

# Market studies

Guidance on the OFT approach

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# 1. Introduction to the guidance

1.1 This guidance is designed to inform stakeholders – businesses and their advisers, consumer groups, and other interested parties – how the OFT conducts market studies. The guidance is divided into five sections answering the following questions:

- Why does the OFT conduct market studies?
- How does the OFT choose markets to study?
- How does the OFT manage market studies?
- What are the outcomes of market studies?
- How does the OFT evaluate market studies?

1.2 This guidance is not intended to be comprehensive in that it cannot cover every possible set of circumstances. It aims to set out the general framework the OFT uses to conduct market studies so that businesses that have an interest in the markets we study, and other stakeholders including consumer bodies and the Government, will be aware of the processes and principles that will be followed.

1.3 This guidance should not be regarded as a legal authority. While it does set out certain legal requirements that must be adhered to, many of the processes described are not subject to detailed regulations. The OFT's approach is to be proportionate and, wherever possible, open. However, where the law allows flexibility, the OFT reserves the right to depart from the general principles set out in this guidance. The OFT may also revise and reissue this guidance in the light of experience and other developments in law and practice.

1.4 This guidance is part of a series of guidance on the Enterprise Act 2002. This series includes guidance on market investigation references and super-complaints.

1.5 Information about the OFT's current and completed market studies can be found on the OFT website:  
[www.of.gov.uk/OFTwork/markets-work/](http://www.of.gov.uk/OFTwork/markets-work/)

1.6 The OFT welcomes ideas for market studies from stakeholders. You can provide your ideas by completing and sending us a form that can be downloaded from our website:  
[www.of.gov.uk/OFTwork/markets-work/market-studies-further-info/](http://www.of.gov.uk/OFTwork/markets-work/market-studies-further-info/)

## 2. Why does the OFT conduct market studies?

### The purpose of market studies

2.1 The OFT aims to make markets work well for consumers. It achieves this by promoting and protecting consumer interests throughout the United Kingdom (UK), while ensuring that businesses are fair and competitive.

2.2 Typically, market studies are examinations into the causes of why particular markets are not working well for consumers, leading to proposals as to how they might be made to work better. They take an overview of regulatory and other economic drivers in a market and patterns of consumer and business behaviour.

2.3 As well as taking a look at particular markets, market studies can relate to practices across a range of goods and services, for example, doorstep selling. The term 'market studies' is therefore not limited to markets in the economic sense. The OFT may also conduct market studies to improve its knowledge of markets or practices, or to look at developing markets, for example where the potential risks to consumers may be high, or where there may be potential barriers to entry.

2.4 The geographic scope of many market studies will be the UK. However, there may be some cases where a market study focuses on a particular part of the UK.

2.5 When markets are working well, firms compete to win business by achieving the lowest level of cost and prices, developing better products and services or exploiting their

strengths, skills, and other advantages to meet consumers' needs more effectively than their rivals. This process encourages innovation and provides consumers with increased choice. Competition is enhanced when consumers are empowered to shop around through access to readily available and accurate information about products and services.

2.6 Markets that are not working well can result in serious negative effects for consumers, businesses and the economy. For example, consumers may be unable to make informed choices about prospective purchases, businesses may be deterred from improving their products or entering the market, and productivity in the sector may be undermined.

2.7 Through gathering intelligence from a range of sources, the OFT can identify markets which appear not to be working well. A market study can then examine whether there is a problem. If it finds there is, the study looks at its effects, and the causes of those effects, and considers how those causes may be best addressed by the most proportionate means.

2.8 As well as investigating adverse effects on competition caused by business and consumer behaviour, market studies can also examine restrictions on competition that can arise through Government regulation or public policy. Whether intentionally or not, public sector restrictions may create barriers to entry into markets, distort the conditions under which market players compete, prevent

competitive markets from developing, and even take markets or sectors outside the scope of competition scrutiny altogether.

2.9 Market studies can also be used to examine issues in markets in which public sector bodies operate as suppliers. Market studies can also investigate markets where the public sector acts as a customer, where greater competition can lead to better value for money for the taxpayer.

2.10 In the White Paper *Productivity and Enterprise: a world class competition regime*, the Government stated its wish for 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 by promoting competition.<sup>1</sup> The Government saw strong competition contributing to long-run national economic benefits by improving productivity as well as delivering more direct consumer benefits.

