



## **UNITED STATES FEDERAL TRADE COMMISSION**

### **International Fellowship Program May - August, 2024 Report**

### **Back to Office Report- September 2024**

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## ABBREVIATIONS AND ACRONYMS

AI	Artificial Intelligence
BBB	Better Business Bureau
BC	Bureau of Competition
BCP	Bureau of Consumer Protection
BE	Bureau of Economics
CAK	Competition Authority of Kenya
CFPB	Consumer Financial Protection Bureau
CID	Civil Investigation Demand
CPD	Consumer Protection Department
CSN	Consumer Sentinel Network
DAP	Division of Advertising Practices
DCRO	Division of Consumer Response and Operations
DLTA	Division of Litigation Technology and Analysis
DOJ	Department of Justice
FCC	Federal Communications Commission
FDCPA	Fair Debt Collection Practices Act
FTC	Federal Trade Commission
IRS	Internal Revenue Service
MoU	Memorandum of Understanding
NOI	Notice of Investigation
OIG	Office of the Inspector General
ROSCA	Restore Online Shoppers Confidence Act
UDAPS	Unfair Deceptive Practices Acts
UFED	Universal Forensic Extraction Device
USA	United States of America

## A. Background

1. The FTC offers staff exchange programs with Non-United States competition, consumer protection, and privacy agencies for terms of three to six months. International Fellows participate in investigations, enforcement actions, and other projects with FTC attorneys, investigators, and economists.
2. International Fellows gain a first-hand appreciation of the practices and approaches that the FTC uses in its enforcement mission, while also sharing insights into their home agencies' approaches. Fellows return to their home agencies prepared to share what they have learned with their colleagues, apply their experience in their work for their home agencies, and help to improve cross-border cooperation through the relationships they have developed. FTC staff also benefits from the insights shared by visiting International Fellows.
3. Since the year 2007, the FTC has hosted 81 international colleagues in the International Fellowship Program. International Fellows have joined the FTC teams in the Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, Office of Policy Planning, and Office of International Affairs. Through a separate SAFE WEB Interns program, the FTC hosts colleagues for shorter terms.
4. The Competition Authority of Kenya nominated Mr. Ronald O. Miyoge (the "appointee") to represent the Competition Authority of Kenya in the FTC's staff exchange program, which was established pursuant to the U.S. SAFE WEB Act of 2006.

## B. Objectives of the Program by CAK

5. **Identification and prioritization of cases:** Over the past years, the Authority has solely relied on complaints lodged by complainants. There is a need to identify cases that have a greater impact on the economy and the consumer in order to generate much-needed publicity on the Authority's mandate. The International Fellow will be expected to develop a system to support the Authority in identifying these high impact cases and prioritizing them based on the strategic plan and other government programs.
6. **Planning for investigations and allocation of resources:** Due to the scarcity of resources, time, human capital, and finances, there is a need to plan and allocate sufficient resources for the cases. The Senior Investigations Officer will be expected to develop a methodology in planning for investigations that will give optimal returns on investment.
7. **Utilization of different modes of investigations:** It is worth noting that there exist differences in the nature of consumer cases as compared to cases involving restrictive trade practices due to factors such as evidentiary information required to prove harm to consumer or appropriate remedial measures. Participating in this Program will enable the Senior Investigations Officer to understand and introduce at least three new approaches to investigate consumer cases especially relating to product safety and substandard goods, as well as emerging issues such as e-commerce.

8. **Coordination with Government Agencies** and other relevant groups of interest e.g. consumer groups, for the Authority to deal with some of the cases there is a need to coordinate with different government departments and other stakeholders that may be interested in these cases. The Senior Investigations Officer will be expected to develop a stakeholder management strategy to guide stakeholder mapping.
9. **Transfer of Skills**- The Senior Investigations Officer will within 14 days of resumption to office, prepare a detailed report and share key learnings in a plenary session with staff.

### C. ABOUT FTC AND ORGANIZATIONAL STRUCTURE

10. FTC is an independent US government agency whose main function is the enforcement of civil antitrust law and the promotion of consumer protection. The FTC shares jurisdiction over federal civil antitrust law enforcement with the DOJ - Antitrust Division. The Commission was established in the year 1914 with the passage of the Federal Trade Commission Act.
11. The Commission is composed of five commissioners, who serve seven-year terms, they are nominated by the President and subject to Senate confirmation, and no more than three FTC members can be of the same political party. One member of the Commission serves as FTC Chair at the President's pleasure. All major key decisions by the Commission are subject to a vote.
12. The FTC's mission is protecting the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education.
13. **The Bureau of Competition** seeks to prevent anticompetitive mergers and other anticompetitive business practices in the marketplace. By enforcing the antitrust laws, the Bureau promotes competition and protects consumers' freedom to choose goods and services in an open marketplace at a price and quality that fit their needs.
14. **The Bureau of Consumer Protection's** is mandated to protect consumers against unfair, deceptive or fraudulent practices. The Bureau enforces a variety of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include individual company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education. In addition, the BCP contributes to the Commission's on-going efforts to inform Congress and other government entities of the impact that proposed actions could have on consumers.
15. **The Bureau of Economics** helps the FTC evaluate the economic impact of its actions. In doing so, the Bureau provides economic analysis and support to antitrust and consumer protection investigations and rulemakings. It also analyzes the impact of government regulation on competition and consumers and provides Congress, the Executive Branch and the public with economic analysis of market processes as they relate to antitrust, consumer protection, and regulation.

