



**International  
Competition  
Network**

# **Market Studies Good Practice Handbook**

*Prepared by*

**ICN ADVOCACY WORKING GROUP**

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Rio de Janeiro, Brazil, April 2012

## FOREWORD

The use of market studies as a tool for competition (or competition and consumer) authorities is now widespread. A year ago, the ICN's Market Studies Project Report found that at least 40 ICN member authorities were using market studies, and the number continues to grow.



As the findings in that Report show, market studies practice around the world is quite varied. Market studies are carried out under different legislative provisions, for different purposes, using different processes. For example, some authorities have formal powers to compel the supply of information for market studies, and others do not. However, a common theme throughout international practice is that market studies can help to build authorities' capacity and can, if done well, both enhance their reputation and promote better market outcomes.

The aim of this Market Studies Good Practice Handbook is to gather together accumulated experience and learning on the conduct of market studies. It does not attempt to prescribe particular purposes for market studies, nor to comment on the range or scope of legal powers that might be provided. But it does identify a number of good practices in conducting market studies that members of the Advocacy Working Group have found to be beneficial and effective. These are not prescriptive, and ICN member authorities should select from them according to their own needs, priorities and resources.

It is not the aim of this work to press for convergence in market studies practice, nor does this seem possible or advisable at this time given the divergence in legal powers and approach. However, I hope that this Handbook will inform member authorities of practices that they can consider adopting or adapting, if they wish, to improve the quality and delivery of their market studies work.

This document was prepared by the Advocacy Working Group, drawing on input from across the ICN membership and from NGAs. It was road-tested with the ICN membership during 2010-11 and revised during 2011-12. I welcome this approach and thank all participating ICN members and NGAs for contributing their insight and experience to enrich the debate. In the light of all this work I think we can be confident that this final version is as effective as it can be and fully captures the very best in market studies practice internationally.

A handwritten signature in black ink, appearing to read 'John Fingleton'.

John Fingleton  
Chair of the ICN Steering Group  
March 2012

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## 1. INTRODUCTION

1.1 This Handbook looks at good practice<sup>1</sup> in the conduct of market studies. It is not intended to be binding in its effect. Rather it is intended as a resource from which competition (or competition and consumer) authorities can draw. It is hoped that this Handbook will be useful for authorities that:

- already conduct market studies
- have recently started conducting market studies
- are considering introducing market studies to supplement their existing enforcement and advocacy toolkit.

1.2 It is intended that this Handbook should apply broadly to different permutations of market study used internationally (an outline of some of the variations follows below). It is also recognised that authorities' legal powers and duties as regards market studies vary. For these reasons:

- it is not feasible or desirable to be prescriptive as to how ICN members should apply the good practice set out in this Handbook
- it is for ICN members to decide if they wish to select from the range of good practices set out here, according to their own particular needs, priorities and resources, and subject to their differing legal powers and duties.

1.3 As noted in the ICN's 2009 Market Studies Project Report,<sup>2</sup> market studies are a flexible tool that can, when used effectively, address a wide range of needs. The working definition of 'market study' used in that report was as follows:

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<sup>1</sup> 'Good practices' are generally considered to be practices which work well in the jurisdiction(s) where they are applied, but which may or may not work well in the legal context of another jurisdiction, and therefore cannot necessarily be recommended for adoption by all ICN members.

<sup>2</sup> *ICN Market Studies Project Report* presented at the 8<sup>th</sup> Annual Conference of the ICN, Zurich, June 2009, see paragraphs 1.4 to 1.7. This report can be downloaded from the ICN website at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc363.pdf>

*'For the purposes of this project, market studies are distinguished from enforcement action against individual undertakings.*

*Market studies are research projects conducted to gain an in-depth understanding of how sectors, markets, or market practices are working.*

*They are conducted primarily in relation to concerns about the function of markets arising from one or more of the following: (i) firm behaviour; (ii) market structure; (iii) information failure; (iv) consumer conduct; (v) public sector intervention in markets (whether by way of policy or regulation, or direct participation in the supply or demand side of markets); and (vi) other factors which may give rise to consumer detriment.*

*The output of a market study is a report containing findings based on the research. This may find that the market is working satisfactorily or set out the problems found. Where problems are found the market study report can include: (i) recommendations for action by others, such as legislatures, government departments or agencies, regulators, and business or consumer bodies; and/or (ii) commitments by the competition (or competition and consumer) authority itself to take advocacy and/or enforcement action.'*

- 1.4 Consistent with this working definition, in this Handbook the expression 'market,' when used in the context of market studies, is not necessarily intended to denote a relevant market as is often defined during enforcement actions, but is intended as a broader concept capturing sectors and market, or sectoral, practices as well as economic markets.

1.5 At the time of the 2009 Market Studies Project Report, at least 40 ICN members were using market studies as part of their toolkit.<sup>3</sup>

1.6 ICN member authorities conduct market studies for a variety of purposes. In some jurisdictions the purpose of market studies is dictated by statute, but in many it is not. Two key possible purposes for market studies, identified by a number of authorities in the 2009 Market Studies Project Report, were:

- as a lead-in to enforcement action when anticompetitive behaviour is suspected in a sector, but authorities do not know the exact nature and source of the competition problem
- as a lead-in to competition advocacy where no violation of competition laws is suspected but it appears that the market is not functioning well for consumers.

1.7 Other possible purposes may include the following:

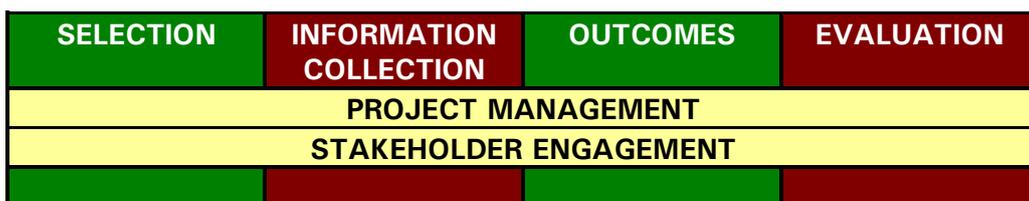
- to fact-find so as to enhance an authority's knowledge of a specific market or sector, or to build technical expertise about markets – this may be particularly useful for markets that are fast-moving, or to take account of recent developments
- to address public interest or concern about markets not functioning in a competitive way - where a market study can either confirm such concerns, or reveal them to be unfounded
- to provide an indication of how an authority might analyse, or apply competition principles to, issues in a sector
- to develop thinking about proposals by regulators or legislators for future regulation so as to be able to advocate to minimise adverse effects on competition.

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<sup>3</sup> A list of the jurisdictions using market studies at that time is presented at Table 2.1 (pages 18 to 20) of the 2009 *ICN Market Studies Project Report* (see footnote 2).

Where authorities have both competition and consumer enforcement powers, market studies can be a good way to develop the link between competition and consumer policy.

- 1.8 Given that no one purpose or purposes for market studies appears, legally or ideologically, better than any other, this Handbook does not attempt to identify good practice in relation to the particular purposes for which market studies should be conducted.
- 1.9 Nor is it the intention of this Handbook to comment on the range or scope of legal powers that ICN member authorities should have to conduct market studies (though it does mention, where relevant and useful, what powers may be available to authorities).
- 1.10 Instead, the Handbook focuses on ways in which ICN member authorities can exercise any legal powers that they have and, more broadly, practical measures they can take to improve the efficiency and effectiveness of market studies, for whatever purpose they are used.
- 1.11 The main body of the Handbook is divided into seven chapters. Chapters 3 and 4 (respectively) consider aspects of project management and of stakeholder engagement that apply throughout the process of conducting a market study, as illustrated below. Chapters 5 to 8 are ordered broadly to follow the key stages of conducting a market study (namely, selection, information collection, outcomes and evaluation).



- 1.12 In more detail:

- Chapter 2 takes an overview of the market studies process
- Chapter 3 looks at good practice in the project management of market studies
- Chapter 4 considers good practice in stakeholder engagement
- Chapter 5 looks at good practice in the selection of market studies
- Chapter 6 examines good practice in the collection and analysis of information
- Chapter 7 considers good practice in developing and securing outcomes from market studies
- Chapter 8 looks at good practice in evaluating the impact of market studies.

For ease of reference, the summaries of key points of good practice in Chapters 2 to 8 are collected together in one place in Chapter 9, the summary chapter.

1.13 The Handbook is a product of the ICN's Advocacy (Market Studies Project) Working Group during 2009 to 2010. It builds on, and is partly informed by, the Advocacy Working Group's 2009 Market Studies Project Report,<sup>4</sup> and the information collected for the purposes of that report.

1.14 Individual chapters of this Handbook were drafted and peer reviewed during 2009 to 2010 by different ICN member authorities involved in the ICN's Advocacy (Market Studies Project) Working Group. The ICN member authorities involved in drafting and peer reviewing each chapter were as follows:

- Chapter 1 – Introduction: UK Office of Fair Trading (OFT)
- Chapter 2 – Overview of the Market Studies Process: German Bundeskartellamt and Irish Competition Authority

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<sup>4</sup> See footnote 2.

- Chapter 3 – Project Management: German Bundeskartellamt, Irish Competition Authority, and UK OFT
- Chapter 4 - Stakeholder Engagement: Canadian Competition Bureau and Russian Federal Antimonopoly Service
- Chapter 5 – Selection of Market Studies: French Autorité de la Concurrence and US Federal Trade Commission
- Chapter 6 – Information Collection and Analysis: Jamaican Fair Trading Commission, Portuguese Competition Authority and US Federal Trade Commission
- Chapter 7 – Developing and Securing Outcomes: Mexican Comisión Federal de Competencia and Danish Competition Authority
- Chapter 8 – Evaluation: UK OFT, Japanese Fair Trade Commission, and UK Competition Commission
- Chapter 9 – Summary: UK OFT

1.15 The draft Handbook as a whole was peer reviewed by the following NGAs<sup>5</sup>:

- John Holmes of Which?
- David Aitman of Freshfields Bruckhaus Deringer LLP
- John Hilke, economic consultant, formerly of the US Federal Trade Commission's Bureau of Economics.

1.16 Following the drafting and peer review process described above, the draft Handbook was reviewed and discussed by the ICN Advocacy (Market Studies Project) Working Group as a whole. A full list of the members of the ICN Advocacy (Market Studies Project) Working Group is attached at Annex 1 to this Handbook.

1.17 The draft Handbook was presented at the 9<sup>th</sup> Annual ICN Conference in Istanbul in April 2010 and published on the ICN website.<sup>6</sup> The draft

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<sup>5</sup> Non-governmental agencies.

<sup>6</sup> <http://www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf>

Handbook was road-tested by ICN members during 2010 to 2011, and a road-testing report was submitted by the ICN Advocacy Working Group to the 10<sup>th</sup> Annual ICN Conference in the Hague in May 2011 and published on the ICN website.<sup>7</sup> Revisions incorporating feedback from the road-testing were made by the ICN Advocacy Working Group during 2011 to 2012 and this final version of the Handbook was submitted by the Advocacy Working Group to the 12<sup>th</sup> Annual ICN Conference in Brazil in April 2012.

1.18 In parallel with preparing the draft of this Handbook, in 2009 to 2010, the Advocacy (Market Studies Project) Working Group produced a web-based information store on market studies. This gives a brief description of the subject matter, and outcomes, of market studies carried out by all participating ICN members in the [five] years [to January 2010]. It also provides links, where available, to the full published study reports on participating members' websites.

1.19 It is hoped that the information store will be enable ICN members, and others, to identify existing market studies in particular sectors, and that this will assist with:

- identifying issues for study
- the cross-fertilisation of ideas about market issues
- identifying approaches to particular market problems
- identifying ICN members who may be able to assist/advise further on their experience of conducting market studies in particular sectors.

The information store can be consulted on the ICN's website.

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<sup>7</sup> The road-testing report is available here: <http://www.internationalcompetitionnetwork.org/uploads/library/doc746.pdf>

A list of all the ICN members who responded to the road-testing questionnaire is at Annexe 2 to that report. ICN members who provided more detailed road-testing comments are noted in Part 3 of the report, and their comments are reproduced at Annexes 7 to 11 of the report.

1.20 The ICN Advocacy (Market Studies Project) Working Group would like to thank all participants in the drafting, peer review and road-testing of this Handbook and in the preparation of the market studies information store for their hard work and dedication in bringing these projects to fruition.

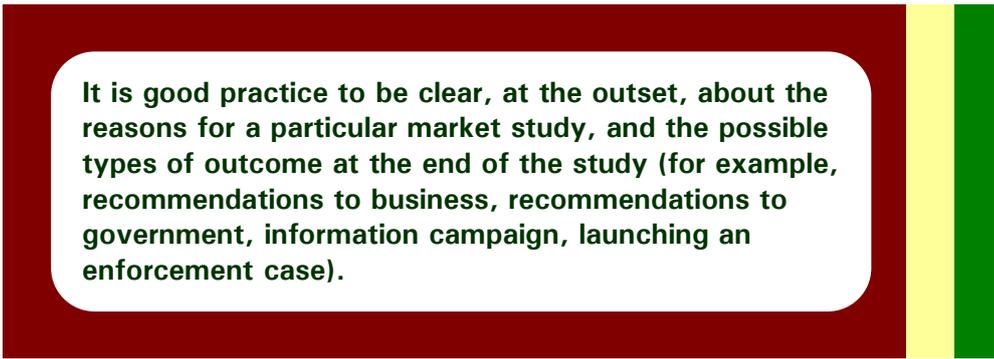
## 2. OVERVIEW OF MARKET STUDIES PROCESS

### Introduction

2.1 This chapter provides the context and overview for the later chapters. It offers tips for good practice in the following areas:

- the distinction between market studies and enforcement action
- the market studies process
- two areas that apply throughout the process of conducting a market study:
  - effective project management and
  - effective stakeholder engagement<sup>8</sup>
- resourcing of market studies
- the length of market studies
- the number of market studies that an authority conducts
- deciding whether to conduct a study jointly with another organisation
- special considerations when conducting market studies that are required by the government or legislature.

### Market studies as distinguished from enforcement cases



**It is good practice to be clear, at the outset, about the reasons for a particular market study, and the possible types of outcome at the end of the study (for example, recommendations to business, recommendations to government, information campaign, launching an enforcement case).**

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<sup>8</sup> The expression 'stakeholder' is defined at paragraph 4.4. Paragraph 4.15 sets out a non-exhaustive list of potential stakeholders for market studies.

- 2.2 It is not always clear to stakeholders, in particular business stakeholders, why authorities study markets, and the types of possible outcomes of market studies.
- 2.3 This may particularly be the case in those jurisdictions where market studies are (or can be) conducted for the purpose of establishing whether it would be appropriate to conduct later enforcement action in the relevant market.
- 2.4 Clear and early communication of the reasons for studying a market and the range of types of possible outcomes that may result from the market study (for example recommendations to business, recommendations to government, information campaign, launching an enforcement case) should help to distinguish market studies from enforcement action and change any perception on the part of businesses that market studies will *necessarily* result in enforcement action. Of course, it will not be possible to identify at the outset of a study what specific outcomes will result from it, but listing the range of possible outcomes may help stakeholders understand more clearly the differences between the market study tool and enforcement action. Authorities will want to ensure that they are clear about whether information submitted through market studies could be used for any enforcement action. This point is considered in more detail in Chapter 6.
- 2.5 Market studies can have benefits for industry, insofar as industry players are given an opportunity to:
- inform the authority about how the market functions
  - make their own suggestions as to how to improve the market
  - identify outputs that could improve market functioning (where these are needed), potentially including deregulation

- identify which of their practices do not or do not appear to comply with the law and which ones raise doubts as to their compliance – this should help spur voluntary compliance.

Better functioning markets bring benefits for consumers and businesses alike.

2.6 To encourage cooperation from stakeholders and aid transparency, whatever the reasons for studying a market and possible outcomes of a market study, it is good practice to explain why authorities conduct market studies and what the types of possible outcomes of market studies can be. To achieve greater clarity on these points, authorities can consider:

- developing internal policy on the purpose of market studies and the types of possible outcomes
- describing their internal policy in speeches, statements and/or published policy guidance
- explaining at the time that a study is publicly launched, what the purpose and, where appropriate, possible outcomes of the study are.

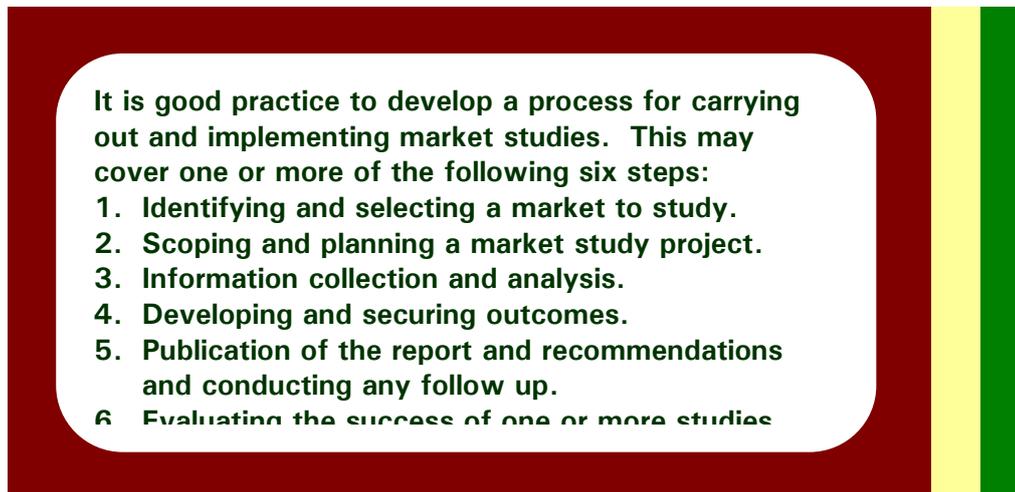
2.7 In some circumstances, without appropriate communication, the distinction between a market study of a sector of the economy and an investigation of alleged anticompetitive activity involving many participants (such as a cartel) may not initially be clear, and authorities may wish to make it clearer.

2.8 In this case, the distinction between a market study and enforcement action can be achieved in a number of ways, for instance by:

- authorities articulating the general principles they apply when deciding whether to address issues by way of a market study or enforcement action
- when appropriate, authorities being very clear about when a market study has finished and when later enforcement action begins

- where authorities have the power to use information collected during market studies for later enforcement action, they might take a policy decision instead to use fresh requests for information to gather evidence for any later enforcement action<sup>9</sup> (the relative benefits and burdens for stakeholders could usefully be taken into account in any such policy decision<sup>10</sup>)
- if complaints about alleged infringement of competition prohibitions come in to market studies teams, they can be forwarded to an enforcement team to consider.

### Market studies process



**It is good practice to develop a process for carrying out and implementing market studies. This may cover one or more of the following six steps:**

- 1. Identifying and selecting a market to study.**
- 2. Scoping and planning a market study project.**
- 3. Information collection and analysis.**
- 4. Developing and securing outcomes.**
- 5. Publication of the report and recommendations and conducting any follow up.**
- 6. Evaluating the success of one or more studies**

2.9 Market studies can demand large expenditures of time and resources, typically ranging from two to three full time staff to, in exceptional cases, as many as 25 experts and other employees.<sup>11</sup> Likewise, most

<sup>9</sup> OECD Directorate for Financial and Enterprise Affairs Competition Committee, 21 November 2008 (DAF/COMP (2008) 34) *Policy Roundtables: Market Studies*, page 214. A link to this report is available here: [http://www.oecd.org/document/38/0,3343,en\\_2649\\_34685\\_2474918\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/38/0,3343,en_2649_34685_2474918_1_1_1_1,00.html)

<sup>10</sup> Business stakeholders may prefer it if information submitted during a market study is not relied on as evidence in any later enforcement action. On the other hand, receiving successive overlapping information requests may increase their burden.

<sup>11</sup> 2009 *ICN Market Studies Project Report* (see footnote 2), page 67.

market studies require a time commitment of at least six months to one year, with some studies lasting as long as two years.<sup>12</sup>

2.10 Having a standardised process for carrying out and implementing market studies can help ensure that they are conducted in an efficient and transparent manner, and that the public resources invested in them are used to best effect. Efficiency in conducting studies will also help to minimise burdens on affected stakeholders.

2.11 Explaining the general process of how an authority conducts market studies can help stakeholders understand it. This, in turn, can enhance the reputation of the authority by increasing its transparency and accountability and demonstrating a professional approach. It can also increase levels of stakeholder engagement in market studies, whether in submitting information about potential issues for study, in responding to information requests, or in helping to secure beneficial outcomes from studies.

2.12 Though authorities have varying levels of resources to devote to market studies and not all market studies are the same, in addition to project management and stakeholder engagement (which are needed throughout a study), market studies often involve some or all of the following six steps:

- Step 1** Identification and selection of a market to study.
- Step 2** Scoping and planning of the project.
- Step 3** Information collection and analysis.
- Step 4** Developing and securing outcomes.
- Step 5** Publication of the report and recommendations, and conducting any follow-up.
- Step 6** Evaluating success.

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<sup>12</sup> 2009 ICN Market Studies Project Report (see footnote 2), page 62.

2.13 Having such a framework can facilitate effective market study delivery, which can be more challenging to achieve in market studies than in enforcement work because there are typically fewer legislative processes to follow, and fewer deadlines imposed by legislative, judicial, or other external drivers.<sup>13</sup>

***Step 1. Identification and selection of markets to study***

2.14 Drawing on intelligence from relevant sources, the authority can identify issues that could appropriately be considered and addressed through a market study, and can select from the identified issues those that most merit study. See Chapter 5 for a more detailed discussion of the selection process.

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<sup>13</sup> This is not, of course, the case where the executive or legislature commissions a market study and sets a deadline for completion.

### ***Step 2. Scoping and planning the project***

- 2.15 Once a study has been selected, it is good practice to create a team and to determine the scope of the study and to prepare a project plan that outlines the expected time frames, activities, resources, work streams and overall organisation of the market study. Scoping and planning is covered in more detail in Chapter 3, which deals with project management.

### ***Step 3. Information collection and analysis***

- 2.16 The team that has been set up to handle the study will then commence collecting and analysing information from appropriate sources. Chapter 6 considers this in more detail.

### ***Step 4. Developing and securing any outcomes***

- 2.17 Where studies are intended to have outcomes, once the information has been collected and analysed, the team will carefully consider how to develop these outcomes and, if appropriate, to test them with stakeholders. Market study outcomes are considered in more detail in Chapter 7.

### ***Step 5. Publication and reporting on market study findings and conducting any follow-up***

- 2.18 The team that undertook the market study will usually draft a report containing the study's findings. Typically, expert staff and – where applicable – the relevant governing body within the authority will review the report, which may subsequently be published. Publication and reporting on market study findings and conducting any follow-up are covered in more detail in Chapter 3, which looks at project management.

### ***Step 6. Evaluating the success of market studies***

- 2.19 After the study has been published, it can be useful for the team to review its work and determine lessons to be learned for future studies, for example, as to how to improve efficiency or increase the impact of future studies. Evaluation is covered in more detail in Chapter 8.

#### **Project management of market studies**



**It is good practice carefully to manage the process and outcomes of market studies.**

- 2.20 It is important that studies be carefully managed throughout so that they can be completed in a reasonable amount of time and can have a positive impact on the relevant sector. Studies that take a long time to complete, even if they are ultimately finished, may have reduced impact, for example, because it is difficult to sustain relevant stakeholders' engagement over time, or because the economic conditions described in the study become dated.<sup>14</sup>
- 2.21 In addition, studies that are poorly managed and that fail to deliver clear outcomes (where this is the intention) may have reduced impact. Good project management of studies will help to ensure professionalism to build an authority's reputation. Chapter 3 considers in more detail elements of effective project management that authorities can consider applying throughout the market study process.

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<sup>14</sup> Different considerations may apply when studies are requested or required by the executive or the legislature to examine the effects of market shocks or the volatility of prices. In such cases, it may make sense for the study to be conducted over a period that would allow for a competitively functioning market to settle.

## Stakeholder engagement

**It is good practice to solicit stakeholder engagement during market studies. Information provided by stakeholders and their support for a market study's outcomes (if it can be obtained) can be key determinants of a market study's success.**

- 2.22 Effective engagement with stakeholders needs attention throughout the course of a study. Stakeholder inputs – in terms of information about the way the market functions – and their reactions to a study's findings and any proposed outcomes can have a large impact on the study's success. This is particularly true in jurisdictions where authorities do not have powers to compel the supply of information, and where authorities depend on the actions of others to achieve outcomes from their studies. Chapter 4 looks in more detail at effective stakeholder engagement in conducting market studies.

## Resources devoted to market studies

**It is good practice to ensure that, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.**

- 2.23 Where possible, market study teams are formed by drawing experts from the authority that have relevant skills and staff members with knowledge of the market to be studied. Commonly, teams include economists and/or lawyers. Statisticians and financial analysts may also be needed. Where authorities cannot resource this internally, some

have noted that they might look externally to secure the necessary expertise. Using third parties to conduct all or parts of studies is considered further in paragraphs 2.28 and 2.29 below. Typically, authorities will seek, where possible, to draw from their expertise both in terms of the specific industry under study and experience of conducting market studies.

2.24 Some authorities have found it useful to specify a 'home' where market studies are managed and organised within the authority. This can be accomplished by putting in place a dedicated team that only conducts market studies, or by giving oversight of, or a lead role in market studies to, a specific office, or assigning market studies to the offices with relevant enforcement experience in the sector. Whether a dedicated team or office can or should be constituted may depend on how many market studies are carried out each year, the complexity of those studies, and the resources required to undertake them, and whether the authority in question possesses the necessary personnel to staff a dedicated team.

2.25 A dedicated team or office provides a fixed resource to maintain and manage the continuous flow of work associated with market studies. Such a team could also help the authority to:

- develop greater specialisation in market studies
- be more efficient in selecting markets to study and preparing reports
- create a cohesive approach to market studies policy.

