

OFT Market Studies

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Roles of the OFT and CC

OFT:

- enforces consumer protection legislation
- enforces competition legislation
- conducts Phase 1 merger investigations
- carries out market studies
- may refer markets to the CC for investigation

CC:

- performs phase 2 merger investigations
- undertakes market investigations following references by OFT or sectoral regulators
- conducts regulatory investigations for licence modifications
- acts as appeal body for energy code modification and Communications Act appeals

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Key changes to markets regime introduced by Enterprise Act 2002

- **independence of competition authorities from Ministers – under previous legislation Ministers had:**
 - made references to CC based on advice from OFT
 - made final decision on remedies based on advice from CC
- **replacement of broad 'public interest' test by more focussed competition test**
- **move from 'monopoly/complex monopoly' to 'features of the market'**
- **gave the CC powers to directly remedy adverse effects on competition**

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Features of the UK markets regime

- **OFT market studies may consider consumer as well as competition issues**
- **outcomes from market studies are either:**
 - action by OFT itself
 - recommendations (non-binding) to others
- **market investigations by the CC consider whether any feature or combination of features in a market prevents, restricts or distorts competition, thus constituting an adverse effect on competition (AEC)**
- **where CC finds an AEC, it can impose legally binding behavioural or structural remedies**

(Compare with EU sector inquiries, which are primarily information-gathering and analysis exercises, which may be followed by antitrust enforcement action, but otherwise have no direct outcome/remedies)

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MARKET STUDIES BY THE OFFICE OF FAIR TRADING

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What is a market study?

- an examination of the way a market is working, leading to proposals as to how it might be made to work better
 - not defined in law
 - no formal powers of investigation or remedy (section 5 of Enterprise Act requires OFT to obtain, compile and keep under review information about matters relating to the general carrying out of its functions)
- market studies can be used to address:
 - obvious consumer harm with less obvious causes and remedies
 - competition problems where there is no explicit anti-competitive behaviour/breach of prohibitions
 - restrictions on competition arising from government actions

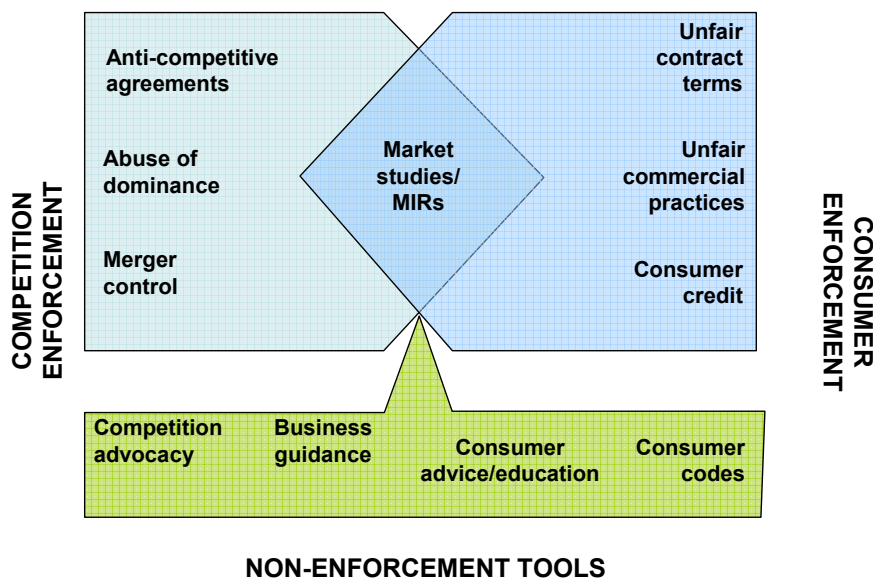
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Changing markets for the better

- Helps to drive a virtuous circle
- Our work shines a light on the market
- Making it more accountable to consumers
- Encouraging consumers to be more proactive
- Driving competition between firms



Market studies - fit with other OFT tools

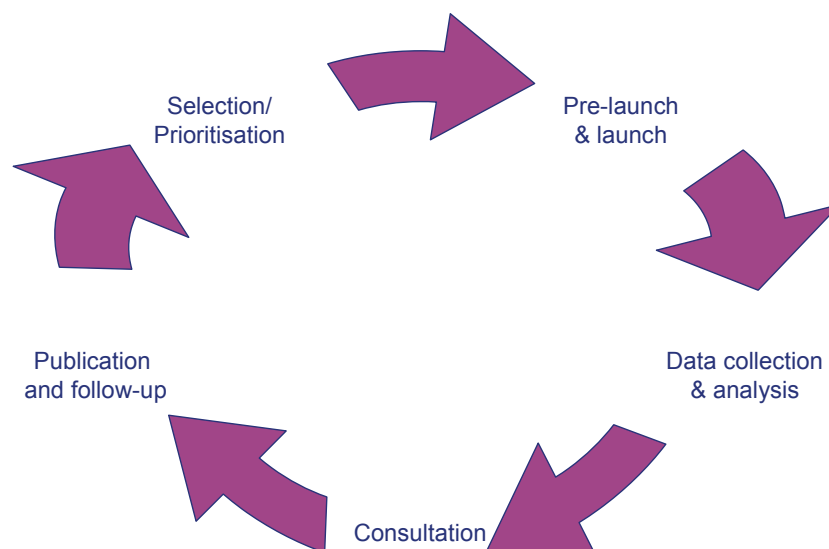


Market studies v enforcement

- where there is a clear case of a breach of competition or consumer protection law by an individual business, taking enforcement action will usually be preferred over a market-wide approach
- but enforcement action may not address the root cause of the problem, or behaviour across the whole market
- a market study can look at the issues more widely and propose remedies which will make the market as a whole work better

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Market study stages



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Where do the ideas come from?