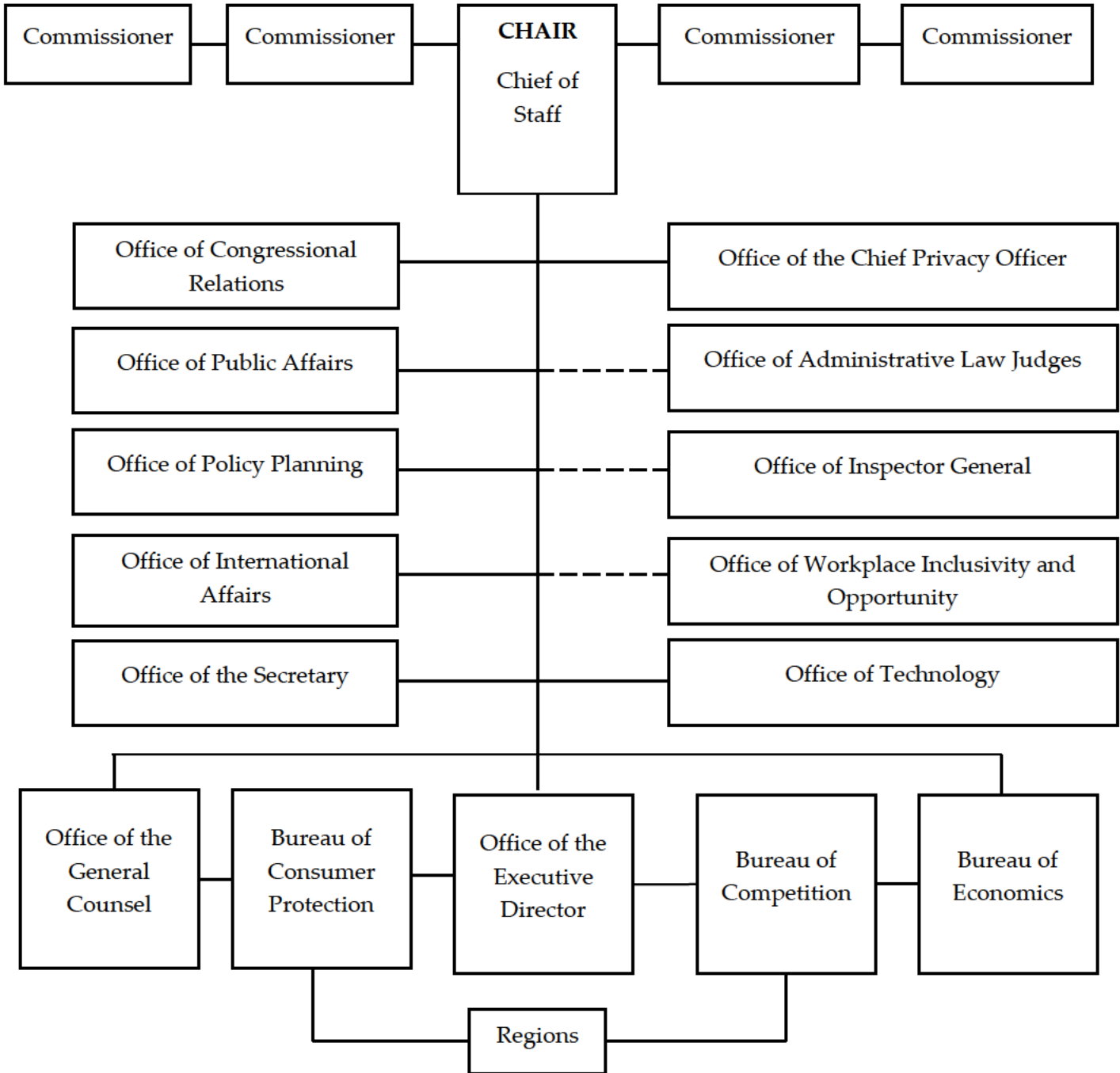
16. The Antitrust Division enforces federal antitrust and competition laws. These laws prohibit anticompetitive conduct and mergers that deprive American consumers, taxpayers, and workers of the benefits of competition.

17. U.S. antitrust laws are enforced by both the FTC's Bureau of Competition and the Antitrust Division of the DOJ. The agencies consult before opening any investigation. The Antitrust Division handles all criminal antitrust enforcement.

