



MARKET STUDIES GOOD PRACTICE HANDBOOK

Prepared by

ICN ADVOCACY WORKING GROUP

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1. INTRODUCTION

1.1 Introduction to Market Studies

This is an updated version of the Market Studies Good Practice Handbook, which was originally presented at the 11th ICN Annual Conference in 2012. The objective of the 2016 update is twofold: to enrich the accumulated experience and learning on the practice of market studies gathered in the 2012 Handbook to account for the experiences of new competition authorities; and to improve the format by making it more user-friendly.

While market studies are carried out under different legislative or administrative provisions, for different purposes, using different processes, it is widely acknowledged that market studies can help to build authorities' capacity and, if done well, both enhance their reputation and promote better market outcomes.

The Market Studies Good Practice Handbook identifies a number of good practices in conducting market studies that members of the Advocacy Working Group have found to be beneficial and effective.¹ These are not prescriptive, and ICN members should select from them according to their own needs, priorities and resources, and subject to their differing legal powers and duties. This Handbook does not attempt to prescribe particular purposes for market studies, or to comment on the range or scope of legal powers that ICN members should have to conduct market studies.

This Handbook adopts the working definition of “market study” used in the ICN's [2009 Market Studies Project Report](#).²

“For the purposes of this project, market studies are distinguished from enforcement action against individual undertakings. Market studies are research projects conducted to gain an in-depth understanding of how sectors, markets, or market practices are working.

They are conducted primarily in relation to concerns about the function of markets arising from one or more of the following: (i) firm behaviour; (ii) market structure; (iii) information failure; (iv) consumer conduct; (v) public sector intervention in markets (whether by way of policy or regulation, or direct participation in the supply or demand side of markets); and (vi) other factors which may give rise to consumer detriment.”

Consistent with this working definition, in this Handbook the word 'market,' when used in the context of market studies, is not necessarily intended to denote a relevant market as is often defined by competition authorities during enforcement actions. It is intended as a broader concept, capturing sectors and market or sectoral practices as well as economic markets.

ICN members conduct market studies for a variety of purposes. Two key possible purposes for market studies, identified by a number of authorities in the [2009 Market Studies Project Report](#), were:

- as a precursor to possible enforcement action when anticompetitive behaviour is suspected in a sector, but authorities do not know the exact nature and source of the competition problem;

¹ 'Good practices' are generally considered to be practices which work well in the jurisdiction(s) where they are applied, but which may or may not work well in the legal context of another jurisdiction, and therefore cannot necessarily be recommended for adoption by all ICN members.

² See paragraphs 1.4 to 1.7.

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- as a precursor to competition advocacy where no violation of competition laws is suspected but it appears that the market is not functioning well for consumers.

Other possible purposes may include the following:

- to enhance an authority's knowledge of a specific market or sector, or to build technical expertise about markets –particularly useful for markets that are fast-moving, or to take account of recent developments;
- to educate consumers, or to address public interest or concern about markets not functioning in a competitive way - where a market study can either confirm such concerns, or reveal them to be unfounded;
- to provide an indication of how an authority might analyse, or apply competition principles to, issues in a sector;
- to develop thinking about proposals by regulators or legislators for future regulation so as to be able to advocate to minimise adverse effects on competition;
- to encourage businesses to self-regulate, when some of their practices are causing the competition problem, but do not constitute a competition law breach that can be addressed through enforcement action;
- to urge the government, business and/or consumer associations to improve the quality and accessibility of information available to consumers; and,
- to undertake a new study in a related market, if the study just concluded has shown that this related market may not be working well.

Where authorities have both competition and consumer enforcement powers, market studies can help develop the link between competition and consumer policy mandates.

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Complementary to this Handbook, a web-based information store on market studies [is available here](#). This gives a brief description of the subject matter and outcomes of market studies carried out by participating ICN members, ranging over ten years to December 2015. It also provides links, where available, to the full published studies on participating members' websites.

The Market Studies Information Store is designed to enable ICN members, and others, to identify existing market studies in particular sectors, in order to assist with:

- identifying issues for study;
- the cross-fertilisation of ideas about market issues;
- identifying approaches to particular market problems; and,
- identifying ICN members who may be able to assist/advise further on their experience on conducting market studies in particular sectors.

