

Market studies: finding and fixing problem markets

Address to the OFT market studies conference

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'The Government would like our competition authorities to take on a high profile advocacy role both by advising on the impact of the Government's own laws and regulations on competition; and more widely acting to promote competition in the economy in a variety of ways.'

This was the call to action in the UK Government's White Paper 'A World Class Competition Regime'¹ that preceded the Enterprise Act 2002.

One of the biggest changes in competition policy internationally in the past decade has been the move from a traditional approach of enforcement of laws on cartels, mergers and monopolies to an effects based one that looks at both public and private restrictions on competition, and that attempts to tackle the causes rather than simply the symptoms of markets not working well for consumers. In the case of OFT and many other agencies, this has extended also to consumer policy.

¹ Paragraph 4.4 White Paper, 'A World Class Competition Regime', July 2001.

Market studies are central to this effects based approach to competition policy. They enable the agency to examine markets more broadly, to focus on the social costs of public restrictions on competition, to engage in advocacy, public education, and to promote a competition culture in which consumers and businesses have confidence in the market process. Governments and agencies have attempted to capture the benefits of an effects based approach in a variety of ways so that today many agencies have new powers to study markets generally. In many cases, there is an explicit power to study markets, but other powers such as the ability to advocate regulatory reform or to champion a competition culture can, in effect, give the agency the same role.

Today's conference is an opportunity to look at how market studies – and other market based tools – have been used in the UK in the 5 years since the Enterprise Act 2002 came into force on the 20 June 2003. We do this in the context of the experience developed from the 28 studies that the OFT has completed over this period, and from the analogous experience of other agencies internationally.

Our conference today will:

- outline how OFT market studies and other comparable international regimes work
- set out how we and others think we've done so far
- address issues or concerns raised with us about our market studies work
- enable a wide ranging and thought provoking discussion, and
- tell you about what we will be doing next.

The programme today is informed by a review of our market studies work which we carried out at the end of last year, as part of which we went to selected external stakeholders and asked them what they thought of the markets regime as a whole. The speakers today will pick up on – and hopefully answer – some of the concerns that came out of that work.

At the outset today, I would like to focus on a number of themes and areas where we would like feedback:

- uncertainty about what is a new and flexible tool
- how we select our market studies

- the process for carrying them out
- how we engage with stakeholders, and
- implementation and follow up.

These themes will emerge during the day, but allow me to touch briefly on one or two of them at the outset.

A key theme of our review is the uncertainty that accompanies market studies. Perhaps this arises because there is no statutory definition – so that we have to work harder to define what we mean by a market study as distinct, say, from a market investigation reference to the Competition Commission or a response to a super-complaint – two other important tools which were introduced by the Enterprise Act. It may also be due to the fact that this is a flexible and new tool. For example, many people mistakenly interpreted our **medicines distribution** market study², announced in response to changes to distribution arrangements by one (but subsequently another) pharma company as a sign that OFT has abandoned Chapter 2 enforcement. OFT had received many complaints of abuse of dominance in this case but our subsequent findings indicated that the government's price control was not watertight. To that end, our review has attempted to draw together and summarise the work we have done. We will be particularly interested in feedback on how we can further improve business and consumer understanding of the market studies tool.

Market studies and other aspects of the Enterprise Act 2002 have brought the OFT into much closer engagement with our key consumer, business and government stakeholders. Because market studies are generally market wide and not focussed on enforcement, we have the ability to engage openly with business, especially industry associations, and consumer groups. The super-complaint process has given greater impetus to the latter group, often underrepresented in policy debate.

² http://www.of.gov.uk/advice_and_resources/resource_base/market-studies/completed/medicines

We have striven increasingly to engage in open and transparent communication with those affected by market studies. A great deal of our market study work is a process of change management where the OFT is simply the catalyst that gathers and presents evidence about how the market is doing and makes it available to others to take action. Those players will be more likely to act if there is a high degree of consensus across all stakeholder groups that we have correctly identified the problem and proposed a sensible solution.

For that reason, I am extremely pleased to have such strong stakeholder presence here today. We look forward to hearing from you what has gone well, and what precisely we could do better.

With regard to implementation, the OFT is increasingly focused on outcomes in markets rather than simple outputs. This means we are increasingly interested in the follow-up and tracking of implementation. In the UK, Government has committed³ to respond to OFT's market study recommendations, setting out whether it accepts them or not and what it intends to do about them, within 90 days. We have found this a very powerful tool. However, some recommendations are still outstanding, and we are keen for feedback on how we might better connect what many agree are very solid outputs in to equally solid outcomes for consumers and the economy.

Specifically for the OFT, market studies facilitate the joining of competition enforcement and consumer protection. As an agency with both competition enforcement and consumer protection powers, market studies enable OFT to fuse competition and consumer protection policy by finding solutions that operate in the area of overlap between the two. Again, I suspect that this, because it is new, is an additional contributor to general business uncertainty about market studies.

³ Paragraph 4.15 White Paper: A World Class Competition Regime, July 2001.

An additional source of confusion may be lack of acceptance of remedies focused on consumer empowerment to address competition problems. It is important that we tackle the source and not the symptoms of the problems we find. If consumers in any market cannot observe prices and switch easily, it is difficult for more efficient rivals to win their business. This in turn reduces the incentive for rivals to become more efficient. There is thus a clear link between productivity growth in the economy and markets working well for consumers. The big challenge here is in devising remedies that work well and are not unduly burdensome on business.

A case in point is our market study on **personal current account banking**⁴. The banking market exhibits many features of a competitive market, with a variety of firms with different cost bases and strategies, changing market shares over time, and no clear issue with disproportionate regulatory barriers to entry. In many areas of the market, such as mortgages, we see vibrant competition producing positive benefits for consumers. However, in the personal current accounts area, we are considering whether lack of price transparency and other barriers to consumer switching may inhibit competition.

Our focus in this study is holistic, joining consumer welfare with productivity growth. What incentive is there for a bank to reduce its costs if it cannot exploit that cost advantage in the market by winning new customers with a better offer? We hope that this study, whose publication is imminent, will set out a vision for a more competitive market where a focus on winning consumers drives increased productivity growth. In doing so, it provides important context for our parallel consumer protection investigation into the fairness of the level and application of unauthorised overdraft charges.

Our structure for today's conference reflects these themes. We begin with an overview of the regime and some historical and international

⁴ http://www.ofc.gov.uk/advice_and_resources/resource_base/market-studies/personal/PCA's-UK

perspective, move on to talk about market study selection, and market study process, and round up with a discussion of outcomes, where we can look at the costs and the benefits of studies. We have invited Terry Calvani, a leading scholar of competition policy and a former member of both the US Federal Trade Commission and the Irish Competition Authority, to give us his thoughts after hearing our discussion today. Philip Collins, the Chairman of the OFT, will close the event.

I would like to thank all our speakers from Government, business, the major UK consumer bodies and international competition agencies.

I think we are at an exciting place with our market studies. We have garnered a few years of experience, we are poised to develop our thinking and practice further – and we would like to hear from you, our stakeholders, today and over the coming months, with your suggestions for developing and refining our market studies regime.

I would now like to pass over to Bronwyn Curtis, one of the OFT's non-executive Board members who will chair the first session.