2.26 On the other hand, having a dedicated team or office could lead to fragmentation within the authority, with staff focused on enforcement and those devoted to market studies not interacting effectively. This could restrict the authority's efforts to create a consistent overall policy approach encompassing both market studies and enforcement activity.

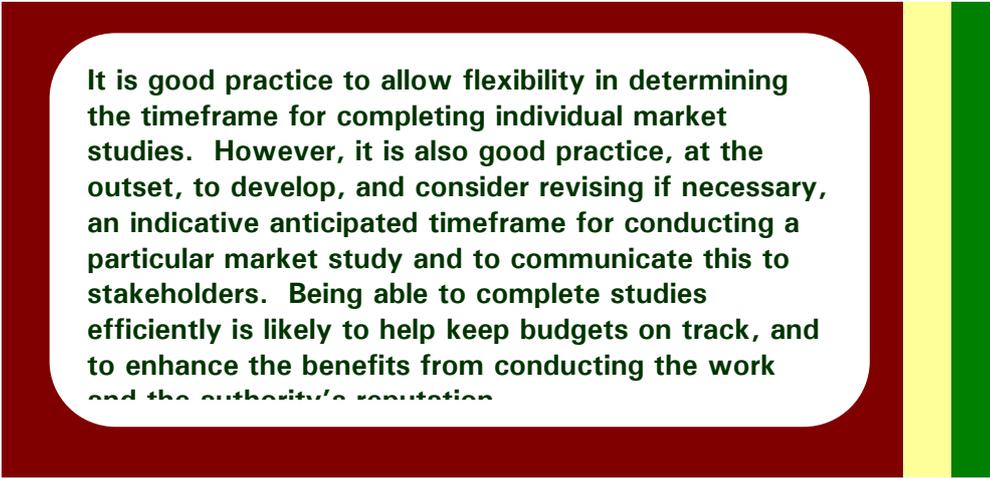
- 2.27 Even where an authority decides not to, or lacks the resources needed to, staff a dedicated team for market studies work, identifying a group of staff with experience in conducting market studies who can provide advice and guidance to staff members who are new to the market studies process can be useful, if it can be accomplished within resource limitations.
- 2.28 At times, it might be useful to bring in third parties to assist with a market study. Indeed, about half of the authorities that responded to the 2009 ICN Market Studies Project survey stated that they do use third parties (whether always, usually, or occasionally).<sup>15</sup> Options include contracting out the entire market study project, or allocating discrete tasks to external consultants, for example consumer research, or the preparation of case studies that illustrate the way that the market works. Some authorities have found it useful to contract out the whole of a study where the subject matter of a study is politically controversial and it is beneficial for the study to be conducted by a body that can take an independent stance.
- 2.29 When authorities choose to contract out only parts of their market studies work, it may be helpful to consider whether the benefits outweigh the costs, including the internal cost of managing contractors' delivery and output. In such cases, it may be useful to limit the involvement of third parties to the following types of situation:
- where third parties have specific knowledge that the authority lacks, for example in conducting consumer market research
  - where work being contracted out is technical or theoretical in nature
  - where the work being contracted out is clearly defined in its scope and in the required deliverables for example conducting a limited number of case studies

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<sup>15</sup> See paragraph 7.23 of the 2009 *ICN Market Studies Project Report* (see footnote 2).

- where the authority simply lacks the personnel to undertake the work itself, and requires assistance to complete the study.

### Length of market studies



It is good practice to allow flexibility in determining the timeframe for completing individual market studies. However, it is also good practice, at the outset, to develop, and consider revising if necessary, an indicative anticipated timeframe for conducting a particular market study and to communicate this to stakeholders. Being able to complete studies efficiently is likely to help keep budgets on track, and to enhance the benefits from conducting the work and the authority's reputation.

- 2.30 Setting a standard length of time for market studies is extremely difficult, and not advisable, because studies vary to such a large extent depending on the specifics of the industry and/or the issues to be studied.
- 2.31 Furthermore, it may be important to retain some degree of flexibility within each individual study. After beginning the collection and analysis of information, authorities may discover that a market study will require more or less time than anticipated at the outset. The overwhelming majority of authorities are able to set their own timeframes in conducting a study, and to alter those defined timeframes after commencing the study.<sup>16</sup> If the circumstances warrant, authorities should not be reluctant to expand or truncate the scope and the timeframe for completing a market study.

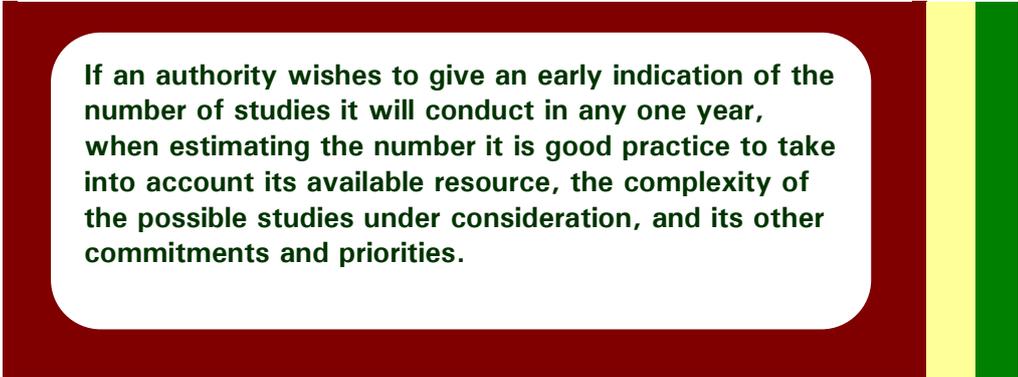
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<sup>16</sup> See paragraph 7.21 of the 2009 *ICN Market Studies Project Report* (see footnote 2).

- 2.32 However, although there is a range of approaches among the ICN membership, authorities may wish to consider providing an indicative timeframe for completion of the study, and an outline of the study's scope, at the time it is publicly launched. Doing so may help increase transparency and manage stakeholders' expectations. However, it will be important to retain flexibility to revise timeframe and scope at a later point if this becomes necessary. Because of the importance of flexibility on timing, some authorities may choose not to announce an expected timeframe at the time of public launch.
- 2.33 It may also be sensible to ensure that there is a process for stopping or curtailing studies where, following initial collection and analysis of information, it becomes clear either that the issues initially envisaged do not exist (in such cases publishing a short report giving the market a 'clean bill of health' can be beneficial in itself) or that the issues identified do not appear to be capable of resolution by the authority or by relevant stakeholders.
- 2.34 If an authority has a well-developed market study selection process, the need to stop or curtail a market study in this way should arise only infrequently because the authority will focus its efforts on selecting markets for study where the issues to address seem both relatively clear and relatively remediable. See Chapter 5 for more information on market study selection.
- 2.35 Conducting studies efficiently and with a minimum of delay is likely to help keep budgets on track, and to enhance the overall benefits of an authority's market study work: more can be delivered with less. Demonstrating efficiency in market studies work will also enhance stakeholders' appreciation of the benefits of market studies, and the authority's reputation. When market studies are conducted efficiently there is also less risk that market study results will be overtaken by

external events. Effective project management, considered in Chapter 3, plays a large part in securing efficient delivery of market studies.

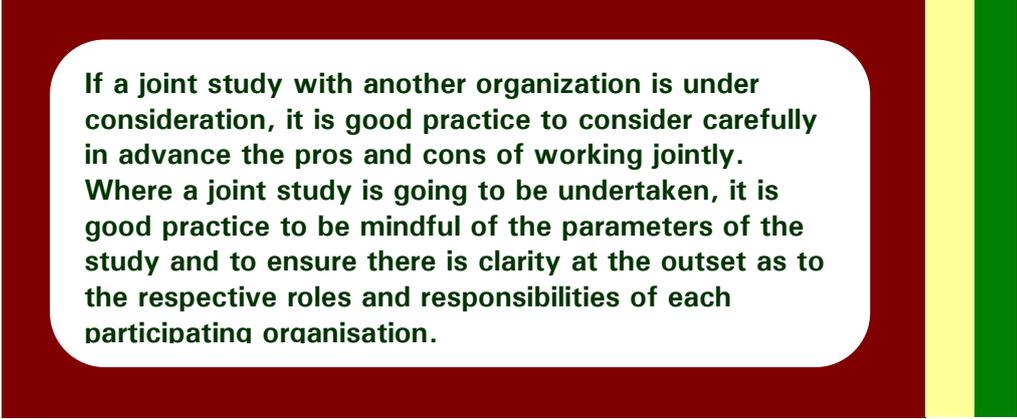
### Number of market studies



**If an authority wishes to give an early indication of the number of studies it will conduct in any one year, when estimating the number it is good practice to take into account its available resource, the complexity of the possible studies under consideration, and its other commitments and priorities.**

- 2.36 It may be unduly burdensome and inflexible for authorities to set a fixed number of studies to be conducted in any given year. How many studies an authority undertakes is likely to be influenced by the number of issues it has identified that appear to merit study, the resources at its disposal, the complexity of the markets and/or issues it has selected for study, and its other priorities and commitments for the year. If an authority wishes to give an early indication of the number of studies it is likely to conduct in the coming year, it makes sense to take these issues into account, and to allow some flexibility to address issues that may emerge as the year progresses. Typically, authorities will wish to be selective, taking on no more studies in any one year than they can handle, and focusing on markets where they can hope to accomplish the most. Adopting this approach may also help to encourage more active participation and support for market studies from stakeholders.

## Joint studies



**If a joint study with another organization is under consideration, it is good practice to consider carefully in advance the pros and cons of working jointly. Where a joint study is going to be undertaken, it is good practice to be mindful of the parameters of the study and to ensure there is clarity at the outset as to the respective roles and responsibilities of each participating organisation.**

2.37 In the 2008 OECD Policy Roundtable on Market Studies, some jurisdictions reported<sup>17</sup> that they routinely consider conducting market studies jointly with neighbouring authorities. It is also possible for authorities to consider conducting market studies jointly with regulatory authorities in the same jurisdiction. Joint studies may:

- provide added resources
- help to ensure that broader experience is brought to issues
- help to minimise burdens on stakeholders where other organisations already plan to conduct parallel work on the same, or related, issues
- provide opportunities to develop convergence on policy issues and analytical approach as between the organisations jointly conducting them.

2.38 Undertaking market studies jointly with another authority(ies), or with a regulatory body, requires a significant additional level of project management. Before deciding to commence a joint market study with another organisation it is important to assess whether each organisation's purpose and interests in carrying out the study are sufficiently aligned. Also, an understanding of the decision making

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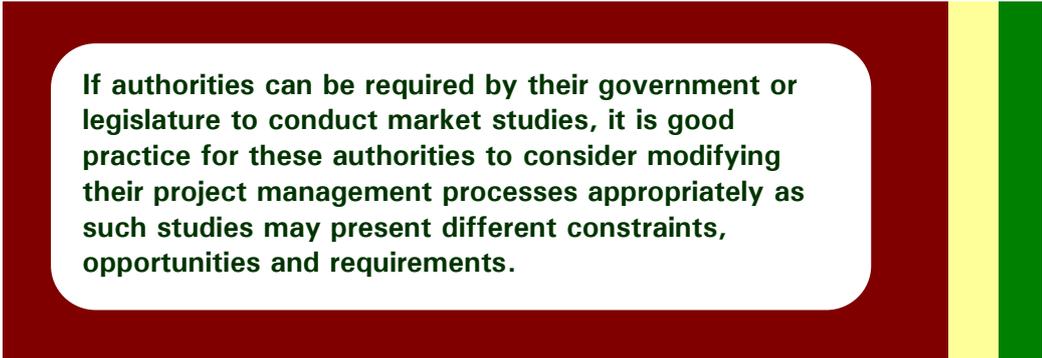
<sup>17</sup> For example Norway, in relation to the Nordic competition authorities, OECD *Policy Roundtables: Market Studies*, page 90 (see footnote 7).

processes of each organisation is necessary to establish an anticipated timescale for completing key stages of the project and publishing the final report.

2.39 Issues can arise regarding legal responsibility for, and ownership of, information, analysis, recommended outcomes, and reports. The ability of the two organisations lawfully to share information can also be an issue. Stakeholder perceptions are a key consideration. Will stakeholders be clear about respective roles and responsibilities? Will joint working with another organisation impair the authority's independence, or perceptions of its independence?

2.40 Where an authority decides to work jointly with another organisation, it may be helpful at the scoping and planning stage to identify ways in which work might be divided between the two organisations and how agreement will be reached and any disagreements dealt with.

**Special considerations when conducting market studies that are required by the government or legislature**



**If authorities can be required by their government or legislature to conduct market studies, it is good practice for these authorities to consider modifying their project management processes appropriately as such studies may present different constraints, opportunities and requirements.**

2.41 The constraints, and opportunities, of market studies that are required by the government or the legislature may be different from those that apply when market studies are self-initiated. For example:

- authorities' ability to self-select may be limited, and they would not be able to de-prioritise the required study
- aspects of scope may be mandated by the government or legislature
- planning and delivery may be dictated by an externally imposed timeframe
- where a study is intended to examine the causes and/or effects of a particular market shock, or the volatility of prices, the authority may wish (if possible) to conduct its study over a period that would allow for a competitively functioning market to settle
- it may be particularly important to engage government and/or legislative stakeholders in relation to findings and any proposed outcomes
- if the market study is particularly high-profile it may be advisable or necessary to deploy additional resources (and to take into account potential effects on the authority's ability to deliver its other priorities).

## Chapter 2 - Summary of Key Points of Good Practice

1	It is good practice to be clear, at the outset, about the reasons for a particular market study, and the possible types of outcome at the end of the study (for example, recommendations to business, recommendations to government, information campaign, launching an enforcement case). This should help stakeholders distinguish market studies from enforcement cases.
2	It is good practice to develop a process for carrying out and implementing market studies. This may cover one or more of the following six steps: <ol style="list-style-type: none"> <li>1. Identifying and selecting a market to study.</li> <li>2. Scoping and planning a market study project.</li> <li>3. Information collection and analysis.</li> <li>4. Developing and securing outcomes.</li> <li>5. Publication of the report and recommendations and conducting any follow up.</li> <li>6. Evaluating the success of one or more studies.</li> </ol>
3	It is good practice carefully to manage the process and outcomes of market studies.
4	It is good practice to solicit stakeholder engagement during market studies. Information provided by stakeholders and their support for a market study's outcomes (if it can be obtained) can be key determinants of a market study's success.
5	It is good practice to ensure that, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.
6	It is good practice to allow flexibility in determining the timeframe for completing individual market studies. However, it is also good practice, at the outset, to develop, and consider revising if necessary, an indicative anticipated timeframe for conducting a particular market study and to communicate this to stakeholders. Being able to complete studies efficiently is likely to help keep budgets on track, and to enhance the benefits from conducting the work and the authority's reputation.
7	If an authority wishes to give an early indication of the number of studies it will conduct in any one year, it is good practice to take into account its available resource, the complexity of the possible studies under consideration, and its other commitments and priorities.

<b>8</b>	If a joint study with another organization is under consideration, it is good practice to consider carefully in advance the pros and cons of working jointly. Where a joint study is going to be undertaken, it is good practice to be mindful of the parameters of the study and to ensure there is clarity at the outset as to the respective roles and responsibilities of each participating organisation.
<b>9</b>	If authorities can be required by their government or legislature to conduct market studies, it is good practice for these authorities to consider modifying their project management processes appropriately as such studies may present different constraints, opportunities and requirements.

### **3. PROJECT MANAGEMENT OF MARKET STUDIES**

#### **Introduction**

3.1 This chapter looks at the project management of market studies and offers tips for good practice under the following headings:

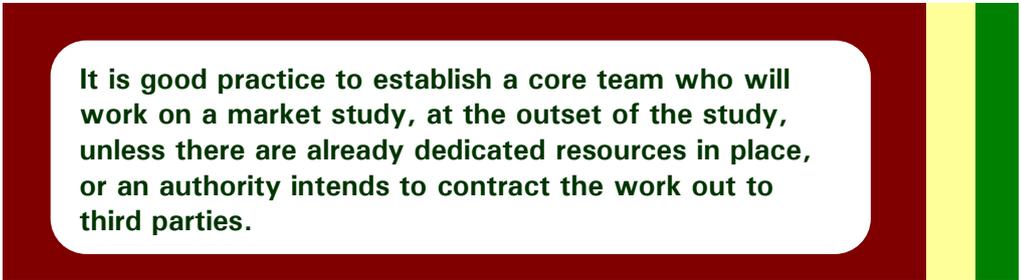
- why a project management process is of value
- creating a team
- considering conflicts
- roles and responsibilities
- team meetings
- input from outside the team
- working with other public bodies
- scoping
- planning
- market study launch
- review of the market study plan
- reporting progress
- risk management
- quality assurance
- deciding on desired outcomes
- drafting the written outputs
- releasing market study findings
- closure of the market study.

3.2 This chapter does not cover stakeholder engagement, the selection of market studies, information collection and analysis, outcomes, or evaluation as these are dealt with in depth in Chapters 4 to 8 respectively.

### **Why is a project management process of value?**

- 3.3 Having a well defined project management process in place can enable authorities to deliver their market studies work consistently and successfully as it helps to ensure that:
- work is well focused, planned and managed (thereby ensuring resources are utilised effectively)
  - the authority and its staff benefit from learning and, as appropriate, applying a consistent approach to their market studies work
  - accountability for delivery of the work is clear and understood by authority staff
  - the reputation of the authority is enhanced as a result of carrying out its work professionally.

### **Creating a market study team**



**It is good practice to establish a core team who will work on a market study, at the outset of the study, unless there are already dedicated resources in place, or an authority intends to contract the work out to third parties.**

- 3.4 Once a market study has been selected, unless resources are already in place,<sup>18</sup> the authority will often identify a team leader and put together a small core team<sup>19</sup> with the necessary skills to take the work forward. Commonly, teams include economists and/or lawyers. Input from statisticians and financial analysts may also be useful, and they may either form part of the core team, or be asked to provide input at

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<sup>18</sup> Some authorities may have dedicated market study teams already in place.

<sup>19</sup> The core team are those staff who will have a role for the whole market study duration. Other authority staff may be required, at discrete points, to work on the market study, for example statisticians to work on surveys and data analysis.

specific points. If there are limitations on available resources, an authority may decide to contract the market study out to an external provider.

### Considering conflicts



**Where not already required to do so by law, it is good practice for authorities to consider conflicts of interest for market study staff.**

- 3.5 Some authorities are required to consider conflicts of interest as a matter of law. Where there is no legal requirement, it is good practice to consider conflicts of interest in any event because, whether perceived or real, such conflicts can undermine the legitimacy of a market study or the process engaged in when conducting a study and/or the market study's findings. As with other kinds of work, authorities may consider whether any of the staff proposed or appointed to a market study team have any conflicts of interest that may influence their approach to the analysis in the market study, or may be perceived to be likely to do so. According to an authority's conflict of interest rules, where staff have conflicts, it may be necessary to address them.<sup>20</sup>

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<sup>20</sup> For instance, such rules may require conflicted staff to be removed from the matter altogether, or the putting in place of appropriate safeguards (for example, requiring the disclosure of the conflict and/or limiting the roles of those members of staff) to ensure that the findings of the market study are, and are perceived to be, free of personal interest. Rules may also require staff working on a market study to notify any new conflicts of interest that arise during the course of the study.

## Roles and responsibilities



**It is good practice to establish clear roles and responsibilities for market study team members at the outset of the study.**

3.6 A key first step in all market study teams is to establish clear roles and responsibilities for team members. Considering the full range of required skills, roles and responsibilities helps with:

- making the planning process simpler and more effective
- making sure staff are given roles and responsibilities that play to their strengths
- identifying whether any required skills are lacking which might require, for example, recruitment of staff or use of consultants
- preventing any gaps and/or overlaps in work.

It can also be helpful to retain a degree of flexibility so as to be able to manage peaks and troughs in workloads.

3.7 It may be useful for the team to review any literature, statistical data, market research, policy developments and regulation that is relevant and available before or after the study is underway. Likewise, it is helpful for the team to keep an eye on any regulatory changes and policy developments that emerge which could impact on the study. The team can check for any such new information during the course of the study and before it is finalised. Such reviews can include international developments in the same industry, where these may be relevant to the study's findings or outcomes.

## Team meetings

Where resource allows, it is good practice for market study teams to hold regular team meetings to monitor and review project plans, and risks, and test and debate ideas and findings with colleagues.

3.8 Where resource allows, having regular market study team meetings is a good way to ensure that all those involved in the market study are aware of, and have a shared sense of ownership in, the work, progress and desired outcomes of the study. Such meetings are also a good way for team members to:

- monitor and review the project plan
- seek the views and suggestions of their colleagues
- question and debate aspects of the work
- monitor and review the risks.

## Input from other parts of the authority, outside the market study team

It is good practice, early on, for market study teams to:

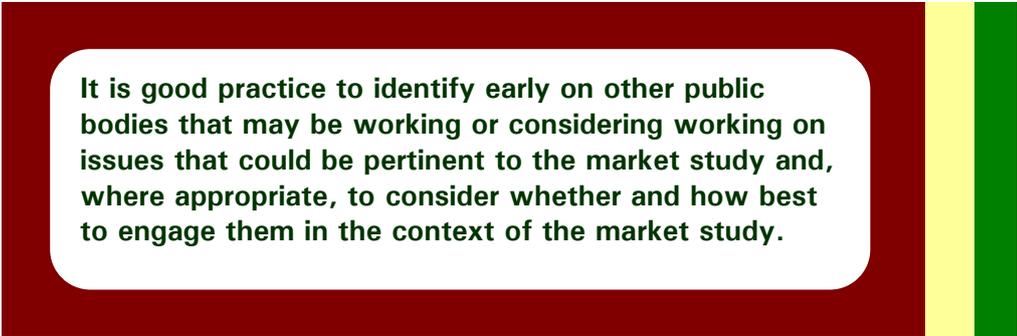
- identify and make contact with the other staff in the authority who will need to be engaged, consulted or involved in approving the work
- provide such staff with advance notice of the likely timing and timescales for their

3.9 Some market studies may require the input of other authority staff, for example when there is:

- an impact, overlap, synergy and/or dependency with other authority work or policy
- a need to engage with authority specialists, such as the press office or procurement staff, or to seek higher level internal approvals.

Giving such staff timely advance notice of when their input and engagement is likely to be required should help avoid last minute internal delays and problems and aids effective team working.

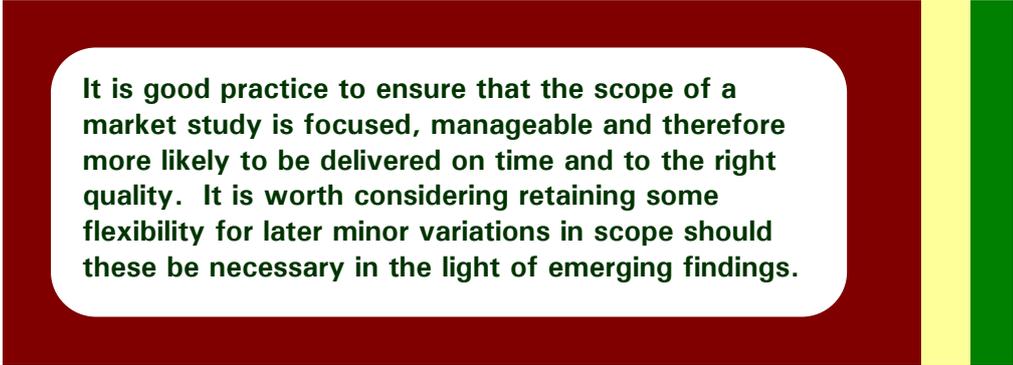
### **Working with other public bodies**



**It is good practice to identify early on other public bodies that may be working or considering working on issues that could be pertinent to the market study and, where appropriate, to consider whether and how best to engage them in the context of the market study.**

- 3.10 It is good practice for authorities to identify whether working closely with or consulting any public bodies that have responsibilities for the market in question, for example sectoral regulators, is advisable or necessary, as this may impact on a study's scope, process and/or outcomes. This is especially important where another public body may be doing (or planning to do) related or parallel work, because, for example, there might be opportunities to look for efficiencies and to minimise information gathering burdens on stakeholders via the sharing of information if possible. See Chapter 2 for consideration of joint studies.

## Scope



**It is good practice to ensure that the scope of a market study is focused, manageable and therefore more likely to be delivered on time and to the right quality. It is worth considering retaining some flexibility for later minor variations in scope should these be necessary in the light of emerging findings.**

- 3.11 One of the first tasks for the team is to determine the scope of the market study. Deciding what is outside the scope of the study, and why, is as important as knowing what to include. The team and/or the authority may need to explain and/or justify inclusions and exclusions and could be called upon by stakeholders to do so publicly.<sup>21</sup>
- 3.12 Being clear about what is inside and outside the scope of the study also helps to manage its delivery: the wider, or less defined, a study's scope, the more difficult it may be to achieve high quality and timely outputs.
- 3.13 Equally, however, it will be useful to retain the flexibility to vary the scope of a study once it has begun, should it be necessary to do so. The scope of the study may need to be changed as the study develops, for instance:
- to focus on those areas of a study that look more promising if initial findings suggest that the original hypotheses need to be altered, and/or that new material should be examined<sup>22</sup>
  - to expand the scope of the study if new promising avenues of research emerge.<sup>23</sup>

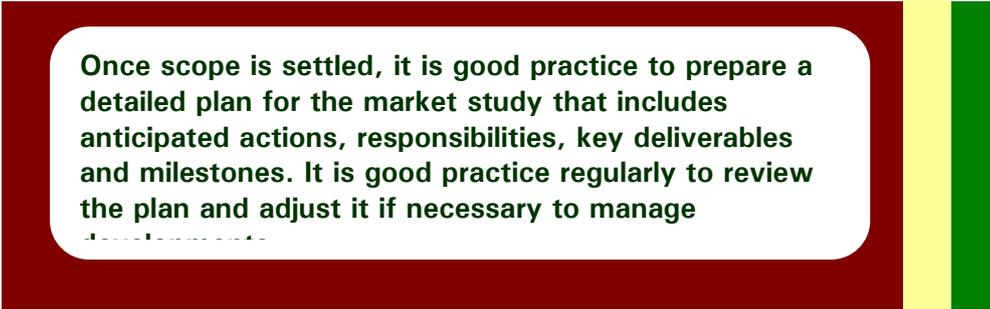
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<sup>21</sup> For example in front of a committee of legislators, or at a stakeholder conference.