2.11 By identifying ways of making markets more competitive and improving consumer welfare, market studies not only benefit consumers, they can also have positive effects on productivity. Competition is a driver of productivity. By encouraging markets to be more competitive, market studies can enhance markets' long-run efficiency.<sup>2</sup>

2.12 Market studies lead to a range of outcomes. They may conclude that, at the time of the report, a market can be given a clean bill of health in that the initial concerns about consumer detriment are not substantiated by the information collected over the course of the study. Where the market is found not to be working well, there are a number of options the OFT will consider to address the causes. These may include:

- improving the quality and accessibility of information for consumers
- encouraging businesses in the market to self-regulate
- making recommendations to the Government to change regulations or public policy
- taking competition or consumer enforcement action, or
- making a market investigation reference to the Competition Commission (CC).

These outcomes are discussed in Chapter 5.

## Market studies and the OFT's other tools

2.13 Market studies are conducted under the OFT's general function in section 5 of the Enterprise Act 2002, which includes the functions of obtaining information and conducting research. Market studies are one of a number of tools at the OFT's disposal to address competition or consumer protection problems, alongside its enforcement and advocacy activities. The OFT may also use its functions under section 5 to carry out research into markets-related issues which is not covered by this guidance. This is because the outcomes of such work do not directly affect stakeholders, so that the same level of transparency and stakeholder engagement is not appropriate.<sup>3</sup>

2.14 Where there is a clear case of a breach of competition or consumer protection law by an individual business, taking enforcement action will usually be preferred over starting a market study. In many cases it will be evident from the outset of the OFT's work that enforcement action is the most appropriate way of dealing

1 *Productivity and Enterprise: a world class competition regime* (White Paper) Department of Trade and Industry, 2001. <http://webarchive.nationalarchives.gov.uk/+/http://www.dti.gov.uk/ccp/topics2/ukcompref.htm>

2 The OFT paper *Productivity and Competition* provides a detailed examination of the relationship between productivity and competition: [www.of.gov.uk/shared\\_of/economic\\_research/oft887.pdf](http://www.of.gov.uk/shared_of/economic_research/oft887.pdf)

3 See, for example, the economic and other research reports at: [www.of.gov.uk/advice\\_and\\_resources/publications/reports/](http://www.of.gov.uk/advice_and_resources/publications/reports/)

with conduct that comes to the attention of the OFT, provided that the issue is sufficiently serious to warrant intervention. There may also be cases where market studies uncover evidence, or provide a clearer understanding of the level and nature of any harm, or of how legal principles should be applied to it, such that enforcement action may be taken following the study.

2.15 It may be the case, however, that enforcement action appears impractical, or may be ineffective, so that a market study is a better way of identifying a remedy to a perceived problem. Enforcement action may not address all of the root causes of any problem, or behaviour across a whole market or markets. Market studies can look beyond individual abuses of dominance, agreements that reduce competition, or breaches of specific consumer protection legislation, and consider all aspects of market structure and conduct. This holistic perspective allows for the examination of whole markets to assess the best way of remedying problems. Looking at the whole market also provides the opportunity to address factors that may affect productivity which are beyond the scope of enforcement tools.

2.16 Market studies are also the tool that best links the OFT's competition and consumer protection responsibilities. Market studies consider the relationship between consumer behaviour in a market, the behaviour of firms in that market, and the market's structure. By looking at these relationships, the OFT can determine whether action that will encourage changes to consumer behaviour, business behaviour, or both, will best address market problems.