The co-chairs of the ICN Advocacy Working Group would like to thank all participants in the drafting, peer review and road-testing of the original Handbook and in the current revision of the Handbook. The co-chairs also wish to thank all the ICN member agencies that have contributed to the Market Studies Information Store.

1.2 The Market Studies Process

It is good practice to develop a process for carrying out and implementing market studies.

Authorities have varying levels of resources to devote to market studies and no two market studies are the same. Market studies can demand large expenditures of agency time and resources. Many market studies

require a time commitment of at least six months to one year, and some studies can last as long as two years or more.³ Similarly, market studies can impose costs on industry players, who may have to pay outside counsel for assisting them with the collection of information.

Effective project delivery can be more challenging to achieve in market studies than in enforcement work because there are typically fewer legislative processes to follow, and fewer deadlines imposed by legislative, judicial, or other external drivers.

Having a standardised process for carrying out and implementing market studies can help ensure that they are conducted in an efficient and transparent manner, and that the public resources invested in them are used to best effect. Efficiency in conducting studies will also help to minimise burdens on affected stakeholders.

A market studies process may include some or all of the following steps, which are explained in more detail in subsequent chapters:

1.2.1 Step 1: Identifying and selecting a market to study

Drawing on intelligence from relevant sources, the authority can identify issues that could appropriately be considered and addressed through a market study, and can select from the identified issues those that most merit study.

1.2.2 Step 2: Scoping and planning a market study

Once a study has been selected, the authority can create a team, refine the scope of the study and prepare a project plan that outlines the expected time frames, activities, resources, work streams and overall organisation of the market study.

1.2.3 Step 3: Planning stakeholder engagement

Prior to the launch of a market study, the market study team can establish a stakeholder engagement strategy to identify key stakeholders, consider their anticipated input, and describe how and when the authority will engage those stakeholders in the study process.

1.2.4 Step 4: Launching a market study

A market study may be launched publicly, which can be an opportunity for a market study team to communicate key information about the market study and solicit stakeholder input.

1.2.5 Step 5: Collecting and analysing information

The team that has been set up to handle the study can begin collecting and analysing information from appropriate sources.

³ 2009 ICN Market Studies Project Report (see footnote 2), page 62.

1.2.6 Step 6: Developing and securing outcomes

Once information has been collected and analysed, the team can consider how to develop outcomes and, if appropriate, test them with stakeholders. The authority can also consider different ways to secure the outcomes proposed by a market study. The team that undertook the market study will usually draft a report containing the study's findings.

1.2.7 Step 7: Evaluating a market study

After a study has been published, it can be useful for the team to review its work and identify lessons to be learned for future studies, for example, as to how to improve efficiency or increase the impact of future studies.

2. IDENTIFYING AND SELECTING A MARKET TO STUDY

This chapter explains the importance of sound selection of market study subjects and offers good practices in the identification and selection of a market to study.

2.1 The importance of sound selection of market study subjects

Careful selection and prioritisation of appropriate subjects for a market study maximises the likelihood of constructive engagement with stakeholders and identifying and securing productive market study outcomes. It also increases the probability of choosing studies that are likely to have a substantive impact.

Sound selection and prioritisation also foster an authority's legitimacy in subsequently confronting potentially anticompetitive behaviour.

Principles of market study selection may not apply when competition authorities are mandated, or required, to conduct specific market studies. However, even under such circumstances, authorities can benefit from influencing the choice or scope of the mandated study.⁴

2.2 Developing flexible prioritisation principles

When authorities have discretion to select what markets to study, it is good practice for them to develop a set of flexible prioritisation principles to guide the selection process.

Authorities may find it beneficial to develop a set of flexible principles or selection criteria that will guide them in deciding which subjects (out of the range of possible subjects that potentially merit study) they will prioritise for action. Such prioritisation principles could be formulated so that they apply to all work that authorities conduct on a discretionary basis.

Authorities may wish to make these principles public, to enhance transparency and reduce the likelihood that the authority is seen to be biased. If made public, it is useful to define selection criteria or prioritisation principles that are sufficiently flexible so that they:

- can be adapted to new markets and situations
- do not lead to a presumption on the part of businesses that certain subjects or types of issues or markets will automatically qualify or be disqualified for study
- do not create or increase the likelihood that the authority will face legal challenges of its decisions to prioritise certain markets for study.