<sup>22</sup> The risk of pursuing an unfounded hypothesis in the first place can also be reduced through thorough discussions among authority staff at the identification and selection stage, and also through discussions with stakeholders. See Chapters 4 and 5.

In such circumstances, it may be useful to revisit the initial project plan and assess the impact of the agreed change in scope on the required resources, timescales, and work streams. Where appropriate, authorities can consider informing stakeholders of changes to scope in order to facilitate their effective participation.

## Planning



**Once scope is settled, it is good practice to prepare a detailed plan for the market study that includes anticipated actions, responsibilities, key deliverables and milestones. It is good practice regularly to review the plan and adjust it if necessary to manage**

- 3.14 Once the scope has been settled, planning is the next task in a market study. The transition from thinking about scope as a set of issues and ideas to thinking about a set of responsibilities for activities, deliverables and deadlines is key.
- 3.15 When drafting a market study plan the team may find it useful to consider and decide on the detail of the following types of factors:
- activities
  - deliverables
  - deadlines
  - staff responsible/involved in delivery
  - activities involving staff outside of the team who will need to provide input/advice and/or be consulted
  - external dependencies – that is, reliance on something outside of project

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<sup>23</sup> The team should keep in mind that this may result in extended deadlines and reduced manageability.

- financial budget
- initial estimates for key milestones – such as:
  - when the study will be publicly announced
  - when information requests will be issued
  - when responses will be required
  - when information analysis will be complete
  - when the team will decide on desired outcomes
  - when findings and outcomes will be quality assured
  - when events such as public hearings, workshops or consultations are likely to take place
  - when drafting the final report will begin
  - when the final report will be published
  - what follow-up activities will be conducted, and in what timeframe.

3.16 Teams may wish to take care not to overlook or underestimate in the plan the time it can take, for example:

- to run a procurement and/or consultation process
- to collect and analyse information
- to engage effectively with stakeholders
- to quality assure the findings and proposed outcomes
- to engage in any follow-up that is needed to persuade others to implement any outcomes
- to monitor impact.

Because of the inherent timing and outcome uncertainties that can be involved in conducting market studies it may be sensible to allow time and budget for contingencies.

3.17 A project plan will ideally be reviewed and updated regularly to ensure that the progress of the market study is actively monitored, kept on course and changed as necessary. By regularly reviewing the plan authorities benefit from:

- early warning of any difficulties in meeting deadlines
- an understanding of the causes of any problems
- having time to consider the options (if any) for seeking any mitigating actions (such as requesting additional resource, cutting back on requirements/activities etc.)
- team members being aware of progress/problems etc.
- team members being aware that progress will be monitored, which reinforces accountability for their input.

### **Market study launch**

**When a market study is launched publicly, it is good practice for authorities to provide basic information about the scope of the study and contact points for further information.**

- 3.18 Some market studies, given their purpose(s), may merit having a public launch. A public launch can be achieved using one of more of the following:
- a published document
  - a press release
  - a targeted mail shot or e-mail announcement to those key stakeholders known to have an interest in the sector
  - announcement at a public event
  - announcement on the authority's website.
- 3.19 If a market study is launched publicly, authorities may at the same time announce basic information about a study, such as:
- the scope of the study
  - anticipated key milestones

- an indicative timeframe for completion of the study<sup>24</sup>
- the reasons for undertaking it
- suspected issues and/or areas of interest
- the types of possible outcomes of the study
- contact points for further information.

Authorities may also inform stakeholders how and when they can participate in and/or provide comments on the market study. Authorities may provide specific contact details for the market study team, and can consider creating a generic e-mail address for the purpose of dealing with all enquiries relating to the study.

### Reporting progress

**It is good practice for market study teams to report internally on progress as necessary and in accordance with any agreed internal governance processes.**

3.20 Market study teams may find it necessary or advisable, pursuant to any governance arrangements authorities may have, to keep authority staff and senior management informed about work progress and activities concluded, possibly including:

- new concerns (good and bad), including any proposed actions to be taken to address these
- next immediate steps.

Where such a need exists, it is a good idea to build such progress reports into the project plan.

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<sup>24</sup> As noted in Chapter 2, however, it will be important to retain flexibility to revise timeframe and scope at a later point if this becomes necessary. Because of the need for flexibility on timing, some authorities may choose not to announce an expected timeframe at the time of public launch.

## Risk management

**It is good practice for authorities actively to consider and manage the risks relating to a market study.**

- 3.21 In any market study there might be one or more areas or issues that pose a degree of uncertainty or risk for the study. There may be uncertainties related to the quality and consistency of the work, to the financial resources or organisation of the study, and to the impact on an authority's reputation or relationship with stakeholders.
- 3.22 The identification of uncertainties and risks, and of strategies to mitigate their impact, will give any study a better chance of being successful through, for example, enabling the team to be:
- alert and prepared
  - proactive – heading problems off so that they either do not happen or have less impact when they do.

## Quality assurance (QA)

**Where resources allow, it is good practice for authorities to quality assure market study work, and for market study teams to identify early on what elements of the market study should be quality assured and how the quality assurance will be carried out.**

### *What is quality assurance?*

- 3.23 Quality assurance is a process that helps to ensure that completed work meets appropriate standards. Having a process to quality assure market

study work, where resources allow it, is a helpful way for authorities and market study teams to ensure that market study work outputs will be of the desired quality and therefore capable of:

- bringing about the desired outcomes
- withstanding possible scrutiny and/or challenge

3.24 The degree to which quality assurance will need to be carried out may depend on the purpose(s) of the study and can be adjusted so that it is proportionate to the risks involved in the work. For example, a more limited quality assurance process may be needed for a study researching a market purely with the aim of improving the authority's understanding of the sector.

### ***What market study elements might require quality assurance?***

3.25 The ultimate aim is that the elements being reviewed meet appropriate standards and are able to stand up to scrutiny. Quality assurance review can include:

- **Evidential QA** - checking that planned research will capture evidence needed to test any hypotheses, and that resulting evidence is accurate, properly referenced, and sufficient to support any final hypotheses, and any proposed outcomes.
- **Logical QA** - checking that any economic, legal or other analytical argument is robust, supported by the evidence and produces credible answers and conclusions that are logically consistent.
- **Integrated QA** - checking that the arguments put forward support the conclusions overall, that they withstand scrutiny and are likely to achieve the desired outcomes.
- **Output QA** - checking the overall output is written and presented in the correct format and style to meet the authority's standards and the needs of the intended audience.

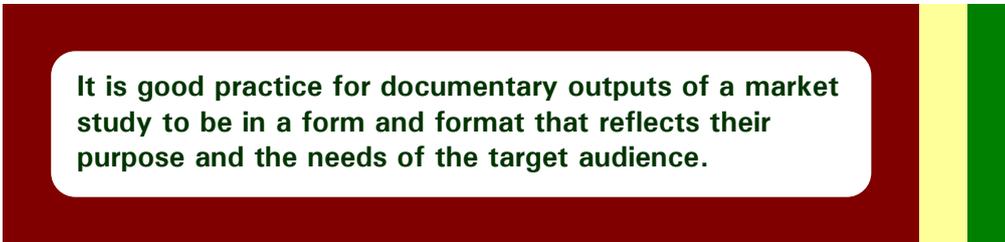
### **Deciding on desired outcomes**

**It is good practice for a market study team to consider the outcomes of a study and to ensure that these are submitted for approval according to the authority's internal governance processes.**

3.26 The team is likely to be called upon to identify and explain the rationale for the recommended outcomes of the study and to submit these for approval in accordance with whatever governance arrangement authorities may have. The market study team may also find it useful to seek input on proposals for:

- what the authority will publish in terms of its findings and recommendations, if any
- the best way to communicate these so as to maximise the desired impact
- further actions, for example advocacy and communication, that might be required to bring about the desired outcomes
- further actions that may be required to assess whether the desired benefits have materialised (for example on-going monitoring of market).

### **Drafting the written outputs**



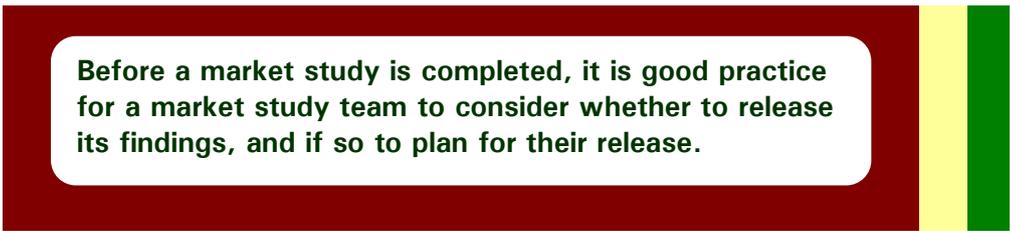
**It is good practice for documentary outputs of a market study to be in a form and format that reflects their purpose and the needs of the target audience.**

3.27 Market studies will often produce documentary outputs, some or all of which may be made publicly available, such as consultation documents, summaries of stakeholder input, detailed evidential reports and a final market study report. It is good practice for the format for written outputs to reflect:

- their purpose (for example, to inform, guide, consult, obtain support, seek decisions)
- the needs of the target audience (how informed are they, what their interests in the subject matter are and whether those interests are broad or narrow).

- 3.28 Authorities may wish to consider whether tracking changes between drafts is useful for audit and accountability purposes. If so, appropriate versions of papers and reports can be logged, dated and filed.

### Releasing market study findings



**Before a market study is completed, it is good practice for a market study team to consider whether to release its findings, and if so to plan for their release.**

- 3.29 Market study teams will usually consider whether some or all of the findings of a market study will be released, and if so, plan how they will be released in a way that maximises their likely impact.
- 3.30 When the findings of a market study are to be published, the team that undertook the market study will usually draft a final report<sup>25</sup> containing the study's findings. Before publishing a final report, it may be useful to obtain feedback from external stakeholders on proposed or possible findings and outcomes. Some authorities have such a discussion with stakeholders on the basis of an interim report which is made publicly available on the authority's website. (See Chapter 4 for a more thorough discussion of the importance of including stakeholders in the process.)
- 3.31 Where findings are published, some form of information specifically aimed at the press, clearly explaining the reasons for conducting the study and its results, may be valuable. The language required to describe the key points of a report to the media is often very different

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<sup>25</sup> Where the authority finds there are no problems in the market it may wish simply to issue a press release to that effect. Also, some studies may be pure information gathering exercises, in which case an authority may decide not to publish a final report.

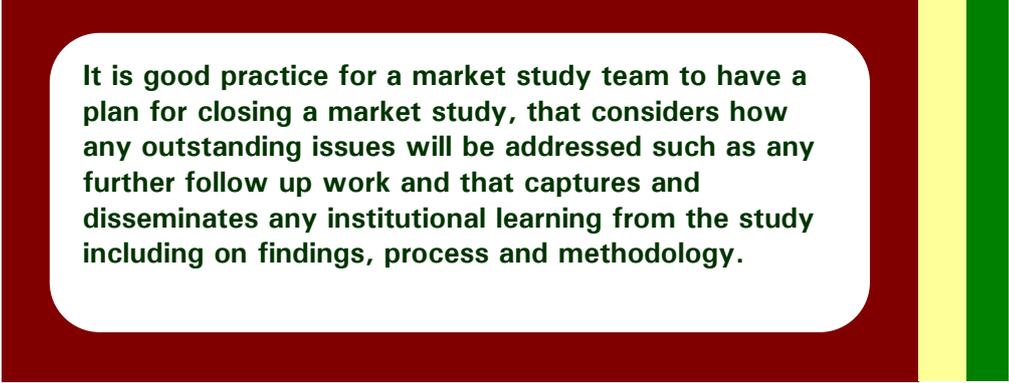
from the language required in report drafting, and care is needed to try to ensure that findings are not selectively or inaccurately reported.<sup>26</sup> Building momentum by using media can be particularly helpful to authorities who lack the means and/or powers to bring about implementation of a study's recommendations.

- 3.32 If information is to be provided to the media, ensuring that relevant staff have the necessary media skills to draft press releases and conduct interviews may be important. Such staff may also benefit from internal practice sessions, and having answers prepared in advance for anticipated questions.
- 3.33 To support the findings of the report, and to promote transparency, it may also be useful to publish separately the non-confidential information, empirical data and/or research that support the market study's findings. Such information, if clearly presented, can help to demonstrate any problems that have been identified in the market, and can lend the findings additional persuasive force.
- 3.34 Prior to any publication, market study teams will carefully consider and apply any relevant laws and policies governing the protection of information (for example, relating to confidential information, personal data and/or defamation), to guard against legal risks arising from publication. If there are no such legal provisions or policies, authorities may wish to consider introducing policies that address these issues.

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<sup>26</sup> This can be damaging to affected stakeholders, as well as diminishing public understanding of the study.

## Closure of the market study



It is good practice for a market study team to have a plan for closing a market study, that considers how any outstanding issues will be addressed such as any further follow up work and that captures and disseminates any institutional learning from the study including on findings, process and methodology.

- 3.35 Once work on the market study has been completed, the administration around closing the study can usefully:
- address whether any further follow-up work is likely to be needed and if it is ensure that it is appropriately timetabled, planned and resourced
  - ensure that the institutional learning generated during the work is captured and disseminated – this may include learning on findings, on process and on methodology
  - consider feedback for team members on their individual performance
  - ensure that all records are in order (filed for retention, returned and/or destroyed), and that there are no outstanding invoices.

## Chapter 3 - Summary of Key Points of Good Practice

1	It is good practice to establish a core team who will work on a market study, at the outset of the study, unless there are already dedicated resources in place, or an authority intends to contract the work out to third parties.
2	Where not already required to do so by law, it is good practice for authorities to consider conflicts of interest for market study staff.
3	It is good practice to establish clear roles and responsibilities for market study team members at the outset of the study.
4	Where resource allows, it is good practice for market study teams to hold regular team meetings to monitor and review project plans, and risks, and test and debate ideas and findings with colleagues.
5	<p>It is good practice, early on, for market study teams to:</p> <ul style="list-style-type: none"> <li>• identify and make contact with the other staff in the authority who will need to be engaged, consulted or involved in approving the work</li> <li>• provide such staff with advance notice of the likely timing and timescales for their engagement/input.</li> </ul>
6	It is good practice to identify early on other public bodies that may be working or considering working on issues that could be pertinent to the market study and, where appropriate, to consider whether and how best to engage them in the context of the market study.
7	It is good practice to ensure that the scope of a market study is focused, manageable and therefore more likely to be delivered on time and to the right quality. It is worth considering retaining some flexibility for later minor variations in scope should these be necessary in the light of emerging findings.
8	Once scope is settled, it is good practice to prepare a detailed plan for the market study that includes anticipated actions, responsibilities, key deliverables and milestones. It is good practice regularly to review the plan and adjust it if necessary to manage developments.
9	When a market study is launched publicly, it is good practice for authorities to provide basic information about the scope of the study and contact points for further information.

10	It is good practice for market study teams to report internally on progress as necessary and in accordance with any agreed internal governance processes.
11	It is good practice for authorities actively to consider and manage the risks relating to a market study.
12	Where resources allow, it is good practice for authorities to quality assure market study work, and for market study teams to identify early on what elements of the market study should be quality assured and how the quality assurance will be carried out.
13	It is good practice for a market study team to consider the outcomes of a study and to ensure that these are submitted for approval according to the authority's internal governance processes.
14	It is good practice for documentary outputs of a market study to be in a form and format that reflects their purpose and the needs of the target audience.
15	Before a market study is completed, it is good practice for a market study team to consider whether to release its findings, and if so to plan for their release.
16	It is good practice for a market study team to have a plan for closing a market study, that considers how any outstanding issues will be addressed such as any further follow up work and that captures and disseminates any institutional learning from the study including on findings, process and methodology.

## 4. STAKEHOLDER ENGAGEMENT

### Introduction

- 4.1 This chapter considers what 'stakeholder' means, and why engaging with stakeholders is important when conducting market studies.
- 4.2 It then offers good practice tips in the following areas:
- communicating the benefits of market studies
  - developing a stakeholder engagement strategy
  - communicating what market study documentary outputs will be published
  - communicating basic information about a study
  - seeking information from stakeholders
  - taking stakeholders' input into account
  - engaging stakeholders in developing market study outcomes
  - engaging policy makers.
- 4.3 Collecting and analysing stakeholder information is considered at greater length in Chapter 6, and developing and securing market study outcomes is considered more fully in Chapter 7.
- 4.4 ICN member authorities that carry out market studies apply differing levels of stakeholder engagement, and hold a range of views on how far stakeholder engagement should be sought in developing the outcomes of market studies. Accordingly, as with all the good practices in this Handbook, authorities can decide whether the good practices in this chapter are useful and relevant for their market studies regimes.

### **What does 'stakeholder' mean?**

4.5 For the purposes of this Handbook, 'stakeholder' means any individual, group of individuals (whether internal or external to the authority), organisation, or group of organisations that has an interest in the market(s) and/or the issues that are the focus of the market study, and/or any outcomes that may come out of the study. A list of common types of stakeholders can be found at paragraph 4.16 below.

### **Why is engaging with stakeholders important?**

4.6 Stakeholders can provide crucial inputs to a market study at various stages of the process by:

- helping to articulate the potential issues that may prompt a market study, or other appropriate action, in the first place
- providing the information, both anecdotal and empirical, required to accurately analyse the market
- providing input and critique that help to make findings and proposed outcomes more robust
- effecting or helping to effect desired outcomes from a study.

4.7 By contrast, there may be stakeholders who resist supplying information and engaging with authorities, or who unjustifiably undermine or attack the market study, its recommendations or other outcomes and any follow-up work.

4.8 Effective engagement of stakeholders will usually,<sup>27</sup> therefore, be a key factor in the success of any study. However, it is important for market study teams to bear in mind throughout that stakeholders have their own motivations and perspectives. To preserve the objectivity of a

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<sup>27</sup> Some market studies may be wholly or largely internal exercises, in which case engagement with stakeholders is not relevant.

study, teams will wish to guard against becoming too closely identified with any one or more stakeholders and their views.

### Communicating the benefits of market studies to stakeholders



**It is good practice for authorities to explain the benefits that may result from stakeholder participation in market studies generally, and for authorities to consider communicating the possible benefits of stakeholder engagement in relation to specific market studies.**

- 4.9 It is good practice for authorities to communicate to stakeholders the importance of their contribution to market studies and the benefits which may come to them from participating and contributing both in relation to market studies generally and in relation to specific market studies.<sup>28</sup> Authorities should weigh up whether there is a risk that an invitation to engage actively with an individual market study may lead stakeholders to conclude (wrongly) that the authority has ruled out the possibility of subsequently taking enforcement action.<sup>29</sup>
- 4.10 The benefits to stakeholders can be expressed as more than simply improving the functioning of the affected markets. Benefits of studies, and of a stakeholder's constructive engagement in them, may include the following:
- consumers gaining a better understanding of the market that may improve their bargaining position vis-à-vis existing and potential suppliers

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<sup>28</sup> This good practice was the subject of significant debate and there is a divergence of views and approaches among the ICN membership, with more in favour than against the good practice.

<sup>29</sup> In some jurisdictions, enforcement action is not one of the possible outcomes from a market study. In others it is. If an authority has in place general guidance on the range of possible outcomes of a market study, this ought to help to guard against the highlighted risk.

- the opportunity for businesses to engage in voluntary compliance or other action that may help to avert the costs and risks of enforcement action, adverse court decisions, or of the introduction of new, inefficient, government policy or regulation
- for governmental bodies, adopting regulation and/or policies that stimulate, rather than restrict, competition, thus promoting increased productivity.

4.11 Stakeholders can be made aware that by not participating in a market study they may be missing the opportunity to articulate their point of view and to share in the development of an approach to resolve any concerns more quickly and at lower cost.

4.12 It may help to promote stakeholder engagement in market studies if authorities seek to deliver key messages about the benefits of engagement in market studies, for example by way of speeches, guidance, or press statements.

4.13 Market study teams can reach out to stakeholders early in a study to express the specific benefits of engagement for individual stakeholders or groups of stakeholders. This may help increase cooperation in individual market studies, and improve the likelihood of successful outcomes.

### **Developing a stakeholder engagement strategy**

**It is good practice for market study teams to develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them. It is good practice to review and update the stakeholder engagement strategy as necessary during the study.**

- 4.14 It is good practice for market study teams to develop a stakeholder engagement strategy early in a market study. A stakeholder engagement strategy can be used to:
- identify the key stakeholders and consider whether they are going to be influential, supportive or unsupportive to the market study
  - consider the input expected from the various stakeholders, taking into account their interests and perspectives, and plan for how the authority will solicit and use this input
  - describe how and when the authority will seek to engage those stakeholders in the study process.
- 4.15 A stakeholder engagement strategy can be reviewed and updated as needed as the study progresses. More detail on the creation of a stakeholder engagement strategy is set out in the paragraphs below.

### ***Identifying stakeholders***

- 4.16 Stakeholders may include:
- government departments, regulators and public bodies at national, regional or local levels
  - business people, businesses and trade bodies involved in the affected markets, including producers of inputs, substitutes and complements
  - consumers, consumer advocates and consumer groups
  - professional organisations and trade unions
  - chambers of trade, commerce or industry, and chambers of agriculture
  - legal and industry experts in the area studied
  - academics with a specialism in the sector
  - media
  - other parties that may have an interest in the market.

4.17 Teams can review and list the groups they know have an interest in the study and its outcomes, including both internal and external stakeholders. It may also be useful to include influencers of stakeholders, that is, those whose advice stakeholders may seek (for example, technical experts, consultants, lobbyists).

### ***Assessing likely input, interests and perspectives***

- 4.18 Next, to help determine how best to engage stakeholders, teams can consider the likely interests of each stakeholder with regard to the study and their likely views on the study taking place.
- 4.19 Teams can then consider what approach they will take to best engage stakeholders, solicit their input and use such input to inform the study. Business stakeholders who are actively engaged in the study may be particularly helpful as sources of information about how the market works in practice, what incentives drive it, and what might help stimulate any change.

### ***Planning stakeholder engagement***

- 4.20 Once stakeholders have been identified and an assessment made of their likely input, interests and perspectives, the team can plan how to engage with them. Different levels of engagement may be needed for different types of stakeholder. Stakeholders may usefully be grouped depending on their closeness to the study and the planned levels of engagement with them.
- 4.21 For example, it may be sensible to engage closely from the outset, and to consider sharing emerging findings, and proposed recommendations or other outcomes, with key stakeholders whose interests are likely to be most affected by the market study. For stakeholders who are slightly more distant from the market study, it may be sufficient to meet at appropriate intervals with them. For those more distant still, less frequent meetings may be sufficient. For the most distant stakeholders, inviting input in writing and considering their views may be enough.
- 4.22 It may also be helpful to identify specific team members who will be responsible for managing key individual stakeholder relationships.

## **Communicating to stakeholders what market study documentary outputs will be published**

**It is good practice for authorities to consider communicating to stakeholders what (if any) market study documentary outputs will be published.**

- 4.23 Market studies typically have a range of documentary outputs. Authorities have differing approaches to publication of the documentary outputs from market studies. Authorities can consider informing external stakeholders which anticipated documentary outputs from market studies they are likely to publish. Giving an indication of the anticipated documentary outputs can help guide the form and content of stakeholder input. This may include not only any reports relating to the market study, but also associated press releases and the results of any subsequent study-specific evaluations (see further Chapter 8 and Annex 2).

## **Communicating to stakeholders basic information about a study**

**It is good practice for authorities to consider communicating to stakeholders basic information about a particular study such as the reasons for the study, its proposed scope and more generally the range of possible outcomes from the study. Authorities can also consider making public key milestones of and/or indicative timeframes for studies.**

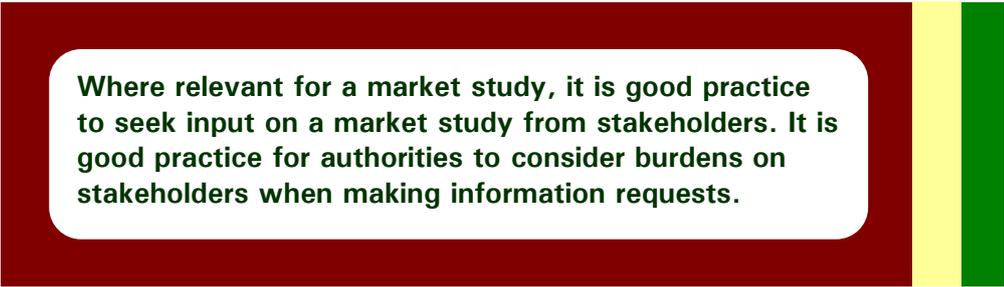
- 4.24 Seeking input from stakeholders on the rationale for the study, its scope and the types of possible outcomes, by way of a consultation prior to, or at the start of, a study can help to solicit stakeholder views, and help the authority manage the study's scope and focus. Consultation in this way is particularly important if the study was prompted by stakeholder input or complaints, or if there is a group or groups strongly opposed to the market study.
- 4.25 As noted in Chapter 1, authorities have differing approaches to the purpose of market studies. Some use market studies as a pure advocacy tool while others use them as a precursor to enforcement action. Some have a mixed approach, and use market studies both as an advocacy tool and as a precursor to enforcement action.
- 4.26 In the case of a possible enforcement action, stakeholders may be incentivised to be more guarded in their co-operation. However, if the types of possible outcome include both enforcement action and voluntary business action, a clear statement to this effect would ensure that business stakeholders are aware that enforcement action is only one of the possible types of outcome, and may encourage greater engagement. Where there are or may be links between a market study and existing or anticipated enforcement action, when appropriate, it may be helpful for authorities to articulate this clearly. (See further Chapter 6.)
- 4.27 Once any consultations are complete, there should be a greater understanding of the levels of stakeholder commitment and, based on their input, a clearer picture of the issues and the approach to take in conducting the market study.
- 4.28 When the reasons for the study, its scope, and types of possible outcomes are clear, authorities can consider publicly stating what these

are, for example, by publishing a press notice, document or other statement on their web site. (See further Chapter 3.)

