

The OFT's market studies

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Structure of lecture

- Market studies in UK consumer and competition policy
- OFT practice and process
- Selected themes
- Performance of market studies
- Conclusions and looking forward

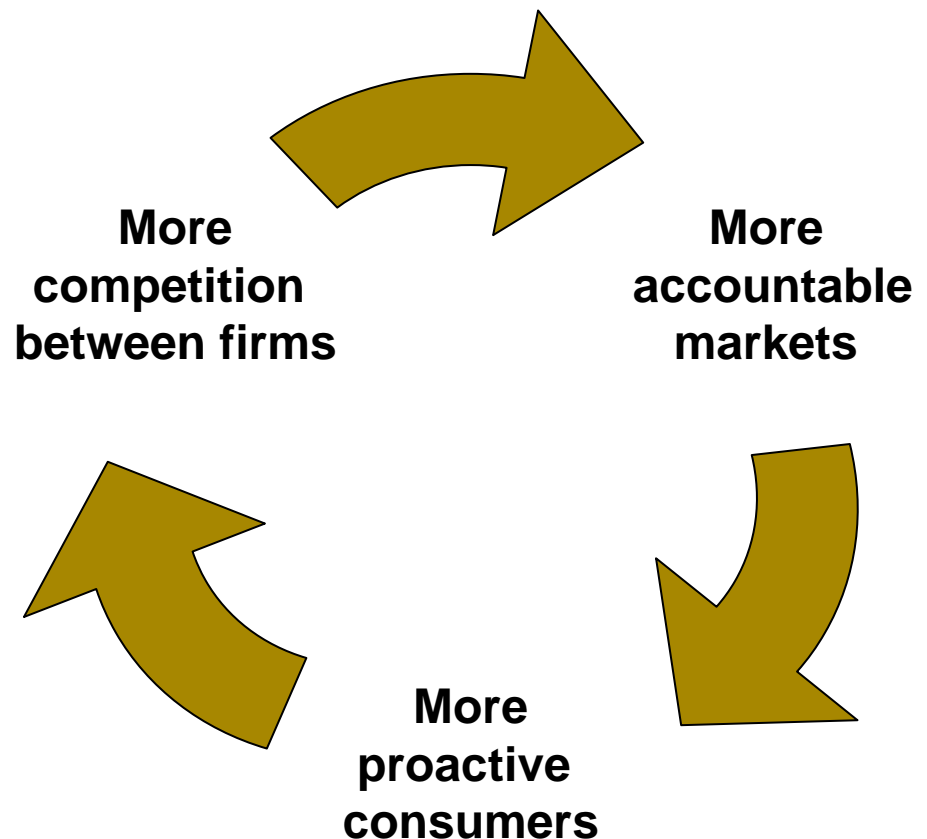
**Market studies in UK consumer
and competition policy**

