Market Studies as an advocacy tool

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OECD roundtable promoting market studies in Latin America
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Advocacy is one of the non-enforcement tools available to the CMA.
The Government has encouraged us to use our powers, and given us new ones

### Powers
- Under Section 7 of the **Enterprise Act 2002**
  - the CMA can give information and advice to Ministers; and
  - a Minister may ask the CMA to make proposals or give other information or advice
- **Small Business Bill** currently before Parliament will give the CMA a Power to Comment on draft legislation
- The government has **committed** to respond to CMA recommendations within 90 days and implement them unless there is good reason not to
- As part of the **Regulatory Impact Assessment** process, policy makers are encouraged to consider the impact new regulations will have on competition

### Focus
- BIS’s **strategic steer** recognised that government can affect markets through regulation, procurement and other activities, and saw the CMA playing a key role in challenging government where government is creating barriers to competition
- The CMA’s **high level strategy** commits it to
  
  *Work with Government and regulators to advocate the further development of effective competition in markets for public services for the benefit of users of public services and taxpayers and advise on how this can be achieved*
- The **Annual Plan** commits us to two interventions with Government this year
Market studies are one element of our approach to advocacy

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<th>What we do</th>
<th>Examples</th>
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<tr>
<td>● Responding to requests from departments, public bodies and local government to find solutions to competition issues</td>
<td>● 2011-2012 – Advice to government on minimum alcohol unit pricing</td>
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<td>● Pursues opportunities to influence government’s role in markets.</td>
<td>● Current – advice on establishment of new regulatory regime for oil and gas extraction</td>
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<td>● Prepares and runs training and guidance to develop officials’ skills in applying competition analysis to policy problems</td>
<td>● Market studies on pharmacy, dentistry, pensions</td>
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<td>● Call for information and subsequent work on higher education</td>
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<td>● Materials used in online Civil Service Learning packages</td>
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<td>● Training in competition analysis with NAO and policy profession</td>
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We can advise on the four key roles government can play in markets

We want to advise government on how to best support competition when it is...

...influencing the market without participating directly itself

through **market shaping/regulations**

through **taxes and subsidies**

...directly participating in the market

through acting as a **buyer**

through acting as a **supplier**

In all cases, we can secure impact by ensuring policymakers understand the **incentives** of market actors and the impact of government action on them.
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<th><strong>Independent, well-evidenced advice from a market perspective is valuable to Government</strong></th>
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<td><strong>An independent view…</strong></td>
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<td><strong>…founded in the evidence…</strong></td>
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<td><strong>…enabling Government to weigh competition and markets concerns against other policy considerations</strong></td>
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Some challenges are more susceptible to advocacy than others

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<th>Issues identified for market studies:</th>
<th>Can advocacy arising from a market study address it?:</th>
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<td>• Firm behaviour</td>
<td>• Maybe if regulation needed, but self regulation or trade association action more likely</td>
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<td>• Market structure</td>
<td>• No (though market investigation could)</td>
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<td>• Information failure</td>
<td>• Yes</td>
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<td>• Consumer conduct</td>
<td>• Maybe – behavioural intervention?</td>
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<tr>
<td>• Public sector intervention</td>
<td>• Yes</td>
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Remove legislative or regulatory barriers to entry or innovation
• Direct or indirect influence?
• Publicly or privately?

Note also that:
• Market studies can aim to “clear the air”
• Some regulators can do market studies too
Our work on dentistry has set expectations for regulators and Government

Our market study on dentistry found:
• It was hard for patients to access dental care professionals directly
• Information on treatment options and charges was poor
• There were few incentives for dentists to provide better service

We recommended:
• Published prices (for NHS and private treatment)
• Treatment plans
• Enforcement by NHS (where part of dentists’ contract) and by professional regulator where forms part of professional standards

Recent work by Which? has found that many of these problems still exist

CMA view:
• Disappointing that more progress has not been made
• But helpful that OFT recommendations remain in place as the standard regulators believe should be adhered to
• Together CMA and Which? Continue to press regulators and Government for further action
Our work on higher education will provide evidence and contribute to public debate

We conducted a Call for Information on higher education in England and found:

- concerns about compliance with consumer protection law
- a regulatory system not keeping up with change in the sector notably:
  - Shift from grants to fees supported by loans
  - Removal of caps on student numbers
  - Growing diversity of providers, both identity and nature of provision

Next step influenced by widespread expectation that there will be legislation

- Our ambition to ensure competition concerns are taken into account in framing legislation. Main risks:
  - limiting innovation and/or entry
  - an uneven basis for competition
- So we intend to publish
  - Guidance on compliance with consumer law
  - Document setting out CMA view on some aspects of potential reform
- And will continue to advise Government on any legislative proposals