

Competition Policy Review International Conference

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Overview

- Governance
 - Description of how the OFT worked
 - What were the results or outcomes
 - Relevance to CPR
- Market Studies
 - How market studies worked at OFT
 - Results/outcomes of that
 - Relevance to CPR
- Conclusion

How OFT Board Worked

- 10-12 members, majority non-executive
 - Non-executive Chairman (so Board can hold Exec to account)
 - Non-execs chosen for skills and expertise, not as “representatives”
 - CEO as head of the agency
- 10 meetings a year + audit + visits + strategy (20 days)
- Responsible for decisions on
 - strategy, planning, selection and performance of senior talent, setting targets for Executive, portfolio of work, consistency across cases, etc
 - Reputation, good process, integrity, doing the right thing,
 - Market studies, Formal Guidance
 - not individual cases, although consulted on important/novel issues
- CMA, other regulators follow this model
- Sector regulators with concurrent comp & cons powers

Outcomes of UK Governance Model

- Economic outcomes
 - Prioritisation around impact (not legalistic)
 - Non-intervention is as important as intervention
 - Performance by evaluation of economic outcomes & mission
- Agency effectiveness
 - Support and challenge
 - Leadership, management and culture change
 - Internal efficiency and cost saving
 - Evolution and correction of approach (e.g., media, decisions)
- Governance, Accountability & Independence
 - Effective decision-making (by accountable experts) and revised
 - Avoiding confirmation bias with internal checks and balances
 - Consistency over time (less about personality of CEO)
 - Conflicts of interest were never an issue
 - Valuable (contemporaneous) external perspective
 - Underpinned our political independence: Board was credible & serious

Relevance to CPR

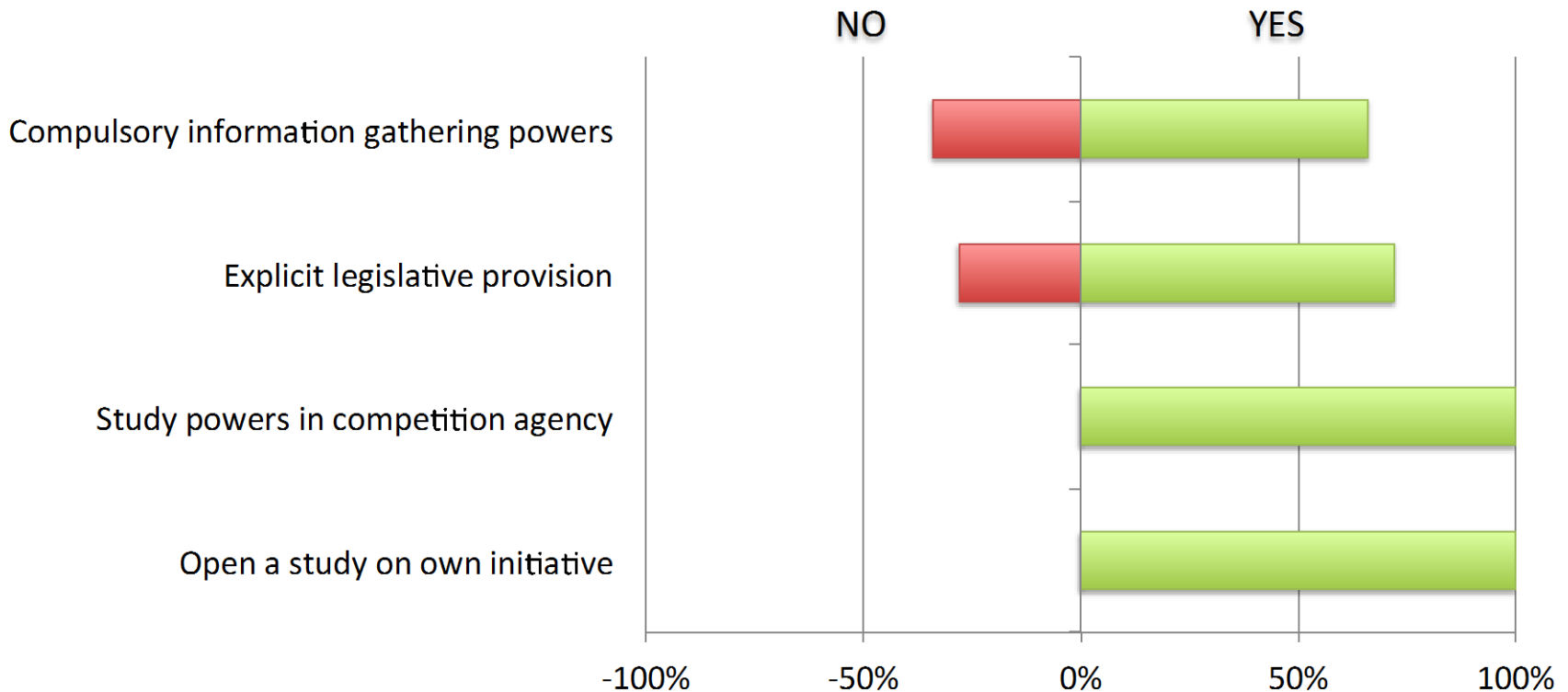
- Area of huge variation internationally: UK one example
- UK Board structure worked well
 - Board better than advisory panel
 - Non-executive chair is advantageous
 - Avoid “representatives”: look for skill, expertise, experience
- Helped by clarity about Board role
 - Agency should regulate its own procedures with public consultation
 - Clarity about decision making (RBA analogy less good here)
 - Clear focus on economic outcomes: impact on consumer welfare with prioritisation and evaluation (less legalistic)
- Rationale
 - Sustain ongoing reform, evolution, learning and self-correction
 - Reduce perception that ACCC can't be trusted or is unaccountable
 - Could support ACCC have broader role such as market studies
 - Taking access regulation out risks making ACCC more of a policeman
 - Would not need to specify press code of conduct