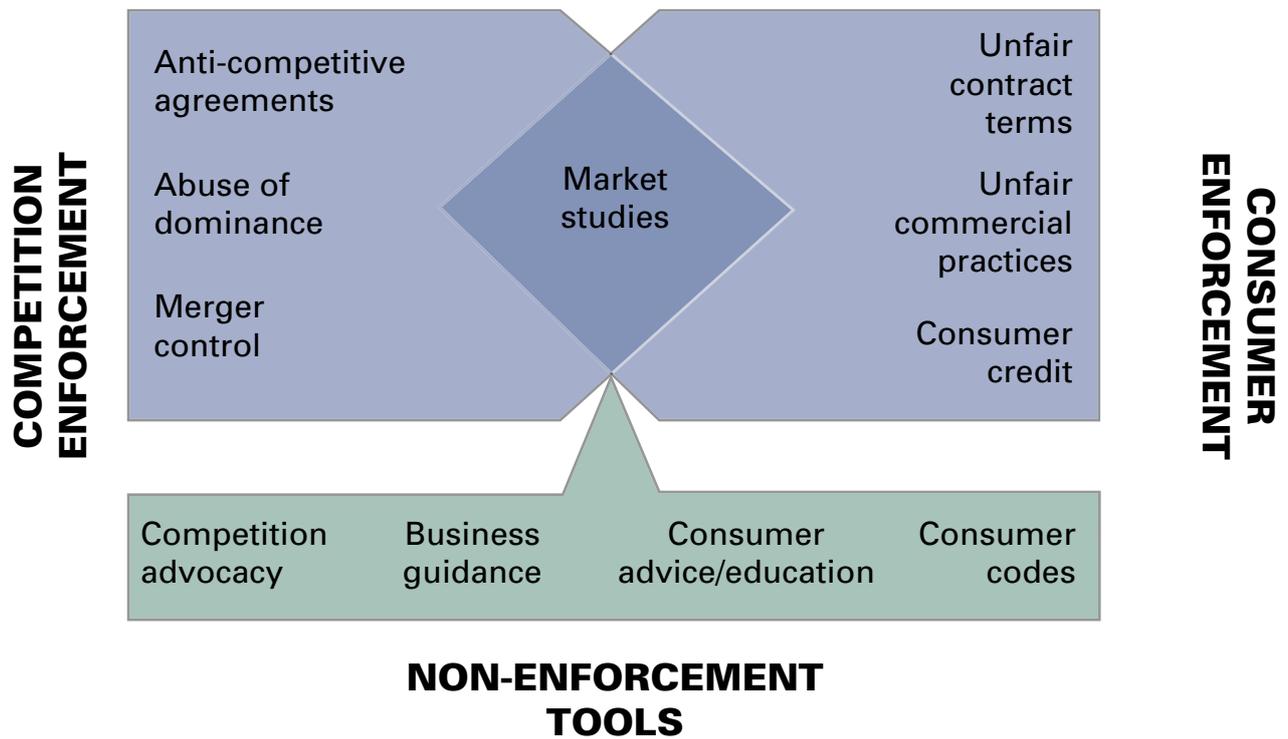
2.17 As government regulation and policy are not typically susceptible to enforcement action, market studies can be the best response to concerns regarding markets where public restrictions may be distorting a market or chilling competition. The Government welcomes advice from the OFT on the impact of laws and regulations on competition. It has made a commitment to consider the advice presented in the OFT's market study reports and to respond to that advice within 90 days.<sup>4</sup>

2.18 Diagram 2.1 shows the central role that market studies play in the work of the OFT. Market studies complement the OFT's enforcement and non-enforcement work and occupy the interface between competition and consumer protection policy.

2.19 The OFT's aim is for market studies work to drive a virtuous circle to the benefit of consumers. On the one side, informed consumers have the confidence to engage more proactively in markets, helping to drive competition between firms. On the other, vigorous competition drives firms to deliver higher quality, increased choice, greater innovation and lower prices.

<sup>4</sup> *Productivity and Enterprise: a world class competition regime* (White Paper) Department of Trade and Industry, 2001.

**Diagram 2.1 Market studies and the work of the OFT**



# 3. How does the OFT choose markets to study?

3.1 The OFT makes use of a range of sources to identify possible markets to study. These may include:

- complaints from businesses and trade associations
- consumer complaints data from Consumer Direct<sup>5</sup>
- suggestions from organisations representing consumer interests
- super-complaints from designated consumer bodies<sup>6</sup>
- suggestions made by other Government departments, local authority Trading Standards Services (TSS) and regulatory bodies
- OFT concerns based on information acquired in the course of enforcement and advocacy work
- intelligence gathering from publicly available sources, and
- OFT research.

3.2 The leads provided by stakeholders, the monitoring of complaints from businesses and consumers, and the OFT's concerns will typically be cross-checked against other information about the market in question. The OFT may carry out an initial assessment of the

market by, for example, researching productivity levels, concentration, or the numbers of businesses entering and exiting the market. It may review the market's history of consumer complaints using information from its local authority TSS partners and Consumer Direct. It may also assess information about the market from other Government departments and public bodies and review relevant past OFT research.

