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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Methodologies for Conducting Market Studies - Note by the United Kingdom

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm.

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United Kingdom

1. UK markets regime

1.1. Market studies

1. Market studies are one of a number of tools at the Competition and Markets Authority's (CMA) disposal to address competition or consumer protection problems, alongside its enforcement and advocacy activities. They are examinations into the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer behaviour.
2. Market studies are flexible tools which enable the CMA to examine markets that appear not to be working well for consumers, even in situations in which it is not immediately obvious that either competition or consumer law has been broken. They may vary in a number of respects, including in terms of themes and issues covered; the type of information gathered and the analysis undertaken; outcomes; scale and resourcing.
3. Market studies can lead to a range of outcomes, including: a clean bill of health; actions which improve the quality and accessibility of information to consumers; encouraging businesses to self-regulate; making recommendations to government to change regulations or public policy; taking competition or consumer enforcement action; or, making a market investigation reference.
4. The CMA and its predecessor, the Office of Fair Trading (OFT), have carried out many market studies which have taken a range of forms, as illustrated in Appendix 1. These include strategic studies to better understand issues (for example, *Advertising of Prices*, OFT, 2010); studies making recommendations for regulatory change (for example, *Pharmaceutical Price Regulation Scheme*, OFT, 2005); studies improving accessibility of information for consumers (for example, *Legal Services*, CMA, 2016) and studies leading to enforcement action (for example, *Quick House Sales*, OFT).¹
5. While the majority of studies have been self-standing, a minority have led to in-depth market investigations which have order-making powers that are not available through a market study. For example, the OFT's investigation of *BAA Airports* (2007) led to significant reform following a market investigation, ultimately leading to the divestment of several airports.
6. Market studies are conducted under the CMA's general review function in section 5 of the Enterprise Act 2002, with certain procedural obligations introduced by the Enterprise and Regulatory Reform Act 2013, including publication of a market study notice, statutory time limits and formal information gathering powers (discussed further below). Within twelve months of the publication of a market study notice, the CMA must set out its findings and the action (if any) it proposes to take.^{2 3}

¹ [Completed OFT market studies](#) and [CMA market studies](#)

² [Market studies and investigations: guidance on the CMA's approach](#) (CMA3).

³ [How market studies are conducted](#) (OFT519)

1.2. Market investigations

7. Market investigations are conducted following a statutory reference from the CMA or from a sectoral regulator.⁴ They have a statutory timetable of 18 months - with the possibility of a six month extension for special reasons - and give the CMA the power to impose both structural and behavioural remedies.

8. Market investigations are more detailed examinations into whether any aspect of the market - be it structural, supplier or customer conduct, or regulation - is restricting competition. Where specific features or a combination of features exist in more than one market, a cross-market investigation may be carried out. If the CMA determines that there is an adverse effect on competition (AEC) in the market it must decide what remedial action, if any, is appropriate. If the CMA decides to take action itself to remedy an AEC it has the choice of accepting undertakings from the relevant parties and/or of making a legally enforceable Order.⁵ In practice, the CMA may decide to take several actions itself and/or make several recommendations to others in a package of measures.

9. The CMA and its predecessor, the Competition Commission (CC), have implemented a range of remedies across several sectors following market investigations. Recently, the CMA imposed a number of remedies to increase competition in the energy market while introducing a price cap to protect those prepayment consumers for whom competition was not working effectively.⁶ This followed a reference of the market to the CMA by Ofgem, the sector regulator. The CMA is also bringing about reforms in retail banking to ensure that customers benefit from technological advances and that new entrants and smaller providers are able to compete more fairly, following its retail banking market investigation.⁷ Other markets that have been investigated through this regime include groceries, airports, and aggregates, each of which led to substantial interventions to improve outcomes for consumers.

10. Market investigations follow more formal processes than market studies. The decision-makers are drawn from a panel of independent Members, and information is gathered by means of formal hearings, information requests and multiple public consultations. The CMA has recently consulted with a view to streamlining the market investigation process, including by reducing the number of formal consultations, allowing for earlier consideration of remedies and introducing earlier, more flexible interaction with parties. The proposed reforms also aim to strengthen synergies between market studies and market investigations while maintaining independence of decision-making.⁸

⁴ Under section 131 of the Enterprise Act 2002 (CMA), and applicable sector-specific legislation (sector regulators).