How Market Studies work UK

- Structure
 - Looked holistically at the overall working of the market
 - Own initiative, super-complaint, took 3-12 months
 - No investigative powers (unlike Ireland, changed in 2013 for CMA)
 - [Market Investigation Reference to Competition Commission]
 - Re-engineered in 2007 to increase engagement and better outcomes
- In practice
 - Prioritisation around impact, with consultation and triage
 - Launch: consultation with sector, Board decision, tight scoping
 - Timetables communicated in advance and kept to
 - Proportionate data requests – often consultation on scope
 - Research and thinking published throughout: increased engagement
 - Ex post evaluation of impact

Market studies internationally

Categorisation of Market Study regimes from 2008 OECD roundtable



Source: Fingleton Associate categorisation of 2008 OECD Round Table responses. Base (21). Not all OECD members submitted responses and there may be some selection bias in the results.

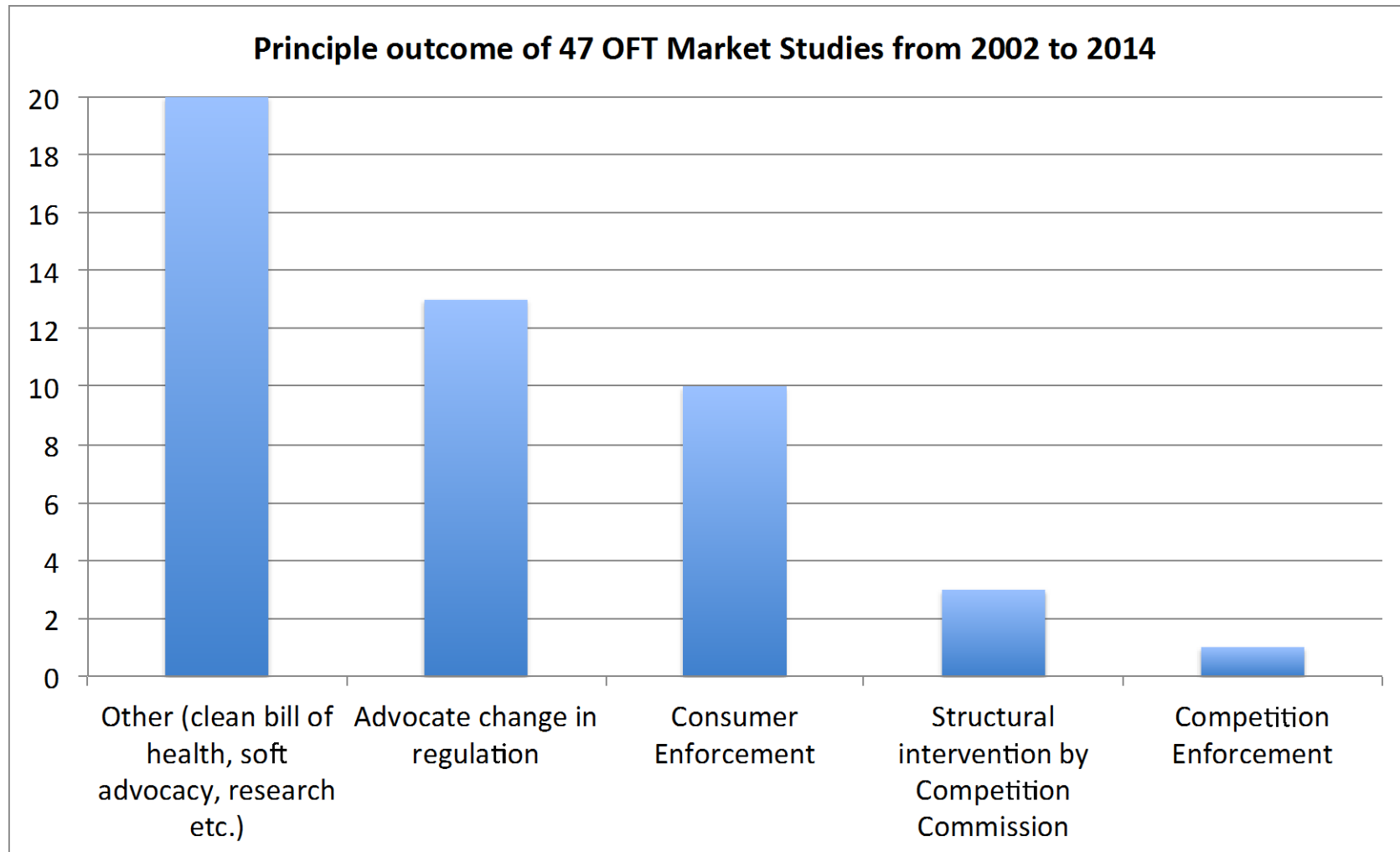
Market study themes

- Markets with public restrictions on competition
 - Legal Services, Taxis, Dentists, Pharmacists, House Building
- Consumer protection
 - Sale and rent-back, Care homes, Mobility aids (vulnerable consumers)
 - Payment protection insurance, Extended warranties (after-markets)
 - School uniforms, Doorstep selling
- Public Sector
 - Government IT, Defined contribution pensions, Pharmaceutical price regulation, Commercial use of public information, Public Subsidies
 - Government and Markets (2010)

Market study themes

- Resolving public concerns about markets not working well
 - Remote communities, Isle of Wight ferries, Off-grid energy
 - Groceries, Petrol
- Issues for small businesses as buyers or competitors
 - Liability insurance, Government procurement, Corporate insolvency
