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The Federal Trade Commission (FTC) was organized in 1915 as an independent administrative agency whose objective was to maintain strongly competitive enterprises as the keystone of our economic system. Legislative authority provides for identification of unfair or deceptive acts or practices in commerce and for enforcement activities. The FTC uses a public interest standard to determine which marketplace activities it will pursue; it does not settle individual cases, but it pursues programs and cases with larger economic impact.

Findings/Conclusions: Although the task of protecting consumer interests in the marketplace is one of its key responsibilities, the FTC has not been successful in recovering many consumers' losses. Legislative authority does not provide the FTC with practical redress authority against businesses. The agency's administrative process lengthens case timeframes, and its standards for dishonest or fraudulent practices increase the FTC's burden of proof. In addition, businesses' weak financial conditions limit their ability to provide consumer redress. If consumers are to receive adequate redress, case actions must be started as soon as possible and handled expeditiously. The FTC has experienced delays because of lengthy negotiation periods, lack of adequate consumer injury analyses, and problems with policy communications. Case delays weaken the consumer's position by lessening the potential for obtaining redress and reducing the value of any redress obtained. Recommendations:

The Congress should amend section 19(a)(2) of the Federal Trade Commission Act to authorize the FTC to order redress if it determines that a reasonable person would have known that violations were dishonest or fraudulent as well as section 13(b) to authorize the FTC to seek an injunction to prevent businesses from dissipating their assets to avoid redressing consumers. The Chairman of the FTC should ensure that redress cases are handled as expeditiously as possible by monitoring implementation of management changes designed to redress delay and improve communications. (RRS)

8045

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Victims Of Unfair Business Practices Get Limited Help From The Federal Trade Commission

The Commission has had only limited success in helping consumers who were victims of unfair or deceptive practices.

--Its authority is impractical because of lengthy procedures.

Many of the businesses that it investigates have weak financial conditions.

--It has not overcome its internal management problems.

GAO recommends that the Congress clarify and strengthen the Commission's authority and that the Commission accelerate its internal processes to better help consumers.





COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-139310

To the President of the Senate and the
Speaker of the House of Representatives

We reviewed the Federal Trade Commission's consumer redress activities to evaluate how well it was implementing its authority under the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act (88 Stat. 2183).

This report describes legislative and management conditions that have hindered the Commission's efforts to obtain redress for consumers injured by unfair or deceptive business practices. It contains recommendations which, if implemented, should enable the Commission to be more effective and timely in obtaining redress for more consumers.

We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget, and the Chairman, Federal Trade Commission.

James G. Steels
Comptroller General
of the United States

D I G E S T

The Federal Trade Commission, which has broad authority to help consumers who have been the victims of unfair or deceptive practices in business, has had only limited success.

In some cases consumers received no redress--satisfaction for losses resulting from unfair or deceptive business practices. In others, the amount of redress was relatively small or available only to a few consumers. (See ch. 2.)

The Commission's ability to obtain consumer redress has been limited by:

- Its impractical authority because of lengthy and time-consuming procedures.
- The weak financial position of many businesses it investigates.
- Its internal management problems.

In January 1975 the Congress passed the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, which added section 19 to the Federal Trade Commission Act. This section authorizes the Commission to seek redress for consumers, but its provisions complicate the process by requiring the Commission to first complete its case against a business (including any appeals to Federal courts) and to then go to a Federal or State court to get the redress.

In the majority of cases reviewed, the Commission took 4 or more years to complete a case. Although no section 19 redress cases have been completed yet, they could take an additional 4 years. Long case time frames can have several negative effects, including:

- Company assets being unavailable for redress.
- A reduced amount of potential redress.
- Difficulties in locating eligible consumers.
- Reduced value of any refunds due to years of inflation.

GAO believes that the Congress should amend section 19 of the Federal Trade Commission Act to authorize the Commission to order redress if it determines that a reasonable person would have known that the violations were dishonest or fraudulent. (See p. 12.)

A weak financial position was one of the major factors cited in the majority of cases where the Commission obtained no redress or only a limited amount of redress for consumers.

The Commission is not explicitly authorized to stop a company, through court action, from dissipating its assets to avoid paying redress. To better assure that a company has resources to provide redress for consumers, GAO believes that the Commission should be able to seek an injunction to preserve a company's assets until the Commission can complete its administrative proceedings. (See p. 15.)

The Commission supports GAO's recommendations for legislative improvements.

Internal management problems involving the settlement negotiation process, consumer injury analysis, and communication of redress policies have contributed to case delays. Commission officials have recognized these problems and have acted to correct them.

GAO believes that the Commission must emphasize and assure that the management changes provide accelerated case processing, better communications among the staff and the Commission, and, in the end, more equitable redress for injured consumers. (See ch. 4.)

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ABBREVIATIONS

FTC Act	Federal Trade Commission Act
GAO	General Accounting Office

CHAPTER 1

CONSUMER REDRESS--WHAT IS IT AND WHERE CAN YOU GET IT?

Although a majority of businesses in this country operate reputably, unfair and deceptive practices by some companies pose serious problems for consumers and Federal, State, and local law enforcement officials. Unfair and deceptive practices have been reported in many businesses, and abuses seem more prevalent in some industries than in others. This report discusses the reasons many consumers do not receive adequate compensation for their losses, using as examples consumer problems in three business areas--vocational schools, land sales, and business opportunities.

Many consumers are easy targets for vocational training abuses. They may be persuaded by misleading advertisements and salespeople promising the training and placement help needed to get jobs such as a medical assistant, an insurance adjuster, or a truck driver. The bright career hopes of many students dim after completing the courses when they are unable to get jobs. This happens in some cases where employers consider the vocational training as unacceptable or where the school's training or placement services may be inadequate. The student's investment of as much as \$1,000 or more and many hours of time and effort in the training program proves virtually worthless.

People can also lose money on new business ventures. Take, as an example, a couple that invests their hard-earned life savings in a business opportunity that promises a chance to work at home. The advertisements are enticing: "Earn yearly gross profits from \$39,600 to \$67,200." Unfortunately, many people, like this couple, never see profits. Instead, many sustain losses which, in some cases, exceed their original investments of thousands of dollars.

Still other consumers are victims of land sales schemes. A seller may carefully lead a consumer into buying underdeveloped land by misrepresenting facts. For example, the seller may say that recreational facilities will soon be available, that development potential of the area is good, or that the land is an excellent investment. If these representations prove false, the consumer seeking financial gain or a home with facilities and amenities of a successful development may be left instead with largely underdeveloped land with a market value below cost.