4.29 Such a statement, at the time of, or soon after, the formal launch of a market study can help to address stakeholder questions and to promote their co-operation. It may also limit the extent to which any opponents of a study can misrepresent its purpose. As noted above, this may be particularly important for managing any stakeholder concern about the possibility of later enforcement action. The importance of distinguishing between market studies and enforcement action is considered in more detail in Chapter 2.

4.30 Authorities can also consider making public the key milestones in their market study, and any indicative timeframes for the study. As noted in Chapters 2 and 3, it will be important to retain flexibility to revise timeframe and scope at a later point if this becomes necessary. Because of the need for flexibility on timing, some authorities may choose not to announce any expected timeframe at the time of public launch.

### **Seeking information from stakeholders**



**Where relevant for a market study, it is good practice to seek input on a market study from stakeholders. It is good practice for authorities to consider burdens on stakeholders when making information requests.**

4.31 Where it is relevant to a market study to gather input from stakeholders, it is good practice to do so.

- 4.32 As noted in the 2009 Market Studies Project Report,<sup>30</sup> some authorities have formal legal powers to require the provision of information for market studies, backed up with penalties for non-compliance. Others do not.
- 4.33 Care in seeking information from stakeholders is important when authorities lack formal investigatory powers and need the voluntary cooperation of stakeholders to collect the information that they need. However, care may also be important where authorities have formal legal powers. Even though stakeholders may be required to respond to information requests in these cases, their engagement in later stages of the study (where there are no formal powers of compulsion) is also likely to be important.<sup>31</sup> Where outcomes of studies can only be implemented by stakeholders voluntarily, loss of engagement of those stakeholders at the information gathering stage may result in reduced efficacy of the study at its implementation phase.
- 4.34 Bearing this in mind, if they decide to seek input from stakeholders, it is helpful for authorities to be sensitive to the time and resource cost implications for stakeholders of any information request. This can include considering whether to tailor questionnaires to each type of stakeholder. Consulting with stakeholders on the content of any request, the format in which the authority asks for information to be provided, and realistic timeframes for providing the requested information can help authorities to minimise the burden of their information requests.
- 4.35 It may help to maintain a constructive relationship with stakeholders if authorities that have formal powers backed up with penalties refrain

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<sup>30</sup> Paragraph 5.9 to 5.21 of the 2009 *ICN Market Studies Project Report* (see footnote 2).

<sup>31</sup> In some jurisdictions there are legal provisions designed to protect against burdensome information requests. This may be an additional reason to take care in the exercise of any formal powers.

from using them unless and until absolutely necessary.<sup>32</sup> This may also help to avoid stakeholder confusion between market studies and enforcement action. See Chapter 6 for a more detailed discussion of this point.

- 4.36 Authorities will typically consider other, publicly available, sources of information before they approach stakeholders. When other regulatory bodies or other teams in the authority are engaged in parallel or overlapping work, the market study team can seek to avoid duplication by coordinating information requests and sharing information between the two bodies, where this is possible under confidentiality or other rules.
- 4.37 A description of the reasons for the study, issues under consideration, and types of possible outcomes will give stakeholders useful context and background in responding to any information request. Appropriate assurances about the protections that will be available in respect of any confidential information are also likely to be welcomed by stakeholders, and to facilitate the process of collecting information, though care must be taken to comply with any such assurances.
- 4.38 Some stakeholders may choose to provide a written response, while others may prefer to give only verbal responses. When stakeholders wish to give verbal responses, meetings or telephone interviews may be best held with each stakeholder individually, in order to provide protections from the disclosure of commercially sensitive or confidential information.

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<sup>32</sup> Conversely, some stakeholders may be unwilling to supply information unless and until they are required to do so compulsorily, perhaps to preserve their relationships with other, more reluctant, respondents.

## Taking stakeholders' input into account

**Where stakeholder input is sought, it is good practice for market study teams to take stakeholder information and views into account to inform the market study.**

- 4.39 Having collected information from relevant stakeholders, it is important for market study teams to take that information into account in analysing the market(s) and/or issues, arriving at findings, and in formulating any market study outcomes.
- 4.40 In particular, market study teams will typically ensure that any interim and/or final market study report presents the evidence, and identifies and articulates relevant stakeholder views, as well as responding to those views where appropriate. This not only ensures that the market study presents a well informed and objective approach to the issues, but also signals to stakeholders that their views have been taken into account.
- 4.41 Inevitably, some market study findings, recommendations or outcomes, may differ from some stakeholders' views. However, productive outcomes and cooperation from stakeholders in implementing recommended changes may still be possible if stakeholders are confident that their views and contributions were taken into consideration.

## Engaging stakeholders in developing market study outcomes

**Where relevant for a market study, it is good practice for market study teams to consider engaging stakeholders in developing market study outcomes.**

- 4.42 Where a market study is intended to stimulate change in markets, it can be helpful for market study teams to consider whether to try to engage stakeholders to help bring about this change. Securing change in markets often requires the co-operation of stakeholders. Engaging stakeholders in developing and/or testing possible market study outcomes can be a crucial way to secure this. Cooperating with stakeholders does not mean being co-opted by them. Where they choose to engage stakeholders in developing and/or testing possible outcomes, market study teams will wish to maintain their independence and objectivity.
- 4.43 Roundtable discussions or workshops (potentially involving business and consumer groups as well as regulators and academic experts) may be a good way to solicit input for a study and share and debate findings and potential remedies for any problems identified.<sup>33</sup>
- 4.44 Some authorities have found it useful to allow stakeholders the opportunity to comment on all or parts of a draft market study report.
- 4.45 Some authorities have found publishing an interim or consultation draft report, or supporting evidence, to be a useful means by which both to obtain feedback from stakeholders on proposed findings and to take stock of any proposed or possible outcomes of the study, their relative merits and their workability. An interim report may re-engage those already committed to participating in the market study and it may also attract further participation from those who have so far adopted a wait and see approach to the market study.

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<sup>33</sup> Authorities should ensure that any such discussions do not risk disclosure of sensitive or commercially confidential information.

- 4.46 The best results for stakeholders may not be the best results for the public interest, however, and market study teams will wish to retain full control over the content of final written materials.

### Engaging policy makers



- 4.47 Authorities may wish to consider ways in which they can influence key policy makers with responsibility for policy and regulation in the relevant market or sector. Authorities may wish to reinforce policy and regulation that are working well, to raise the profile of competition issues generally in order to pave the way for later recommendations being accepted, or may wish to advocate for specific changes. Authorities may consider involving key regulators in the process of the study in the first instance, see Chapter 2 discussing joint studies and Chapter 3 for working with other public bodies.

- 4.48 The types of activities authorities can consider to educate and influence policy makers generally include, for example:

- **Holding workshops (using illustrative examples)** to educate participants on the benefits of competition and offer tips on what to be alert to when designing policy and/or regulation. These could involve participants, depending on desired scale and variety, from:
  - a number of different government departments/regulators

- selected government departments/regulators – that have similar interests
  - one government department or regulator – where it may, for example, be beneficial to concentrate on a narrower but very significant stakeholder.
- **Establishing and facilitating a cross-governmental forum** - for discussion of competition issues arising in different policy fields, and how government can champion competition in its policy making. The work of such a forum could help with identifying markets where competition appears not to be working well.
  - **Producing guidance** - such guidance could include tips about the questions government departments/regulators should consider when assessing the impact (or possible impact) of their existing and/or new policies/regulations.
  - **Offering and publicising the authority as a source of assistance** to policy makers when reviewing existing and/or drawing up new policies/regulations.

4.49 Authorities can usefully adopt a pragmatic approach, accepting that government public policy objectives on occasion may impact negatively on competition. Where this is so, authorities can consider working with policy makers to seek a policy outcome that produces the least negative effect on competition, and to encourage policy makers to quantify and objectively justify any harm to competition.

4.50 Activities that authorities can consider to advocate for specific changes include the following:

- Assessing the likely views and motivations of the policy maker and developing approaches and lines to take that are most likely to address their objectives and influence their thinking.
- Engaging regularly with the policy maker during the course of the study, to provide updates on key findings and proposals.
- Testing proposed recommendations with the policy maker for workability before they are finalised.
- Attempting to quantify, if possible, the likely costs and benefits of implementing any proposed recommendations: it may be helpful to include any such cost benefit analysis in the final published report.
- Ensuring that the market study team is available after publication of the study to explain the background, context, and findings of the study, and its recommendations, and to assist in answering any queries in relation to implementation. Implementation can be a lengthy process, and authorities can usefully bear in mind that resource may be needed to assist in implementation for a significant period.

## Chapter 4 - Summary of Key Points of Good Practice

1	It is good practice for authorities to explain the benefits that may result from stakeholder participation in market studies generally, and for authorities to consider communicating the possible benefits of stakeholder engagement in relation to specific market studies.
2	It is good practice for market study teams to develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them. It is good practice to review and update the stakeholder engagement strategy as necessary during the study.
3	It is good practice for authorities to consider communicating to stakeholders what (if any) market study documentary outputs will be published.
4	It is good practice for authorities to consider communicating to stakeholders basic information about a particular study such as the reasons for the study, its proposed scope and more generally the range of possible outcomes from the study. Authorities can also consider making public key milestones of and/or indicative timeframes for studies.
5	For many but not all authorities it is good practice to seek input on a market study from stakeholders. It is good practice for authorities to consider burdens on stakeholders when making information requests.
6	Where stakeholder input is sought, it is good practice for market study teams to take stakeholder information and views into account to inform the market study.
7	Where relevant for a market study, it is good practice for market study teams to consider engaging stakeholders in developing market study outcomes.
8	Where possible, it is good practice for authorities to engage with policy makers to: <ul style="list-style-type: none"><li>• reinforce policy and regulation that are working well</li><li>• raise the profile of competition issues generally, and/or</li><li>• advocate for specific recommended changes to policy and/or regulations.</li></ul>

## **5. SELECTION OF MARKET STUDIES**

### **Introduction**

5.1 This chapter explains the importance of good selection of market studies. It notes that different considerations apply when market studies are required or mandated by government and legislators. It then offers tips for good practice in the following areas:

- working with government and legislators when market studies can be mandated or required
- soliciting issues for market study from a wide range of third parties
- considering issues for market study from a wide range of internal sources
- resourcing the collection of issues for market study
- selecting issues for study
- developing flexible prioritisation principles.

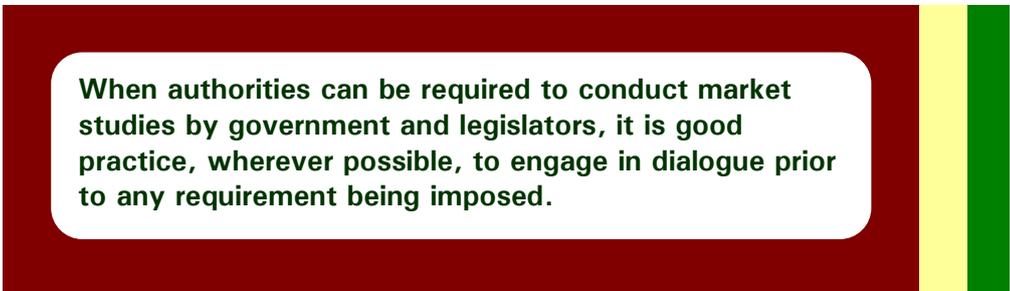
### **The importance of sound selection of market studies**

5.2 As the first step of the market studies process, the selection process is crucial since not choosing wisely may damage an authority's credibility and lead to a considerable waste of its time and resources. For example, it is useful for authorities to have in mind:

- the purpose (or purposes) for which a selected market has been chosen for study (the range of common purposes for market studies is described in Chapter 1)
- the types of outcome that may result
- how studying a particular market fits with their objectives and any selection principles or prioritisation criteria.

- 5.3 Selection and prioritisation of the best issues for market study maximises the potential for constructive engagement with stakeholders and delivering appropriate market study outcomes. It also increases the probability of choosing studies that are likely to have a high impact.
- 5.4 Sound selection and prioritisation also fosters an authority's legitimacy in subsequently confronting potentially anticompetitive behaviour.
- 5.5 Principles of market study selection may not apply when authorities are mandated, or required, to conduct market studies, but if there are opportunities to influence the choice or scope of the study that is mandated, it is sensible to make use of these. This is considered further below.

#### **Working with government and legislators when market studies can be mandated or required**



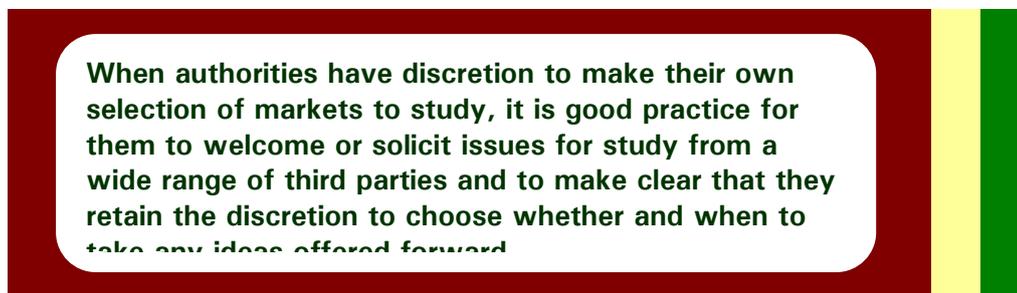
**When authorities can be required to conduct market studies by government and legislators, it is good practice, wherever possible, to engage in dialogue prior to any requirement being imposed.**

- 5.6 When government and/or legislators are able to mandate, or require authorities to carry out specified market studies, it can be helpful, wherever this is possible, for authorities to discuss potential issues or potential markets for study informally with government or the legislature before any formal requirement is imposed. This can help to ensure that:
- government and legislators do not pre-empt authorities' internal planning by mandating a study that is already in an authority's work plan

- appropriate markets or issues are identified for study
- market studies that are mandated can be effectively completed within the available budget and time frame
- government and legislators recognise the risks and opportunities that mandated studies can entail
- authorities have some opportunity to discuss the range of uses to which the completed study can be put.

5.7 Mandated studies can involve very high profile issues, where much is at stake politically and economically, and accordingly may involve higher levels of reputational risk. Authorities may therefore consider taking particular care to spell out any limitations in the findings of mandated studies.

**Soliciting issues for discretionary market study from a wide range of third parties**



5.8 The majority of authorities enjoy considerable discretion in determining the subject matter of their market studies. In many jurisdictions, external stakeholders are able to influence, propose, or even instruct, authorities to carry out certain market studies. These parties include:

- other regulatory authorities
- businesses, business associations, small and medium-sized enterprise groups

- consumer associations and representative bodies, including 'super-complainants'<sup>34</sup>
- national, regional or local government or government agencies
- professional organisations and trade unions
- chambers of trade, commerce or industry, and chambers of agriculture
- media and external experts
- other stakeholders.<sup>35</sup>

5.9 One of the major advantages of authorities having the ability to initiate market studies themselves is that it allows them greater freedom to identify potential concerns in markets or sectors and ensure that market studies focus on the most critical issues.

5.10 On the other hand, other parties, like government agencies, parliament, or consumer groups, may have a broader perspective on issues that are of vital social and economic significance.<sup>36</sup> They may thus help authorities draw issues for market study from a wider base.

5.11 Engagement on potential issues for market study with key stakeholders, including consumer or business groups that register complaints, may be valuable in making authorities aware of possible sectors or markets that might merit study.

5.12 Authorities may also welcome or encourage submissions on potential issues for study and/or information regarding any potential market or sector that would merit study through their external website. When soliciting issues for study from stakeholders and the public, authorities

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<sup>34</sup> In the UK, the OFT may receive a super-complaint from a Government designated consumer body concerning a feature or combination of features of a market that is or appears to be significantly harming the interests of consumers. When such a complaint is received, the OFT must consider it and respond within 90 days. A possible outcome of a super-complaint could be an OFT decision to launch a market study.

<sup>35</sup> See Chapter 4.

<sup>36</sup> Government agencies may also respond to political pressure from interest groups and thereby inject political considerations into study selection recommendations.

may request their views on any potential concerns, the causes and/or solutions of the perceived problems identified, and whether their information is confidential.<sup>37</sup> Authorities can consider whether it is appropriate to offer safeguards as to the handling of any sensitive or confidential information that they receive in this way. When soliciting issues for discretionary study, in order to manage expectations, authorities should make clear to stakeholders that whilst they are grateful to receive their ideas the ultimate choice on whether and when to act on those ideas remains with them.

- 5.13 If stakeholders submit ideas and/or information about issues for study, authorities may wish to acknowledge receipt of the information and relay to the stakeholder what the authority intends to do with it, stating whether the issue will be taken forward, and if so in what time frame, or giving reasons why the issue will not, or will not at this time, be taken forward. Such engagement with stakeholders will hopefully reassure them that their ideas and information have been actively considered and encourage them to submit other ideas and information about issues for study in the future.
- 5.14 Involving stakeholders in gathering information about issues for market study may also build support for the market study tool. It may encourage them to be more cooperative in providing information for any market studies that are selected, and more invested in the outcomes of studies.
- 5.15 As an alternative, or in addition to actively soliciting information about issues for market study from third parties, authorities may wish to keep abreast of business trends and press coverage as potential sources of issues for market study.

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<sup>37</sup> Guidance on what kind of information may be useful, and how to set this out, may be helpful for stakeholders if it is not over-burdensome.

## Collecting issues for market study from a wide range of internal sources

**When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider issues for study from a wide range of internal sources.**

5.16 It is good practice for authorities to capitalise on their internal knowledge by collecting together information on issues for market study from internal sources including:

- successful market studies in markets with similar characteristics or similar restrictions on competition
- their own enforcement experience, including enforcement efforts that have not been successful
- their own research and market monitoring, including as to:
  - advances in technology that are likely to affect competition
  - critical gaps in empirical economic studies of significant markets
  - situations in which regulatory treatments vary considerably between jurisdictions
  - recent changes in regulation
  - recent changes in business behaviour in a specific market or the economy more generally
- their concerns about business compliance
- feedback from consumers
- consultation with other government departments
- dialogue with fellow competition authorities or regulators, and successful market studies in other countries
- contacts with academics.

## Resourcing the collection of issues for market study

**When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider how to resource and organise the collection of issues for market study.**

5.17 In order to ensure that issues for market study are collected, it is good practice for authorities to consider how they can best resource and organise gathering such issues. Methods for collecting issues for study could include:

- establishing regular internal meetings to discuss issues that come out of other work
- establishing intranet discussion groups aimed at capturing ideas about issues from staff members<sup>38</sup>
- regular reviews of media and other reports for possible issues
- establishing regular discussion forums with external stakeholders who may have useful information about issues that may merit study.

5.18 Authorities may wish to consider creating a small dedicated team to support and run efforts to collect issues for market study. Authorities may have units like a competition policy or advocacy office or a chief economist's team that may be well suited to perform such a role. A dedicated market studies ideas team could also play a role in considering which issues might best be selected to take forward as market studies. Whether or not it makes sense for an authority to create a dedicated ideas gathering team will depend on its total resources, and other priorities.

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<sup>38</sup> This approach may be more fruitful if staff members have incentives to make proposals for market studies. One reward could be that a staff member who submits an accepted proposal can elect to be part of the team that conducts the study.

## Selecting issues for study

**When authorities have discretion to make their own selection of markets to study, it is good practice for them carefully to weigh different issues that could be studied and only to select for study those issues that best meet their objectives.**

- 5.19 In order to ensure that only the best issues that could be studied are taken forward, it may be useful for authorities to consider their objectives in studying markets, and to develop a set of factors that they will take into account when selecting markets for study.
- 5.20 For instance, authorities may wish to favour issues that are well supported by theoretical and empirical analysis, that are based on identifiable competition concerns and/or where there appear to be some workable solutions to address the concerns.
- 5.21 Characteristics of the market or sector concerned, the nature of any perceived problem, and the level of concern about it, may also be factors to take into account in selecting markets to study. For example, authorities may choose to take into account one or more of the following factors:
- impact on consumers of the market problem
  - size and/or type of detriment to consumer welfare
  - the impact on all market players (not just consumers)
  - level or type of consumer complaints or concerns
  - level or type of business complaints or concerns

- political interest or attention and priorities<sup>39</sup>
- market size
- entry barriers
- market value
- unusual market events
- degree of product differentiation
- market structure (including degree of vertical integration, concentration and likelihood of mergers)
- the degree of public regulation in the market involved
- the likelihood that a study could help open up markets or promote emerging markets.

5.22 The economic climate or any unique characteristics of a market may affect priorities regarding the best candidates for market studies.

5.23 Timing constraints may also be taken into account for markets that are faster changing than others, or for emerging markets. In such cases, the advisability or practicability of studying a market may be affected by market dynamics, for example, rapidly changing market conditions.

5.24 Practical considerations bearing on the likely utility of a study may also play a role as factors for selecting appropriate markets to study. Key practical considerations to which authorities may wish to assign appropriate weight include:

- resource implications for the authority
- the work done by other national authorities or (in the case of the European Union) the EU Commission
- the availability of a ready forum to present findings and advocate for any outcomes

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<sup>39</sup> See OECD *Policy Roundtables: Market Studies* report (footnote 7), at page 192: in its criteria for selecting market studies, the contribution of the South African Competition Commission explicitly refers to the 'importance of the industry to the poor'.

- desire to obtain knowledge about the sector or market
- desire to obtain enforcement data
- the likelihood that advocacy efforts will have clear benefits
- the ability to gauge or measure the effects of advocacy efforts
- an assessment that the benefits of conducting a study are likely to exceed the costs<sup>40</sup>
- whether or not the study is likely to yield useful recommendations
- whether the authority can bring a unique perspective to bear in a useful way.

5.25 When the same concerns about a particular sector are commonly shared by several countries (for example, for markets having a geographic scope not limited to one country), multiple authorities may be interested in studying a particular sector. This suggests possibilities for cooperation among authorities in conducting market studies – see Chapter 2.

### Developing flexible prioritisation principles

**When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study.**

5.26 Authorities may find it beneficial to develop a set of flexible prioritisation principles that they will apply to decide which issues (out of the range

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<sup>40</sup> Studies, and any consequences drawn from them, may have both public and private costs. It will be useful for authorities to bear in mind that any costs for business of engaging in a market study or its outcomes may be passed on to consumers (through higher prices or reduced innovation, choice or quality), and to account for this when considering the possible benefits that can be achieved.

of possible issues that potentially merit study) they will prioritise for action. Such principles could be formulated so that they apply to all work that authorities conduct on a discretionary basis.<sup>41</sup>

5.27 Authorities may wish to make public their general criteria or principles for assessing issues for market study. If they decide to do so, authorities will want to ensure that their selection criteria or principles are sufficiently flexible that they:

- can be adapted to new market situations
- do not lead to a presumption on the part of business that certain types of issues, cases or markets will automatically qualify or be disqualified for study
- do not create or increase the likelihood that the authority will face legal challenges of its decisions to prioritise certain markets for study.

5.28 Furthermore, authorities may wish to publicly announce upcoming or planned market studies once they are selected, as one way of clearly defining priorities and of pre-empting future pressures to change topics (unless they are not free to choose which markets studies to select).

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<sup>41</sup> For example, the UK OFT has a published set of prioritisation principles that it applies when considering which cases and projects (including market studies) it will prioritise for action. More information is available here: [http://www.offt.gov.uk/advice\\_and\\_resources/publications/corporate/general/oft953](http://www.offt.gov.uk/advice_and_resources/publications/corporate/general/oft953)

## Chapter 5 - Summary of Key Points of Good Practice

1	When authorities can be required to conduct market studies by government and legislators, it is good practice, wherever possible, to engage in dialogue prior to any requirement being imposed.
2	When authorities have discretion to make their own selection of markets to study, it is good practice for them to welcome or solicit issues for study from a wide range of third parties and to make clear that they retain the discretion to choose whether and when to take any ideas offered forward.
3	When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider issues for study from a wide range of internal sources.
4	When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider how to resource and organise the collection of issues for market study.
5	When authorities have discretion to make their own selection of markets to study, it is good practice for them carefully to weigh different issues that could be studied and only to select for study those issues that best meet their objectives.
6	When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study.

## 6. INFORMATION COLLECTION AND ANALYSIS

### Introduction

6.1 This chapter looks at information collection and analysis and offers tips for good practice in the following areas:

- preparing for information collection
- organising research
- sources of information
- how to request information
- how information might be used
- consulting on draft information requests
- use of formal powers to compel the supply of information
- types of information collected
- methods of collecting information
- using third parties to collect information
- managing information
- analysing information
- how to safeguard information.