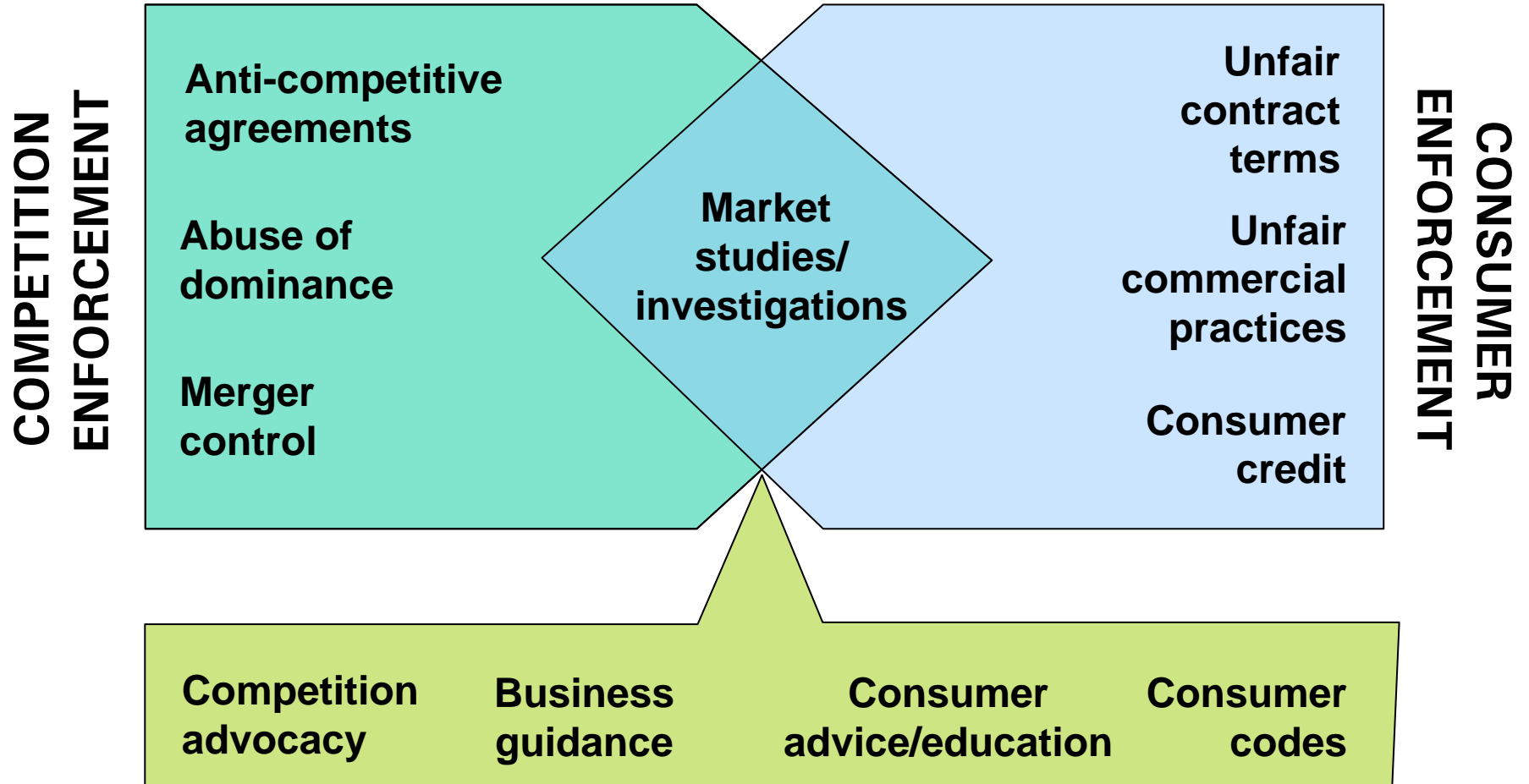
UK consumer and competition policy

- Objective is to make markets work well for consumers
 - Long-term consumer welfare
 - Productivity growth
- Range of tools
 - Consumer enforcement (unfair contracts, commercial practices, credit)
 - Competition enforcement (agreements, abuse, mergers)
 - **Market Studies**, Advocacy and Market Investigation References
 - Guidance, education, advice, codes, policy direction
- Consistent approach
 - Effects-based led by consumer harm
 - Focus on outcomes and behaviour change
- International comparison

Changing markets for the better

- Helps to drive a virtuous circle
- Our work shines a light on the market
- Making it more accountable to consumers
- Encouraging consumers to be more proactive
- Driving competition between firms





SOFTER NON-ENFORCEMENT TOOLS

What is a market study

- An examination of the way a market is working leading to proposals as to how it might be made to work better
 - Not defined in law
 - Generally does not involve use of formal investigative tools
 - Not our response to super-complaints
 - May lead to a market investigation reference
- Particularly allows us to address
 - State restrictions: a key input to advocacy
 - Inefficient equilibrium: especially avoids corrupting Ch1/81 or Ch2/82
 - Obvious consumer harm with less obvious origins and remedies

Market study outcomes

- Clean bill of health
- Information to help consumers
- Encouraging firms to take voluntary action
- Encouraging consumer codes of practice
- Recommendations to Government or regulators
- Investigation or consumer or competition enforcement action
- Market investigation reference to the Competition Commission

**OFT practice and process on
market studies**

OFT market studies outputs

- 33 studies since 2002 (including on-going studies)
- Huge variety in topic
 - Effects of government intervention and public restrictions
 - Inefficient equilibrium, poor consumer outcomes, diagnosis
- Variety in other dimensions
 - Timing
 - Types of recommendations
 - Effectiveness
 - Learning effects