WHAT IS CONSUMER REDRESS?

When taken advantage of by unfair practices, consumers should seek redress. Consumer redress is satisfaction or payment to consumers by businesses for economic injury resulting from unfair or deceptive business practices. Forms of redress include (1) restitution (giving consumers something back, generally money); (2) specific performance (requiring the business to provide the promised goods and services); (3) rescission (unmaking or wiping out a contract); and (4) reformation (modifying the contract to make it conform to the original intent of the parties).

WHERE CAN CONSUMERS GET REDRESS?

Consumers who are economically injured can seek satisfaction through:

- Direct contact with the business.
- Local consumer groups.
- Better Business Bureaus which can help to settle disputes.
- State agencies which investigate consumer complaints and file suits against businesses violating State consumer protection laws.
- Small claims courts.
- Suits in other courts, either individually or through class action suits brought by many consumers.
- Federal agencies, such as the Federal Trade Commission.

Each option has limitations. When business-sponsored redress mechanisms work correctly, they can be the most efficient and satisfactory method of resolving consumer complaints. But not all businesses have effective systems.

Consumers have resolved some of their problems through local groups and Better Business Bureaus. Activities of these groups, however, are limited by resource constraints and lack of enforcement authority.

The form and effectiveness of consumer protection authorities of individual States also vary. While State agencies can sometimes combine their actions, coordinating such efforts can be difficult.

Small claims courts offer considerable potential for handling consumer problems, but studies have shown that they have not worked as well as they can. Many courts are located only in downtown sections and are often open only during weekdays when most consumers work. In some courts there are not enough staff to help consumers prepare complaints. Even when a consumer wins a case, problems in locating the defendant or ignorance of collection procedures hinders collecting on a judgment.

Consumers can seek redress in other courts, but high legal fees often make this impractical. Class action suits can make the fees somewhat more affordable, but these are permitted in only about 15 States. In addition, a 1969 Supreme Court decision significantly reduced consumers' ability to bring class actions in Federal courts by holding that separate claims of consumers residing in different States could not be added together to satisfy the \$10,000 jurisdictional requirement. ^{1/}

COMMISSION'S ROLE IN CONSUMER REDRESS

Because of its broad powers and responsibilities, the Commission is in a unique position to reduce unfair and deceptive acts and practices in the marketplace. It is also able to seek, through the courts, redress for consumer losses resulting from acts and practices which a reasonable person would have known were dishonest or fraudulent.

Commission's organization and objectives

The Commission was organized as an independent administrative agency in 1915 under the Federal Trade Commission Act of 1914 (15 U.S.C. 41). The Commission consists of five members appointed by the President and confirmed by the Senate for 7-year terms. The President designates one Commissioner as Chairman.

The Commission has three major operating bureaus-- Consumer Protection, Competition, and Economics. Its basic objective is to maintain strongly competitive enterprises as the keystone of our economic system. Although the Commission has many duties, the public policy underlying them all is essentially to prevent the free enterprise system from being stifled, substantially lessened by

^{1/}Snyder v. Harris, 394 U.S. 332 (1969).

monopoly or restraints on trade, or corrupted by unfair or deceptive trade practices. In brief, the Commission is charged with keeping competition both free and fair.

The Commission's budget and staffing for fiscal year 1978 were about \$60 million and 1,700, respectively.

Legislative authority

The Commission's primary legislative authority stems from section 5 of the FTC Act which simply states that unfair methods of competition and unfair or deceptive acts or practices in commerce are unlawful. The Clayton Act (15 U.S.C. 12) and other legislation such as the Consumer Credit Protection Act (15 U.S.C. 1601) identify specific unfair or deceptive acts or practices and provide authority for Commission enforcement activities.

Priorities

The Commission uses a public interest standard to determine which marketplace activities it will pursue. It does not settle individual consumer complaints; rather, it pursues programs and cases with larger economic impact. In the past, the Commission was criticized for concentrating too much of its resources on trivial cases. Consequently, the Commission has been shifting its priorities to emphasize larger issues that are national in scope.

COMMISSION'S ENFORCEMENT PROCEDURES

The Commission has broad investigative and adjudicative procedures which are separate from the regular court system. The FTC Act and the Administrative Procedure Act (5 U.S.C. 551) specify how the Commission must proceed in prosecuting its cases.

An investigation of a business or industry may be initiated on the basis of consumer or industry complaints, referrals from the Congress or other Government agencies, or the Commission's own monitoring activities.

The Commission's investigation, essentially information-gathering and analysis, leads to a consent order, a complaint, a rulemaking proceeding, or a decision to close the case.

Most Commission cases are settled when a business agrees to cease and desist from a challenged practice.

The public has an opportunity to comment on the proposed consent order containing the agreement and the Commission considers these comments before finalizing its order. Those signing agreements can have a statement included that the agreement is for settlement purposes only and is not an admission by the company that it has done anything wrong. If the company fails to comply with the consent order, the Commission can bring suit for civil penalties that can run up to \$10,000 for each violation of the order.

If the company involved does not agree to a settlement, the Commission issues a formal complaint, and the case is "tried" before a Commission administrative law judge. The judge's decision and order are binding on all parties unless the order is appealed to the Commissioners. Likewise, the Commissioners' decision is final unless appealed to a U.S. court of appeals.

