

# investigating markets

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## A more proactive role for the OFT

The job of making markets work well for consumers goes beyond enforcing competition and consumer protection law. It also requires us to keep markets, practices and regulations under scrutiny to ensure that the interests of consumers are being well served.

In its July 2001 White Paper *Productivity and Enterprise: A World Class Regime*, the Government signalled a major extension of the OFT's activities in this area. It proposed a more proactive and outward-looking role for the OFT in examining specific markets and sectors and suggesting how they can be made to work better for consumers.

The OFT already has a duty to review commercial activities relating to goods and services in the UK and to identify practices that may harm consumers. With the help of significant extra resources from the Government, we are conducting more investigations into markets where concerns have been raised but where enforcement does not appear, at first sight, to be the appropriate response.

These studies are open and exploratory – no one is in the dock. Rather their aim is to gain the best possible understanding of how markets work and whether the needs of consumers are being met. We might research one particular market in detail, or investigate how common practices operate across a range of markets.

Investigations may be triggered in a number of ways: for example, by information received from colleagues in our competition enforcement and consumer regulation enforcement divisions or from local authority trading standards departments. They could also arise from 'super-complaints' – the new route by which consumer organisations can alert us to concerns they have about markets – or from complaints made directly to the OFT by consumers. Investigating teams will canvass a wide range of opinion and gather information for analysis. The results of each study will be communicated widely.

If a market receives a clean bill of health, that decision – and the thinking behind it – will be open to public scrutiny. However, if a study reveals grounds for further investigation and action, the OFT will use its powers accordingly.

Possible outcomes include:

- recommendations for changes in laws and regulations
- enforcement action by the OFT's competition and consumer regulation divisions
- a reference of the market, with explanation, to the Competition Commission
- recommendations to regulators, self-regulatory bodies and others to consider changes to their rules
- a campaign to promote consumer education and awareness
- no further action.

## Criteria for investigations

An investigation may be launched where there is evidence that a market is failing to meet the needs of consumers. This might be due to:

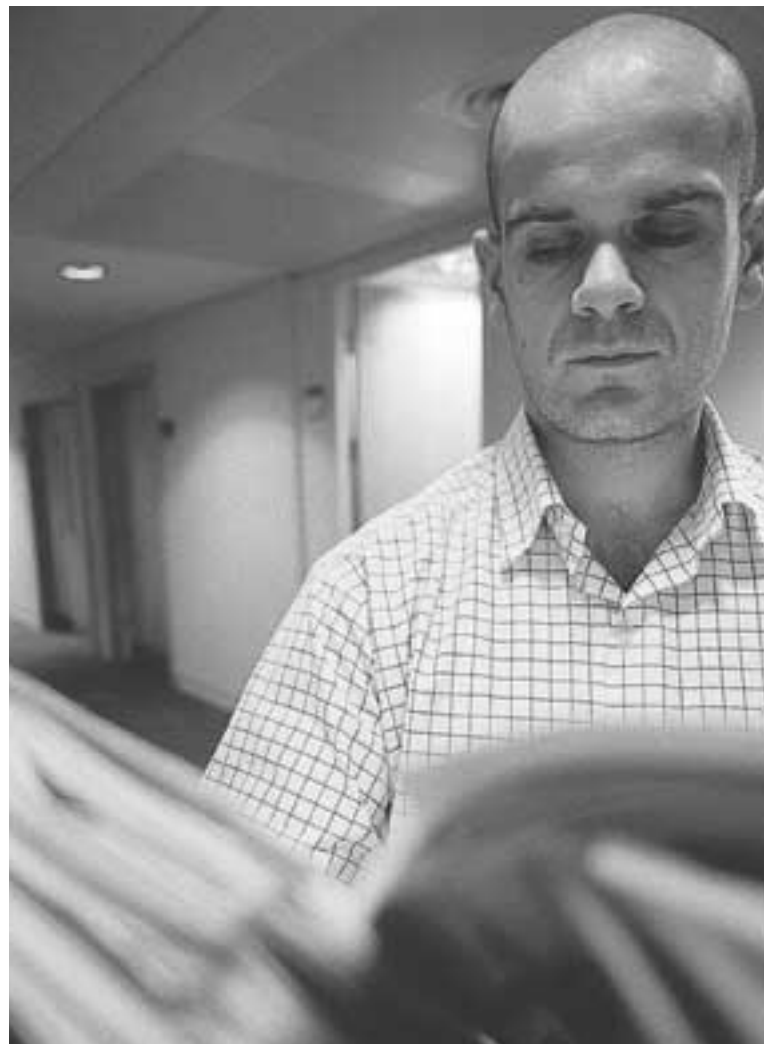
- competition problems, such as restrictions on supply, low innovation and price discrimination
- consumer detriment, such as high prices, product or contractual complexity, lack of information or questionable sales practices
- an interaction between the two, for example where a limited number of suppliers caused by high entry barriers leads to restricted consumer information and high prices.