⁵ The CMA's order-making powers are contained in Schedule 8 to the Enterprise Act 2002.

⁶ [Energy market investigation](#)

⁷ [Retail banking market investigation](#)

⁸ [Updated guidance on the CMA's approach to market investigations – consultation.](#)

2. Information gathering

2.1. Market studies

2.1.1. Pipeline and scoping

11. Prior to the launch of a market study, the CMA gathers information from a combination of sources and undertakes an initial assessment of the market. Initially, this helps to develop theories of harm and enables a decision to be made on whether the project is a priority for the CMA.⁹ Thereafter, it assists with scoping the market study and developing an evidence gathering strategy.

12. At this stage sources of information may include: complaints from businesses and trade associations; consumer complaints; information from organisations representing consumer interests or super-complaints from designated consumer bodies; information obtained in the course of other CMA work and research; market research; media and social media monitoring and other public intelligence. The CMA may also undertake focussed stakeholder engagement - for example with government departments, and other key stakeholders whose insight or intelligence may enhance understanding of the issues, including actual or potential consumer harm, and help inform the CMA's decision on whether or not to launch a study.

13. *After launch*

14. A market study begins formally with publication of a market study notice. This triggers the CMA's ability to exercise statutory powers to gather information.¹⁰ The CMA aims to be fair and reasonable in its requests for information, and will use statutory investigatory powers where necessary to ensure that information requests are answered completely and in a timely manner. The CMA adopts a flexible approach – the form of engagement with parties may differ depending on the circumstances, for example, the extent of informal cooperation or the nature of information requested – which means the CMA may decide to proceed on an informal basis.

15. In general, information is obtained from a wide variety of sources during a market study, which may include:

- Seeking written submissions in response to the published market study notice
- Review of existing CMA work and intelligence
- Questionnaires, surveys, 'mystery shopping' exercises
- Formal (statutory) information requests
- Meetings with individual stakeholders
- Roundtables with stakeholders
- Site visits to businesses

⁹ Decisions are informed by the CMA's published [Prioritisation Principles](#). In particular, these consider the potential impact of a CMA intervention in terms of consumer welfare; strategic significance, including relevance to the CMA's published priorities; risks (to a successful outcome) and resources required to undertake the work.

¹⁰ [Market studies and investigations: guidance on the CMA's approach](#) (CMA3). Publication of a market study notice triggers the CMA's ability to exercise statutory investigatory powers including: giving notice requiring any person to attend a specified place to give evidence; giving notice requiring any person to produce specified documents; giving notice requiring any person carrying on business to supply specified forecasts, estimates, returns or other information in a specified form and manner.

- Information from sector regulators
- Information from central and local government
- Literature reviews
- Market intelligence
- International comparisons of similar markets in other countries

16. The exact nature and extent of information gathering will depend on the specifics of the study being undertaken. For example, for market studies dealing with public bodies acting as suppliers or customers, or projects focussing on the impact of regulations, the project team will collect information from relevant public bodies through questionnaires or meetings.

17. The case studies outlined later in this paper illustrate a range of different approaches across studies examining a variety of theories of harm, from the impact of regulations to weak consumer response.

2.2. Market investigations

18. As explained above, a market investigation is one possible outcome of a market study. It is an in-depth investigation led by an Inquiry Group drawn from the CMA's panel of members. The group is supported by a team of staff including specialists providing advice on economic, legal and accounting matters. The conduct of a market investigation, including approaches to the gathering and analysis of evidence, is set out in detail in guidance published by the CMA.¹¹ The CMA is empowered to require information and the attendance of witnesses in the course of a market investigation.

19. The CMA must conclude a market investigation in 18 months from the date that the reference is made (although the CMA may extend this period by up to a further six months if it considers that there are special reasons why the investigation cannot be completed and the report published within 18 months). There are a number of stages to the investigation, including evidence gathering which might involve a series of site visits and hearings with parties and other interest groups, publication of a provisional findings decision (after about 12 months), further hearings and then the provisional decision on remedies (if required) before publication of the final report.