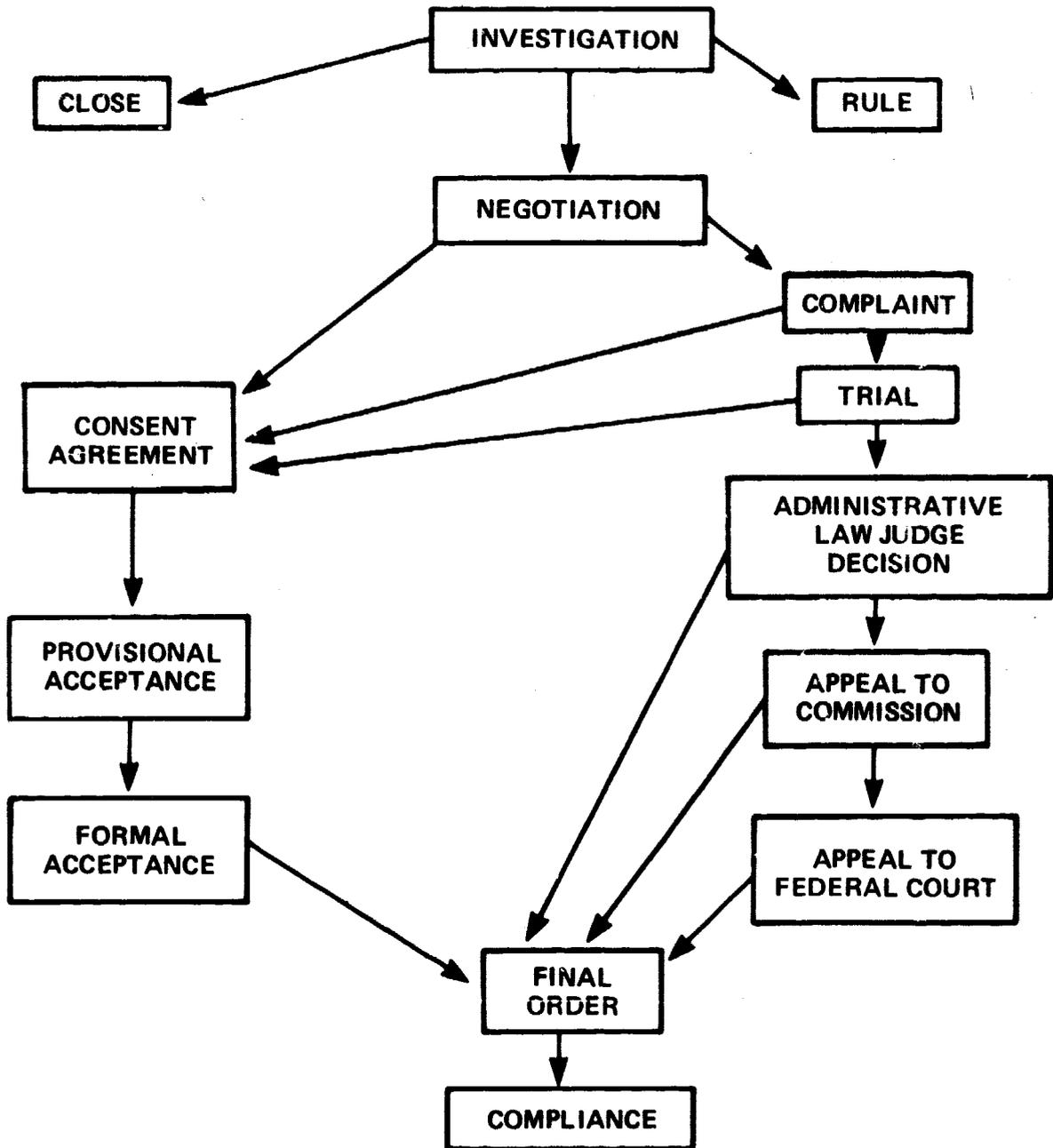
A typical Commission order may require the business to cease and desist from engaging in specified unfair and deceptive acts and practices or affirmatively disclose certain information to customers.

An investigation may also result in a recommendation that the Commission promulgate a trade regulation rule concerning certain acts or practices. Rulemaking is a substantive lawmaking proceeding, which defines unfair or deceptive acts or practices within an industry or group of industries. The proceedings contain strict procedural safeguards and provide for broad public participation and comment before a rule is promulgated.

Investigations may be closed without any Commission action for several reasons, including lack of evidence of a violation, private action, or excessive cost of continuing.

The following flow chart illustrates the main steps in the Commission's enforcement procedure.

FEDERAL TRADE COMMISSION PROCESS



SCOPE

We reviewed the Commission's performance in obtaining redress for consumers economically injured by unfair or deceptive acts and practices by:

- Evaluating the Commission's authority for obtaining redress.
- Determining whether redress was obtained where appropriate.
- Determining whether consumers received equitable redress for their injuries.

We concentrated on recent cases, generally those active since 1975, in three programs--vocational schools, land sales, and business opportunities. We chose these programs because they were among the most active in terms of consumer redress.

Our review work was performed between June 1977 and August 1978 and included an evaluation of cases developed at Commission headquarters in Washington, D.C., and at several of the Commission's regional offices.

CHAPTER 2

LIMITED SUCCESS IN GETTING CONSUMER REDRESS

In many Commission cases, consumers have not received any redress. Even when the Commission is able to obtain redress it is often small or available only to a limited number of injured consumers. The Commission's success has been limited by impractical redress authority (see ch. 3), weak financial conditions of many firms (see ch. 3), and management control problems (see ch. 4).

The following schedule shows that the Commission obtained redress in only 12 of the 24 cases resolved between 1975 and August 21, 1978, involving vocational schools, land sales, and business opportunities.

<u>Program</u>	<u>Cases resolved</u>	<u>Redress results</u>		
		<u>None</u>	<u>Restitution</u>	<u>Other</u>
Vocational schools	15	8	7	0
Land sales	3	0	1	2
Business opportunities	<u>6</u>	<u>4</u>	<u>1</u>	<u>1</u>
Total	<u>24</u>	<u>12</u>	<u>9</u>	<u>3</u>

CONSUMERS OFTEN RECEIVE NO REDRESS FOR THEIR LOSSES

In 12 of the 24 cases, the Commission did not obtain any consumer redress. In one case, the Commission issued a consent order on October 19, 1977, against a vocational school for misrepresenting current and future job prospects for students completing its gas turbine mechanics course. Commission staff estimated that from mid-1972 to mid-1975, about 2,500 students enrolled in the course but received little or no benefit from it. The course tuition in 1975 was about \$1,100; the Commission estimated the total consumer loss at \$2 million.

Similarly, the Commission's investigation of a case against an idea-promotion company showed that it misrepresented, among other things, its engineering and marketing ability to develop and promote clients' ideas and to obtain financial gain for its clients. Consumers spent from \$750 to \$1,200 each to have their ideas and inventions promoted.

Few realized gains. Commission staff estimated the total consumer loss at about \$750,000.

LIMITED REDRESS OBTAINED IN SOME CASES

The Commission did obtain some consumer redress in 12 of the 24 cases resolved between 1975 and August 21, 1978. The redress obtained was generally much less than the losses to consumers and was provided to only some eligible consumers. For example, in January 1975 the Commission settled its case against a vocational school offering courses such as computer keypunching, computer programming, secretarial training, and medical and paramedical personnel training. Commission staff estimated that students paid about \$12 million in tuition for courses which were virtually worthless for future employment. The negotiated settlement required the school to refund up to \$1.25 million to certain students. The school had difficulty locating students eligible for the refund and ended up paying back only about \$675,000.

