry us at the moment. To what extent does the Unfair Commercial Practices Directive reduce the need for a Timeshare Directive? Again, it is in the package of all you were talking about at the beginning, which would reflect very much on what we would want to recommend in that package.

Dr Twigg-Flesner: I will perhaps explain first of all how the Unfair Commercial Practices Directive—the UCPD, as it is affectionately known by those in the know—relates to the Acquis review and also consumer law more generally. The Unfair Commercial Practices Directive is essentially focusing on market behaviour/business behaviour: how contracts are marketed to consumers; how businesses behave after contracts are negotiated, when there might be after-sales issues to be resolved and so on. It does not grant individual consumers specific rights. It is more a regulatory tool that allows us to police the market, to ensure that traders behave

appropriately, that they do not engage in misleading behaviour, aggressive behaviour, and so on. It can be used in that sense to deal with rogue traders or traders who are known to the enforcement agencies for continuously being accused of not acting fairly and responsibly towards consumers. But if there has been an infringement of the legislation implementing the UCPD, which I think will be enacted later on this year in the United Kingdom, there will be no individual consumer claims based on that; it will simply be enforced through injunctions, and potentially the criminal law, but nothing that will grant consumers specific claims for damages and so on. The Law Commission may investigate the possibility for this—indeed, I am not sure whether that issue has been parked altogether now. The Timeshare Directive, on the other hand, deals with individual consumers and gives individual consumers the right, on the one hand, to get all the information they need to make an informed decision in that particular case, but also, if they do want to change their mind, then to withdraw from the contract. The two fit together in the sense that you have general policing of the market by the UCPD and then individual consumers, who do not benefit from the UCPD as such, able to rely on the withdrawal rights to get out of the contract if they so wish. If there are particular concerns about the way certain timeshare operators behave, then the Timeshare Directive will allow individual consumers to some extent to get out of the bargains they have entered into by withdrawing from the contract—if they are sufficiently aware of the right of withdrawal and so on, because they need to know to be able to exercise their right of withdrawal. If there are numerous concerns and the enforcement agencies are made aware of those, they can rely on the UCPD, for example, to challenge these companies and try to get them to change their ways or, indeed, to withdraw from the market altogether. In combination with the Injunctions Directive and the Consumer Enforcement Co-operation Regulation that can be done on a cross-border basis, pan-European basis even.

Q140 Baroness Howarth of Breckland: How effective do you think that policing is or has been?

Dr Twigg-Flesner: We do not have any experience of the UCPD just yet because it has not really entered into force. I think the due date is 12 December this year, when it has to enter into force across the EU. It might not do so in all the Member States. That is the usual problem with directives: they have to be transposed. The early experience with the enforcement regulation, I understand, is a good one. The noises I have heard from various corners are that the thing is working tolerably well and there is some cross-border co-operation going on already. I think

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

there will be some reporting on this in due course and we will see how effectively that works.

Q141 Baroness Howarth of Breckland: In a nutshell you are saying there is still a great need for the Timeshare Directive, but, particularly, could you address the holiday club issue which is one that does concern us a lot.

Professor Howells: The question of the holiday club may come up later when we talk about the scope of the directive and what is covered by it and so forth. As I understand it, the point about the holiday job club is: Is it inside the scope of the directive? Do the information duties applying to it provide the right sort of information that you need to be able to make use of it? As I understand it, that is the point about the holiday club. The same point would be made as Christian just made about the use of the UCPD: the UCPD could stop rogue traders, you could have injunctions against bad selling practices, aggressive selling practices, but it would not do anything unless there is a new right of damages attached to it—which is still on the agenda—for the individual consumers. I think you have to make sure that the holiday club schemes are protected within the timeshare regime to give those consumers those rights.

Dr Twigg-Flesner: The UCPD does introduce some very interesting additional obligations which are not so well known to English law at present. There is the regulation of misleading omissions, for example—so the failure to tell the consumer something—which historically has not been so tightly regulated. If you fail to tell a consumer important information that he should have in order to make an informed decision then that constitutes a misleading omission under the directive and that can be challenged. Previously, not saying anything, keeping silent, was not necessarily something where the law objected if you look at traditional English contract law.

Professor Howells: What would happen then is that the Office of Fair Trading would seek an undertaking or an injunction to that company to make sure that in future they gave that information.

Chairman: That is an interesting distinction. Thank you very much. That is most helpful.

Q142 Lord Moser: This relates to the relationship between the new directive and the existing directives. I find it all rather puzzling: you have doorstep selling, you have distance selling directives in the Community, and another one about package travel, but timeshare and holiday club is not included. It was suggested to us by one of the organisations that came to see us that the opportunity should be taken. That seems obvious, does it not? In fact, I find it extraordinary that those existing directives do not include timeshare and holiday regulations. What is the future?

Professor Howells: To some extent that might be addressed by the general directive, to see to what extent one can harmonise. I think it is the exclusion of immovable property from distance selling and doorstep directives which have caused the issue because people have said, “Selling property is different from selling goods, and so that is outside,” and timeshare becomes a sort of property right. Now, of course, timeshare is a unique property right, in the sense that you do not really feel like you are buying a house, you are buying the right to use a house for a certain period of time. But if you look at the rights given by those directives, particularly the doorstep and distance selling, they give you a right to information and a right to withdraw, which you have in the Timeshare Directive anyway, so I do not know if that much is added to it. Of course in the package travel context there are additional obligations. The person who produces the package travel has a responsibility for the provision of all the services, so if you are injured in a hotel overseas due to the negligence of the hotel owner you can return a claim against the package travel operator. But there you need a combination of services. In the timeshare, where there is no direct combination of services and it is simply the provision of accommodation, that would fall outside the Package Travel Directive.

Q143 Lord Moser: Do you see the new directive, which is what we have been discussing, remaining partly separate from existing directives?

Dr Twigg-Flesner: I believe so, yes.

Q144 Lord Moser: I find that still difficult. From the point of view of simplicity—which is, I know, not the primary aim of the European Union!—would there be some merit—

Professor Howells: They would say that the horizontal directive will try to ensure that the information obligations and the right of withdrawal are as far as possible identical in those contexts. In a sense, it would not matter whether you were having your rights under the Doorstep Selling, the Distance Selling or the Timeshare Directive; as far as possible you would have the same information duties placed on people—although they may have to be more extensive in the timeshare context, I would think—you would have the same right of withdrawal, you would have the same method of exercising the right of withdrawal. It would be very confusing for consumers if you had a right of withdrawal on a doorstep contract, and that said you had to exercise the right of withdrawal in one particular way—and you knew about that because you had experience of it—and there was a different way of exercising the right of withdrawal in the timeshare, and you made a mistake because you used the method you were used to. That would be very confusing. That is what the

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

Commission is trying to harmonise or looking to harmonise, so there is less confusion between the different directives.

Dr Twigg-Flesner: In essence, I do not think we think there is a problem in the fact that they are not currently covered by the Doorstep and Distance Selling Directives because in terms of the standard provision we have the same kinds of rights in all these directives: pre-contractual information and withdrawal rights. This is really just to make sure there are no immediate conflicts between the way the right of withdrawal operates, for example. That is the other concern.

Professor Howells: If there is anything we have missed, if there is an example that has been given to you where you think people have fallen through the trap, perhaps you could let us know and we could think about it in more in more detail.

Chairman: I am sure we could do that. The Committee what might want to follow that up. That is a kind offer. Let us think about that.

Q145 Lord Trefgarne: That takes me to ask you a question about one area which might or might not come within the scope of the directive and that is, for example, multi-annual hotel reservations. If you book up, every year, the same place, will that come within the scope of the directive? Is it right that it should, if it does?

Professor Howells: I was thinking about that this morning. I was thinking of some examples. The difference between ourselves and the Commission is one of interpretation as to whether you have a contract here or not. I was thinking that if I booked a hotel in London for the two weeks of Wimbledon every year for the next 10 years, and then the day before Wimbledon came along I said to the hotel, "I haven't got a contract, it was only a reservation," I do not think that hotel would be too pleased with that argument. When I reserve a hotel, I am committing myself to pay for that unless there is a cancellation right within the contract. Very often a hotel would say, "If you cancel over 48 hours, there is no payment payable." It does not rule out the contract, it is just that I have exercised my right under the contract to get out of the contract without paying a penalty. My view is that probably when I make a reservation with a hotel I am making a contract; whereas the Commission's assumption seemed to be that a reservation was just a future hope that you would turn up at the hotel. It is really the way in which you interpret that contractual conversation.

Dr Twigg-Flesner: That may of course be something that is different across the Member States. The Member States may treat reservations as just that: a reservation with no immediate legally binding effect.

Q146 Lord Trefgarne: Most hotels nowadays take your credit card details when you make a reservation, which means, I guess, that they could take money off you if you cancelled.

Professor Howells: If you cancelled outside their terms of contracting, yes.

Q147 Lord Trefgarne: They would say, "Have you read our terms?" and then, if I said no, "Oh, well, sorry. Half a day's payment comes off that." I can just hear it.

Professor Howells: You could well see that there would be circumstances where people would want to make contracts for the same week.

Q148 Chairman: Yes, on the regular visitor approach to things—so that, instead of staying in a flat, they stay in a hotel because it is more convenient.

Dr Twigg-Flesner: Of course a consumer would be very surprised if they turned up at a hotel and were told, "We don't have a room for you, we have a reservation" and they would have no right of redress because it was just a reservation. You would expect there to be some sort of legal redress.

Q149 Baroness Neuberger: It is quite common in various areas of Europe that you do turn up and they push you instead to another hotel. Quite a lot of European countries do not seem to think there is anything strange about not giving you the room—which I have always thought very eccentric—so there may be a different view.

Professor Howells: You may want to consider, as well, that there is now no minimum period. In the previous directive there was a seven-day minimum period, which would exclude lots of hotel bookings. There is now no seven-day minimum period. You may want to think about whether if you want lots of repeat bookings they are the same contract? You may argue that these are separate contracts: I book every Monday but I do it under 52 different contracts. I think that may be the way round it.

Q150 Lord Trefgarne: A contract would only be a contract if the hotel has agreed to provide a room for a certain price. You book up for this week and they will tell you what the rate of the hotel is, but they will not tell you what the rate is for five years ahead.

Professor Howells: You could have a contract based on an assumption that you will pay the "rack rate" at the time or the applicable rate at the time. As long as there is some reasonable method of ascertaining what the payment will be in the future, there could be a contract for it.

Chairman: Claridges has been much in the public eye recently for their extraordinary guest list. Maybe we should ask them what they do.

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

Baroness Morgan of Huyton: *And whether they have such a thing as a “rack rate”.*

Dr Twigg-Flesner: I think the real issue is whether they should be included at all. The Commission says they are not included because they are not reservations. We think, “Well, be careful, they might be included, and you might have a very strange situation where in some jurisdictions some hotels might find themselves challenged. What you really want to achieve is an exclusion, so why not put this explicitly in the Directive, saying reserving a hotel room, whether it is a contract or not, is not subject to the directive.”

Q151 Chairman: Certainly I would be jolly cross if I arrived in Cornwall for my spring weekend and found that the reservation had gone. It has never happened to me. Whether it is a contract or not I think is for the lawyers to determine, but I think the habit in this country is that if you have made a reservation then, unless you arrive at midnight or something, in almost every situation you get your room.

Professor Howells: But would you expect the hotel to have to send you all the information that they would have to send you if it was a timeshare.

Chairman: No, I would not, and I think we assume that when we ring them up and we give them our credit card, we have done a deal, and the deal means that they will keep a room for us.

Baroness Howarth of Breckland: This seems to illustrate that there is a big difference between the UK and Europe

Baroness Neuberger: I think so.

Q152 Baroness Howarth of Breckland: We want to try to get the best practice recommended through the directive to protect consumers, so that colleagues do not arrive in Spain and discover that there is not a room. It would be useful if we could somehow get a mention of this and sort out what the right future would be in Europe in the directive.

Professor Howells: We have to get to the two issues separate. We may want to address that problem—which may be a real problem—but I do not know if the timeshare is the way to do it.

Q153 Lord Trefgarne: The hotels will be looking for protection from those customers who book and just do not bother to turn up. They would say, “You could have sold the room to somebody else,” but the hotel would say, “It was 11 o’clock at night and you never came.” They deserve some consideration as well.

Dr Twigg-Flesner: Indeed.

Professor Howells: There are things like advanced payments and so forth. If they were included, it would become quite complicated for hotels.

Q154 Chairman: You do sometimes have to make a downpayment, using your card for the downpayment, and then that becomes part of your payment for the hotel bill at the end. I think that is how it usually works.

Dr Twigg-Flesner: There is a plan to revise the Package Travel Directive, because, of course, package travel no longer exists in the same way as before. I wonder if that might be an opportunity to think about things like clarifying what constitutes a reservation if a consumer makes his own arrangements as opposed to going through a travel agent. Very few consumers go through the traditional package travel route these days: everybody books online using the websites for hotels and airlines to put together their own packages. One of the things the Commission was talking about at one point was to have these two separate big regimes. On the one, the horizontal instrument, as is now being discussed in the Green Paper, and there was also at one point talk of a “the consumer goes travelling” kind of directive, to cover all these various travel arrangements and perhaps also to link it in with the air travel compensation regulations and so on, the overbooking regulation. I do not what has happened to these ideas. It is something that may happen later on when they talk about package travel specifically but that is something to keep an eye on, I think.

Q155 Baroness Neuberger: In your note to us you were very interested and keen on the reduction of the length of the contract from three years to one and then you said that you wondered whether there was actually any need for a minimum duration of contract. You say that “reduces the possibility of evasion, but does not remove the risk associated with ‘trial packs’ entirely.” I am not sure I fully understood that point, but, anyway, the Government have responded in oral evidence, and does not really like it, saying that possibly no minimum duration might affect the package holiday legislation—which is what we have just been talking about. I wonder if you could expand on that and maybe explain, in particular, why you think that perhaps having no minimum might be the preferable route.

Professor Howells: I have to say it is not the point I would want to go to the stake on

Baroness Neuberger: *I wondered!*

Professor Howells: That said, I think there are some Member States that have removed it altogether. I think Finland is one.

Dr Twigg-Flesner: I have brought with me the relevant section from a Consumer Law Compendium and I will let you have the relevant information to that section. In the report it is pages 419 through to 477. It is a 700-page document—we are very proud of it. It makes a wonderful doorstep! At page 433 we

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

explain which Member States did not have a minimum period, even in the current implementation. We have Cyprus, Finland and Hungary as the obvious ones with no minimum duration, and some Member States have reduced the period as well. Some Member States have gone away and said, “We don’t need to have a minimum period at all.”

Professor Howells: If there is a technique of getting around the directive based on 35 month trial periods, maybe the same technique could be applied to an 11-month period, so you have an 11-month cover with an automatic renewal and so forth, and it gets you outside the directive.

Baroness Neuberger: *It is basically closing that.*

Professor Howells: If there were real ways in which this could impact on the Package Travel Directive, that would be interesting, but there must be a situation where there was a combination of two elements, not just the accommodation but also the travel or services being provided locally, so you have to see how many timeshare operators would provide those additional services and therefore be caught by it. What the implication of that would be I have not thought through, I am afraid.

Dr Twigg-Flesner: Belgian Law, for example, applies the timeshare rules to contracts of less than one year duration where there is an automatic renewal clause in the contract. Where it is envisaged that, even though it is limited to, say, 11 months, it is automatically renewed unless consumer cancels, then they will apply the regulations as well.

Q156 Baroness Morgan of Huyton: I have another question about the scope of the directive. We are aware that there is a growing pattern of the use of flexible timeshare holiday clubs—so this is specifically about timeshares not holiday clubs. We are unclear whether you think that is that is satisfactorily covered, whether it is covered in Annex I, or whether that needs to change, whether it needs to be revised to incorporate those more clearly, or whether you think it is adequate.

Dr Twigg-Flesner: The definition of “timeshare” includes “one or more accommodations”. That is the phrase used, so it does cover these multiple resort deals. I suspect we have to then apply the information obligations from Annex I to each of these properties, if there is a group of properties that falls within the scope of the contract. The difficulty arises when it is never clear which kind of properties might be included in these multiple resort arrangements, if there are properties that might be replaced by other properties and so on, and then it might be very difficult to be able to provide this information because they might not know which properties will eventually be covered by the agreement. To the extent

that they say, “You can have a property in these 10 resorts, these are the 10 types of properties we have,” they would have to provide information on each of those in order to comply with the obligations. We will come to information later on perhaps, but there is still a risk of overburdening consumers with a lot of information which they might not understand or need at that point.

Professor Howells: The confusion in my mind was that many of these packages may have some of the characteristics of long-term holiday products. I would be worried about: Do I know what my points are worth? How do I know what they will get me? How can those points not be skewed in the future to change my rights, so that I might need five points this year to get a villa with a swimming pool but seven points next year or whatever? Something like the obligation at Annex III(b)—which says “to state the exact nature of the right which is subject under the contract”—might be usefully included in timeshare contracts which were based on a points basis, to let me understand what rights I have.

Chairman: That is interesting. There is another question on information. Lord Dundee.

Q157 Earl of Dundee: In relation to the Timeshare Directive what type of information do you think should be provided by the operator to the consumer automatically rather than simply on request?

