

objective 5 studying markets

We actively investigate markets that do not appear to be working well and publish the results of these studies. Our studies help us to assess if there are problems preventing a market from working well and, if so, what action the OFT and others should take. We make use of a wide range of sources to identify possible candidates for market studies. These include super-complaints from designated consumer bodies, information from our own enforcement teams, evidence from the public and our own research. In some cases, assessment of information from a super-complaint or another source can lead directly to a market investigation reference to the Competition Commission (CC).

Performance against our annual plan

<p>Objective We will study markets proactively to see whether they are working well and refer markets to the Competition Commission for investigation where appropriate.</p>	
<p>Our commitment</p>	<p>Our performance</p>
<p>Respond to super-complaints from designated consumer bodies within 90 days of receipt.</p>	<p>Received two super-complaints, both of which were responded to within 90 days:</p> <ul style="list-style-type: none"> • Home credit (received 14 June 2004, response 10 September 2004) • Northern Irish banks (received 15 November 2004, response 11 February 2005).
<p>Initiate up to seven market studies, at least two of which will look at the effects on the market of government regulations.</p>	<ul style="list-style-type: none"> • Six market studies launched: <ul style="list-style-type: none"> - Public subsidies - Financial Services and Markets Act - Ticket agents - Care homes - Liability insurance follow-up - Property searches.

<p>Complete ongoing studies within published timescales.</p>	<p>Reports published on:</p> <ul style="list-style-type: none"> • Doorstep selling • Public sector procurement • Public subsidies • Financial Services and Markets Act • Ticket agents.
<p>Carry out between two and four reviews of existing CC undertakings to determine whether they remain necessary or require modification.</p>	<ul style="list-style-type: none"> • Secretary of State accepted OFT advice following review of orders relating to specialist advertising services, car parts and film distribution • Launched reviews of undertakings relating to opium derivatives and telephone directory advertising services • Following a review of existing undertakings, consulted on undertakings in lieu of a new market investigation reference of postal franking machines.
<p>Refer markets to the CC for investigation where we consider that the reference tests in the Enterprise Act and the criteria in OFT guidance are met.</p>	<p>Referred the following markets to the CC:</p> <ul style="list-style-type: none"> • Bulk liquefied petroleum gas (LPG) for domestic use • Home credit.

<p>During 2004-05, the OFT spent £3.52m on achieving this objective.</p>	
<p>This money was allocated as follows:</p>	
<p>Staff costs</p>	<p>£2.63m</p>
<p>Miscellaneous administration</p>	<p>£0.89m</p>



Market study guidance

Our approach to selecting and conducting market studies was set out in guidance published in November 2004.

The decision to undertake a market study follows a preliminary review of the market. If this uncovers significant issues warranting further examination, we will launch either a short, fact-finding study (typically three to six months in length) or a full study, lasting approximately one year.

Possible outcomes of a market study include:

- giving the market a clean bill of health
- initiatives to help consumers make more informed buying decisions
- encouraging businesses to take voluntary action
- encouraging the development of consumer codes of practice
- recommendations to government or other public bodies on the effect of regulations on a market
- pursuing enforcement action
- a market investigation reference to the Competition Commission (CC).

> **Guidance on market studies:**

www.offt.gov.uk/Business/Market+studies

Completed market studies

Doorstep selling

Legislation on doorstep selling should be updated to combat the psychological tactics employed by many salespeople, we concluded in a report published in May 2004.

Our study into the £2.4bn a year market found that sophisticated influencing techniques were leading consumers to make inappropriate purchases which they later regretted.

The report highlighted a gap in consumer protection: under current legislation consumers who are cold-called have a seven-day period in which to cancel a contract, while consumers who request a visit, for example by responding to a leaflet drop, have no such right.

We recommended that the government extend the law to give cancellation rights for solicited as well as unsolicited visits, and consider closing a loophole which allows unscrupulous traders to undermine these rights by unnecessarily installing goods during the cooling-off period. The Department of Trade and Industry launched a consultation on these and other legislative proposals in July 2004.

> **OFT campaign on doorstep selling: page 72**

Public sector procurement

We commissioned a study on the positive and negative effects of public sector procurement on competition.