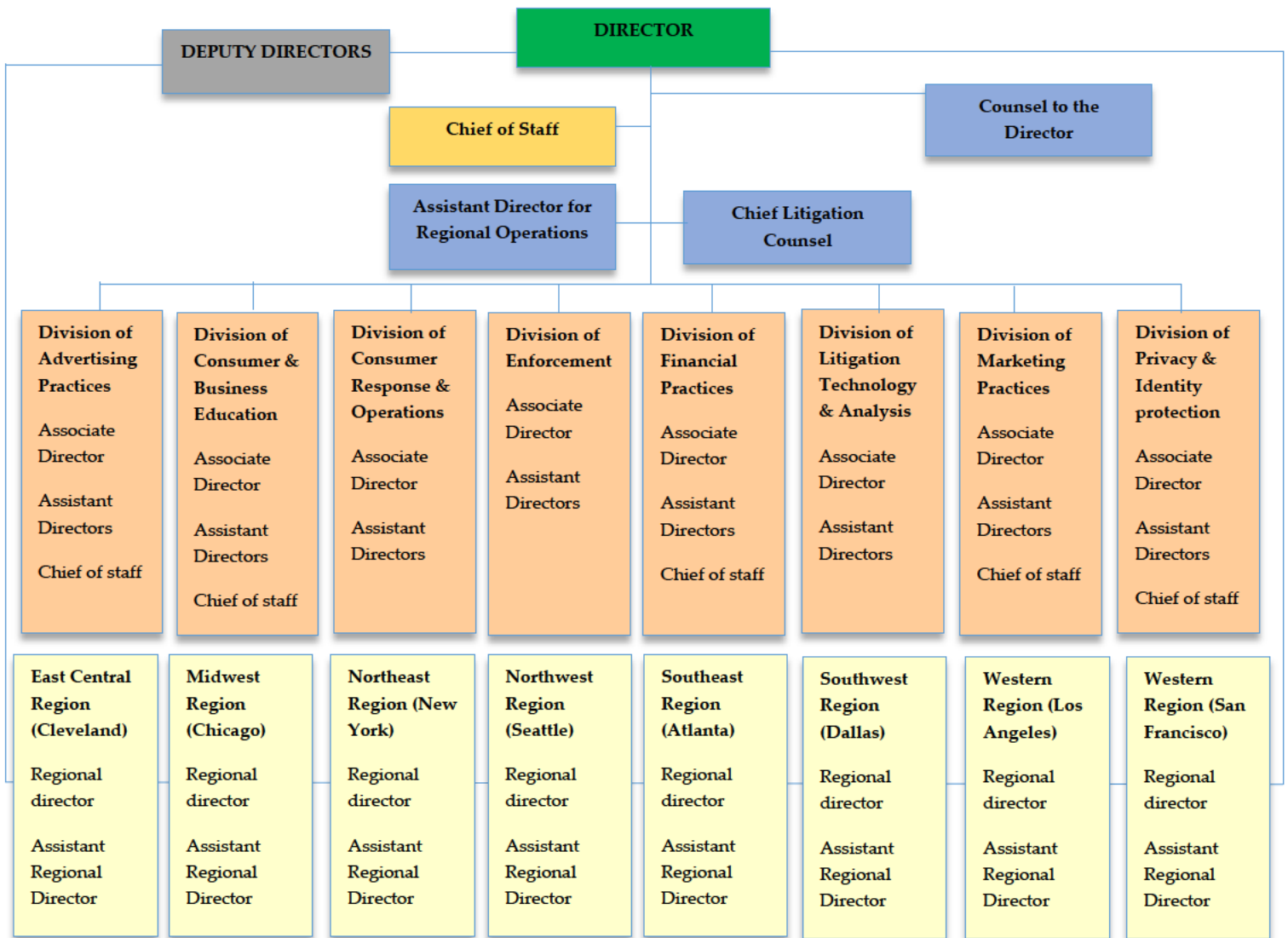
**a. Office of Inspector General**

18. This is an independent organization within the FTC, its mission is to prevent and detect fraud, waste, and abuse, as well as promote efficiency and effectiveness in FTC programs and operations evaluations, performance audits. The OIG primarily accomplishes its mission by performing financial audits and reviews of FTC programs and operations; conducting investigations of employee and contractor misconduct and crimes against the FTC; and by keeping FTC leadership, Congress, and other stakeholders informed, through the OIG's Reports to Congress and Top Management and Performance Challenges report. FTC Employees are expected to report waste, fraud, abuse and corruption. Further, all contact with OIG is confidential and may be anonymous too.

# FTC ORGANIZATIONAL STRUCTURE



# BCP STRUCTURE





## **b. Office of Technology**

19. The Office of Technology assists FTC by strengthening and supporting law enforcement investigations and actions; advising and engaging with FTC staff and the Commission on policy and research initiatives; and engaging with the public and relevant experts to understand trends and to advance FTC work.

Technologists have deep expertise across a range of specialized fields. These includes practitioners and subject matter experts across security and software engineering, data science, AI, machine learning, human-computer interaction design, and social science research relating to technology.

## **c. Office of Public Affairs**

20. The Mission of this Office is to reach, inform, educate, and engage consumers and businesses through media and digital technologies and in collaboration with internal partners to advance consumer protection and competition. The office is the primary point of contact for all news media inquiries.

## **d. The Office of International Affairs**

21. The FTC works with competition and consumer protection agencies around the world to promote cooperation and convergence toward best practices. The FTC has built a strong network of cooperative relationships with its counterparts abroad and plays a lead role in key international organizations and networks.
22. In the consumer protection area, the OIA coordinates with foreign law enforcement agencies on investigations and cases that affect U.S. consumers. Through arrangements and agreements with consumer protection enforcement agencies in foreign countries, and through multilateral organizations, OIA engages and coordinates information sharing and investigative cooperation for law enforcement actions.
23. The OIA leads and coordinates the FTC's work in international antitrust, consumer protection, and technical assistance projects. Its director reports directly to the Chair, and OIA staff work closely with all of the FTC's bureaus and offices.
24. OIA further coordinates onboarding of international fellows and interns from other countries.

## **e. Office of Policy and Coordination**

25. The Office of Policy and Coordination works with FTC Bureaus and Commission staff in preparing speeches, testimony for congressional panels, appellate briefs, advisory opinions to help clarify FTC rules and decisions about competition issues and briefing papers. This Office is also charged with incorporating racial equity and social justice into the Bureaus and Commissions enforcement actions and policy decisions.

## **f. BCP Divisions**

26. The FTC's BCP stops unfair, deceptive and fraudulent business practices by collecting reports from consumers and conducting investigations, suing companies and people that break the law, developing rules to maintain a fair marketplace and educating consumers and businesses about their rights and responsibilities. The FTC's BCP stops unfair, deceptive and fraudulent business practices by; collecting complaints and conducting investigations; suing companies and people that break the law; developing rules to maintain a fair marketplace; and educating consumers and businesses about their rights and responsibilities.
27. FTC collects complaints about hundreds of issues from data security and false advertising to identity theft and "Do Not Call" violations. Therefore, FTC uses these complaints to bring cases, and share them with law enforcement agencies worldwide for follow-up. In addition to the Bureau's eight divisions, FTC has got eight regional offices in the following regions: in Atlanta, Chicago, Cleveland, Dallas, Los Angeles, New York, San Francisco, and Seattle. These regional offices help to amplify US national impact and local presence, and allow the FTC to respond better to the diversity of the U.S. marketplace.
28. The Northwest Region in Seattle handles both antitrust and consumer protection matters. The Region works to enforce the federal antitrust laws through merger and anticompetitive conduct investigations and litigation across an array of industries. The office also stops unfair, deceptive and fraudulent business practices by conducting investigations, bringing law enforcement actions, building state and local partnerships, and educating consumers and businesses about their rights and responsibilities. The Regional office serves the residents of Alaska, Idaho, Montana, Oregon, Washington, and Wyoming states. All eight (8) regional offices have consumer protection mandate.

**FTC's Bureau of Consumer Protection is composed of eight divisions namely:**

### **i. Division of Advertising Practices**

29. The DAP enforces the nation's "truth-in-advertising" laws, which require advertisers to tell the truth and to back up their claims with reliable, objective evidence. DAP uses a variety of tools to protect consumers from misleading claims, including bringing law enforcement actions in federal and administrative courts, issuing warning letters, developing rules and guidance to businesses, advocating effective industry self-regulation, and preparing consumer education materials. It also works to protect consumers' health, safety, and economic interests.

### **ii. Division of Marketing Practices**

30. The Division of Marketing Practices responds to ever-evolving problems of consumer fraud in the marketplace. The Division enforces the FTC Act and several other federal consumer protection laws by filing FTC actions in federal district courts for immediate and permanent orders to stop scams; prevent fraudsters from perpetrating scams in the future, freezing their assets; and getting compensation for scam victims.