Dr Twigg-Flesner: It is a difficult one to think of because a lot of these pre-contractual information obligations are devised on a particular policy slant: there is a perception that certain items of information have to be provided. I think the problem we have so far is that the items of information required—and they still are, even in the current draft directive—are very unstructured. You have a lot of different items of information with some overlaps but there is no clear arrangement of these various information obligations. We would like to see, first of all, some thought being given to how this information is presented, before we look at the detailed items of information which should be included. Professor Howells has done some work on the ability of consumers to process information. One of the findings that are fairly well established now is that consumers can really only process information that is given to them in certain chunks and they can only really process seven different chunks of information. In one of the research groups in which I am involved, we have tried to identify perhaps broader categories that you could use for information, so you have chunking categories, if you like. This work is being fed into the Common Framework Reference. We have a draft provision in there that basically says: These are the main categories of information that we find in the Acquis Communautaire at the moment and therefore we should perhaps try to restructure all

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

the existing information obligations under these broad headings and then try to see if there are any surplus ones which we perhaps might not need at all or have only available on request, and whether the ones that we have are perhaps duplicating information. To us it seems important that the consumer gets information about what they are actually buying: some basic information about the property; what the property involves; what facilities are provided. Information about the price is very important. Information about key legal rights is important, including the right of withdrawal, and perhaps information about complaints procedures so that consumers can find redress where they need to if something has gone wrong.

Professor Howells: I think it is very important to say: What do the consumers need to know, when do they need to know it and how do they need to know it? Probably a lawyer is not the best person to answer that question. We can point out the need to consider these factors but I think you need other skills to work out how that plays in. Also I think we have to bear in mind that there are different reasons why you want to give people information. One, which was lying behind your question, was the decision to enter into the contract: What decision do I need upfront to decide if this is a contract I want to enter into? Another very important purpose of information is to resolve disputes later on down the line. If I have a timeshare and a few years later I have a dispute—"They are saying I have to pay the service charge, do I have to?" or whatever—there you may want a very detailed amount of information to refer to lots of points that may arise in the future. We are saying that we need to differentiate. Clearly timeshare is a contract where you have to give a lot of information—it is a complex product, it is a very important purchase for people—but we have to distinguish the need for that information for the long term with the need to bring key points to consumers' minds. I am afraid I am not the person to answer your question on what needs to be brought to people's minds.

Q158 Earl of Dundee: If you take this aspect at its most basic, as you were explaining it to us, clearly the position is at the moment that consumer awareness is insufficient in regard to information presentation. The presentation of information is not good enough. Different ways need to be worked out for how to make it better. Might one aspect worth considering be an obligation of the operator to have to prove that he has been responded to on certain key categories and areas by the purchaser?

Dr Twigg-Flesner: How would that be achieved in practice? Would you then effectively require that the consumer perhaps signs the relevant item of information?

Q159 Earl of Dundee: I am thinking of something very elementary. When you catch an aeroplane these days, they ask you: "Do you have any bombs in your luggage?" or something. The dialogue may not be quite like that between the operator and the consumer but it would not be dissimilar. There might be an obligation upon the operator to show a tick list that he had asked certain questions, which might be quite general questions or categories.

Professor Howells: The danger is that they can become defensive tactics for the industry. I remember that I once signed a form which said that I had been advised about every possible alternative way of financing this loan. When I said, years later, "You never mentioned this one to me," he said, "Oh yes, they did. You said that **all** had been mentioned to you." I did not know what "all" was. So there are ways in which those tick lists can come into defensive tactics for the industry and the industry then says, "We told you all this. You may not have taken it in and you may not have processed it, but it has clearly been made and you have clearly ticked the box." We have to make sure that information is given to consumers and given to them in a way in which they can really take it into account and really know exactly what they have been told—not just, "We have given you information on all aspects of the property" but which actually lists which aspects you have said and be specific about what you have told the consumer.

Q160 Chairman: Some consumers will want certain things and others will not want the same things. I gather the lists in the suggestions from the Commission include whether a property has a sauna. I could not care less whether a property has a sauna—I never want to go anywhere near a sauna. I am saying that certain bits of information are more important to purchaser A than they are to purchaser B, and that is one of the problems.

Professor Howells: We have all listened at the end of a telephone line to somebody saying, "I've got to repeat this to you" and you put the phone on speaker for five minutes whilst the poor person reads a list of things off to you and you do not pay any attention to all that. I really think that is a regulatory burden which is not even doing consumers any good. I think you have to be a bit careful about your tactics and pinpointing certain key aspects may be the way to do it.

Dr Twigg-Flesner: You could go one step further and require consumers to complete a little questionnaire afterwards to prove that they have understood this information! You soon get into a very, very difficult paper trail.

Chairman: I think we are going, once again, into the role of comedy rather than serious endeavour. Now, the post-sale situation. We are back to Lady Howarth again.

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

Q161 Baroness Howarth of Breckland: We are into this question about whether people are really buying the right to have ever-increasing charges rather than something that is going to give them pleasure and how we make sure that, post-sales, people really understand what is happening. People can suddenly find themselves having to pay and do not know how to get out of it. We are interested in how the directive should help to make this clear and take forward some way of people being able to get out of timeshares. Although they would not want to lose their investment, we have learned that this is like buying a motorcar: you buy it and it depreciates pretty rapidly. We would be very interested in these two issues.

Professor Howells: There was a point once made to me quite forcefully in relation to the Financial Services Act, that with these sorts of products you do not know within 14 days or 28 days whether you really want the product or not, you know whether you have a good pension in 25 or 40 years time and it is too late to exercise a right of withdrawal then. Similarly, with the timeshare: you may well realise you have got into a product which is going to cost you a lot of money on an annual basis—which you did not fully appreciate—at some stage down the line. Also there is, I understand, some concern that the controls on the costs are not always fully understood by consumers or properly noted. One way around that might be to have a very clear explicit warning, in red, that this is a long-term engagement which may cost you considerable sums of money on an annual basis, and make consumers realise that. Another and perhaps a more practical way is to try to make sure that the timeshare owners have some say in the running of the properties. Many people live in estates which have a scheme covering some communal area and people become share owners in that scheme and can decide how it is maintained, the costs and so forth. It may well be useful to have an information obligation as to whether or not, when you are a timeshare owner, you have any control in the management of the scheme or whether the management and the charging of the scheme are exclusively in the control of the organisation that is selling you the property.

Q162 Baroness Howarth of Breckland: What about the issue of withdrawal and having some capacity for people to get out of their timeshare at the end of the day. This seems to be an eternal contract really.

Professor Howells: There is a real danger that you sign up for a contract and it just becomes a burden around you. You might well say, “I’d like to give the contract up, even if I don’t get any money back. I just want to get out of this thing at the end of the day.” Again, you would have to ask the timeshare industry how that would impact on them. If there is a company that has engaged in the long-term

management of the project, then it may not be too great a difficulty to take some units back and resell them. In fact, it may show long-term commitment to the project to be able to do so, but I am afraid I do not know enough about the financing and management of the timeshare companies to give an authoritative statement on that.

Q163 Chairman: We could ask a supplementary question of them on that. The last question is rather similar and that is to do with exchange and how the definitions are going to impact upon exchange of properties. Do you think it is problematic in some way or another?

Dr Twigg-Flesner: I think it is just bad drafting, to be honest. If I take you to page 15 of the proposal, the draft Article 2(1)(d), if you look at the definition of “exchange”, it is “a contract by which a consumer against consideration”—and we have mentioned the problematic use of that word—“joins a scheme which allows him to modify the location and/or time of his timeshare interest through an exchange.” That an exchange is something you do through an exchange is to me incredibly circular and tells me nothing. That is something that applies also to the definition of “trader”. They have tried to define a concept by relying on a concept to define itself and I think that is problematic. That is just a more general point about the style of drafting, the quality of drafting of the directive which probably needs to be improved.

Q164 Baroness Howarth of Breckland: Is this trying to get at a situation where you have a timeshare which is linked to a particular property, south of France, Miami, wherever it is, but that group of property can do exchanges with other people’s timeshares in other parts of the world or in other parts of the same country? Is that what we are trying to get at in this particular provision?

Professor Howells: My understanding of the industry is that there are certain companies set up to act as an exchange system, so timeshare operators will be linked up to an exchange company and you will then have the right to bank your property against other properties. Just some general reading around the area expresses some concern that maybe what happens is that some of these companies get all the banked properties and sell some on the open market and then there is a depletion in the property available for exchange and people do not get the property they were expecting. I do not know if that is a real problem or just a theoretical problem. I think you would have to ask the industry or the consumer groups about that, but something that strikes me is that, if I am buying an exchange service—and I think you pay a fee of about £80 or £90 to be in the system—and I apply in good time for an exchange and something that is appropriate to my needs is not there, why

25 October 2007

Professor Geraint Howells and Dr Christian Twigg-Flesner

should I still pay that fee? Should I not have the right to get the fee back and say, “You said I had to notify you by a certain date in this year if I wanted an exchange. I did that. You were not able to provide me with the service I wanted, why should I have to pay you the fee?” If there was a real incentive to get the fee to make sure the exchange was effectuated, that would probably solve lots of the problems, because there would be an incentive on the scheme to make sure there was an appropriate pool of properties.

Chairman: *That is a very interesting insight.*

Professor Howells: I think you would need to check with the industry the facts of how great a problem that is.

Q165 Chairman: We have a couple of questions to ask them, perhaps by letter. We are almost at the end of our time. Does anybody have any further questions they would like to ask? Is there anything you think you should have told us which you have not told us? I cannot imagine what it would be. Thank you both very much for coming. It has been a most interesting session. It has been very useful for us. We have lots more concrete appreciation of what is going on at a European level and also some of your thoughts about the very specific points as well. Thank you very much indeed for coming before us.

Professor Howells: Thank you for preparing so well the questions which have provided a nice structure for the discussion.

Chairman: Thank you very much.

Supplementary memorandum by Professor Geraint Howells and Dr Christian Twigg-Flesner

In the context of the review of the consumer acquis, are there any specific changes to the sales away from business premises (doorstep selling) directive which you could envisage as being of relevance to the marketing of timeshare and holiday clubs, including in relation to the premises used at resorts for sales presentations?

The current review of the Doorstep-Selling Directive states

“When considering the appropriateness of Article 1, it is also important to consider whether its wording is clear. For instance, the exact meaning of ‘excursion’ may need clarifying, as would suggest the *Travel Vac* case in which the European Court of Justice ruled that an invitation from a trader to a tourist complex away from the town where the consumer is staying, and different from the town where the trader had his registered office, amounted to an excursion under Article 1(1)”.

Further . . .

“3.1 Immovable property contracts—Article 3(2)(a)

The exemption at Article 3(2)(a) provides that contracts for the construction, sale and rental of immovable property and rights in immovable property are exempted from the scope of the Directive. In the *Travel Vac* case, the European Court of Justice was asked to clarify whether this exemption applied to timeshare. The Court ruled that the exemption did not apply and therefore both the Timeshare Directive and the Doorstep Selling Directive could apply to a single transaction. It also ruled that the Directive applied to the provision of a set of tourist services whose value is higher than that of the right to use the immovable property”.

This is not, in fact, an accurate statement of the decision in the *Travel Vac* case (C-432/97 *Travel Vac SL v Sanchis* [1999] ECR I-2195. The contract in that case was not merely one for the acquisition of a timeshare right; rather, the contract covered both the timeshare itself and additional services:

“[9] According to the order for reference, under the terms of their contract concluded on 14 September 1996 in Denia (Spain), *Travel Vac* sold to Mr Antelm Sanchís a 1/51 undivided share of a furnished apartment in the Parque Denia residential development, entitling him to the exclusive use of that apartment during the 19th week of the calendar year under a ‘time-share’ scheme.

[10] Under the contract, *Travel Vac* was also obliged to provide Mr Antelm Sanchís with certain services such as maintenance of the building, management and administration of the time-share scheme, use of the common services of the residential estate and membership of Resort Condominium International, an international club allowing the purchaser to exchange his holidays in accordance with the rules of the club.

[11] Under the contract the purchaser had to pay the sum of ESP 1 090 000, of which ESP 285 000 was the cost of the undivided share, the balance of the price being made up of value added tax, joint ownership of the furniture as inventoried, the abovementioned services and membership of Resort Condominium International”.

Clearly, drawing a dividing line between “pure” timeshare contracts and those which are “timeshare + services” may be a difficult one to draw. The ECJ took the respective value of the timeshare right itself and of the services as the main criterion. To the extent that many timeshares are sold as such packages then the distant selling regulations might apply to them.

But whatever decision is taken with regard to the scope of the doorstep selling directive in the present review, we reiterate the point made during our oral evidence: the doorstep selling directive and the (revised) timeshare directive both provide a right of withdrawal and information duties. We are unable to perceive any additional benefit to consumers if the doorstep selling directive were to extend to timeshare contracts in whatever shape, because the timeshare directive provides essentially identical rights. Of course there would always be the advantage that if consumers were only aware of rights under the distance selling regulations that their claim could not be dismissed. Against this is the regulatory burden on businesses having to check formal compliance with additional sets of regulations.

Rather, thought should be given to the scope of the timeshare directive, to ensure that timeshare + services contracts are clearly covered.

The problem giving rise to the need to invoke the distance selling rules in Travel Vac was that the national rules implementing the Timeshare directive could not apply—either because the contract was entered into before the directive had to be implemented, or because the Spanish government had not implemented on time (as a general principle, directives are not directly applicable as between the parties to a consumer contract and can only take effect through national law).

In addition, you offered during the evidence session with the Committee to look at any specific examples that the Citizens Advice Bureau might have given us to support their view that various aspects of the acquis could work better together. The CAP did indeed cite a particular example relating to the distance selling Directive. We would welcome your view. They note: “A Hampshire CAB client from the South East received an unsolicited phone call offering a free holiday in Spain for £149 flights provided they attended a 60-minute exhibition. He had just come out of hospital after an operation and was not thinking clearly, and agreed to pay by credit card. As they already had a timeshare his wife tried to cancel and was refused. The card company said they could not refund unless the company agreed. The CAB advised that this is in breach of the Distance Selling Regulations and the client should cancel in writing.” The CAB adds as a commentary: “These clients should have been able to exercise the cancellation rights available under distance selling law. The exclusion of timeshare from Directive 97/7/EC on Distance Selling, at article 2, appears to have been misinterpreted by businesses who make unsolicited calls to consumers to include timeshare-like, travel discount club and re-sale of timeshare. As the Timeshare Directive does not currently cover these sales the exemption will not apply”.

The problem here seems not to be about the timeshare but the flights. These are exempted from many of the provisions because of art 3(2) of the Distance Selling Directive, which states that the Directive does not apply “to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period”.

The contract here was not for a timeshare, but for the flights and holiday. It raises altogether different questions about cold-calling, and the exclusion from the scope of the distance selling directive of such contracts. This question is better addressed in the review of the distance selling directive.

Note that the UCPD might be utilised in this context, once it enters into force, but only to seek an injunction against such practices and will not as yet give rise to individual rights.

You discussed with the Committee issues arising in relation to multi-annual reservations for hotel accommodation. If multi-annual reservations for hotel accommodation were to be excluded from the scope of the directive, would you see this as a potential loophole in the legislation and if so what could be done to address it?

It could be a potential loophole. Equally, one would not want hotels unwittingly to be caught by the directive. From the explanatory memorandum, it clearly seems to be the case that the Commission intends to exclude these contracts from the scope of the directive. The best solution may be to include something to this effect in the preamble to the directive which would allow the courts to interpret cases in the light of this guidance.

It seems to us that hotel reservations might be more appropriately regulated in another measure. The review of the Package Travel directive may lead to a broader approach to regulating tourism across the EU, and that might be a more appropriate context.

Once again, we need to bear in mind that the Timeshare Directive primarily focuses on information and withdrawal rights. But what, if any, are the problems with multi-annual reservations? If they relate to issues such as price-increases, lack of availability of the right category of rooms, and transfers to other hotels, then

regulation may be needed to deal with this—but the Timeshare revision would be the wrong place to do so. The Committee may feel that it wishes to encourage the government to press for consideration of this issue by the EU in a different context.

2 November 2007

Written Evidence

Memorandum by Citizens Advice

1. Introduction

1.1 Citizens Advice is the national body for Citizens Advice Bureaux (CABx) in England and Wales. The CAB service is the largest independent network of free advice centres in Europe, with 462 main bureaux in England and Wales. Bureaux provide advice from over 3,300 outlets, including courts, prisons, GP surgeries, hospitals, probation services and prisons. All CABx are registered charities. In 2006–07 the CAB service helped people with approximately 145,000 consumer related issues and 32,400 travel, transport and holiday issues.

1.2 Citizens Advice has long been concerned about the effectiveness of timeshare legislation to deal with problems in this market. In November 2003 we published an evidence report, “*Paradise Lost*”, outlining the problems experienced by CAB clients and seeking legislative change.

2. General Comments

2.1 Citizens Advice considers that Directive 94/47/EC, on timeshare, has provided some strong consumer protection which should be retained, in particular the ban on initial deposits and the provision of cancellation rights. We support the proposal for a new Directive in this field that is able to:

- cover all products that use timeshare accommodation of all types, including boats and timeshare-like products that involve large initial fee, regular maintenance or annual membership, and transaction fees;
- provide consumer protection for both the purchase and the life of the contract, for example for administration, re-sales and management fees;
- cover the use of credit to buy the timeshare. The currently unregulated market associated with timeshare is a major area of consumer detriment because there are large sums of money involved, frequently funded through consumer credit;
- fit with other consumer protection Directives which provide consumer protection from certain practices associated with the wider timeshare market and;
- provide for adequate enforcement as well as consumer redress.

2.2 The key factors that result in problems for consumers in the wider timeshare market are:

- Pressure selling.
- Significant expenditure including large up front payments.
- Poor identification of the businesses involved in the sales and ongoing contractual relationship and lack of clarity about who is responsible to the consumer and for what.
- Avoidance of existing laws (timeshare, doorstep selling, distance selling, unfair contract terms, package holidays).
- Long term contracts with no financial certainty for ongoing costs and often no contractual right to end the agreement, even after many years.