On July 13, 1976, the Commission settled its case against another vocational school. The Commission charged the school with using unfair and deceptive practices in promoting and selling trailer truck driver courses. Commission staff estimated that 1,950 students each paid \$795 in tuition, about \$1.5 million in total, from 1971 to 1973. The negotiated settlement required the school to pay a total of only \$25,000 to students enrolled in the courses during calendar year 1973. In the end, 292 students each received about \$86.

Commission staff negotiated a settlement only for students enrolled during calendar year 1973 mainly because (1) a much more extensive student survey would be needed and (2) with the school having limited assets for restitution, expansion of the refund period might have doubled or tripled the number of eligible students, significantly reducing the amount of restitution each would receive.

A third vocational school case was settled on October 26, 1976. The Commission alleged that the school misrepresented the employment benefits of its home study courses for positions such as nursing assistant and insurance claims adjuster. Commission staff estimated that about 5,500 students enrolled in the school's courses from February 1969 to June 1972 at tuition costs ranging from \$595 to \$895. While the consumer loss was estimated to be at least \$1 million, the negotiated settlement provided for only \$200,000. Refunds were provided to only about 475 students. The relatively few students

participating in the refund was partly because of difficulties in locating former students.

These are three of the nine cases in which the Commission obtained some restitution for consumers. The amount of restitution obtained in most of the other cases was also substantially less than the consumer losses.

The Commission does not believe that the problem is the result of shortcomings in its negotiated agreements. It noted that the purchasers of vocational school courses, for example, tend to be young adults who change residence as a result of changes in their employment or marital status. The Commission incorporated in recent orders requirements that companies providing restitution undertake more extensive efforts to locate persons who might be eligible for refunds. For example, in June 1978 the Commission supplied public service announcements to 980 television stations and 8,383 radio stations across the Nation in an attempt to locate students who might be eligible for \$1.5 million in refunds from a vocational school.

The Commission obtained its largest cash refund for consumers in its case against a land sales company. The Commission charged the company with violating a Commission order issued in 1972. The Commission alleged that the company misrepresented the land's investment potential, the nature and extent of developments, the availability of water, and the company's resale policy. The Commission's January 1977 settlement provided for almost \$4 million to be refunded to consumers and up to \$16 million to be spent on capital improvements through 1985.

Value of some redress is hard to assess

Redress has not always been restricted to restitution. In two land sales cases settled between 1975 and August 21, 1978, the Commission obtained consumer redress other than restitution, such as land improvements. While the cost of the redress package to the business can be estimated, the total value provided to consumers is difficult to measure.

For example, on September 27, 1977, the Commission settled its case against a land sales company charged with deceiving consumers in land sales transactions. Over 10,500 lots in Arizona were sold at an average unit price of over \$4,000. Commission staff valued these lots at about half that amount. While no detailed analysis

was made, the estimated consumer loss was between \$17 and \$21.5 million. The major part of the Commission's settlement did not provide any restitution to individual consumers. It did, however, require the company to spend about \$4 million on improvements and recreational facilities, including those originally promised to consumers along with some additional improvements.

The real value of the redress package to consumers, however, is unclear. According to one Commission official, improvements probably would have been made without the Commission's action. He further stated that, even if the improvements were made, there was insufficient reason to believe that the developments would become viable or the lots habitable let alone transformed into good investments.

CHAPTER 3

NEED TO STRENGTHEN THE COMMISSION'S AUTHORITY TO OBTAIN REDRESS

The task of protecting consumer interests in the marketplace is one of the Commission's key responsibilities. As shown in chapter 2, the Commission has not been successful in recovering many consumers' losses. Part of the problem is that the Commission's ability to negotiate a settlement with a business has been weakened because the Commission's authority to obtain redress if the business does not voluntarily provide it is impractical. Poor financial conditions of many of the businesses the Commission investigates also have contributed to the problem.

MAGNUSON-MOSS ACT PROVIDES COMMISSION WITH IMPRACTICAL REDRESS AUTHORITY

In January 1975 the Congress enacted the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act (88 Stat. 2183) which added section 19 to the FTC Act (15 U.S.C. 57b, see app. I). This section enables the Commission to seek redress for consumers in Federal district courts or any State court with jurisdiction over such matters.

Section 19(a)(1) authorizes the Commission to go directly to court to seek redress for consumers harmed by violations of the Commission's rules. Section 19(a)(2) authorizes the Commission to seek redress for unfair and deceptive practices which result in a final Commission order but requires the Commission to (1) go through administrative and judicial processes which lengthen case time frames and (2) prove dishonest or fraudulent conduct. As of August 21, 1978, the Commission had brought only two cases to court under this authority; neither had been resolved.

Administrative processes lengthen case time frames

To obtain redress under section 19(a)(2), the Commission must first issue a final order. The Commission's process for issuing an order, illustrated on page 6, can take several years. Once the order becomes final, the Commission must within 1 year initiate a second process which involves a State or Federal court proceeding which can also take several years.

The Commission has noted that, if an order is issued in a proceeding against more than one party and fewer than all respondents seek judicial review of the order, the order becomes final only as to those parties who do not seek judicial review. Because of the requirement that a section 19 proceeding be brought within 1 year of the time the Commission's order becomes final, the Commission must commence its redress proceeding against those parties not seeking judicial review while awaiting the completion of the appeal process before commencing its redress proceeding against the parties who seek review. This could result ultimately in the Commission's having to litigate two redress proceedings pertaining to one Commission adjudicative proceeding.

In a majority of the redress cases we reviewed, 4 years or more elapsed from the start of an investigation until the Commission issued a final order (completion of the final process). The schedule below shows case time frames. For cases in process, the schedule includes time used through August 21, 1978. It includes cases involving vocational schools, land sales, and business opportunities that were active between January 1975 and August 21, 1978.

<u>Case status</u>	<u>No.</u>	<u>Under 36 mos.</u>	<u>36 to 47 mos.</u>	<u>48 mos. and over</u>
Final order issued	a/26	9	7	10
Ongoing	<u>17</u>	<u>3</u>	<u>1</u>	<u>13</u>
Total	<u>43</u>	<u>12</u>	<u>8</u>	<u>23</u>

a/Includes the two cases in section 19 proceedings.

Delays in issuing a final order can adversely affect redress to consumers. For example, in 1971 the Commission opened a formal investigation of the advertising, enrollment, and solicitation practices of a vocational school that offered courses in truck driving and heavy equipment operation. Commission staff did not have a precise estimate of the consumer loss resulting from alleged misrepresentations, but believed it to be at least \$5 million. Commission staff initially obtained an agreement with the school in February 1976. The agreement provided for refunds of up to \$1.5 million, including administrative costs. An eligible student would not receive a refund of more than 75 percent of the tuition paid. The Commission issued a final order containing a revised version of the agreement (no change in the refund amount) on December 28, 1977. Since refunds

will be given to certain students completing the courses between 1970 and 1973, the value of the restitution will be reduced by 5 or more years of inflation.

