Outcomes of markets work and securing government commitment to implement recommendations

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OECD roundtable promoting market studies in Latin America
Santiago de Chile – 18 March 2015
UK regime contains two mechanisms for reviewing competition in markets

<table>
<thead>
<tr>
<th><strong>Market studies</strong></th>
<th><strong>Market investigations</strong></th>
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<tbody>
<tr>
<td>Initial “Phase 1” investigation</td>
<td>In depth “Phase 2” investigation</td>
</tr>
<tr>
<td>12 month maximum statutory deadline (NB must consult on any phase 2 reference within 6 months)</td>
<td>18 month statutory deadline (extendable by up to 6 months, if there are “special reasons”)</td>
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<tr>
<td>CMA or sectoral regulators</td>
<td>Only CMA can do this</td>
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<tr>
<td>No powers to compel parties to accept remedies at phase 1.</td>
<td>CMA has powers to implement remedies itself or make recommendations to others</td>
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Possible outcomes:
- Initiate a phase 2 market investigation
- Clean bill of health
- Recommendations to government
- Other advocacy work
- Undertakings-in-lieu of reference

Possible outcomes:
- Clean bill of health
- Recommendations to government
- Other advocacy work
- CMA introduces its own remedies through accepting undertakings or making an Order
Markets work can lead to a diverse range of outcomes

‘Remedies Universe’

Structural remedies
- Divestiture and prohibition

Behavioural remedies
- Intellectual property remedies

Recommendations to Government / others
- Enabling measures (e.g. information, reducing entry barriers)
- Measures to control outcomes (e.g. price controls)
### Recommendations to Government are a common outcome of markets work

<table>
<thead>
<tr>
<th>Market</th>
<th>Improve customer information (enabling)</th>
<th>Switching remedies (enabling)</th>
<th>Lower entry barriers (enabling)</th>
<th>Remove other impediments to rivalry (enabling)</th>
<th>Recommendations to Government / agencies</th>
<th>Measures to control outcomes</th>
<th>Divestiture</th>
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Notes: Does not include ongoing investigations.  
(X) Denotes a relatively minor aspect of the remedies package
Various factors affect whether we act ourselves or recommend action by others.

**Reasons to act ourselves**
- Others may not have the power to take action
- It is usually quicker for CMA to take action
- We retain control over detail of implementation

**Reasons to make recommendations**
- Sometimes Government actions are cause of the problem
- CMA may not have the power to take action
- May fit better with other market regulation
- Regulator may find it easier to adjust remedy over time
The Government has made a commitment to respond to CMA recommendations

- UK Government committed itself to responding to recommendations from the Office of Fair Trading and the Competition Commission within 90 days

- When the CMA was established, Government went further:

  “The Government…sees the **CMA playing a key role in challenging government** where government is creating barriers to competition. The Government…commits to accept the CMA’s recommendations for improving competition. There will be a presumption that all recommendations will be accepted unless there are strong policy reasons not to do so.”

  *Statement of Strategic Priorities for the CMA*
  
  October 2013
Several obstacles may prevent effective implementation of recommendations

<table>
<thead>
<tr>
<th>Potential obstacle</th>
<th>Mitigation strategy</th>
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| Government / agency does not accord competition a high priority relative to other objectives | • Longer-term competition advocacy: secure Government commitment to respond (e.g. within 90 days).  
  • Engage competition-friendly departments (e.g. economics / finance ministry)  
  • Frame benefits of recommendation in ways that resonate with Government / agency |
| Government / agency does not buy into competition authority’s analysis of problem, or its solution. | • Quality of analysis and reasoning in report  
  • Engaging stakeholders during investigation.  
  • Public communication of recommendation  
  • Following up after report to explain decision |
| Government / agency signs up to the principle, but does not follow through.         | • Understand process for implementing recommendation.  
  Frame recommendation in ways that makes it easier for Government to act.  
  • Seek early commitment and timescale for action.  
  • Demonstrate ongoing commitment to following-up recommendations.  
  • Actively manage implementation during changes of key personnel (or Governments…) |
Workplace pensions project shows how market studies can have a big impact

- **Context**
  - UK Government looking to improve provision of workplace pensions by introducing automatic enrolment into schemes.
  - UK Department of Work and Pensions keen to ensure that these changes were competition and consumer friendly.

- **Market study**
  - Short-term (<1 year) market study focused on influencing policy and producing workable recommendations for change
  - No powers to make change ourselves. Impact relied on active management of public and private sector stakeholders.

- **Outcomes**
  - Recommendations well-received and followed through
  - Shows how timely market studies can be a powerful advocacy tool.
Annex: More information about workplace pensions case study
Overview of problem

- Competition cannot be relied upon to drive value for money for all pension savers

- Two fundamental reasons why market does not currently work well
  - **Product complexity**: very difficult for employees and employers to assess key elements of value for money.
    - **Charges**: difficult to understand and not incurred directly. Differences can look small but have a significant impact over time
    - **Quality**: very difficult to compare scheme quality in terms of quality of administration, suitability of the investment strategy, and the effectiveness of its execution
  - **Weak buyer side**:
    - Split roles. Different ‘agents’ can act on behalf of the scheme member/employee – employers, advisers, trustees – but may not have clear incentives or responsibilities to do so
    - Many scheme members and employers lack knowledge, understanding or resources to get to grips with pensions

- Time and resources that SME employers have to invest in workplace pensions likely to be particularly.
Recommendations

● **Improving governance**
  - Minimum governance standards for all pension schemes set in legislation
  - Agreement with Association of British Insurers (ABI) for Providers to establish Independent Governance Committees. Committees able to escalate issues to the regulator
  - Department for Work and Pensions should consider options for enhancing the enforcement powers of The Pensions Regulator to address risks in trust schemes

● **Increasing transparency on charges and quality**
  - All costs and charges on pension schemes disclosed in a consistent framework that will allow comparison of a single charge
  - Investment transaction costs should be disclosed according to defined methodology
  - Employers that are not advised should receive key information on scheme quality from providers
Recommendations (2)

- **Ending specific risks of consumer detriment**
  - Agreement with ABI for immediate audit of all legacy schemes (pre 2001) and schemes with Annual Management Charges above 1%. Audit to be overseen by independent panel that will effect remedies
  - Pensions regulator to identify and address those small trust schemes at greatest risk of poor value for money

- **Preventing risks of detriment in future**
  - Use leverage of automatic enrolment to discourage:
    - Schemes with active member discounts, which disadvantage those members not currently contributing to the schemes;
    - in-built adviser commissions, which disincentivise switching
    - Schemes with insufficient scale to offer value for money.
Longer-term principles

- Scale
- Alignment of incentives
- Robust independent governance
- Flexibility
- Simplicity and switching
Subsequent developments

- Report and recommendations were well received:

- Some key developments since publication include:

  - Internal Governance Committees we recommended will be up and running from this year.

  - The audit we recommended has now been carried out. It found that:

    - Between £23.2bn and £25.8bn of assets potentially exposed to a Reduction In Yield (RIY) of more than 1% (RIY - is a the universal measure the IPB has used to quantify charges)

    - Between £5.6bn and 8.0bn is potentially exposed to an RIY greater than 2%.

    - Between £0.8bn to £0.9bn to an RIY greater than 3%.