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Global Forum on Competition

THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

Contribution from the United Kingdom

-- Session IV --

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THE INTERFACE BETWEEN COMPETITION AND CONSUMER POLICIES

-- United Kingdom --

1. We welcome this discussion which covers an important issue and one which is currently high on our agenda. The mission of the Office of Fair Trading (OFT) is to make markets work well for consumers. Competition and consumer policy are complementary in achieving this. The OFT has enforcement powers in both areas, and has been working to develop and exploit the synergies between them, to promote and protect consumer welfare.

2. In doing so, the OFT works closely with sister authorities: the Competition Commission (CC), the sector regulators, and the Local Authority Trading Standards Services (LATSS).¹ A further important part of the UK framework is the existence of two strong consumer representative bodies: the National Consumer Council and Which? These provide a voice to consumers which is reinforced by their ability to make super complaints to the OFT.²

3. This brief paper lays out the OFT's views on this important topic and focuses on the OFT's functions. In doing so it answers questions one and two from the committee. The other questions are addressed briefly in the Annex.

1. Interactions between consumer and competition policy

1.1. Synergies

4. The OFT combines both competition and consumer enforcement in its mission to make markets work better for consumers. This recognises the potential for competition and consumer policy to form a virtuous circle:

- On the one side, vigorous competition should drive firms to deliver higher quality, increased choice, greater innovation and lower prices, all of which are beneficial to consumers.³ Importantly, well-

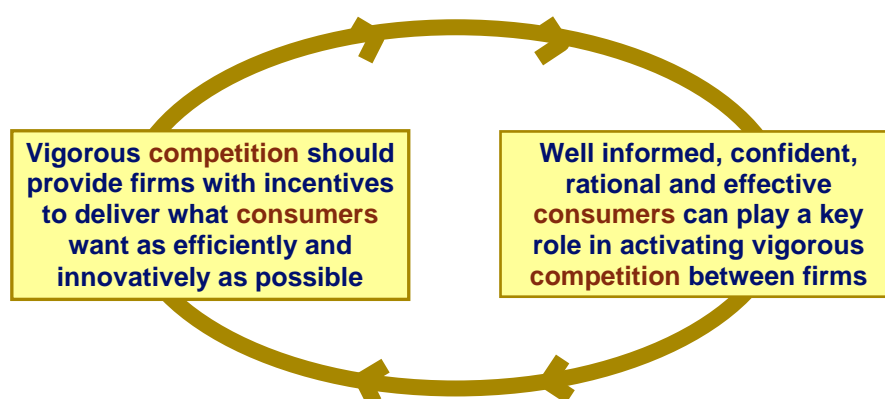
¹ The CC carries out market investigations. These are carried out under a competition-focussed legal test, but in practice can play an important role in addressing problems in markets that are driven by consumer behaviour, and in doing so encompassing both competition and consumer policy. They are discussed further below. The UK sector regulators for energy, water and communications also each have both competition and consumer enforcement powers, which they use in a joined up. The 204 Local Authorities Trading Standards Services focus on consumer policy (including both enforcement and advice) and have no duty to consider competition when carrying out their functions, but strategic leadership for these services is provided by the OFT.

² The system of supercomplaints requires the OFT to give a reasoned response to a formal complaint by these bodies within a set timeframe. See http://www.offt.gov.uk/advice_and_resources/resource_base/super-complaints/

³ There are numerous examples from within the UK of where increased competition has led to substantial tangible benefits to consumers. For example see DTI Economics Paper No.9 prepared by Centre for

functioning markets can also overcome consumer problems without the need for consumer enforcement intervention. For example, competition can drive firms to adopt good standards of business behaviour towards consumers, in order to achieve a good reputation, so long as these are observable to consumers and affect their purchasing behaviour.

- On the other side, effective consumer policy has a two-fold role in making markets work well: firstly, it should promote consumer confidence in markets, and it should enhance the ability of consumers to drive vigorous competition. For example, by ensuring that claims made by sellers are not misleading, consumer policy plays a crucial role in enabling consumers to make sensible choices between offers and be confident that they will be well-served by the market. This in turn is necessary for ensuring that it is those suppliers with the most attractive offers that succeed in the market.



5. Clearly there will be circumstances in which markets will not work perfectly, and thus consumer policy also has a role in protecting consumers from rogue firms or shoddy quality. Moreover, where firms do breach the law, consumer redress can play an important role in improving the position of consumers, including enhancing their confidence in the system as a whole. The potential for costly redress can also enhance the incentives for firms to be compliant in the first place. For both of these reasons, the UK is considering making consumer redress easier (through private damages actions) following breaches of competition law.⁴

6. Within the spheres of competition and consumer policy, there is a wide spectrum of statutory and non-statutory tools that can be used: from full-on enforcement (with or without criminal sanctions), to settlements, to warning letters, to business guidance, to consumer education, to regulatory recommendations to Government. There are also a wide range of remedies which can result from a CC market investigation.

