

Empowering consumers of public services through choice- tools

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1 FOREWORD

Choice-tools are structured sources of information, discussion, and comparison that help consumers compare and choose between alternative service and product offerings.

On 14 March 2011 the Office of Fair Trading (OFT) held an evidence-gathering roundtable, in conjunction with the Cabinet Office, on issues surrounding tools that help consumers choose between providers of public services. The key objective of the event was to outline some of the challenges of, and approaches to, choice-tools in public services by:

- understanding how choice-tools have evolved in private markets, such as financial services
- acknowledging the differences between choice-tools in private markets and those for public services such as health, education and social care, and
- exploring how central government can support choice-tools for public services.

During the event, a number of presentations were made, followed by questions and a discussion. This document does not reproduce the individual contributions made at the event, but provides a summary of the key competition and consumer protection issues raised at the event and some approaches of how these concerns can be mitigated through the design of the choice-tool and enforcement of competition and consumer regulations. This document supplements *Better Choices: Better Deals*, the Government's 2011 consumer empowerment strategy.

2 EXECUTIVE SUMMARY

- 2.1 The OFT's mission is to make markets work well for consumers. Consumers' ability to make informed and effective choices is central to ensuring markets work well.¹ This is as true where consumers make choices between providers of public services as it is in private markets. However, the complexity of choosing between public service providers, such as choices about health care or education, can be particularly difficult. The importance of such services to consumers can make poor choices particularly harmful.
- 2.2 Indeed, consumer choice in public services will only bring benefits if that choice is informed and effective. Active consumers switching from poor performing providers to those that offer better service or value for money can contribute towards growth through increased efficiency in the delivery of public services.
- 2.3 For these reasons, on 14 March 2011 the OFT held a roundtable discussion in conjunction with the Cabinet Office, on tools that help consumers choose between providers of public services. The objective was to explore how government can best support the development and use of such tools. In addition to helping the OFT fulfil its mission of making markets work well for consumers, it was hoped that empowering consumers to make effective choices between public service providers would support the Government's strategy for both Public Sector reform and Growth.²
- 2.4 The OFT's contribution to the roundtable built on its previous work examining both the ways government interacts with markets, and on how consumers make choices.

¹ See *Office of Fair Trading Annual Plan 2011-12*, OFT, March 2011; www.offt.gov.uk/about-the-offt/annual-plan-and-report/annual/

² See *The Plan for Growth*, HM Treasury and Department for Business, Innovation and Skills, March 2011; http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

2.5 This paper provides insights from the roundtable, and background information about recent OFT enforcement activities, that might assist more effective policy and delivery of consumer choice in public services. It:

- outlines the importance of choice in supporting well functioning markets in both the public and private sectors
- discusses some of the challenges faced by consumer when choosing between public service providers, and how those challenges may affect the provision of tools that help consumers choose
- provides a number of case study examples of how private sector choice-tools mitigate some of those problems
- provides details on recent OFT enforcement cases that were specifically designed to support the effectiveness of choice-tools.

2.6 The key messages are:

- consumer feedback can add substantial value to a choice-tool
- providers of choice-tools for public services could learn from private sector choice-tools that adopt a range of strategies to ensure consumer feedback is trusted and adds value, many of which appear highly successful
- while the transparency and competition that choose-tools provide may challenge business, when firms co-operate with choice-tool providers they can develop a greater understanding of their consumers and reap substantial business benefits
- choice-tool providers need to understand the consumer in order to provide the right information in the right format. Competition between choice-tools can help this happen
- the OFT has taken a range of enforcement cases to establish clear precedent against firms that pay for, or create, false consumer

feedback; and to support the efficient operation of government funded choice-tools

- making performance and complaint data owned by the government, regulators, and ombudsmen public can facilitate entry, innovation and diversity in choice-tools
- there may be benefits from self-regulation or accreditation by choice-tools and service providers to ensure high standards are met across the industry.

3 INTRODUCTION

Background

- 3.1 The OFT's mission is to make markets work well for consumers. This includes markets where government is involved as regulator, part-provider, or purchaser. The OFT supports long-term economic growth by ensuring that, where markets exist, empowered consumers and open competition drive innovation and productivity.
- 3.2 The OFT's work in markets that involve government is underpinned by Enterprise Act Section VII: Provision of information and advice to Ministers.

