

Competition prioritisation framework

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This is a framework for thinking about prioritisation decisions. The lists of factors to consider under different criteria are illustrative and not exhaustive. The criteria are not substitute for judgment which is needed to give full effect to strategic decisions.

Steps	Criteria
Initial steps	<p>Clear strategy for CA98 enforcement encompassed in the annual plan. This includes OFT thinking on the desired portfolio of cases (mix of large and small, chapter I and chapter II, vertical and horizontal etc), selection of priority sectors as well as policy objectives and priorities.</p> <p>Also need to consider if the OFT is best placed to tackle the problem (and is CA98 the best tool)? Relevant considerations include:</p> <ul style="list-style-type: none"> • Might other action be as or more effective? • Will enforcement action reduce/stop the detriment? • Would the problem be better tackled by another regulator? • What are the opportunities for private enforcement? <p>If the OFT is not best placed, there may be no need to apply prioritisation criteria.</p>
Step 1	<p>Estimate of direct consumer benefit that would arise from intervention i.e. the harm that would be reduced/removed as a result of taking action. At the beginning of a case, use rules of thumb unless better information is available:</p> <ul style="list-style-type: none"> • Cartels: 10 per cent of parties' turnover in affected market/sector • All other: 5 per cent of parties' turnover in affected market/sector <p>When more accurate data are available of actual effect (e.g. following an investigation) then that should be used to estimate a more accurate measure of consumer benefit.</p>
Step 2	<p>Deterrent effect - likely consumer detriment prevented as a result of deterrence.</p> <p>Relevant considerations will be:</p> <ul style="list-style-type: none"> • Whether parties likely to be party to other similar arrangements (e.g. RPM) • Whether the issue being considered affects the whole sector and not just parties being investigated • Whether it is a wider issue affecting other sectors • Whether other recent cases have covered the same sector/issues

<p>Step 3</p>	<p>Aggravating/Mitigating Factors</p> <p>These are factors which strengthen or weaken the need to take action in any particular case.</p> <p>Examples of aggravating factors are:</p> <ul style="list-style-type: none"> • Recidivism • Action affects particularly vulnerable consumers • Blatancy of the infringement • Duration of the infringement <p>Mitigating factors could include:</p> <ul style="list-style-type: none"> • The fact that conduct ceased (for reasons other than OFT investigation) • Very short duration • New entrant/SME
<p>Step 4</p>	<p>Policy/Precedent/Profile</p> <p>Other factors which might point in favour of or against taking action in a particular case. This could include the following:</p> <ul style="list-style-type: none"> • New sector • Priority sector • Need for policy clarity • Novel infringement • Criminal cartels • Sector concerned is particularly important for the UK economy • Profile - raising awareness of the OFT • Key interest to stakeholder and/or commentators • Similar issue is being considered by the European Commission
<p>Step 5</p>	<p>OFT resources</p> <p>What resources would be required to achieve desired outcome (likely to be an infringement decision but might be an alternative outcome)? This will depend on the type of evidence needed and the complexity of issues still to be resolved.</p>
<p>Step 6</p>	<p>Likelihood of success</p> <p>What is the probability that the case will lead to the desired outcome (often an infringement decision - but could be something else)? Other things being equal, we will pursue those cases where we stand the greatest chance of having an impact.</p>