

Good practice in the design and presentation of consumer survey evidence in merger inquiries

Response to consultation

March 2011

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1 INTRODUCTION

- 1.1 In May 2010, the Competition Commission (CC) and Office of Fair Trading (OFT) - herein referred to jointly as 'the Authorities' - published a draft joint good practice guide for the design of consumer surveys and the presentation of evidence from them.
- 1.2 This good practice guide - herein referred to as 'the Guide' - was intended to assist parties and their advisors who wish to provide consumer survey evidence in merger inquiries. It noted several principles of good survey design and set out a range of practices that were designed to increase the evidential weight that could be given to survey results. Examples of good and poor practice drawn from recent CC and OFT investigations were included.
- 1.3 A formal public consultation on the contents of the Guide ran from 25 May 2010 to 3 September 2010. During this period:
- three open meetings were held at the OFT with 52 delegates attending in total
 - four presentations with question and answer sessions were conducted at economic consultancies in London
 - fourteen written submissions were received, seven from market research agencies, four from law firms and three from economic consultancies.
- 1.4 We would like to thank all participants in the events for their considered and helpful contributions. This paper sets out the main issues raised throughout the consultation and a joint CC and OFT response to each of them.

2 MAIN POINTS AND AUTHORITIES' RESPONSES TO THEM

2.1 The consultation paper invited comments in nine areas:

- Would the issue of a good practice guide in this area be helpful to merging parties, or would it be better to have no guide?
- Is the purpose of the Guide clear, or is it not?
- Are the four principles listed an appropriate basis for assessing the evidential value of a survey, or are they not?
- Should other principles be added to the Guide?
- Are there any elements of the Guide that would not tend to increase the evidential value of a survey if complied with?
- Are there any elements that would impose serious difficulties or unreasonable costs on the execution of a consumer survey?
- Is the amount of detail in the Guide too low, about right or too high?
- Is the Afterword helpful in placing consumer survey evidence in context, or is it not?
- Further suggestions for improving the content of the Guide.

2.2 These areas (occasionally in combination) are used in this paper as headings to organise the issues and submissions.

2.3 The Authorities' responses to points raised in the consultation are presented in **bold**.

Would the issue of a good practice guide in this area be helpful to merging parties, or would it be better to have no guide?

- 2.4 There was clear support for the development of the Guide from a majority of the organisations consulted. Nine of the substantive written responses (out of fourteen) opened with a statement of support for the initiative. The following two quotations are illustrative:

'I fully support your initiative to illustrate good practice in this research area ... it makes eminent sense to try to establish a common framework about how such surveys should be conducted.' (Research agency)

'The publication of a guide is useful in that it demonstrates the obvious interest of the competition authorities in receiving clearly structured and focused survey evidence that offers probative value.' (Law firm)

- 2.5 The detailed submissions in response to this question are summarised below.

Strengths of the Guide

- 2.6 During the presentations to economic consultancies, attendees commented upon a number of strengths they saw in the Guide, welcoming the use of real case study examples, the recognition that consumer responses to hypothetical questions had evidential value, the implication that the Authorities would engage with parties over the design of research and the guidance on avoiding measurement error in survey design.

Maintaining and updating the Guide

- 2.7 Three participants in the consultation expressed their hopes that the Guide would be reviewed and updated regularly following publication and would signal the openness of the Authorities to new developments in research methods.
- 2.8 **We are committed to reviewing guidance at appropriate intervals. The omission of a research technique from the Guide does not imply that results derived using it would not be given evidential weight in appropriate circumstances.**

The value of precedents in designing research

- 2.9 One economic consultancy pointed out that, in the absence of a published good practice guide, parties would continue to design consumer research based on examples in past cases, whether these were appropriate to a current merger or not.
- 2.10 **We agree. One of the implicit objectives of the Guide is to encourage parties and their advisors to use the most appropriate research techniques to generate robust evidence in a given merger situation, irrespective of whether evidence from those techniques appears to have been influential in previous cases. We will note this objective explicitly.**