Other factors that will be considered before an investigation is launched are whether:

- the market is of clear significance to consumers
- the OFT is the most appropriate body to examine the matter
- an investigation is preferable to the immediate exercise of our various enforcement powers
- there is a prospect that the necessary evidence can be obtained, and
- there is a prospect that a remedy can be found.

The OFT plans to explore, with a wide range of stakeholders and interested parties, how best to focus on areas of concern.

Under the Enterprise Bill, it is proposed that the OFT will be able to refer markets to the Competition Commission for a comprehensive market investigation. The OFT and the Competition Commission will be given full responsibility for



this activity, with ministerial involvement only in exceptional circumstances. The Government also intends to replace the public interest test for Competition Commission referrals with a more flexible test based on competition issues.



## Competition and regulation

The July White Paper outlined a further role for the OFT – ensuring the Government’s own actions do not hinder competition. Legislation can affect market structures and dynamics, for example by erecting barriers to entry. The Government has therefore asked the OFT to examine the impact of its rules and regulations and advise on how competition can be made more effective. The OFT will work with Government and others, including business organisations, to highlight key areas for such work.

For more on **super-complaints**, see page 28.

More details of the proposed **Enterprise Bill** can be found on page 68.

## The new Markets and Policy Initiatives division

To spearhead our market investigations, we set up a Markets and Policy Initiatives division (MPI) in October 2001. Working closely with the competition enforcement and consumer regulation enforcement teams, the division consists of three branches:

### 1 Economic and statistical analysis and financial analysis

Headed by the OFT’s Chief Economist, the economic and statistical analysis and financial analysis branch provides the central resource of economic and statistical advice and financial analysis for the whole of the OFT, as well as managing the OFT’s economic research programme.

### 2 Market investigations

The market investigations branch undertakes market investigations and assesses the impact on markets of new and existing laws and regulations. It also coordinates the OFT’s response to super-complaints.

### 3 Relations with government departments and public liaison

The third branch of the MPI division monitors initiatives taken by Government and advises on their possible impact on competition and consumers. It liaises with other regulatory bodies in the UK and handles preparations for the OFT’s future role as a regulator of payment systems such as ATMs, cheques and credit cards.

This branch also contains the OFT’s public liaison unit, which is the main point of contact for consumer enquiries. The unit operates a call centre which advises members of the general public where to turn to for specialist help with a consumer problem. While we cannot deal with individual complaints, the information gathered helps us to identify markets for future investigation.

## **First market investigations**

The first three market investigations were announced in October.

### **Consumer IT goods and services**

The market for IT goods and services – ranging from word processing to internet service provision – has grown rapidly and has brought large benefits to many consumers. More than 40 per cent of households now have a personal computer.

The study covers hardware, software and related services and is investigating consumer concerns. These include the availability of information for consumers before purchasing an IT product and the quality and availability of after-sales support.

We have commissioned two consumer surveys – one on purchasing and the other on after-sales experiences. Consultations are also taking place with manufacturers, retailers, trade associations, government departments and trade journals.

We plan to report our findings in autumn 2002.

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## Pharmacies

We are looking at the market for retail pharmacy services and, in particular, whether consumers are best served by the system that regulates where pharmacies can open. Since 1987, pharmacies have needed a contract from their local health authority to dispense NHS prescriptions. This business is essential to many chemists and drug stores. The overall turnover of these businesses last year was £18.7 billion.

Many customers want to buy medicines over the counter with the benefit of a pharmacist's advice, or need frequent prescriptions, so it is important that a convenient service is readily available. Restrictions on where chemists can open may well affect competition.

We are reviewing the system to see how present restrictions affect competition and consumer interests and whether there are better ways of achieving public interest objectives.

We have conducted interviews with the leading pharmacy chains. The views of independent pharmacists have been elicited via a questionnaire on our website. We are also holding discussions with the appropriate professional bodies, industry regulators and government officials.

We are also commissioning research, including economic modelling of retail pharmacy markets, a review of pharmacy regulations in other countries and analysis of the sale values of pharmacies.

We plan to report in autumn 2002.

## Extended warranties for electrical goods

The market for extended warranties for electrical goods is growing fast and is worth over £1 billion a year. The market is changing rapidly with the introduction of cashback warranties and more widespread use of non-insurance backed warranties.

The review will consider issues such as the value for money provided by these warranties, whether there is evidence of high-pressure selling, and the degree of competition and price transparency in the market.