Previous work by the OFT

- 3.3 Our 2009 publication, *Government in Markets: Why competition matters – a guide for policy makers*, discussed the different ways government can directly or indirectly affect competition in markets.³ It explored the pros and cons of using market mechanisms to deliver services, and highlighted the importance of understanding the possible unforeseen consequence of government involvement or creation of private markets.
- 3.4 Central to delivering the OFT mission is ensuring that empowered consumers make good choices, and thus drive competition and growth. Firms which deliver a good service should be rewarded by the custom of consumers, while those performing poorly should be punished by a lack of business. In 2010, we published *Choice and Competition in Public Services*, which provided case study examples of the value and pitfalls of consumer choice in public services.⁴

³ See *Government in markets: Why competition matters – a guide for policy makers*, OFT, October 2009; www.of.gov.uk/shared_of/business_leaflets/general/OFT1113.pdf

⁴ See *Choice and Competition in Public Services: A guide for policy makers*, OFT, March 2010 www.of.gov.uk/shared_of/business_leaflets/general/of1214.pdf

- 3.5 In its enforcement activity, the OFT also takes a holistic approach to consumer protection and competition enforcement, using its consumer enforcement powers to promote competition and economic growth, and competition powers to promote empowered consumers. In recent years we have used behavioural economics to understand consumer choice, and have developed an online enforcement strategy that uses our consumer protection powers to sustain effective consumer choice and thus strong competition between firms.
- 3.6 In 2007 we published a market study on *Internet Shopping* that discussed the importance of consumers making effective use of online comparison and shopping tools.⁵ We have followed this up with studies on the *Advertising of prices*⁶ analysing how consumers react to the way price information is framed, and *Online markets*⁷ which discussed how online sales and services work.

⁵ See *Internet shopping: An OFT market study*, OFT, June 2007; www.offt.gov.uk/OFTwork/markets-work/completed/internet

⁶ See *Advertising of Prices*, OFT, December 2010; www.offt.gov.uk/OFTwork/markets-work/completed/advertising-prices/

⁷ See *Online markets: discussion paper – A report for the Office of Fair Trading*, Plum Consulting and Kepler LLP, July 2010; www.offt.gov.uk/shared_offt/market-studies/onlinemarketsdiscussionpaper

Current work and interest

- 3.7 The OFT's current consumer enforcement priorities focus on maintaining consumer trust in online markets. We aim to help consumers to empower each other through the provision of information, helping each other to make good choices, and drive competition and growth. For example, we have recently taken enforcement actions against firms whose actions may undermine trust in online consumer feedback.^{8,9}
- 3.8 On 14 March 2011 we held an evidence-gathering round table, in conjunction with the Cabinet Office, on issues surrounding tools that help consumers choose between providers of public services. The event brought together senior government policy makers with choice-tool experts from the private and voluntary sectors. It explored what private and public sector providers of choice-tools could learn from each other, presented some options for central government support of public service choice-tools, and outlined relevant consumer and competition legislation.

Outline and purpose

- 3.9 This paper builds on both previous OFT work and the March roundtable. It provides examples of how public and privately provided tools, such as websites, help consumers choose between goods and services. It also outlines recent precedent-setting competition enforcement and consumer protection work the OFT has done to support the use and operation of such tools.
- 3.10 The paper sets this information in the context of enhancing effective consumer choice between providers of public services. We hope the information and case studies it contains will help in delivery and policy

⁸ Developing trust in online markets is one of the key themes in *Office of Fair Trading Annual Plan 2011-12*, OFT, March 2011; www.oft.gov.uk/about-the-oft/annual-plan-and-report/annual/

⁹ See www.oft.gov.uk/news-and-updates/press/2010/134-10 and www.oft.gov.uk/news-and-updates/press/2011/30-11

decisions facing government departments that use, or plan to use, consumer choice in public service delivery.

- 3.11 Chapter 4 discusses some of the benefits and issues surrounding choice-tools, with a focus on the nature of consumer choice between public service providers. It concludes with a list of consumer protection and competition enforcement issues relevant to choice-tools for public services.
- 3.12 Chapter 5 provides case studies of how choice-tool design might resolve those issues, and outlines relevant consumer protection and competition enforcement work recently undertaken by the OFT. It concludes with a discussion of the potential dangers of concentration in choice-tools, the role of government data in facilitating a diverse market in choice-tool provision and the potential benefits of self-regulation.

4 CHOICE AND CHOICE-TOOLS

4.1 This chapter discusses how effective consumer choice helps markets work well, and the role of tools that help consumers choose. It goes on to discuss some of the particular features of consumer choice between public service providers, before concluding with some risks that may prevent the emergence of effective tools that help consumers choose.

Benefits of consumer choice and the role of choice-tools

4.2 Making markets work well for consumers involves understanding how firms and consumers interact in the market. In almost all cases, effective consumer choice is essential for well functioning, competitive markets. In a well functioning market, active consumers exert pressure on firms to improve their product and service offerings. Informed consumer choice ensures that consumers are more likely to receive services that they need, and less likely to be inefficiently supplied services from which they do not benefit. This virtuous circle between consumer protection and competition enforcement underpins much of the OFT's work.¹⁰

4.3 With the rise of the internet, the cost of providing tools tailored to individual consumers' needs has decreased, and their prevalence has grown over the last decade. In private markets, consumers have become familiar with comparison websites that allow them to compare competing offerings in financial services, energy provision and travel, thereby helping to support consumer choice and drive competition.