The research, carried out by consultants DotEcon Ltd, highlighted a number of ways in which procurement practices can limit competition, such as by imposing very long-term contracts or bundling too many contracts into one tender. It also showed how competition can be promoted, for example buyers with similar needs grouping together when they tender, which can mitigate supplier power.

DotEcon identified nine sectors where public procurement is more likely to impact on competition. The OFT is evaluating the findings before deciding what further action or recommendations are necessary.

Public subsidies

The impact of the public sector on markets was also the subject of a preliminary report, published in November 2004, on the potential for public subsidies to distort competition.

A total of around £6bn was spent by public sector bodies such as central government, the devolved administrations and regional agencies on subsidies to private firms in 2003.

Based on initial research, we developed an analytical framework for assessing the characteristics of subsidies and markets that are likely to lead to greater distortion of competition. Using this framework we found that existing rules and guidance at a European and national level do limit such competition distortions, but could go further.

The next stage of the study will focus on specific issues and case studies to develop recommendations to government on subsidy design.

Financial Services and Markets Act

Research by Oxera for the OFT found that the Financial Services and Markets Act 2000 (FSMA) does not appear to have had a significant negative impact on competition in financial markets.

The study, conducted as part of the Treasury's two-year review of FSMA, further concluded that FSMA promotes competition by addressing market failures where these exist, for example by addressing information asymmetries in the provision of investment services through the regulation of financial advisers.

FSMA, which came into force in December 2001, established the Financial Services Authority (FSA) as the sole regulator of the UK financial services sector. It also created the Financial Services Compensation Scheme and the Financial Ombudsman Service to provide redress to consumers where regulations have been breached.

The report noted that the FSA has considerable discretion under the Act to pursue its objectives, but that its actions are unlikely to have had an adverse effect on the structure of markets because of the FSMA competition scrutiny provisions.

We announced in March 2005 that we would not carry out further research into markets affected by FSMA at this time.



Ticket agents

Though most consumers buying from ticket agents were happy with their last purchase, we identified a need for better price information and clearer contract terms.

The ticket agents sector is made up of primary agents, who have agreements with event promoters or venues to sell tickets on their behalf, and secondary agents, who acquire tickets from a range of sources for resale at a price the market will bear.

Our market study found that information about ticket prices was often only available through the ticket agent or box office, making it hard for consumers to shop around. We recommended a change to Committee for Advertising Practice (CAP) guidance so that all non-broadcast event advertising indicates the face value of the ticket and that additional fees may apply.

The report also concluded that some of the terms in ticket agents' consumer contracts were potentially unfair. The Society of Ticket Agents and Retailers agreed to work with the OFT to produce model terms for its members.

Complaints about secondary agents were more common, ranging from mis-description – where consumers are not told the face value of a ticket or the seat location – to non-delivery of pre-paid tickets. These issues are covered by consumer protection legislation and we will work closely with enforcement partners to ensure compliance.

Ongoing market studies

Property searches

The £200m property search sector is the focus for a market study announced in December 2004.

Information on land ownership, the local environment and planning permission is essential to buying and selling property. This information is often collected or held exclusively by bodies such as local authorities and the Land Registry.

Our study, which follows a number of complaints to the OFT from property search companies, focuses on the structure of the market and how consumer needs are being met in terms of the collection, accessibility and pricing of information.

Liability insurance follow-up review

In our 2003 report on liability insurance, we pledged to keep these markets under review. Our follow-up study, launched in December 2004, looks again at premium levels and the availability of cover to determine if the markets are working better. We are also examining claims that 'after the event' insurance, which is taken out when an individual pursues a claim against a liable party, has contributed to the rise in liability insurance premiums.

Care homes

In response to an informal super-complaint from the Consumers' Association (now Which?), supported by a number of organisations in the Social Policy Ageing Information Network, a study was launched in June 2004 into care homes for older people.

The study explores how prospective residents and their representatives choose a home and how this affects the market. It also looks at price transparency, the ease with which clear and accurate information on moving into a home can be obtained, whether care home contracts offer sufficient protection against unreasonable price increases, and the ability of older residents and their representatives to make complaints.

This study was published on 18 May 2005.