The primary focus of this division is scams; telemarketing scams; business opportunity scams; pyramid schemes; multi-level marketing; Herbalife case<sup>1</sup>; regulate funeral homes advertising; and warranties by manufacturers to consumers.

### **iii. Division of Privacy and Identity Protection**

31. The division deals with consumer privacy, data privacy, identity theft and credit reporting and information security. It enforces the statutes and rules within its jurisdiction, engages in outreach and policy development, and educates consumers and businesses about emerging privacy, credit reporting, and information security issues, as well as identity theft prevention and assistance.

### **iv. Division of Consumer and Business Education**

32. The DCBE mission is to give consumers the tools they need to make informed decisions and give businesses the tools they need to comply with the law. The Division creates free, plain language information online, in print, and on video. DCBE gives targeted objective advice to people and steps they can take to avoid or resolve a problem. People and organizations can take these resources written in English and Spanish and use them in their own communities.
33. The Division publishes hundreds of blogs posts and sends free email alerts to several hundred thousand subscribers. It also participates in hundreds of outreach events nationwide, including webinars, trainings and presentations and partners with other state agencies and consumers lobby groups like BBB.

### **v. Division of Consumer Response and Operations**

34. The DCRO collects and analyzes data to target law enforcement and education efforts and measure the impact of activities related to the FTC's consumer protection mission. The division is responsible for various projects and functions, including a Consumer Response Center. Counselors respond to consumer reports and inquiries received by telephone, mail and online. The CSN falls in this division. The division conducts complaint intake; they have consumer database where consumers can file complaints with the FTC; they manage the database, it's a massive database of cases. The database is also available to law enforcement agencies and regulators who are looking at a target.

### **vi. Financial Services Division**

35. Financial services Division play an important role in the daily lives of virtually all Americans. It deals with consumers in the market place, it investigates false information and unfair business practices, this includes Financial Technology. Financial Practices protects individuals and small businesses applying for short-term loans, including by ensuring that lending companies or their marketers do not gain an unfair competitive advantage. The division handles matters arising in: Motor Vehicle Sales Financing, Leasing, Deceptive Debt Collection Practices, Mortgage, Credit Card, and Other Debt Relief Services and Deception

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<sup>1</sup> <https://www.justice.gov/opa/pr/herbalife-nutrition-ltd-agrees-pay-over-122-million-resolve-fcpa-case>

Relating to other Financial Services i.e. fintech cases and profit for education, predatory lending, auto financing, debt relief and credit repair.

#### **vii. Division of Enforcement**

36. The Division of Enforcement litigates civil contempt and civil penalty actions to enforce federal court injunctions and administrative orders in FTC consumer protection cases; it coordinates FTC actions with criminal law enforcement agencies through its Criminal Liaison Unit; develops, reviews, and enforces a variety of consumer protection rules; coordinates multi-pronged initiatives to address current consumer protection issues; and administers the BCP's bankruptcy program.
37. Order Enforcement: The Division monitors compliance with administrative and federal court orders entered in FTC consumer protection cases. These orders address a wide range of consumer protection issues, including advertising and financial practices, data security, high-tech fraud, and telemarketing. The Division conducts investigations of possible order violations files civil contempt actions in federal court to enforce injunctions initiates court actions to obtain civil penalties for administrative order violations.

#### **viii. Division of Litigation and Technology Analysis**

38. The DLTA plays a central role in the Bureau's investigation and litigation of consumer protection matters, including working with attorneys to assess case needs, managing the technological tools used to conduct investigations and litigation, and evaluating and implementing emerging technologies. The Division functions include:
- a) Digital Forensic Unit: conducts forensic examinations of digital media to identify, collect, analyze, and preserve electronically stored information for use in court.
  - b) E-Discovery Unit: uses technological tools to process, organize, manage, and produce electronically stored information.
  - c) Forensic Accountants: analyze financial information to help locate assets and maximize recovery in consumer protection cases.
  - d) Honors Paralegals: provide a wide range of assistance on consumer protection investigations, litigation, and initiatives.
  - e) Tech Lab: provides undercover access to BCP staff and technical assistance in using innovative tools to investigate targets, detect unfair or deceptive activity, and capture evidence.
  - f) Technology Planning: analyzes and anticipates the Bureau's technological needs in fulfilling its consumer protection mission and helps acquire necessary technology.

#### **D. FTC Law Enforcement Mandate**

39. FTC authorizes the filing of a complaint when it has "reason to believe" that the law has been or is being violated and it appears to the Commission that a proceeding is in public interest. The FTC votes to Authorize the FTC staff to file a complaint in the USA District Court.
40. Consumer Protection Laws enforced by the FTC fall into three main categories:

- a. Section 5 of the FTC Act.
  - b. Rules in the code of Federal Regulations
  - c. Other Statutes
41. Section 5 of the FTC Act prohibits unfair methods in Competition, affecting commerce and unfair or deceptive acts or practices in or affecting commerce. Further, they are three elements of deception, mainly; A representation, omission or practice; Likely to mislead consumers acting reasonably under the circumstances; and that is material<sup>2</sup>.
42. FTC is informed of consumer complaints through the CSN database, newspaper stories, media and telephone calls. Further, FTC collects potential information on the target namely: Background information, revenue, how long they have been in business, staff complaints etc.
43. FTC enforces the following statutes among others:
- a. Fair Credit Reporting Act
  - b. Restore Online Shoppers Confidence Act (ROSCA)
  - c. Covid 19 Consumer Protection Act
  - d. Equal Credit Opportunity Act
  - e. Fair Credit Reporting Act
  - f. Fair Debt Collection Practices Act (FDCPA)
  - g. Identity Theft Act
  - h. Inform Consumers Act
  - i. Fraud and Scam Reduction Act
  - j. Consumer Review Fairness Act
  - k. Truth in Lending Act
44. The FTC may use rulemaking to address unfair or deceptive practices or unfair methods of competition that occur commonly, in lieu of relying solely on actions against individual respondents. FTC enforces the following rules amongst others:
- i. Telemarketing Sales Rules relating to unwanted calls i.e. robocalls.
  - ii. Children’s Online Privacy Protection Rule.
  - iii. Mail, Internet or Telephone Order Merchandize Rule – i.e. not shipping after receiving cash.
  - iv. Rule on the Use of Consumer Reviews and Testimonials - The rule ensures that reviews, upon which consumers often rely to make purchase decisions, are based on real experience with a product or service.
  - v. Green Guides.
  - vi. Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act (“Energy Labeling Rule”).
  - vii. Noncompete Rule.