3. *With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?*

3.1 The current legislation reduced the number of complaints about timeshare which we believe would return that if the existing law were repealed.

3.2 The rules for timeshare should attract enforcement provisions and redress. Citizens Advice does not believe that voluntary agreements can deliver this. The timeshare market has always attracted a rogue element, because of the high upfront costs paid by consumers (often around £6,000), an ongoing obligation to pay maintenance and service charges, and complex agreements which consumers are unlikely to understand. We believe that the swiftness with which rogue traders managed to evade the initial Timeshare Directive supports the view that voluntary self-regulation will not be sufficiently robust.

3.3 Not all timeshare companies are members of the code of practice operated by the Organisation for Timeshare in Europe (OTE). Citizens Advice considers that there is no guarantee that businesses across this sector would choose to join a voluntary agreement, and even if they did, a code of practice would only be effective if there is effective compliance monitoring.

4. *In this policy area, what do you consider to be the respective roles of EC law and national law?*

4.1 It has been the role of EU legislation to set minimum standards so that all member states can find common ground. Holidays and travel have been important in promoting cross-border purchasing. National law can, in addition, reflect local custom, practice and preference and allow for the particular national enforcement provisions.

5. *What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?*

5.1 The existing Directive has provided good front-end consumer protection, including banning deposits and providing cancellation rights but only in respect of those contracts that have fallen within its definition of timeshare. Weaknesses have been:

- the definitions of products covered and the duration of contracts, which allowed timeshare companies to develop new products outside the scope of the legislation;
- failure to allow for prompt review of the legislation to deal swiftly with new problems causing consumer detriment;
- failure to protect consumers during the life of a long term contract;
- the length of timeshare agreements means there is every possibility of changed circumstances but locks consumers into a product they may be unable to afford without sensible clauses for termination. Membership and maintenance fees are not regulated in terms of the justification and choice for the amount payable and points values can be reduced; and
- other consumer protection directives do not interact with the timeshare directive, so that the full potential for enforcement has not been realised.

5.2 There are a number of issues that need to be addressed if the wider life of a timeshare is to be encompassed in a new Directive, rather than just the initial sale, including maintenance fees.

5.3 Increases in the cost of maintenance fees often cause consumers to relinquish their timeshare and because timeshare agreements can be long people outgrow them. Collection of these fees can be aggressive, as in the following examples:

A CAB in Oxfordshire reported that a couple in their seventies were no longer able to afford the maintenance fees on a timeshare in Portugal they had had for 21 years. The fees had now increased five fold, and the couple had not used the accommodation for some years. When they stopped the annual payments they received a copy from the land registry showing their home with a message that this would be useful in a court action for the money. They sought advice because they thought their home was at risk. When the adviser looked through their contract a clause covering non-payment of maintenance fees allowed for the company to reclaim the timeshare after three years. It also said owners are not obliged to tell the company but just to note the effect of non-payment.

A South London CAB client wanted to terminate a timeshare agreement bought in 1982. Her husband had died and she could no longer afford the maintenance fees to the end of 2011 when the timeshare ran out. The contract terms allowed for the timeshare company to terminate if she failed to pay for three years but had no provision for her to surrender it.

5.4 Changes to timeshare legislation should also be seen within the wider context of the review of the consumer acquis and the new Unfair Commercial Practices Directive (2005/29/EC) being transposed into UK legislation. The proposed new timeshare law is an opportunity to look at how other relevant Directives, including the doorstep selling, unfair contract terms, distance selling and package travel, could work better together to ensure more coherent consumer protection legislation.

5.5 Timeshare is exempt from the Distance Selling Directive, in order to avoid confusion between which legislation applies. There are, however, a number of ways in which rogue elements in the wider timeshare associated market use distance sales:

A Hampshire CAB client from the South East received an unsolicited phone call offering a free holiday in Spain for £149 flights provided they attended a 60-minute exhibition. He had just come out of hospital after an operation and was not thinking clearly, and agreed to pay by credit card. As

they already had a timeshare his wife tried to cancel and was refused. The card company said they could not refund unless the company agreed. The CAB advised that this is in breach of the Distance Selling Regulations and the client should cancel in writing.

5.6 These clients should have been able to exercise the cancellation rights available under distance selling law. The exclusion of timeshare from Directive 97/7/EC on Distance Selling, at article 2, appears to have been misinterpreted by businesses who make unsolicited calls to consumers to include timeshare-like, travel discount club and re-sale of timeshare. As the Timeshare Directive does not currently cover these sales the exemption will not apply.

5.7 Use of distance mechanisms to contact consumers about re-sales is also common and could be tackled under distance selling law. And in the case of Travel Discount Clubs, we see no reason why the Package Travel Directive should not catch this concept. Travel and transport, and other provisions, are commonly involved so that the elements for a package are present.

6. *What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?*

6.1 Citizens Advice believes that it is vital for the Commission to review and revise this Directive regularly. The scope of the review should not be restricted to “certain aspects” of “marketing and sale” and “exchange”, as it will fail to provide much needed certainty about the levels of ongoing costs such as maintenance.

6.2 Many of the current problems in the market are addressed, but we fear that it is too definitive. It will be open to abuse and evasion, for example in the original Directive the three-year rule led to 35 month agreements. In this draft the one year rule will doubtless lead to 51 week agreements which, like the 35 month ones, will be described as “trials”.

6.3 We are concerned as to whether the use of the word “exchange” at 1 (d) would be capable of incorporating the exchange of one timeshare type product for another. This might be captured under 1(c) as “re-sale”. We would welcome clarification.

7. *On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?*

7.1 Citizens Advice believes that the legislation must require companies to provide all the information consumers need. We are concerned that there are still gaps in provision, including the following:

- Annex II at (d) the addition of a specific date by which failure to complete the accommodation would trigger reimbursement.
- Annex III at (c) the duration would seem always to be relevant rather than being included “if necessary”. At 9(d) the further costs such as maintenance and booking costs need to be known if consumers are to make an informed transactional decision, as envisaged in the UCPD. We see the provisions of Article 5 (5) as reflected in (e) as very dangerous and against the whole nature of withdrawal rights which, we believe, should return the consumer to the pre-contractual position.
- Annex V at (h) provides for important information but we believe for the contracts covered by this annex to have value the concrete examples should be the most popular ones requested.

8. *How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?*

8.1 In the UK we have examples of good practice in the delivery of information to consumers through provisions for credit paperwork. We suggest the following:

- A prominent title to the front of the paperwork that clearly defines the nature of the agreement and the law governing it, for example “timeshare re-sale contract governed by the timeshare directive . . .”.
- Consumers’ signatures should be in a box that also contains wording that the contract is cancellable.
- Cancellation information should be presented adjacent to the signature box, should specify how and where to cancel and the date by which this must be done and should make reference to where further advice can be readily obtained.

9. *How satisfactory, from the consumer's perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?*

9.1 We are concerned that even preliminary agreements will need to include the information in the annex and are not sure why a binding preliminary contract should be permitted at all.

9.2 At Article 5.3 withdrawal rights are extended by a maximum of three months for failure to provide information including at Annex I(m) on withdrawal. It is our experience that when cancellation rights are not given, consumers will not realise they are available so that the extension for three months may not have the desired effect. We suggest the withdrawal rights should always run from the provision of the required information, however long it takes to provide it. This, we feel, will avoid rogue traders risking not providing cancellation rights on the basis that only a few consumers will realise they are missing within three months.

9.3 The provisions at Article 5.5 provide the obvious way of getting around the rules. Rogues will make up costs that consumers are not in a position to challenge and will threaten court action for failure to pay. This clause undoes the consumer protection provided in the right to cancel.

10. *One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2), which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?*

10.1 If a comprehensive directive is to be achieved, Citizens Advice believes that the Commission must take into account what has worked for each member state. For example, In the UK we have always included caravans as potential timeshare accommodation, as these were in common use when UK legislation was passed, but were far less clear about the inclusion of boats. Movement of consumers and business around the EU is more common now so that practices in one state might be spreading more easily to other states.

10.2 In terms of Article 1(2) however it is very important that consumers know how to use their cancellation rights. In our briefing report "*Can You Cancel It?*"¹, we concluded that more consistency was needed in relation to cancellation rights in EU legislation. We recommended:

- a minimum 14 day cancellation period, clarifying whether these should be working or calendar days;
- a common time for the cancellation clock to start ticking, taking into account the problems across different markets; and
- a variety of methods for consumers to exercise their cancellation rights, which also reflected the various methods of purchase.

11. *How can consumers best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?*

11.1 If this important protection is to be assured, we suggest that acceptance of a payment before the end of the withdrawal period should result in the agreement being open to legal challenge as unenforceable. In addition in our report *Paradise Lost*² we recommended that all companies engaged in the wider timeshare market, including agents who undertake re-sales, should be registered in the member state in which they operate. Further, we said that these businesses should make suitable arrangements for the protection of consumer monies that are paid in advance.

A Derbyshire CAB reported that a client was persuaded to pay £3,500 to join a holiday club whilst on holiday in Tenerife. She had changed her mind by the following day but had no cancellation rights.

12. *How significant a problem for consumers have advance payments been in the re-sale market (Article 6(2))?*

12.1 Re-sale has become an addition to those scams easily perpetrated in this market. In our experience the seller in re-sale scams is never heard of again and the name of that client is often sold on for a further scam to try to get the advance fee back. This also raises issues about data privacy.

A Dorset CAB client was cold called by a company offering her help to sell her timeshare. They required £995 up front for marketing and presentation costs which would be refunded when the timeshare was sold. The terms and conditions were read over phone. The client phoned the next

¹ Citizens Advice evidence briefing "*Can You Cancel It?*" December 2005—CAB/ECC clients' experience of cancellation rights in consumer contracts.

² Citizens Advice evidence report "*Paradise Lost*"—November 2003—CAB clients' experience of timeshare and holiday clubs.

morning to cancel but was told all had been processed and she could not do, though she was supposed to be entitled to a seven days cooling off period.

A CAB in Gloucestershire saw a client who had lost all his savings after trying to resell his timeshare. After dealing with one company and ending up losing £5,000, he was cold called by another one, based in Spain, who offered him to get his money back in a group legal case but that never happened.

13. *What are your views on the provisions relating to judicial, administration and out-of court redress (Article 9 and Article 10(2))?*

13.1 In the UK the provisions of Article 9 seem most likely to be provided by enforcers in the consumer protection field, though changes to provision for representative actions may add to this. In terms of Article 10.2 we currently have no consumer ombudsman except for specific purchases, so that the clause would rely on encouraging codes of practice in this market. As we have outlined earlier in our submission, we do not feel that codes of practice in this area are likely to be effective.

14. *The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by member states for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?*

14.1 It is not clear whether sanctions at Article 11 are to apply to all the provisions of the proposed new Directive. We have not been convinced that all the tools available for enforcing consumer protection relevant to this market have been used. We are not convinced that enforcement is adequately funded.

17 September 2007

Supplementary memorandum by Citizens Advice

1. INTRODUCTION

1.1 Citizens Advice was asked by the Committee to provide follow-up evidence in the following areas:

- Coherence of consumer protection legislation.
- Problems with exchange agreements.

2. COHERENCE OF CONSUMER PROTECTION LEGISLATION

2.1 The proposed new Directive presents an opportunity to look at how various Directives could work together more effectively to achieve more coherent consumer protection legislation. In our initial written evidence we cited distance selling, doorstep selling and package holidays as areas which are relevant to the Timeshare Directive. This section looks at these areas in more detail.

2.2 Citizens Advice Bureaux often report cases where the telephone, normally associated with distance selling, has been the conduit for engaging consumers in timeshare-like sales and resales. To sell holiday club deals the initial call claims that the consumer has “won a holiday” but the objective is to ensure that a presentation is attended during this “holiday” and it is often necessary for flights to be bought.

A 70 year old CAB client from Somerset living alone and suffering from depression and paranoia received a telephone call telling her she had won a holiday. There were people cheering in the background. She thought they said she needed to pay £7 booking fee so gave her credit card details. £584 was taken from her account. Her doctor telephoned the company to explain the position but they would not speak to him. The paperwork received also shows the accommodation is timeshare, flights, meals and transfers are not included. The paperwork also says the offer is only available to people in paid employment.

A CAB client from Devon sought advice on behalf of her brother-in-law who is mentally disadvantaged and receives Incapacity Benefit and Disability Living Allowance. He received an unsolicited phone call from a company in Florida, offering a Florida holiday for four for £700, and he paid over the phone by credit card. It later transpired that the offer was only for accommodation

and did not include flight tickets. It was actually from a timeshare company. Repeated phone calls and correspondence have failed to produce a refund of the £700, despite the website offer of this in the event of cancellation within 30 days. Based in part on the client's complaint, the Florida Department of Agriculture and Consumer Services have filed an action against this business, illustrating the global practices in this market.

2.3 The cross-over between timeshare and doorstep selling has meant that doorstep selling law applies in cases where consumers are taken to a venue off business premises, such as a local hotel, for presentation of products that successfully evade the timeshare legislation.

A CAB client from Somerset who was HIV+ was given a scratch card whilst on holiday in Malta. He was told he had won and told: "just come and hear about our holiday club". At the presentation he was persuaded to sign up to a 20 year deal for £11,600. He wanted to cancel and expects that his health would not allow him to use the holiday club. The credit company is based in the UK but the agreement says it is governed by the laws of the British Virgin Islands. He was not covered by timeshare law and the credit company has refused his request to cancel. But the bureau advised that he should have received cancellation rights under the Doorstep Selling Directive.

2.4 The cross-over between timeshare and package holidays has long been a concern for Citizens Advice, and was highlighted in the 2003 report *Paradise Lost* which looked at CAB clients' experiences in the timeshare and timeshare-like market. This report noted that the products sold in some holiday club agreements included the very elements that package holiday regulations was designed to protect—those offering both travel and accommodation.

CAB clients from East London sought advice about the lack of consumer protection covering their experience of pressure selling of a holiday club product. While they were in Tenerife, they had been approached by someone who offered them a Club Class Holiday scratch card free of charge, offering 40% discount on hotels and 50% off flights. They scratched the card and we told that they had won a prize. The person then took the clients about 150 yards from where he met them, into the office of the supplier. Because the accommodation and flights are often supplied by different businesses it is not clear that the Package Holiday Directive would cover this contract, despite them being sold to the consumer as linked elements.

3. PROBLEMS WITH EXCHANGE AGREEMENTS

3.1 Consumers often pay annual fees in order to enter into exchange arrangements to use accommodation at other resorts. This section looks at CAB evidence where the alternative accommodation has failed to meet the consumer's expectations, highlighting the difference between what has been described and what is delivered.

A CAB client from the Lake District was sold a holiday club membership in Spain, which did not live up to expectations. There was poor availability and the accommodation was substandard, leaving the client £10,000 out of pocket, having had only one holiday in three years.

A CAB client from the West Midlands was sold a holiday club that promised five star hotel accommodation at three star prices. He had specified that holidays had to be taken during school breaks, as his wife is a teacher. He confirmed all holiday dates in writing. When he tried to book he was told by the Spanish agency that arranging bookings that the company have no access to these five star hotels and he had never succeeded in making a booking. The holidays have proved a source of frustration and delivered nothing, he thinks it is a scam.

A Northumberland family sought advice about ending their 39 year holiday club agreement, which should have enabled them to go on holiday to any chosen hotel, anywhere in the world and get a free week with an automatic upgrade to luxury status. They were very unhappy and upset with the standard of the hotel accommodation on the one holiday they took using the "points" system. The client signed the deal for over £7,000 and then had to pay £77 per month admin charges. They paid a deposit and put the rest of the money on the credit agreement. The bureau calculated the overall cost as £12,000. The company has already gone into liquidation and been taken over twice. The credit was arranged there in the hotel for them so the contract appears to have been made off trade premises, which should have attracted doorstep selling rights.

Memorandum by Group RCI

1. *With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?*

Clearly the existing Timeshare Directive has been a success for timeshare products and services. The standard of consumer protection is high, and as a result, consumer confidence has increased and complaints have significantly decreased since the Directive's inception in 1994. The Commission has produced no evidence to back up any claims that the current Directive is not functioning effectively for the timeshare industry, and there seems to be no real reason focus so heavily on increased regulation of the timeshare industry. With regard to other travel products or services such as discount travel membership clubs, RCI agrees with the timeshare industry's assertion that the enforcement of existing laws to target those rogue operators who are the real cause of consumer detriment would be sufficient to alleviate current concerns.

The vast majority of timeshare operators in Europe have supported a self regulatory scheme since the formation of the Organisation for Timeshare in Europe (OTE) in 1998. Through the application of the OTE Code of Conduct, which covers not only the sale and marketing of timeshare products, but also resale, exchange and other holiday options not addressed by the 1994 European Timeshare Directive, complaints about the timeshare industry have reduced by 60% since 2002. Currently, the vast majority of complaints are resolved within 14 days of receipt. Additionally, the OTE Alternative Dispute Resolution Scheme, developed and independently administered by the Chartered Institute of Arbitrators since 2005, has been very successful in encouraging even swifter complaint resolution for consumers.

Finally, if new legislation is necessary, and it is, it should follow the same format of the Unfair Commercial Practices Directive, focussing on general principles rather than tying consumer protection to specific services or products, which will be obsolete once new services have been developed with the aim to circumvent the requirements of the new Directive. The advantage of codes of conduct is that these can be swiftly amended to reflect new market practices or the introduction of new products and services thereby ensuring that the requirements found in the principle based legislation are clarified to also apply to the new practices or products and services.

