

# studying markets

Making markets work well for consumers requires us to keep markets, practices and regulations under scrutiny.

In support of our enforcement teams, we take a broad look at how entire markets work. Our Markets and Policy Initiatives (MPI) division identifies areas for study and reports on markets where concerns have been raised but where enforcement action does not appear, at first sight, to be the most appropriate response.

To inform this work, we gather a wide range of market intelligence and MPI staff provide expert advice on economics, statistics and financial analysis. We liaise closely with government, business and consumer groups through regular meetings and seminars.

MPI also coordinates our input on the major policy initiatives that affect our work and advises government on the potential impact of new laws on competition. For example, during the reporting period we worked closely with the Department of Trade and Industry on the text of the Enterprise Act 2002 and related statutory instruments.

## Market studies

Market studies help us to gain the best possible understanding of how markets work and whether consumer needs are being met. Studies are open and exploratory and do not put anyone in the dock. We aim, wherever possible, to work in partnership with participants in the markets, and

to minimise the burden on business by keeping a sharp focus on areas of concern.

The results of our market studies, which we make public, help us assess what action, if any, needs to be taken to make markets work better.

Possible outcomes include:

- publication of a report with recommendations to government, industry, regulators or self-regulatory bodies
- action by the OFT's enforcement divisions using competition and consumer regulation powers
- action by sectoral regulators
- a market investigation reference to the Competition Commission
- consumer information and education initiatives
- sponsoring a consumer code of practice
- a clean bill of health for the market.

A study will be launched where there is evidence that a market is not working well. 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.



Studies may be triggered by information received from our enforcement divisions or from colleagues in trading standards departments. They could also arise from 'super-complaints' made by designated consumer bodies (see page 22) or from information passed on by consumers to our Enquiries Unit (see page 28).

In deciding whether to intervene through market studies, we will consider:

- the scale and significance of the possible problems/consumer detriment
- whether the likely benefits from a study justify the possible cost and disruption to businesses
- the prospect of obtaining evidence and finding remedies
- whether the OFT is the most appropriate body
- whether a study is preferable to enforcement action or a market investigation reference to the Competition Commission.

The OFT will publish its procedures for market studies, including the criteria for selecting markets and making market investigation references, later in 2003. Guidance on market investigation references was published in March 2003.

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## Completed studies

### Extended warranties

The OFT referred the market for the supply of extended warranties on domestic electrical goods to the Competition Commission in July 2002 following a 10-month study.

We found that the large electrical retail chains, which sell the majority of warranties, had a point-of-sale advantage which made it difficult for other providers to get a foothold in the £500 million-a-year market.

As consumers are often unaware of their options, they tend to purchase warranties as an afterthought and rarely shop around for the best value, the study reported.

In October 2002, we launched a campaign to encourage consumers to think carefully before taking out extended warranties (see page 80). We will continue to investigate complaints received about unfair terms in contracts for extended warranties.

### Consumer IT goods and services

A year-long study showed that the £2-billion market for consumer IT goods and services is working well, but with some room for improvement.

We found that consumer satisfaction with the price and performance of PCs was high. Consumers were generally able to shop around and very few had difficulties obtaining and using information to compare products and prices.

However, we identified a number of areas where suppliers could do more to serve consumers. These include:

- providing clear information at the point-of-sale and in promotional literature on support services, including the cost of telephone helplines
- developing systems and training sales staff to guide consumers more effectively through the purchasing process
- developing a test standard against which the performance of inkjet cartridges can be measured uniformly so that consumers can compare the true cost of using different printers and cartridges over the course of a printer's lifetime.

The OFT is monitoring the actions of suppliers over a 12-month period. If the situation for consumers does not improve in that time, we will consider if further action should be taken.

## Pharmacies

Removing the entry restrictions on the community pharmacy market would give consumers greater choice and deliver large savings for business and government, an OFT study concluded in January 2003.

Under current regulations, pharmacists can only dispense NHS prescriptions if local health authorities are satisfied that this is 'necessary or desirable' for the adequate provision of pharmaceutical services in the local community.

The study found that these controls restricted price competition on over-the-counter (OTC) medicines, stifled innovation and discouraged pharmacies from competing on additional customer services. We estimated that, in a freer market, consumers would save around £25-30 million on OTC medicines each year.

Deregulation would also significantly reduce compliance costs for business and cut NHS administration, the study found.