General criticisms of the Guide

- 2.11 Four general criticisms of the overall usefulness of the Guide were made.
- 2.12 A law firm at an open meeting criticised the Guide as being too prescriptive about suitable research methods. It was felt that this would be a particular problem in cases that required work before the Authorities are notified about a merger and can therefore be consulted on research methods.
- 2.13 **There is no intention to limit the range of consumer research techniques that may be used to generate evidence.**

- 2.14 A different law firm was concerned that following the detailed practices set out could give parties a false sense of security, if it turned out that there were issues in a particular merger that should have been considered, but that are not covered in the Guide.
- 2.15 **At draft paragraph 1.4 we state 'We recognise that circumstances vary and that judgment and skill will be required in applying survey methods to a particular case'. It is not possible for a published Guide to cover every possible issue of concern in conducting consumer research.**
- 2.16 A research agency criticised the proposal to publish the Guide as a document rather than as an online resource, on the grounds that this format would not be able to keep up with changes and developments in survey techniques and research methods.
- 2.17 A similar point on the difference between procedural and technical guidance was made in a submission from an economic consultancy:
- '... the substantive points raised in the draft Guide do not fully address the variety of situations or issues that are likely to be encountered. As a consequence, we suggest that the Guide make it clear that its primary purpose is as a procedural guide, and that the substantive observations are simply 'examples' of issues that can arise.' (Economic consultancy)
- 2.18 **We recognise that detailed technical guidance will be superseded by developments, and so have sought to present in Section 2 general principles that are unlikely to change quickly as the basis for assessing evidential weight. In draft paragraph 1.6 we state that 'submissions that follow the principles set out in this document ... are more likely to be given evidential weight'. We will stress that 'principles' here applies to the material in Section 2, and that the detailed information in Section 3 is intended as a technical resource to parties, to illustrate the principles in application.**

Overall response to consultation question

- 2.19 **The overall weight of the consultation response is in favour of a Guide being published. We note the concern that the detailed good practice material could appear to be prescriptive or to discourage parties from using innovative research methods and we will re-draft to address this. We will also draw a clearer distinction between those general principles that will usually guide our assessment of the weight that should be given to survey evidence (Section 2), and the detailed examples that are provided as a technical resource to assist parties (Section 3).**

Is the purpose of the Guide clear, or is it not?

- 2.20 One research agency stated that the purpose of the Guide was clear. Other respondents did not express views or made suggestions for clarifying the purpose. These suggestions are summarised below.

The intended audience for the Guide

- 2.21 One law firm suggested that the intended audience for the Guide should be stated explicitly.
- 2.22 **In draft paragraph 1.1 we state 'These surveys are usually conducted by management consultancies, economic consultancies or market research agencies'. We will make it explicit that these groups are the main intended audiences.**

The applicability of the Guide

- 2.23 A number of respondents questioned whether the good practice described would be applied to other situations in which survey evidence was being presented to the Authorities, for example, in small surveys that did not involve the use of research agencies, in surveys conducted prior to merger notification, in market studies and in Competition Act cases.
- 2.24 **In draft paragraph 1.7 we state 'Whilst these guidelines focus specifically on consumer survey research for merger inquiries, some general comments on their wider application and context are presented in an Afterword'. We will change this to make it clear that, whilst the Guide focuses on consumer survey research that has been designed for the specific purpose of providing evidence in a merger inquiry, this does not preclude the good practice principles being relevant in other types of investigation.**

The relationship to the Merger Assessment Guidelines

- 2.25 One respondent from a law firm noted during an open meeting that procedural guidance in the Guide should be fully consistent with that in the joint Merger Assessment Guidelines.
- 2.26 **The status of the Guide is that of a technical resource to assist parties in presenting effective survey evidence. It does not in any way moderate or interpret the Merger Assessment Guidelines and this will be stressed in the introduction to the Guide.**

Overall response to consultation question

- 2.27 **We will sharpen the drafting of the Guide introduction to make it explicit that the good practice principles will be used for assessing quantitative consumer survey research in merger inquiries, and that this does not preclude the principles being relevant in other types of investigation.**

Are the four principles listed an appropriate basis for assessing the evidential value of a survey? Should other principles be added to the Guide?