4.4 Choice-tools vary in how they facilitate choice, and how consumers interact with them. Some tools use comparisons of performance or product data to aid choice. For example, school league tables use performance data, and insurance comparison sites use product data.

¹⁰ See *Office of Fair Trading Annual Plan 2011-12*, OFT, March 2011; www.oft.gov.uk/about-the-oft/annual-plan-and-report/annual/

- 4.5 Increasingly, user-generated data is used to aid choice. Consumers often trust the views of other consumers more than those of firms or even the government, and the use of qualitative consumer experience can make complex decisions and comparisons easier.

Box 4.1: Consumer feedback – Reevo.com

Reevo (www.reevo.com/b2b) is a consumer feedback aggregation and syndication service which displays over 500 million reviews to consumers each month. Reevo's reviews appear across 120 retailer, publisher and manufacturer websites and on its own website.

Reevo is an example of a feedback tool that links consumers in several ways. Consumers can read other consumer's verified feedback on products or services through reviews and can also direct questions to product owners. Experience has shown that consumers are very willing to help others in this way, with around 18 per cent of product owners agreeing to answer questions, contributing to a pool of 20,000 opted-in owners in around six months.

Reevo collects reviews by contacting the customers of their manufacturer and retailer partners. This collection method provides a larger number of reviews than alternative software tools. With this volume of reviews, Reevo can offer consumers highly relevant review content and more accurate and genuine ratings. With a small sample of reviews, or a sample in which the opinions of all purchasers are not accurately represented, it is easy for a vocal minority of dissatisfied purchasers to have a disproportionate impact on the overall verdict. Proactively contacting consumers ensures that a representative range of opinions is gathered, resulting in a more accurate overall verdict.

The larger number of reviews enables consumers to find information tailored to their particular circumstances: a consumer with a large family may have different considerations when purchasing a washing machine than someone living alone.

Consumer trust in Reevo is promoted by this collection method, which guards against fake reviews by only allowing verified purchasers to write a review.

Reevoo also ensures its reviews are trustworthy by not allowing companies to remove negative reviews or edit the content of reviews. Reevoo argue that even bad reviews are good for consumers as their research suggests that consumer trust increases when there are both good and bad reviews, and without any bad product reviews, consumers are highly sceptical of positive reviews.

Benefits of choice, and choice-tools, in public services

4.6 There are a number of benefits in encouraging choice between public service providers including:¹¹

- the intrinsic value of being able to exercise a choice in services provided by the state
- increasing the likelihood that the right services are delivered to the right people (efficient allocation of resources)
- as a means of driving improved efficiency and better outcomes and
- reducing the wider costs to society of poor decision making, particularly as misinformed or poorly considered consumer choices in public services can have long lasting negative consequences.¹²

4.7 Choice-tools in public services can facilitate consumer choice by helping reduce the costs of searching. Specifically, choice-tools can help:

- remind consumers that they have a choice

¹¹ See *Choice and Competition in Public Services: A guide for policy makers*, OFT, March 2010 www.of.gov.uk/shared_of/business_leaflets/general/of1214.pdf

¹² See *Equity and excellence: Liberating the NHS*, Department of Health, July 2010 www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_117353

- provide consumers with sufficient and appropriate information to enable meaningful comparisons and
- encourage consumers to act on that information.

4.8 The information contained within a choice-tool, particularly if it is standardised across service providers, can be helpful to consumers making choices between service providers and stimulate competition between different service providers. As a result, choice-tools can be used to make service providers more accountable to consumers.

4.9 In short, choice-tools can make markets for public services work well for consumers by facilitating effective consumer choice, and thus aligning consumer preferences to service provider offerings.