In March 2003, the government announced it would come forward with proposals in response to our study and would publish a progress report at the end of June.

## Studies in progress

Market studies in progress at the end of the reporting period included:

- **Estate agencies:** comprehensive study of buying and selling residential property in England and Wales.
- **Taxi services:** examination of the market for licensed taxis and minicabs, looking at how local authority regulations restricting the number of licences affect the quality of service to passengers.
- **Payment systems:** exploratory study of recent developments in the credit card, automated teller machine (ATM) and clearing system networks ahead of planned legislation to give the OFT regulatory powers over the industry.
- **Liability insurance:** fact-finding study launched amid concerns that the market may not be working well. The study is looking at the factors that have led to sharp increases in premiums for public, product, professional and employers' liability insurance.
- **Doorstep selling:** formal study of practices surrounding doorstep selling, following an informal super-complaint (see page 22).



## Super-complaints

Super-complaints are a fast-track route by which certain consumer bodies, to be designated by the Secretary of State for Trade and Industry, can have their concerns about a specific market examined by the OFT.

The Enterprise Act requires the OFT to review super-complaints made by designated consumer bodies and to announce within 90 days if they will be taken forward, for example to a full market study or enforcement action. We have been accepting super-complaints on an informal basis since 2001. This was replaced by a new statutory duty under the Enterprise Act in June.

A super-complaint can be submitted by a designated consumer body where there is evidence that consumer interests are being significantly harmed (or appear to be so harmed) by any feature or combination of features relating to a particular market.

## Private dentistry

An informal super-complaint, submitted by the Consumers' Association in October 2001, led to a full market study of the £1 billion-a-year market for private dentistry.

The study concluded that better information on prices and treatment is required to improve competition and give consumers greater choice. It recommended more effective self-regulation of the market through improved monitoring and enforcement of standards, and the implementation of comprehensive complaints procedures. It also called for some regulatory restrictions on the supply of dentistry services to be lifted.

We are planning an awareness campaign to help consumers make informed choices about which dentists and treatments will best meet their needs.

## Doorstep selling

Following an informal super-complaint received from the National Association of Citizens' Advice Bureaux (now known as Citizens Advice), the OFT launched a formal study of practices surrounding doorstep selling. We are examining what goods and services are commonly sold in the home; problems experienced by consumers buying this way and why problems are associated with some products and services and not others. We expect to complete the study by November 2003.

## Mail consolidation

In March 2003, the industry watchdog Postwatch asked the OFT to look into problems in the mail consolidation market (where businesses carry out initial mail sorting in return for a discount on postage fees). At the end of the reporting period, the OFT was considering whether to refer the complaint to PostComm, the postal service regulator, as it appeared to be better placed to address the issues involved. A decision to remit this super-complaint to PostComm was subsequently made.

Further information on market studies and super-complaints is available on our website at [www.offt.gov.uk](http://www.offt.gov.uk)

## Compliance with Competition Commission remedies

### SME banking

We obtained undertakings from the UK's main clearing banks to improve competition and choice in the supply of banking services to small and medium-sized enterprises (SMEs). These remedies implement recommendations made in a Competition Commission report published in March 2002.

The report claimed that competition in the market was not working properly, leading to SME customers in England and Wales being overcharged.

The CC found complex monopolies to exist in the supply of SME banking throughout the UK, with the four largest banks providing nearly 90 per cent of services. It also identified a number of common practices that harmed customers by limiting choice, affecting the level of information and restricting price competition, thereby making it difficult for other suppliers to enter the market.

The OFT was asked by the Chancellor of the Exchequer and the Secretary of State to seek undertakings from the eight main clearing banks in the UK to implement the CC's proposed remedies, and to monitor compliance with these.

The banks have agreed to these remedies, which will make it easier for customers to shop around and to move their accounts between banks. In addition, the four leading clearing banks have agreed to offer SME customers in England and Wales an account paying interest of at least the Bank of England base rate minus 2.5 per cent, or a current account free of money transmission charges, or a choice between the two.



## Veterinary medicines

The OFT welcomed a CC report into prescription-only veterinary medicines (POMs) which found that competition in the market was not working effectively.

We had referred the market to the CC for investigation in October 2001. This followed complaints by farmers and pet owners that prices were higher in the UK than elsewhere in Europe and that pharmacies that might have been willing to offer cheaper prices were having problems obtaining supplies.

