

How the CMA intends to use market investigations to extend the frontiers of competition

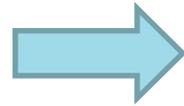
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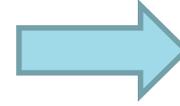
RPI Annual Conference, Oxford, 9 September 2014

Agenda

**When to
intervene?**



**How to
intervene?**



**With what
effect?**

**The decision to open
an investigation**

**The conduct of the
investigation**

**The outcome and the
follow-up**

Intervening in markets with behavioural biases

- Behavioural biases are not necessarily a problem – they can be part of healthy process of discovery and market ‘self-healing’
 - smart customers protect biased customers
 - biased customers learn from past decisions
 - the market provides tools that facilitate decision making
- But sometimes this process of discovery and self-healing does not work
 - in many circumstances the dominant incentive of suppliers is to *exploit* biases, not correct them (Oren Bar-Gill in ‘Seduction by Contract’)
 - the market is then trapped in a poor equilibrium (many examples in consumer-facing businesses or financial services – eg PPI)
 - regulatory intervention may be needed to restore a healthier dynamic, while acknowledging the risk of getting it wrong

Intervening when the market is in flux

- Intervening alongside government/regulators/trade associations
 - not necessarily a problem if reviews are joined up
 - we can add value when government/regulators are confronted with big, knotty problems
- Intervening when there is technological change
 - argument is usually that digital innovation empowers consumers and facilitates new entry
 - very valid argument – and there have been cases where the OFT/CC misjudged the pace of change (eg Yellow Pages 2006)
 - however the risk of over-estimating the pace of digital innovation is at least as great (eg electronic telecommunications)
 - and we cannot automatically assume that digital innovation makes competition more effective

Some of the challenges we are facing

- Markets under investigation are bigger and more complex
- Some of these markets have been under scrutiny for a while
 - this can be helpful as the problems are more clearly delineated
 - but these problems are also typically the most difficult to resolve!
- Use of behavioural economics
 - obviously a source of great insights for our work
 - but may require a fair amount of experimentation and trial-and-error (which does not fit easily into a market investigation process)
- And we now only have 18 months to do all this

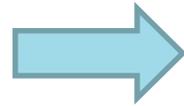
Some of the changes we are introducing

- Using the synergies created by the establishment of the CMA
 - some of the staff working on phase 1 will also work on phase 2
 - the decision makers (and the decision making process) will be completely different
- Working more closely with sectoral regulators
 - useful interaction at the start to gather market knowledge and understanding
 - also influences the way we think about remedies at the end of an inquiry
 - but we concentrate the interaction at specific points in the process to preserve our independence

Using divestments as remedies

- Are divestments disproportionate?
 - they can certainly be costly – in general we expect markets structures to evolve to maximise efficiency so divestments might cause inefficiencies
 - but a financial loss for the selling firm is not prima facie evidence that the measure is disproportionate (it is also consistent with a reduction in the market power of the selling firm)
- Are divestments too intrusive?
 - divestments are a one-off intervention in the market – the premise is that the market can then be left to respond to consumer needs
 - arguably less interventionist than behavioural or regulatory remedies, which imply a direct and sustained constraint on the behaviour of firms

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