2.28 These two questions in the consultation attracted some strong views in submissions. Two law firms and one research agency supported the principles set out, but also suggested that they be strengthened. One law firm and one economic consultancy wanted it made explicit that the principles would apply equally to the Authorities. Finally, several suggestions for extra principles (or new elements in the existing draft principles) were made. These are addressed in detail below.

Support for the principles

2.29 One research agency strongly supported the principle that research objectives should be set out to test hypotheses in advance of data being collected. Indeed, their submission went further:

'A fundamental principle should be that no question is formulated without knowledge as to how it will be analysed'.

2.30 **Whilst we applaud the rigour underpinning this response, we recognise that research in merger inquiries is sometimes commissioned under conditions of haste and uncertainty. We would therefore not wish to include so strong a requirement amongst the principles used to assess the evidential value of consumer research.**

2.31 The same agency also supported full disclosure of research results for scrutiny by interested parties.

- 2.32 Two law firms supported the set of four draft principles, and suggested also that the principle of transparency of objectives should be extended to include an explicit statement of the competition theories of harm to be probed by the consumer research. These might include both price and non-price effects for all consumers, all customers or some sub-set of them.
- 2.33 **Whilst we agree that research should be designed within a clear context of competition theories of harm, we do not feel it necessary to require this context to be set out explicitly in the research reports submitted in evidence. This would be difficult for an independent market research agency to do, and the context is usually implicit in the research design itself.**

Application of the principles to the Authorities

- 2.34 One law firm and one economic consultancy argued that the principles should apply equally to the assessment of consumer survey evidence commissioned or produced by the Authorities. In particular, full survey objectives, methodology, results and the underlying individual consumer survey responses should always be made available to interested parties promptly during the inquiry.
- 2.35 **We will add to the introduction that, whilst the Guide has been designed to help interested parties in a merger inquiry submit evidence to the Authorities, the Authorities will endeavour to follow the good practice principles in a merger inquiry themselves, wherever reasonable and practicable.**
- 2.36 **We will also note that it is our aim to be open and transparent in our work, and that we will consider requests from parties to inquiries for the disclosure of the information underlying our analyses, including requests for disclosure of the information derived from consumer surveys. However these requests may be subject to important legal and practical constraints on our ability to disclose such information. These constraints include the Enterprise Act 2002, the Data Protection Act 1998 and the statutory timetable for each merger inquiry.**

Suggestions for further principles

- 2.37 It was suggested by one economic consultancy that a fifth principle should be added to the Guide: sources of survey error should be evaluated and their likely effects estimated in the survey report. This principle would cover coverage error, sampling error, response error and measurement error.
- 2.38 **Whilst this is good research practice, it is not clear that its presence would increase the evidential weight that the Authorities would give to a piece of consumer research. Estimating the effects of some sources of error would involve subjective judgments, and these are best kept separate from the formal submission of research evidence. It may be useful to include such material in submission documents whose purpose is to interpret the survey results.**
- 2.39 One economic consultancy and one law firm sought clarification on how the Authorities would approach giving evidential weight to consumer survey evidence that was relevant to the merger and collected for other business purposes, but did not comply closely with the good practice set out in the Guide.
- 2.40 **This is an assessment that will require judgment in light of the specific circumstances of a merger inquiry. We agree with the general balance of factors implicit in the request for clarification: relevant evidence that has been collected for the purpose of directing business strategy might tend to be given a higher weight than that generated in the light of a proposed merger; however, evidence that does not conform to principles of good research practice would tend to be given less weight than that which does. We will comment on this in general terms in the Guide.**