3.3 Following this initial research phase, market study proposals are prepared. A market study proposal typically includes a description of the market and a theory of harm (an identification of the possible problems in the market and an explanation of their possible causes). A proposal typically considers possible remedies, assesses the potential impact the market study may have on consumer welfare, and estimates the OFT resources required to carry out the study.

3.4 As well as estimating the cost of the study for the OFT, in selecting studies, the OFT takes into account the fact that market study outcomes may involve costs to business. As these costs will, in all likelihood, be passed on to consumers, the OFT takes into account whether the net effect on consumer welfare of a market study is likely to be positive.<sup>7</sup>

5 Consumer Direct is the Government-funded telephone and online service offering information and advice on consumer issues: [www.consumerdirect.gov.uk](http://www.consumerdirect.gov.uk)

6 More information on super-complaints can be found in OFT guidance *Super-complaints: Guidance for designated consumer bodies*: [www.offt.gov.uk/advice\\_and\\_resources/publications/guidance/enterprise\\_act/oft514](http://www.offt.gov.uk/advice_and_resources/publications/guidance/enterprise_act/oft514)

7 The OFT will bear in mind that many of the costs are 'one-offs' whereas the benefits will be felt on an ongoing basis following implementation of any remedies, and may have knock-on effects on other markets. Even market studies that lead to a 'clean bill of health' can bring about benefits to the market in question, for example by removing regulatory uncertainty or promoting consumer confidence.

3.5 Market study proposals are then considered against the OFT's prioritisation principles. These principles ensure that OFT resources are used to produce the greatest benefits for consumers. The principles can be summarised as:

- impact
  - what is the likely direct or indirect impact on consumers?
  - what are the wider economic benefits?
- strategic significance
  - does the work tie in with the OFT's strategy and objectives?
  - is the OFT best placed to act?
  - how would the balance of the OFT's portfolio be affected?
- risks
  - what is the likelihood of a successful outcome?
- resources
  - what are the resource implications of doing the work?<sup>8</sup>

3.6 Where appropriate, the OFT may also take into account other relevant factors before making a decision to commence a market study. However, in general, market study proposals are tested against the prioritisation principles and a decision is taken on whether to prioritise a market study proposal for action.<sup>9</sup>

3.7 The OFT recognises that markets are dynamic. Market studies will be reassessed against the prioritisation principles if there is a significant change in the market's structure, or conduct in the market, after the study has been launched, where it appears that such changes may affect the original rationale for the study. If such developments significantly alter the priority given to a market study, the OFT may decide to curtail or stop the study. A study may also need to be stopped or delayed if OFT resources need to be diverted urgently to other higher priority work.<sup>10</sup> The OFT would expect to publish a statement of its reasons for not completing any study.

8 The OFT has published a document that provides a detailed description of each of the OFT's prioritisation principles and how they are used: [www.of.gov.uk/advice\\_and\\_resources/publications/corporate/general/oft953](http://www.of.gov.uk/advice_and_resources/publications/corporate/general/oft953)

9 Applying relevant OFT governance rules, including the OFT Board's Rules of Procedure [www.of.gov.uk/shared\\_of/board/rules.pdf](http://www.of.gov.uk/shared_of/board/rules.pdf) and authorisations under Schedule 1, paragraph 12 of the Enterprise Act 2002.

10 Such decisions would be taken according to relevant OFT governance rules (see footnote 9).

# 4. How does the OFT manage market studies?

## Project management, transparency and stakeholder engagement

4.1 Although market studies differ greatly in terms of subject matter, they are all managed according to the same set of project management principles. The OFT's project management framework is informed by the OFT's public service objectives and project management best practice. Key aspects of the framework are robust planning, clear roles and responsibilities for project team members, a structured project lifecycle, and a system for monitoring progress.

4.2 The OFT is committed to the principle of transparency. In the context of market studies, transparency means providing timely and useful information to stakeholders. Transparency also means being clear about why a market is being studied, how we intend to study the market, and providing accessible explanations about our findings and recommendations to stakeholders and the general public.