Because of the anticipated difficulty in locating many eligible students, Commission staff estimate that only one-half to two-thirds of the school's redress liability will actually be paid out. To be eligible for refunds, students must provide certain information regarding the courses they took and their attempts to get jobs, but one Commissioner was concerned that it would be difficult for many students to accurately recall details occurring 6 or 7 years earlier.

The first section 19 redress case to reach the second process (court proceeding) initially came under Commission investigation in 1968. The Commission issued its complaint in 1972 with the resulting order becoming final in 1976. ^{1/} The redress case was filed with the district court on February 3, 1977, and was still in process as of August 21, 1978.

While most cases might not take so long, the need for a second process increases the difficulty in getting redress for consumers because delays generally work to the detriment of consumers. The Commission's bargaining position is weakened where a long processing time is inevitable. For example, in one case settled in December 1976, Commission staff recommended acceptance of the proposed settlement rather than pursue further redress in court partly because of the time factor. The staff estimated that litigation might extend the case 8 years or more.

Dishonest or fraudulent standard
increases Commission's burden of proof

Section 19(a)(2) also provides that the courts are to order consumer redress only if the Commission proves that the act or practice resulting in a final order is one which a reasonable person would have known was dishonest or fraudulent.

^{1/}The act applies to practices occurring prior to its enactment in cases where the Commission's final order was issued after January 4, 1975, and where the party was notified that consumer redress might be sought.

The legislative history on the standard is limited. Congressional debate indicated a concern about protecting a business from unforeseen liability: a business having no reason to suspect that it was behaving unlawfully should not be forced to give consumers redress. The Congress wanted to impose a more rigorous test for allowing redress than the Commission's normal criteria--unfair and deceptive--for determining violations of the FTC Act.

The term "fraud" has received much attention in the courts. In contrast, Commission staff found that the term "dishonest" has been interpreted by only a handful of courts. To guide case development for section 19 actions, Commission staff outlined the elements of dishonesty and fraud based on past cases. The thrust of the outline is that consumer redress would be limited to circumstances where reasonable people would have known that the conduct was wrongful and, therefore, could have foreseen liability. But because there are no case decisions on the standard in this context, its meaning and scope are still uncharted and open to debate. One Commission attorney told us that the uncertainties further increase the burden of proof and, while difficult to measure, can have a dampening effect on the Commission's negotiating position in trying to settle cases out of court.

WEAK FINANCIAL CONDITIONS LIMIT A BUSINESS' ABILITY TO PROVIDE CONSUMER REDRESS

In many of the potential redress cases we reviewed, the poor financial condition of the business was one of the major reasons that the Commission accepted a settlement that did not provide for full redress to injured consumers. In 3 of the 24 completed cases we reviewed, the business had closed. In 14 others, Commission staff cited the businesses' weak financial condition in recommending that the Commission accept settlements which required the companies to cease and desist from future unfair practices but which did not provide redress for consumers injured by past actions.

The Commission Chairman has stated that violators have often dissipated their assets and left only a shell of a closely held corporation before the Commission could complete its case. For example, chapter 2 described two cases where consumers received no redress for their losses. In both cases Commission staff cited the insufficient assets of the businesses and their principal officers as the main obstacle to obtaining redress.

Although the Commission may ask a district court to preserve a company's assets once the section 19 proceeding is underway, its authority to preserve a company's assets pending completion of administrative proceedings is not clear. Section 13(b) of the FTC Act (15 U.S.C. 53(b)) authorizes the Commission to seek a court injunction against a company about to violate any law the Commission enforces. However, the Commission's injunctive authority does not explicitly provide for the use of injunctions to preserve a company's assets. Preservation of company assets in consumer redress cases is often necessary to better assure that the assets will be available for consumer redress.

On June 9, 1977, the Commission announced that it had asked a Federal court to enjoin a firm involved in alleged unfair land sales from disposing of or encumbering its land, contracts, accounts receivable, or other assets. On July 27, 1977, the Commission announced that the firm had agreed to meet the conditions sought in the injunction request. Thus the Commission succeeded in preserving the company's assets for the redress order; however, the court never ruled whether such an injunction could properly be granted under section 13(b).

CONCLUSIONS

The Commission has had limited success in obtaining redress for consumers because its authority to do so is time consuming and impractical.

Long time frames can have a negative impact on consumer redress. First, as time passes, particularly if the case involves litigation, there is a greater chance that company assets will be unavailable for redress. Second, it becomes increasingly difficult as the years go by to locate consumers eligible for refunds. Therefore, fewer consumers may receive benefits. Third, years of inflation reduce the value of any refunds obtained.

The Congress should allow the Commission to order redress in cases where a reasonable person would have known that the violations were dishonest or fraudulent. Under this concept businesses would be protected from unforeseen liability as the Congress originally intended in enacting section 19 and the need for a separate judicial process would be eliminated.

A business which has injured consumers through its unfair or deceptive acts or practices must have some

assets before the Commission can try to get redress for these consumers. Consumers' chances of receiving redress are weakened if a company dissipates its assets while the Commission is investigating it. When the Commission has reason to believe that a company may be dissipating its assets to avoid redressing consumers, the Commission should be able to seek an injunction to preserve those assets until it can complete its administrative proceedings. Therefore, the Congress should clarify the Commission's authority to allow it to obtain injunctions in these cases.

RECOMMENDATIONS TO THE CONGRESS

To give the Commission stronger and clearer authority to obtain redress for economically injured consumers, we recommend that the Congress amend section 19(a)(2) of the FTC Act to authorize the Commission to order redress if it determines that a reasonable person would have known that the violations were dishonest or fraudulent.

We also recommend that the Congress amend section 13(b) of the FTC Act to authorize the Commission to seek an injunction to prevent businesses from dissipating their assets to avoid redressing consumers.

AGENCY COMMENTS

In its comments on this report (see app. II), the Commission agreed that procedural obstacles to obtaining meaningful redress are significant. It pointed out that the FTC Amendments of 1978 (H.R. 3816), then pending in the Congress, would reduce this problem to some degree by providing that a Commission order is final 60 days after the order is served. Pursuant to that provision, the Commission would be able to file a section 19 proceeding for redress as soon after that 60-day period as it wishes, rather than awaiting the completion of the judicial review process. However, a potentially lengthy administrative adjudication would still have to be completed before a redress proceeding could be commenced. It said that our proposal that the Congress specifically authorize the Commission to order redress itself would significantly lessen delays in providing redress for consumers and would improve the Commission's ability to negotiate orders providing greater relief.