Commercial use of public information

- Public restrictions around competitive neutrality: access to information for re-use
- Study recommended public sector information holders:
 - make as much public sector information available as possible for commercial use/re-use, at the earliest point that it is useful
 - give equal access to information
 - give proportionate cost-related pricing
 - introduce accounting separation
- Govt commissioned independent review of Models of Public Sector Information Provision via Trading Funds.
- Shareholder Executive's Trading Funds Assessment is looking at pricing and access policy for key trading funds

Sale and rent back

- Markets not working well, poor consumer outcomes
- Study recommended
 - FSA to regulate SRB transactions, possibly including:
 - Standards of disclosure around sale price, valuation, term and rent
 - Giving consumers opportunity to seek independent advice
 - Consider minimum lengths of tenure
 - Self-regulation in the interim
 - Action to raise consumer awareness
- OFT to raise awareness of possible breaches of CPRs

How do we select markets to study?

- Legal powers are broad and flexible – function of acquiring information under section 5 Enterprise Act 2002
- For the purposes of the functions in sections 6 to 8 EA02 including making proposals or giving information or advice to Ministers or other public authorities (s7)
- A broad discretion – but exercised carefully – with a view to maximising impact with limited resources:
 - We gather intelligence
 - We filter ideas
 - We apply Prioritisation Principles

Prioritisation



Balance of four factors:

- **Impact:** Direct and indirect impact on consumer welfare and the economy
- **Significance:** Strategic impact, innovation, precedent setting, capacity building, whether OFT best placed to act
- **Risk:** Expected risk at outset of project, risk if we do not act
- **Resources:** People and monetary resources used

Engaging with parties

- Each study has a stakeholder engagement strategy
- Engagement is continuous but flexible. It will usually include:
 - Consulting at launch with published scoping document
 - Appropriately limited information requests/questionnaires to key players in industry
 - Consumer research
 - Informal consultation on findings and potential remedies through meetings with individual firms or bodies
- It may also include one or more of the following:
 - Industry event to present emerging thinking, e.g. PPI
 - Publication of draft findings – to facilitate informal discussion of initial findings, e.g. Homebuilding
 - Formal consultation on findings e.g. Personal Current Accounts in the UK
 - Roundtable discussions of findings and potential remedies, e.g. Personal Current Accounts in the UK

