Competition & Markets Authority

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

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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

When to intervene?

Intervening in markets with behavioural biases

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- 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

Discussion

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When to intervene? → **How to intervene?** → **With what effect?**

The decision to open an investigation

The conduct of the investigation

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