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<sup>2</sup> FTC Source statement on deception, 103 FTC 110, 174 (1984)

- viii. Test Procedures and Labeling Standards for Recycled Oil.
- ix. Fuel Economy Advertising for New Automobiles.
- x. Used Car Rule.
- xi. Fair Packaging and Labeling Act: Regulations Under Section 4 of the Fair Packaging and Labeling Act.

## **E. FTC Investigations**

### **i. When to Initiate a Formal Investigation by FTC**

- 45. FTC does not resolve all individual consumer complaints that they receive; therefore, they observe a trend and build a case based on a number of complaints and those cases having public interest issues. Many different entities may be engaged in similar practices. Therefore, focus is on companies that are likely to cause the greatest amount of consumer harm; volume of complaints; estimated sales; sizes of various companies; jurisdictions affected; geographical widespread of the conduct; ability to provide redress to consumers; value of assets of companies; financial net worth and whether the companies are a going concern or not.
- 46. Regarding evidence collection, FTC collects its investigation evidence via consumer interviews, former employees, experts, whistleblowers, websites, social media evidence and CID responses by the targets. FTC also uses Subpoenas and depositions to collect information from various parties. Further, each and every case has got a leading attorney and a number of investigators and attorneys who investigate the cases as a team.
- 47. FTC further conducts deposition hearings where they have an opportunity for the parties in a civil suit to obtain testimony from a witness under oath prior to trial, parties gather facts and information so that they can better be prepared at trial to present their claims and defenses.
- 48. FTC also gets information on cases they want to investigate from Analysis of CSN Database, Better Business Bureau (“BBB”), Google Reviews, Yelp Reviews, Trust Pilot, Reddit, App Store Reviews (Apple and Google Play) among others.
- 49. FTC therefore investigates UDAPS, deceptive practices that mislead consumers from acting reasonably and dark patterns that leads consumers to agreements without their understanding.

### **ii. Civil Investigative Demands**

- 50. CID is a structured way used by FTC to obtain information from potential defenders and third parties, it is part of an investigation plan, they are interrogatory response documents, they are compulsory processes subject to enforcement in a federal court, further CIDs are also issued to banks, telephone companies and payment processors.
- 51. CIDs have certification of compliance that recipients sign to certify compliance and verify the truth and accuracy of any interrogatory responses. FTC investigations are entirely evidence

driven and that explains why detailed CIDs are issued to targets and it has to be approved by the Commission.

52. Some of the responses sought from the defendants in the CIDs include the following:

- i. Instructions to targets /defendants to stop any electronic or paper destruction related to FTC investigations.
- ii. Notifies defendants that FTC may use any response information for only investigations purposes and no disclosure will be done except valid requests by USA Congress and prior notice will be made to the defendants.
- iii. Certificate of compliance attached to the CID.
- iv. Defendant Company Information namely: Company Profile, Directors, Legal Name.
- v. Turnover of the company.
- vi. All individuals who have ability to control the company policies and practices related to compliance must be listed.
- vii. Description of companies' policies and practices with respect to handling customers and consumer complaints and inquiries.
- viii. Products and services produced by the company.
- ix. Advertising Practices: Start, end dates of adverts, location of and target market of disseminated and location.
- x. Proof of complaints made to consumers and how they were resolved.
- xi. Privacy and information security practices.
- xii. All communications between the company and advertising agencies.

## F. REMEDIES

53. When it comes to remedying consumers, the FTC uses the following three methods:

- a. **Administrative** – The Commission warns companies and violators to stop deception, it applies when consumers have not suffered monetary harm. This method is good for cases where FTC is not seeking for a monetary relief especially if consumers have not suffered monetary harm. Further, the FTC as opposed to a federal court will decide whether a particular practice is unfair or deceptive. This way the FTC is able to develop the law and some precedence. However, it has some shortcomings in that its slow and more resource intensive, discovery is hard and getting a preliminary relief is more difficult.
- b. **Federal Court** – This method applies where monetary relief is given to consumers, especially in instances where there are Rule Violations and where consumer funds may be lost via scams or fraudulent schemes. This method is faster and more efficient, the parties can litigate both the liability and the monetary relief at once. The court can decide to issue a preliminary relief by way of an asset freeze and a permanent injunction as well, especially if it's discovered that money can be lost via scams outside the USA. Further, a Federal Judge can hold an accused in contempt for not complying with orders to compel.

c. **Federal Court Civil Penalties** – This method is used where financial consequences or consumer losses are hard to quantify. The civil penalty goes to the USA Treasury and not to consumers. A monetary sanction is imposed on the defendant for breaking the law, the aim of the monetary sanction is to deter the defendants and potential violators of the law. Further civil cases needing civil penalty are referred to the DOJ.

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H. Consumer Sentinel Network (CSN)

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60. CSN is based on the premise that sharing information can make law enforcement even more effective. To that end, the CSN gives law enforcement members access to reports submitted directly to the FTC by consumers, as well as to reports shared by data contributors.



61. CSN is free and available to any federal, state or local law enforcement agency. In addition, CSN information is also available to select international law enforcement authorities. CSN has a search functionality which is used to get complaints, frauds and scams across the world. Search word can be company name, phone number, topic for the last one year.
62. CSN has got a data visualization tool which helps to spot trends and analyze complaints, over 300,000 cross border complaints can be accessed, they border on fraud and scams, the CSN is filed with several organizations that contribute complaints to the database. Sentinel account under the CAK monitors cross border cases which may be impacting Kenyan Consumers, further, complaints in the database can be searched by widgets.



64. Law Enforcement Agencies, Consumer and Competition Agencies can become Consumer Sentinel Members via a registration process, the application must be completed for your organization or subgroup in a single session. Agency intending to register should review a given checklist and ensure that all the required materials are in place before beginning the application process.