Figure 4.1: Consumers choosing public services without choice-tools

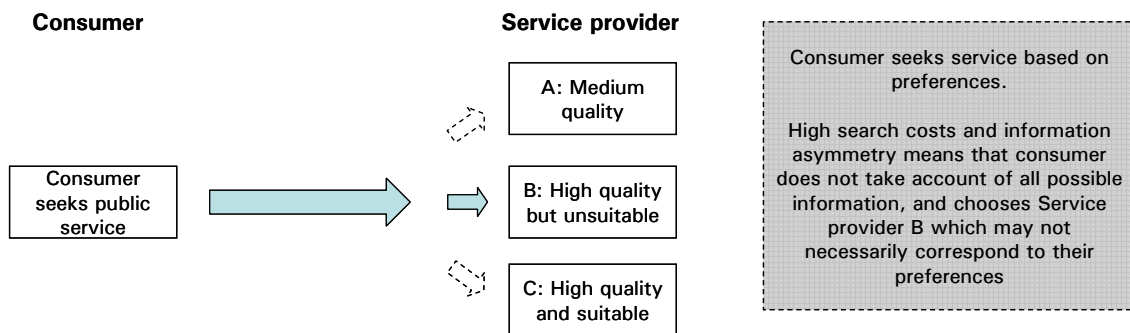
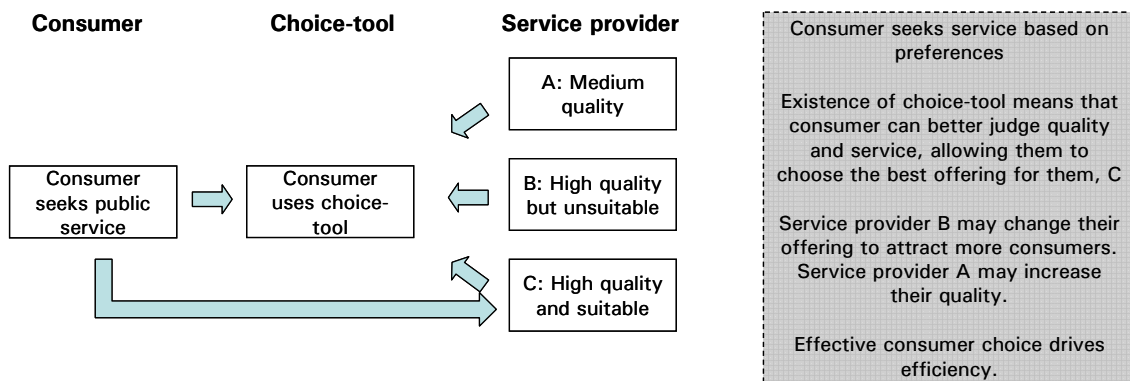


Figure 4.2: Consumers choosing public services with choice-tools



Difficulties of implementing public service choice and choice-tools

4.10 Public service markets differ from private markets in a number of ways:

- there is a lack of price signals in public markets, particularly at the point of delivery
- the government has an obligation to provide a service to all consumers rather than just profitable groups of consumers, and
- there is no profit motive within public organisations.

4.11 Consumers in general are more likely to make better decisions when they are able to access, assess, and act on information about the alternatives available to them.¹³ This may be difficult when choosing between public service providers as:

- awareness that a choice exists may be limited
- more than one person may be involved in the decision, such as social care provision which may involve both the individual and their doctor and family, and
- choice is often based upon measures of quality, not price as in other markets. Quality can be hard to assess before experiencing the service, may only be understood a long time after the service is provided, and in any case may be difficult to express in objective performance indicators.

4.12 Together, the above characteristics of public services pose a number of challenges for the development of effective choice-tools in public services, including:

¹³ See *Choice and Competition in Public Services: A guide for policy makers*, OFT, March 2010 www.of.gov.uk/shared_of/business_leaflets/general/oft1214.pdf

- how to help consumers make choices between services where quality may be hard to assess and that have a complicated and hard to predict impact on the consumers life
- establishing sustainable business models to allow private and voluntary sector provision, and
- conflicting incentives if state the provider or commissioner of both choice-tool and service. For example, while the state may want to facilitate consumer choice on the one hand, it may be concerned about the viability of services provision on the other.

4.13 Despite such challenges, a number of choice-tools already exist in public service markets that present service provider performance information alongside user-generated data and are both publicly and private/voluntary sector provided. As underlying choice in public services is set to increase,¹⁴ there may be increasing demand for choice-tools in public services going forward, and for these to be increasingly provided through private and voluntary sector means.

Box 4.2: Choice-tools in healthcare – NHS Choices and iWantGreatCare

NHS Choices

NHS Choices is a government-provided choice-tool providing information on NHS healthcare, social care and healthy lifestyles. It uses a combination of decision tools, government data on service providers and, increasingly, patient feedback to enable patients to compare treatments and services.

Some content such as patient comment is sourced from 'trusted affiliates' such as Patientopinion.com, reflecting a growing relationship between NHS Choices and other information intermediaries. However, NHS

¹⁴ See *The Coalition: our programme for government* www.cabinetoffice.gov.uk/news/coalition-our-programme-government

Choices has very strict limits on what can be posted, and doesn't allow comments about any named or identifiable doctors or nurses.

There are 100 million visits to the website each year and almost as many again through syndicated sites that use NHS Choices content, such as commercial, Local Authority and social networking websites. NHS Choices is funded by the Department of Health and cost approximately £25 million to operate in 2009/10.

iWantGreatCare.org

iWantGreatCare.org allows patients to provide feedback on healthcare experiences. Patients can directly rate and review healthcare professionals (such as GPs, hospital consultants and dentists) as well as social care providers and medicines.

Patients rate healthcare professionals on three dimensions; trust, listening skills and whether they would recommend them to others. An overall rating percentage is generated and patients can also provide qualitative feedback. Other patients can then search for healthcare professionals by geography and specialism to compare ratings and reviews.

iWantGreatCare.org is funded by providing performance consultancy services to healthcare providers, using the data captured from patients on the site.