2. *In this policy area, what do you consider to be the respective roles of EC law and national law?*

While EC laws clearly have a role in ensuring that consumers benefit from a high level of consumer protection throughout the EU so that UK consumers benefit from the same protections when buying abroad as when purchasing at home, the Commission must leave to member states the discretion to enact such legislation that defines how such consumer protection is achieved locally.

3. *What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?*

Generally, the existing Directive has worked well as indicated by the significant decrease in consumer complaints since its enactment.

4. *What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?*

The Commission's Impact Assessment on this issue clearly demonstrates that the real consumer problems do not lie with timeshare, but with other holiday products that do not afford consumers the protection included in timeshare products—namely Long Term Holiday Products and Discount Travel Membership Clubs. The scope and definitions contained in the draft Proposal only serve to confuse and muddle the issue, and add further burdens to the timeshare product without adequately addressing the fundamentally different Long Term Holiday Discount Travel Membership Club products.

5. *On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?*

As a general rule, the proposed annexes relating to timeshare and timeshare exchange require too much non-material information to be included in the purchase contract while not going far enough in relation to information required to be included for Long Term Holiday Product contracts.

With regard to the new annex affecting our product, timeshare exchange (Annex V) the requirements are unduly onerous and at times confusing. For example, the Proposal states that exchange is an ancillary contract and will be cancelled automatically if the consumer cancels the timeshare agreement—and yet the Annex requires that exchange companies indicate how a consumer can cancel the exchange contract, an irrelevant disclosure since the consumer need not take any action. Furthermore, the requirement for exchange companies includes items only relevant to operators of resorts themselves, such as disclosures of the cost of running resorts, resort management and repairs, and other factors irrelevant to an exchange guest, who is in effect only visiting the resort he exchanges into. Finally, while we currently provide a disclosure guide that succinctly describes the 3,300 resorts available for exchange, the proposed depth of description in all EU languages could lead to a volume of over 3000 pages.

6. *How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?*

RCI supports the OTE's suggestion of working closely with partners such as the European Consumer Centres, the DTI and the OFT to create a pan-European information campaign.

7. *How satisfactory, from the consumer's perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?*

We fully support the imposition of a cooling off period, which we believe should be harmonised throughout Europe. Since evidence shows that the majority of consumers who cancel do so during the first few days of the cooling off period, we do not believe that extending the period from 10 to 14 days will lead to a significantly improved environment.

Additionally, as stated previously, while the Proposal states that exchange is an ancillary contract and will be cancelled automatically if the consumer cancels the timeshare agreement, the proposed Annex requires that exchange companies indicate how a consumer can cancel the exchange contract, an irrelevant disclosure since the consumer need not take any action. We believe this requirement is confusing and unnecessary, and suggest that it be removed. We agree that written details of the cooling off period should be included in the timeshare purchase contract, together with the date of cancellation and details of where and how the consumer should cancel, but that the exchange contract should simply state that it is an ancillary agreement and will be automatically cancelled in the event of cancellation of the main purchase contract.

8. *One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2) which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?*

Allowing Member States to apply more stringent national provisions seems out of sync with the goal of establishing a more consistent regime across the EU. The UK would seem to be put at a great disadvantage since timeshare is a vital economic contributor to the small tourist communities where resorts are located and the lack of consistency would place such communities at a disadvantage with their European counterparts, thus damaging to the area in terms of year round employment and the benefits to local businesses.

9. *How can consumers best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?*

A full ban on advance payments would only exacerbate an already tenuous situation, as timeshare developers would be put at further disadvantage in working to sell and close legitimate, trust-protected contracts. We have continually advocated the use of independent third parties for deposit payments, a system used effectively in many other jurisdictions, and strongly advocate that such third party escrow system would encourage the

growth of the industry. As there is no evidence of a significant volume of complaints relating to difficulties in obtaining refunds of deposit payments, RCI joins the timeshare industry in calling for the Commission to review this proposal.

10. *How significant a problem for consumers have advance payments been in the resale market (Article 6(2))?*

The single most significant concern about advance payments is the fraudulent practice of contacting a consumer by phone and persuading an existing timeshare owner—generally by making a false promise that a buyer has been found—to part with a significant sum of money in anticipation of the sale of his or her timeshare interest. Such practice, is outright fraud and could be dealt with under existing laws. In many jurisdictions, however, resale agents are permitted to take a fee for legitimate advertising expenses. These reputable agents form an important part of the industry and the Commission’s proposal will impede on their business practices and, ultimately, could make the selling process more difficult for the timeshare owner.

11. *What are your views on the provisions relating to judicial, administrative and out-of-court redress (Article 9 and Article 10(2))?*

The proposal’s requirements for judicial, administrative and out-of-court redress are consistent with existing practice.

12. *The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by Member States for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?*

The sanctions as enumerated seem reasonable. However, as mentioned above, we see the lack of consistent enforcement to date as a significant issue.

13. *With particular relation to enforcement, do you consider that the relationship between the proposed new Directive and the provisions of the Unfair Commercial Practices Directive is sufficiently clear?*

We believe that with proper enforcement, the UCP Directive will address many of the concerns described by the Commission and is a more appropriate vehicle for dealing with the aggressive and misleading practices carried out by the rogue operators who cause that consumer detriment.

14. *Are there any significant issues in the timeshare market that the proposed new Directive has failed to address?*

We firmly assert that, with regard to the timeshare market, the current Directive has worked well and there is no evidence to suggest that a new Directive is required. Clearly the products described in the proposal as “long term holiday products” pose concerns for regulators, however, we believe that it is clear that these travel-related services are still not as strictly regulated as timeshare by the proposal and could be better addressed by enforcement of the UCP or other consumer fraud regulations.

ABOUT GROUP RCI

RCI is a vendor to the timeshare resort industry that exists to make opportunities available for timeshare owners to exchange their timeshare interests with other timeshare owners in different locations and thus to maximise the flexibility and enjoyment of their purchase. Timeshare Exchange facilitates the delivery of high year-round occupancy rates in holiday regions and encourages the even spread of tourism in local markets. RCI Exchange is operated by Group RCI, a wholly-owned subsidiary of Wyndham Worldwide. Wyndham has 5,000 employees in Europe, of which 1,500 are employed in the RCI-EU Timeshare Exchange business. RCI Europe, Middle East and Africa Headquarters are in London, with offices and employees in the UK, Eire, Spain, Belgium, Germany, Italy, France, Greece, Portugal, Finland, Egypt, the UAE and South Africa. RCI member households number more than 400,000 in Europe, and while RCI does not own any resorts, over 3,500 resorts globally are affiliated to RCI’s network.

25 September 2007

Memorandum by Andy Harris

My name is Andy Harris.

I am submitting this evidence as an individual. I have been an owner of timeshare since 1986 and I have worked in the timeshare industry in England, Canary Islands and in the Caribbean for about 15 years.

I am a shareholder in four timeshare companies which are involved in development, sales and marketing, resort management and resales.

I was invited to meet with the Consumer Affairs Directorate in 2001 to discuss the protection of consumers for timeshare sales.

I am a former committee member of the Timeshare Consumers Association, I have membership of the Organisation for Timeshare in Europe and I was the Expert Witness in a case involving Lanzarote Beach Club.

I would like to give my evidence on the specific issues as follows:

OVERVIEW

Rationale Legislation

1. I agree with Mr van der Mark says that there is already enough legislation; we have the Companies Act, we have the Sales of Goods Act and we are soon to have the Unfair Commercial Practices directive. Therefore, in simple terms, if the product does not do what it says on the tin, the consumer may claim their money back.

2. It is very confusing for the consumer who reads about UK law being overturned in a European Court of Law, whereas in many instances, the national law overrides and is stronger than the European law. For the sake of clarity for the consumer, I would suggest that the European Union's timeshare directive should be implemented by all member states and that it should take precedence over any national law. Therefore, if the cooling-off period is to be five days, then this should be the same for everybody and it should override the fact that Germany may want to go for a 50 day cooling-off period.

3. It has been agreed by both the OTE and Mr Grey that the existing directive has had a marked affect on timeshare sales. There have been less complaints about timeshare, which may be looked at as a good thing. However:

- (a) There have been more complaints about holiday clubs.
- (b) Holidays clubs did not exist before the legislation.
- (c) There are less complaints about timeshare because there are less timeshare companies marketing in the EC countries.
- (d) The directive has meant increased marketing costs.
- (e) This has led to higher sales prices.
- (f) The consumer now has the same excellent product at a higher price, but it has driven a number of companies into financial difficulties which, in turn, have led to higher management costs.

4. The definitions will cover everything from a three year pack to a holiday home in Tuscany. I think the definitions should just cover products bought outside your country of residence. Alternatively, Article 1 should apply to all holiday products and Article 2 could refer to a contract of more than 12 hours. This would give a level playing field with the rest of the holiday industry.

5. *National Provisions*

I agree with Article 3 that companies should provide written information where the consumer requests it.

6. Consumers have way too much information available to them from far too many different sources. There should be one source to obtain all information on legislation and this should be the Department of Trade and Industry.

7. *The Right of Withdrawal*

From a consumer's perspective the provisions on the right of withdrawal would appear to be very satisfactory. However, as this encourages cancellations, this means that the consumer who cancels an excellent timeshare product is likely to end up doing as they always do, ie staying in sub-standard accommodation at inflated prices through unscrupulous travel agents and tour operators.

8. You have drawn comparisons between Europe and the US. It has been brought to your attention that some States in the US offer a three day cooling off period. Might I suggest that you look at one of the world's biggest timeshare user countries, which is South Africa? The Timeshare Institute of South Africa (TISA) is a self-regularity body that governs business practices in the timeshare industry in South Africa. They have a 15 page code of conduct which all timeshare operators must adhere to. This includes a five day cooling-off period. Rather than re-invent the wheel, I would suggest that this is adopted for all EU member states.

9. *Advance Payments*

The consumers can best be protected by saying "No". Timeshares are generally offered to people between the ages of 25 and 65 who are married or co-habiting and who own their own house. The law can only protect them so far. Whilst you feel the nanny state should hold the consumer's hand, I feel that the consumer should be given more credit for their intelligence. After all, at the age of 18 they are allowed to vote for MPs.

10. There is no problem for consumers making advance payments in the resale market, so long as the consumer has not been cold called.

11. *Redress*

Under Article 9, I believe that the best method of out of court redress should be by a single professional organisation, such as the Organisation for Timeshare in Europe. One of the problems that the consumer has is the confusion created by having so many different parties apparently involved with timeshare complaints, eg the Office of Fair Trading, The department of Trade and Industry, Trading Standards, Citizens Advice Bureau, the Organisation for Timeshare in Europe, the Association of Timeshare Owners Committee, then there are various one-man bands such as Mr Sandy Grey who pretends to head up a consumer organisation.

12. *Sanctions Monitoring and Enforcement*

If all monitoring sanctions and enforcement are done by one body, albeit the DTI or OTE, then they should have the power to impose fines accordingly. It should be very simple that any company not adhering to the rules should not be allowed to trade.

13. I feel that because of the Unfair Commercial Practices Directive that there is actually no need to make any amendments to the Timeshare Directive. I would have thought that making changes with something done as recently as 1997 is over zealous and I would have expected the House of Lords to have better things to do.

14. *Outstanding Issues*

If the Directive is to cover many holiday products, then it should be known as the Holiday Directive.

I would now like to cover some other points arising:

Languages

In Article 3 I would suggest that it is difficult for small companies to have everything in different languages. If the customer does not understand the language, then they should either not sign the contract or have it translated.

Complaints

The proposal talks about a significant number of complaints. However, this is not defined. If it is correct that the majority of complaints are to do with holiday clubs, then I agree with the OTE that they should be dealt with separately. In the Consultation Paper by the DTI on the same issues in 2000, it was pointed out that the majority of complaints are post-contractual by members who are concerned about management fees. Therefore, the changes proposed in the current Directive will not address this issue.

Deposits and Cancellations

The proposal talks about member states, consumers and other stakeholders versus the European timeshare industry. I believe the significant contributions by timeshare to the economy should not be overlooked. As an example, holiday bookings in certain areas of the UK are way down due to the poor weather; however timeshare units still retain their high occupancy levels, thus keeping staff employed. By encouraging cancellations and stopping the taking of deposits you will be further damaging the timeshare industry.

Under self-regulations, we would use timeshare trustees who are most certainly trustworthy to hold deposits. As with many other products, the deposit should actually be non-refundable. Customers should not be allowed to withdraw from contracts if they agree to purchase a product and the product does what it says, then timeshare should be treated as any other product. Customers are simply guaranteeing their holiday accommodation for future years at a fixed price.

Prior to the current Directive approximately 10 out of every 1,000 people invited to a presentation completed a purchase. The legislation has now meant that only five people out of the original 1,000 complete a purchase. This has led directly to holiday clubs and timeshare resorts running into financial difficulties. Any further legislation will simply damage the good guys, whilst the bad guys will continue to find loopholes.

O TE

In your consultation with the OTE, it was pointed out that the United States offer 10 days cooling off period. In my opinion, there should be no cooling off period at all. This would benefit the consumer as they would be able to buy the product at a lower price. However, to extend the current period would be a pointless exercise as the majority of people cancel within the first two days anyway. I agree with the OTE that people do not read contracts and so the more that is put in the paperwork, the more it confuses the consumer who you are trying to protect.

If the OTE, who claim to represent the majority of timeshare owners, are receiving just 250 complaints, I am surprised that so much time is being spent on changing the legislation. You say that the, "Directive has not gone wrong, but something is wrong in the market place that was not before". Might I point out that the legislation has created the holiday clubs and you will create new ideas that circumvent the law if you make any further changes, whereas if you make it easier to sell good old fashioned timeshare, the travel clubs will disappear.

You say that timeshare is sold as an investment. However, I find this an extraordinary claim. All timeshare is sold as an investment in holidays and every sales presentation I have seen explains that the product might not be worth anything over a period of time. With the Sales of Goods Act, Companies Act and the new Unfair Commercial Practices Directive, I agree with Mr van der Mark that you have enough legislation already.

30 August 2007

Memorandum by Interval International

1. *With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?*

Binding legislation is essential in this policy area. Voluntary agreements only bind those companies that subscribe to them. Self-regulation by trade associations such as the Organization for Timeshare in Europe has been effective in ensuring that its members adhere to applicable laws and to high ethical standards. Most problems experienced by consumers have been caused by companies that are not members of the trade association over which the trade association does not have any control.

2. *In this policy area, what do you consider to be the respective roles of EC law and national law?*

Timeshare transactions are usually characterised by contracts between parties that are not based within the same jurisdiction ie: UK residents purchasing a timeshare interest in Spain, Portugal or Italy. It is important that regulation in this field be harmonised across the 27 Member States to ensure the same level of protective measures across the EU regardless of the place of residence of the consumer and the jurisdiction of the timeshare trader. A harmonised set of rules would simplify matters for business and would avoid confusion

amongst consumers. The desired level of harmonisation can only be achieved through a balanced EU Directive which, *inter alia*, should have the effect of eliminating divergences in the national laws of the Member States.

3. *What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?*

The existing Directive has gone a long way toward providing better protection for consumers. However, problems have continued to exist primarily due to the fact that consumers continue to be deprived of the protection offered by the Directive as a result of the emergence of holiday products that have been sold outside of the legislation. The introduction by the existing Directive of a ban on the taking of advance payments by consumers has been punitive for the timeshare industry without adding protection for consumers. The ban on advance payments is regarded by the timeshare industry as disproportionately burdensome for EU timeshare businesses in relation to the public interests that the Timeshare Directive aimed to safeguard. Prohibitive measures that hamper business growth should not be preserved or repeated. Where possible, the new Directive should also serve as the basis for rectification of errors made in the past. The existing prohibition should be modified so as to allow the taking of advance payments for so long as they are secured by recognised independent third parties, such as trustees, notaries or authorised escrow agents accredited by national law.

4. *What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?*

The response to this question is limited to the scope of the proposal as it relates to exchange traders.

Exchange contracts should not come under the scope of all of the provisions of the Directive. Some provisions such as the Right of Withdrawal prescribed by Article 5 should not be applicable to exchange contracts. The reason for this is that the exchange contract is an ancillary contract. Therefore, as provided in Article 7, the exchange contract must automatically terminate if the consumer exercises his right to withdraw from the main timeshare contract. In practice, the enrolment of a consumer as a member of the programme offered by the exchange trader is made by the timeshare trader in the context of the purchase of a timeshare interest. If the timeshare purchase is cancelled, the exchange should cancel automatically. The provisions of Article 7 suffice and there is no need for a separate withdrawal period for exchange, as provided in Article 5.

5. *On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?*

The requirement imposed on traders to provide pre-contractual information is a valuable mechanism for the protection of consumers. Our opinion is that the European Commission has not correctly understood the nature of the exchange business and the mechanics associated with the enrolment of consumers as members of an exchange programme.

The reality is that exchange traders do not interact with consumers when they purchase a timeshare interest. The sale of a timeshare is performed by the timeshare trader who subsequently enrolls the consumer as a member of the exchange company. Often, this happens three or four weeks after the purchase of the timeshare interest by the consumer. The obligation to provide information on exchange should, therefore, be placed on the timeshare trader as the exchange trader is not present when the consumer signs the timeshare contract. The exchange trader should be required to deliver annual information on the main features of the exchange programme but the obligation to provide such information to the consumer should lie with the timeshare trader as part of the timeshare sales contract.

6. *How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?*

Through informative campaigns initiated by the Department of Business, Enterprise and Regulatory Reform and by encouraging consumers to contact the trade association OTE and read the information materials which are periodically produced by OTE.