As part of the investigation, we have conducted a mystery-shopping exercise involving 1,000 electrical retailers, together with surveys of 2,000 consumers and over 3,000 independent electrical repairers.

Consultations are also planned with trade associations, consumer bodies and government departments.

The inquiry report will be published in summer 2002.

## Super-complaints

To give consumers a stronger voice on competition issues, the OFT introduced a 'super-complaints' procedure in 2001. This ensures a fast-track response to concerns raised by designated groups such as the Consumers' Association and the National Association of Citizens' Advice Bureaux.

Super-complaints are concerned with how markets operate, rather than the activities of particular companies. Complainants must provide reasonable evidence that market structures or practices are working against the consumer's interest.

Preliminary work by the OFT will establish if this evidence is strong enough to take the complaint forward, for example by a full market investigation or enforcement action.

We investigate super-complaints quickly and publish a clear, public response within 90 days. If we decide not to take further action, our announcements explain the reasons why.



## First super-complaint: private dentistry

The £1-billion-a-year market for private dentistry was the subject of the first super-complaint, submitted in October by the Consumers' Association.

The Association claimed to have identified a number of areas where patient interests were not being met. These included a lack of price transparency in the provision of services, the failure of new entrants in the market to bring down prices, and the difficulties consumers face in seeking redress for poor treatment.

We found that the questions raised by the Association warranted a detailed market investigation.

This investigation will use powers under Section 2 of the Fair Trading Act 1973 to examine the market including how NHS and private dental services work together, the incentives for dentists to treat patients under the NHS or privately, and the constraints on new services. It will also study the expectations and rights of consumers and the quality of information available to them.

We will report our findings by the end of 2002.

## Competition in the professions

The rules, regulations and practices of three professions – law, architecture and accountancy – came under scrutiny in an OFT report published in March 2001.

Following a comprehensive review, we found that a number of professional rules appeared to be anti-competitive.

These included restrictions on the freedom of professionals to advertise, to seek business, to form partnerships (including multi-disciplinary partnerships) and the ability to offer a wide range of services.

Following a key recommendation in the report, the DTI pledged to repeal Schedule 4 of The Competition Act, which allows certain professions to apply to the Secretary of State to have their rules ‘designated’ – in effect shielding them from the Chapter I prohibition. Provision for repeal is contained in the Enterprise Bill now before Parliament.

The professions were given a year to justify, amend or abolish anti-competitive rules outlined in the report. In response to the report, positive steps have been taken by a number of professional bodies. Though some issues have been addressed, some remain open.

A progress report was published on 22 April 2002. Many professional rules have already been revoked or amended to allow greater competition. Examples include: the Bar Council has lifted a ban on clients having direct access to barristers;



the Law Society has agreed to allow solicitors employed by companies not in the legal profession such as supermarkets to provide services to consumers; the accountancy professional bodies amended their rules to allow cold calling and comparative fee advertising. However, further consideration is being given to remaining rules that may unnecessarily restrict competition.

## Funerals

A wide-ranging investigation into the £800-million-a-year funeral industry concluded that more could be done to protect consumer interests.

The report was published in July. It found that bereaved families tended to use funeral businesses recommended to them and generally did not enquire closely about the cost.

While complaints about funeral services are rare, the emotional pressures and the fact that few people have experience of arranging funerals make consumers vulnerable. The report also identified a number of recent changes in the market – such as the increased use by local authorities of a single funeral firm for the removal of bodies on behalf of coroners – which could inhibit consumer choice.

The report's main recommendations were that:

- price lists, including the price of each coffin, should be prominently displayed and made available for people to take away
- fully itemised written estimates and invoices should be provided at the first meeting with a customer
- every funeral outlet should provide details of who controls the business
- local authorities and hospitals should ensure that funeral businesses, contracted on their behalf, do not attempt to influence the customer's final choice of funeral director
- the trade associations should improve their codes of practice.

One trade association has submitted its code for review by the OFT under its new approach to codes of practice (see page 44). We are encouraging the remaining trade associations to do the same.

## Future developments

The Government has provided funding for seven market investigations a year. The OFT will also be publishing formal guidelines covering:

- how markets are selected for investigation
- how investigations will be conducted
- the procedure for initiating enforcement action
- the procedure for dealing with super-complaints.

## Consumer Complaints

The OFT compiles consumer complaints quarterly. These are supplied voluntarily by the local authority trading standards service, local authority environmental health departments and some advice agencies. For consumer complaints for the year to 30 September 2001 see our website at

[www.of.gov.uk/News/Annual+report/default.htm](http://www.of.gov.uk/News/Annual+report/default.htm)