20. As noted above, the CMA has recently consulted with a view to streamlining the market investigation process.¹² The CMA is proposing to make two key changes to the way it undertakes market investigations in future:

21. Streamlining the process by assessing potential remedies at an earlier stage; reducing the number of formal consultations around set-piece publications; and introducing earlier, more flexible interactions with parties, in particular earlier hearings with parties, consulting on our approach to analysis and sequentially sharing or publishing analysis; and

- Strengthening synergies between market studies and market investigations while maintaining independence of decision-making, clarifying the relationship between the Board in its role of referring markets for investigation, and the Group who are the independent decision-makers for that investigation by:

¹¹ [Market investigation guidelines](#)

¹² [Updated guidance on the CMA's approach to market investigations – consultation.](#)

- Considering remedies and undertaking preparatory work for the market investigation during the latter stages of market studies; and
- Introducing the potential for the Board to issue an advisory steer on the scope of a market investigation (in cases where the CMA has undertaken the market study).

22. The proposals under I) are intended to ensure that the CMA can reach robust conclusions over shorter timescales, delivering significant time and resource savings both for parties and the CMA, while also ensuring parties have greater opportunities to inform our thinking and analysis on the issues at an early stage.

23. The proposals under II) are designed to help maximise the synergies from the creation of the CMA, by making best use of market studies and market investigations.

24. *Current approach*

25. To ensure an efficient handover, the CMA begins preparatory work on a market investigation on a contingency basis before the final decision to make a reference is taken. This will include consideration of further information gathering and analysis likely to be required.

26. Once the market investigation reference has been made, the CMA formally launches its investigation with a ‘first day letter’ to key main parties, including information on the terms of reference. This first day letter takes forward the information-gathering process by requesting specified initial factual and financial information. At an early stage, informal meetings are held with main parties, usually covering procedures to be adopted for the conduct of the investigation and often seeking information and views on the market. A detailed market and financial questionnaire is next sent to the main parties and, in many cases, other information is collected from a wider range of parties.

27. The CMA may decide to conduct one or more surveys as part of the process. In many cases, the CMA organises early site visits to several parties. These are designed to be helpful to both the CMA and the parties involved and offers a chance to gain a greater understanding of the parties’ businesses.

28. Information gathering is informed by the developing theories of harm. An Issues Statement is released at an early stage in the investigation process, discussing the theories of harm the CMA intends to pursue. Parties are invited to provide submissions commenting on the issues set out in a formal Issues Statement.

29. The Inquiry Group holds a round of formal private hearings with parties ahead of the publication of its Provisional Findings. Where the CMA provisionally finds that there is an AEC, response hearings will take place with the main parties and potentially key third parties. Having considered responses from parties, the CMA will notify its provisional decision on remedies for comment before reaching its final decision.

3. Information analysis

3.1. Market studies

30. As information is obtained during the course of a market study the initial analysis undertaken at the scoping stage is updated and refined. The focus is on developing a deeper understanding of evidence to support or rebut the theories of harm and to reach

conclusions about the extent of any market failure and any harm to consumers that may have resulted.

31. Analysis is also focussed on the most appropriate way to remedy any market failures that have been identified. To be effective, any recommendations made by the CMA at the end of a study are reliant on recipients taking account of the remedy. Therefore, findings and proposed measures are discussed with interested parties to take their views on effectiveness, practicality and unintended effects. This might involve testing with focus groups or panels of industry representatives and experts.

3.2. Market investigations

32. The CMA's analysis in the course of a market investigation is focussed on reaching a decision as to whether there has been an adverse effect on competition, and thereafter on potential remedies. The analysis covers all relevant aspects of competition, often assessing the ability or incentives firms have to offer better prices or terms to customers and to strive for efficiency, better ways of operating and improved products.

33. The CMA applies a range of analytical techniques, both qualitative and quantitative, so as to understand the nature of competition in the market under investigation, as well as the impact of any features. A number of these are illustrated below in the case studies on the CMA's energy market investigation and retail banking market investigation.

34. The extent to which the CMA will seek to quantify particular effects (e.g. on the adverse effects on competition or the effects of remedies) will vary from case to case, depending on the scale of any particular effect, the practicality of conducting quantitative analysis and the resource implications.