- 4.14 Choice-tools can assist consumers who use them. If enough consumers use them, they can change the incentives of service providers and increase the efficiency of whole markets. However, not all consumers can or will use a tool to help them choose, and choice-tools are not a complete panacea to the problem of consumer choice in public services. Ensuring vulnerable groups have access to choice-tools, particularly choice-tools that require the use of enabling technologies such as the internet, remains a challenge.¹⁵

¹⁵ See *Markets and Households on Low Incomes*, Europe Economics and New Policy Institute for the OFT, September 2010; www.offt.gov.uk/shared_offt/research/OFT1268.pdf

Risks that the competition and consumer regime can help mitigate

- 4.15 There are a number of risks related to choice-tools for public services. While most of these risks also apply to choice-tools in private markets, the important nature of public services to consumers may make the consequences of poor choice-tools more acute.
- 4.16 The first set of risks surrounds consumer feedback. Consumer feedback may be particularly important for choice in public services due to the complex nature of the services and the difficulty for the average consumer of interpreting myriad performance data. However, there are risks in collecting consumer feedback that may deter its use. For example, consumer feedback can be undermined by firms or marketing agencies pretending to be consumers, thus distorting results.
- 4.17 The second set of risks relate to how the market for public services develops over time, and how service providers interact with it. These include:
- service providers deliberately amending their offerings in response to the incentives that a choice-tool creates, without actually improving the underlying product and at the expense of wider, potentially more important, dimensions¹⁶
 - decreasing choice amongst the choice-tools as one tool becomes increasingly more popular and effective, leading to decreased incentives for the tool to meet consumers needs.
- 4.18 Chapter 5 provides case studies of how private sector choice-tools have tried to mitigate these risks, and describes some of the OFTs relevant precedent setting competition and consumer protection cases.

¹⁶ See *Choice and Competition in Public Services: A guide for policy makers*, OFT, March 2010 www.of.gov.uk/shared_of/business_leaflets/general/oft1214.pdf

5 CHOICE-TOOLS, CONSUMER PROTECTION, AND COMPETITION ENFORCEMENT

- 5.1 Chapter 4 outlined the possible role of choice and choice-tools in the provision of public services, and concluded with some risks that may prevent the emergence of effective choice-tools. This chapter presents case studies of how private market choice-tools have mitigated such risks, outlines relevant consumer enforcement and competition protection legislation, and gives examples of recent enforcement by the OFT. For example, ensuring that traders and their staff do not pretend to be independent consumers when posting online reviews is an enforcement priority for the OFT.
- 5.2 This chapter will first focus on the potential risks of incorporating consumer feedback into choice-tools. It then discusses the risk that choice-tools may change the incentives of public service providers in negative as well as positive ways. It concludes with a short discussion of other issues raised by participants at the discussion on effective delivery of choice-tools that we co-hosted with the Cabinet Office in March. These include the potential dangers of concentration in choice-tools, the role of government data in facilitating a diverse market in choice-tool provision, and the potential benefits of self-regulation

Consumer feedback

Ensuring consumer feedback is genuine and relevant

- 5.3 Many choice-tools include user-generated data, such as feedback on service providers. This can be especially useful for helping to evaluate complex products or services where numbers and data are confusing and hard to synthesise.
- 5.4 However, if user-generated data is false or inaccurate then consumers can be misled into using services they would otherwise not have chosen. False feedback will also distort competition as service providers receive incorrect signals about how they are performing against their rivals.

Case study example

- 5.5 Different approaches exist to demonstrate whether user-generated data such as consumer feedback is relevant and genuine. In some private markets, consumer feedback can only be given once a transaction has taken place. Additionally, a number of choice-tools in private markets allow consumers to rate other comments, or ensure relevance by giving prominence to comments from consumers that display similar characteristics.¹⁷

Box 5.1: Relevance and trust – practices in online marketing

The practice of recommending products, services and content to consumers on the basis of past behaviour is well established in on-line markets. For example, companies such as Google use an individual's past search behaviour to recommend news stories that are likely to be relevant to them.

It is not just 'own behaviour' that is used to form predictions for individuals either. Firms also use 'collaborative filtering' techniques to understand what is likely to be relevant to a single user, on the basis of the revealed behaviour and tastes of thousands of consumers that faced similar choices.

Online retailers such as Amazon.co.uk recommend further purchases to consumers using data from customers that made similar purchases. The same approach is used by film and music streaming sites. Google's search engine uses a 'page ranking' system to ensure that search results prioritise those web pages that others found most relevant when searching a particular term.

To ensure trust in recommendations and feedback, a common practice is to require verification, for example by only permitting feedback to be submitted in the event of a purchase. This is the approach adopted by

¹⁷ See *Impact of User-Generated Content on Media*, Market Intelligence, Mintel, November 2010.

eBay, the online auction site. Here, only buyers can leave ratings and feedback on the performance of a seller.