The Commission also agreed that explicit statutory authority to preserve the assets of a potential provider of redress would significantly increase the likelihood

that funds or other assets would remain after litigation. It commented that H.R. 3816 contained a provision which would have clarified its authority to seek a court order to preserve the respondent's assets. (Note: The House defeated H.R. 3816 on Sept. 28, 1978).

CHAPTER 4

MANAGEMENT PROBLEMS REDUCE COMMISSION

EFFECTIVENESS IN OBTAINING REDRESS

Section 19(d) of the FTC Act imposes specific time limitations on the Commission for bringing redress actions. For trade regulation rule violations, the limit is 3 years after the violation. For unfair and deceptive acts or practices leading to a final cease and desist order, the redress action must be brought before the court within 1 year after the Commission's order becomes final. In the latter case, the potential redress covers violations occurring during the 3 years prior to issuance of the Commission's complaint.

If consumers are to receive adequate redress, case actions must be started as soon as possible and handled expeditiously. The Commission has experienced delays because of lengthy negotiation periods, lack of adequate consumer injury analyses, and problems with policy communications. Case delays weaken the consumer's position by lessening the potential for obtaining redress and reducing the value of any redress obtained. Commission officials recognized these management problems and have revised operating policies and procedures.

LENGTHY NEGOTIATION PROCESS CAN WEAKEN COMMISSION'S CASE

When an investigation indicates that corrective action is needed, the Commission drafts a complaint and proposed order and notifies the business of the potential action against it. If the business refuses to negotiate a settlement, the Commission may issue the complaint.

Because investigation activity is often suspended during negotiations, failure to reach an agreement may result in the evidence becoming stale, leaving the Commission unprepared to litigate the case. A land sales case in process at August 21, 1978, is an example of this situation.

The Commission began its formal investigation of this case in June 1973. By October 1975 the staff believed that there was enough evidence for the Commission to issue a complaint and thus offered the company an opportunity to negotiate a settlement. The negotiations looked promising for

a while but faltered when the company insisted on having a combination of the weakest provisions of other land sales orders. Negotiations were terminated in March 1977 because Commission staff found the company's offer of settlement unacceptable.

Since there was little investigative activity during the negotiation period of about 16 months, the case was not ready to proceed to litigation. Commission staff found the evidence not sufficiently current or adequate to support issuance of a complaint. While no detailed consumer injury estimate was made, the staff believed it to be about \$450 million (half of the company's total land sales). The impact of this long delay on the potential for consumer redress is still in doubt, but it appears that the consumers' position was weakened.

Even when the Commission staff is able to reach an agreement with a business, problems can occur. The company could be protected by the statute of limitations if it changes its alleged unfair or deceptive practices and the period of investigation and negotiation exceeds 3 years. Because the 3-year statute of limitations under section 19 is determined by issuance of a complaint which starts the litigative process, the option for the Commissioners to reject the settlement in favor of litigation may be weakened if most of the alleged violations occurred 3 or more years earlier.

In two cases--a vocational school case and a land sales case--at least one Commissioner questioned the adequacy of the proposed settlement. In response, staff favored acceptance of the agreement partly because of the type of circumstances relating to the statute of limitations described above. Since most of the alleged violations in these cases would have been outside the 3-year limit if the Commission rejected the agreement and issued a complaint, the staff believed that litigation would not produce better consumer relief. The negotiation period was about 8 months in one case and over 1 year in the other.

The Bureau of Consumer Protection issued a September 1977 directive requiring staff to limit negotiation efforts to 20 staff-hours without continuing the investigation. The Bureau amended this policy in December 1977 to limit negotiations to 20 staff-hours, or 20 days, whichever comes first. Use of this policy should speed up Commission action.

LACK OF ADEQUATE CONSUMER
INJURY ANALYSIS CAUSES DELAYS

On every case questions can arise on a variety of issues such as (1) the choice of remedies; (2) whether to accept a consent agreement or issue a complaint; and (3) whether to require restitution for past transactions, protect consumers in future transactions, or both. Analysis of these issues requires a thorough understanding of the amount and nature of the consumer injury. The Commission has not always adequately analyzed these issues before attempting to negotiate a redress settlement. Such an analysis can be difficult, costly, and imprecise, but if it is not done adequately it can slow down the case or lead to an inappropriate decision.

In recent cases lack of adequate consumer injury analysis created problems in case handling. For example, in one land sales case, the Commission provisionally accepted a consent order on March 8, 1977. During the Commission's final review, questions arose about whether the consent order was in the public interest. Bureau staff believed that a final determination could not be made partly because the fair market value of land in relation to the purchase price had never been adequately determined. Without such information, the staff could not estimate consumer injury and, therefore, the Bureau could not evaluate the available remedies. The case was returned to the staff who then had to obtain additional consumer loss and other requested information. Based on this new information, on March 7, 1978, the Commission rejected the consent order and closed the case.

In another land sales case, a more detailed consumer injury analysis provided a substantially different perspective on a proposed agreement with a company which allegedly made misrepresentations in selling its land. The proposed agreement--signed on June 1, 1977--provided for capital improvements including recreational facilities in the sales area. Based on its limited analysis, the staff believed that the improvements would be a positive step toward increasing the usefulness and value of the land. Reviewing officials, however, believed that the consumer benefit of the proposed redress package could not be properly analyzed because the fair market value of the land had not been adequately determined.

When the Commission obtained the needed information, it found that the land was so devoid of natural amenities that the construction of recreational facilities could not transform the areas into desirable communities. As

a result, one Commission official believed that capital improvements would not be a satisfactory form of redress in this case. On July 5, 1978, the Commission rejected the consent agreement and returned the case to adjudication.

After review of these cases, Bureau officials informed Commission staff about the need to obtain sufficient information to evaluate the propriety of seeking consumer redress. Also, in January 1978, the Bureau restructured its process for evaluating staff requests for Commission actions so that attention is focused on the analysis of consumer injury at the outset of formal investigations.

POLICIES AND PROCEDURES ARE NOT EFFECTIVELY COMMUNICATED

The Commission has had much difficulty communicating policies and procedures, including those pertaining to potential redress cases, to its staff. Studies by outside consultants and internal committees found this communications problem to be serious and frustrating to staff.