35. The CMA's guidelines for market investigations provide more detail on the types of analysis undertaken, including on prices and profitability.

4. Case studies

36. The following section provides an illustration of the CMA's approach to information gathering and analysis with reference to recent market studies and market investigations.

4.1. Legal services market study

37. In December 2016 the CMA published its final market study report into legal services.¹³ The CMA concluded that competition in legal services for individual consumers and small businesses was not working well. In particular, it found that there is not enough competition on price, quality and service to help those who need legal support to choose the best option.

38. The CMA set out a package of measures which challenge providers and regulators to help customers better navigate the market and get value for money, including a requirement on providers to display information on price, service, redress and regulatory

¹³ [Legal services](#)

status. The measures were developed after discussions with key stakeholders, including the eight frontline legal regulators.

39. While the market study covered a broad range of legal services, a small number of case study areas (wills and probate; employment law; and commercial law services) were identified to allow for a more detailed examination of the three theories of harm that the market study considered:

- Whether consumers can access, assess and act on information about legal services so that they can make informed purchasing decisions and thereby drive competition for the supply of legal services.
- Whether information failures result in consumer protection issues that are not being adequately addressed through existing regulations and/or redress mechanisms.
- Whether regulations and the regulatory framework go beyond what is necessary to protect consumers and weaken or distort competition for the supply of legal services.

40. To evidence the study, the CMA commissioned independent quantitative and qualitative surveys of individual consumers' experiences of the legal services market. It also commissioned in-depth qualitative research into small business customers of legal services. Taken together, this research provided evidence on how different types of consumers decide between legal service providers; their awareness of information on quality and price; and how consumers judge quality. It also helped provide initial evidence on the types of interventions that might help consumers engage with the market and choose between providers.

41. The CMA also reviewed and analysed pre-existing material, in particular the significant body of research already carried out by the Legal Services Board - the independent body responsible for overseeing the regulation of lawyers in England and Wales - and its Consumer Panel.

42. A decision was taken *not* to undertake wide-scale information requests from the highly fragmented legal services providers' base, but instead to seek focussed information, as far as possible through trade bodies and existing structures. Several bilateral meetings took place at key points in the study,¹⁴ involving representative bodies, some new entrants (to establish, for example, potential barriers to entry), and key regulators in the sector. In addition, three roundtables and workshops were held involving key legal services providers, which helped to test ideas for remedies and appetite for reform.

4.2. Digital comparison tools market study

43. In September 2016 the CMA launched a study into digital comparison tools (DCTs)¹⁵ to consider how the benefits of these increasingly important tools could be maximised, but also to consider concerns that had been raised on a range of issues, from DCT-supplier contract terms to transparency.