For more information about prioritisation principles, see the [ICN AEWG Competition Agency Practice Manual on Strategic Planning and Prioritisation](#).

2.3 Identifying subjects for market studies

When authorities have discretion to identify what markets to study, it is good practice for them to consider how to resource and organise the collection of issues for such study.

⁴ This is considered further below in section 2.5.

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Resources permitting, authorities may wish to consider designating a small team that will support and run efforts to consider issues for study. A competition policy or advocacy office or a chief economist's team may be well suited to perform such a role.⁵

2.3.1 *Researching potential subjects for market studies within the authority*

When authorities have discretion to identify what subjects to study, it is good practice for them to collect information on potential subjects from sources within the authority.

Authorities can benefit from internal knowledge by seeking input on potential subjects for market study from internal sources including:

- regular internal meetings to discuss issues that come out of other work;
- internal discussion groups aimed at capturing ideas about issues from staff members;
- other market studies in markets with similar characteristics or similar restrictions on competition;
- their own enforcement experience, including enforcement efforts that have not been successful; and,
- their own research and market monitoring, including:
 - advances in technology that are likely to affect competition;
 - critical gaps in empirical economic studies of significant markets;
 - situations in which regulatory treatments vary considerably between jurisdictions;
 - recent changes in regulation;
 - recent changes in business behaviour in a specific market or in the economy more generally;
 - authority staff concerns about business compliance;
 - feedback from consumers;
 - consultation with other government departments;
 - dialogue with fellow competition authorities or regulators;
 - market studies in other countries;⁶ and,
 - contacts with academics.

2.3.2 *Seeking input from external sources to identify potential subjects for market studies*

When authorities have discretion to identify what markets to study, it is good practice for them to consider subjects for market studies from a wide range of external sources.

Most authorities enjoy considerable discretion in determining the subject of their market studies. In other jurisdictions, external sources are able to influence, propose, or even instruct, authorities to carry out certain market studies. Such external sources⁷ may include:

- other regulatory authorities;
- businesses, business associations, small and medium-sized enterprise groups;
- consumer associations and representative bodies, including 'super-complainants';

⁵ Allocating resources to market study teams once a market study subject has been selected is covered in more detail in section 3.1.

⁶ Authorities can refer to the [ICN Market Studies Information Store](#) for details of market studies carried out by other ICN member agencies.

⁷ External sources listed here may include stakeholders. For further information about engaging with and identifying stakeholders, see chapter 4.

- national, regional or local government or government agencies;
- legislative bodies, such as parliament or congress;
- professional organisations and trade unions;
- chambers of trade, commerce or industry, and chambers of agriculture;
- media and external experts; and,
- others.

One of the major advantages of giving authorities the discretion to select subjects for market studies themselves is their ability and expertise to identify the most critical competition issues.

Input from external sources who may have a broader perspective on issues that are of vital social and economic significance can be helpful. Such input, from a broad range of market players, can help authorities identify subjects for market study.

Engagement on identifying potential subjects for market study with consumer or business groups that register complaints may be valuable in making authorities aware of possible subjects that might merit study.

Authorities may also welcome or encourage submissions that help identify potential subjects for market studies through their public website.⁸ When seeking input from external sources, authorities may request views on any potential concerns, the causes and/or solutions of the perceived problems identified, and whether the information provided to the authority is confidential. When soliciting subjects for discretionary study, authorities should clearly communicate that whilst input is welcome, the authority retains full discretion on whether to act on the submitted ideas.

If ideas and/or information about subjects for potential study are submitted from external sources, authorities may wish to acknowledge receipt of the same. The authority may also wish to relay to the external source what the authority intends to do with the information, stating whether the issue will be taken forward, and if so in what time frame, or giving reasons why the issue will not, or will not at this time, be taken forward. Such engagement will help to reassure the external source that their ideas and information have been actively considered and encourage them to submit similar ideas and information in the future.

Seeking input from external sources when identifying subjects for market study may also build support for the market study process. It may encourage them to be more cooperative in providing information for any market studies that are selected, and more invested in the outcomes of studies.