- 2.41 A law firm suggested that the Guide should set out the merger circumstances in which the Authorities would be likely to regard consumer survey research as a useful source of evidence:
- '... survey evidence may be useful where the potential competition concern relates to a large population, and where reliance on the views of only a few members of that population may not be representative of the population at large. This is particularly the case where the population at large may contain various sub-groups with different attributes or attitudes, and competitive effects might vary between consumers'.
- 2.42 **We agree and, whilst not precluding survey evidence from having value in any merger, will add this point to the 'Representativeness of sample' principle in the Guide.**
- 2.43 Another law firm proposed that ethical use of survey evidence should underpin the principles in the Guide:
- 'We consider that it would be helpful to state specifically that 'survey design and analysis should be based on ethical considerations', or wording to similar effect. This should serve as a reminder that any temptations to skew survey evidence in favour of the theory or issue being advanced should be resisted fully'.
- 2.44 **Whilst we agree with the proposition, the Authorities approach each merger inquiry with the assumption that merging parties and their advisors will engage with us in ways that are governed by appropriate ethical considerations and professional standards. We do not therefore intend to add a requirement for ethical conduct to the Guide.**
- 2.45 Two respondents to the consultation suggested that the Guide focused too much on survey design and implementation at the expense of data processing, analysis and reporting.
- 2.46 **We will ensure that the drafting of the Guide does not minimise the importance of good analysis and reporting practice, but note that this is described well in general social and market research texts and is rarely specific to providing evidence in merger inquiries.**

Overall response to consultation question

- 2.47 **We will state that the Guide has been designed primarily to help interested parties in a merger inquiry. We will comment on the factors that influence the weight that can be given to consumer survey evidence that was commissioned for purposes other than those directly related to the merger. We will add an introductory note on the type of merger circumstances in which consumer survey evidence is most likely to be useful and seek to ensure that the Guide does not appear to minimise the importance of good analysis and reporting practice.**

Are there any elements of the Guide that would not tend to increase the evidential value of a survey? Would any aspect of the Guide impose serious difficulties or unreasonable costs on the execution of a consumer survey?

- 2.48 The majority of the consultation responses in this area came from economic consultancies. They fall into four broad subject areas:
- sampling and inference
 - informing respondents about the purpose and sponsorship of the survey
 - asking hypothetical survey questions
 - survey fieldwork standards.
- 2.49 We summarise and respond to the submissions in each of these areas.

Sampling and inference

- 2.50 The draft Guide adopts a 'classical statistical' approach to the design and analysis of consumer surveys. Hypotheses to be tested and measures to be estimated are set down in advance, a sample of consumers is selected and asked questions that bear upon these, then inferences are drawn from the sample responses about the consumer population of interest. Sampling and analysis methods are designed to allow these inferences to be drawn with minimum bias and estimable amounts of sampling uncertainty.
- 2.51 There was some criticism of the 95 per cent standard social research threshold for statistical significance cited in the Guide. One economic consultancy questioned whether this was appropriate in surveys for merger control and one research agency noted the cost implications of trying to achieve this across surveys in a number of local markets.
- 2.52 There was also concern over the difficulty of predicting in advance whether sub-groups of consumers might have different views and of designing samples with sufficient statistical power to produce robust results for the sub-groups identified.
- 2.53 Two economic consultancies suggested that a more graduated approach to assessing the strength of quantitative evidence was required.