7. *How satisfactory, from the consumer's perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?*

Please see response to question 4 above. Article 5 should not apply to exchange. Automatic cancellation of an exchange contract must take place (as provided by Article 7) if the consumer exercises his right to withdraw from main timeshare contract.

In addition, there are important omissions in Article 5 (2), (3) and (4). The references to Annex I and Annex II should be expanded to also include points (a) to (k) of Annex III and points (a) to (i) of Annex IV. The extended withdrawal period of three months should also arise in the context of Long Term Holiday Products and Resales.

8. *One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2) which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?*

The proposed Article 1(2) is most unfortunate. A consistent regime across Member States is essential and Member States should not be given the option to apply more stringent national provisions. The proposed Directive should not miss the opportunity of introducing a uniform set of rules across the EU. Article 1(2) will defeat the whole purpose of the new Directive. The Article should be deleted as otherwise the legislation is bound to give rise to confusion for consumers and fragmentation of the European internal market.

9. *How can consumers best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?*

We believe that the prohibition on the taking of funds at point of sale was by far the most punitive, damaging, discriminatory, and unnecessary measure introduced by European legislators when timeshare was regulated through EU wide legislation. These views are unanimously shared by all timeshare operators in Europe today. With the enactment of the Timeshare Directive in 1994, the European timeshare industry was singled out as the only industry in Europe that would be prohibited from taking a deposit sum at the time of execution of a sales agreement. Further, we know of no other jurisdiction in the world that has a prohibition on deposits as part of their timeshare regulations. Other less punitive means have proven to provide the needed protection of the purchaser's deposit.

There are several mechanisms that will provide the adequate protection necessary to ensure that funds are protected. These include escrow accounts, trustee arrangements, third party guarantees and other arrangements providing security such as posting of letters of credit.

Each Member State should be allowed to define the mechanisms that are best suited to protect the advance payment made to a third party. We at Interval International are strong proponents of an amendment to the proposed Article 6 that would serve the purpose of facilitating the taking of an advance payment provided that any of the above described guarantees are in place.

10. *How significant a problem for consumers have advance payments been in the resale market (Article 6(2))?*

In the past few years, a substantial number of consumer complaints have derived from the activities of certain unscrupulous resale companies. These companies try to extract money from existing timeshare owners by persuading them to part with an advance payment or administration fee for selling their timeshare, promising them guaranteed sales for their timeshares at inflated returns. Often, once the initial deposit is paid, the consumer hears no more. Unlike in the case of timeshare contracts, a ban on deposits for resales is justified.

11. *What are your views on the provisions relating to judicial, administration and out-of court redress (Article 9 and Article 10(2))?*

These provisions are adequate and correctly drafted.

12. *The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by Member States for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?*

A majority of the problems experienced by consumers are the result of very poor and often in-existent enforcement in some of the Member States. Some Member States did not introduce any sanctions in their legislation implementing the existing Directive. The proposed new requirement for Member States to introduce effective, proportionate and dissuasive sanctions will only be beneficial for so long as the respective national bodies engage in the practice of monitoring compliance with the legislation.

13. *With particular relation to enforcement, do you consider that the relationship between the proposed new Directive and the provisions of the Unfair Commercial Practices Directive is sufficiently clear?*

Yes.

14. *Are there any significant issues in the timeshare market that the proposed new Directive has failed to address?*

We also would welcome views on any other aspect of the Commission's Proposal Interval International has serious concerns regarding the scope of the revision of the Timeshare Directive in general and as it relates to exchange issues in particular. The European Commission has failed to recognise the distinct nature of the business offered by exchange traders and proposes same legal requirements for both timeshare contracts and for exchange.

An exchange trader typically enters into multi-year affiliation agreements with developers of timeshare resorts ("timeshare traders"), pursuant to which the timeshare traders agree to enrol all purchasers of timeshare interests at the applicable resort as members of the exchange trader's network. In return, the exchange trader provides the timeshare purchasers with the ability to exchange their timeshare accommodation for comparable accommodation at resorts participating in the exchange network.

It is important to differentiate exchange from timeshare. Timeshare, unlike exchange, is characterised by substantial financial and long term commitments. Exchange is different. Timeshare traders generally enrol their timeshare purchasers as members of the exchange trader at the time of the initial purchase of the timeshare interest by the timeshare purchaser. The initial enrolment term with the exchange trader ranges from one year to three years. Timeshare owners are then responsible for renewing their membership and paying related fees.

Exchange fees are quite modest: £69 per year membership fee and, should the member wish to exchange, £99 exchange fee (for exchanges to Europe, North Africa and the Middle East) or £114 (for exchanges to the rest of the world). Generally, no funds are paid by the consumer at enrolment, only at time of renewal. Responses to the Commission consultation gave no evidence of problems related to exchange and consumer complaints about the exchange sector are extremely low.

Interval International views as highly problematic a proposal that has failed to recognise the ancillary nature of the exchange service and that requires exchange contracts to comply with the same provisions that are to apply to timeshare purchase agreements, despite being entirely different types of contract. While Article 7 of the proposed Directive correctly characterises exchange as an ancillary contract, the remaining provisions that are to apply to timeshare and long term holiday products are also made applicable to exchange contracts.

While we are fully supportive of the introduction of a 14 day withdrawal period applicable to timeshare purchase contracts, we see no need for the introduction of a separate withdrawal period applicable to exchange, as required by the proposed Article 5. Our view is that the introduction of a mandatory withdrawal period for exchange contracts is unjustified as it is neither supported by any evidence of consumer complaints nor does it offer additional value to the consumer. It could even be confusing for consumers to have to deal with two withdrawal periods (one for the timeshare contract and one for the exchange membership contract) that do not run concurrently, as the exchange contract is only executed once the exchange trader receives it from the timeshare trader, sometimes two to three weeks later.

Furthermore, in almost all cases the consumer pays nothing to the exchange company for the initial membership—as it is paid by the timeshare trader. Therefore, there is no reason for a cancellation period for the exchange membership contract since there are no consumer funds to be protected.

As the exchange membership contract is ancillary to the timeshare purchase contract we support the provision enshrined in the proposed Article 7 which introduces an automatic ancillary contract cancellation provision. Accordingly, if the consumer exercises the right to withdraw from the main timeshare contract, the exchange membership contract would automatically be cancelled. Article 7 achieves the objective of effectively protecting consumers without penalising exchange businesses.

DISCLOSURE INFORMATION ON EXCHANGE

We support a legal framework whereby consumers are provided with adequate pre-contractual and contractual information by timeshare traders so that they can make an informed decision when purchasing a timeshare interest. As pointed out above, the timeshare trader (as opposed to the exchange trader) is the party that interacts with consumers during the timeshare purchase process. It is, therefore, important that the information to be provided by the timeshare trader not be limited to the attributes of the timeshare product but also include information on exchange services.

Annex V of the proposal produced by the Commission requires amendments and refinement to ensure that the information elements listed therein are tailored to meet the needs of both exchange traders and exchange consumers. Information requirements that may be suitable for timeshare contracts are not appropriate for the services that are typically provided by exchange traders. Exchange businesses should be required to produce information specific to their business. Timeshare traders should then be required to provide to their customers the information issued by the exchange trader. This is the best way of ensuring that consumers have an adequate understanding of an exchange programme prior to making a decision to purchase a timeshare interest.

INTERVAL INTERNATIONAL

Since 1976, Interval International has led the vacation ownership industry with its hallmarks of quality and innovation. Interval has a global network of more than 2,200 resorts in 75 countries, and serves its developer clients and over 1.9 million members—worldwide timeshare vacation owners—through 26 offices in 17 countries. Interval provides a variety of exchange services and year-round travel related benefits to enhance member vacation experiences. Headquartered in Miami, Florida, and with European headquarters in London, Interval International is an operating business of IAC/InterActiveCorp, (NASDAQ: IACI), which also includes such well-known brands as Ticketmaster, Ask, Lending Tree and City Search.

4 September 2007

Memorandum by Local Authorities Coordinators of Regulatory Services and Trading Standards Institute

1. QUESTION 1

1.1 *With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?*

1.2 ANSWER

1.3 The Commission's own study confirmed the need to tackle the problem, which has evolved from a mere sale of timeshare to other forms of holiday clubs.

1.4 Trading Standards have experience of the problems encountered by consumers. We confirm that binding legislation is the only way to prevent rogues ignoring any voluntary agreement. UK consumers are targeted by rogues abroad who encourage participation by transporting them to an isolated venue where they feel unable to "escape". Promised incentives to attend, very long presentations and misleading verbal indications of resale procedures will not be resolved by any voluntary agreement.

1.5 We strongly believe that a failure to introduce binding legislation could lead to a two-tier system with the majority of operators complying with the voluntary agreement but a hard-core minority failing to comply. This will lead to uncertainty in the market place. The introduction of the Timeshare Act 1992 considerably reduced the complaints received by Trading Standards about this trade sector. Unfortunately certain operators, in particular, the Resale market, those involved in the Points business and those operators making boats available have operated outside the controls of the Act.

2. QUESTION 2

2.1 *In this policy area, what do you consider to be the respective roles of EC law and national law?*

2.2 ANSWER

2.3 TSI and LACORS consider that in this policy area it is vitally important that EC law provides uniform and consistent sanctions across the European Union particularly due to the number of transactions in this sector being cross border with the issues of different laws and languages. National legislation must reinforce these sanctions via an enforcement mechanism that deals with non-compliance, linked to robust trade association measures, and provides adequate numbers of regulators to deal with advice and enforcement. Cross border disputes are unfortunately common place in this particular trade sector

2.4 EC law should also dictate whether it is maximum or minimum harmonisation.

3. QUESTION 3

3.1 *What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?*

3.2 ANSWER

3.3 Weaknesses—The legislation is out of date and therefore does not meet the needs for consumer protection from similar trading practices. Comparisons with the Package Travel Regulations are relevant as they were also implemented in 1992. Since then the internet and the cheap flights have considerably changed the industry. The existing Timeshare Directive failed to consider the Holiday Ownership Clubs that have been a continuing cause of complaint to Trading Standards.

3.4 TSI and LACORS consider that powers given to enforcement authorities are not extensive enough. Other powers are necessary if the enforcement of new legislation is to succeed, ie the power of entry and the power to make test purchases to ascertain whether an offence has taken place.

3.5 TSI and LACORS also consider that the existing penalties are not a strong enough deterrent for breaching the timeshare legislation.

3.6 The main weaknesses have been:

- Issue over boats.
- Companies claiming they are not selling Timeshare (uncertainty over Holiday Ownership/Points).
- Tele Sales companies giving misleading information often linking Free holidays to presentations.
- Overseas enforcement Issues particularly those countries where enforcement is a low priority.
- The Resale industry.
- Data Protection issues where consumers are cold called.
- Uncertainty over which company a consumer has contracted with (often the case where marketing companies are involved in addition to the presentation company and the actual Timeshare Company).
- A clear breakdown of the costs involved.
- Security of consumer deposits/upfront fees.
- High pressure selling.

3.7 Another concern is the exploitation of any loopholes as the market develops. The legislation needs to be far reaching to pre-empt the developing market.

3.8 Strengths—The strength of the existing Directive is that it met the demands at the time of its publication. One of its main strengths is the 14-day cooling off period. Its introduction has seen a reduction in the number of complaints received by Trading Standards.

4. QUESTION 4

4.1 *What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?*

4.2 ANSWER

4.3 TSI and LACORS want transparency. This is essential in any timeshare contract.

INFORMATION PROVISION

5. QUESTION 5

5.1 *On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?*

5.2 ANSWER

5.3 TSI and LACORS consider that all the prescribed information, especially the right of withdrawal mentioned in the annexes should be bold, precise and compelling and not buried amongst a substantial amount of meaningless information.

5.4 As Trade Association only covers members, TSI and LACORS believe that consideration should be given to making membership compulsory. We also consider that the OFT should be working with this sector to bring any Trade Association into the OFT Code Approval Scheme in order to ensure greater protection for consumers.

5.5 In addition, TSI and LACORS consider that it would be useful to have the adoption of the format used in Consumer Credit Act regulations whereby key information headings and warnings are contained in boxes, which make it easier for consumers to understand.

6. QUESTION 6

6.1 *How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?*

6.2 ANSWER

6.3 TSI and LACORS consider that there should be a requirement for all timeshare businesses and holiday ownership clubs to highlight the requirements of the new legislation on their websites and advertising.

6.4 We also suggest that information should be provided to consumers by consumer champions such as the new National Consumer Council or the OFT. We also think that the timeshare industry should follow the example of the mortgage code whereby businesses would be required to give Code of Conduct/Consumer Rights information on their websites and in their advertising.

THE RIGHT OF WITHDRAWAL

7. QUESTION 7

7.1 *How satisfactory, from the consumer's perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?*

7.2 ANSWER

7.3 TSI and LACORS consider that the consumer should be given no less than 14 days after the day on which the contract is signed for cancellations.

7.4 We strongly consider that Article 5 should be amended to prevent excessive and prohibitive expenses being applied by the timeshare business in the event of cancellations. This may act as a deterrent to some consumers from exercising their cancellation rights. We would prefer that there was no financial charge imposed for cancellation within the "cooling-off" period (as with consumer credit legislation).

7.5 We consider that there is uncertainty over Article 5(5) fees. This should be clarified as unreasonable; rising fees is a common complaint to trading standards.

8. QUESTION 8

8.1 *One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2) which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?*

8.2 ANSWER

8.3 TSI and LACORS consider that the main difficulty with this area is the different enforcement regimes in the Member States. Consumers of countries with more stringent national provisions face uncertainty and often disappointment when entering into agreements in other Member States.

ADVANCE PAYMENTS

9. QUESTION 9

9.1 *How can consumers' best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?*

9.2 ANSWER

9.3 TSI and LACORS would like to see all agreements and contracts breaching Article 6 being made invalid and unenforceable against the consumer.

9.4 We would also like to see this made an offence.

10. QUESTION 10

10.1 *How significant a problem for consumers have advance payments been in the resale market (Article 6(2))?*

10.2 ANSWER

10.3 TSI and LACORS are aware that this is a real problem for consumers. Consumers are left in a very vulnerable position where resellers can increase their fees and change the terms at any time. A number of these companies have gone out of business meaning consumers can be left heavily in debt.

10.4 There is no protection for consumers' money paid in advance in cases when dealing with an unscrupulous trader or if the trader goes out of business.

10.5 We consider that consumers may be less inclined to use their cancellation rights if an advance payment or other financial commitments are made.

10.6 Traders may delay paying back advance payments in cancellation cases in order to pressurise the consumer into staying in the contract.

10.7 The trader may use the opportunity of discussing refunds of advance payments with the consumer to exercise further sales pressure to keep the consumer locked into the contact.

10.8 TSI and LACORS consider that this is a significant problem but suggest that other potential consultees such as ECC Net and the Timeshare Association might be better placed to Answer this Question.

REDRESS**11. QUESTION 11**

11.1 *What are your views on the provisions relating to judicial, administration and out-of court redress (Article 9 and Article 10(2))?*

11.2 ANSWER

11.3 Overseas transactions continue to be a major concern. Any arbitration must be seen as independent and not trade led. Existing approved ADR schemes for arbitration should be recognised (these can be found on the Europa web site).

SANCTIONS, MONITORING AND ENFORCEMENT**12. QUESTION 12**

12.1 *The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by Member States for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?*

12.2 ANSWER

12.3 TSI and LACORS consider that there needs to be strong (criminal) sanctions and penalties must be a deterrent. Criminal sanctions will also have the added advantage of making POCA actions much more available.

12.4 We believe that anything less would encourage the trade to contravene the proposed legislation. The penalties whether financial or of a custodial nature should be high enough as to dissuade unscrupulous traders from breaching the legislation.

13. QUESTION 13

13.1 *With particular relation to enforcement, do you consider that the relationship between the proposed new Directive and the provisions of the Unfair Commercial Practices Directive is sufficiently clear?*

ANSWER

13.2 TSI and LACORS consider that this is covered.

14. OUTSTANDING ISSUES**14.1 QUESTION 14**

14.2 *Are there any significant issues in the timeshare market that the proposed new Directive has failed to address?*

14.3 ANSWER

14.4 TSI and LACORS consider that this proposed legislation really does not go far enough to protect legitimate business and consumers from the actions of unscrupulous traders who leave consumers out of pocket and give this sector of trade a bad name. For example, re-sale businesses are often the subject of fraudulent complaints, where consumers pay money in advance and find the business has then disappeared with no trace. We believe that Holiday Ownership Clubs need to be included and clarification of whom the consumer has the contract with, eg marketer, owner, trustee etc.

14.5 We consider that it would have been desirable to introduce a licensing scheme for traders to undertake this type of business. This is certainly the case for consumer credit licences where the applicant has to be a fit person to engage in these activities. This would stop unscrupulous traders from engaging in this trade and would act as a deterrent to anyone wishing to breach the proposed legislation.

14.6 TSI and LACORS consider that timeshare operators use information in breach of Data Protection Act; we understand that a number of consumers are concerned that they have received an unsolicited call from a timeshare/resale company.

14.7 LACORS would like to thank the following Local Authorities for their assistance with this response: Essex County Council, Somerset County Council, South Ayrshire Council and West Sussex County Council.

