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
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

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 4 direct outcome/remedies)
MARKET STUDIES BY THE OFFICE OF FAIR TRADING

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
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

<table>
<thead>
<tr>
<th>COMPETITION ENFORCEMENT</th>
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<tbody>
<tr>
<td>Anti-competitive agreements</td>
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<td>Abuse of dominance</td>
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<td>Merger control</td>
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<tr>
<td>Market studies/MIRs</td>
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<td>Unfair contract terms</td>
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<td>Unfair commercial practices</td>
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<td>Consumer credit</td>
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<tr>
<th>CONSUMER ENFORCEMENT</th>
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<td>Competition advocacy</td>
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<td>Business guidance</td>
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<td>Consumer advice/education</td>
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<td>Consumer codes</td>
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NON-ENFORCEMENT 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.

Market study stages

- Selection/Prioritisation
- Pre-launch & launch
- Consultation
- Data collection & analysis
- Publication and follow-up
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

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
Filtering ideas

1. Ideas (info and intelligence)
2. Initial filter within teams
3. Ideas development
4. Prioritisation
5. Project

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
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

Development of conclusions, publication

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

Frequency of outcomes

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Frequency</th>
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<tbody>
<tr>
<td>Clean bill of health</td>
<td>2</td>
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<tr>
<td>Consumer information/education</td>
<td>5</td>
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<tr>
<td>Recommendations to business</td>
<td>7</td>
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<tr>
<td>Recommendations to Government</td>
<td>16</td>
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<tr>
<td>Consumer enforcement</td>
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<tr>
<td>Competition enforcement</td>
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</tr>
<tr>
<td>Market investigation reference</td>
<td>7</td>
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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

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
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

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