- 2.54 One proposed that where multiple local markets or consumer sub-groups had been analysed, probability values for significance tests or confidence intervals for measures should be reported for each market or sub-group. This would allow varying evidential weights to be given, survey results to be combined with other evidence, and effort to be focussed on reviewing borderline cases.
- 2.55 **We will re-draft those parts of the Guide that deal with the statistical significance of results, to reduce the emphasis on meeting standard social research thresholds for statistical significance and to encourage parties to provide clearly-described confidence intervals for those estimates that are critical to the theory of harm being probed. We will also stress the importance of considering both the statistical and the economic significance of survey-based estimates.**
- 2.56 The other consultancy went further, noting that the type of survey evidence that can realistically be gathered in a merger inquiry is not always amenable to analysis using classical statistics based on distributional assumptions. This consultancy suggested that non-parametric analysis results should be given evidential weight.¹
- 2.57 **Whilst we accept that non-parametric analysis (and other, computationally-intensive types of data analysis) may generate useful and valid inferences, the Authorities have less empirical experience in assessing their evidential weight upon which to draw. Although these methods are not mentioned in the Guide, this does not indicate that their presentation as evidence is unwelcome, particularly when the methods underpinning them are described clearly.**

¹That is, results from analysis techniques that do not depend upon assumptions about the distribution of attitudes or behaviours in the consumer population of interest.

Informing respondents about the purpose and sponsorship of the survey

- 2.58 Draft paragraph 3.48 attracted criticism from consultation participants of all types. This paragraph states '... parties may need to state explicitly in consumer survey introductions that this sharing of data is being contemplated. This depends upon the amount of personal detail being collected within the survey. It may be done most efficiently by including the name of the relevant regulator in the sponsor description ...'.
- 2.59 Participants were almost unanimous in their view that this approach risked introducing a selection bias into the survey sampling. It would not always be clear how this bias might act, but there was a clear view that a neutral introduction that gave the general purpose of the survey as 'market research' and did not mention the involvement of the Authorities would be better.
- 2.60 **There is a tension here between the requirements of unbiased survey sampling and those of good practice in data protection when collecting and sharing data. We recognise the concerns expressed.**
- 2.61 **We will remind parties of the need to meet the requirements of the Data Protection Act 1998 as they apply to survey data and offer advice on minimising both the risk of an inadvertent breach of the legislation and the risk of biasing the survey results. We will be clear that the general advice provided does not replace the need for the parties to take legal advice in a specific merger situation.**

Asking hypothetical survey questions

- 2.62 The open meeting with economic consultancies generated some criticism of the Guide's implicit signalling that responses to hypothetical questions were a potential source of strong evidence. Concern was expressed that the Guide was too sanguine about the ability of survey design measures to reduce hypothetical bias and should be clearer that analysis of revealed preference survey responses would almost always be more reliable than that from stated preferences.

- 2.63 **At the start of the draft Guide section on hypothetical questions, we note that there are 'potential extra sources of bias and measurement error', but recognise that, particularly in notified mergers, revealed preference information may not be available.**
- 2.64 **Even when a proportion of the consumers in a market may have had previous experience of purchasing decisions, identifying and contacting a representative sample of them can be difficult or expensive, and their recall of previous behaviour and the decision processes around it may be uncertain. Hypothetical questions do have a part to play in the investigation of mergers, though we will add a comment to the Guide reminding researchers always to assess the responses to hypothetical questions in the context of other evidence about the respondent and a general understanding of consumer behaviour.**
- 2.65 Other, more detailed, comments were provided to us in submissions. Two economic consultancies agreed that presenting absolute price changes to investigate consumer reaction to increases was good practice, and suggested also that appropriate rounding of prices helped consumers understand them. Presenting them alongside percentage increases gave the fullest picture.
- 2.66 **We agree that appropriate rounding of prices is helpful, but do not agree that percentage increases should be presented with them. The aim of the questions is to present as realistically as is feasible the choice a consumer would encounter following a price increase, and it would be rare for this to be presented to the consumer as a percentage.**
- 2.67 Another economic consultancy suggested that a survey should, where possible, include questions that can be used to test the internal consistency of hypothetical question responses.