12 September 2007

Memorandum by MEPs

INTRODUCTION

My Committee has lead responsibility in the European Parliament for timeshare legislation, and has begun its deliberation on the Commission's latest proposals. We held a Public Hearing on 28 June with contributions from the following:

Commissioner Meglena KUNEVA, Commissioner for Consumer Protection
 Peter VAN DER MARK, Secretary General, Organisation of Timeshare in Europe (OTE)
 Sandy GREY, Chairman, Alliance of Timeshare Consumers in Europe (ATCE)
 Carlos VOGELER, President of the National Association of the Timesharing Industry (ANETC)
 Henry BANKES, Vice President—Legal Affairs of Group RCI
 Jutta GURKMANN, Director European Consumer Centre Kehl (Germany)
 Michael HALEY, Head of European Enforcement Team, Office of Fair Trading (UK)
 Hans DE CONINCK, Tourism Expert—"Test Achat", Belgium Member of BEUC, the European Consumers' Organisation
 Alex RADFORD, Solicitor, De Cotta McKenna and Santafé

The Committee will be producing proposals for amendments the coming months. As an elected Member of the European Parliament for the North West I have received and continue to receive many complaints on timeshare.

The Committee first raised the problems with existing timeshare legislation in November 2001, when the Committee organised a hearing in the European Parliament. The European Parliament then adopted a resolution³ calling for the Commission to propose further legislation in June 2002. I attach that resolution alongside this submission.

The UK is amongst the most affected Member States both in terms of consumers owning timeshare, in the UK and abroad and in terms of the size of its domestic timeshare industry. The UK industry is estimated to be worth a total €157 million per year, according to the impact assessment conducted by the Commission.⁴ The UK has more timeshare owners than any other European country. In 2001, 31.6% of all timeshare owners in Europe were residents of UK.⁵

In 2006 UK European Consumer Centre (ECC) had the second highest number of complaints after Germany, receiving 341 complaints related to Timeshare, other long-term holiday products, resale and exchange.⁶

Consumer Timeshare organisations have contacted us demanding protection for consumers from fraudsters and scam merchants when making such major financial decisions.

OVERVIEW

Binding legislation is needed to safeguard timeshare consumers. Without a European wide framework of legal rights and redress the perception of the timeshare industry as a "problem" will persist, and UK law cannot adequately cover problems in popular Member State destinations such as Spain, Portugal, and growing new markets such as Bulgaria. An important role does exist however for joint enforcement action.

A code of conduct was introduced, developed by the Organisation of Timeshare in Europe (OTE), but this has not been sufficient. I have received many complaints from timeshare consumers about companies that did not comply with the requirements of the OTE code of conduct. It is a problem of enforceability.

The high proportion of rogue traders in this market, its relative lack of maturity, and the large amounts of money involved for consumers mean that self-regulation alone cannot achieve our aims.

³ PE 298.410 Report on the monitoring of Community policy on the protection of purchasers of the right to use immovable properties on a timeshare basis (Directive 94/47/EC) (2000/2208 (INI)).

⁴ SEC (2007) 743.

⁵ SEC (2007) 743.

⁶ According to the impact assessment conducted by the Commission, SEC (2007) 743.

However, it has proved difficult to ensure that the law keeps up with the development of new products and in particular with those rogue traders who develop “timeshare-like” products to ensure they fall outside the law. Rogue traders also continue to break the law, for example in taking deposits during the cooling off period.

The main strengths of the existing Timeshare Directive⁷ are the mandatory cooling-off period, the ban on fee taking during this period, and the precontractual information requirements, applicable to all products that fall under the scope of the Directive. The cooling-off period is essential as it gives the consumer the right to withdraw from the contract within a certain period of time. This period of time is needed for consumers to think about what they have done in a calm environment, reducing the risks of pressurised hard selling techniques. Precontractual information is also essential to ensure consumers can make an informed choice.

However I still receive many complaints from consumers experiencing weaknesses in the current Directive. The main source of these is the tight definition of timeshare. All too often disreputable companies have simply redesigned their products to avoid falling within the existing Directive. These “timeshare-like” products, such as timeshare products for a period of less than three years (as required in the Directive) are a major problem. Furthermore products such as holiday clubs that are often sold in a similar way to timeshare also fall out of the coverage of the current Directive. It is important to close these loopholes, and to do so in such away that prevents disreputable traders simply redesigning their products further to avoid this necessary regulation.

According to the Commission’s impact assessment, in the first half of 2006 76,9% of complaints were about long term holiday products, 17,3% about resale and only 5,8% about timeshare. Of the letters I have received, more than half of them are about long term holiday products. Those figures clearly show that the first problem that needs to be address is extending protection to consumers when they buy a long term holiday product.

Consumers have also raised with me incidents of timeshare resellers asking for upfront fees, with resellers wholly outside the existing scope.

The new directive extends the scope to long term holiday products and resale, the ban on upfront fees for resale, and a proposed increase in the cooling-off period, as well as timeshare on non-fixed properties such as boats and caravans. The Committee will analyse whether the 14 days proposed is sufficiently long to ensure holiday makers have had time to return home and reflect carefully on purchases made whilst on holiday.

SCOPE AND DEFINITIONS

In order to avoid the weakness in the existing legislation, the definition of timeshare should be as broad as possible to protect consumers against rogue traders.

With a view to improving consumer protection, the scope should be extended to long term holiday products and resale. This extension of the scope will grant consumers equal protection when buying these products as when they buy timeshare products. This will increase consumer confidence in all timeshare and timeshare-like products, to the ultimate benefit of both consumers and the responsible sector of the industry.

Particular consideration of the extended definition is needed to prevent further loopholes being left for future exploitation by those less reputable traders. A recent Delegation from my Committee to Portugal had interesting discussions with authorities there in relation to the enforceability and coverage of timeshare legislation, and I welcome further input from all Member States.

It has been raised with the Committee that special attention should be given to the definition of long term holiday products, to ensure that services such as staff association clubs which help people get discounts on accommodation and holidays are not inadvertently brought into scope.

INFORMATION PROVISION

Information requirements are essential to consumers. The new information provisions could include two more elements: calculation and evolution of management fees, and an indication of availability for long term holiday products, both issues frequently raised by consumers.

Generally, consumers need to be informed where they are most likely to be approached; ie when they are on holiday, just before being attracted to sign timeshare or timeshare-like contracts. The Office of Fair Trading (OFT) has conducted several campaigns in airports or airline magazines. I think this is an excellent initiative that could be extended in Europe, targeting the main countries involved.

The law can provide protection but there is no substitute for a well informed consumer who can resist pressure selling and are confident and informed enough to shop around in advance if they wish to purchase such products and compare offers.

⁷ Timeshare Directive 94/47/EC.

RIGHT OF WITHDRAWAL

Consumers should be aware that they are protected by the right of withdrawal in every European Member State. In order to give greater clarity to this right it is essential to have only one method of calculating days, such as the proposed calendar day methodology.

ADVANCE PAYMENTS

Many consumer complaints focus on advance payments in relation to resale. Generally, timeshare owners are contacted by traders and offered a good price for their timeshare. This price is very attractive, even though timeshare resale prices are in reality very low. Then the agent takes an upfront fee and disappears with it.

The development of the rogue resale market is due the opportunity of charging upfront fees. With a clear ban of advance payments, these rogue traders will decrease, as it was the case in 1997 with the entry into force of the ban on advance payments for timeshare by Directive 97/47/EC.

REDRESS, SANCTIONS, MONITORING AND ENFORCEMENT

Satisfactory out of court redress is clearly preferential for consumers than lengthy and potentially costly court procedures, and Alternative Dispute Resolution should be made more widely available by the legitimate industry. However experience had shown that it is not always enough. In the evidence I have received, many consumers tried to solve their problems through OFT or OTE but were not satisfied with the results.

The OFT is a very good tool, but does not act for individuals or seek redress for them. Furthermore the OTE mechanism applies only for OTE members. Rogue traders will continue to operate outside the OTE.

The Unfair Commercial Practices Directive (UCPD) will ensure complementary legislation is introduced in all Member States to tackle all forms of aggressive and misleading selling. Tackling these unfair sales tactics will drastically improve the timeshare industry. However the UCPD is a broad horizontal tool, not designed to deal with specific issues of the timeshare industry. Given the scale of problem selling and the very poor image of the industry, there remains a need for specific sectoral legislation that will work together with the UCPD to improve the situation for consumers, and for the responsible actors in the industry.

In order to counter problems with enforcement, more cooperation between enforcement bodies and administrative authorities is needed. In this context I hope the new Consumer Enforcement Network, launched by the Commission across Europe at the start of 2007, will make a real difference. Ensuring correct transposition and effective implementation of legislation is a priority for my Committee, and we will monitor the Member States' performance closely to ensure they are meeting their obligations under this law.

1 October 2007

Memorandum by Angus Murray

Comment: I have only just learned of these proposals, 13/9/07, so have little time to make any submission. The bogus holiday club scam operated by DWVC/Timelinx/Incentive Leisure has already resulted in huge numbers of victims and untold misery, and their activities continue unchecked. My comments on various aspects are detailed below against each category.

OVERVIEW

1. *With regard to measures intended to safeguard timeshare consumers, what is the rationale for binding legislation rather than a voluntary agreement?*

Comment: Voluntary agreements such as that made between Designer Way Vacation Club (DWVC) and Office of Fair Trading (OFT) are simply ignored, as DWVC has done repeatedly in regard to the 7 day cooling-off period for agreements agreed between themselves and OFT.

2. *In this policy area, what do you consider to be the respective roles of EC law and national law?*

Comment: Both EC Law and national law should be at one in protecting consumers from organisations like DWVC and their associate companies, in this case Incentive Leisure and Timelinx.

3. *What has been your experience of the existing Directive? What, in your view, are its strengths and weaknesses?*

Comment: It is so full of loop-holes as to be completely useless. I can't help wondering if this has been deliberately done, in order to allow timeshare and bogus holiday club scams to continue unchecked.

SCOPE AND DEFINITIONS

4. *What is your view of the scope and definitions contained in the draft Proposal (Articles 1 and 2)? Might they be expanded, clarified or reduced? If so, how might this be achieved?*

Comment: why not just allow a compulsory 10 day cooling-off period for all timeshare or holiday club sales in all circumstances and irrespective of where any such agreements are signed. Is that so difficult?

INFORMATION PROVISION

5. *On the basis of your own experience, what is your assessment of the proposals relating to information provision and advertising (Article 3 and Annexes)?*

6. *How can consumers generally be best informed by national governments or other bodies about their rights in relation to this Directive (Article 10(1))?*

Use consumer websites and discussion forums such as that of HolidayWatchdog at forum.holidaywatchdog.co.uk/#33F804—there is more effective and better publicised advice and victim experience here than in all UK government information.

THE RIGHT OF WITHDRAWAL

7. *How satisfactory, from the consumer's perspective, are the provisions on the right of withdrawal (Article 4(3) and Article 5)?*

Comment: I don't understand the legalistic wording of these provisions, and doubt if many other victims of the timeshare/holiday club scam industry will either! I doubt if any of the hundreds of thousands of victims cares about the wording, provided it isn't as full of legal loop-holes as present legislation. For instance the voluntary cooling off period agreed between DWVC and OFT apparently doesn't apply if agreements are signed on the premises of DWVC or its associate company Incentive Leisure.

8. *One of the aims of the provisions is to establish a more consistent regime across Member States. To what extent is this achieved, particularly given the flexibility enshrined within Article 1(2) which allows Member States to apply more stringent national provisions relating to aspects of the right of withdrawal?*

ADVANCE PAYMENTS

9. *How can consumers best be protected from any demand to make advance payments before the end of the period during which the consumer may exercise the right of withdrawal (Article 6(1))?*

Make the encashment of such payments completely illegal within the cooling off period. Better still don't leave huge loop-holes, as is presently the case, whereby scammers can ignore any cooling-off period legislation.

10. *How significant a problem for consumers have advance payments been in the resale market (Article 6(2))?*

Comment: don't know.

REDRESS

11. *What are your views on the provisions relating to judicial, administration and out-of court redress (Article 9 and Article 10(2))?*

It is essential to prosecute with vigour, those companies such as DWVC/incentive Leisure who simply ignore consumer legislation or voluntary agreements.

SANCTIONS, MONITORING AND ENFORCEMENT

12. *The proposed Directive expands the current requirement for penalties against infringements of the legislation (Article 11). What is your view on the level of sanctions imposed by Member States for infringements of the current Directive, and on the efficacy of monitoring and enforcement across the EU?*

Comment: if member states in future remain as inactive on this appalling and widespread scam as they are at present, then the scammers have nothing to worry about!

13. *With particular relation to enforcement, do you consider that the relationship between the proposed new Directive and the provisions of the Unfair Commercial Practices Directive⁸ is sufficiently clear?*

No.

OUTSTANDING ISSUES

14. *Are there any significant issues in the timeshare market that the proposed new Directive has failed to address?*

Comment: It's likely the scammers will simply invent another name for the same sort of scam, and carry on regardless!

We also would welcome views on any other aspect of the Commission's Proposal

Comment: I only heard about these proposals yesterday, in spite of having corresponded with various consumer bodies, including Charles Walker MP, Trading Standards and Office of Fair Trading and others, all of whom either didn't know or wouldn't tell about the proposals.

If they didn't know, then how were the vast number of innocent victims, many elderly and without internet access, supposed to know?

Please look at Holiday Watchdog website forum.holidaywatchdog.co/#33F804 particularly those threads involving DWVC, Incentive Leisure and Timelinx.

Only two months ago my wife and I fell victim to their bogus holiday club scam, and already have received aggressive threats, and accumulated a large amount of related correspondence. Unfortunately, owing to the almost non-existent publicity, it is too late to make the deadline for submission of this correspondence, but I am prepared to send this information, and to appear before your committee.

13 September 2007

Memorandum by Tony Sedgwick

1. In response to the invitation contained within the published document into an Inquiry into the Replacement of the EU's Timeshare Directive I humbly make this submission for your consideration.

MY BACKGROUND

2. For the four years ending 31 May 2006 I was the CEO of the International timeshare Resale Association (ITRA), a self regulatory body set up by Timeshare Resale Organisations with the avowed aim of ensuring member companies of ITRA in the Timeshare Resale Industry, would voluntarily submit to the oversight by the association and its terms of membership and discipline codes for the protection of their own clients and the companies themselves by agreeing to be so regulated and to ensure compliance with all relevant legislation. The Association was the brainchild of the owners of ETOO/Club Class Holidays and I was asked by the owners to research it and run it, and then to develop the website, which I did.

3. I was made redundant by the owners of the company employing me (Club Class Holidays (Gibraltar) Ltd when I uncovered evidence of Criminal activity by the main funding body of ITRA, the European Timeshare Owners Organisation (ETOO), who, as such founding member company agreed to be bound by the same terms as everyone else, however, the company refused to comply with the regulations to curb the fraudulent nature of their business activity after I confronted them with it in Late April 2006 and I was instructed to keep

⁸ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market. OJ L149 11.06.05 p 122-139.

quiet about it under pain of punishment of dismissal. This placed me in a position that became clearly untenable and I was forced to accept redundancy a few weeks later, in May 2006.

4. The level of fraud and deception uncovered during that period of four years by myself, involving Timeshare Resale Companies, Holiday Club Companies and Cash Back Scheme Companies and the blatant public dismissal by those organisations to comply with any regulations in force led to me setting up my own website to expose such fraud due to the frustration of having the legitimate complaints made by myself to the OFT, the DTI, the Police and our own member companies, refusing to seemingly take any action to protect consumers against the Fraud or misrepresentation resulting in the loss of substantial fees being perpetrated by them. That website is <http://www.scambusters.gb.com> and is run in a private capacity with no funding other than my own and no other organisation influences its nature.

In response to the request for written evidence the following is my submission.

5. *Overview (1)* Timeshare Organisations and the Resale companies in particular along with Holiday Club Organisations will not comply with regulations that they can find a way around (the proverbial loophole) and which are not enforceable. My experience after eight years in the industry (I was the Membership Manager for Club Class Holidays for the four years prior to my moving to ITRA) provides me with the broad knowledge that voluntary compliance within the Timeshare industry is not possible with the people running these businesses as they want a fast track to great wealth and they continually look for ways not to comply with any legislation. In the case of ETOO/Club Class Holidays (Gibraltar) Ltd, and many others, they continued to deceive the OFT and make promises, as did Timelinx whose product Designer Way Vacation Club still today attracts substantial complaints to the OFT due to their non compliance on a voluntary basis to the undertakings made by them to the OFT. I found in ITRA, with the members they had, voluntary regulation at this late stage within the established timeshare industry, just does not work. The criminal elements are too firmly entrenched to operate within the law unless forced to do so, not on promises but on enforceable legislation.

6. (2) EC Law should be strong and supportive of National Law, which should be the first point of contact to redress any such complaint of Fraud, Misrepresentation or Breach of Contract. EC Law should be the next step with wide ranging powers to combat such offences, especially for the individual who cannot afford the enormous legal fees charged by lawyers that make the cost prohibitive, which happens today and is the reason why many people fail to take action and has resulted in a seeming drop in the number of complaints, but in reality they are growing. Owners are just giving up and writing off their losses because the route to redress and seek compensation is too arduous and costly.

7. (3) The existing Directive is a first starting point and is useful as a point of reference, however, as the proposals have noted the new products on the market since that Directive was introduced have negated the effect of the legislation and a whole new multi million pound industry has sprung up rivalling normal Timeshare sales to first time buyers and that is the Resale and Holiday Club Industry along with the Cash Back Schemes and their promises of huge returns.

8. Its weaknesses lie in the fact that the Directive has not kept pace with the demands, growth and rapid changes of the industry and has been left far behind and this review is most welcome and not too soon in coming.

9. *Scope and Definitions (4)* The proposals have focused in on two main areas of contention amongst Timeshare Owners regarding Resale's and that is the Up Front Fees and the Withdrawal or cooling off period and the ability to recover fees on a change of mind. Many companies are arguing that the up front fee is non refundable because of their own costs. The evidence I have suggests strongly that, that is not the case. Most of the money collected by Resale companies is based on the false and misleading sales pitch to owners by sales and marketing people that "We have a buyer for your Timeshare". They then go on to relate that in order to process their sale and collect and pay them the promised amount, they require an up front fee in most cases of £850 or more. Tens of thousands of people have fallen for this lie and handed their credit cards over for the deduction of the fee, and wait in vain for their money to appear within the allotted time (6—12 weeks is the usual promised time scale).