4.3 Stakeholder engagement means actively consulting, and taking into account the views of, interested parties such as businesses, organisations representing business, consumer groups and Government departments over the course of the market study. In most cases this

will be done informally, rather than consulting formally on findings and recommendations. Engagement gives the OFT the opportunity to be clear about the issues we are considering, allowing for more focused submissions from stakeholders. It also helps the project team gain a better understanding of the market, and increases the likelihood that any recommendations will be accepted by stakeholders.

## Stages of market study projects

4.4 In general, once a market study has been prioritised for action, there are four project stages that lead to the publication of the market study report. These stages are:

- pre-launch
- launch
- data collection and analysis, and
- informal consultation on findings and recommendations.

The duration of a study depends on many factors including the scale and complexity of the market. The average length of OFT market studies from launch to publication of the report has been around 12 months, but some studies have been as short as five months.

## Pre-launch

4.5 Having decided to prioritise a market study proposal for action, a project team is formed. Market study project teams vary in size depending on the size and scope of the study. A typical team might consist of three to five staff, with input from OFT's legal and economic staff. The size and composition of the team will, however, vary according to the scale of the project and the specific skills required.

4.6 In the pre-launch period, the project team will generally work on the following:

- refining the scope of the project by describing the goods and services that make up the market, and developing the theory of harm and possible remedies
- reviewing the project proposal assumptions concerning the potential impact the project will have on reducing consumer detriment, and making an impact estimation plan<sup>11</sup>
- producing a project plan
- developing a stakeholder management and communication strategy
- identifying and assessing the risks affecting the study and agreeing the actions required to mitigate those risks, and
- depending on the significance of the study, forming an internal consultative steering committee to offer high level advice to the project team.

4.7 Where the OFT considers that it may be helpful to seek the views of stakeholders in advance of the formal launch of a market study, for example because there are questions

around the appropriate scope, it may announce its intentions in a press release on its website, following which it will contact key stakeholders directly as well as inviting submissions from other interested parties.

## Launch

4.8 To launch a market study, the OFT will usually publish a press release. The press release will often be accompanied by a short document describing the study in more detail. This may include information on one or more of the following:

- the scope of what the project team intends to study and questions it is considering
- an invitation to make submissions
- contact details for the project team, and
- a timetable and high level milestones for the project.

This material is published on the OFT's website.

4.9 Stakeholders are free to contact, and make submissions to or seek clarification from, the OFT throughout the course of a market study. Such approaches should be made in the first instance to the contact point named on the OFT's website, who will arrange for them to be handled by the appropriate member of the project team.

## Data collection and analysis

4.10 During this phase of the market study, the project team gathers detailed information about the market in order to test the theory of harm and possible remedies.<sup>12</sup>

<sup>11</sup> Chapter 6 gives more information on impact estimation.

<sup>12</sup> Section 5 of the Enterprise Act 2002 provides the legal basis for requests for information during the course of a market study. Section 5(1) states that 'the OFT has the function of obtaining, compiling, and keeping under review information relating to the carrying out of its functions.' These include the functions in sections 6 to 8 of the Enterprise Act 2002, namely providing information to the public, providing information and advice to Ministers, and promoting good consumer practice. Section 174 of the Enterprise Act also gives the OFT certain investigatory powers that it may use when it believes it has the power to make a market investigation reference, that is when it has reasonable grounds for suspecting that any feature of a market prevents, restricts or distorts competition. These powers are: to require the attendance of parties to give evidence, to require the production of specified documents and to require the supply of specified information including estimates and forecasts.

4.11 Project teams collect data from businesses, consumers and organisations through a variety of means. Questionnaires, surveys and focus groups for businesses and consumers are used when appropriate. They may also hold meetings with individual stakeholders either in person or by telephone. Site visits to businesses may also be arranged. To find out about consumers' experience in the market, project teams may conduct 'mystery shopping' exercises.

4.12 Project teams may undertake further literature reviews to obtain additional information. They may also obtain information about similar markets in other sectors or countries. This comparative work can help inform analysis and provide ideas for how to address any problems which may be identified, although the OFT recognises the need to treat it with caution and to take account of differences in market structure and other features.

4.13 Quantitative data about the market is used in most market studies. This may be supplemented by qualitative data. Qualitative data can provide insights into the market and therefore lead to better analysis on the part of the project team. Examples drawn from stakeholders' experience may also be published in market study reports for illustrative purposes where these will promote a better understanding for readers.