When communications problems occur, delays in processing redress cases are inevitable. For example, regional staff was quite disturbed with the issues raised by headquarters' review of its recommendation for redress on a land sales case. While the details of the review were quite lengthy, the staff's feelings are clearly indicated by its response:

"There is nothing we could have done to anticipate the 'policies' suggested [by the review]. After hard fought negotiations, we felt that we had the best settlement that could be obtained under the circumstances. While a devil's advocate approach is a good way to clarify issues, it should be done during the negotiations and not by taking after-the-fact potshots at settlements that were negotiated pursuant to what the Regional Office felt was the Bureau policy."

Bureau officials acknowledged that issues raised after staff work is essentially completed and which might require substantial revision or termination has been a problem. They cited a need for earlier Bureau involvement in case handling to avoid the morale problems and unnecessary use of Commission resources that can otherwise occur. The Bureau Director explained his position in a November 1977 memorandum to the staff:

"Staff have almost cried out in the past for guidance, for statements of policy early on so that they are not left in the dark only to return six months later or three years later with a work product with which the Bureau Director disagrees. We want to check back periodically to see if we can help and to make sure we are all on board together."

The Bureau Director has implemented periodic review sessions of pending matters so that early communication of policies can be assured. In addition, the Commission told us that the Bureau and the Office of General Counsel have established procedures to assure development of consistent policies and eliminate some review delays.

The Commission recently revised its operating manual which is designed to guide the staff in processing matters within the agency. The manual is prepared by the staff itself and issued by the Executive Director. Although the operating manual represents directives from the Executive Director, the Commission has developed a system to assure that all Commission directives and policies are incorporated into the operating manual.

CONCLUSIONS

The Commission should handle cases involving potential consumer redress as expeditiously as possible to maximize consumers' prospects of receiving redress. This has not been happening.

Several of the Commission's changes or proposals should expedite case processing and put consumers in a better position to receive redress. Staff will be focusing on consumer injury at the outset of formal investigations, investigations will be suspended for negotiation periods for no more than 20 calendar days, and communication of procedures to staff should be improved.

The Commission must emphasize and assure that the management changes provide accelerated case processing, better communications among the staff and the Commission, and, ultimately, more equitable redress for injured consumers.

RECOMMENDATION

We recommend that the Chairman of the Federal Trade Commission ensure that redress cases are handled as expeditiously as possible by monitoring the Bureau's implementation of its management changes designed to reduce delay and improve communications.

AGENCY COMMENTS

The Commission acknowledged the need for clear communications of its policies regarding redress actions. It attributed some of its past problems to the fact that it has been dealing with novel remedies and a new statute which raises significant legal and policy issues.

SECTION 19 OF THE FEDERAL TRADE COMMISSION ACT

Sec. 19.(a)(1) If any person, partnership, or corporation violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 5(a)), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 5(a)(1)) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b).

(b) The court in an action under subsection (a) shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c)(1) If (A) a cease and desist order issued under section 5(b) has become final under section 5(g) with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding

under section 5(b) with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 5(b) which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.



OFFICE OF
THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

August 10, 1978

Mr. Gregory J. Ahart
Director
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

The Federal Trade Commission has reviewed the draft of the General Accounting Office's proposed report to the Congress on the Commission's efforts to obtain consumer redress and appreciates having an opportunity to comment on the report prior to its publication.

The report raises several issues regarding the Commission's success in obtaining redress for consumers, its statutory authority to seek redress and preserve a respondent's assets and the management problems which may have reduced the Commission's effectiveness in obtaining redress for consumers. Our comments will address each of these aspects of the report.

As the report acknowledges, the Commission's authority to seek redress in the district court requires the Commission to complete its administrative adjudication, including judicial review, and then to litigate the redress issues in federal court. This lengthy and time-consuming litigation alternative has militated in favor of the Commission's accepting settlements for less than the maximum the Commission might obtain in litigation. The Commission necessarily must weigh the costs and risks of litigation, the fund which may be available for redress after litigation, and the effect of inflation on the real recovery by consumers if relief is litigated rather than negotiated, in a decision whether to accept a settlement.

The Availability of Redress Through the
Federal Trade Commission

The report concludes that the Commission has had limited success in obtaining redress for consumers based upon a review of cases regarding vocational schools, land sales, and business opportunities. The Commission cannot disagree that it would have been desirable to obtain full redress for all consumers in most if not all matters in these areas. However the Commission's success cannot be measured purely by the number of cases in which redress was obtained, the number of consumers who were the beneficiaries pursuant to the Commission's orders, or the dollar amount of recoveries by consumers. The Commission's performance must be analyzed in light of several other factors.

As the report acknowledges, the financial position of respondents to Commission actions explains some of the difficulties the Commission has had in obtaining redress; a company which is close to bankruptcy or has few assets from which restitution can be made, is unlikely to voluntarily provide refunds. In some instances, however, the Commission has been able to obtain redress from such financially weak companies. Understandably, in such cases, the refunds were less than full or were made to fewer than all injured consumers.

In addition, several of the consent agreements into which the Commission has entered have provided restitution concerning acts or practices for which redress might not have been available under Section 19 of the FTC Act. As noted in the report, the statute limits redress to acts and practices occurring within three years prior to issuance of a complaint by the Commission. Recently, the Commission has successfully negotiated (with one land sale company and one vocational school) to have companies provide redress to consumers who were injured as much as seven years prior to the time the complaint would have been issued had a consent agreement not been reached.

The report cites one matter where a vocational school refunded to consumers an amount which was considerably less than that which it had agreed to pay because the school had difficulty locating students who were eligible for refunds. (P.14.) The problem of finding injured consumers, unfortunately, is not unique to that case. The difficulty generally has not been, however, a product of shortcomings of the negotiated agreements between the Commission and respondents. The purchasers of vocational school courses, for example, tend to be young adults who change residence as a result of changes in their employment or marital status. Moreover, after earlier consent orders did not provide for adequate searches for potential recipients of Commission-negotiated redress, the Commission has incorporated in recent orders requirements that respondents undertake more extensive efforts to locate persons who might be eligible for refunds.

The Commission's Authority to Seek Redress

The report concludes that the Commission's authority to seek redress (15 U.S.C. § 57b) is impractical because of the requirements that the Commission's order, issued after an adjudicative proceeding, be final before a redress proceeding can be commenced in federal court. The Commission agrees with the report's finding that the procedural obstacles to obtaining meaningful redress are significant. The administrative adjudicative process, even if expedited, is time-consuming. Moreover, even if the administrative hearing and appeal to the Commission are expedited, judicial review of the Commission order may add several years before the Commission's order is final.