### Preparing for information collection

**It is good practice, before seeking any information, for the market study team to prepare by:**

- **considering what information they need for the purposes of the market study**
- **consulting with any authority specialists**
- **considering the time that will be required for information collection and analysis.**

**It is good practice for authorities to make use of publicly available information.**

- 6.2 All market studies will require the collection of some sort of information. The extent and variety of techniques to be used when collecting information will vary due to the differences:
- in the purpose or purposes of market studies
  - in the role of stakeholders in the market concerned
  - between authorities in terms of those that have and do not have a formal power to compel the supply of information for market study purposes.<sup>42</sup>
- 6.3 Some authorities have experts, such as statisticians, financial analysts and econometricians that can advise market study teams on specific types of information that may be needed and on the best ways to ask for its submission in order to make the subsequent analysis more effective.
- 6.4 Once authorities have made a preliminary assessment of what information is needed they will wish to consider and plan how that information can best be obtained. Care needs to be taken to avoid the risks of requesting too much information and/or framing information requests too broadly. Addressing these risks at the outset will mean that authorities avoid requesting or receiving excessive and irrelevant information.<sup>43</sup> This, in turn, avoids placing unnecessary burdens on either the authority concerned or the stakeholders associated with the market study.

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<sup>42</sup> An authority has a formal power to compel the supply of information when any failure to comply with an information request it makes in exercise of that power attracts legal sanctions.

<sup>43</sup> In some (if not many) cases, there will need to be follow-up requests later in the study as understanding of the market develops. It is preferable, if possible, to manage the scope of any follow-up requests so as to reduce burdens on those to whom requests are addressed.

6.5 When considering and planning what information to collect, authorities may find it useful to consider the following questions before any requests are made:

- Why is the information needed, for example what theories or hypotheses are the team trying to evaluate, understand, or discount?
- Is any or all of the information already available within the authority?
- Is any or all of the information already available from other public bodies, for example other regulators or government departments?
- If information is available publicly, is it free or will a fee be required?<sup>44</sup>
- Is any or all of the information available from commercial sources, and if so what are the costs of obtaining access to it?
- Where multiple sources of vital information are available, which are the most reliable, and which are the easiest, quickest and cheapest to access (including any expenses associated with access, formatting, etc.)?
- Will the team need to seek information from private sector stakeholders and if so who, when and how?
- How much information is needed? Is information sampling sufficient or is it necessary to contact the whole population that is of interest?

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<sup>44</sup> If authorities are carrying out a study purely for internal research purposes then all the information needed may be available from, for example, free websites and/or other free published material.

- How will the information be analysed? Thinking about this early on will help authorities consider how best to phrase information requests.
- What contingencies will there be if the identified sources will not or cannot supply the requested information?
- What use will be made of the information?

6.6 Authorities may find it beneficial to consider the above questions at a team meeting, because discussions can sometimes be useful in identifying and deciding what needs to be done and how best to do it.

### Organising research

**It is good practice for market study teams to consider carefully how they conduct research, including factors such as spending decisions, organisation, and alternative routes to gather information if initial results are inconclusive.**

6.7 Market studies are often exploratory or speculative in nature. For this reason, it may be hard for authorities to take a view on the value of any particular strand of research until after it is complete. When organising and commissioning research, authorities should be prepared to address potentially inconclusive research results. Authorities may find it helpful to:

- break the research into stages and/or smaller pieces so that:
  - lessons can be learned and applied in any subsequent information collection/analysis phases

- a decision can be made as to whether spending any more time and/or money on a particular research strand is worthwhile and/or justifiable
- think about alternative routes to gather information in case the initial research is not conclusive.

### Sources of information

**It is good practice for market study teams to consider carefully the sources of information for the market study, including from which stakeholders information needs to be sought, taking into account the wide range of potential sources, and the potential merits and relative efficiencies of each.**

6.8 The purpose(s) of the study will ultimately determine whether information needs to be sought from stakeholders and if so from which ones. Information can be obtained from a variety of domestic, international, private and public sources, and it may be more efficient to collect information from one source than it is to collect it from another. Possible sources of information include:

- consumers and consumer organisations
- businesses and business organisations
- other domestic government departments and regulators (who may have relevant policy papers, policy thinking and administrative information<sup>45</sup> about the industry)
- international institutions (such as the Organisation for Economic Co-operation and Development)
- other bodies, including competition authorities in other jurisdictions<sup>46</sup>

<sup>45</sup> 'Administrative information' refers to information generated and/or held by the authority perhaps as a result of previous studies, complaints, enquiries etc.

<sup>46</sup> Authorities can consider consulting the ICN market studies information store to find out if competition authorities in other jurisdictions have conducted one or more studies in the same or

- sector experts and academics
- industry consultants<sup>47</sup>
- surveys<sup>48</sup> published by market research companies.

6.9 Information about sectors in foreign jurisdictions can be of benefit when trying to persuade domestic stakeholders and/or governments of the need for, or benefits and workability of, proposed changes, particularly regulatory changes. Information collected from sector experts and industry consultants may prove more helpful than historic information in industries where rapid innovations are common.

### How to request information

**When making an information request for a market study, it is good practice for authorities to make clear, as applicable:**

- what information is being sought
- how information is to be submitted – that is, the required format (if any)
- the timescales for submission
- the consequences of not supplying the information – these could be legal or more general such as missing the opportunity to inform the study and its outcomes
- a contact point for questions about the information request.

6.10 When making information requests it is good practice for authorities to specify clearly what information is being sought.

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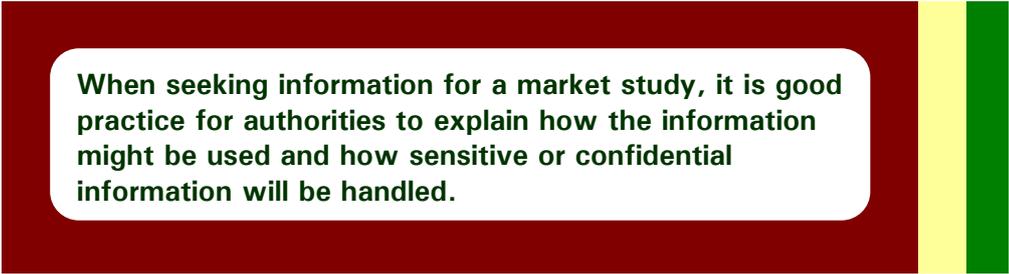
a closely related market. The market studies information store can be accessed on the ICN website.

<sup>47</sup> Privately collected industry information and the services of industry consultants or retirees may represent satisfactory alternatives when voluntary participation by typical stakeholders is not forthcoming.

<sup>48</sup> 'Survey' refers to a statistically robust method of collecting primary data whereas 'questionnaire' refers to a method of collecting primary data which may not be statistically robust.

- 6.11 Authorities may also wish to consider how prescriptive to be about the form and/or format in which they request information to be submitted. For example, if authorities want information to be submitted electronically, then it may be helpful either to specify the required format, or to ensure that appropriate technology is available to review and analyse information submitted in multiple electronic formats.
- 6.12 It is good practice for authorities to be clear about the timeframes in which they wish the information to be supplied. It may be helpful also to explain any consequences for the recipient of the request of failing to respond within specified timeframes, or of failing to respond at all, whether such consequences are legal or more general (such as loss of the opportunity to inform the study and its possible outcomes).
- 6.13 It is also good practice to provide details of a team contact who can answer any questions that recipients have about the information request.

#### **How information might be used**



**When seeking information for a market study, it is good practice for authorities to explain how the information might be used and how sensitive or confidential information will be handled.**

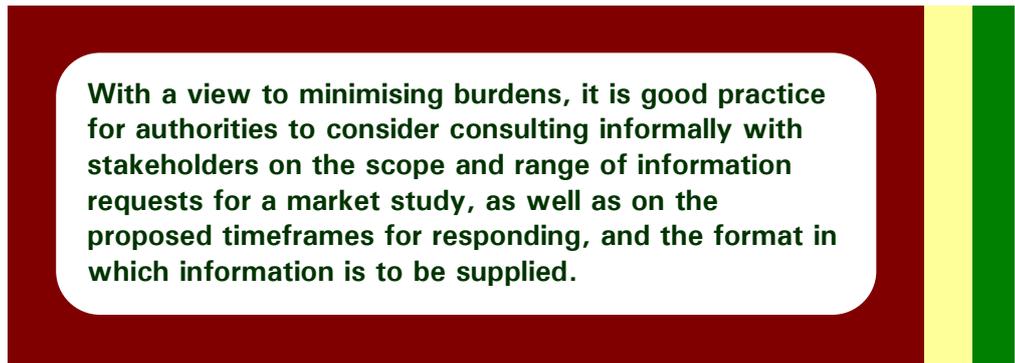
- 6.14 Barring any legal and other constraints (such as prior commitments to stakeholders) that may exist, authorities may be able to use information collected during a market study to help take forward their understanding of a sector, enforcement, advocacy and consumer and business education efforts. It is good practice for authorities to explain the

purpose of information requests and the use or possible uses to which the information may be put, including whether the information could be used for future enforcement action. Where information may be included in any published market study report, it is also useful to say so.

6.15 When publishing market study reports, authorities will typically consider whether any of the information contained in them is sensitive and/or confidential.

6.16 To assist in this consideration, it is helpful for authorities, at the time of making any information requests for a market study, to invite respondents to indicate whether any of the information they supply is of a sensitive or confidential nature, and to explain the reasons why. Authorities may also wish to inform stakeholders of any protections that will apply for any sensitive or confidential information that might be submitted.

### **Consulting on draft information requests**



**With a view to minimising burdens, it is good practice for authorities to consider consulting informally with stakeholders on the scope and range of information requests for a market study, as well as on the proposed timeframes for responding, and the format in which information is to be supplied.**

6.17 In some jurisdictions, authorities have the power to compel the supply of information for market studies. In others they do not. Whether or not formal powers of compulsion exist, it is good practice for authorities to keep in mind the burden that information requests impose on respondents. To this end, it may be helpful to consider consulting informally with stakeholders as to the range and scope of information

requests, the timeframes in which responses are requested, and the formats in which information is requested, to ensure that information requests address the relevant issues, are properly tailored and not unduly burdensome for their recipients (see further Chapter 4).

### **Use of formal powers (where available) to compel the supply of information**

**Where authorities have powers to compel the supply of information for market studies, it is good practice for them to consider seeking information on a voluntary basis first.**

**If authorities run a market study in parallel with an enforcement investigation in the same market, it is good practice to consider carefully any interaction or duplication between the gathering and use of information in the different contexts.**

6.18 When authorities have the legal power to compel the supply of information for market studies it is good practice for them to consider seeking information on a voluntary basis first as this may help to:

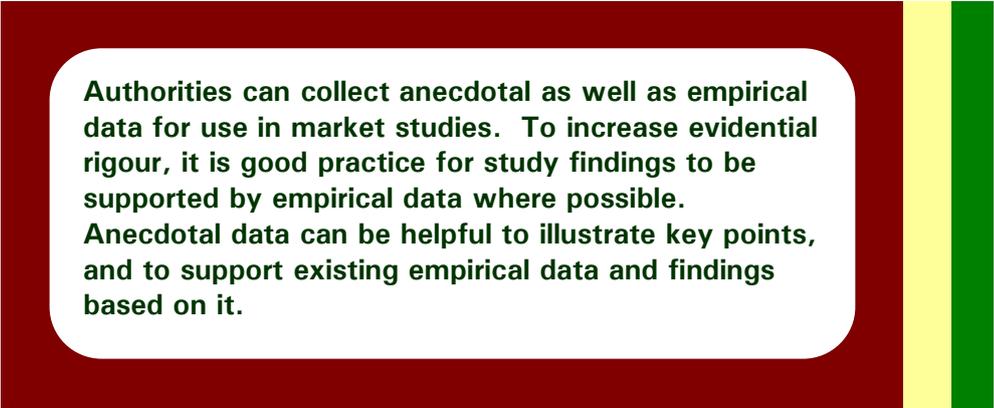
- reinforce the separation between market studies and enforcement action
- build cooperation from stakeholders (see further Chapter 4).

Voluntary requests may not be a sensible first step where an authority has reason to believe that the information will not be forthcoming unless it exercises formal powers.

6.19 If an authority is running a market study in parallel with an enforcement investigation in the same, or a closely related, market it is good practice for the authority to consider carefully the interactions between the two

contexts so as to avoid duplicative requests where possible. It is also helpful for authorities to be very clear about the relevant legal constraints on the use of information in each context, the purposes for which information supplied pursuant to each request can be put and the assurances, if any, that they will give about the use of information in each context.

### **Types of information collected**

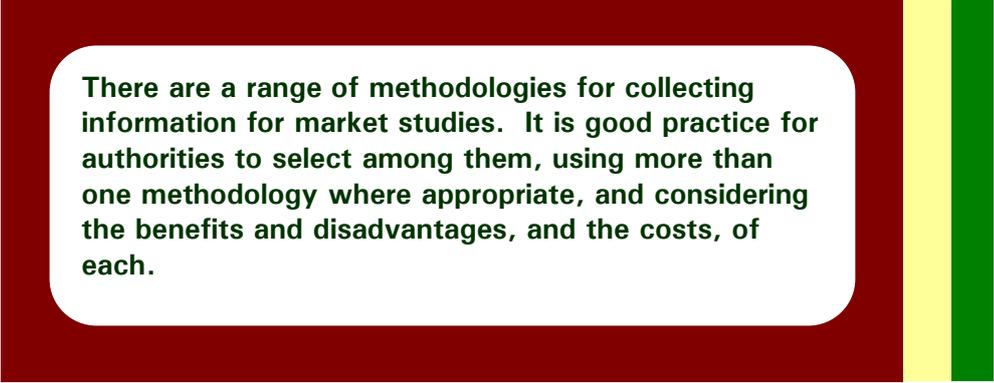


**Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, it is good practice for study findings to be supported by empirical data where possible. Anecdotal data can be helpful to illustrate key points, and to support existing empirical data and findings based on it.**

6.20 Authorities can choose to collect both anecdotal and empirical data for use in market studies. Although the collection of empirical data is more widespread than the collection of anecdotal data, it is clear that both categories can be useful. The differences in benefits include the following:

- empirical data can be more persuasive than anecdotal data in supporting generalised findings
- empirical data validates the authority's work and is more reliable should the market study result in future enforcement activities
- anecdotal data can provide useful illustration of key points to support findings based on empirical data.

## Methods of collecting information



**There are a range of methodologies for collecting information for market studies. It is good practice for authorities to select among them, using more than one methodology where appropriate, and considering the benefits and disadvantages, and the costs, of each.**

6.21 There are a variety of ways for authorities to collect information for use in market studies. Which of these will be used will be determined by the legal powers available to the authority, the purpose(s) of the study, and sometimes also by the amount of resource available, as some methodologies are more resource intensive than others. Many authorities find it beneficial to employ more than one methodology to acquire the information they need as this suits the differences in:

- the roles of different stakeholders in the market
- possible market factors authorities are seeking to understand and evaluate.

6.22 The variety of methodologies that authorities can use includes the following:

- literature reviews, including of existing market research
- examining existing administrative information – either held by the authority and/or other government departments/regulators etc.
- designing and issuing questionnaires
- conducting focus groups, workshops, seminars, meetings and/or in-depth interviews
- carrying out consultations
- information requests targeted at individual market participants
- carrying out large surveys

- open public calls for submissions on identified topics
- conducting mystery shopping<sup>49</sup>
- (where authorities have the necessary legal powers) carrying out on-site inspections, with or without notice
- constructing econometric models, or using experimental economics.

Methodologies involving the creation of new, or tailored, materials, such as questionnaires, focus groups and surveys can usefully be road-tested internally and/or externally before they are put to use. This may help to highlight and iron out potential problems.

6.23 The above methodologies have advantages and disadvantages. For example:

- **Existing market research and administrative information** – on the plus side these are the quickest and least resource intensive methods in obtaining information. The downside is that using these methods might mean that the information is dated or not in the most beneficial or complete format for an authority's purpose(s) which might lead to the work being less informed.
- **Use of questionnaires, focus groups, in-depth interviews and mystery shopping** – on the plus side these methods allow authorities to explore qualitative issues in a tailored and relatively short period of time. Focus groups and in-depth interviews are methods which can also bring out other issues as a result of the interactions between the groups of interviewers and interviewees. The downside is that these methods only produce qualitative information, so they cannot be relied upon to support quantitative findings.

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<sup>49</sup> 'Mystery shopping' refers to instances when external contractors, or an authority's own staff, pose as customers making enquiries about a purchase to see how they are dealt with by businesses.

- **Large surveys** – on the plus side these produce statistically robust data and so general statements can be made about the population from which the relevant sample was drawn. The main downside is that large surveys may require more resources (in terms of time, human, and financial resources) relative to the other methods.
- **Econometric modelling** – on the plus side, econometric modelling can be used to statistically separate out the effects of different potential explanations for market outcome and to quantify the relative weight and likelihood that observed relationships in a sample reflect the relationships in the whole population. On the downside, modelling can be complex, it may be difficult to convey results to policy makers and the public, and results are sensitive to assumptions, techniques applied, and to data errors. In addition it can be difficult to resolve technical differences in results between multiple econometric studies. Generally, it is a good idea to ensure that econometric modelling is used in conjunction with other quantitative and qualitative analysis.
- **Experimental economics** – on the plus side, many market parameters can be controlled and the parameters of interest varied systematically and retested at relatively low cost. On the downside, critics may challenge the realism of such markets in terms of the incentives, knowledge and experience of market participants, and the applicability of laboratory results to real-world markets.

6.24 Where authorities decide to use focus groups, seminars and/or workshops they will need to spend time considering such things as:

- **Venues** - can the authority's premises be used? If not what are the alternatives?

- **Numbers** - how many people will be invited? Will more than one event be required, for example, to cover different geographical regions?
- **Management** – how will the event be run? Authorities can consider for example timings, layout, style, external speakers, facilitation and how information will be captured.
- **Costs** – how much needs to be budgeted for? Authorities can consider for example what hospitality will be provided (for example breakfast/lunch), and any costs of booking external venues. Will external speakers require their travel and subsistence costs to be met and, if such requests are made is the authority prepared to pay for these?
- **Experience with subtleties** – how much experience do staff have in conducting similar events in other contexts? How sensitive are the results to minor variations in procedure, format, order of presentation, etc?

### Using third parties to collect information

**In certain circumstances, authorities may wish to consider the use of third parties to carry out some or all of the external research for a market study.**

**Where a third party is going to be used, it is good practice for authorities carefully to consider the role and responsibilities of the third party.**

6.25 Many authorities have both carried out their own external research, and have used third parties, such as market research agencies, academics,

and/or economic consultancies, to carry out external research on their behalf for market studies.<sup>50</sup>

6.26 There may be good reasons to keep market study research in-house. These may include:

- building internal capacity and legal/economic expertise
- developing internal sectoral knowledge and expertise
- ensuring that appropriate procedures are followed to handle any confidential information that is sought.

6.27 On the other hand, using third parties to collect information for a market study on behalf of the authority can also be beneficial. Third parties may:

- possess particular skills the authority lacks, for example market research companies will have staff who are skilled, trained and experienced in obtaining information
- allow the authority to focus its limited resource where it is most needed
- allow the study to be delivered more quickly and efficiently.

6.28 Subject to appropriate laws and regulations, authorities may wish to consider putting contracts for collecting data for a market study out to competitive tender to ensure a broad field and selection of the best qualified person or organisation.

6.29 It is beneficial if third parties are well informed as to what is required of them when conducting research for a market study. Through contractual terms and other discussions, authorities may wish to clarify:

- how outputs will be monitored to ensure quality and timescales are not being compromised or missed
- who owns the information collected, and any reports of the research

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<sup>50</sup> Few authorities are known to rely exclusively on third parties to conduct external research.

- how the contractor should protect personal and confidential information
- in what capacity the contractor is engaged (does the contractor act independently, or as an agent of the authority?)
- where the responsibility lies for making any changes required to outputs, and whether the costs of making revisions will be included in the contract price.

6.30 Authorities can usefully consider whether and how to address stakeholder concerns about supplying the information for the market study to third party contractors.

### **Managing information**

**It is good practice for market study teams carefully to consider how they manage information gathered during a market study, including the receipt, review and organisation of information and noting any confidentiality requirements.**

6.31 It is good practice for receipt of all market study information supplied to the authority as a result of requests to be acknowledged, where feasible, soon after it has been received. Where input has been received verbally by authorities via meetings, workshops etc. it is good practice to write it up soon afterwards while it is still fresh in team members' minds. Authorities may consider making recordings and taking transcripts of verbal sessions where the benefits of doing so appear to outweigh the associated administrative burdens on case teams.

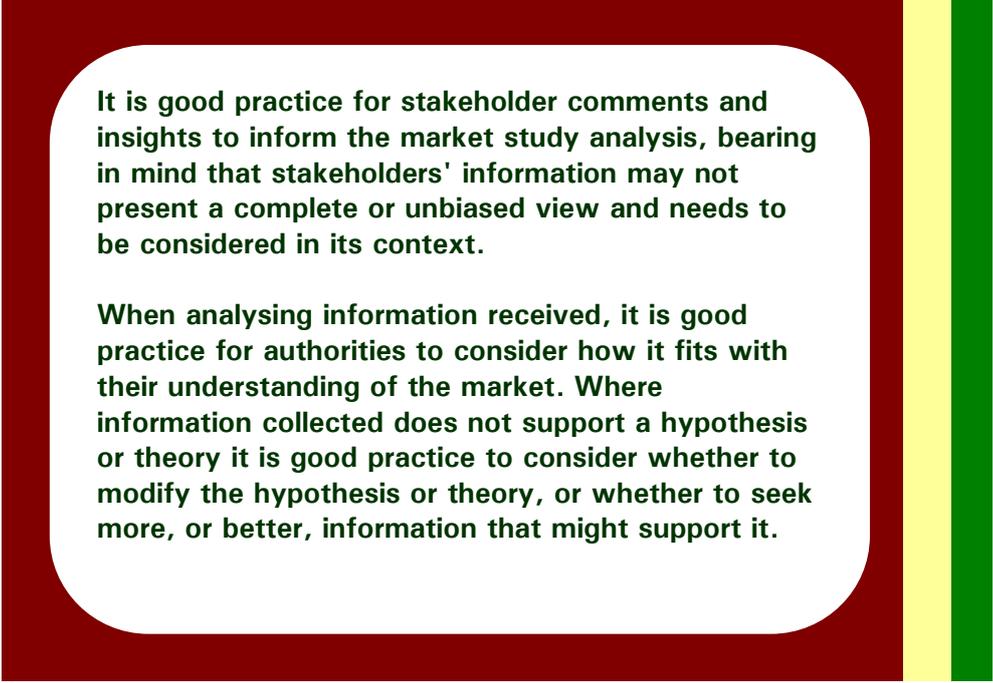
6.32 It is good practice for market study teams to log and record systematically information received. This includes noting whether the information has been submitted on a confidential basis or whether

permission has been given to its disclosure. Authorities may keep information on physical paper files and/or electronically.

6.33 Whatever ways authorities choose to keep information gathered for a market study, whether on physical paper files and/or electronically, they may wish to:

- file information for ease of use, for instance in chronological order or by topic
- be disciplined in the titling of documents so that they can easily be located in the future
- indicate whether the information is confidential
- highlight where stakeholders have agreed/not agreed to the disclosure of information.

### **Analysing information**



**It is good practice for stakeholder comments and insights to inform the market study analysis, bearing in mind that stakeholders' information may not present a complete or unbiased view and needs to be considered in its context.**

**When analysing information received, it is good practice for authorities to consider how it fits with their understanding of the market. Where information collected does not support a hypothesis or theory it is good practice to consider whether to modify the hypothesis or theory, or whether to seek more, or better, information that might support it.**

6.34 Once information is received for a market study, teams can start to analyse it. Where third parties have been engaged to conduct surveys it may be best for any reports of the results to put forward a neutral

presentation of findings, leaving the authority to interpret how these findings relate to other conclusions and what their implication is in terms of the study's outcomes.

6.35 The sequence for analysing market study information is broadly as follows:

- assess whether the information meets requirements (if not, consider making modifications, or accept that this is the best that can be obtained in the time available)
- consider how the information fits with the authority's ideas, theories or hypotheses about the market
- modify theories or hypotheses as appropriate and/or seek further information.

6.36 In complex market studies, there might be more than one work stream under analysis. The robustness of the findings in each work stream will typically need to be checked and then considered and combined into a collective analysis of the bigger picture in order for the team to develop possible outcomes.

6.37 When analysing information from stakeholders it is important to understand where their interests lie and what their incentives are in supplying information and engaging with the authority on the market study. For example, some stakeholders may desire a particular outcome and submit information that is one-sided and/or designed to promote or support the status quo, or the particular changes they would like to see. This may be less of a problem when formal powers have been used to compel the supply of information in a complete and accurate form.<sup>51</sup>

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<sup>51</sup> In a context without formal powers to compel information, soliciting voluntary submissions for a market study from a wide variety of stakeholders and market participants will help provide a range of views with which to assess potential biases and divergence of perspectives.

6.38 Stakeholder comments and insights will inform and, as appropriate, be incorporated in the final analysis of any information collected for a market study.

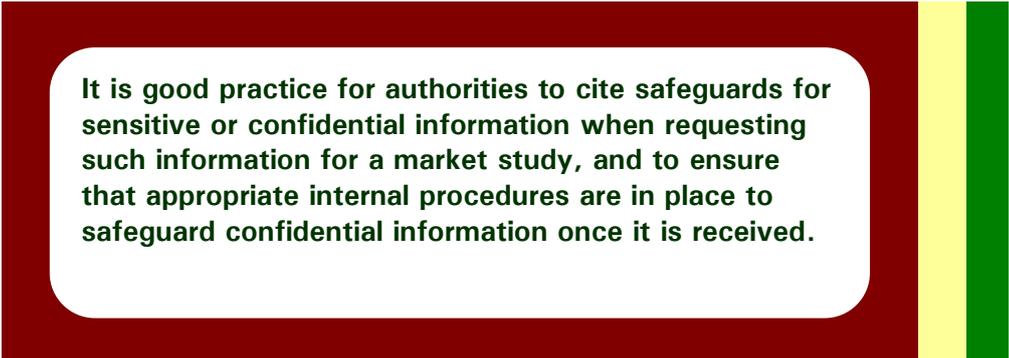
6.39 Some authorities have found it useful to release initial market study findings and/or proposed or possible outcomes. Discussion of initial findings and/or proposed or possible outcomes can be arranged via publication of an interim report, public consultations, workshops, or seminars. The value here is that stakeholders with specialised knowledge/expertise, who may or may not have supplied information before, would be given a further opportunity to contribute information and have an opportunity to respond or comment on the information put forward by others.