7. An interesting aspect of the UK regime is the OFT's Consumer Codes Accreditation Scheme, which aims to facilitate consumer policy outcomes (in particular improved quality and effective consumer redress) through market-based methods. The rationale for this regime is broadly as follows:

Competition Policy, University of East Anglia, 'The Benefits from Competition: Some Illustrative UK Cases', July 2004. Available at: <http://www.berr.gov.uk/files/file13299.pdf>

⁴ See the OFT's discussion paper and consultation responses at: http://www.of.gov.uk/advice_and_resources/resource_base/consultations/private

- In certain markets, it may be in the interest of any individual firm to offer a poor quality product or service, even though it is in the joint interest of all firms to keep quality high so as to preserve consumer confidence.⁵
- In such a situation, it may be in the interest of the firms in a market to agree to abide by a code which stipulates certain standards of business behaviour. Where the OFT is persuaded that the firms signed up to a code have incentives to abide by it, and where the code provides effective consumer redress, the OFT can give ‘OFT accreditation’ to the code. This can add credence and hence improve the effectiveness of such schemes.
- The OFT scheme also requires that such codes do not harm competition by limiting entry into either the market or the code scheme. Indeed, codes will typically be good for entry, in that they can allow small firms to thrive without the need to establish their own reputation.

1.2. *Tensions*

8. At the same time, there are potential tensions between competition and consumer policy, mostly associated with the unintended consequences of competition and consumer interventions.

- For example, by over-relying on competition to deliver benefits to consumers, competition policy unless accompanied by other consumer protection measures can sometimes confuse consumers, or reduce their confidence in the market, and in doing so fail to achieve the full benefits of competition.

An interesting UK example of this was the de-regulation of telephone directory inquiry services. De-regulation successfully led to large scale new entry, with over 200 firms initially seeking to enter the market and provide directory inquiry services. In many ways it was a success. In particular, substantial innovation was observed (including new services such as call connect, textback and classified searches). However this was accompanied – at least initially – by higher average prices and higher complaint levels, largely due to the difficulties faced by consumers in assessing price and quality across the many new suppliers. The UK telecommunications regulator⁶ now acknowledges that the policy would have benefited from further analysis in advance of how to ensure transparency for consumers and how consumers would react to such multiple market entry. For example, one option for additional consumer protection might have been to set benchmarks for quality of service⁷.

- At the same time, by imposing rules of behaviour or standards on markets, consumer policy can potentially impede competition, innovation or choice, to the detriment of (at least some groups of) consumers.

A topical example relates to the way in which credit card issuers calculate interest. The consumer organisation Which? made a super-complaint to the OFT concerning variations in how credit card

⁵ For example where product quality can only be judged after consumption and it is difficult for individual firms to establish a strong reputation because repeat purchases and ‘word of mouth’ recommendations are both low.

⁶ Then Oftel, now Ofcom.

⁷ Nevertheless, Ofcom's research report on DQ services, published in March 2006, identified significant improvements in accuracy and levels of consumer satisfaction since the period immediately following the introduction of competition.

issuers calculated interest charges.⁸ They argued that this made comparing the real cost of different cards difficult and called for standardisation of methodology. The OFT published its response to the super-complaint in June 2007.⁹ Whilst the OFT had sympathy with Which?'s concerns, it felt that imposing standardisation could harm choice and innovation in this market. Hence an alternative solution is now being advanced.

2. The UK regime

2.1. The OFT's approach to integrating competition and consumer policy

9. Given the synergies, and risk of tensions, between competition and consumer policy, the UK supports the establishment of joint consumer and competition agencies. The OFT has powers in both the competition and consumer spheres, as do the key UK sectoral regulators.

10. A coherent approach to competition and consumer policy consists of a number of elements, each of which is typically less easy to achieve between separate organisations than within a single one:¹⁰

- *A shared approach to collecting intelligence.* A joined up agency benefits from joined up intelligence: complaints received in one area (whether from consumers or businesses) will often be more effectively dealt with under different powers. Especially important in the UK is the OFT's national consumer advice telephone helpline (Consumer Direct). Data from Consumer Direct provides valuable intelligence on what issues are directly affecting consumers, which can feed into cases and studies which address both competition and consumer issues.¹¹
- *A joined up approach to choosing tools.* In the past, the OFT has had a tendency to think about tools first, and market problems second. The issue in the market is now the starting point, and then the tools available to address the issue are considered. These could include competition and consumer enforcement, consumer codes, public education and/or our market studies and market investigatory powers. Knowing when each of the tools will be most effective in promoting consumer welfare is crucial for choosing which to pursue.