**I. Outreach / Consumer Awareness and Education**

65. FTC’s DCBE Provides resources to consumers, businesses, and other agencies regarding trends in fraud schemes and how to report scams. FTC collaborates with consumer lobby groups to conduct awareness to groups.
66. FTC’s DCBE Provides resources to consumers, businesses, and other agencies regarding trends in fraud schemes and how to report the scams. It develops Information Communication and Education materials for circulation to these groups during outreach. Consumers are sensitized on: online Shopping, credit loans and debts, how to stop unwanted calls, emails and texts, identity theft and online security, phone scams, how to avoid scams, consumer advice, advice for older adults, business guidance, advice for the elderly, resource for parents and teachers, lotteries, grandkid scams, online dating scams, paying too much, cryptocurrency scams and imposters scams among others.
67. Scammers call or they send a text or email pretending to be someone they are not; they pretend to be government agencies like the IRS or Social Security Administration, they call



telling you that someone is using your information or account to commit crimes and that all your money is at risk. They claim that something bad will happen if you don't pay or give them personal information or they might purport that you will miss out on some government benefit.

68. Therefore, to avoid being scammed, consumers are sensitized that nobody legitimate will ever contact you out of the blue demanding money or personal information. Further, consumers should not trust caller IDs and they should not pay anyone who demands payment by wire transfer, gift cards or cryptocurrency, they should not respond to pressure, read reviews carefully, check refund policies, check for physical location and they should share what they learn with their communities.
69. FTC prioritizes sensitizing and educating specific demographics namely: college going students, military consumers, Spanish speakers, new comers who can be scammed about immigration issues among others.
70. They are also community advocate centers that serve low-income consumers; people of different groups / less to reach people / hard to reach free legal services providers; help consumers who are not able to lodge cases and complaints, identify websites to report credit card fraud / imposters; imposters taking loans using other people personal information is known as identity theft. If you want FTC to reach consumers who speak non-English languages i.e Spanish, you may use an interpreter via telephone: they have *connected with the interpreter guidance document*.
71. As part of the Stop Senior Scams Act, the FTC brought together an advisory group of government partners, consumer advocates, and industry representatives to focus on ways to better identify and stop scams from impacting older adults.
72. A **Better Business Bureau**<sup>3</sup> has its mission of improving the trust between businesses and communities. The public uses BBB business profiles to find out more about company backgrounds, brands and charities.
73. **FTC and Federal Communications Commission MoU:** FCC implements and enforces the Communications Act of 1934, as amended which requires all common carriers, practices, classifications and regulations. The MoU is supposed to avoid duplicative , redundant, or inconsistent oversight in this areas, cooperate in matters of overlapping Authority i.e telemarketing enforcement , FCC and FTC works together to protect consumers from acts and practices , unfair, unjust, and /or unreasonable i.e coordination on agency initiatives where one agency action will have a significant effect on the other agency authority or programs, consultation on investigations or actions that implicate the jurisdiction of the other agency regular coordination meetings to review current market place practices and each agency's work on matters of common interest that impact consumers.

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<sup>3</sup> <https://www.bbb.org/>

Sharing of relevant investigative techniques and tools, intelligence and technical and legal expertise and best practices in response to reasonable requests. FCC and FTC share data regarding consumer complaints to the extent feasible.

74. As part of capacity building and training the International Fellow attended the following trainings, outreach activities and meetings among others:

- i. State of Alaska Consumer Protection Round Table Meeting.
- ii. State of Idaho Consumer Protection Roundtable Meeting.
- iii. State of Wyoming Roundtable meeting.
- iv. Workshop with USA Securities and Exchange Commission.
- v. State of Washington Consumer Protection Roundtable Meeting.
- vi. FTC Summer Law Clerk Training.
- vii. Bureau of Competition Presentation on Negotiation Techniques.
- viii. Washington State, Office of the Attorney General, Consumer Protection Division.
- ix. FTC and Federal Communications Commission (FCC) meeting, where FCC and FTC share data regarding consumer complaints.
- x. FTC meeting with Kazakhstan delegation to discuss regulation of financial institutions, however FTC does not have jurisdiction over banks; FTC has got a MoU with Consumer Financial Protection Bureau (CFPB), with whom they share some jurisdiction.
- xi. Energy Sector Mergers III (Oil and Gas Mergers Group) meeting with Nigeria Federal Competition and Consumer Protection Commission.
- xii. Department of Interior Training on creating a Gender Inclusive Workplace.
- xiii. Pacific Partnership meeting.
- xiv. Undercover Subcommittee meeting.
- xv. North America Collection Protection Group.
- xvi. State of Washington Seniors Outreach and sensitization.
- xvii. Carnegie Africa Forum Webinar: Rise of machines, Will AI enable or undermine Africa's Digital Future.

## J. Some enforcement actions and Milestone Cases and Emerging Trends

### a) Artificial Intelligence (AI)<sup>4</sup>

75. AI is changing the way we live and work, on a personal scale, AI is used for daily tasks like checking weather, getting directions, finding a restaurant finding something to watch etc. Private sector firms use it to analyze complex data, find emerging patterns, provide automated responses to consumers, further AI was used to develop vaccines against COVID-

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<sup>4</sup> <https://oecd.ai/en/wonk/definition> : An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

19. In the public sector, AI has been adopted rather slowly, governments use it in resource re-allocation, modelling economic recovery, assisting PWD students in education sector, tracking and improving government services. Therefore, AI has the potential to transform how consumer protection agencies do their work
76. Investigation of AI detection software companies making allegedly false or unsubstantiated accuracy claims for detecting AI written materials in education and other settings i.e Certain AI is 98% accurate in AI detection. AI can be used to create Fake Consumer Online Reviews and AI Powered Digital Impersonification and voice cloning.
77. We are living in a pivotal all hands-on deck moment where innovative technologies i.e rise of large language models and generative AI are rapidly being developed and deployed and they are changing the way we work, live and communicate. Across the layers of technology from hardware and computer infrastructure to consumer application and devices. Businesses are therefore investing in building and deploying AI products and services.
78. Therefore, there is need to conduct an AI Sweep on scammers who cause deception by using AI, focus should also be placed on investigating AI use in pricing decisions, AI washing, false claims and Computer-generated AI responses.