- Complex markets
 - Advertising of prices, Internet shopping, Consumer contracts, Online targeting of advertising and prices,
 - Current accounts, Payment systems, Equity underwriting

UK Market study summary



Source: Fingleton Associate analysis of published Market Study data. Some studies had more than one outcome and a judgment call was taken to assign the principle outcome.

Relevance to CPR

- Confusion about what market study is
 - Not an anti-business tool
 - Not policy-making
 - Link to enforcement and synergies around investigations doesn't help
 - Powers of initiation should rest with agency: losers pick Government
- Stark proposal not to give power to ACCC
 - Lack of stakeholder trust in ACCC: fairness, power, perception?
 - Commonwealth body less effective with Territories and States?
- ACCC with market studies would be more balanced and economically focussed with broader and more consistent support?
 - Would a change in governance support ACCC having this role?
 - Can both ACCP and ACCC have market study powers?
 - Limiting ability to use market study powers for enforcement

Conclusion

- Governance: go further?
 - Board structure has worked very well in UK
 - Could be a useful part of Australian reforms, with right design
- Market studies are essential part of the comp & cons toolkit
 - Not about policy-making
 - Should not be about investigation and enforcement
- Overall consistency and architecture: 3 bodies?
 - Caution about adding new regulators : can't undone easily
 - Risk of a more legalistic ACCC, and not able to support reforms
- Focus more clearly out outcomes & productivity growth
 - Narrative of competition and consumer policy about consumer welfare
 - Economic benefits of international competition policy harmonisation
 - Drive that through all of the report's recommendations (e.g., S46)