Market investigation references

Under the Enterprise Act, we have the power to refer markets to the Competition Commission (CC) for further investigation where we have reasonable grounds for suspecting that any feature, or combination of features, of a market is preventing, restricting, or distorting competition. It is for the CC to decide whether competition is being prevented, restricted or distorted and, if so, whether action should be taken.

Home credit

In response to a super-complaint from the National Consumer Council, we referred the supply of home credit to the CC in December 2004.

Home credit is the provision of small unsecured cash loans repaid in regular (often weekly) cash instalments which are collected by agents who call at the customer's home. Some home credit lenders also sell shopping vouchers or hampers on credit. While there are around 500 firms in the market, which in terms of debt outstanding is valued at £2bn, four firms account for nearly 70 per cent of business.

Our analysis of the super-complaint and the responses to a subsequent consultation found that competition in the market appears to be restricted, with lenders having limited incentive to compete on price or attempt to win business by taking over other lenders' loans.

Bulk LPG for domestic use

We referred the market for the supply of bulk liquefied petroleum gas (LPG) for domestic use to the CC in July 2004.

A preliminary review, prompted by complaints to the OFT from consumers, found that features of the market appear to prevent, restrict or distort competition, and may lead to customers paying higher prices for their household LPG supply.

LPG is used in the home for heating, cooking and the heating of water. Domestic customers tend to be based in rural areas with no access to mains gas. Most suppliers retain ownership and responsibility for the maintenance of the tanks. Customers wishing to change supplier typically face sizeable switching costs, with the current and new suppliers often charging for the removal and installation of their respective tanks.

Northern Ireland personal current account banking

Following a super-complaint from Which?, we consulted the affected parties on a reference to the CC of personal current account banking in Northern Ireland.

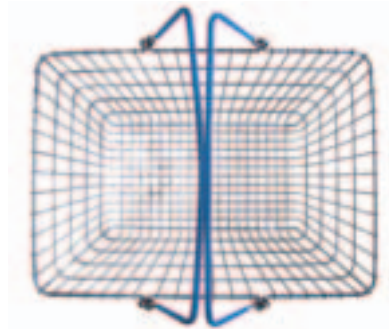
Our analysis of the super-complaint identified questions about the effectiveness of competition between the four leading banks that provide PCA banking in Northern Ireland. There was a low level of switching by customers, both between rival banks and to alternative accounts within the same bank. We also found evidence of parallel pricing behaviour and of price leadership, where one firm in the market sets a price which others follow.

Review of remedies

The OFT is required to keep under review action taken in compliance with undertakings or orders, and from time to time consider if these remedies are having their intended effect of making markets work better.

Our role is purely advisory: the power to vary, revoke or make new undertakings or orders rests with the Competition Commission and the Secretary of State for Trade and Industry.

Two reviews were announced in November 2004. The first examines undertakings given in relation to classified advertising in telephone directories; the second looks at undertakings given by Macfarlan Smith Ltd on the pricing and supply of opium derivatives used in a wide range of painkillers and cough medicines.



Our review of undertakings given by suppliers of postal franking machines concluded that these were outdated and inadequate, and that a market investigation reference to the CC was appropriate. In response to this decision, new undertakings were offered to us by the two leading suppliers of postal franking machines in the UK and the Royal Mail. We consulted on these in February 2005.

In December 2004, the Secretary of State accepted our advice, subject to consultation, that orders relating to car parts and film distribution were no longer needed. In March 2005, the Secretary of State accepted our advice, subject to consultation, that an order relating to specialist advertising services should be revoked.

Supermarket code review

We found that supermarkets are, by and large, complying with the Supermarkets Code of Practice, but that the Code is not being used to resolve disputes.

A compliance audit carried out on our behalf looked at a sample of 500 relationships between grocery suppliers and the big four supermarkets. It found relatively little evidence that the Code was being breached. There was some evidence of supermarkets asking for lump sum payments (mostly involving Safeway before its acquisition by Morrisons) but suppliers appear not to have complained about these.

We urged suppliers to overcome their fear of complaining and to make better use of the Code's dispute resolution procedure. We also recommended that supermarkets and suppliers put their terms of business in writing to avoid misunderstandings and to ensure that deals are honoured.

We concluded that, based on the evidence we had seen, the market for the supply of groceries seems to be working well for consumers, but we invited further evidence and comments on the issues raised by the audit, and on wider competition concerns.