#### **b) FTC vs Epic Games**

79. A \$245m penalty against Epic Games was finalized by FTC in March 2023 to settle charges that the company used dark patterns to trick players into making unwanted purchases and allowed children to rack-up unauthorized charges without any parental involvement.
80. The Commission finalized an order requiring Epic Games, the maker of the Fortnite video game, to pay \$245 million to consumers. Epic deployed a variety of design tricks known as dark patterns aimed at getting consumers of all ages to make unintended in-game purchases.
81. As part of a settlement package with Epic, the FTC said that Epic deployed a variety of design tricks known as dark patterns aimed at getting consumers of all ages to make unintended in-game purchases. Fortnite's counterintuitive, inconsistent, and confusing button configuration led players to incur unwanted charges based on the press of a single button. The company also made it easy for children to make purchases while playing Fortnite without requiring any parental consent. According to the FTC's complaint, Epic also locked the accounts of customers who disputed unauthorized charges with their credit card companies.
82. Under the FTC's order, Epic were ordered to pay \$245 million, which was to remedy consumers as refunds. The order also prohibited Epic Games from charging consumers through the use of dark patterns or from otherwise charging consumers without obtaining their affirmative consent. Additionally, the order barred Epic from blocking consumers from accessing their accounts for disputing unauthorized charges.

**c) Fiscal Year 2020 \$ 5 billion Facebook FTC Privacy decree violation<sup>5</sup>**

83. Following investigation by the FTC, the DOJ filed a complaint on behalf of FTC alleging that Facebook repeatedly used deceptive disclosures and settings to undermine users' privacy preferences in violation of its 2012 FTC order. These tactics allowed the company to share users' personal information with third-party apps that were downloaded by the user's Facebook "friends." FTC noted that many users were unaware that Facebook was sharing such information, and therefore did not take the steps needed to opt-out of sharing.
84. The \$ 5 billion penalty against Facebook is the largest ever imposed on any company for violating consumers' privacy and almost 20 times greater than the largest privacy or data security penalty ever imposed worldwide.

**d) FTC vs Amazon<sup>6</sup> (an E-commerce Case)**

85. FTC took action against Amazon.com, Inc. for its years-long effort to enroll consumers into its Prime program without their consent while knowingly making it difficult for consumers to cancel their subscriptions to Prime.
86. Amazon knowingly duped millions of consumers into unknowingly enrolling in Amazon Prime. Specifically, Amazon used manipulative, coercive, or deceptive user-interface designs known as "dark patterns" to trick consumers into enrolling in automatically-renewing Prime subscriptions. Amazon also knowingly complicated the cancellation process for Prime subscribers who sought to end their membership.
87. Amazon rejected changes that would have made it easier for users to cancel Prime because those changes adversely affected Amazon's bottom line.
88. Amazon also knowingly complicated the cancellation process for Prime subscribers who sought to end their membership. The primary purpose of its Prime cancellation process was not to enable subscribers to cancel, but to stop them. Further, Amazon leadership slowed or rejected changes that would've made it easier for users to cancel Prime because those changes adversely affected Amazon's turnover. The case is awaiting determination by the US District Court.

**e) FTC Takes Action Against Bill Payment Company Doxo for Misleading Consumers, Tacking on Millions in Junk Fees<sup>7</sup>**

89. Doxo violated the FTC Act, the ROSCA, and the Gramm-Leach-Bliley Act. The bill payment services company further employed dark patterns, charged junk fees and engaged in unfair or deceptive practices in violation of the FTC Act.

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<sup>5</sup> <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook>

<sup>6</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-sues-amazon-illegally-maintaining-monopoly-power>

<sup>7</sup> <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-takes-action-against-bill-payment-company-doxo-misleading-consumers-tacking-millions-junk-fees>

90. The accused knew for many years of internal surveys and complaints from tens of thousands of consumers and hundreds of billers of the harms their business model caused consumers and have still failed to correct their unlawful actions.
91. As a result, many consumers have had their utilities shut off, had car and health insurance lapses, and have been charged fees and fines even though they paid their bills on time. *“Doxo intercepted consumers trying to reach their billers and tricked them into paying millions of dollars in junk fees,”* said Samuel Levine, Director of the FTC’s Bureau of Consumer Protection.

## K. Recommendations and Take Aways

92. In order to strengthen its enforcement mandate and also apply learned best international practices, CAK may consider implementing some of the following recommendations:
  - i. **Consumer Sentinel Network:** Activate CAK membership to the database and be able to cross reference complaints reported across jurisdictions; this will also assist in initiating *suo moto* cases after observing a particular trend;
  - ii. **Techlab / Forensic lab;** proposal to come up with a tech lab and purchase investigation tools mentioned in the report; this may also require trained IT professionals, undercover computers and android and apple phones and registered telephone numbers with local telco companies.

CAK may consult *Data Pilot*, which provides advanced solutions for digital forensic laboratories across the world; this helps analyze evidence from a multitude of digital devices. Further, the Authority may consider coming up with undercover social media pages namely Facebook, X (formerly Twitter), Instagram to conduct undercover investigations;
  - iii. **Complaints/Cases investigations:** Review Consumer Protection Notice of Investigation to include the following information:
    - a) Certificate of compliance attached to the notice.
    - b) Defendant Company Information namely: Company Profile, Directors, Legal Name.
    - c) Turnover or Sales of the company.
    - d) Mention all individuals who have ability to control the company policies and practices related to compliance.
    - e) Description of the companies’ policies and practices with respect to handling customers and consumer complaints and inquiries.
    - f) Products and services produced by the company.
    - g) Description of company’s policies and practices with respect to handling customer / consumer complaints, inquiries.
  - iv. **FTC issues warning letters** to warn companies that their conduct is likely to be unlawful and that they can face serious legal consequences, such as a federal lawsuit, if they do not immediately stop. Companies that receive FTC warning letters take steps quickly to correct problematic advertising or marketing language and come into compliance with the law. In many cases, warning letters are the most rapid and