Communication and follow-up

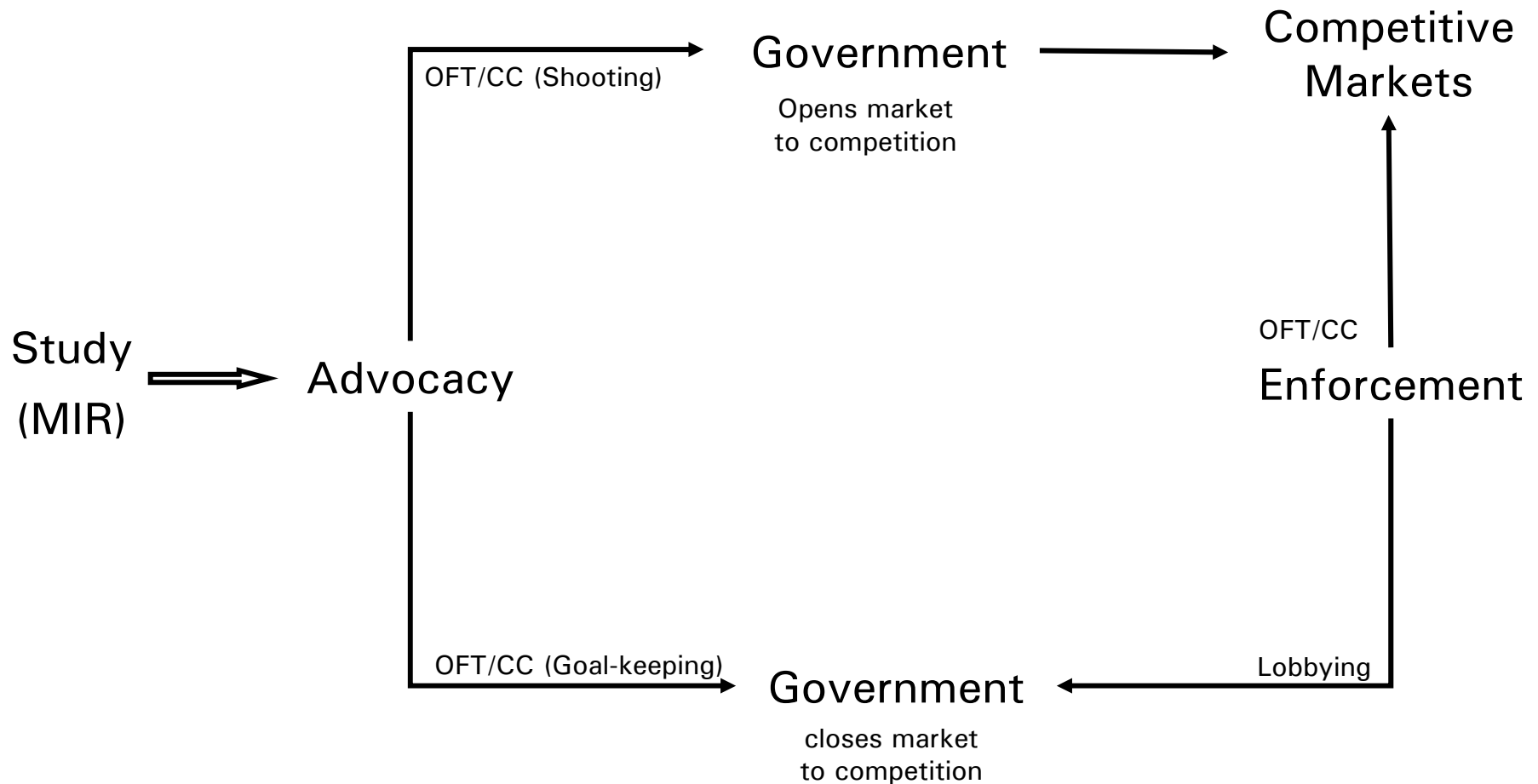
- Findings and key data are published – press is alerted
- Government responds to any recommendations to it within 90 days
- OFT explains findings, advocates the recommended change, and helps with any Impact Assessment
- Success depends on cooperation with government, business, and consumers
 - government to recognise the contribution that market studies can make to efficient and productive markets, and respond positively to them
 - business to help us to identify anticompetitive public restrictions, to recognise the benefits of engaging actively with the OFT to implement proportionate remedies on a negotiated basis
 - consumers to drive competition by taking advantage of enhanced opportunities to exercise choice
- And sometimes playing the long game

Selected themes

Key to successful competition advocacy

- An effective way to tackle public restrictions on competition – an advocacy tool that maximises chance of change
- Addresses any kind of public restriction:
 - Regulatory restrictions (barriers to entry): Taxis, Private Dentistry
 - Competitive neutrality: CUPI, Public Sector Procurement, PPRS
 - Distortions from public funding: Public Subsidies
- Advocacy complements enforcement
 - Advocacy opens more markets to competition, with greater need for enforcement (shooting)
 - Greater enforcement leads to lobbying for reduced competition scrutiny (goal-keeping)

Studies, advocacy and enforcement



Private dentistry

- **OFT in shooting mode:**
- Recommended that restrictions on professionals complementary to dentistry (e.g. hygienists) be ended, so they can supply consumers directly
- Recommendations accepted by Govt
- Dental Complaints Service established in March 2004 to help resolve patients' complaints
- Changes to Health Act 1999 removed restrictions on certain professionals and allowed GDC to register additional care professionals
- OFT carried out an awareness campaign - with a consumer information leaflet published in 2006 so that consumers of private dental services knew what information they needed and had a right to expect

Pharmaceutical Price Regulation Scheme

- **OFT in goal keeping mode:**
- Found some drug prices were significantly out of line with patient benefit, and with price of substitute treatments
- Recommended replacing 'profit cap and price cut' scheme with value based pricing scheme to reflect therapeutic benefit to patients - estimated cost savings for the NHS of £500 million per year
- PPRS now in the course of renegotiation: interim scheme in place Aug – Dec 08
- Govt rejected value-based pricing, but considering ways to ensure access to medicines reflects their value to patients. Has agreed measures to reduce price of out of patent drugs and action to give patients faster access to new drugs.
- OFT report informed the debate.