- 5.6 In the private sector, around 46 per cent of consumers who use content, such as feedback generated by other consumers, also make their own contributions in the form of further user-generated feedback.¹⁸ This suggests that there may be scope for actively encouraging user-generated feedback among consumers of public services to kick-start a virtuous circle of consumers helping each other through engagement with a choice-tool.

Consumer protection

- 5.7 Consumer legislation, such as the CPRs (Consumer Protection from Unfair Trading Regulations, 2008), may deter bad practice. The CPRs aim to protect consumers from misleading advertising and aggressive business practices. These include, for example, non-declaration of financial interest by posters of reviews on consumer blogs. Consumer protection thus acts as a deterrent to modern marketing techniques undermining consumer trust in online reviews.
- 5.8 The CPRs can be enforced by local authority trading standards services, or by the OFT. The OFT has recently taken action against Hand Picked Media for non-disclosure of a financial interest when engaging with social media. The OFT also took action against Groupola when an employee of the company was found to be promoting the company's products on social media without disclosing their relationship.

¹⁸ Mintel *ibid.*

Box 5.2: OFT enforcement action to protect the integrity of online consumer reviews and comments

In March 2011 the OFT received undertakings from Groupola, a group buying website, that their employees would not make statements (including, without limitation, comments on social networking and blogging websites) which falsely represent that the author is an ordinary consumer, without clearly and prominently disclosing the fact of any employment or other relevant relationship.

These undertakings resulted from an investigation into Groupola which uncovered evidence of positive comments about the company being made on the company's Facebook page by an employee pretending to be an independent consumer. In this case the OFT confirmed that it is never acceptable for traders or their staff to pretend to be independent consumers and that the OFT will continue to prioritise cases that protect the integrity of online consumer reviews and comments.

This case followed enforcement action taken by the OFT in December 2010 against Handpicked Media, an operator of a commercial blogging network. In this case the OFT was concerned that individuals engaged by Handpicked Media were publishing online content which promoted the activities of Handpicked Media's clients, without sufficient disclosures in place to make it clearly identifiable to consumers that the promotions had been paid for. This included publication on website blogs and microblogs (for example Twitter).

As a result, Handpicked Media gave undertakings to the OFT that it would not engage in any future promotion that does not clearly identify, in a manner prominently displayed with the editorial content such that it would be unavoidable to the average consumer, that the promotion has been paid for or otherwise remunerated.

- 5.9 The OFT's recently published annual plan identified the tackling of online trading practices that pose a threat to consumer confidence in online markets as a key theme for OFT's priorities over the 2011-12 period.¹⁹

Unintended reactions to choice-tools from service providers

- 5.10 Choice-tools create incentives for service providers to improve their performance in areas publicised by the choice-tool. However, there is a risk that the choice-tool may create unintended consequences by perversely influencing the incentives of service providers. For example, it may lead service providers to reduce the upfront cost of a service (which is covered by a choice-tool), while increasing hidden costs, so that the service appears more attractive to consumers. Alternatively, service providers may amend how their services are listed within the choice-tool to maximise exposure and gain a competitive advantage.

Competition enforcement

- 5.11 Amending how services are listed in a choice-tool may constitute as an infringement of competition law as outlined by a recent OFT case (below).

Box 5.3: Reckitt Benckiser Gaviscon case

Where a branded medicine's patent has expired and a 'generic name' has been assigned to it, GPs can use their prescribing software – a choice-tool for GPs to help choose prescriptions to search for the brand and then provide patients with an 'open' prescription that lists its generic name. Pharmacies that receive these prescriptions can choose whether to dispense the relevant brand or equivalent but cheaper generic medicines. This choice provides for strong price competition between pharmaceutical suppliers and can result in considerable savings to the NHS.

¹⁹ See *Office of Fair Trading Annual Plan 2011-12*, OFT, March 2011; www.offt.gov.uk/about-the-offt/annual-plan-and-report/annual

The OFT found that Reckitt Benckiser withdrew NHS packs of Gaviscon Original Liquid from the NHS prescription channel after the product's patent had expired but before the publication of the generic name for it, so that more prescriptions would be issued for its alternative product, Gaviscon Advance Liquid. Pharmacies that receive prescriptions for Gaviscon Advance Liquid must dispense it, as it is patent protected and there are no generic equivalent medicines.

Case study example

- 5.12 Choice-tools can create a potentially negative effect by focussing the incentives of service providers on the information dimensions covered by the choice-tools, at the expense of features that the choice-tools do not cover. This can lead to distortions in service offering, such as decreasing any up-front fee while increasing subsequent or hidden charges, which may not be in the consumer's interest. One way to mitigate against creating such unintended consequences would be to ensure that choice-tools provide a selection of data which gives a rounded picture of the service offering – for example by providing multiple dimensions to compare against coupled with using consumer feedback if appropriate.

Box 5.4: Providing consumers with a rounded picture - Gocompare.com

Gocompare.com is a website providing an online comparison service mainly to consumers of insurance but also financial services and utilities as well. It was established in 2006 and operates on a cost-per-sale 'referred business' model.