- 2.68 **We agree that demonstrating internal consistency in responses tends to increase the overall evidential weight that can be given to survey results. We will, however, not recommend weighting responses according to measures of internal consistency (that is, giving apparently inconsistent responses less weight). The potential benefits of such adjustments are likely to be outweighed by the loss of statistical power (due to a reduction in effective sample size) and the increased difficulty of replicating results.**
- 2.69 A law firm requested that we include more detail on the framing of diversion option questions in terms of the permanent closure of an outlet or a price increase.
- 2.70 **This would require discussion of a fairly technical area of economic analysis. At draft paragraph 3.40, the Guide notes the broad options and limits its comments on good practice to the importance of being clear with respondents in which context the questions are being asked. We do not intend to go further than this in the first edition of the Guide.**
- 2.71 One market research agency expressed concern that the use of prompted questions to identify diversion options risked educating consumers about their alternatives, hence biasing their unprompted responses.
- 2.72 **Whilst this is true, it must be weighed against the time and resource implications of recording and coding unprompted, open responses and the risk of bias being introduced by using coding staff to categorise responses rather than simply letting respondents do so. We note at draft paragraph 3.38 'Questions asking about diversion options for a product or service should be designed and tested to ensure that they provide response scales that cover all possible options, sometimes by including and analysing an Other (please specify) option'.**
- 2.73 One law firm felt that the value of piloting surveys was under-emphasised. A market research agency noted that:

'While probing respondents' confidence in their answer may reduce bias, it is likely to substantially increase the length of a questionnaire (and therefore costs) which would be unnecessary if the questionnaire is designed well and piloted (especially through cognitive testing)'.

2.74 **We agree, and will add a note to the Guide to capture the general point that measures to monitor and assess possible sources of bias are likely to be needed less under circumstances where there has been an opportunity for careful survey piloting.**

2.75 One law firm was particularly critical of the example in Box 3.14, stating that it fell a long way short of good practice.

2.76 **We accept that it is not an ideal hypothetical question and will change the title to limit the use of the example to 'Good practice in describing a price increase'.**

Survey fieldwork standards

2.77 One law firm and one economic consultancy challenged our citation of the ISO 20252 and IQCS professional research standards in the Guide as being too prescriptive.

2.78 **Because the standards are mentioned in Section 3, which we will now position as a resource for parties and an illustration of the principles in application, we do not view their inclusion in this part of the Guide as prescriptive.**

Overall response to consultation question

2.79 **We will re-draft those parts of the Guide that deal with the statistical significance of results.**

2.80 **We will advise parties on minimising both the risk of an inadvertent breach of the legislation and the risk of biasing the survey results.**

- 2.81 **We will note that there are difficulties in getting consumers to answer stated preference questions in such a way that the validity and reliability of their responses may be demonstrated, and remind researchers always to assess the responses to such questions in the context of other evidence about the respondent and a general understanding of consumer behaviour.**

Is the amount of detail in the Guide too low, about right or too high?

- 2.82 Six respondents to the consultation commented that the Guide provided the right amount of technical detail and number of examples to meet its objectives.

Proposals to limit or reduce the amount of detail

- 2.83 Two respondents felt that the short draft paragraph 3.51 on the use of non-parametric survey analysis methods was confusing and added little value.

- 2.84 **On reviewing this, we agree and will remove it from the Guide.**

- 2.85 One law firm commented:

'Given that it would be undesirable to create a full blown manual on how to design questionnaires and undertake survey evidence, the real value of the Guide lies probably in the fact that it encourages relevant stakeholders to reflect more on the purpose for which evidence is gathered as well as ensuring that such evidence should be tested properly for its probative value before it is submitted to the Authorities'.

- 2.86 The open meeting with economic consultancies also articulated criticism that the Guide contained both procedural information that can be set down by the Authorities fairly definitively, and technical advice that should respond to the circumstances of each merger.