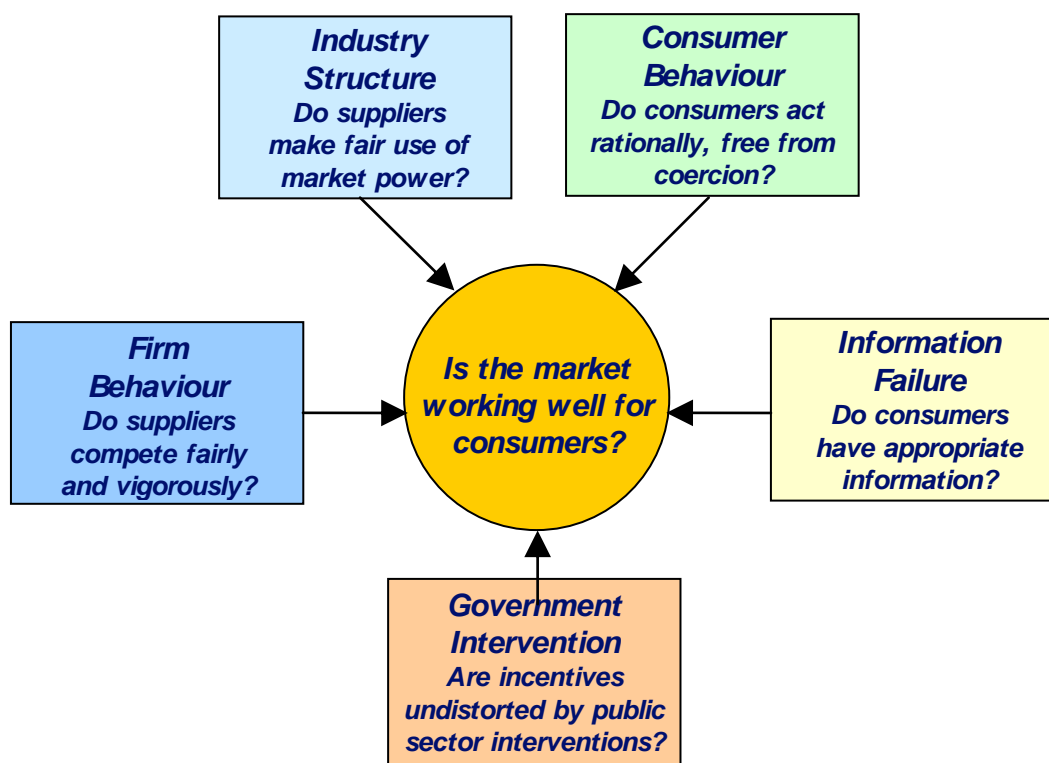
11. Figure 1 below sets out the different categories of factors which can potentially prevent markets from working well for consumers. A joined up approach considers each of these potential sources of market failure, taking care to focus on the causes of problems, not just their symptoms.

⁸ Available on the Which? website: http://www.which.co.uk/files/application/pdf/Supercomplaint_pdf-445-111967.pdf

⁹ Office of Fair Trading, 'Response to the super-complaint on credit card interest rate calculation methods by Which?', 26 June 2007, available at: http://www.offt.gov.uk/shared_offt/reports/financial_products/oft935.pdf

¹⁰ The OFT recognises that separate bodies can co-operate closely (indeed the OFT and CC does co-operate closely with other enforcement bodies within the UK). However, the OFT has found it can be difficult to attain the level of integration between organisations that can be achieved within a single one and has also observed tensions between competition and consumer agencies in other countries where they are separate.

¹¹ That said, the OFT's close links with local authorities trading standards services provides a useful local intelligence network without full integration.

Figure 1: Factors that may prevent markets from working well for consumers

- *A consistent approach to enforcement policy.* The OFT is currently reviewing potential areas of inconsistency between competition and consumer policy activities, and how best to ensure greater consistency. This includes a greater focus on risk-based assessments to avoid unintended consequences on each area of policy from the other.
- *A consistent approach to resource prioritisation.* The OFT is committed to ensuring that it takes on the cases where the OFT can have the greatest impact for consumers (relative to cost), irrespective of what tools they involve.¹² That said, the OFT also recognises that a key role of its work is to ensure an effective competition and consumer regime, and that deterrence and clear precedent require it to ensure that it takes a mix of cases, across different tools and different types and sizes of markets.