6.40 This type of later stage information collection can help authorities to:

- validate the market study findings
- identify and fill any gaps in the analysis
- recognise any potential biases not identified in earlier stages of the market study
- test the relative merits and workability of proposed or possible outcomes.

It may, of course, also add to the timescales for getting the study finished.

### **How to safeguard information**



**It is good practice for authorities to cite safeguards for sensitive or confidential information when requesting such information for a market study, and to ensure that appropriate internal procedures are in place to safeguard confidential information once it is received.**

- 6.41 Authorities will have their own policies and procedures for safeguarding confidential information gathered in a market study. In particular, where information is sought on a voluntary basis, citing the laws and/or policies that require the authority to safeguard confidential information will not only encourage stakeholders to disclose information that they might otherwise withhold, but also provide the proper incentives for authorities to be vigilant in the handling of confidential or sensitive information.
- 6.42 It is good practice for authorities to ensure that appropriate internal procedures are in place for handling sensitive or confidential information obtained during a market study, and for storing, disposing or returning such information to the relevant parties where applicable. Such a process will typically be pursuant to some (externally or internally) imposed obligation to safeguard confidential information. In most instances, authorities are legally obliged to protect sensitive or confidential information supplied. In the event that there are no legal obligations, it is good practice for authorities to consider adopting appropriate policies that offer such protections.
- 6.43 Further, subject to appropriate laws and policies, it is good practice for authorities to review, before publishing or otherwise disclosing, any confidential information they receive for a market study. If any permissions to disclose are needed these can be sought and obtained.
- 6.44 Where permission to disclose is not forthcoming, authorities will consider not disclosing. In the case of a market study report, this may involve making appropriate redactions from the report. If redactions to the report are needed, authorities may wish to consider maintaining two

versions of a market study: a private confidential version (for internal use) and a public non-confidential version (for external viewing).

## Chapter 6 - Summary of Key Points of Good Practice

1	<p>It is good practice, before seeking any information, for the market study team to prepare by:</p> <ul style="list-style-type: none"> <li>• considering what information they need for the purposes of the market study</li> <li>• consulting with any authority specialists</li> <li>• considering the time that will be required for information collection and analysis.</li> </ul> <p>It is good practice for authorities to make use of publicly available information.</p>
2	<p>It is good practice for market study teams carefully to consider how they conduct research, including factors such as spending decisions, organisation and alternative routes to gather information if initial results are inconclusive.</p>
3	<p>It is good practice for market study teams to consider carefully the sources of information for the market study, including from which stakeholders information needs to be sought, taking into account the wide range of potential sources, and the potential merits and relative efficiencies of each.</p>
4	<p>When making an information request for a market study, it is good practice for authorities to make clear, as applicable:</p> <ul style="list-style-type: none"> <li>• what information is being sought</li> <li>• how information is to be submitted – that is, the required format (if any)</li> <li>• the timescales for submission</li> <li>• the consequences of not supplying the information – these could be legal or more general such as missing the opportunity to inform the study and its outcomes</li> <li>• a contact point for questions about the information request.</li> </ul>
5	<p>When seeking information for a market study, it is good practice for authorities to explain how the information might be used and how sensitive or confidential information will be handled.</p>
6	<p>With a view to minimising burdens, it is good practice for authorities to consider consulting informally with stakeholders on the scope and range of information requests for a market study, as well as on the proposed timeframes for responding, and the format in which information is to be supplied.</p>

7	<p>Where authorities have powers to compel the supply of information for market studies, it is good practice for them to consider seeking information on a voluntary basis first.</p> <p>If authorities run a market study in parallel with an enforcement investigation in the same market, it is good practice to consider carefully any interaction or duplication between the gathering and use of information in the different contexts.</p>
8	<p>Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, it is good practice for study findings to be supported by empirical data where possible. Anecdotal data can be helpful to illustrate key points, and to support existing empirical data and findings based on it.</p>
9	<p>There are a range of methodologies for collecting information for market studies. It is good practice for authorities to select among them, using more than one methodology where appropriate, and considering the benefits and disadvantages, and the costs, of each.</p>
10	<p>In certain circumstances, authorities may wish to consider the use of third parties to carry out some or all of the external research for a market study.</p> <p>Where a third party is going to be used, it is good practice for authorities carefully to consider the role and responsibilities of the third party.</p>
11	<p>It is good practice for market study teams carefully to consider how they manage information gathered during a market study, including the receipt, review and organisation of information and noting any confidentiality requirements.</p>
12	<p>It is good practice for stakeholder comments and insights to inform the market study analysis, bearing in mind that stakeholders' information may not present a complete or unbiased view and needs to be considered in its context.</p> <p>When analysing information received, it is good practice for authorities to consider how it fits with their understanding of the market.</p> <p>Where information collected does not support a hypothesis or theory it is good practice to consider whether to modify the hypothesis or theory, or whether to seek more, or better, information that might support it.</p>
13	<p>It is good practice for authorities to cite safeguards for sensitive or confidential information when requesting such information for a market study, and to ensure that appropriate internal procedures are in place to safeguard confidential information once it is received.</p>

## 7. DEVELOPING AND SECURING OUTCOMES

### Introduction

7.1 This chapter looks at achieving the desired outcomes for market studies and offers tips for good practice under the following headings:

- types of outcome
- developing outcome options
- benefits versus costs
- testing the outcomes
- recommendations to government
- voluntary action
- action by the authority
- referral to a third party
- stakeholder advocacy
- effective use of the media
- measuring success and deciding when to stop follow-up advocacy.

7.2 The success of market study outcomes will depend on:

- the effectiveness of several other factors considered elsewhere in this Handbook, including:
  - making informed decisions on the selection of market studies
  - effective engagement of stakeholders
  - effective project management – including as to the timeliness of the study and the handling of risks
  - effective information collection and analysis – that supports any case for change
- an authority's competition advocacy tools and skills, including being able to defend a study's recommendations (possibly by estimating its costs and benefits).

## Types of outcome

**It is good practice for authorities to develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes.**

7.3 Given the variety that exists in the purpose(s) of market studies it is neither feasible nor sensible to judge whether one type of outcome is generally better than any other. A decision as to what, if any, outcomes are appropriate for individual market studies will depend on a range of factors, including:

- the purpose(s) of the market study
- the issues/problems found
- the policy/regulatory landscape
- consumer and/or business incentives.

7.4 There are a number of types of possible outcome from market studies, including:

- no action, because a market is working well, or is already improving, or because remedies are more costly than their likely benefits
- recommendations to government for changes to existing or draft laws
- recommendations to government for changes to existing or draft policies
- competition enforcement
- (where authorities have consumer enforcement powers) consumer enforcement
- further market monitoring or a further market study
- voluntary action by businesses

- business and/or consumer education
- referral to a third party for action
- use of the results of the market study in litigation against restrictions on competition.

7.5 Market studies can often involve more than one outcome, especially where outcomes complement each other. For example, a market study may lead to recommendations to change regulation, combined with voluntary action by business that supplements the proposed regulatory change. Similarly, a market study which reaches findings that justify opening an enforcement investigation may lead to parallel benefits by way of educating businesses to increase their compliance with competition and/or consumer laws and educating consumers to make better purchasing decisions.

#### **Developing outcome options**



**It is good practice when developing market study outcome options for authorities to:**

- **keep the options under review throughout the course of the study**
- **test the support, where applicable, for recommendations and actions.**

7.6 It is good practice when developing market study outcome options for authorities to:

- keep the options under review throughout the course of the study – this allows room for the options to evolve as necessary as a consequence of on-going stakeholder engagement, information collection and analysis, changes in government policy, etc.
- test the support for any likely recommendations and actions.

Authorities may wish to consider fall-back options that could be introduced if the preferred options prove unworkable.

7.7 When authorities are developing outcome options, it may be helpful for them to consider the following questions:

- How could the issues(s) be resolved?
- Is there a sufficient link between the issue(s) found and the possible solutions under consideration?
- How should the possible solutions be ranked?
- What are the pros and cons of each?
- Is there sufficient information to justify the findings that support the option(s)?
- What are the costs involved - do the benefits outweigh the burdens?
- What steps would be necessary to encourage adoption or implementation of the option(s)?
- What is the likelihood of the option(s) being implemented – if the authority is reliant on others to do so?
- How might the option(s) fit (or not) with other government regulation and or policy?

7.8 Considering these questions will help to ensure that the analysis is thorough, that outcomes are appropriately linked to findings, and that

there is persuasive narrative to support the recommendations and/or any actions subsequently made or taken.

### **Benefits versus costs**



**It is good practice for authorities to assess the costs and benefits, when relevant, of proposed market study outcomes.**

- 7.9 When deciding on the outcomes of a market study, it is good practice for authorities to consider, where applicable,<sup>52</sup> whether the benefits they envisage will exceed the costs for businesses and other parties. If possible, it may be helpful to try to take into account business costs of implementing any outcomes within the context of considering overall benefits to consumers, being mindful of whether costs may be passed on to consumers.<sup>53</sup> However, it may be difficult to collect reliable data, or to make sufficiently reliable estimates of business costs.
- 7.10 Many authorities carry out a cost benefit analysis or impact assessment, at the time of, or shortly after, making market study recommendations. This can help build the case for intervention in the market, especially when the intervention involves making regulatory changes.
- 7.11 Some authorities that do not make a cost benefit assessment have noted that their market studies do not impose implementation costs, because the studies are purely fact-finding in nature, or the recommendations contained in studies entail the removal of restrictions on competition.

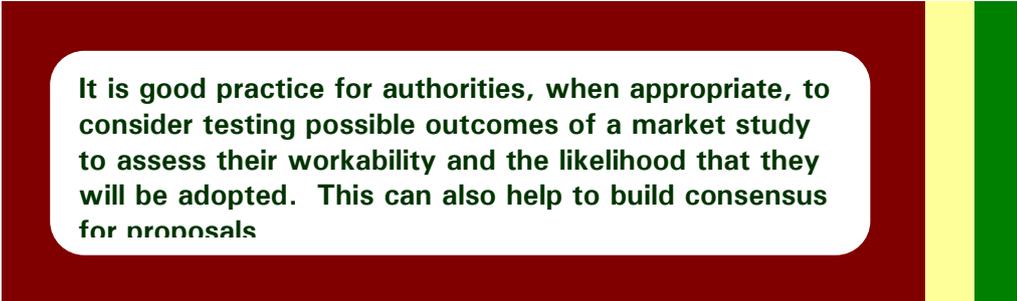
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<sup>52</sup> Some authorities may not wish to conduct cost benefit analyses if their studies are purely fact-finding in nature.

<sup>53</sup> Business costs may be passed on to consumers through higher prices or reduced quality or choice.

7.12 However, even where recommendations entail only the removal of restrictions on competition, conducting some form of cost benefit analysis may help the authority to counter any arguments from those that currently benefit from the effects of those restrictions in the event that they oppose the recommended changes.

### Testing the outcomes



**It is good practice for authorities, when appropriate, to consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted. This can also help to build consensus for proposals**

7.13 Depending on the initial purpose(s) of a market study, authorities may find it useful to test possible outcomes with stakeholders. This will help to expose the relative merits of different options, any flaws in their workability, the degree of support (and thus the likelihood that outcomes will be adopted), and may help to build consensus for the adoption of outcomes. Some ways to test proposed outcomes include:

- a public consultation phase at the end of the study
- a 'brainstorming' workshop, hearing or focus group with key stakeholders
- a series of face to face meetings with key stakeholders.

### Recommendations to government



**Where market study recommendations are addressed to government, it is good practice for authorities to carefully consider how to present the recommendations to effectively advocate for change.**

- 7.14 Many authorities operate in a context where their government is not required to respond to their market study recommendations. This highlights the importance of accompanying market studies with effective advocacy efforts.
- 7.15 The advocacy efforts can include, where this is possible, engaging with other government departments, legislators and other interested third parties, by presenting findings, explaining the analysis, presenting the possible costs and benefits of the proposed remedies, and liaising on government proposals for implementation. Where legislative change is needed, authorities can usefully ensure that appropriate resources are made available to respond to consultations by government departments or by legislators.
- 7.16 Some of the specific advocacy tools that authorities may find useful include:
- public speaking opportunities
  - issuing press notices
  - holding press conferences
  - making use of third party advocates
  - releasing rebuttals of faulty arguments made by opponents.
- 7.17 In addition to conducting some form of cost benefit analysis (as suggested in paragraphs 7.9 to 7.12 above), when seeking to change government regulations and/or policy, authorities can prepare for possible non-cost related objections, such as interference with other (non-competition) public policy objectives. In the face of such objections, authorities can emphasise the importance of competition in making markets work effectively and can, where possible, try to help

policy makers identify other ways to achieve their (non-competition) policy objectives, that are less harmful to competition.

7.18 If authorities are considering introducing a market study regime, and they have the opportunity to provide input into the design of the regime, they may wish to consider seeking a public government commitment to respond to their recommendations. For example, in the UK, the government has committed<sup>54</sup> to considering recommendations for regulatory or policy change made by the OFT following one of its market studies, and to responding publicly in writing within 90 days. Whenever the UK government accepts those recommendations, it works towards implementing them after the 90 day period, in consultation with the OFT, and writes a regular update report. The OFT is also consulted if the government decides to bring its implementation efforts to a close.

### **Voluntary action**



**It is good practice for authorities to engage effectively with industry where voluntary action is a desired market study outcome. Being alive to individual and collective business interests can help to encourage cooperation.**

7.19 The fact that many authorities operate in a context where business is not required to respond to market study recommendations highlights the importance of advocacy efforts directed at business where voluntary business action is the desired outcome of a market study. Steps that authorities can take include:

- testing market study findings with business prior to publishing a final report

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<sup>54</sup> It committed to this in a government policy document.

- working with business to try to secure voluntary commitments that can be announced at the time of publication of the market study report.

7.20 When an authority is starting to promote voluntary industry measures it is helpful to consider and identify the particular or collective interest of the industry. Engaging with industry through trade bodies may help to build consensus. It may be useful to initiate a working group to look for common ground between the authority and key industry stakeholders and/or to discuss principles according to which voluntary action can be taken.

7.21 Where authorities suspect, or it becomes clear, that businesses are unlikely to offer voluntary action or compliance that will address the findings of the market study, the authority may wish to consider and explore, if relevant, options for advocating for new legislation or regulation and/or enforcement action, as appropriate.

### **Action by the authority**

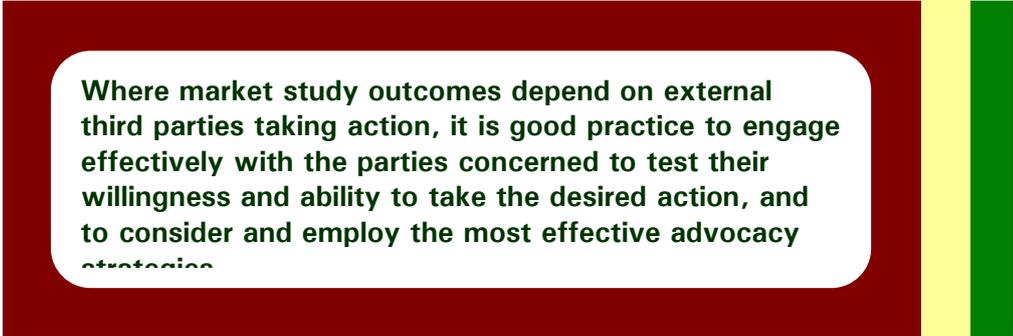


**It is good practice for market study teams to secure any necessary internal clearances before announcing any outcomes that involve the authority itself taking further action.**

7.22 When one or more of the proposed outcomes from a market study involves action to be taken by the authority itself (for example, conducting an education campaign, taking enforcement action, monitoring the market, or re-examining the market at a later date) it is very important that there is buy-in at the senior level within the authority, and that teams that may be called upon to undertake such

action have sufficient resource to do so. It can be reputationally damaging if an authority does not implement commitments that it has made itself.

### **Referral to external third parties**



**Where market study outcomes depend on external third parties taking action, it is good practice to engage effectively with the parties concerned to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies**

- 7.23 Market studies may sometimes result in a referral of the market (or aspects of the market) to third parties to take action. This may occur where the relevant third parties are in a better position to act, perhaps because the desired outcomes fall within their jurisdiction. For example, sectoral regulators or other government departments may be better placed to act or have the appropriate jurisdictions.
- 7.24 In some jurisdictions, authorities have the power to require a third party to take action following a market study. In other cases the action may depend upon a third party's willingness and/or ability to facilitate and/or adopt the desired outcomes.
- 7.25 Where authorities are dependent on third parties' agreement to take action, they can encourage cooperation by:
- early testing of the third party's willingness and ability to take the desired action
  - building consensus to achieve the desired outcome during the progress of the study

- engaging other stakeholders (for example, consumer and business groups) to support change or advocacy efforts (for example, by supporting the authority's position in the press or with government).

7.26 It may also be helpful for authorities to develop alternative outcomes and options as a fall-back if the third party declines to take the action desired, for example action by the authority itself (perhaps enforcement action, or further advocacy) or recommendations to government.

### **Stakeholder advocacy**



**It is good practice for authorities to include relevant stakeholder engagement in their advocacy efforts in support of market study outcomes.**

7.27 Stakeholders have various, and possibly conflicting, interests in market study outcomes. Authorities can carefully weigh the pros and cons of engaging stakeholders in advocating in support of market study outcomes. Stakeholders may choose to support or disagree with market study outcomes, in pursuit of their own objectives, whether or not authorities engage with them. In some cases it may be advantageous to engage supportive stakeholders in advocacy efforts.

7.28 Stakeholders may support market study outcomes that are in their self-interest or in line with their wider objectives. For example:

- Businesses that have recently entered or expanded in a market (or are likely to do so) may support an authority's calls for regulatory change that would open up the market.

- Businesses and business groups may support recommendations for changes in law or policy that would reduce their regulatory burden.
- Consumer groups and charities may support a recommended regulatory change which is aimed at increasing protections, and/or the availability of redress, for consumers.
- Business and/or consumer groups and/or other regulators or public bodies may support educational messages and materials aimed at securing increased compliance by business or advising consumers of their rights and of how to shop around for the best products or services.
- Governments or their agencies may support voluntary action where this is in line with their policy objectives.

7.29 Examples of how stakeholders may contribute to the success of market study outcomes are:

- advocating to government and others to make the necessary changes
- providing speaking opportunities and/or stands at their events
- referring to the results of the study in the media or in publications
- helping deliver education to businesses and/or consumers for example by allowing the use of their premises for posters/leaflets/guidance.

7.30 Authorities can take care to ensure that any support from stakeholders does not bring conflict or reputational harm to the authority.<sup>55</sup> For example, a business may want to refer to working in partnership with an

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<sup>55</sup> For example if a key third party advocate was the subject of an on-going enforcement investigation.

authority in such a way as to suggest that the authority endorses its products or approves its business ethics.

- 7.31 Depending on the type of market study carried out and the outcomes identified, authorities may wish to consider the use of roundtables and public events as a means of providing opportunity for supporting and opposing stakeholders to express their views on the outcomes.

### **Effective use of the media**



**It is good practice for authorities to recognise the potential effect of media coverage on market study outcomes. A well thought through communications strategy can help to drive successful outcomes.**

- 7.32 Press and other media coverage can strongly influence the success of a market study and its outcomes. An effective negative press campaign can quickly extinguish enthusiasm for proposed outcomes. Conversely, supportive press coverage can help to build and support the case for change. In the light of this, authorities can usefully develop and regularly review a communications strategy for market studies, or within broader advocacy efforts.
- 7.33 Effective media coverage will be particularly important at public launch of the study (efforts to build support in the study's early stages can reap benefits later), and at the end of the market study, when findings and outcomes are tested publicly and when the final report and outcomes are published. Where a study calls on stakeholders (whether government, business, consumer bodies or others) to take action, supportive press lines can raise the political and reputational stakes,

increasing the incentives on stakeholders to deliver the desired outcomes.

7.34 Media platforms are increasingly diversified, and authorities can consider securing coverage across the range of platforms, including:

- newspapers
- specialist magazines and periodicals
- seminars, workshops and conferences
- television
- radio
- internet including the authority's own and others' websites.

7.35 Speaking engagements that will be published in the professional or other press may present a good opportunity to deliver high-level messages.

### **Measuring success and deciding when to stop follow-up advocacy**



**It is good practice for authorities to recognise that successful market study outcomes may take time and require well-resourced follow-up.**

7.36 In some cases it will be clear early on when market study outcomes have been achieved, for example the government may immediately accept the recommendations. This is very likely when there was desire for change at the outset, perhaps because the government itself suggested the study.

7.37 In other cases the results from a market study are not always immediate. Nevertheless, studies enjoy a measure of success:

- whenever they contribute to a debate providing increased clarity and/or useful proposed outcomes that may lead to future change
- whenever recommendations or proposed outcomes (even though they are not fully accepted) are taken up in part, or prompt introduction of alternative measures to resolve the issues identified
- whenever they shine a light on a market that was previously poorly understood – a study that gives a market a clean bill of health can reduce business and consumer uncertainty, and lead to fewer complaints
- whenever they provide an authority with enhanced understanding of a specific market or sector.

7.38 It is important for authorities not to lose momentum in seeking to advocate changes once a market study has concluded. Sometimes it will take time to persuade those concerned of the value in implementing recommendations. It will help if authorities recognise this and ensure that there is adequate resource, and a coherent plan, for engaging in any necessary follow-up. It may also help if authorities look out for future opportunities for advocacy, and capitalise on these where possible.<sup>56</sup> In some cases, updating a market study may be appropriate if doing so will add to the effectiveness of protracted competition advocacy efforts.

7.38 There will inevitably be times when, perhaps in spite of carefully planned and executed follow-up activities, continued advocacy for market study outcomes seems unlikely to produce any, or any significant, results. In such circumstances, it may be sensible for authorities to weigh up the prospects and potential benefits of future success against the costs of continuing to push for outcomes, including

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<sup>56</sup> The degree and methods used by authorities for follow up advocacy work will depend on their resources and priorities. Some authorities have a dedicated small advocacy team.

the opportunity costs of not pursuing other potential projects that may have a greater impact.

7.40 In making this assessment, it may be helpful to develop and/or apply prioritisation criteria or principles, where these exist. Authorities may be prepared to stop pursuing market study follow-up where the costs of doing so are high, the benefits and prospects of success are low, and where resources can usefully be redeployed to pursue other work of a higher priority. If the prospects of successful advocacy increase in the future, authorities can reconsider their prioritisation at that time.

## Chapter 7 - Summary of Key Points of Good Practice

1	It is good practice for authorities to develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes.
2	It is good practice when developing market study outcome options for authorities to: <ul style="list-style-type: none"> <li>• keep the options under review throughout the course of the study</li> <li>• test the support, where applicable, for recommendations and actions.</li> </ul>
3	It is good practice for authorities to assess the costs and benefits, when relevant, of any proposed market study outcomes.
4	It is good practice for authorities, when appropriate, to consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted. This can also help to build consensus for proposals.
5	Where market study recommendations are addressed to government, it is good practice for authorities to carefully consider how to present the recommendations to effectively advocate for change.
6	It is good practice for authorities to engage effectively with industry where voluntary action is a desired market study outcome. Being alive to individual and collective business interests can help to encourage cooperation.
7	It is good practice for market study teams to secure any necessary internal clearances before announcing any outcomes that involve the authority itself taking further action.
8	Where market study outcomes depend on external third parties taking action, it is good practice to engage effectively with the parties concerned to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies.
9	It is good practice for authorities to include relevant stakeholder engagement in their advocacy efforts in support of market study outcomes.

<b>10</b>	<b>It is good practice for authorities to recognise the potential effect of media coverage on market study outcomes. A well thought through communications strategy can help to drive successful outcomes.</b>
<b>11</b>	<b>It is good practice for authorities to recognise that successful market study outcomes may take time and require well-resourced follow-up.</b>

## 8. EVALUATION

### Introduction

8.1 This chapter considers the following areas of best practice:

- what is meant by evaluation?
- why evaluate market studies?
- how to approach market study evaluation.

8.2 The chapter then lists five possible evaluation tools, one or more of which authorities might consider applying. More detail on each of these tools is provided in Annex 2.

### What is meant by evaluation?

8.3 Evaluation, in the context of market studies, means any activity that is designed to measure the effectiveness and/or the costs and benefits of conducting one or more market studies, or the effectiveness and/or costs and benefits of a market studies regime as a whole.

### Why evaluate market studies?

Where resources permit, it is good practice for authorities to consider evaluating the effectiveness of their market studies. This can help authorities to demonstrate:

- that individual studies have met their objectives cost-effectively
- the value of market studies more generally.

It can also inform future market study selection, and process management.