- 2.87 **These comments accord with our view on the limitations of the Guide as a detailed instruction manual. In general, our stance is to resist the addition of detailed technical material, especially in areas where the Authorities have not yet had the opportunity of gaining empirical experience. We have already noted our intention to distinguish general principles from detailed technical illustrations (see paragraph 2.18 above).**
- 2.88 A number of respondents requested more information on the extent to which the Authorities would engage with parties over the design of consumer research and the timings for this.
- 2.89 **The Guide will confirm the Authorities' willingness to engage at any stage of the research process from sample design through to presentation of results, wherever this is reasonable and practicable. This would allow the technical issues that are germane to each particular merger situation to be addressed.**
- 2.90 **The timing of such engagements would clearly be dependent upon the progress of each merger inquiry and would not preclude developing views on the evidential weight of a piece of research on either side. Engagement with the Authorities will not provide an alternative to the piloting of surveys.**

Proposals to add more detailed information

- 2.91 We received about thirty distinct suggestions for more detail to be added to the Guide, and these are summarised in this section. As noted in paragraph 2.87 above, we intend to draft new illustrations only where the Authorities have a clear understanding of accepted good practice and there is a strong empirical under-pinning for them.

2.92 The suggestions have been summarised in three groups:

- survey sampling guidance
- survey methodology suggestions
- other issues.

Survey sampling guidance

2.93 There were requests for more guidance on how large a sample of consumers should be surveyed, how interview quotas should be set, how individual consumers should be selected for interview, whether the results should be weighted to reflect the consumer population and, if so, what effect this has on the precision of inferences.

2.94 **'Representativeness of sample' is set out in the Guide as the second principle by which the evidential weight attached to survey research will be assessed. We have also noted above that we intend to re-present our views on the most appropriate general ways of estimating and reporting the uncertainty associated with survey-based inferences. We do not, however, intend to go beyond this in providing further examples of good sampling approaches, which depend strongly on the circumstances of an individual merger.**

Survey methodology suggestions

2.95 Two respondents proposed that more information on the Authorities' views of the use of online surveys should be provided.

2.96 **In draft paragraph 3.41 we state 'Face-to-face and telephone interviews are usually considered to be more reliable than paper or online self completion questionnaires'. This is due to the ability of a trained interviewer to engage the full attention of a survey respondent and clarify or probe responses in a controlled way. We do not intend to discuss the robustness of survey methodologies in greater detail.**

2.97 Several research agencies and economic consultancies were disappointed that the Guide did not present views on the relative strengths and weaknesses of evidence gathered through experiments that invite respondents to trade-off features of products or services, such as conjoint or discrete choice methods.

2.98 **Whilst we agree that guidance in this area would be desirable, there are relatively few examples to date of merger cases in which evidence of this type has been material to the determination of the outcome. The practicality of conducting conjoint research and presenting its results to a good evidential standard within the practical constraints of a merger inquiry remains controversial; during the open meetings respondents offered a diverse range of views on this. The CC published the results of a review of this area in October 2010 and we do not intend to seek to summarise its conclusions in the Guide.² This is an area that we may be able better to address as part of a future update to the Guide.**

2.99 Other areas in which respondents indicated that they would welcome guidance on methodology included:

- using appropriate language and structure of survey questions to minimise measurement error
- the importance of appropriately randomising the order of categorical response scales
- a list of question types ranked by their likely reliability
- capturing the degree of emotion associated with different diversion options.

2.100 **These areas are all interesting and potentially useful, but too detailed in nature for discussion in the first edition of the Guide.**

²The report is available at www.competition-commission.org.uk/our_role/analysis/summary_and_report_combined.pdf

Other issues

2.101 Further suggestions for the addition of more detail to the Guide included the following:

- give more details on how to specify survey processes as far as possible to reduce subjectivity
- include footnotes with illustrations of best practice underneath the example questions in the guide
- include examples of measuring non-price changes
- include more good examples
- include more explanation of why the poor examples were deemed to be so
- provide a standard form confidentiality agreement for data sharing of disaggregated results
- include an example of a survey in full, so that the flow of questions can be seen
- provide a checklist of minimum information to be provided with survey results (for example, survey objectives, population, population size and sampling frame)
- consider in what types of merger situation consumers might respond tactically
- discuss which survey methodologies are most suitable for which types of merger inquiry