10. In addition, the sales people then go on to eventually inform owners that the original buyer pulled out under a number of excuses but that the week(s) would continue to be marketed. Eventually owners are invited to Spain to meet a "Corporate Buyer", who turns out to be another arm of their company and they attempt to force the buyer to exchange his timeshare for membership to a Holiday Club for more fees which is clearly a Breach of Contract, the original contract being a Sales Contract not an exchange contract. Recently contracts have dropped the word "Sales" from the wording because of the definition on the word sale to mean "an exchange of anything for money", and nothing else and use only the word "Marketing" in their contracts,

however the understanding is the same, the end result expected in return by the owner is money, not an exchange for another product or service.

11. The original directive started its protective cover from the 3rd year onwards and many people saw this as a way of circumventing the law with the use of Holiday Clubs and introduced a 35 month membership to use empty timeshare apartments for their members which of course is one month short of the period when compliance would have been obligatory and it became open house and still is today.

12. The Committee need to understand the main problem and how the problem affects owners and the money involved enabling the necessary legislation to be put into place to protect those owners and I believe that the proposals appear to be suggesting that the final result will be better protection for Timeshare owners.

13. A further study of the problem in relation to the proposals would need to be undertaken for me to comment further in the short space made available to me for this submission.

14. *Information Submission (5) and (6)* They seem fine and should go a long way in protecting the rights of the individual as long as the political will to implement those elements that protect individuals against the various fraudulent expressions by Timeshare Resale and Holiday Club companies is present, along with the necessary policing of those companies with the power to act which I believe the new Enforcement Network has been set up to do just that. A move I most strongly welcome.

15. *(6)* There is much that can be said here. Most of the information available to inform people is contained on Government Websites and my experience is that people do not know where to go to find the necessary information to keep them informed. My own research into the information and rights available has so far spanned some five years and I am still learning new things. The ordinary man in the street does not stand a chance of learning what I have learned and published on my website and he needs guidance, constantly.

16. My "How to Get Your Money Back Guide" is one way I keep people informed but it is a long slow process and has only scratched the surface. Every purchaser of a Timeshare in any of its forms, should be given a detailed booklet on their rights in the event of certain things being said or done, at the point of sale, and before monies are handed over or contracts signed. The criminal element have too big a foothold to pussyfoot around and strong measures need to be implemented to weed out the rogue traders to enable the legitimate companies to surface, comply with and be fully regulated by a body other than the OTE, who will only investigate and arbitrate for their own members and their clients but who refuse admission to membership of the OTE to hundreds of Timeshare companies and in turn tens of thousands of their clients, those owners have no one to turn to for help in the event of a complaint. I appear to be one of very few people offering such assistance as I have and achieving the successes I have achieved.

17. ALL Timeshare organisations in whatever related form, should be fully regulated by an independent body and no one should be allowed to be excluded membership and of course licensed and subject to legislation and a discipline code that can remove their licence and prevent them from trading and that is the only way to clean up the industry and give purchasers the protection they should have a right to. Those owners scammed run into tens of thousands and the amount of money taken by fraudulent means runs into tens if not hundreds of millions of pounds annually, it is no small fry.

18. *The Right of Withdrawal (7) and (8)* The provisions are of course useful but they do not often provide the protection needed as most timeshare products are purchased whilst on holiday and by the time the purchaser returns home and realises what he has done after checking out the claims and he changes his mind, it is already too late. The Cooling off Period should either be extended to 30 days from point of sale if such sale is made whilst on holiday, or commence for 30 days from the date the purchaser returns from holiday if that is where he signed the contract and paid the fee. The proposals cover this point.

19. *Advance Payments (9) and (10)* There should an absolute ban on all up front fees during the initial sales process and the withdrawal period, and, if any payments are made and the purchaser changes his mind and asks for his money back, it should be refunded immediately and without question under pain of enforceable punishment.

20. Almost without exception the complaints I have received over the past five years have come from this one area alone and due mainly to the lies told by the marketing people that they had a buyer for the owner's timeshare and persuaded the owner to hand over his credit card and the money is gone. Fortunately for some, current UK legislation allows for the recovery of much of these fees under the protection afforded by the Consumer Credit Act 1974 (Section 75) Equal Liability and I have been singularly successful in using that and other legislation in recovering the hundreds of thousands of pounds I have for owners over the years.

21. There are variations to that approach by the scam companies but this submission does not allow space to go into them, although more detailed information is available on my website.

22. *Redress (11)* There appears to be almost no avenue of redress that satisfies the consumer against Timeshare Fraud and I have received thousands of complaints over the years and requests for help because it is unknown to whom should a person turn to for help outside of the court system which, in most cases, is not an option that many want to take up. I have been overwhelmed by requests for help over the years and if I, acting alone have reached the stage of success I have, how much more so would an organisation achieve who had the funding and the staff to assist those owners without having to pay as much and more than they were trying to recover. As it is I recently came across a legal gentleman running a website called www.inventorysolutionsuk.co.uk who claims much success in court.

23. The OFT do not deal with individual cases although I have sent them many of the complaints made to me over the years and there is tremendous frustration at the lack of information and help for the ordinary man in the street, who bought a timeshare and who wants to sell it now he no longer needs it for whatever reason, but finds he can not, no matter how many times he pays a fee on the promises of unscrupulous people who know the law well enough to continue their fraud and knowing that at present, they are untouchable.

24. The timeshare owner who has been defrauded wants one thing and one thing only his money back without too much hassle or cost. I provide such a service and my fee is just £30 no matter how long it takes. It does not provide me with an income to live on and I have given away more than I have charged but it is a route to go down until something better comes along for the long suffering and aggrieved owner.

25. *Sanctions, Monitoring and Enforcement (12)* Judging by the complaints I have received over the years, there appears to be legislation in the EU which has no teeth and I have seen little to impress me that the legislation is little more than the fulfilment of a requirement and this is evidenced by the ongoing scams being carried out upon tens of thousands of timeshare owners where the individuals concerned are well known, and exposed on hundreds of websites, but very little is done by any authority to investigate or curb their fraudulent activities despite the high volume of complaints. All my success in recovering fees has been through the existing UK legislation and the evidence and knowledge I have gained.

26. (13) Yes. An aggrieved person always has the courts as a final resort and the new proposals extend and go beyond that in proposing greater protection but it will require a more grass roots availability for those who cannot afford to prosecute in Spain, for example, if living in the UK on a pension, unless there is an agency, able to take his case forward if all else has failed without the additional burden of cost which prevents most people from going down that route, which is why they come to me, and those that find my website by a Google search term which many have told me about "Etoo Scam", always express their gratitude for the guidance and support offered either for nothing, or in the case of taking action to recover fees, paying my small fee.

27. *Outstanding Issues (14)* A cold call by a sale and marketing representative and then a hard sell pitch to convince owners that buyers existed based on a number of different lies should be made as illegal as spam emails. The UK Misrepresentation Act and the notes attached to it go a long way in clarifying that point, but the ordinary man in the street is unaware of it. Even Trading Standards have contacted me for guidance regarding complaints they have received and I have guided them in their endeavours.

28. If a timeshare resale organisation really did have buyers waiting, then they should write to the owner, or email them, with an offer and details of the offer and include removal or unsubscribe information and if the owner decides on further information before parting with any money he should be given the opportunity to assess the truthfulness of the offer, and if he wants his name removing from "The List" it should be complied with. As it is the Resale Company never give any details of the offer whether private or corporate stating all sorts of rules, that are meaningless, but sound genuine to the layman.

29. The new directive does not, as far as I can tell, cover that point as experience has shown and there is an audio transcript on my www.scambusters.gb.com home page between a sales rep for ETOO and an owner in which the sales rep stated they work from lists only and conduct no marketing and that they have buyers lined up whom they contact. If that is the case there is no need for an up front marketing fee and to take one is an offence. It is unknown how many other companies employ the same technique but ETOO and Timelinx are considered to be the biggest timeshare Resale organisation in Spain and between them they have in excess of 65,000 to 70,000 members.

Is that true or is it part of the ongoing deceptive deliberate lies? I suspect, nay, believe the latter and that situation should be addressed as well.

This document is submitted for your consideration and is submitted on an individual basis and as the main person behind the Scambusters Website and as the former head of the International Timeshare Resale Association. I am 63 years of age and retired from active full time employment.

23 August 2007

Memorandum by Shakespeare Classic Line Ltd

My name is David Evans. I am submitting this evidence on behalf of Shakespeare Classic Line Ltd, the company of which I am a Director. The company has been in business for 10 years as a developer, retailer, wholesaler and management company of holiday ownership.

I would like to give my evidence on the specific issues as follows:

1. OVERVIEW

Many industries have strong industry associations such as ABTA. The timeshare industry has ARDA in America and TISA in South Africa. If TATOC were to merge with the OTE, then we would have a strong industry association in Europe. It would then be a simple matter for anybody involved in the ownership industry having to be a member of the association. Strong publicity telling everybody about the association and that heavy fines and expulsion would be levied to companies breaking the rules.

2. We feel that there is more than enough legislation covering sales of goods and services, but it is the policing of this legislation that is the problem. Therefore, adding to the legislation simply increases the problem.

We believe that one association should cover all of the member states, thus making it clearer for the consumer. We also believe that there is a problem of conflict between EC laws and national laws.

3. The existing Directive has led to confusion and has seriously damaged the timeshare industry. The strength of the Directive is the full disclosure, but the weakness is the cancellation notice, which has led to holiday clubs and major disintegration of the timeshare industry.

4. SCOPE AND DEFINITIONS

We believe that any changes in legislation should only apply to products bought outside the country of residence.

5. NATIONAL PROVISIONS

We agree that written information should be provided to the consumer.

6. We repeat that we believe that there should be a strong industry association.

7. RIGHT OF WITHDRAWAL

From a consumer perspective, the right of withdrawal is confusing. The consumer purchases the product believing it to be a good product, only to find that they are being invited to cancel which immediately raises alarm bells because the consumer then believes that there is something wrong with the product because they are being invited to cancel.

8. We believe that the legislation is using a sledge hammer to crack a nut. With approximately five people completing a purchase out of every one thousand people who are invited to a presentation, we do not understand why you are trying to protect those people from buying such an excellent product.

9. ADVANCE PAYMENTS

The consumer should not be protected from making advance payments. They expect to pay a deposit as with any other product. You are starting from the premise that timeshare is a poor product and this is just not the case. You are being given completely false figures by Sandy Grey, when in reality there are very very few complaints about the actual timeshare product. Any complaints you receive about the way the product is sold will almost certainly be covered by the new Unfair Commercial Practices Directive.

10. There is no problem for consumers making advance payments in the resale market so long as the consumer has not been cold called.

11. REDRESS

Once again we point to the OTE as the best method for out of court redress.

12. SANCTIONS, MONITORING AND ENFORCEMENT

Again we point to the fact that policing the legislation is difficult and we, therefore, believe that the trade body with government funding should be able to monitor and have the powers of enforcement against any company breaking the rules. This could be very simply achieved by having a disclosure document for all sales. Providing that the client agrees to every clause and that the product does exactly what it says, then there would be no need for sanctions. However, if the product does not do exactly as written in the disclosure document, then the client should receive their money back plus interest from the company who sold them the product and this should be guaranteed by an insurance policy.

13. As already stated, we believe that the Unfair Commercial Practices Directive makes the need for any European timeshare legislation null and void.

14. OUTSTANDING ISSUES

The Directive is set out to ruin a once thriving industry; it is a fantastic product, used by millions of people all over the world, so the top hotel chains such as Hilton and Marriott's are involved in the industry. The product is owned by middle income families who wish to stay in places that were previously only affordable to the rich; the product is also owned by the rich who like their accommodation guaranteed. We believe that the legislation goes too far and we do not need any more.

31 August 2007

Memorandum by The Association of Timeshare Owners Committees

INTRODUCTION

Established in 1989, the Association of Timeshare Owners Committees (TATOC) is a consumer-based association of timeshare owners representatives elected by timeshare owners at their resorts/clubs. TATOC's objective is to support timeshare consumers by providing resources, assistance and guidance and to liaise with government agencies on their behalf.

At present we represent approximately 250,000 owners from 72 resorts and Clubs in the UK, Spain, Canary Islands, Portugal, Madeira, Malta and Austria. From 1st January 2008 TATOC will also take over consumer complaints and representation for UK citizens on all timeshare matters where the resort/company are not members of the Organisation for Timeshare in Europe (OTE), and to liaise with OTE where they are.

Timeshare is a successful holiday product. A recent independent survey revealed that 96% of owners rate timeshare as better than any other self-catering holiday and 97% of owners rate timeshare as better than staying in a hotel. It is of considerable concern to TATOC that, neither the existing, nor the proposed Directives, give due recognition to the existing 1.45 million timeshare owning families in Europe who are already consumers. It is essential to existing owners that the timeshare industry has long-term security, stability and prosperity. All timeshare owners need the principle features of their investment to be successful, and these requirements include a successful timeshare marketplace, an effective resale facility, and a fully satisfactory exchange facility. Whilst the main focus of the proposed Directive is on potential consumers at the point of sale, the potential impact on the existing 1.45 million timeshare owning families must also be considered.

TATOC welcomes the opportunity to present evidence to the House of Lords regarding the EU Commission's proposed replacement of the Timeshare directive (proposal COM(2007) 303 final). Our comments on the numbered questions in the Call For Evidence are listed below. Our additional comments/concerns on detailed areas of the proposed Directive are included as an appendix.

1. The rationale for bidding legislation or voluntary agreement?

The 1994 Timeshare Directive (94/47/EC) has been highly effective in providing protection for consumers purchasing timeshare products. In TATOC's response to the European Commission's Consultation Paper, we made it clear that TATOC did not support a combined legislation that brought non-timeshare products like Discount Holiday Clubs into the same legislation as timeshare. We still hold this view very strongly, but

recognise that momentum and support for the combined legislation is now so great that we must take a pragmatic view, and make a positive and practical contribution to the proposed Directive.

Consumers in the recently emerging non-timeshare products need the same degree of protection as afforded to timeshare owners by the original Timeshare Directive. It must also be recognised that the Code of Conduct and Dispute Resolution Scheme introduced by OTE has had a major impact on improving standards and protection for consumers within those timeshare companies who are OTE members or subscribe to the Code of Conduct. However, not all companies are OTE members or subscribe to the Code of Conduct.

TATOC believes that a combination of legislation and a voluntary code-of-practice with a well recognised industry “badge of quality” will provide the maximum protection for consumers. The new Directive must provide adequate protection to consumers of the newly emerging non-timeshare products, without having a detrimental effect on the legitimate timeshare product and its owners.

2. *Respective roles of EC law and national law?*

TATOC understands that it is the role of an EU Directive to establish a minimum standard of consumer protection to apply across the EC. We believe that this is especially important in holiday products which, by their very nature, are often cross-border. It is the responsibility of Member States to produce national legislation to transpose the EU Directives and to provide effective enforcement procedures and sanctions.

3. *Strengths and weaknesses of the existing Directive*

The existing Directive has been very effective in providing consumer protection on the sale of timeshare products. Evidence of this is seen in the dramatic decrease in timeshare complaints and the drive by businesses to develop products not covered by the Directive. The weakness of the existing Directive is that its scope is no longer sufficient to provide protection for newly emerging holiday products *incorrectly described in the proposed Directive as “similar to it”* (opening page of the Directive). It must be recognised that legislation alone can never provide protection for consumers without rigorous enforcement by Member States. This failure to enforce existing law has been the major weakness in dealing with the illegal practices of unscrupulous businesses operating bogus timeshare resale companies. More than anything else, it is this lack of enforcement that has caused a loss of consumer confidence in the timeshare product.

4. *Scope and definitions of the draft Proposal (Articles 1 and 2)*

It is made clear throughout the proposed Directive and associated papers that the perceived problems in marketing are not related to the genuine timeshare product. It remains TATOC’s concern that bringing non-timeshare products within the scope of a Directive bearing the name of “timeshare” will prove detrimental to the genuine timeshare product and its owners.

It is our view that the proposed Directive takes too “heavyweight” an approach in addressing timeshare exchange facilities, or indeed that any real or quantified problems exist in this area. We believe the requirements of the Directive on timeshare exchange to be unnecessary and unworkable. Please see appendix paragraph 4 for further comment.

On the matter of resale companies, the vast majority of problems are a direct result of the illegal activities of unscrupulous companies and the only real method of removing this problem is the rigorous enforcement of existing laws by Member States. Without this action there will be no additional benefit from any provision in the new Directive to address resale.

TATOC fully recognises and supports the need to introduce legislation to provide consumer protection on the new long-term holiday products that lie outside the definition of timeshare within the current Directive.

The definition of “timeshare” within Article 2 (1a) is inadequate to correctly identify the legitimate timeshare product, and to differentiate it from non-timeshare products where the consumers’ benefits are *not* guaranteed against any identifiable assets or right of use of holiday accommodation directly owned by the consumers or held in trust. See appendix paragraph 1.

5. *Information provision and advertising (Article 3 and Annexes)*

For ownership at fixed timeshare resorts, TATOC supports the extended disclosure information detailed in Annex 1 and 2. However, we are most concerned about the opportunity described within Article 5 paragraph 5 for marketing companies to have the opportunity to levy and enforce a charge for cancellation of the contract during the cooling-off period. Whilst recognising that the existing Timeshare Directive contains a similar provision, this does provide an opportunity for unscrupulous companies to make considerable and unjustified profits from members who withdraw from their contract. We press very strongly for this opportunity to be removed.