In September 2002, the CC provisionally concluded that one or more complex monopoly situations existed in relation to the supply of POMs and in April 2003 the CC submitted its report to the Secretary of State. The report found:

- a scale monopoly in favour of National Veterinary Services Ltd, the largest wholesaler of POMs with a market share of at least 35 per cent
- a complex monopoly situation involving veterinary surgeons engaged in one or more of the following conducts:
  - failing to inform animal owners of the availability of prescriptions; discouraging requests for prescriptions or declining to provide prescriptions on request
  - failing to inform animal owners of the price of POMs before dispensing them or failing to provide itemised bills
  - pricing POMs in a manner which did not reflect their costs of supply

- a complex monopoly situation in the behaviour of eight manufacturers which prevented pharmacies obtaining POMs on terms that would allow them to compete with veterinary surgeons
- a complex monopoly situation arising from the failure of all the veterinary wholesalers to take reasonable steps to supply pharmacies with POMs so that they could compete with veterinary surgeons in the supply of POMs.

The CC recommended to the Secretary of State a large number of remedies designed to encourage and increase competition in the supply of POMs.

## Supermarkets Code of Practice

In February 2003, we announced a review of the Supermarkets Code of Practice, almost a year after it had come into effect.

This legally binding code, drawn up by the OFT in response to a Competition Commission report on supermarkets published in October 2000, aims to put relations between the four leading supermarkets and their suppliers on a clearer and more predictable basis.

The code includes a commitment by Asda, Safeway, Sainsbury and Tesco to pay suppliers within a specified time, to give reasonable notice of price or volume changes and not to seek lump sum payments or better terms as a condition of stocking a supplier's products.

## Enterprise Act 2002

It also sets out a procedure for resolving disputes between parties, including independent mediation and, as a final resort, a referral to the OFT.

We have written to a wide range of suppliers' organisations and to the supermarkets in question to find out if the code is working and whether it should be changed.

### The Enterprise Act

MPI took the lead in preparing the OFT for the Enterprise Act 2002, which comes into force in 2003. The division coordinated the OFT's response to the draft legislation for ministerial briefings, amended our internal procedures and published guidance on various aspects of the legislation. MPI also organised training courses for OFT staff.

We published an overview guide to the Act within 24 hours of the Act receiving Royal Assent in November 2002 and launched a publicity campaign to ensure external stakeholders are informed of the Act's major provisions. This included press advertising and briefing materials aimed at professional advisers, such as lawyers and accountants, and a free e-mail update service. Within two weeks of our advertisements appearing in March 2003, we received more than 200 requests for information. We also arranged for expert speakers from the OFT to address business and consumer group meetings around the UK.

For more general enquiries, the OFT set up an Enterprise Act helpline and an e-mail contact point.

MPI has published a consultation draft of guidance on how designated consumer bodies can make a reasoned super-complaint. It also worked with OFT colleagues to publish guidance on the circumstances in which market investigation references will be made.

We have prepared internal procedural guides covering super-complaints, market studies and market investigation references under the Enterprise Act. A draft guidance booklet on these procedures will be made publicly available in summer 2003.

For more on how our Consumer Regulation Enforcement and Competition Enforcement divisions prepared for the Enterprise Act in the reporting period (see pages 35 and 70).

To subscribe to the e-mail update service on the Enterprise Act, go to [www.oft.gov.uk/enterpriseact](http://www.oft.gov.uk/enterpriseact)

The Enterprise Act helpline number is 020 7211 8181 and the e-mail contact point is [enterpriseact.enquiries@oft.gsi.gov.uk](mailto:enterpriseact.enquiries@oft.gsi.gov.uk)

## Competition assessment of regulations

Government regulations can have unintended effects on competition, for example by raising barriers to entry, stifling innovation or imposing disproportionate costs on some businesses. Since February 2002, government departments have been invited to carry out a competition assessment of new policies as part of the Regulatory Impact Assessment process. This became a requirement in September 2002.

Under the Enterprise Act, the OFT has a general function of providing advice and information on competition issues to government departments.

We worked with the Cabinet Office to develop a two-stage process for competition assessments. The first stage consists of an initial competition filter – nine straightforward questions on whether a policy is at risk of impacting materially on the competition process. Depending on the results of the filter, a simple or more detailed assessment of the competition effects may be needed.