At that time consumers wanted a more complete picture of insurance products than just price, which was the market norm. Gocompare set out to provide a choice-tool that provided what they believed consumers wanted: information on insurance coverage as well as premiums.

The impact of this was that all insurance choice-tool providers now provide cover as well as premiums data on their websites, meaning consumers are able to make a more rounded comparison of products. This also ensures that insurance providers can promote products that compete primarily on coverage rather than price.

- 5.13 Providing a comprehensive set of performance indicators in a way that consumers can understand and compare may be difficult for more complex choices, such as those between public services.

Other issues

- 5.14 A number of other issues were raised at the roundtable co-hosted by the OFT and the Cabinet Office. These included:
- the potential dangers of concentration in choice-tools
 - the role of government data in facilitating a diverse market in choice-tool provision, and
 - the potential benefits of self-regulation.

Concentration in the market for the choice-tool

Role of networks

- 5.15 Choice-tools that utilise user-generated data, such as consumer feedback, are likely to need a certain critical mass of consumers using them if they are to be useful to other consumers. Often this goes further, and choice-tools become more useful the more consumers that use them, that is, they exhibit 'network effects'.²⁰ As a consequence, choice-tools may exhibit high levels of market concentration with only a few choice-tools existing in a market. This may be particularly true of online based choice-tools given the experience of other online tools such as search services with Google, and social networking sites such as Facebook.
- 5.16 Public service choice-tools may also exhibit similar properties over time. A small number of choice-tools in a public service market may itself

²⁰ For an introduction to network economics, see *The Economics of Network Industries*, Shy, O., 2001

create competition concerns of high costs or low service quality, and may lead to associated consumer protection concerns from a lack of choice. Further, as outlined above, concentration may change the incentives of public service providers in negative ways. Even if network effects exist, provided there are low barriers to entry and exit for the provision of choice-tools, that is, the market remains 'contestable', incumbent choice-tool providers will still be encouraged to provide the best service possible.

Role of Intermediaries/Gateways

- 5.17 One way to ensure choice-tools provide positive incentives to public service providers may be to have a number of choice-tools effectively competing for consumers. This makes it harder for service providers to target the way data is processed or displayed by a single tool. Concentration in choice-tool provision may prevent this.
- 5.18 In some cases, consumers may access a choice-tool through being referred by people such as careers advisors in schools, local GPs,²¹ or portals such as direct.gov. If such intermediaries or gateways to public service information promoted multiple choice-tools then this may act as a counterweight to one choice-tool provider becoming dominant.
- 5.19 A drawback of this is that if intermediaries and gateways promote an inferior choice-tool, and this promotion drives consumers to choose this choice-tool over others, then over time this may become the default tool. This would close off opportunities and incentives for new entrants, therefore creating problems for competition. Transparency around how choice-tools are chosen and promoted by intermediaries may mitigate these concerns and will create a level playing field for all providers.

²¹ See *Patient choice - How patients choose and how providers respond*, Anna Dixon, Ruth Robertson, John Appleby, Peter Burge, Nancy Devlin, Helen Magee;
www.kingsfund.org.uk/publications/patient_choice.html

Ensuring competitive neutrality

- 5.20 In some cases it may be that a publicly provided choice-tool is an appropriate option. However, due to possible advantages in both funding and access to data, there is a risk that this will lead to the establishment of a single and incumbent choice-tool, thereby creating barriers to entry to new choice-tools. This is a problem if alternatives to publicly provided choice-tools may be innovative and better meet customer demands. One way of mitigating the entrenchment of a publicly provided choice-tool would be to have periodic reviews of publicly provided choice-tools to assess whether public provision is necessary.
- 5.21 Where a publicly provided choice-tool co-exists alongside private and voluntary sector choice-tools, it is crucial that a 'level playing field exists' (or the market is competitively neutral) whereby competitive advantages arises from differences in costs, efficiency or objectives and not from whether the choice-tool is provided privately, publicly or through the voluntary sector.²² If choice-tools are not provided in a competitively neutral way, there is a risk that less effective choice-tools will gain an unfair competitive advantage at the expense of more innovative and efficient choice-tools.
- 5.22 The main challenges to competitive neutrality are:
- differences in regulation, pension and tax treatment between public, private and voluntary choice-tools
 - legal application of competition law, and
 - incumbency advantages enjoyed by existing choice-tools, such as access to information, pre-qualification and bid criteria and transition costs.

²² See *Competition in mixed markets: ensuring competitive neutrality*, OFT, July 2010; www.of.gov.uk/shared_of/economic_research/oft1242.pdf

Access to consumer feedback data

- 5.23 Ensuring plurality of supply in markets that exhibit network effects is difficult.
- 5.24 In addition to the options for encouraging multiple choice-tools outlined above, government may wish to encourage choice-tool providers to ensure that any user-generated data used by the tool is transportable to competing tools if the user desires. This may go some way to allowing better or more innovative tools to enter the market by using the already established base of user-generated data that they may need to operate.