4.14 For market studies dealing with public bodies acting as suppliers or customers, or projects focusing on the impact of regulations on competition, the project team will usually collect information from the relevant public bodies by questionnaires and through meetings.

4.15 Project teams aim to gather information in a way that imposes the minimum cost to business, and welcome early discussions with parties on alternative ways of collecting necessary data. Where a market study interacts

with related work by other regulators and public bodies, the OFT will seek, as far as possible, to work with them to avoid overlaps and duplication, and, where possible, to coordinate information requests.

4.16 Market studies may require external consultants to provide additional resource for particular project activities, for example, conducting a survey. External consultants may also be used if specialist skills are required. In selecting consultants, the project team will have regard to potential conflicts of interest, and will also ensure that consultants who are awarded contracts are required to deal with sensitive information in accordance with the Official Secrets Act 1989, Data Protection Act 1998 and Enterprise Act 2002.

4.17 Project teams analyse the results of their data collection and test their theory of harm against the information. Based on this analysis, they will begin to determine what measures might be most appropriate to address any competition and consumer issues in the market.

## **Informal consultation on findings and outcomes**

4.18 In most market studies, the project team will informally discuss its findings and proposed outcomes with stakeholders who will be affected by them. If a large number of stakeholders have been involved, only key stakeholders may be approached to ensure an efficient consultation, although any representations received at this stage will be considered. This informal consultation process provides an opportunity for the project team to test its analysis of the market and the recommendations it plans to make. Feedback can help the project team refine its recommendations so that they are effective and appropriately targeted.

4.19 For studies focused on the impact of regulations, team members will meet the relevant Government department or public body to discuss proposed recommendations and how they might best be implemented.

4.20 At this stage, the project team may approach those who have provided information to discuss the need for exclusion of potentially sensitive information prior to publication.<sup>13</sup>

## Publication

4.21 Generally, market study reports give a description of the market or practice under consideration and the reasons for carrying out the study, describe the methodologies used to collect and analyse the data, set out the OFT's conclusions on the issues considered, and propose remedies to address any problems which may be identified. The research supporting the report will usually be annexed to it.

4.22 The report is published on the OFT website. Publication will usually be accompanied by a press release. Project team members and OFT officials may give media interviews about the study.<sup>14</sup>

## Disclosure of information obtained during a market study

4.23 In terms of disclosing information the OFT acquires during a market study, Part 9 of the Enterprise Act 2002 and the Data Protection Act 1998 restrict the ability of the OFT to disclose information it receives in the course of its work. The Enterprise Act 2002 provides<sup>15</sup> a general restriction on disclosure of information relating to the affairs of an individual or the business of an undertaking if it has come to the OFT in the exercise of listed functions<sup>16</sup> unless disclosure is otherwise permitted under Part 9. Part 9 sets out a number of permitted gateways for disclosure, including, for example, disclosure for the purpose of facilitating the exercise of a statutory function.

4.24 Prior to making any disclosure, the OFT must have regard to the considerations in section 244 of the Enterprise Act 2002.<sup>17</sup> Where necessary, in order to reach an informed view on the application of section 244, the OFT will consult relevant individuals and businesses prior to publication of its report to seek their views on the level and nature of harm that might result from publication of certain information that they have supplied.

<sup>13</sup> In particular, commercial information or information relating to the private affairs of an individual which, if disclosed, the OFT thinks might significantly harm the legitimate business interests of a business or the interests an individual (section 244(3) of the Enterprise Act 2002).

<sup>14</sup> The legal basis on which the OFT publishes its market study reports is section 4(4) of the Enterprise Act 2002. This section states that the OFT 'may: prepare other reports in respect of matters relating to any of its functions, and arrange for any such report to be published'. In addition, the OFT can rely on its functions of providing information and advice for the benefit of the public and of promoting good consumer practice (sections 6 and 8 of the Enterprise Act 2002). When market study reports relate to markets involving Government regulations or public bodies, the OFT relies on its function of making proposals or giving other information or advice to Ministers or other public authorities (section 7 of the Enterprise Act 2002).

<sup>15</sup> Section 237 of the Enterprise Act 2002.

<sup>16</sup> Including functions under the Enterprise Act 2002.