We are concerned that the requirements of Annex 1 would be wholly impractical for flexible or points-based timeshare companies where the portfolio of products can be very extensive. It is quite impracticable for a marketing company to provide, or for a consumer to absorb, such quantity of detail in such cases. For example, it is not uncommon for there to be ten or more resorts in a single portfolio and provision for this must be built into the proposed Directive. See appendix paragraph 7.

We are concerned that the requirements of Annex 3 (long-term holiday products) are insufficient to provide adequate protection to consumers. The dangers of such products are not adequately revealed by the requirements of the Directive, while the sheer volume of information may give a purchaser a false sense of security. Marketing companies should be required to provide full details of the product, and a full description of the assets whether real, rented or contractual upon which the product is dependent. See Appendix paragraph 2.

There is additional information TATOC feels would be highly beneficial to purchasers of Timeshare and LTHPs that should be included in Annexes 1 and 3. This is described in Appendix paragraph 3.

TATOC supports the focus of the proposed Directive onto resale companies, but is concerned that Annex 4 introduces considerable confusion and anomalies that must be resolved. See appendix paragraph 5

6. *How can consumers generally be best informed about their rights in relation to this directive?*

There are two aspects to this question. First, there is a need to bring information about the introduction and purpose of any new Directive to the attention of the general public. TATOC would support an intensive media campaign by Member States, and would welcome the opportunity to work with the OFT, DTI or any other government agency on this matter.

Secondly, there is an essential need for potential timeshare and LTHP purchasers to be particularly aware of this Directive, together with any other relevant Directives such as the Unfair Commercial Practices Directive, and the national legislation that implements them. TATOC recommends that the disclosure information. (Article 3 (2) and Annex 1 and 3) be extended to include a legislative summary making reference to relevant Directives and national legislation.

7. *How satisfactory for consumers are provisions for withdrawal (Article 4(3) and Article 5)?*

The right of withdrawal, together with a ban on deposits, have been the two fundamental aspects of the existing Timeshare Directive that introduced much needed consumer protection to timeshare purchases. It is essential that the disclosure information referred to in Annex 1 (m) contains the full and detailed information as described in article 5 of the proposed Directive.

The right of withdrawal hinges on pre-contractual information being provided in writing (Article 3) and a written notice of withdrawal (Article 5) being “dispatched” before the deadline expires.

There are many examples where disputes have resulted from disagreement about withdrawal notices being sent or the date on which this was done. To limit the possibility for such disputes, the pre-contractual information should also include guidance on any requirements within the contract or national law for a consumer to demonstrate the sending of a withdrawal notice.

8. *To what extent does the Directive achieve a more consistent regime across Member States?*

TATOC is in full support of a harmonised approach across Europe, especially because the nature of timeshare is one of a cross-border business. A harmonised cooling-off period of 14 days is a specific example (Articles). We are concerned that confusion could result, both to marketing companies and to consumers, if member states substantially modify the requirements of the new Directive within their national legislation. Article 1(2)

limits the provision for more stringent requirements to the right of withdrawal, which should minimise the danger, but even so it is TATOC's view that a common application of the directive in Member States will result in less confusion for consumers.

9. *How can consumers be best protected from demands for advance payments?*

As indicated in 7 above, the ban on deposits has been a fundamental element of the consumer protection introduced by the existing Timeshare Directive. TATOC strongly supports the ban on deposits to continue. However, a number of member states currently allow a process of deposit taking by independent third parties, a procedure which Article 6 (1) and (2) prohibits. This may have a detrimental effect on timeshare sales within these countries. Before closing the door on this procedure, TATOC would welcome a study to establish whether a third-party procedure can be identified and regulated that would provide the opportunity for third party deposits without weakening the consumers undisputed right to a return of monies on withdrawal from the contract under the provisions of the Directive.

10. *How significant a problem for consumers have advance payments been in the resale market?*

This has been the most significant consumer problem in the area of resales. There have been a large number of companies contacting timeshare owners and requesting advance payments for a variety of reasons, many claiming to have a buyer already waiting and willing to pay an attractive but inflated price. The vast majority of consumers never achieved a sale and never saw their money again. *These illegal practices will not be prevented by any provisions within a new Directive.* The answer to this problem lies in identification and rapid, rigorous enforcement of existing laws.

The new Directive (Article 6(2) provides that no payment, guarantee, reservation, etc may be taken by a resale company (or third party) prior to completion of the sale. However, the timeshare industry and its consumers needs to have an active, reputable resale marketplace in operation for the benefit of consumers who may no longer be able to utilise, or perhaps not afford, the ongoing cost of their investment. A total ban on all payments prior to completion of a sale is too simplistic an approach, and will result in further stagnation of the resale market and a resulting disadvantage to consumers. Reputable resale agents incur costs in advertising timeshare properties for owners. TATOC would welcome a study to consider whether Article 6(2) could be safely revised to allow for a small, reasonable and detailed charge to be made by registered companies.

Please see appendix paragraph 5 for further recommendations on resale.

11. *View on sanctions imposed by member states for infringement of the current Directive*

The provisions of the Directive appear satisfactory, but TATOC's concern again remains one of there being an adequate commitment to investigation and enforcement.

12. *View on the level of sanctions imposed by Member States in enforcing the current Directive*

We do not have sufficient information available to comment on the number or effectiveness of actions brought for infringement of the current Directive. However, the overwhelming impression is that there has been few actions brought against offenders under the current legislation. This may be testament to the effectiveness of the Directive, but may also be due to the limited scope of the directive and the moves to develop products that lie outside of its protection.

The phraseology of the Directive in Article 11 (2) is encouraging, ie that sanctions should be "effective, proportionate and dissuasive". If possible we would add "timely", "punitive" and "rigorously enforced" to this statement.

13. *Relationship between the proposed Directive and the Unfair Commercial Practices Directive*

The expanded scope of the new Directive will introduce much needed consumer protection, much of which lies outside of the core timeshare product itself. It is TATOC's view that this extended scope will be well complimented by the provisions of the Unfair Commercial Practices Directive in further regulating the activities of companies operating within the provisions of the new Directive

14. *Significant issues in the timeshare market that the proposed Directive has failed to address*

Please see appendix for TATOC concerns on:

- Areas not addressed.
- Areas where the proposal will not provide adequate protection or may have missed its intended “target”.
- Areas where there would be serious practical difficulty in implementation.

ADDITIONAL COMMENTS ON DETAILED ASPECTS OF THE PROPOSED DIRECTIVE

1. *Definition of timeshare*

The definition of timeshare in Article 1 (a) of the proposed Directive does not capture the essential factor differentiating timeshare from other Long Term Holiday Products (LTHP). Timeshare ownership is based on clearly defined holiday properties for which owners have a long-term right of use that is directly owned by them or held in trust on their behalf. If the Directive is to incorporate different requirements for timeshare and LTHPs the distinction between them must be more clearly defined. We would propose the definition of timeshare be extended to include a phrase:

the right to use one or more clearly defined accommodations where the long-term right of use belongs to an individual owner or group of owners, or is held in trust on their behalf.

In addition, the statement in paragraph 1 of the first page of the proposed Directive that “new products similar to (timeshare) have appeared on the market” is incorrect and misleading. *The newly emerging long-term holiday products designed to circumvent the 1994 Timeshare Directive are nothing what-so-ever like timeshare* except, perhaps, that the aggressive sales techniques that gave timeshare its original bad name have reappeared on these new products. The statement that the two products are similar is detrimental to the image and perception of timeshare and should be removed.

2. *Disclosure information for LTHPs*

Annex 3 should require more detailed information for LTHPs to clearly indicate to buyers the precise details of the accommodation and any other benefit being offered, including its ownership and any security of ownership or right of use by the company, for the services being offered over the time period. The requirements placed on timeshare products in Annex 1 are far more extensive and demanding, yet it is consumer protection in LTHPs that has been a principle driver behind the new Directive. The requirements of Annex 3 are inadequate to substantially improve consumer information or to provide adequate protection for purchasers of LTHPs.

3. *Additional information required in Annex 1 and 3*

There are many reasons why an owner may no longer wish, or be able to, continue to enjoy the benefits of their holiday product. It is TATOC’s view that information should be included in Annexes 1 and 3 to detail the procedures, requirements, limitations and costs of transferring ownership, and of resigning from the ownership should this prove necessary.

The detailed operation, rules and costs applying to a particular timeshare resort or LTHP can change from time to time as described within the Constitution or rules governing the detailed operation of the ownership. It should be made clear to potential consumers that the information presented in Annex 1 and Annex 3 are only applicable at the time of signing the contract, and may change thereafter. The rules governing such changes should be described.

TATOC also believes it would be helpful to potential consumers if Annex 1 indicated whether a particular timeshare resort or club had an elected Owners’ Committee and how to contact this organisation.

4. *Exchange facilities*

TATOC is concerned that the requirements of Annex 5 demonstrate a lack of understanding of how timeshare exchange facilities operate and would be impractical and unworkable. For example, the largest exchange company RCI, on which the majority of timeshare owners depend for their exchange facilities, has access to more than 3,000 resorts. The requirements of Annex 5 (c & e) in many cases do not apply or would be

impractical to provide for 3,000 properties. Paragraphs i to m do not generally appear applicable to exchange companies or the timeshare exchange environment.

Other exchange companies, for example Dial an Exchange in the UK, offer exchange facilities to owners who “bank” their ownership in exchange for others where the exchange company has no direct contract or relationship with the particular resort.

In addition, the right of withdrawal (Article 5) and the advance payments (Article 6) do not apply well to exchange companies because of the essentially different service such companies provide compared to the actual sale or resale of holiday products. It is TATOC’s view that a complete revision of Annex 5 and how exchange facilities fit into the Directive is essential.

5. Resale

TATOC supports the focus the new Directive brings to resale companies. However, we are concerned that paragraph e of Annex 4 makes provision for resale companies to make a charge for withdrawal from a contract. We are concerned, as we are with the same provision in Annexes 1, 3 and 5, of the proposed Directive, that this facility could be abused by disreputable companies and we would prefer to see this opportunity removed.

Article 3 (3) places the onus to provide a purchaser with the information in Annex 4 on the resale company. This task may be extremely difficult, if not impossible, for the resale company to deliver and to be sure that the information is up-to-date. We recognise the need for a purchaser to have access to all relevant information but the practicalities of delivery must be given further consideration or the onerous task placed upon the resale company may be an impossible burden and will further stagnate the already difficult legitimate resale market. This will greatly disadvantage consumers and, in particular, will work to the great detriment of aging owners or others who, for whatever reason, may find themselves in urgent need to sell their timeshare.

Article 6 paragraph 1 refers to a ban on “advance payments” within the cooling-off period while Article 6 paragraph 2 refers to a ban on advance payments until the actual sale has taken place or the resale contract is otherwise terminated. In principle, we cannot see any justification for an “advance” payment when a sale has been completed, nor do we understand the concept of an “advance payment” when a contract is terminated.

This confusion about advance payments for resale activity can only act against the consumer in one of the most important areas the Directive has set out to address, and this must be clarified.

6. Resort Constitutions

The majority (if not all) of timeshare resorts or Clubs are based upon a published Constitution to which owners and the timeshare company agree to abide and which forms part of the contract between the two parties. The Directive gives no recognition to these Constitutions which provide much of the requirements of Annex 1 and far more. Annex 1 should be extended to include any such Constitution or other legal agreement binding the owners and supplier.

7. Flexible timeshare ownership and points clubs

There is a growing trend within timeshare for owners to purchase a flexible type of ownership which provides for a range of holiday accommodation without the need to utilise an exchange company. This may take the form of owning one or more weeks within a specific time period at a range of specific resorts within a management group, or ownership of a number of holiday “points” which can be used to obtain accommodation at a large portfolio of accommodation.

In such cases many of the paragraphs in Annex 1 do not have a practical interpretation and Annex I must be revised to incorporate these products.

10 September 2007

Memorandum by Timeshare Computer Link Ltd

My name is Lee Sheard. I am submitting this evidence on behalf of Timeshare Computer Link Ltd, of which I am a Director.

The company deals exclusively in resale timeshare and has done so for the last 11 years.

I would like to give my evidence on the specific issues as follows:

OVERVIEW

1. As the resale of timeshare does not have the same binding legislation as some other timeshare products. We feel satisfied with the voluntary agreements in place. We follow the OTE Code of Ethics as far as resales are concerned. I believe that any further legislation would make the selling of the product more difficult and, therefore, of no benefit to the consumer. We believe that there is already enough legislation in place in the Companies Act and the Sales of Goods Act to cover for any misdemeanours.
2. We find the difference in EC law and national law to be confusing. We would be happy to be governed by an EC law, providing that the controls and punishments were dealt with equally by all member states, thus making a level playing field. Otherwise, we would prefer to be controlled by the OTE with them being made the primary legislators for the industry, having more responsibility for reporting to governments any unethical practice they come across.
3. The existing Directive has been beneficial to our business because customers cancel their contracts under the legislation and then come to us and buy similar products at lower prices. However, we consider that this is not of any great benefit to the industry or the consumer because most consumers cancel simply because they can and then do not repurchase from anywhere because they are put off by people who do not understand timeshare. The legislation has also created off-shoot businesses which will continue in one guise or another irrelevant of any further legislation.

SCOPE AND DEFINITIONS

4. The scope and definitions are likely to create even more confusion for the consumer and the industry. We believe that the current definition of an immovable property of more than three years duration is more than adequate.

NATIONAL PROVISIONS

5. Where we agree a resort should offer full disclosure, we find this to be not practicable in the resale business. The clients contact us and they are at liberty to ask whatever questions they want prior to deciding whether or not to buy. Whilst we try and verify everything the best we can, it is difficult if the resort will not pass on the information to us.
6. We think that the OTE should be the information place for timeshare. They should give information on websites, in the national press and in flight magazines. They should have leaflets available from Citizens Advice Bureaux and Trading Standards offices.

RIGHT OF WITHDRAWAL

7. From a consumer perspective, I am sure the provisions on right of withdrawal are satisfactory. However, as this encourages cancellations of what is a superb product, I see no advantage to the consumer.
8. There appears to be to me too much emphasis on the right of withdrawal. Providing the product does as described, we do not agree that there should be any right of withdrawal This again could be addressed by the OTE.

ADVANCE PAYMENTS

9. Advance payments are a standard way of making a deposit for any purchase that people will make. We do not see why timeshare should be treated any differently.
10. We do not have a problem with purchasers on the resale market. People come and buy because they want the product and the payment of a deposit secures the week in their name whether the payment is paid to a third party or not does not make any difference. We have more difficulties with the vendors changing their minds about selling, rather than purchasers.

REDRESS

11. The simplest way to deal with this from a consumer's point or view would be to have one arbitrary body. This surely should be the OTE combined with the only other European association with any credibility, which is TATOC.

SANCTIONS, MONITORING AND ENFORCEMENT

12. The penalties applied by member states are of little threat because of the cumbersome way that courts work. It would be much better to have the OTE applying the sanctions and fines to those companies who break the rules. Through an insurance policy they would be able to recompense the consumer and punish unethical practices.

13. I believe that the Unfair Commercial Practices Directive means that there would be no need for any further timeshare legislation.

OUTSTANDING ISSUES

14. The Directive has completely failed to address the timeshare industry in general. The current legislation has had a crippling effect on the small timeshare operator and the new proposals may well make it not worthwhile for companies to continue. In the resale sector we sell a proportion of timeshare to people who are in a cooling off period, but mainly we sell to existing owners who are looking to extend their ownership, therefore, they see how good the product is.

CONCLUSION

15. Over 11 years we have a fairly good idea about what is happening in the industry. People telephone us for advice and, of course, we hear why people want to sell, as well as why people want to buy. Most people selling have owned for a number of years and, due to a change in circumstances, decide that they no longer require the timeshare. The vast majority have been very happy with their ownership and the complaints we receive are almost exclusively due to companies in Spain cold calling people saying they have a buyer for their timeshare. There are always going to be some "bad apples in the barrel", but we do not believe that legislation is the way to deal with these "bad apples".

We believe that much of the perception that timeshare is a troublesome product is brought about by Sandy Grey. Nearly all negative newspaper articles and TV and radio interviews can be attributed to Sandy Grey. He gives mis-information to the consumers and having read the interview he had with you, I also know that he gives misleading information to Government bodies.

Last night I was looking at the cost of an apartment in Vale Colorado for ski-ing. For one week I could end up paying well over £1,000, whereas through timeshare I can have the same standard of accommodation for a fraction of the price. Timeshare is an excellent product and I thoroughly recommend that each member of this committee looking at the legislation should contact me with a view to purchasing a week or more.

In support of our view that there is already enough legislation, we will point to the following Acts that are already in place for the consumer:

- Consumer Credit Act 1974
- Consumer Protection Act 1987
- European Communities Act 1972
- Fair Trading Act 1973
- Trade Descriptions Act 1968
- Unsolicited Goods and Services Act 1971
- Unsolicited Goods and Services Amendment Act 1975
- Misrepresentation Act 1967
- Supply of Goods and Services Act 1982
- Sale of Goods Act 1979
- Sale and Supply of Goods 1994
- Sale of Good Amendment Act 1995
- Unfair Contract Terms Act 1977

Then we have the more recent Timeshare Act of 1992 and then we have the up and coming Unfair Commercial Practices Act 2007.

7 September 2007

ISBN 978-0-10-401205-5



9 780104 012055

Printed in the United Kingdom by The Stationery Office Limited
12/2007 384445 19585