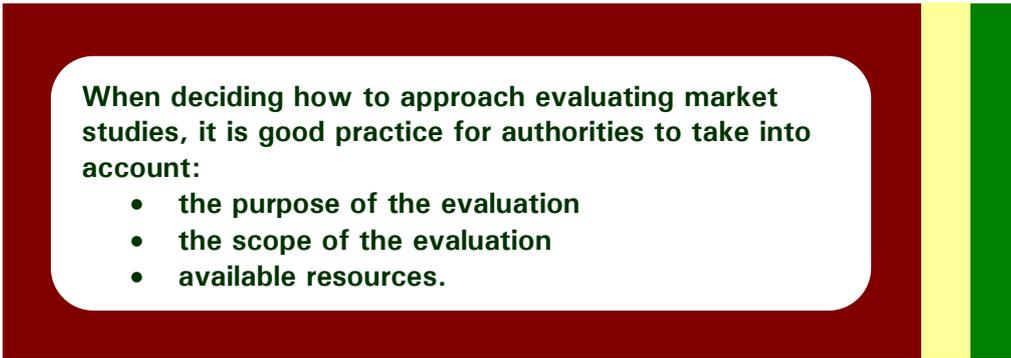
8.4 Where resources permit, evaluation is a good way for authorities to demonstrate that they have met their objectives cost-effectively, and that they are accountable. Evaluating market studies work, specifically, allows an authority to demonstrate the value of individual market studies and of the market study tool. It also helps an authority take informed decisions about future selection of market study topics and ways it can improve its market study processes.

8.5 In addition, evaluation can:

- shed light on what types of intervention following a market study work best to bring about desired outcomes
- help to identify whether post-study follow-up action is needed
- help persuade governments to change policy or legislation, or business or consumers to change their practices in markets.

8.6 The use of evaluation tools for market studies is relatively new, and as such, good practice in their design and application is a developing area.

### **How to approach market study evaluation**



**When deciding how to approach evaluating market studies, it is good practice for authorities to take into account:**

- the purpose of the evaluation
- the scope of the evaluation
- available resources.

8.7 There are a variety of ways that market study evaluation can be carried out. What method works best will be influenced by the purpose of the evaluation, its scope (whether it is intended to capture market studies alone or also other parts of an authority's portfolio) and the available resources to dedicate to evaluation activity.

- 8.8 Evaluation of market study impact can be conducted ex post – once the outcomes and/or effectiveness are known and some attempt can be made at measuring them. Alternatively, mechanisms to estimate impact ex ante – before the outcomes and/or effectiveness of one or more studies is known – can be built into the market study process.
- 8.9 A full evaluation programme<sup>57</sup> can systematically introduce both ex post evaluation and ex ante impact estimation. It can also seek to evaluate the wider benefits from market studies and other work.
- 8.10 An overall model that might be used for any evaluation method would include the following steps:

***Step 1: Decide what is being evaluated***

Any approach to evaluation will begin by determining what is being evaluated. For example, an authority might seek to evaluate the effectiveness of its own processes, or it might look beyond this at whether its study achieved the desired aim. Desired aims might include one or more of:

- improving internal knowledge of the market
- informing later enforcement action
- achieving changes in markets that benefit consumers
- improving market efficiency.

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<sup>57</sup> If an authority plans to develop a programme of evaluating market studies, it can be beneficial to create a dedicated in-house evaluation team or in-house responsibility for evaluation in a specific section or office. This ensures evaluation activity is given due attention and establishes a centre of expertise. An evaluation team can be used to evaluate a variety of authorities' work and need not be used solely for market studies evaluation. Where authorities choose to use the ex post evaluation and/or the ex ante impact estimation tools, described below, an evaluation team can also provide dedicated resource to conduct or contract for ex post evaluation and specialist training and support to market study teams in drawing up ex ante impact estimation plans. The costs of the team and its work need not be excessive. One authority estimates that it spends around 1 per cent of its budget on staff and research costs for a full evaluation programme spanning its entire portfolio of activities.

***Step 2: Decide what the intended outcomes were, and determine key indicators of success***

The next step is to decide what the study was intended to achieve. There might have been different intended outcomes at different stages of the study (for example, initial, intermediate, and final). Once the intended outcomes have been established, key indicators of success (for each stage, if relevant) can be determined.

***Step 2.1:*** Some success criteria might relate to the authority's inputs and activities in conducting a study such as:

- Was the right information obtained?
- Were the processes followed properly planned, managed and efficient (for example, were team roles clear, activities clearly defined and planned, timescales met)?
- Were resources adequate and efficiently utilised?
- Was engagement with stakeholders effective?
- Was the knowledge of the authority improved to the desired extent?

***Step 2.2:*** Some success criteria might relate to the immediate outputs that the study aimed to achieve, for example:

- Was awareness raised, at least in the short term? In the case of a clean bill of health, this may be expected to reduce the number of complaints received.
- Was the debate with governments, consumers and/or businesses better informed as a result of the market study?
- Were recommendations accepted and implemented (for example, the government made the recommended legislative changes)?
- Were solutions devised that changed behaviour in the right direction (for example, a considerable number of firms have taken some voluntary action, or consumers' awareness and understanding have changed the choices they make)?

- Timeliness: was the study timed for maximum effect to feed into a current government policy agenda?

**Step 2.3:** Some success criteria might relate to longer-term outcomes (and accordingly may be more difficult to measure) for example:

- Whether the market works better and the changes are sustainable. Possible criteria might be: better quality, more choice, more customer switching, better understanding of options, greater clarity of prices, improved redress mechanisms, lower prices, lower consumer detriment.
- Whether the benefits of any changes exceeded the costs of implementing the proposals.
- Whether consumer confidence improved.
- Whether there was increased stakeholder confidence in the authority, which in turn led to more constructive engagement.
- Whether a platform was created that led on to future work by the authority, including enforcement action, if relevant.
- Whether the effects of individual market studies was more (or less) relevant than the effects of the authority's portfolio of market studies, and how far the factors that influenced individual market study effects were inside the control of the authority.

Success criteria at steps 2.2 and 2.3 are mainly relevant for outcome-oriented market studies.

***Step 3: Decide what information is to be collected and how to collect it***

- Does information need to be qualitative and/or quantitative?
- What methods would be best to collect the information, for example before and after price comparisons, consumer surveys, workshops, reviewing switching behaviour?
- Will the authority collect the information or employ third parties, such as market research companies?

***Step 4: Use information to evaluate success against key success indicators***

- Evaluate how far the key success indicators were met, and (if desired and possible) quantify any gains or losses against a consumer welfare or a total welfare standard (see further paragraphs 16 to 19 of Annex 2 below).

***Step 5: Write up findings***

- Write up the findings and, if desired, publish them.

8.11 For authorities that wish to consider developing evaluation of market studies, the Handbook identifies five possible tools<sup>58</sup>:

- **Tool 1** - Internal review of an individual market study.
- **Tool 2** - Internal review of an individual market study informed by external stakeholder feedback.
- **Tool 3** - Periodic review of the effectiveness of selected market studies, or of a market study regime.
- **Tool 4** - Ex post evaluation of the impact of one or more market studies – this can help an authority test the actual value of its market studies work.
- **Tool 5** - Ex ante estimation of the impact of market studies – this can help an authority estimate on a regular basis the value of its market studies work.<sup>59</sup>

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<sup>58</sup> Other materials that authorities might wish to consult when devising an appropriate evaluation tool include: the W.K. Kellogg Foundation Evaluation Handbook (at [www.wkkf.org/knowledge-center/resources/2010/W-K-Kellogg-Foundation-Evaluation-Handbook.aspx](http://www.wkkf.org/knowledge-center/resources/2010/W-K-Kellogg-Foundation-Evaluation-Handbook.aspx)); '*Performance of national competition authorities: a method for assessment*' by Abel Mateus and others of the Portuguese Competition Authority (available through [http://www.concurrences.com/article\\_revue\\_web.php3?id\\_article=19895&lang=en](http://www.concurrences.com/article_revue_web.php3?id_article=19895&lang=en)); the UK civil service guidance notes on policy evaluation: [http://www.nationalschool.gov.uk/policyhub/magenta\\_book/](http://www.nationalschool.gov.uk/policyhub/magenta_book/); and materials from the UK OFT's website at: [http://www.offt.gov.uk/advice\\_and\\_resources/resource\\_base/evaluation/publications](http://www.offt.gov.uk/advice_and_resources/resource_base/evaluation/publications)

These tools are outlined in more detail in Annex 2.

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<sup>59</sup> Whatever evaluation tools are applied, to aid transparency, authorities should consider publishing their evaluation principles and process. One authority that has done so conducted a public consultation on its evaluation criteria. Authorities should also consider publishing the outcome of their evaluations.

## Chapter 8 - Summary of Key Points of Good Practice

1	<p>Where resources permit, it is good practice for authorities to consider evaluating the effectiveness of their market studies. This can help authorities to demonstrate:</p> <ul style="list-style-type: none"><li>• that individual studies have met their objectives cost-effectively</li><li>• the value of market studies more generally.</li></ul> <p>It can also inform future market study selection, and process management.</p>
2	<p>When deciding how to approach evaluating market studies, it is good practice for authorities to take into account:</p> <ul style="list-style-type: none"><li>• the purpose of the evaluation</li><li>• the scope of the evaluation</li><li>• available resources.</li></ul>

## **9. SUMMARY OF GOOD PRACTICE**

### **Introduction**

- 9.1 For ease of reference this chapter brings together all the summaries of Key Points of Good Practice that can be found at the end of Chapters 2 to 8 respectively.
- 9.2 The summaries contained in this chapter follow the order in which they can be found in the Handbook as follows:
- overview of market study process (Chapter 2)
  - project management of market studies (Chapter 3)
  - stakeholder engagement (Chapter 4)
  - selection of market studies (Chapter 5)
  - information collection and analysis (Chapter 6)
  - developing and securing outcomes (Chapter 7)
  - evaluation (Chapter 8)

### **Overview of market studies process**

- 9.3 It is good practice to be clear, at the outset, about the reasons for a particular market study, and range of possible outcomes that may emerge during the course of the study. This will help stakeholders distinguish market studies from enforcement cases.
- 9.4 It is good practice to develop a process for carrying out and implementing market studies. This may cover one or more of the following six steps:
1. Identifying and selecting a market to study.
  2. Scoping and planning a market study project.
  3. Information collection and analysis.
  4. Developing and securing outcomes.

5. Publication of the report and recommendations and conducting any follow up.
  6. Evaluating the success of one or more studies.
- 
- 9.5 It is good practice carefully to manage the process and outcomes of market studies.
  - 9.6 It is good practice to solicit stakeholder engagement during market studies. Information provided by stakeholders and their support for a market study's outcomes (if it can be obtained) can be key determinants of a market study's success.
  - 9.7 It is good practice to ensure that, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.
  - 9.8 It is good practice to allow flexibility in determining the timeframe for completing individual market studies. However, it is also good practice, at the outset, to develop, and consider revising if necessary, an indicative anticipated timeframe for conducting a particular market study and to communicate this to stakeholders. Being able to complete studies efficiently is likely to help keep budgets on track, and to enhance the benefits from conducting the work and the authority's reputation.
  - 9.9 If an authority wishes to give an early indication of the number of studies it will conduct in any one year, it is good practice to take into account its available resource, the complexity of the possible studies under consideration, and its other commitments and priorities.
  - 9.10 If a joint study with another organization is under consideration, it is to consider carefully in advance the pros and cons of working jointly. Where

a joint study is going to be undertaken, it is good practice to be mindful of the parameters of the study and to ensure there is clarity at the outset as to the respective roles and responsibilities of each participating organisation.

- 9.11 If authorities can be required by their government or legislature to conduct market studies, it is good practice for these authorities to consider modifying their project management processes appropriately as such studies may present different constraints, opportunities and requirements.

### **Project management of market studies**

- 9.12 It is good practice to establish a core team who will work on a market study, at the outset of the study, unless there are already dedicated resources in place, or an authority intends to contract the work out to third parties.

- 9.13 Where not already required to do so by law, it is good practice for authorities to consider conflicts of interest for market study staff.

- 9.14 It is good practice to establish clear roles and responsibilities for market study team members at the outset of the study.

- 9.15 Where resource allows, it is good practice for market study teams to hold regular team meetings to monitor and review project plans, and risks, and test and debate ideas and findings with colleagues.

- 9.16 It is good practice, early on, for market study teams to:

- identify and make contact with the other staff in the authority who will need to be engaged, consulted or involved in approving the work
- provide such staff with advance notice of the likely timing and timescales for their engagement/input.

- 9.17 It is good practice to identify early on other public bodies that may be working or considering working on issues that could be pertinent to the market study and, where appropriate, to consider whether and how best to engage them in the context of the market study.
- 9.18 It is good practice to ensure that the scope of a market study is focused, manageable and therefore more likely to be delivered on time and to the right quality. It is worth considering retaining some flexibility for later minor variations in scope should these be necessary in the light of emerging findings.
- 9.19 Once scope is settled, it is good practice to prepare a detailed plan for the market study that includes anticipated actions, responsibilities, key deliverables and milestones. It is good practice regularly to review the plan and adjust it if necessary to manage developments.
- 9.20 When a market study is launched publicly, it is good practice for authorities to provide basic information about the scope of the study and contact points for further information.
- 9.21 It is good practice for market study teams to report internally on progress as necessary and in accordance with any agreed internal governance processes.
- 9.22 It is good practice for authorities actively to consider and manage the risks relating to a market study.
- 9.23 Where resources allow, it is good practice for authorities to quality assure market study work, and for market study teams to identify early on what elements of the market study should be quality assured and how the quality assurance will be carried out.

- 9.24 It is good practice for a market study team to consider the outcomes of a study and to ensure that these are submitted for approval according to the authority's internal governance processes.
- 9.25 It is good practice for documentary outputs of a market study to be in a form and format that reflects their purpose and the needs of the target audience.
- 9.26 Before a market study is completed, it is good practice for a market study team to consider whether to release its findings, and if so to plan for their release.
- 9.27 It is good practice for a market study team to have a plan for closing a market study, that considers how any outstanding issues will be addressed such as any further follow up work and that captures and disseminates any institutional learning from the study including on findings, process and methodology.

### **Stakeholder engagement**

- 9.28 It is good practice for authorities to explain the benefits that may result from stakeholder participation in market studies generally, and for authorities to consider communicating the possible benefits of stakeholder engagement in relation to specific market studies.
- 9.29 It is good practice for market study teams to develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them. It is good practice to review and update the stakeholder engagement strategy as necessary during the study.

9.30 It is good practice for authorities to consider communicating to stakeholders what (if any) market study documentary outputs will be published.

9.31 It is good practice for authorities to consider communicating to stakeholders basic information about a particular study such as the reasons for the study, its proposed scope and more generally the range of possible outcomes from the study. Authorities can also consider making public key milestones of and/or indicative timeframes for studies.

9.32 For many but not all authorities it is good practice to seek input on a market study from stakeholders. It is good practice for authorities to consider burdens on stakeholders when making information requests.

9.33 Where stakeholder input is sought, it is good practice for market study teams to take stakeholder information and views into account to inform the market study.

9.34 Where relevant for a market study, it is good practice for market study teams to consider engaging stakeholders in developing market study outcomes.

9.35 Where possible, it is good practice for authorities to engage with policy makers to:

- reinforce policy and regulation that are working well
- raise the profile of competition issues generally, and/or
- advocate for specific recommended changes to policy and/or regulations.

### **Selection of market studies**

- 9.36 When authorities can be required to conduct market studies by government and legislators, it is good practice, wherever possible, to engage in dialogue prior to any requirement being imposed.
- 9.37 When authorities have discretion to make their own selection of markets to study, it is good practice for them to welcome or solicit issues for study from a wide range of third parties and to make clear that they retain the discretion to choose whether and when to take any ideas offered forward.
- 9.38 When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider issues for study from a wide range of internal sources.
- 9.39 When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider how to resource and organise the collection of issues for market study.
- 9.40 When authorities have discretion to make their own selection of markets to study, it is good practice for them carefully to weigh different issues that could be studied and only to select for study those issues that best meet their objectives.
- 9.41 When authorities have discretion to make their own selection of markets to study, it is good practice for them to consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study.

#### **Information collection and analysis**

- 9.42 It is good practice, before seeking any information, for the market study team to prepare by:

- considering what information they need for the purposes of the market study
- consulting with any authority specialists
- considering the time that will be required for information collection and analysis.

It is good practice for authorities to make use of publicly available information.

9.43 It is good practice for market study teams to consider carefully how they conduct research, including factors such as spending decisions, organisation and alternative routes to gather information if initial results are inconclusive.

9.44 It is good practice for market study teams to consider carefully the sources of information for the market study, including from which stakeholders information needs to be sought, taking into account the wide range of potential sources, and the potential merits and relative efficiencies of each.

9.45 When making an information request for a market study, it is good practice for authorities to make clear, as applicable:

- what information is being sought
- how information is to be submitted – that is, the required format (if any)
- the timescales for submission
- the consequences of not supplying the information – these could be legal or more general such as missing the opportunity to inform the study and its outcomes
- a contact point for questions about the information request.

- 9.46 When seeking information for a market study, it is good practice for authorities to explain how the information might be used and how sensitive or confidential information will be handled.
- 9.47 With a view to minimising burdens, it is good practice for authorities to consider consulting informally with stakeholders on the scope and range of information requests for a market study, as well as on the proposed timeframes for responding, and the format in which information is to be supplied.
- 9.48 Where authorities have powers to compel the supply of information for market studies, it is good practice for them to consider seeking information on a voluntary basis first. If authorities run a market study in parallel with an enforcement investigation in the same market, it is good practice to consider carefully any interaction or duplication between the gathering and use of information in the different contexts.
- 9.49 Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, it is good practice for study findings to be supported by empirical data where possible. Anecdotal data can be helpful to illustrate key points, and to support existing empirical data and findings based on it.
- 9.50 There are a range of methodologies for collecting information for market studies. It is good practice for authorities to select among them, using more than one methodology where appropriate, and considering the benefits and disadvantages, and the costs, of each.
- 9.51 In certain circumstances, authorities may wish to consider the use of third parties to carry out some or all of the external research for a market study.

Where a third party is going to be used, it is good practice for authorities carefully to consider the role and responsibilities of the third party.

9.52 It is good practice for market study teams carefully to consider how they manage information gathered during a market study, including the receipt, review and organisation of information and noting any confidentiality requirements.

9.53 It is good practice for stakeholder comments and insights to inform the market study analysis, bearing in mind that stakeholders' information may not present a complete or unbiased view and needs to be considered in its context.

When analysing information received, it is good practice for authorities to consider how it fits with their understanding of the market. Where information collected does not support a hypothesis or theory it is good practice to consider whether to modify the hypothesis or theory, or whether to seek more, or better, information that might support it.

9.54 It is good practice for authorities to cite safeguards for sensitive or confidential information when requesting such information for a market study, and to ensure that appropriate internal procedures are in place to safeguard confidential information once it is received.

## **Developing and securing outcomes**

- 9.55 It is good practice for authorities to develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes.
- 9.56 It is good practice when developing market study outcome options for authorities to:
- keep the options under review throughout the course of the study
  - test the support, where applicable, for recommendations and actions.
- 9.57 It is good practice for authorities to assess the costs and benefits, when relevant, of the impact of any proposed market study outcomes.
- 9.58 It is good practice for authorities, when appropriate, to consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted. This can also help to build consensus for proposals.
- 9.59 Where market study recommendations are addressed to government, it is good practice for authorities to carefully consider how to present the recommendations to effectively advocate for change.
- 9.60 It is good practice for authorities to engage effectively with industry where voluntary action is a desired market study outcome. Being alive to individual and collective business interests can help to encourage cooperation.
- 9.61 It is good practice for market study teams to secure any necessary internal clearances before announcing any outcomes that involve the authority itself taking further action.

9.62 Where market study outcomes depend on external third parties taking action, it is good practice to engage effectively with the parties concerned to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies.

9.63 It is good practice for authorities to include relevant stakeholder engagement in their advocacy efforts in support of market study outcomes.

9.64 It is good practice for authorities to recognise the potential effect of media coverage on market study outcomes. A well thought through communications strategy can help to drive successful outcomes.

9.65 It is good practice for authorities to recognise that successful market study outcomes may take time and require well-resourced follow-up.

### **Evaluation**

9.66 Where resources permit, it is good practice for authorities to consider evaluating the effectiveness of their market studies. This can help authorities to demonstrate:

- that individual studies have met their objectives cost-effectively
- the value of market studies more generally.

It can also inform future market study selection, and process management.

9.67 When deciding how to approach evaluating market studies, it is good practice for authorities to take into account:

- the purpose of the evaluation
- the scope of the evaluation
- available resources.



## **Annex 1**

### **FULL LIST OF WORKING GROUP MEMBERS**

#### **ICN Members**

**Armenia: State Commission for the Protection of Economic Competition**

**Brazil: Conselho Administrativo de Defesa Econômica (CADE)**

**Canada: Competition Bureau**

**Chile: Tribunal de Defensa de la Libre Competencia (TDLC)**

**Chile: Fiscalía Nacional Económica**

**Croatia: Croatian Competition Agency**

**Czech Republic: Office for the Protection of Competition**

**Denmark: Danish Competition Authority**

**Egypt: Egyptian Competition Authority**

**El Salvador: Superintendencia de Competencia**

**Estonia: Estonian Competition Authority**

**European Commission: Directorate General for Competition**

**France: Autorité de la Concurrence**

**Germany: Bundeskartellamt**

**Ireland: The Competition Authority**

**Italy: Autorità Garante Della Concorrenza e del Mercato**

**Jamaica: Jamaica Fair Trading Commission**

**Japan: Fair Trade Commission**

**Jersey: Jersey Competition Regulatory Authority**

**Jordan: Ministry of Industry and Trade, Competition Directorate**

**Korea: Fair Trade Commission**

**Mexico: Comisión Federal de Competencia**

**Moldova: National Agency for the Protection of Competition**

**Mongolia: Authority for Fair Competition and Consumer Protection**

**Netherlands: Netherlands Competition Authority**

**Poland: Office of Competition and Consumer Protection**

**Portugal: Portuguese Competition Authority**

**Romania: Competition Council**

**Russian Federation: Federal Antimonopoly Service**

**Singapore: Competition Commission**

**South Africa: Competition Tribunal**

**Spain: Comisión Nacional de la Competencia**

**Turkey: Turkish Competition Authority**

**UK: Competition Commission**

**UK: Office of Fair Trading**

**US: Federal Trade Commission**

**US: Antitrust Division, Department of Justice**

**Uzbekistan: State Committee on Demonopolization and Competition  
Development**

**Zambia: Competition Commission**

## Annex 2

### FIVE POSSIBLE TOOLS FOR EVALUATING MARKET STUDIES

#### TOOL 1 - Internal review of an individual market study

- 1 Market study teams can review an individual market study to capture lessons learned during the market study process and write up a final paper and/or an internal presentation to share the learning from this exercise. An internal review might examine:
  - the quality of the information collected and whether its analysis met authority requirements and expectations
  - whether selection of contractors and management of their performance was efficient and represented value for money
  - whether stakeholder engagement was successful and as expected
  - whether the right risks were identified and mitigations were effective
  - whether any initial assessment of the benefits that would result from the study was realistic
  - whether there were any surprises, how and why these arose, and what could be done to mitigate or eradicate these in the future
  - activities that could have been handled better, and if so how.
  
- 2 All the above could feed into tips for future reference. A subsequent internal know-how seminar on the lessons learned, for other authority staff, may also be useful, as well as making lessons learned materials available to authority staff. A structured assessment of lessons learned is very useful in informing and improving future work practice and process, and a dedicated effort, for example, through a 'know-how team,' ensures that the capture and dissemination of lessons learned and tips for the future is given due weight within the authority.

## **TOOL 2 - Internal review of an individual market study informed by external stakeholder feedback**

- 3 Where it will make for a more informed review, authorities can consider supplementing an internal review of a market study (see TOOL 1) with targeted external stakeholder feedback. This may be particularly useful when the idea for the study came from an external stakeholder. In such cases, seeking feedback from that stakeholder will give it an opportunity to comment on the process and outcomes, and to make suggestions for doing things differently or better in the future, as well as an opportunity to state whether its expectations were met.

## **TOOL 3 - Periodic review of the effectiveness of selected market studies or of a market study regime**

- 4 Authorities may wish to consider conducting (or asking third parties to conduct) periodic reviews of a portfolio of studies they have conducted, or of all studies conducted under their market studies regime, so as to provide an overall assessment of the benefits and costs of their market study regime and/or their overall effectiveness in carrying out market studies. Such reviews may inform discussions with government departments about the overall effectiveness of the market studies regime. They may also help authorities to communicate with a wider stakeholder community about the benefits of a market study regime, the authority's successes, and the lessons it has learned in conducting studies.<sup>60</sup>

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<sup>60</sup> As part of any such review, authorities can consider seeking the views of key stakeholders on their market studies performance via meetings, workshops or short questionnaires, concerning issues such as study selection, efficiency and transparency of process etc. Where studies are targeted at achieving voluntary or regulatory change, seeking views of stakeholders on authority performance will guide authorities as to how they can increase the likelihood of securing desired outcomes.

#### **TOOL 4 - Ex post evaluation of the impact of one or more market studies**

- 5 Ex post evaluation of the impact of selected market studies can provide a view of the costs, benefits and effectiveness of market studies, some time after they have been completed. Ex post evaluation may be done internally or via external consultants. It is possible to build in a degree of independence by using a separate in-house team or engaging external consultants to carry out these evaluations. This can help to avoid accusations of bias in relation to the findings, and, if the evaluations are published, helps to present the authority as publicly accountable for its expenditure. Since such in-depth evaluations can be expensive, authorities may only wish to subject a sample of their market studies to such a review.
- 6 Where studies are aimed at achieving change in markets, ex post evaluations can be a useful way of measuring:
- whether work has led to changes in the behaviour of the key market participants (consumers, businesses and/or government)
  - what costs and benefits have arisen from these changes and to whom
  - whether there have been any unwanted effects
  - whether there have been contextual changes that affected outcomes.<sup>61</sup>

#### ***Selecting market studies for ex post evaluation***

- 7 Authorities may wish to ensure that studies are only selected for in depth ex post evaluations where the benefits of the evaluation will be proportionate to the cost. A study also has to be '**evaluatable**,' that is

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<sup>61</sup> These tools may also allow the authority to compare the effectiveness of studies resulting in different types of outcome (for example, guidance, regulation, education) and to compare and contrast reactions of different target audience groups.

there have to be indicators that can be used to assess success and enough time needs to have elapsed to observe change. Within these constraints, market studies can be chosen for ex post evaluation on the basis that they satisfy at least one of the following criteria:

- The study has a high chance for **reading across/transferring lessons** to ongoing and future market studies. Studies can be selected on the basis that, collectively, the evaluations will gather information across a number of areas (for example, regulatory, self-regulation, consumer education and so on).
- The study recommended **innovative solutions**, so the authority is keen to assess their impact.
- The estimated **consumer detriment to be examined in the study is particularly large** (when quantifiable) or serious and the market study is likely to have high impact.
- The study was **very costly** to carry out in terms of the authority's staff and/or non staff costs and/or costs to stakeholders (in terms of inputting information, engaging with the authority and/or implementing recommendations).
- The study was of a particularly **topical/controversial** issue or led to an important authority long-term commitment.