<sup>17</sup> The considerations the OFT must have regard to are as follows: the need to exclude from disclosure (so far as practicable) any information whose disclosure the OFT thinks is contrary to the public interest (section 244(2)); the need to exclude from disclosure (so far as practicable) (a) commercial information whose disclosure the OFT thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or (b) information relating to the private affairs of an individual whose disclosure the OFT thinks might significantly harm the individual's interests (section 244(3)); the extent to which the disclosure of information subject to the second consideration is necessary for the purpose for which the OFT is permitted to make the disclosure (section 244(4)).

# 5. What are the outcomes of market studies?

5.1 The principal outcomes of a market study are one or more of the following:

- a clean bill of health for the market
- consumer-focused action
- recommendations to business
- recommendations to Government
- investigation and enforcement action, and
- a market investigation reference to the CC.

5.2 Except in the event of a clean bill of health, the outcomes of market studies generally require follow-up work, either to implement actions which are for the OFT to pursue, or to monitor the implementation of recommendations addressed to others, such as business or Government. This work may be carried out by the original project team, or passed to another team in the OFT.

## A clean bill of health

5.3 A market study may conclude that on balance, at the time of the report, the market, or aspects of the way it functions, can be given a clean bill of health. A clean bill of health will mean that some or all of the potential consumer detriment identified during the project proposal stage is not substantiated by the information obtained, or that intervention would not be proportionate to the detriment. Giving a clean bill of health can address public interest or concerns about a market. However, it does not preclude the OFT from revisiting the market at a later date should new information, or a change in

market circumstances, suggest that there are concerns about the functioning of the market, and the OFT's prioritisation principles are met.

## Consumer-focused action

5.4 Consumer-focused action may take the form of an OFT-led information campaign. The objective of such campaigns is to raise consumer awareness so that consumers are able to make better purchasing decisions. The campaign may stress factors that consumers should consider when making a purchase, or inform consumers of their rights when transacting with businesses.

5.5 Consumer-focused action may involve the OFT working in partnership with organisations that assist consumers and other Government bodies. If the market involves a particular group of consumers, the OFT may work with the most appropriate organisation to help ensure that the campaign is successful.

## Recommendations to business

5.6 Where market problems can be addressed through changes to business behaviour, the OFT may make recommendations to business. Recommendations may address a range of issues. Examples include improving how, when and what information on after-sales services is made available to consumers, changes to the standard terms and conditions of consumer contracts, and improving avenues for consumer redress in the event of problems or disputes.

5.7 The OFT can recommend that businesses in the market develop a code of conduct or improve an existing one. Codes of conduct may be appropriate if the market study finds a significant number of consumer complaints and problems having those complaints resolved. As codes are voluntary, the OFT will be more likely to recommend a code if the businesses concerned want to make improvements for consumers. The OFT may follow up recommendations on codes of conduct by providing support to trade bodies to ensure their codes address the issues identified in the market study report. Where appropriate, the OFT may work with relevant trade bodies to give OFT approval to a code of practice under its Consumer Codes Approval Scheme.<sup>18</sup>

## Recommendations to the Government

5.8 When the OFT concludes that changes in the law, Government policy, and/or regulatory practice are necessary to remedy any problems which may be identified in the market, it will make recommendations to Government departments and/or other public agencies or regulators.

5.9 Recommendations to the Government are the likely outcome of market studies that examine the effect of regulations in a market, or markets where a public sector agency is a supplier or major customer. Recommendations to the Government may also be made when a market study concludes that consumers will benefit from additional protection, especially in markets where the risks of consumer harm are significant.

5.10 To promote its recommendations to the Government, the OFT will meet relevant agencies and departments to present findings and answer questions. The Government has committed to responding to the OFT's recommendations within 90 days of the market study report being published.<sup>19</sup>

5.11 The Department for Business Innovation and Skills (BIS) is responsible for coordinating the Government's responses where market studies make regulatory recommendations.<sup>20</sup> The OFT liaises closely with BIS<sup>21</sup> and, where appropriate, other interested Government departments, to monitor how actions on recommendations are progressing.

## Investigation and enforcement action

5.12 The appropriateness of enforcement action as a means of addressing the harm envisaged is considered at the selection stage, and such a course of action could, if appropriate, be followed at that point rather than as the outcome of a market study. Enforcement action may, however, follow a market study should evidence or understanding obtained through conducting the study indicate possible breaches of competition law or consumer protection legislation, or if it is concluded that enforcement action is in fact necessary to address the issues identified.<sup>22</sup> A study may help inform potential enforcement action, or identify alternative or additional outcomes.

