Competition advocacy in an economic downturn

International Competition Network – Advocacy Working Group, 12 January

John Fingleton – Chief Executive

Chris Jenkins – Head of Advocacy Team

Office of Fair Trading
Outline

- What is competition advocacy in ‘normal’ times?
- Challenges for competition advocacy in an economic downturn
- How should we respond?
- What about international cooperation?
Competition advocacy – a baseline for ‘normal’ times

- Advising government where its activities affect competition and consumers
  - particularly where state regulation or behaviour restricts or distorts competition
  - tackling market problems – competition and consumer enforcement not sufficient
- Informing and educating consumers and businesses
- Distinguish between
  - Framework advocacy and issues advocacy
  - Shooting (opening up markets) and goalkeeping (preventing restrictions on competition)
OFT tools for advocacy to government

- Legal power to advise government where its activities and policies affect competition (Enterprise Act 2002)
- Range of tools for achieving this, including
  - Market studies – government committed to responding in 90 days (e.g. Commercial Use of Public Information)
  - Competition Impact Assessments – required for all new policies
  - Other ‘advocacy projects’ – can be public or private (e.g. Environmental Product Standards project)
  - Cross-government groups (e.g. Competition Forum)
  - Public speeches
- In ‘normal’ times, focus on opening up markets (‘shooting’)
Advocacy at a turning point?

● **Before**
  - Decade of macro stability
  - Broad and growing confidence in markets
  - Reduction in global barriers

● **Now**
  - Causes
    • Economic downturn
    • ‘Credit crunch’
  - Consequences
    • Loss of faith in markets?
    • More vulnerable consumers
    • Failing firms
    • Incentives for cartels
How might a downturn threaten competition policy?

● Competition policy works well when
  - markets are given time to evolve and drive efficiency
  - there are low barriers to entry and exit of firms
  - consumers are able to cope with variability in price and quality

● But downturn could undermine these conditions...
  - policy more focused on short-run survival
  - may be pressure to support ‘failing firms’
  - consumers may value stability over improved aggregate outcomes

=> Reduced support for competition?
Challenges for competition advocacy

- Competition policy given lower priority by government alongside other policy goals?
- Pressure to circumvent or soften competition rules?
- Greater direct government involvement in markets
- Reduced confidence in markets and market outcomes among policymakers and consumers
- But also opportunities
How should competition authorities respond?

- Advocacy response will depend in part on
  - the powers and duties of the competition authority
  - its relationship with government
  - its historic experience of advocacy

- But very little formal power required to express a view that will be listened to
Key themes in responding to the downturn

- Importance of framework advocacy
- Effective ‘goalkeeping’
- Trusted advisor vs public champion
- Flexibility and prioritisation
Framework advocacy

- Importance of clear framework of competition and consumer enforcement
  - Underpins long-term business investment and decision-making
- Ensure other frameworks (e.g. industrial policy, financial services policy) harness strong competition to deliver objectives
- Opportunity for independent competition authorities – under less immediate political pressure
- Requires senior level engagement and a public approach
Shift from shooting to goalkeeping?

- Shooting
- Advocacy
- Goal-keeping

Government

- Opens market to competition
- closes market to competition

Competitive Markets

Study

Downturn likely to impact on govt activity

Enforcement

Lobbying

Office of Fair Trading
‘Goalkeeping’ – highlighting the competition effects of new policies

- Need to focus policymakers on long-run effects
- Extension of normal ‘competition assessment’ approach
- Minimise distortion of competition to achieve policy goal
  - Is there a less restrictive alternative? (Lack of imagination?)
  - Can impact be reduced – e.g. time limited intervention
- Direct subsidy vs. reduction in competition
- Early engagement is crucial
## Trusted adviser versus competition champion?

<table>
<thead>
<tr>
<th><strong>Private adviser to government</strong></th>
<th><strong>Public competition champion</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Try to get into policy discussions at early stage</td>
<td>More public communications around the benefits of the competition framework</td>
</tr>
<tr>
<td>Concentrate on stopping new competition restrictions rather than challenging existing restrictions</td>
<td>Challenging government approaches publicly where there is threat of significant new competition restrictions</td>
</tr>
<tr>
<td>Private and informal influencing, including via economists and lawyers.</td>
<td>More speeches and press articles rather than/as well as market studies</td>
</tr>
</tbody>
</table>

- **Difficult question – need to strike balance**
- **But need credible threat of going public**
Flexibility and prioritisation

● Need to be able to react to issues quickly
  - OFT has initiated more cross-office working – e.g. on financial services
  - Ongoing contact with relevant policymakers – need good intelligence on future initiatives
  - Build up expertise in key areas – e.g. industrial policy?

● Prioritisation to ensure overall portfolio of work supports the competition framework – delivers visible benefits
  - ‘Clean bill of health’ can be good for public confidence in markets
Scope for international cooperation

- Many markets and/or market participants are international and government needs to respond in a coordinated way
- Those seeking to influence governments, even where markets are not international (e.g. pharmacists) are very good at talking to each other and using examples from other countries (often misleadingly)
- Good ideas for lines of work or creative solutions to stranded assets
- Sharing best practice, e.g. how best to influence government policy
Some issues for discussion

- What is the right balance between public advocacy and private advice to government?
- How do we ensure continuing support for the competition framework?
- Where does consumer advocacy fit in?
- What are the key issues that we are likely to face over the next twelve months?