***What methods should be applied in conducting ex post evaluations?***

8 Methods used in ex post evaluations can usefully be tailored to suit the market study or studies in question. For example information collection methods could be quantitative such as examining prices before and after

the study or qualitative such as consumer interviews, surveys or workshops. Links to two published examples are given below.<sup>62</sup>

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<sup>62</sup> [http://www.offt.gov.uk/shared\\_offt/about\\_offt/oft852.pdf](http://www.offt.gov.uk/shared_offt/about_offt/oft852.pdf)  
[http://www.offt.gov.uk/shared\\_offt/reports/Evaluating-OFTs-work/oft956.pdf](http://www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft956.pdf)

***What timing considerations should authorities take into account in selecting market studies for ex post evaluation?***

- 9 It may take a long time for recommendations to be implemented and even longer for identifiable changes in behaviour to take effect. Undertaking an evaluation too soon may lead to lack of identification of impact and an inability to quantify any reduction in consumer detriment. On the other hand, waiting too long before evaluating a study makes it difficult to attribute impact to the authority's work, as other factors also affect the market. It also delays any remedial action that may be necessary.

***How can authorities make their ex post evaluation transparent?***

- 10 Authorities may consider making public ex post evaluations, or portions of the results. This carries at least four risks, explored below:

- The study selection process becomes biased towards selecting only market studies for which the likely impact is quantifiable. The use of ex ante impact estimation, incorporating key success indicators upfront (see TOOL 5) should at least partially mitigate this, as the indicators should make the success of any market study measurable to some extent.
- If early published ex post evaluations are very critical of work, this may have a negative impact on current market studies work. Set against this, authorities may be keen to improve and to be transparent where possible.
- If early published ex post evaluations show very positive results of the impact of an authority's market studies work, there may be external lack of confidence that the evaluation results are impartial. Factors that might mitigate this risk are:

- transparent selection criteria for the market studies to be evaluated
  - ex post evaluations contracted out to external consultants through competitive tender
  - an up-front commitment to publishing all ex post evaluations work, whatever the findings.
- Ex post evaluation may show that some interventions may have had an immediate negative impact (for example, negative total welfare effect). On the other hand, such findings will inform authorities and help them to consider how to minimise negative impacts in future.

## **TOOL 5 - Ex ante estimation of the impact of market studies**

11 Impact estimation is a process that seeks to anticipate the likely costs and benefits of a piece of work, and that plans for measuring costs and benefits during the course of the work and after it is completed. Authorities might consider using ex ante impact estimation for their market studies work, or for selected market studies.

12 Where it is decided to roll out impact estimation for all market studies work, it will need to be introduced, taught and embedded as part of an authority's market study process.<sup>63</sup>

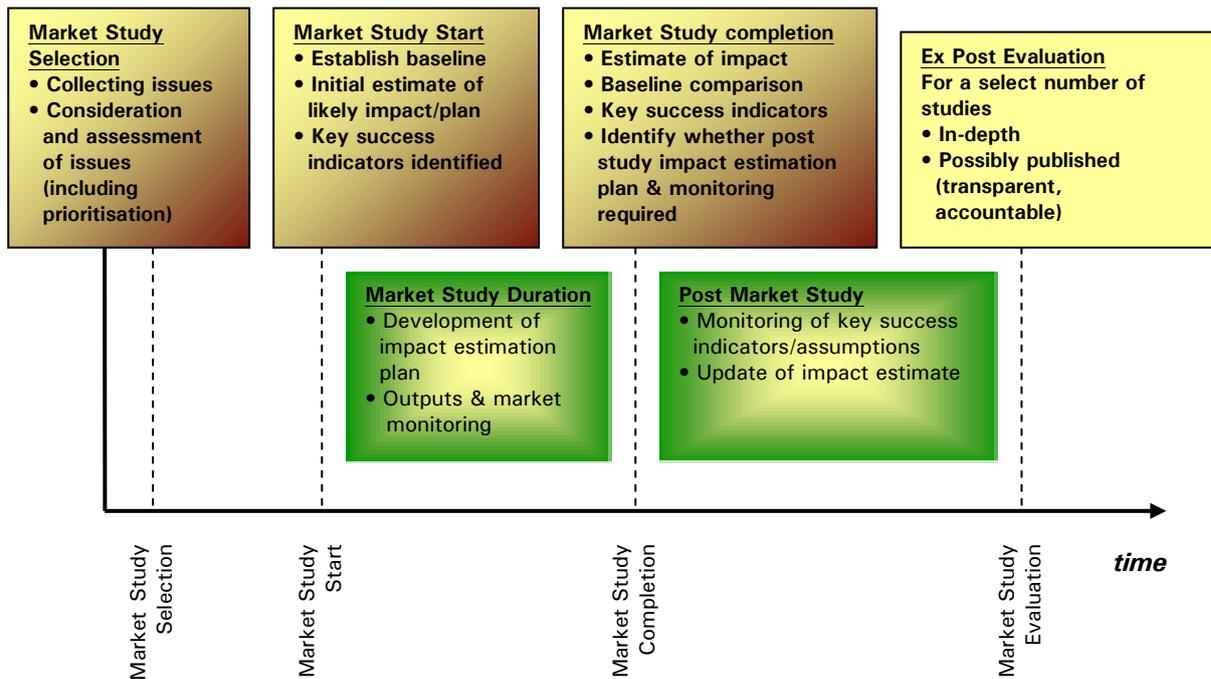
### ***At what points in the market study process should ex ante impact estimation be considered?***

13 Ex ante impact estimation is made easier if authorities consider the desired impacts of the study at the selection of a market study, during the study, and after its completion. This will help to keep the focus on

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<sup>63</sup> For instance, by explaining to market study teams the benefits of doing impact estimation, and how to do it, using workshops and internal materials, and providing templates and examples on the authority's intranet site.

outcomes, and help to identify barriers to successful intervention and any remedial actions, as well as enabling an authority to monitor whether the changes initially envisaged actually happened. The diagram below shows the points during the market study process at which consideration of impact can be built in.



### ***What impacts are measured?***

14 Ex ante impact estimation can be used to estimate the direct financial benefits to consumers following an authority's work, or actions by others, such as other government agencies or regulators, where such action was identified as being prompted by the work done by the authority.<sup>64</sup> Such financial benefits may arise, for example, from market studies that facilitate consumer switching through information and education. Factors that can be included in calculations are:

<sup>64</sup> In some cases, authorities might be reliant on other government agencies or regulators to act on their recommendations. Where this is the case, authorities should be mindful of how the claimed impacts will be split between the two agencies. Where a recommendation is made to another agency, benefits should not be claimed until after the relevant agency has made a change. In the meantime a study can report that 'should our recommendations be accepted, we estimate that the impact will be...' Authorities should be wary of the risks of over-claiming, and note very clearly any assumptions and cost or benefit allocations on which estimates are based.

- decreases in prices
- monetised improvements in quality range or service
- monetised time savings
- the benefits that consumers gain from making better informed choices.

There are risks attached to over-claiming, and authorities may wish to note very clearly any assumptions and cost or benefit allocations on which estimates are based.

- 15 Where problems are in an upstream market and benefit arises in the first instance to business customers it can be assumed the benefits will be passed on in full to final consumers, unless there is strong information to the contrary.

***What costs and benefits are measured in evaluation and impact estimation?***

- 16 When seeking to measure and quantify the impact of market studies either ex post or ex ante (TOOLS 4 and 5) it is important to decide what costs and benefits will be measured, and against what standard.

- 17 In terms of the standard, one approach is to apply a consumer welfare standard. While it is theoretically possible to consider total welfare effects, the costs and benefits are often considered too difficult to measure with sufficient accuracy to make the exercise worthwhile, because of the difficulties of estimating the value of total welfare effects and of establishing a causal relationship between authority intervention and total welfare effects.

- 18 When applying a consumer welfare standard, the key benefits to capture are the positive effects on consumer welfare, including static

and dynamic effects.<sup>65</sup> There may be additional benefits and costs identified in or from a market study if a total welfare standard is applied.<sup>66</sup>

- 19 In terms of costs to be measured, there are three main cost components to consider: investigation costs, implementation costs and any reduction in profits for businesses that operate in the market resulting from the authority's intervention. Applying a consumer welfare standard, an authority could seek to capture both investigation costs and implementation costs, but would not include any reduction in firms' profits when considering costs.<sup>67</sup>

### ***How to build ex ante impact estimation into market studies***

- 20 First, study teams seek to draw up an impact chain that draws causal connections linking the authority's anticipated actions resulting from the study to possible final positive impacts in the market. Next they establish the key success indicators for each market study<sup>68</sup> that will

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<sup>65</sup> Dynamic effects might include the benefits of increased clarity about how a market is working that may result from any study, and any benefits that result from the study having averted the introduction of more interventionist measures, such as sector-specific regulation.

<sup>66</sup> In some circumstances, market studies may appropriately include analysis of income or wealth distribution effects, particularly those concerning economically disadvantaged or vulnerable consumers. When studies include such analysis, any estimation of the impact of those studies can also include an assessment of the impact of the study on income or wealth distribution.

<sup>67</sup> Authorities may take account of investigation costs and implementation costs when selecting market studies and when considering what the best outcomes of each study should be. In weighing investigation and implementation costs against the benefits it is important to bear in mind that they are 'one off' costs, but that the benefits of any changes in the market will be felt on a lasting basis. Therefore, where investigation and implementation costs are included in any evaluation, they should be compared against the discounted present value of the benefits over time.

<sup>68</sup> Ideally, success indicators should be defined by market study teams well before publication of a final report. Identifying success indicators early will inform thinking on what actions will have greatest impact for what issues. Also, if authorities think ahead to how success might be measured, this can inform the range and type of data collected during the study. For example, some of the information gathering undertaken may explicitly be designed to inform the baseline and enable repetition, so that comparable data sets may be collected over time, to enable the authority to monitor developments. In some cases just starting a market study may affect the market. Where this is judged to be likely, the authority should collect baseline information before the study launches.

enable the team to measure whether the study is having the anticipated positive impacts.

- 21 Key success indicators will be defined so that the success of each study can be judged on its own terms and in a way that reflects the differences between market studies. The indicators may be based on the information gathered about consumer detriment and the reasons why the market might not be working. Throughout the duration of the project the key success indicators will be updated as more information becomes available.
- 22 Teams then decide how the key success indicators will be monitored both during and after the study. A methodical approach to estimating impact involves authorities drawing up impact estimation (and monitoring) plans for use during the course of the study, and post study monitoring plans, to monitor impacts in the short term after the study is completed.<sup>69</sup>
- 23 An impact estimation (and monitoring) plan sets out the key success indicators that will be monitored during the study, and how and when they will be monitored. It may also make an initial quantitative and/or qualitative assessment of impact.
- 24 A post market study monitoring plan records what is to be monitored post market study completion and when. For example, the plan might include monitoring retail prices or carrying out consumer and/or business surveys. This plan should also record the monitoring costs, risk ratings and any follow-up actions required. Information in the plan is used to check whether the key success indicators/assumptions used in

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<sup>69</sup> More detailed consideration of the content of an impact estimation plan is set out in Appendix 1 to this Annex.

estimating impact are moving in the right direction and to update the initial impact estimate if necessary.<sup>70</sup>

***How can authorities make their impact estimation transparent?***

- 25 An annex to the published market study report can describe the general approach to impact estimation and the particular key success indicators and monitoring plans. In addition, the estimated values of the costs and benefits of key recommendations can be included either in an annex to the report or in the main text of the report.<sup>71</sup>

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<sup>70</sup> More detailed consideration of the content of a post market study monitoring plan is set out in Appendix 2 to this Annex.

<sup>71</sup> A sample of an annex to a market study describing impact estimation is attached at Appendix 3 to this Annex. It is taken from the sale and rent back market study conducted by the UK OFT.

## Appendix 1 to Annex 2

### POSSIBLE CONTENT OF AN IMPACT ESTIMATION PLAN

- 1 Think about a brief introduction to the **background** of the project outlining the background to the market study, for example, why and how it was chosen.
  
- 2 Think about an **impact chain** that draws a series of causal connections linking the authority's actions to possible final impacts, for example, consumer detriment reduced, vulnerable consumer protected, productivity enhanced. Essentially, it tells a story as to why the authority might expect their actions to lead to the positive outcomes predicted for them. For those studies conducted for purposes such as gaining knowledge of a sector or informing enforcement work, impact should be considered in the context of any subsequent intervention work.
  
- 3 Draw up an **impact estimation and monitoring plan** used for the identification of, and suggestions for monitoring, key success indicators. These are elements of the impact chain, changes in which are indicative that the authority's actions are leading towards the anticipated final impacts. This will also set out what needs to be monitored, where it can be monitored, how soon monitoring needs to begin, what baseline data is available and, looking forward, how frequently monitoring needs to take place.
  
- 4 Consider an **initial quantitative estimate of impact**: how might changes in key success indicators be combined with other information to produce an estimate of the impact of the authority's actions? This estimate would be expressed in terms of monetised consumer savings.

- 5 Consider an **initial qualitative estimate of impact**: not all of the impact of an authority's action can be expressed in terms of monetised consumer savings and, therefore, it is necessary to discuss the qualitative impact. This could include details of the deterrence effect or the impact on consumer confidence resulting from the authority's action.

## Appendix 2 to Annex 2

### POSSIBLE CONTENT OF A POST STUDY MONITORING PLAN

- 1 **A list of the key success indicators/assumptions used:** this sets out the expected change in the key success indicators/assumptions used, that is, what is being monitored.
  
- 2 **The baseline data:** this data should be collected early and certainly before the end of the market study. Impact estimation is undertaken by comparing the situation after a market study with a relevant counterfactual – ideally, this would be what the market would have looked like if the market study had not taken place. In practice, the pre-intervention baseline can help to inform construction of the counterfactual, or can be a useful proxy. Ideally, a baseline should give an idea not only of what the market conditions were at some point in time before intervention, but also of developments before intervention.

For example saying 'Product A cost €B when the "X" authority's impact was first felt' is not as useful as saying 'Product A cost €B at the time when "X" authority's impact was first felt, and its price had been declining at a rate of 5 per cent a year previously.'

The second example tells us that "X" authority's intervention to lower prices takes place in the context of falling prices: this changes the way to think about impact. Where a baseline is not available an authority should still do its best to estimate impact and identify key success indicators.

- 3 **Data monitored:** it is important to have an accurate record of when the monitoring took place and the results that were recorded.

- 4 **The key results:** the key results are used to compare against the baseline data to assess whether the key success indicators/assumptions used are moving in the right direction.
- 5 **The risk rating:** this is used to highlight whether the key success indicators/assumptions used are moving in right direction. A colour coded scheme can be used, for example, green means it is moving in the right direction, if there is no impact then the risk rating is amber and if it moves in the wrong direction it is red.
- 6 **The approximate costs of monitoring:** this is used to record the approximate costs to monitor the key success indicators post project including staff resources required in terms of man hours and any costs of a survey/primary data collection if required.
- 7 **What the time will be spent on:** it is important to record what staff time will be spent on, for example commissioning a survey or analysing data. This will ensure that adequate resources are allocated to complete the monitoring.
- 8 **Any follow up actions required:** this is used to set out what follow up actions are required. For example, this could be in terms of advocacy, to highlight any additional data that is needed or to raise issues for discussion by senior management.

## Appendix 3 to Annex 2

# THE UK OFT SALE AND RENT BACK MARKET STUDY: IMPACT ESTIMATION ANNEX

### Introduction

- 1 This annex considers the likely impact of our proposals. Given both the limitations of the data and the speed of ongoing developments in the housing and financial markets, it is not possible to quantify the expected benefits or costs with much confidence. Moreover, the exact nature of the impact will depend on the details of FSA regulation. Nevertheless, we provide an indication of where the costs and benefits will lie and give broad indications of magnitude where possible.

### Overall impact

- 2 We expect the overall impact of our recommendations to be:
  - Higher standards of professional conduct in the sale and rent back sector, on the basis that:
    - 'rogue' traders will be less attracted to operating in a regulated sector
    - regulation will require improved standards in some areas, for example disclosure.
  - A reduction in the numbers of people being persuaded to undertake sale and rent back when it is not in their best interests to do so.
  - For those that do undertake sale and rent back, a reduction in the risks they face
    - this could lead to an increase in the number of people considering sale and rent back where this type of transaction is potentially suitable.
  - An increase in the costs of offering sale and rent back
    - this is likely to lead to some operators exiting the industry, and some consolidation among those that remain.

- Some restriction on the products that can be offered in the sector.

3 Below we discuss the costs and benefits in more detail.

### **Benefits**

4 There are three groups of consumers that will benefit from our recommendations:

- Group A: those consumers for whom sale and rent back is the most suitable way of releasing equity from their home will benefit from a higher quality product. Most significantly, these consumers will face less risk of early eviction or unexpected rent increases, and may have access to redress if things do go wrong. In addition, the increased advice and transparency may enable them to shop around more easily and get a cheaper or more suitable deal.
- Group B: some consumers who would previously have entered sale and rent back transactions will be diverted towards more suitable alternatives. This will result from a combination of fewer unscrupulous firms operating, and increased access to advice. The increased transparency and increased general awareness of the risk of sale and rent back may also contribute to consumers making better decisions.
- Group C: some consumers who were previously dissuaded from sale and rent back because of concerns surrounding the product may now proceed with the transaction.

5 The extent of these benefits to some of these individuals may be significant.

- 6 To illustrate the case of consumers who may benefit from the enhanced security of the product (that is, consumers in Group A), assume that, with no regulation, a consumer sold a property worth £150,000 at a discount of 20 per cent to market value, thus foregoing £30,000 of equity in that property. Their alternative option was to sell on the open market and find alternative accommodation. However, they go through with sale and rent back in the expectation that they will be allowed to remain in their own home for a number of years. If this expectation were not fulfilled because their tenancy was terminated sooner than anticipated, the financial detriment suffered would be a proportionate share of £30,000. The psychological detriment could also be significant. Regulation would mean that the consumer had greater security of tenure, would not be evicted without cause and therefore would enjoy the full benefit anticipated in exchange for the £30,000 of equity foregone.
- 7 A similar level of detriment may be experienced by consumers who undertake sale and rent back when it is not the most suitable option for them (that is, consumers in Group B). For example, they may proceed even though the rent is not affordable on a sustainable basis. In this situation the consumer might be better off selling on the open market, keeping the equity thus released, and moving to a smaller property. When consumers enter into a sale and rent back that is not sustainable for them, they forego the equity in their home but are only able to remain there for a short period longer. Again, the financial detriment suffered would be a proportion of the discount on the sale. Regulation cannot prevent consumers making short-term choices, but by keeping the most unscrupulous operators out of the market, and increasing consumers' access to independent advice it might be possible to reduce the likelihood of this happening.
- 8 Quantifying the number of individuals who, without regulation, would face such severe detriment is difficult. The consumer survey suggests

that around 13 per cent of sale and rent back customers are currently 'dissatisfied' with their transaction and 17 per cent are 'very dissatisfied'. We would not want to attach too much significance to these figures - it is impossible to gauge how severe this dissatisfaction was, and in any case the figures derive from a small sample base. Nonetheless we note that they relate to what is still a young market – further down the line some of the consumers who declared themselves satisfied with the product at this stage may yet experience difficulties.

- 9 To date there have been perhaps 50,000 transactions overall. On the basis of the above figures, this suggests around 15,000 dissatisfied or very dissatisfied customers.
- 10 It is hard to estimate precisely how many transactions will take place going forward, but it is likely that, in the short term, the number of transactions will drop, perhaps significantly. (We note, however, that as discounts may be deeper, the amount of potential detriment associated with each transaction may increase.) In the medium to long term, however, it is impossible to say whether the market will disappear, continue to function on a smaller scale, or start growing again.
- 11 However, with potential detriment being so severe in individual cases, and with detriment likely to be experienced in a material proportion of cases, the market does not need to be very big for the total detriment to mount up. To illustrate: if the size of the market was around 5,000 transactions per year, and 5 per cent of sale and rent back transactions resulted in detriment of the order of £20,000, the total detriment would be £5 million per year.
- 12 We also note that this detriment is likely to be experienced by a highly vulnerable consumer group – lower income consumers facing serious financial and housing difficulties.

- 13 Finally, our recommendations will also benefit some individuals who were dissuaded from sale and rent back because of the concerns surrounding the product (Group C). The benefit of the recommendations to these consumers will be the additional gain from a regulated sale and rent back transaction over and above the next best option. However, the consumer survey suggests that a few people were dissuaded from the transaction because of the risk - more commonly it was because of affordability issues. We do not think the benefit to Group C will be particularly significant compared to Groups A and B.

### **Costs**

- 14 Regulation will be costly to put in place. These costs will be born by the firms (some of which will be passed on to the consumer), the FSA, the Government, and advisory bodies such as Citizens' Advice.

### **Costs to firms**

- 15 The likely costs of regulation of sale and rent back can only be estimated when specific proposals are under consideration. However, by way of comparison, the FSA estimated that the incremental costs associated with regulating home reversion schemes would be fairly significant. Depending on the type of firm, estimates of the one-off costs ranged from £8,000 to £115,000 per firm, while ongoing costs ranged from £2,000 to £13,000 per firm per year.
- 16 For other products the FSA has used lower cost approaches. For example, its estimate of the incremental cost of regulation of Home Purchase Plans (HPPs) was £32 per product sold. However, this is unlikely to be indicative of the costs for sale and rent back, as there were generally no serious problems in the HPP market and the regulation primarily formalised existing practice, rather than introducing new requirements.

- 17 While the costs associated with regulating home reversion are likely to be more relevant for sale and rent back, the requirements may not be exactly the same. As we are not suggesting that sale and rent back firms should provide advice, costs should be lower in this respect. Also we do not necessarily envisage a standardised format for disclosure documents, just a minimum standard as regards content. On the other hand, many home reversion firms were already regulated by the FSA for the provision of lifetime mortgages, so there will be some additional costs for sale and rent back firms applying for FSA authorisation for the first time.
- 18 Even if the requirements were the same for sale and rent back as they are for equity release, it is still not possible to draw a straightforward comparison. The equity release market, with only a few large firms, is much more concentrated than the sale and rent back market which is highly fragmented. We would therefore expect the cost per firm to be much higher for equity release, even if the costs per transaction were comparable. Without a proper understanding of the balance of fixed and variable costs in each case, we cannot estimate what the cost per transaction or per firm would be of regulating sale and rent back.
- 19 Although we cannot estimate the costs of the requirements precisely at this point (because it would be for the FSA to consult on these), it is likely that there would be some fixed costs associated with regulation, and these fixed costs might sit heavily on small firms. For this reason, we envisage that there might be some restructuring and consolidation of the industry in response to regulation. Some players might exit altogether, for example, those who are primarily private landlords and who only undertake a small amount of sale and rent back business. Others might merge, or perhaps join a franchise group or other network, as has been common practice among IFAs, for example.

- 20 Consolidation could potentially reduce competition. However, given the fragmentation of the industry at present, and the lack of shopping around, it seems unlikely that the impact on competition would be significant. Indeed, improvements to the reputation of the industry might mean that large firms are more inclined to enter. Such firms could be a significant driver for competition in the market.

### **Costs to consumers**

- 21 The increased costs to firms will be passed on to consumers, at least in part. It is therefore likely that the number of transactions will be reduced.
- 22 In principle it is possible that some consumers would prefer a low cost, risky product; if so they will be harmed by regulation that means this option is no longer available. However, we do not think this is a material concern as our consumer research suggested that for most consumers, the guarantees of security of tenure were a critical reason for the transaction.

### **Costs to government**

- 23 There will also be costs to the Government and the FSA. The costs to the FSA are not likely to be very significant as they already regulate equity release. The estimated costs to the FSA of implementing the home reversion regulation were £40,000 - £80,000, with minimal ongoing costs.
- 24 We have also recommended that the Government undertake some work on consumer awareness. However, we envisage that this would consist primarily of ensuring that the right message about sale and rent back is reaching consumers through existing channels, such as the arrears pack sent out by lenders.

- 25 DWP will also incur some costs in providing clearer guidance on housing benefit but we do not anticipate that these would be significant.

**Cost to advisory centres**

- 26 Advisory centres will also be called upon to increase advice to those entering into sale and rent back agreements. However, there should be an offsetting decrease in the number of customers who require advice after getting into difficulty with sale and rent back without taking earlier advice.
- 27 The Government has recently committed to an additional £9 million extra funding for face-to-face debt advice provided by third sector partners. This will include more specialised training for Citizen Advice Bureaux staff and local authorities, to provide tailored comprehensive financial advice for consumers, as well as strengthening the capacity and expertise of the National Housing Advice Service to provide independent expert advice for people struggling to pay their mortgage or loan. We envisage that sale and rent back messages could be incorporated within this training.