Box 5.5: Reducing barriers to data transfer - Google.com

Data availability is important if the market for a choice-tool is to be freely contestable. Government can facilitate data availability through the release of publicly-held information, for example performance data on public service providers. This still leaves a need to facilitate the transfer of user-generated content between existing choice-tools or potential entrants.

Google's 'Data Liberation Front' team is an example of an initiative that could be useful in assisting content transfer. Its stated goal is to 'make it easier for users to move their data in and out of Google('s) products'. It has developed the company's applications to ensure users don't face restrictions when attempting to move the content they have generated within them elsewhere.

In addition to facilitating content sharing, this approach could have an important impact on innovation in choice-tools. It would impose a strong incentive upon choice-tools to innovate and provide a valuable user experience, in order to retain providers of feedback.

Competition Enforcement

- 5.25 Under the Competition Act 1998 and Article 102 of the Treaty on the Functioning of the European Union, the abuse of a dominant position is

prohibited. Any business found to have abused a dominant position could be fined up to 10 per cent of its worldwide turnover. It is conceivable that dominance could be established in a choice-tool.

Data issues

- 5.26 One important barrier to entry for private and voluntary sector choice-tools is access to data. Often public bodies, regulators, and ombudsmen collect data which, if publicly available, could add substantial value to choice-tools.
- 5.27 In particular, public bodies often collect performance and complaints data at the service provider level. Knowing the performance of individual services within the service provider's portfolio may significantly help consumers make an informed choice.
- 5.28 In order to ensure that data is accurate and consistent across service providers, data could be freely provided for the creation of choice-tools under a standard licence, allowing access to be revoked if the terms of the licence were broken. The licence would stipulate the purposes for which data could be used and may be specific to the public service market or a more general licence to cover the development of choice-tools across all public services.
- 5.29 Complex licensing arrangements may create barriers to entry to private and voluntary sector provision of choice-tools; particularly if there is already significant public sector involvement in the underlying market. Licensing may also limit the ability of the choice-tool to innovate and respond swiftly to consumers' needs
- 5.30 A more radical option would be for public bodies to release performance data of service providers and leave the interpretation of the data and subsequent creation of the choice-tool entirely to the private and voluntary sector.

Box 5.6: Commercial Use of Public Information

Many public bodies hold valuable information assets. For example, Met Office weather data, Ordnance Survey mapping data, and Land Registry information all have significant potential in commercial applications. In many cases where private firms can add value to public sector information, such as in-car navigation systems, the public sector information holder is the monopoly provider (typically because of high fixed costs of collection, or statutory collection powers). In some cases the public sector body may also be competing with private firms in the downstream market for value added products.

In its 2006 market study, OFT concluded that access to unrefined public sector information needed to improve, and estimated that the potential benefits of increased competition could include a doubling of the value added to the UK economy, contributing around £1 billion per annum.

Role of self-regulation

- 5.31 Many of the competition and consumer concerns outlined above may be resolved through the self-regulation of choice-tools. This could be in the form of accreditation or adherence to a code of practice.²³
- 5.32 For instance, codes could contain commitments by service providers not to make defamation claims that are unlikely to be taken forward, and not to post false feedback. Self-regulation of tools may contain commitments by choice-tools to confirm to best-practice in terms of transparency over their own income.
- 5.33 There are however, competition risks that may arise with self-regulation, particularly around incumbent service providers creating barriers to entry for future new entrants, or opportunities for collusion among service

²³ For more detail on self-regulation see: www.offt.gov.uk/OFTwork/policy/self-regulation/

providers to occur. This can often be resolved by sensible scheme design.^{24,25}

²⁴ See *The economics of self-regulation in solving consumer quality issues*, OFT, March 2009; www.offt.gov.uk/shared_offt/economic_research/oft1059.pdf

²⁵ Also *The competition impact of environmental product standards*, Frontier Economics for the OFT, October 2008; www.offt.gov.uk/shared_offt/economic_research/oft1030.pdf

A LIST OF ORGANISATIONS PARTICIPATING IN CHOICE-TOOLS ROUNDTABLE EVENT

ArkSchools
bestcourse4me.com
Cabinet Office
Care Quality Commission
Citizens Advice
Confederation of British Industry
Consumer Focus
Council for Healthcare Regulatory Excellence
Department for Business, Innovation and Skills
Department for Education
Department of Health
Doctor Foster Health
eBay
Gocompare.com
Google
iWantGreatCare
MoneyMadeClear
National Audit Office
National Employment Savings Trust
Ofcom
Office of Fair Trading
Ofqual
Policy Exchange
Reevoo
Reform
The Nuffield Trust
Which?

The OFT also spoke with the Department for Work and Pensions separately.