12. In order to achieve a more coherent and holistic approach to applying these tools, the OFT has carried out some major changes over the past two years. In particular, the organisation has been restructured to ensure that competition and consumer policy are more joined up. Within its delivery area, reporting lines from both activities go to the same decision makers. Within its policy and strategy area, the activities now sit within the same groups, requiring staff to have a greater understanding across a wide spectrum of statutory and non-statutory tools. Key prioritisation issues are addressed at a cross-office

¹² The OFT carries out a substantial *ex post* evaluation of our interventions. This is partly to enable evaluation of its impact, but also to learn about what sorts of interventions have the greatest impact, and indeed how they might have delivered more benefits. All of this provides important learning for its prioritization and enforcement behaviour. For more about the OFT's evaluation activities, see <http://www.of.gov.uk/about/benefits/evaluation>

prioritisation committee and key substantive policy issues are addressed at a cross-office policy committee, both of which cover the competition and consumer areas in a consistent and holistic way.

2.2. *The Role of Market Studies and Market Investigations*

13. Lastly, we would like to highlight the importance to the UK approach of the UK's market studies and investigations regime in ensuring a joined up approach to competition and consumer issues.¹³

14. The OFT can carry out market studies where it believes that a market is not working well for consumers, irrespective of whether the issues are primarily consumer or competition-focussed. The CC can carry out market investigations, which address 'features' of a market which prevent, restrict or distort competition. Despite the competition-based nature of this legal test, the CC regularly looks at markets in which competition is restricted due, in part, to limited ability or incentive for consumers to search or switch between suppliers. These sorts of factors might more typically be linked with consumer policy (although in reality they often cross the divide between the traditional domains of competition and consumer policy¹⁴).

15. CC market investigations also allow for wide ranging remedies. Where the competition problems in the market are essentially associated with a lack of consumer search or switching, these remedies will often be focussed on improving the position of consumers, and thus very closely aligned to those typically associated with consumer policy.

16. For example, in the Home Credit investigation, the CC found adverse effects on competition partly due to a lack of switching in response to price rises.¹⁵ The CC required that suppliers publish prices on a designated website, provide certain information and statements to customers, share data on the payment records of their customers and pay a "fair" early repayment rebate. The combination of remedies was designed to first address the structure of the market (by for example, facilitating search and switching and thereby enable consumers to activate competition between suppliers and secondly to protect consumers from detriment arising from the fact that the market was not working well.

17. One particular area where market studies and investigations have proved useful has been in the area of follow-on markets, such as extended warranties for domestic electrical goods.¹⁶ In such markets,

¹³ See CC Guidelines on Market Investigation References (CC3) (2003), OFT 'Market Studies: Guidance on the OFT Approach', OFT516; OFT, 'Market Investigation References: Guidance about the making of references under Part 4 of the Enterprise Act', OFT511. Examples are available at: http://www.oft.gov.uk/advice_and_resources/resource_base/market-studies/ Studies include: Internet Shopping, Personal Current Accounts, Payment Protection Insurance.

¹⁴ Such costs can increase market power without any one firm becoming dominant, thus making it difficult to tackle under abuse of dominance or anticompetitive agreements legislation. They can also lead to consumers making suboptimal decisions even without firms' resorting to the misleading advertising or pricing which consumer enforcement might tackle.

¹⁵ The CC decision was also based on its finding that lenders did not compete in a significant way on price, incumbency advantages for established lenders, lack of sharing of information about customers, customers' requirements for an agent they could trust and regulation. See http://www.competition-commission.org.uk/rep_pub/reports/2006/517homecredit.htm. Other market investigations in which consumer type remedies have been used include Store Cards, the supply of Liquid Petroleum Gas and Personal Banking in Northern Ireland.

¹⁶ See <http://www.competition-commission.org.uk/inquiries/completed/2003/warranty/index.htm>

the consumer may make a well-reasoned and researched decision in respect of the primary market (the domestic electrical good or credit product), but has then traditionally been faced with little choice in the follow-on market (other than the choice to buy or not buy).

18. The effect of this is that suppliers have 'mini-monopolies' in these follow-on markets, and prices/margins are typically high. This gives rise to two issues:

- Is there real consumer detriment here (or are all the extra profits¹⁷ from the follow-on product effectively given away through competition in the primary market)?
- If there is, how might this best be remedied? Price regulation in the follow-on market can have detrimental effects on incentives and the market, as can a ban on suppliers offering the follow-on product at all. Remedies which encourage shopping around or switching for the follow-on product have greater potential to solve the problem in a way that is sensitive to both competition and consumer policy.