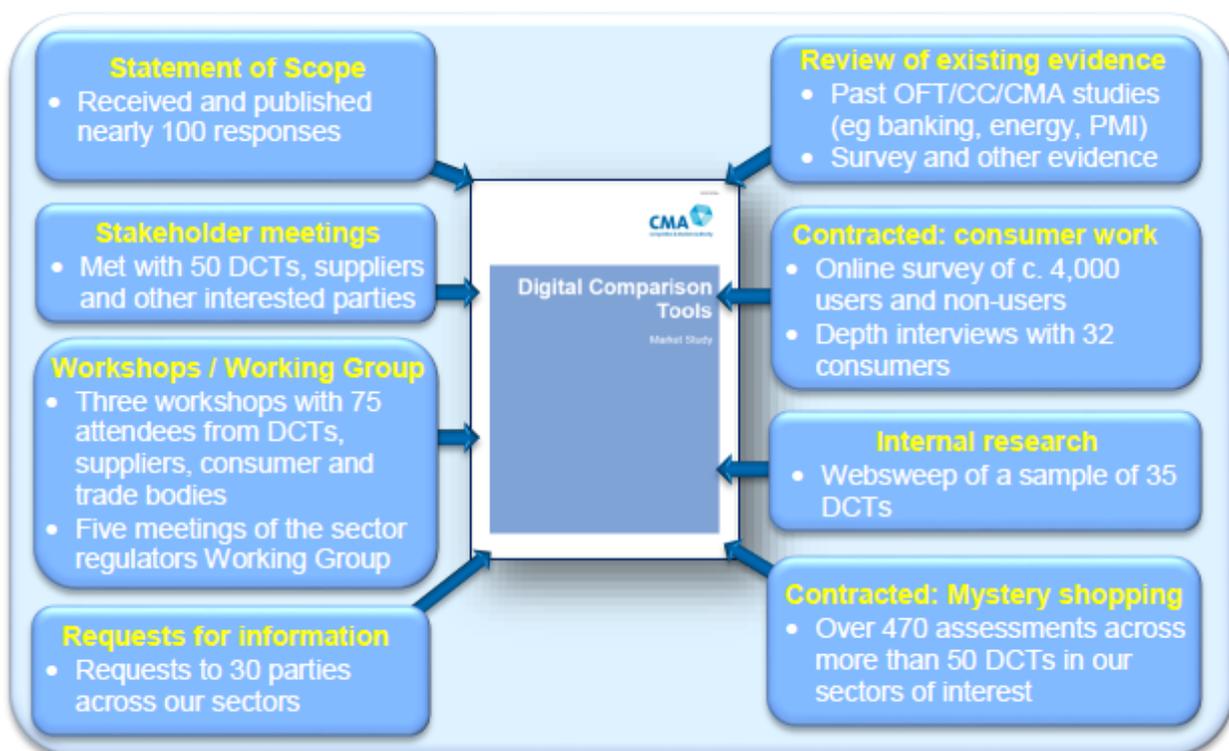
¹⁴ After issuing the Statement of Scope, after publication of the Interim Findings and in the lead up to finalising the CMA's final recommendations.

¹⁵ [Digital comparison tools](#)

44. The CMA focused on DCTs presenting offers from service suppliers - in particular in utilities, financial services and travel. Within these broad sectors, the CMA chose four case studies for targeted evidence-gathering: home insurance; credit cards; broadband (including packages); and flights. In addition to these four case studies, the CMA has drawn on its existing evidence base in energy, personal current accounts and private motor insurance and, in some cases, gathered additional information in these sectors.

45. Since launching the study the CMA has consulted a large number of parties and gathered a wide range of evidence, including from commissioned consumer research and mystery shopping. In general terms, the CMA has sought information on a voluntary basis, to maintain collaborative dialogue with parties.

46. The diagram below provides an overview of specific methods and evidence sources.



4.3. Care homes market study

47. In December 2016 the CMA launched a market study into care and nursing homes for the elderly.¹⁶ The CMA is examining:

- How care homes are complying with their obligations under consumer protection law.
- How older people and/or their representatives find the experience of choosing a care home.

¹⁶ [Care homes](#)

- How regulation and the role of local authorities affect competition in terms of quality and price.
- Whether competition is working well for residents, and whether it drives choice, quality and value for money for both self-funded and publicly funded residents.

48. Evidence is being gathered from a wide range of stakeholders including residents of care homes and their relatives/representatives, care home providers, local authorities, sector regulators, consumer groups and charities. This has included sending (voluntary) information requests to care home providers and a selection of local authorities; working with consumer organisations to publicise the study with a view to generating intelligence and complaints; commissioning qualitative consumer research; purchasing datasets of company accounts to undertake financial analysis to better understand incentives for investment in the sector and concerns around sustainability of the sector; and, holding round tables with stakeholders.

49. The CMA approached care home providers in order to identify (often very vulnerable) care home residents and their representatives for our qualitative consumer research. Providers were given the option of supplying residents' details under the CMA's statutory information gathering powers, in order to ease any data protection concerns. Next of kin were informed of the research and given an early opportunity to opt out. Subsequently a market research company commissioned by the CMA carried out qualitative interviews with next of kin and where they thought it appropriate, with a number of residents.

50. Given regional variations in public policy and market conditions across the UK, the CMA also carried out focussed and structured in depth interviews with providers and other stakeholders in different geographical areas, to explore these key differences.

4.4. Energy market investigation

51. The CMA's energy market investigation covered both wholesale and retail markets in both gas and electricity. In relation to the retail markets, it found that although competition had benefited those customers who have switched to competitively priced fixed-term deals, around 70% of the domestic customers of the six largest energy firms were still on the more expensive 'default' standard variable tariff. A number of the CMA's remedies focussed on encouraging switching to more competitively priced deals.¹⁷ It also found that customers on prepayment meters were not well served by competition and introduced a price cap to protect them until the introduction of smart meters.

