

UK Markets Regime

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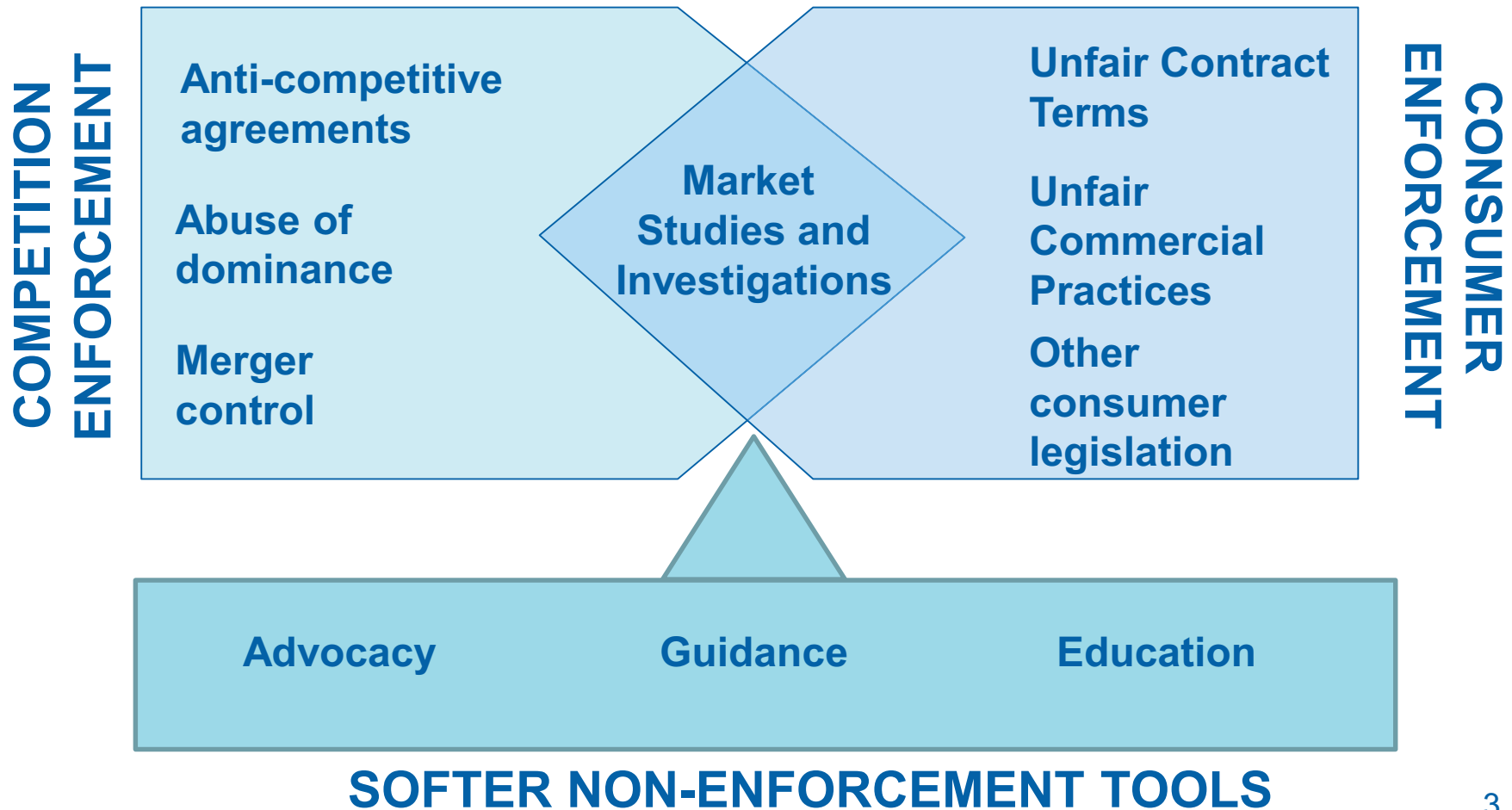
Introduction

- Markets regime has roots in the 1950s but was introduced in its current form in 2002 and updated in 2013
- Key component of UK competition and consumer protection framework
 - Art 101 and 102
 - Merger control
 - Sectoral regulation (promote competition and concurrent competition law powers)
 - **Markets regime**
 - Consumer protection
 - Advocacy, guidance etc

Features of the markets regime

- CMA: independent agency, free from political direction
- CMA Board: initiate market studies and make market references
- Sectoral regulators: can also make market references (eg Energy)
- Two phase process
- Phase 2 Group independent from CMA Board
- Order-making powers (and recommendations to government)
- Rigorous judicial appeal system

CMA toolbox



Deciding between tools

- Markets regime: pro-active competition policy
 - Art 101 and 102 and mergers regime reactive
- Allows holistic analysis of market
 - Enforcement/mergers assess specific issues
- Address government interventions in markets
 - Rail rolling stock leasing; Taxi licensing; Public sector procurement; Pharmacies; Commercial use of public information
- Powers to implement remedies: behavioural and structural
 - Divestments, transparency of information, market rules, recommendations to government (and its agencies)
 - No requirement for adverse findings

Filling a gap?

- If competition authority not acting, government will
 - Groceries: “clearing the air” – public confidence
 - Airports and railways: decisions at privatisation
 - Energy: policy regime and regulation
- Institutional independence important
 - Evidence-based findings
 - Reduced risk of less market-friendly interventions
- Evaluation key
 - Assess market and economic impact
 - Learning and revising approach, refine remedies over time

Markets work: a complementary tool

- Work on markets can uncover areas of interest for further enforcement activity
 - Buses
 - Supply of ICT to the public sector
 - Online reviews
- Opportunity to revisit markets previously investigated
 - Groceries
 - Retail Banking
- Option to use alternative tools eg advocacy on online reviews

Key challenges in market regime today

- Shorter timescales
- Market investigations in regulated sectors
- Legal challenges

Shorter timescales

Challenges

- Continuing need for thorough analysis
- Volume of evidence
- Complexity of analysis
- Rights of parties to verify analysis
- Evolution of economic frameworks
 - eg behavioural economics can provide insights

How to address

- More streamlined end-to-end process
- 80:20?
- Engage with parties at the right time, in the right manner
- Earlier development of remedy options
- Leverage regulatory capacity

Market inquiries in regulated sectors

Challenges

- Issues tend to be difficult to remedy
- Regulatory activity will already have shaped market behaviour
- Regulated sectors attract government attention:
 - not always evidence based
 - directive rather than consultative
 - be seen to act

How to address

- Leverage knowledge of regulator and build on relationships eg concurrency
- Liaise with government
- Inquiry to include review of regulatory framework
- Re-set balance between government and regulation
- Regulator as delivery partner

Legal challenges

Challenges

- Risk of successful appeal if analysis and conclusions not robust
- Procedural as well as substantive appeals
- Likelihood of challenge more likely if remedies more costly/intrusive eg divestment
- Benefits to consumers delayed

How to address

- Culture: don't be afraid of appeal but be prepared
- Ensure fair process and clarity of analysis
- Self challenge and proportionality assessment
- Speedier implementation of remedies

In conclusion:

- Market studies and investigations offer flexible and important tools
- Streamlining needed to manage within statutory timetables
- Working alongside sectoral regulators increases options
- Legal challenges a constant reality

.....and let's see how we all feel when Energy, Healthcare and Banking are complete!