19. The OFT greatly values the potential within the UK regime to bringing a holistic perspective to problems such as these, which encompass both competition and consumer concerns.

¹⁷ It is worth noting that, even if all extra profits were given away, there may be a potential issue arising from poor consumption decisions. For example, consumers who focus on the primary market price may end up buying a product that is wrong for their needs taking their lifetime usage costs into account.

ANNEX

Q.1 How does consumer policy interact with competition policy in your country, if at all? Can you give examples where they have conflicted? Where have they been complementary?

Answered in the main text.

Q.2 What do you feel are the benefits and drawbacks to your country's choice of "dual-function" or "separate agencies" for handling competition and consumer policy?

Answered in the main text

Q.3 Has your country required that "no frills" versions of complicated products be offered, to help vulnerable consumers? If so, who provided the product and how was its supply enforced? What was the effect on competition, if any?

There are no examples of the OFT mandating a "no frills" product. From within the UK there are some examples of either government regulation or self-regulation, these include:

Basic bank accounts

In 1999, the Social Exclusion Unit's Policy Action Team¹ highlighted the importance of access to basic banking services and recommended the continued development of basic bank accounts for customers who did not wish to open, or had been refused, a standard current account. Following that report, all the main retail banks agreed Memorandum of Understandings with the Government to introduce a basic bank account "specifically designed to address the needs of the financially excluded".²

Basic bank accounts are simple personal current account products of which there are two types. Those operated through bank branches and ATMs, and those that can also be operated through post office counters. Typically these are very similar to personal current accounts but overdraft facilities are either not available or curtailed and no cheque book is provided.

The rationale behind basic bank accounts is not one of avoiding over complication, rather one of social inclusion.

Other financial products

There are a variety of other voluntarily simplified products including stakeholder pensions which were intended to stimulate competition through increased consumer understanding and ease of comparison.

¹ *Access to Financial Services*, Report of Policy Action Team

² HM Treasury, *Promoting financial inclusion*.

We are unaware of any research as to whether they have had any impact. These came out of the government's 'Sandler Review of Medium and Long-Term Retail Savings in the UK'.³

Funeral services

Some voluntary schemes exist for a standardised no frills product and service. The National Association of Funeral Directors Code requires a 'simple funeral service' is available and defines what that consists of. The other trade association (The Society of Allied and Independent Funeral Directors) has a corresponding 'simple (basic) funeral'. We know of no research into the impact on competition.

Unfair Commercial Practices Directive

It should be noted that the Unfair Commercial Practices Directive should lead to greater convergence of consumer enforcement throughout Europe and this might highlight what benefits can be achieved.

Q.4 Can you identify areas where a better convergence of both competition and consumer policies globally would be beneficial?

We have no in depth examples to provide here, however we do feel the following areas could potential benefit from such increased convergence:

- Work on professional standards could benefit from increased convergence which allowed for easier cross-border trade and thus greater competition.
- Where breaches of competition legislation lead to consumer detriment it might be helpful to have the potential for international recovery.
- Misleading advertising and pricing are both areas where better convergence may be beneficial. The ability to advertise or offer prices across national borders may facilitate competition.

Q.5 Can you provide examples of sectors or products where an increased international cooperation between competition authorities and consumers representatives could render the markets more competitive while ensuring an adequate protection of consumers around the globe?

Again we have no in depth examples to provide here, however we do feel the following area could potential benefit from such increased cooperation:

- Personal financial products such as savings accounts and mortgages are typically national markets. There is less reason for this to be the case given the ability to move money. Differing regulatory standards and concerns about consumer rights and redress may be one area worth investigating here.
- In the EU the Privacy and Electronic Communications (EC Directive) Regulations 2003 regulate the sending of spam. This Directive introduces an opt-in regime for all commercial email to individual subscribers. Business can only send direct marketing messages to individuals where explicit prior consent is given. In other countries an opt out approach has been taken.

Spam is inherently global and the fight against spam needs a global approach: unsolicited emails can come from anywhere in the world. Spam and the scams and deceptive content it can deliver may have a serious impact on consumer confidence. Approximately 90% of ecommerce remains business to business which may reflect a lack of consumer confidence.

³ Available at: http://www.hm-treasury.gov.uk/documents/financial_services/savings/fin_sav_sand.cfm

It may be the EU approach is over-zealous, dampening competition and providing a competitive advantage to firms located outside the EU. Alternatively other countries may be too lax which has a knock on effect to consumer confidence in all countries.