- effective means to address the problem. Therefore, CAK may also adopt this method for deterrence purpose.
- v. Failure to post a phone number for customer support is an offense under ROSCA as it leaves consumers with no recourse for complaint resolution. CAK may need to compel companies to post their contacts in their websites.
  - vi. **Artificial Intelligence (AI) Sweep:** conducts an AI sweep, since AI affects consumer transactions across borders and it's an emerging issue. Further, some AI tools have been known to write fake consumer reviews; Investigation of AI detection software companies that make allegedly false or unsubstantiated accuracy claims for detecting AI written materials in education and other settings i.e. Certain AI is 98% accurate in AI detection.
  - vii. **Green washing dark patterns / misleading green claims:** They Authority may conduct market screening in this area.
  - viii. Investigate companies for weight loss false and misleading claims.
  - ix. **Conduct Financial Literacy outreach to consumers** i.e. regarding taking loans from MFIs and App lending fintech.
  - x. Consumer Outreach /Awareness segregation along demographic lines i.e. consumer outreach may target:
    - a. College/ University students,
    - b. Financial Literacy programs targeting military consumers /disciplined forces (i.e. military consumer awareness),
    - c. Those who speak only Kiswahili and other local languages,
    - d. Senior members of the society i.e. those who are above 65yrs old and Persons Living with Disabilities
  - xi. **Translate consumer complaint forms and other forms into Kiswahili,** this may make work easier to many consumers.
  - xii. Further, outreach on consumer education and awareness may target businesses and their advocates.
  - xiii. **How to avoid imposter scams:** educate consumers about imposters who want to con various consumers using CAK name i.e. consumers can be educated that CAK doesn't conduct arrests, they need not respond to pressure, CAK doesn't charge for lodging consumer complaints etc.
  - xiv. **Mapping out other government agencies outreach events** i.e. participate in creating consumer awareness especially for those having MoUs with CAK. This may be an awareness outreach to groups of consumers and its cost-effective measure.
  - xv. **Creation of consumer education /awareness YouTube videos and** coming up with consumer blogs; this may be done in collaboration with the department of communication;
  - xvi. Educating consumers on scammers i.e. telemarketing fraud, scammers contact people and lure them to give out their account numbers, educate consumers on cryptocurrency and bitcoins scams.
  - xvii. Establishment of Toll-Free Call Centers.



- xviii. Click to Cancel Rule for Digital Subscriptions: Seeks to make it easier to cancel a subscription as signing up for one and coming up with Rule on Junk Fees / Undisclosed fees.
- xix. Regulators with consumer protection mandate Round Table Consumer Protection Forum / meetings to discuss consumer protection cases / trends; who is handling what and information sharing, this can be done virtually every quarter.
- xx. Aggregation of Consumer Complaints / Cases in terms of which counties are contributing complaints, age groups i.e. 20-29, 30-39, 40-49, 50-59, 60-64, above 65, amount paid. This information may be instrumental in assisting and mapping which counties to do awareness.
- xxi. FTC has an Email retention policy of seven (7) years, after which their emails are deleted automatically, however if a matter is still running, one is allowed to archive the relevant emails.
- xxii. Since FTC enforces a number of statutes, the Authority may also amend the Act in order to enforce the Consumer Protection Act.
- xxiii. Emerging practices in a sector / market place: market studies are conducted in a particular sector before conducting regulation / taking action.
- xxiv. Undercover work involves talking to scammers pretending to be consumers; consumers are sent to companies to collect information / consumer declarations.
- xxv. **Litigation Hold** / also called a preservation order: is a process that FTC uses to preserve all forms of potentially relevant information when litigation is pending or reasonably anticipated. Litigation hold requires the preservation of documents and electronic information in all officers' possession relating to any given ongoing cases, whether privileged or not, Therefore, case officers and attorneys should immediately determine whether they have documents or electronic information in their possession and preserve it i.e. archiving emails and voicemails; hence officers should respond and indicate whether they have materials to preserved or not, if they do, they will comply with litigation hold until the matter is heard and concluded. CAK may consider preserving information where matters may end up in Competition Tribunal and or the law courts
- xxvi. Social media Influencers could be misleading or creating deception content to consumers, therefore CAK may monitor and screen the content aired by these influencers.
- xxvii. Succession Management: The Authority may consider coming up with a Management Trainees mentorship programme for analysts / investigators.
- xxviii. Decentralization of Authority mandate to cover other regions in the country.

## Implementation Matrix: FTC Fellowship Program

No.	Recommendations / Way Forward	Timelines (To be achieved)	Resources Required
1.	Activate CAK membership to the Consumer Sentinel Network.	Within 60 days	ICT Personnel, CPD Officers and Relevant approvals
2.	Develop Techlab / Forensic lab and purchase appropriate investigative tools.	Within 4 years	Budget, ICT Personnel and CAK Management
3.	<b>Complaints / Cases investigations:</b> Review Consumer Protection Notice of Investigation to include additional information.	Within 90 days	CPD Officers
4.	Initiate Artificial Intelligence (AI) Sweep.	Within 12 months	CPD officers
5.	Conduct Consumer Outreach /Awareness segregation along demographic lines.	Within 3 months and quarterly	Budget and CPD Officers
6.	Initiate Green washing dark patterns / misleading green claims investigations.	Within 12 months	CPD officers
7.	<b>How to avoid imposter scams:</b> Educate consumers about imposters who want to con various consumers using CAK name.	Within 12 months and quarterly	Budget and CPD Officers
8.	Mapping out other government agencies outreach events.	3 months and quarterly	Budget and CPD Officers
9.	Creation of consumer education /awareness YouTube videos	Within 12 months	Budget CPD Staff and Communication
10.	Establishment of Toll-Free Call Centers.	Within 4 years	Budget CAK Management, Call Centre staff
11.	Regulators with consumer protection mandate Round Table Consumer Protection Forum / meetings to discuss consumer protection cases / trends.	Within 12 months	MoU, CPD officers CAK legal officers
12.	Aggregation of Consumer Complaints / Cases in terms of which counties are contributing complaints	Within 6 months	CPD staff

13.	Amend the Act in order to enforce the Consumer Protection Act.	Within 4 years	CPD staff
14.	Succession Management: The Authority may consider coming up with a Management Trainees mentorship programme for analysts / investigators.	Within 2 years	CAK Management
15.	Decentralization of Authority mandate /services to the Counties.	Within 5 years	CAK Management

**Report Prepared by:**

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