We set up a telephone helpline for policy makers, offering advice and information on competition issues and guidance on conducting detailed assessments. In 2002-03, we provided advice on over 250 cases.

Full details of the assessment procedure are contained in the OFT publication **Guidelines for Competition Assessment** available at [www.of.gov.uk/News/Publications/Leaflet+Ordering](http://www.of.gov.uk/News/Publications/Leaflet+Ordering) (under Reports/Competition Policy)

## OECD review of regulatory reform

The effectiveness of the UK's competition policy came under scrutiny in an Organisation for Economic Cooperation and Development (OECD) report published in October 2002. As part of a general review of regulatory reform, the OECD noted that the UK's regulatory environment is 'supportive of market openness and global competition'.

Based on the views of all 30 member countries, the report judged that changes to the competition and regulatory regime in the past two decades had placed the UK at the forefront of regulatory reform in the OECD. However, it noted that there was still work to do.

The OECD review of regulatory reform in the UK can be found on the OECD website at [www.oecd.org](http://www.oecd.org)

## Contact and liaison

To gain new insights into how markets work, we gather market intelligence and analysis from consumers, business and competition authorities at both a national and international level. We have developed a programme of meetings with consumer and trade bodies, regional development agencies, sectoral regulators and other government departments.

We maintain close working relationships with international organisations such as the OECD, the World Trade Organisation and United Nations Conference on Trade and Development on a range of competition and consumer issues.

We participated in the work of the International Competition Network (ICN), a new forum for competition authorities and businesses to share ideas and work towards a common set of principles for competition law enforcement. At the ICN's first annual conference in Naples in September 2002, the Director General of Fair Trading delivered a paper on the challenges faced by merger control regimes worldwide and the need for greater international consistency in analysing anti-competitive effects.



We chair an ICN working group examining different approaches to the analysis of mergers around the world. This includes managing an international project on merger guidelines and a comparison of the 'dominance' and 'substantial lessening of competition' tests, which is currently the subject of debate within the European Council of Ministers (see page 72).

The working group will present a summary of this work to the 2003 ICN conference.



### Listening to consumers

Consumers are often the first to notice that a market is not working well. Their information and complaints are vital to the work of our market study and enforcement teams.

As the main point of contact with the public, our Enquiries Unit handled 100,000 telephone calls, 14,000 e-mails and 3,250 letters in the reporting period.

While we have no power to intervene in disputes relating to consumer legislation, we can inform people about their statutory rights or refer them to other sources of help, such as trading standards departments and consumer organisations. If a complaint provides evidence of a possible breach of competition law, this information will be passed on to the appropriate enforcement team.

Technical discussions are underway to develop an interface between the unit's contact centre and Consumer Direct, the DTI's proposed nationwide consumer advice line. This will allow the seamless transfer of calls between various agencies.

By collating data from consumer complaints, the unit provides key information to support market studies or enforcement action. A project to integrate the unit's database with the OFT's case management system, allowing enforcement teams to access this intelligence directly, was completed in February 2003.

## Performance and spending

Under our service delivery agreement (SDA) with the Treasury, we had three high-level objectives for studying markets, advising government and liaising with the public for the financial year 2002-03. These were underpinned by performance targets.

### Market studies

#### *Objective*

To study markets proactively to see whether they are working well for consumers. As well as business behaviour, studies will cover government laws and regulations to ensure a competitive environment for business and consumers. Where appropriate, studies will lead to reports that will be published.

#### *Target*

By 31 March 2003 we will have commenced up to seven studies of markets where it is thought that competition is not working well: these will include studies of markets where initial consideration suggests problems lie in the area of regulation, and studies following super-complaints. We expect to refer two cases to the Competition Commission. We will have completed three studies: pharmacy licensing, IT services and private dentistry.

#### *Performance*

- Four studies were completed with reports published:
  - Consumer IT goods and services – report found that while the market worked well, better information was needed
  - Extended warranties – reference to the CC
  - Pharmacies – report recommended that the control of entry regulations for community pharmacies be ended
  - Private dentistry – report recommended better information on prices and treatments; better and more effective self-regulation and the lifting of regulatory restrictions on the supply of some services
- Three further studies were launched during the year:
  - Taxis – launched 21 August 2002
  - Estate agents – launched 11 June 2002
  - Doorstep selling – launched 12 November 2002
- Two shorter ‘exploratory’ studies were launched during the year:
  - Liability insurance – launched 10 December 2002
  - Payment systems – launched 31 January 2003.