52. Over the course of the investigation the CMA received over 100 submissions from energy suppliers, generators, government bodies, consumer groups, academics and other interested parties. Meetings were held with the ten largest energy suppliers to help identify data and information held by each supplier and the wider industry which could assist the investigation. Following this, market and financial questionnaires were sent to these parties. Subsequently, site visits were carried out to the premises of the six large energy firms, including a small supplier, a generator and an electric power transmission network. Case study interviews were conducted with small to medium sizes suppliers to discuss barriers to entry and expansion.

¹⁷

[Energy market investigation](#)

53. Written evidence and data was gathered from a large number of third parties including government departments/regulators, other energy suppliers, generators, gas and electricity distribution companies, power exchanges, brokers and traders, consumer bodies and price comparison websites. The CMA also commissioned a survey of domestic customers of energy suppliers in Great Britain.

54. Throughout the investigation the CMA consulted key parties on its approach to certain pieces of analysis, including the approach to financial and profitability, gains from switching and cost pass through analysis. The CMA's views on a range of issues were published at various stages, including where appropriate, the results of analyses. Notably, consultations were held following publication of the Issues Statement, Updated Issues Statement, Provisional Findings and Provisional Decision on Remedies. The CMA's intention was to assist the parties in understanding its concerns, to allow parties to respond to the points raised and more generally to encourage comments and aid transparency.

55. Examples of specific analysis undertaken included:

- A quantitative assessment of the potential for electricity generators to exploit market power
- Modelling the impacts of introducing locational pricing for transition losses
- An analysis of the extent to which changes in prices reflected changes in wholesale, network and policy costs
- A quantitative assessment of the gains available to customers from switching supplier, tariff and / or payment method
- An analysis of the profitability of generation and retail supply, including assessments of the cost of capital
- An analysis of efficient benchmark tariffs, used to construct the prepayment price cap.

4.5. Retail banking market investigation

56. In November 2014, the CMA made a reference for an investigation of the supply of retail banking services to personal current account (PCA) customers and to small and medium sized enterprises (SMEs).

57. The CMA published its final report in August 2016, concluding that older and larger banks do not have to compete hard enough for customers' business, and smaller and newer banks find it difficult to grow, meaning that many people are paying more than they should and not benefiting from new services. To address these problems, the CMA is implementing a package of reforms, including requiring banks to implement Open Banking by 2018, to accelerate technological change in the UK retail banking sector.

58. Extensive information gathering and analysis was conducted over the course of the investigation.¹⁸ This included initial meetings with a large number of parties to help identify data and information held by each relevant party to assist with the investigation; visits to a number of banks throughout the UK; and meetings with regulators. Contact was also made with a large number of other third parties including financial service

¹⁸ A chronological description of the conduct of the investigation from the reference to the publication of the final report is set out in [Appendix 1.1 to the Final Report](#).

providers, IT providers, government departments, price comparison websites, academics, SMEs, consumer representative bodies and a number of trade associations.

59. A customer survey and qualitative research into PCA customers, and separately, qualitative research into the behaviour of SMEs were undertaken. A number of case studies were carried out on market entry and expansion. The CMA consulted on its approach to a number of key pieces of analysis, including on profitability, business current account and PCA pricing, PCA switching and analysis of the actual behaviour of PCA customers versus their perceived behaviour. The CMA also consulted on the commissioning of a report on the impact of innovation in the UK.

60. A number of hearings and roundtables were held (summaries are published on the CMA's website). Prior to the publication of the CMA's provisional findings, and in order to facilitate contributions from parties, the CMA published views on a range of issues at various stages and, where appropriate the results of its analysis. This included a number of working papers, including:

- Relationship between concentration and outcomes: review of empirical literature
- Summary of entry and expansion in retail banking
- Barriers to entry and expansion: Capital requirements, IT and payment systems
- BCA and PCA pricing analysis
- Retail banking financial performance
- Quantitative and qualitative analysis of searching and switching in PCAs.

Appendix: Market studies take a range of forms

