

# Market Investigations: Lessons from UK Experience

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# Outline

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1. Nature of UK market investigations
2. Main issues investigated
3. CMA market investigation powers and remedies
4. Some key case illustrations
5. Assessment: pros and cons

# 1. What are UK market Investigations?

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# 1. UK Market investigations

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- Introduced in UK Enterprise Act 2002 (but similar UK provisions have existed since 1970s)
- Flexible: can investigate any “market feature” that restricts, distorts or prevents competition
- No fault, prospective analysis
- Now conducted by UK’s Competition and Markets Authority (“CMA”) – 18 months for in-depth investigation
- Highly transparent, and intensive, investigation process

## 2. What are main issues investigated?

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## 2. Overview of cases since 2002

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- 15 cases in 13 years, including “usual suspects”:
  - Energy markets
  - Banking and insurance
  - Construction materials
  - Grocery retailingPlus a diverse set of others
- Broad categorisation:
  - demand-side problems: information, incentives
  - supply-side problems: monopoly, oligopoly, entry barriers
- Wide variety of issues investigated:
  - some classic monopoly and oligopoly problems
  - problems caused by regulation
  - information and incentive failures
  - addressing consumer protection concerns

### 3. What are CMA's powers and remedies?

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### 3. Very wide range of CMA powers and remedies

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- Enforced change of industry/market structure: compulsory divestment (e.g. London airports, cement manufacture)
- Reduce entry barriers: regulatory, structural or conduct-related (e.g. audit services)
- Information to empower/change consumer conduct (banking, store cards)
- Fix regulatory errors (railway franchise contracts, car insurance)
- Impose price controls – seen as last resort, if cause cannot be addressed (classified directories)
- Or “do nothing”: but only one of 15 cases has led to no remedies



## 4. Lessons from key case illustrations

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## 4. Key case illustrations

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- Airports: structural remedies led to enforced sell-off of 2 major London airports owner by BAA
- Cement: more ambitious micro-managing of oligopoly market structure envisaged – create new oligopoly member in cement industry
- Yellow Pages: price control imposed on classified advertising paper directory “monopolist” – but this proved to be completely unnecessary
- Payment Protection Insurance (PPI): ban on sale of insurance at same time as sale of financial product
- Retail banking: concerns with consumer or supplier conduct?
- Supermarkets: code of conduct remedies aimed at protecting grocery suppliers from competition and buyer power
- Audit market: encouragement to switch, against customer interests?

## 5. Concluding themes

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## 5. Pros and cons of market investigations regime

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Pros	Cons
Flexibility – can address variety of market failures	<i>Too</i> flexible – lacking in predictability and focus
Prospective focus avoids pitfalls of competition law prohibitions	Competition law framework does not always sit well with concerns or remedies
Remedies can implement/assist beneficial supply-side reforms	Temptation to follow popular political agenda
Provide a healthy check on misguided regulatory constraints/errors	Inability to devise remedies to fix problems
	Insufficient recognition of regulatory limitations?

# Locations and contact

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