Moreover, if a Commission order is issued in a proceeding against more than one party and fewer than all respondents seek judicial review of the Commission's order, the order becomes final only as to those parties who do not seek judicial review. Because of the requirement that a Section 19 proceeding be brought within one year of the time the Commission's order becomes final, the Commission must commence its redress proceeding against those parties not seeking judicial review while awaiting the completion of the appeal process before

commencing its redress proceeding against the parties who seek review, */ which could result ultimately in the Commission's having to litigate two redress proceedings pertaining to one Commission adjudicative proceeding.

Furthermore, even if judicial review is sought concerning only the relief ordered by the Commission, and not regarding the Commission's determination that Section 5 of the FTC Act has been violated, the Commission must await the conclusion of the review process even though it is the determination of a violation on which the Section 19 action is predicated.

The FTC Amendments of 1978 (H.R. 3816), now pending in Congress, would reduce this problem to some degree, by providing that a Commission order is final sixty days after the order is served (Section 5(g)(1)). Pursuant to that provision, the Commission would be able to file a Section 19 proceeding for redress as soon after that sixty-day period as it wishes, rather than awaiting the completion of the judicial review process. However, a potentially lengthy administrative adjudication would still have to be completed before a redress proceeding could be commenced.

The report notes that this inevitably long "processing time" weakens the Commission's bargaining position. Certainly, respondents are aware of the factors militating in favor of settlement rather than lengthy and expensive litigation, and may approach negotiations with such factors in mind.

*/ This is the circumstance in which the Commission finds itself in FTC v. Turner Enterprises, Inc., No. 77-67-Orl-Civ-R (M.D. Fla.), which was instituted while the individual respondent in the matter was seeking judicial review, Turner v. FTC, No. 76-1227 (D.C. Cir., July 5, 1978). (Mr. Turner may yet seek certiorari of the Court of Appeals decision.)

Regardless of the impact that Section 19 has had on the negotiation of consent agreements which have provided redress, the fact remains that the procedures which it sets out by which the Commission can seek redress are cumbersome and time-consuming. The Commission therefore welcomes the GAO recommendation that it be specifically authorized to order redress itself. Although the Commission respectfully disagrees with the holding in Heater v. FTC, 503 F.2d 321 (9th Cir. 1974), that it presently lacks this remedial power, and intends to seek judicial affirmation of that authority in the future, clear and prompt statutory authorization of the Commission's power to order redress would be a substantial benefit to consumers.

An authorization for the Commission to order redress for actions which violate the FTC Act would significantly lessen the delays in providing relief for injured consumers and, by providing the threat of more immediate redress orders, improve the Commission's ability to negotiate orders which provide greater relief. Such Commission-mandated redress would be subject to the same judicial review as any other provision of Commission orders. Such review should be adequate to protect respondents.

The GAO recommendation that the Commission be authorized to order redress appears to include only administrative adjudicative proceedings. Therefore, the Commission would still be required to seek redress for trade regulation rule violations in federal district court. In light of the rationale underlying the recommendation, that the administrative adjudication and redress proceeding be consolidated in order to eliminate delay, this discrepancy can be readily justified. In the event of a rule violation, the Commission would initiate one proceeding for civil penalties in district court pursuant to § 5(m)(1)(A) of the FTC Act and redress pursuant to Section 19. There would be no delay in obtaining relief or waste of judicial resources because one court would be determining both whether the defendant had violated the FTC Act (as defined in the rule) and the extent of the defendant's redress obligation.

The Commission's Authority to Enjoin the
Dissipation of Assets

The Commission concurs with the conclusion that its success in obtaining redress has been limited by the weak financial condition of respondents. Explicit statutory authority to preserve the assets of a potential provider of redress would significantly increase the likelihood that funds or other assets would remain after litigation. H.R. 3816, again, contains a provision which would clarify the Commission's authority to seek a court order preserving the assets of a respondent to an FTC adjudicative proceeding. If enacted, that provision should be helpful, where applicable, in assuring that assets for redress will not be wasted prior to judgment.

It should be noted that, in addition to using its injunctive authority under 15 U.S.C. § 53(b) to prevent dissipation of assets, the Commission, once it has commenced a Section 19 proceeding, may ask the district court for similar relief which may be necessary to preserve the relief sought in the redress proceeding. The Commission sought an order requiring such preservation in FTC v. Las Animas Ranch, Inc., No. 78-K-81 (D. Colo.). After the Commission sought an order restraining defendants from disposing of contracts (reformation of which is being sought), defendants stipulated to entry of such an injunction. (Order, April 7, 1978.)

Management Problems

The report notes that management problems such as delays resulting from extensive negotiations, lack of adequate injury analysis and problems with policy communications, have hampered the Commission's effectiveness in obtaining redress. As the report acknowledges (p. 27), Commission officials have recognized these difficulties and revised operating procedures in order to reduce their undesirable effects on the Commission's effectiveness. The directive limiting time to be spent in negotiations which was issued in September 1977 (noted in the report at p. 30) was one attempt at such revision. In addition to that action, the Bureau of Consumer Protection has revised its evaluation

process so that attention is focused on the analysis of consumer injury at the outset of a formal investigation. Although estimates of consumer injury and potential for consumer redress are difficult to make, the Bureau and the Commission are attempting to assess such factors in commencing Commission actions and in accepting negotiated settlements for redress.

The Commission has attempted, too, to improve the communication of policies to avoid the confusion and anxieties on the part of the staff, which the report notes. The failure to clearly articulate policies may be attributed to some degree to the fact that the Commission has been dealing with novel remedies and a new statute which raises significant legal and policy issues.

The Commission acknowledges the need for clear communication of its policies regarding redress actions. The Director of the Bureau of Consumer Protection has implemented periodic review sessions of matters pending in each division and regional office so that early communication of policies can be assured.

In addition, in order to facilitate review and coordination of policies and the litigation of redress proceedings, the Bureau of Consumer Protection and General Counsel's Office have established procedures for the joint monitoring and supervision of redress matters. This inter-divisional effort will assure the development of consistent policies and should eliminate delay in the review process.

The report recommends that the operating manual or specific policy guidelines for redress cases be issued to improve communication. The revised Operating Manual which contains such guidelines has been approved for dissemination to the staff.

The Commission appreciates having had an opportunity to comment on the draft report on its efforts to obtain redress and to provide additional information for your consideration in the preparation of the final report to the Congress.

By direction of the Commission.



Michael Pertschuk
Chairman

GAO note: Page references in this appendix may not correspond to page numbers in the final report.

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