- **complaints from businesses and trade associations**
- **complaints from consumer bodies**
- **suggestions from other government departments**
- **monitoring of complaints data**
- **issues arising from enforcement work**
- **internal research**

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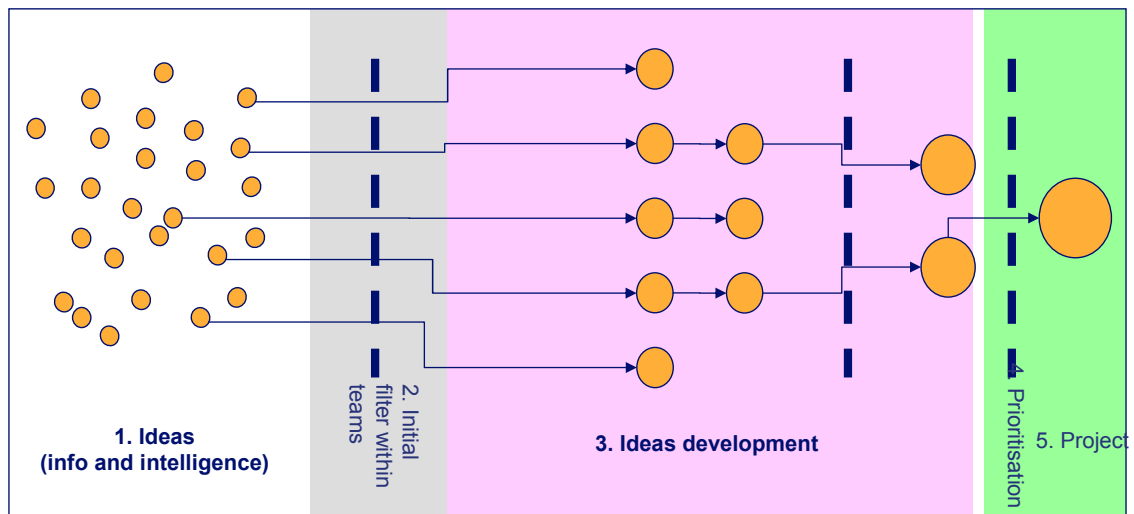
OFT prioritisation principles play a part in selection of market studies

Balance of four factors:

- **IMPACT** – direct and indirect impact on consumer welfare and the economy
- **SIGNIFICANCE** – strategic impact, innovation, precedent setting, capacity building
- **RISK** – expected risk at outset of project, risk if we do not act
- **RESOURCES** – staff and monetary resources required

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Filtering ideas



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Before the launch

- **scoping, initial information-gathering**
- **develop hypotheses and key questions, determine what needs to be done to answer them**
- **identify stakeholders, develop stakeholder management and communications strategy**

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Information-gathering and analysis

- **information-gathering**
 - information requests
 - surveys
 - mystery shopping
 - consumer research
 - international comparisons
- **analysis**
 - internal analysis, testing of hypotheses
 - external research eg economic consultancy

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Development of conclusions, publication

- **reach conclusions and develop recommendations**
- **consult informally on potential outcomes**
- **publish report**

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Possible outcomes of market studies

- "clean bill of health"
- consumer information/education
- recommendations to business
- recommendations to Government to amend law – NB government commitment to respond within 90 days
- enforcement action
- market investigation reference to the Competition Commission

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Frequency of outcomes

Clean bill of health	2
Consumer information/education	5
Recommendations to business	7
Recommendations to Government	16
Consumer enforcement	5
Competition enforcement	0
Market investigation reference	7

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Examples of market studies

- Consumer Information Technology: clean bill of health, some voluntary action by business
- Internet Shopping: work with consumer groups, business & public bodies
- Private Dentistry: consumer info campaign, recommended better regulation
- Pharmaceutical Price Regulation Scheme: recommendations to Government to revise the scheme
- Commercial Use of Public Information: recommendations to Government
- Medicines Distribution: recommendations to Government
- Homebuilding: mostly clean bill of health, industry code of conduct agreed

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Evaluating market studies

- **for the period 2007 to 2010 OFT estimated annual consumer savings of at least £345 million, of which £107 million was apportioned to OFT, for market studies and related work**
- **impact estimation is built into studies**
 - helps focus on expected benefits and measure whether they are happening
- **a programme of ex-post evaluation of market studies informs:**
 - choice of markets to study
 - how studies are conducted to maximise impact
 - whether further action could be taken in the market

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Good practice guidance

ICN Market Studies Good Practice Handbook 2010 gives guidance on:

- **project management**
- **stakeholder engagement**
- **selection**
- **information collection and analysis**
- **developing and securing outcomes**
- **evaluation**

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Further information

The OFT website contains a guidance booklet on market studies, as well as details of all current and completed market studies and related work:

<http://www.oft.gov.uk/OFTwork/markets-work>

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