18 Information on OFT's code approval scheme can be found on the OFT's website: [www.of.gov.uk/consumer-advice/approved-codes-explained/](http://www.of.gov.uk/consumer-advice/approved-codes-explained/)

19 The 90 day response time to market studies is a Government commitment made in the White Paper, *Productivity and Enterprise: a world class competition regime*, Department of Trade and Industry, 2001.

20 The Department for Business Innovation and Skills' responses to market studies can be found on the Department's website: [www.bis.gov.uk/policies/business-law/competition-matters/market-studies](http://www.bis.gov.uk/policies/business-law/competition-matters/market-studies)

21 Where recommendations are to the devolved administrations, the OFT works with the relevant bodies to promote the recommendations and monitor how they are acted upon.

22 Guidance and policy statements describing how the OFT uses its powers to enforce consumer protection and competition law are available on the OFT website: [www.of.gov.uk/OFTwork](http://www.of.gov.uk/OFTwork)

## Market investigation reference to the Competition Commission

5.13 When the findings of a market study by the OFT give rise to reasonable grounds to suspect that a feature or combination of features of a market in the UK prevents, restricts or distorts competition, and a market investigation reference appears to be an appropriate and proportionate response, the OFT is able to make such a reference to the CC.<sup>23</sup> Decisions to make market investigation references are made in accordance with relevant OFT governance rules.<sup>24</sup> The OFT has a duty to consult on making a market investigation reference.<sup>25</sup> Generally, the OFT will aim to consult within six months of the launch of the study when a market investigation reference is an outcome that is being considered at the time of the launch. In some cases the OFT will need less than six months to reach this consultation stage.

<sup>23</sup> The OFT's guidance *Market Investigation References* describes the legal test applied by the OFT when making a decision to refer a market, the process for making that decision and how the test is applied: [www.offt.gov.uk/advice\\_and\\_resources/publications/guidance/enterprise\\_act/offt511](http://www.offt.gov.uk/advice_and_resources/publications/guidance/enterprise_act/offt511)

The CC's guidelines describe how it conducts its market investigations once a reference has been made. These guidelines can be found on the CC's website: [www.competition-commission.org.uk](http://www.competition-commission.org.uk)

<sup>24</sup> See footnote 9.

<sup>25</sup> Section 169 of the Enterprise Act 2002.

## 6. How does the OFT evaluate its market studies?

### Individual market studies

6.1 Impact estimation measures the effect which interventions by the OFT are envisaged to have on reducing consumer detriment, and is a component of all market studies.<sup>26</sup> By estimating the impact of market studies, the OFT can assess if they are providing value for money.

6.2 As impact is an OFT prioritisation principle, an initial assessment of impact is presented in the market study project proposal.

6.3 In its annual reports, the OFT publishes estimates of consumer savings from completed market studies whose recommendations were implemented in the year.

### Market studies in general

6.4 The OFT also runs a more in-depth evaluation programme for its work including market studies.<sup>27</sup> This programme currently commits the OFT to evaluating at least one market study a year. A key objective of the evaluation programme is to improve the effectiveness of the OFT by providing learning points that will inform how it prioritises its work and its choice of intervention methods. Comprehensive evaluations on past market studies provide information that will help the OFT:

- focus on markets where a market study is likely to make the most impact
- maximise the impact of each market study, and
- decide if further action should be taken in markets the OFT has studied.

6.5 Where appropriate, evaluations of individual market studies will consider whether their effect would have been different had a different approach been taken to implementation of their recommendations.

<sup>26</sup> Further details of the principles and processes used to estimate impact can be found in the OFT publication *Approach to calculating direct benefits to consumers*: [www.offt.gov.uk/advice\\_and\\_resources/publications/reports/Evaluating/oft955](http://www.offt.gov.uk/advice_and_resources/publications/reports/Evaluating/oft955)

<sup>27</sup> Further details on how market studies are evaluated can be found in the OFT publication *Evaluation strategy for market studies*: [www.offt.gov.uk/shared\\_offt/about\\_offt/oft862.pdf](http://www.offt.gov.uk/shared_offt/about_offt/oft862.pdf)

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Printed in the UK on at least 50% recycled paper  
Product code OFT519  
Edition 06/10  
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