2.102 **We will bear these suggestions in mind as part of the drafting process, but do not intend to respond to them individually here.**

Overall response to consultation question

- 2.103 **We have resisted the addition of detailed technical material to the Guide, especially in areas where the Authorities have not yet had the opportunity of gaining empirical experience. Examples of the use of trade-off research techniques to furnish evidence in merger inquiries may be added as part of updates of the Guide.**
- 2.104 **We will confirm the Authorities' willingness to engage with parties during the survey research process, wherever this is reasonable and practicable.**

Is the Afterword helpful in placing consumer survey evidence in context, or is it not?

- 2.105 Whilst some participants welcomed the Afterword section as providing useful context, as we note in paragraph 2.23 above its inclusion had also caused uncertainty about the circumstances in which the Guide would be used as the basis for assessing evidence.
- 2.106 **We will remove the Afterword section, on the grounds that the other clarifications described above render it redundant.**

Further suggestions for improving the content of the Guide

- 2.107 It was suggested that the Guide should provide references to relevant literature, rather than attempting to cover many aspects of good practice in the document.
- 2.108 **We disagree. One of the aims of the Guide is to provide a resource for parties that can be accessed quickly, avoids ambiguity and collects our current views in one place. References to academic papers and textbooks would compromise this.**

2.109 It was also requested that the use of sub-headings and the table of contents be improved, to make it easier to locate material in the guide for reference.

2.110 **We will seek to improve these.**

3 CONCLUSIONS AND NEXT STEPS

- 3.1 The consultation has demonstrated that there is wide support for the development and publication of the Guide.
- 3.2 Concern was expressed that it was not clear which parts of the Guide represent procedural guidance that would be used by the Authorities in assessing the evidential weight to be given to evidence, and which parts are examples of possible approaches to survey research that depend on the circumstances of a merger and only provided as a resource to parties. We will identify these different elements clearly.
- 3.3 There was no consensus on whether the Guide should provide more technical detail on how to conduct consumer surveys. Some respondents to the consultation argued that, without more detail the principles were too vague to be of practical use; others warned against stifling innovation and professional judgment by appearing to be prescriptive about survey methodology.
- 3.4 We will only include sufficient detail to illustrate the procedural elements of the Guide and will make it clear that the detail provided is not prescriptive. On balance, a shorter, principles-based Guide is more likely to achieve its aims than a longer manual on how to conduct consumer research.
- 3.5 We will make it explicit that the principles in the Guide will be used primarily for assessing quantitative consumer survey research in merger inquiries. This does not preclude their being relevant in other types of investigation.
- 3.6 The consultation has highlighted the tensions between transparency in dealing with potential survey respondents, sharing consumer data with other parties and the requirements of data protection legislation. We will offer general advice on reconciling these.

- 3.7 We will be explicit that the Authorities welcome engagement with parties over research design and implementation issues, and will themselves endeavour to follow the good practice set out in the Guide during a merger inquiry, wherever reasonable and practicable.
- 3.8 We intend to publish a first edition of the Guide in 2011.

4 LIST OF RESPONDENTS AND ACCESS TO SUBMISSIONS

4.1 The following organisations provided submissions to the consultation:

- Ashurst
- Charles Russell
- Decision Technology
- FDS International
- GfK NOP
- Herbert Smith
- LECG
- MVA Consultancy
- NERA
- Oxera
- Pinsent Masons
- Prospect Consulting (two submissions)
- Synovate

4.2 Copies of the non-confidential submissions are available in Adobe Acrobat (PDF) format on the OFT website at:

www.of.gov.uk/OFTwork/consultations

5 COMMENTS OR COMPLAINTS ABOUT CONSULTATION PROCESS

- 5.1 If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Jessica Nardin
OFT Consultation Co-ordinator

Room 5C/039
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Fleetbank House
2-6 Salisbury Square
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