Key for joining competition and consumer analysis

Supply and demand sides may interact, dealing with one side only may not be optimal:

- Personal current accounts study:
 - examined inefficient market equilibrium
 - conducted alongside investigation of unauthorised overdraft charges under UTCCRs
- Homebuilding study :
 - Considered whether holding of landbanks amounted to anti-competitive hoarding of land
 - Analysed consumer detriment arising from defects in new homes

Making better use of other instruments

- Problem may come to us as a complaint under our enforcement powers
- Dealing with it by enforcement action may
 - Not address the root cause of the problem or behaviour across the whole market
 - Not be the most appropriate tool – could ‘stretch’ the prohibitions beyond their scope
- Study enables a look at the whole market and consideration of cause and effect, best basis for remedies

Medicines distribution

- Study followed complaints under CA98 about vertical integration.
- Two potential rationales for suppliers to vertically integrate:
 - as a means of extending market power down the distribution chain (as complained); or
 - to circumvent the price regulation in the market.
- A study could examine all factors
- Found significant risk that ‘direct to pharmacy’ schemes would lead to increased NHS costs and reduced service levels
- Recommended changes to PPRS so that discounts given in supply chain (12.5%) are formalised in manufacturer's list price or pharmacies get agreed minimum discounts
- But ‘direct to pharmacy’ schemes did not raise sufficient concerns to justify CA98 action at that time: OFT would monitor the situation as the market developed
- Govt to discuss recommendation on pricing as part of on-going PPRS renegotiation

**The overall performance of
market studies**

Evaluating market studies

- For the period 2005 to 2008 we estimated consumer savings of **at least** £266 million, of which £122 million was apportioned to OFT, for market studies and related work of market investigation references, and reviews of undertakings and orders
- We now build impact estimation into our studies
 - Helps us focus on the benefits we expect to see and measure whether they are happening.
- We have a programme of ex-post evaluation of market studies. This informs:
 - choice of markets to study
 - how we conduct studies to maximise impact
 - whether further action could be taken in the market

Direct benefits of market studies

- New car warranties:
 - savings of £120-170 million
 - better consumer information would have increased impact
- Taxis
 - £2-5 million benefit from derestriction to date, potential for further £5-13 million
 - Additional recommendations on reducing fares to market clearing levels would have increased impact
- Extended warranties
 - yearly savings of £19 million
 - better compliance would lead to further savings

Costs to business

- Market studies are generally light touch
- But still impose burdens, and not just direct costs
- Burdens on business ultimately borne by consumers
- Our approach
 - Try to reduce burdens in various ways
 - We apply a proportionate approach (not ex ante measurement)
 - Try to understand better the nature of costs and mitigate
- Important to measure correctly
 - Benefits to a clean bill of Health
 - Northern Irish Banks

Wider benefits of market studies

- Business in UK generally free to enter markets & compete freely, & OFT supports open markets
- Open markets generally produce good outcomes but
 - Sometimes bad for long-term consumer welfare
 - Sometimes appear bad for consumer welfare even if they are not
- Market studies play an important role
 - Distinguishing between these scenarios
 - Identifying action when outcomes are bad
 - Giving independent clean bill of health where appear bad but are not
- Help ensure that open markets are publicly accountable
 - Counterfactual is less open markets: e.g. price or entry regulation
 - Example of aftermarkets, e.g. PPI
- With MIRs they give UK regime additional route to address problems that are not best addressed by enforcement

Conclusions and looking forward

Conclusions

- Essential part of effects-based system
- An area of international leadership for the UK
- Flexible instrument & very diverse outputs
- Have brought real net benefits to UK consumers
- Complements OFT internal change (expertise)
- Strive constantly to improve by review & evaluation

Looking forward

- Market studies will continue to play a central role
- More systematic and transparent prioritisation
- Avoid disproportionate burdens on business/consumers
- Enhanced and varied stakeholder engagement
- Better follow-up
- Continued international leadership