*continued overleaf...*

## Market studies continued

<i>Target</i>	<i>Performance</i>
We aim to complete all market studies within a 12-month period of their start.	<ul style="list-style-type: none"> <li>• Of the four studies completed in the financial year, only one (extended warranties) was within the 12-month target. Lessons are being learned to improve future delivery.</li> </ul>
We will provide a reasoned response to super-complaints within 90 days whether or not the super-complaint leads to a longer investigation. We will respond to the NACAB super-complaint by December 2002. We will publish guidance on super-complaints by 31 March 2003.	<ul style="list-style-type: none"> <li>• Two informal super-complaints were dealt with within the 90-day target:               <ul style="list-style-type: none"> <li>– Private dentistry</li> <li>– Doorstep selling</li> </ul> </li> <li>• A third informal super-complaint on mail consolidation was received in March 2003</li> <li>• We have published a consultation draft of super-complaints guidance. A final text will be published before the provisions start. This is later than expected. However, we need to incorporate information from a DTI document which was not published until 31 March 2003 and from the final version of the Statutory Instrument (SI) on concurrency, expected in May 2003.</li> </ul>

During the financial year, the OFT spent £2.40m on achieving this SDA objective. This money was allocated as follows:

Staff costs	£1.7m
Consultancy and research	£0.6m
Miscellaneous administration	£0.1m

## Advice to government

### Objective

To advise government on how to achieve the most effective regime for competition and consumers

<i>Target</i>	<i>Performance</i>
<p>We will assist the DTI with the passage of the Enterprise Act, and publish, following consultation, guidance on key areas arising from the Act. We will also develop a training and education strategy to explain the Act and the OFT's role.</p>	<ul style="list-style-type: none"> <li>• We liaised closely with the DTI and the Home Office about the Enterprise Act; EA statutory instruments and consultation documents. We have also published all statutory guidance required by the Act.</li> <li>• A wide range of specific and general publications have been issued on the OFT and the Act</li> <li>• To date 40 seminars on the Act have been given to business, regulators and other relevant groups.</li> </ul>
<p>By March 2003 we expect to have responded to some 100 requests from departments for quick advice on the potential implications for competition of new legislation, and to have given detailed advice in all key cases. In exceptional cases, where serious competition concerns remain after legislation has been brought forward, we will publish a report. We will continue to improve understanding of the competition filter for RIAs and carry out a review of the process, the initial stage of which will be completed by 30 September 2002.</p>	<ul style="list-style-type: none"> <li>• The Regulatory Review team exceeded its target of responding to 100 requests from departments for quick advice, providing 292 responses. The team also met its target of providing detailed advice in all key cases.</li> <li>• It was not necessary to publish any reports, possibly due to the good links developed with policy officials. A review of the team's role and the processes was completed by the end of 2002.</li> </ul>

During the financial year, the OFT spent £0.90m on achieving this SDA objective. This money was allocated as follows:

Staff costs	£0.85m
Miscellaneous administration	£0.05m

## Consumer liaison

### *Objective*

To provide a source of information to the public on consumer and competition legislation and to gather and record intelligence for referral to enforcement divisions and MPI

<i>Target</i>	<i>Performance</i>
Target for answering calls to designated telephone enquiry point (08457 224499) – (four rings/12 seconds).	<ul style="list-style-type: none"> <li>We estimate that 95 per cent of calls received were answered within four rings. A technology upgrade will provide more accurate reporting in the next period</li> </ul>
Call abandonment* to be less than five per cent of calls received during operational hours.	<ul style="list-style-type: none"> <li>Average abandonment of calls was 3.93 per cent</li> </ul>
Average length of completed calls to be less than 3.5 minutes	<ul style="list-style-type: none"> <li>Average call handling time was 2.3 minutes</li> </ul>
Target for responding to correspondence (including faxes and e-mails) from members of the public – 10 working days.	<ul style="list-style-type: none"> <li>All correspondence responded to within 10 working days</li> </ul>

\*callers hang up before a call can be answered, or are connected to a message recording system without speaking to a member of staff.

During the financial year, the OFT spent £0.27m on achieving this SDA objective. This money was allocated as follows:

Staff costs	£0.26m
Miscellaneous administration	£0.01m