In addition to actively soliciting information about subjects for market studies from external sources, authorities may wish to keep abreast of business trends and press coverage to help identify potential subjects.

2.4 Selecting subjects for market studies

When authorities have discretion to identify what markets to study, it is good practice for them to carefully weigh different potential subjects and to select only those that best meet their objectives.

⁸ It may be useful for authorities to offer guidance on what type of information may be useful, how information should be provided to the authority. Authorities may wish to consider how to seek input in a way that is not overly burdensome.

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In order to ensure that only the most relevant subjects are selected for market studies, and optimise the use of resources, it may be useful for authorities to consider their objectives in studying markets and to apply their prioritisation principles.

Authorities may choose to take into account one or more of the following factors when selecting subjects for market studies:

- impact on consumers;
- size and/or type of any potential detriment to consumer welfare, including level or type of consumer complaints or potential competitive concerns;
- the impact on all market players (not just consumers) including level or type of business complaints;
- the availability of information and data to support theoretical and empirical analysis;
- market size and value;
- entry barriers;
- unusual market events;
- degree of product differentiation;
- market structure (including degree of vertical integration, concentration and likelihood of mergers)
- the degree of regulation in the market involved;
- the likelihood that potential outcomes⁹ can resolve competition concerns identified in the authority's analysis; and,
- past advocacy, monitoring, or enforcement activity that indicates, for example, a history of anticompetitive conduct or competition concerns, a pattern of unexplained higher prevailing prices than in similarly situated economies, high market concentration or high barriers to entry in the sector.

The economic climate or any unique characteristics of a market may affect priorities regarding the best candidates for market studies.

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Timing constraints may also be taken into account in fast-changing markets or emerging markets. In such cases, the advisability or practicability of studying a market may be affected by market dynamics, for example rapidly changing market conditions.

Practical considerations bearing on the likely utility of a study may also be a relevant factor for selecting subjects for market studies. Key practical considerations to which authorities may wish to assign appropriate weight include:

- whether or not the study is likely to yield useful outcomes;
- an assessment that the benefits of conducting a study are likely to exceed the costs¹⁰;
- the added value of a successful market study compared to other advocacy work or as a complement to competition enforcement;
- staff resource implications for the authority;
- the work already done by other regulators or authorities;
- the availability of a ready forum to present findings and advocate for any outcomes;
- desire to obtain knowledge about the sector or market;

⁹ See chapter 7 regarding outcomes.

¹⁰ Market studies, and any consequences drawn from them, may have both public and private costs. It will be useful for authorities to bear in mind that any costs for business of engaging in a market study or its outcomes may be passed on to consumers (through higher prices or reduced innovation, choice or quality), and to account for this when considering the possible benefits that can be achieved. See section 7.2.1 regarding costs and benefits.

- the likelihood that advocacy efforts will have clear benefits;
- the ability to gauge or measure the effects of advocacy efforts; and,
- whether the authority can bring a unique perspective to bear in a useful way.

Once a market study subject is contemplated or selected, it is good practice to publicly announce the potential or imminent launch of a study, as a way to clearly define priorities, pre-empt future pressures to change topics, and enhance transparency more generally.

2.5 Working with government and legislators when market studies are mandated or required

Where competition authorities can be required to conduct market studies, e.g. by the government or legislature, it is good practice, wherever possible, to engage in dialogue and coordinate with the mandating body prior to any requirement being imposed.

Where competition authorities can be required to carry out specified market studies, it can be helpful for them to discuss potential issues or potential markets for study informally with the mandating body before any formal requirement is imposed or publicised. This can help to ensure that:

- government and legislators do not pre-empt authorities' internal planning by mandating a study that is already in an authority's work plan;
- appropriate markets or issues are identified for study;
- market studies that are mandated can be effectively completed within the available budget and time frame;
- government and legislature are made aware of the risks and opportunities that mandated studies can entail;
- authorities have an opportunity to discuss the range of uses to which the completed study can be put;
- the authority can ask the mandating body for the necessary budget to be able to support the resources required for conducting the study; and,
- the authority and the mandating body can consider, together, who to best define and characterise the study, benefitting from their respective perspectives and expertise.

Mandated studies can involve very high profile markets or issues, where much is at stake politically and economically, and accordingly may involve higher levels of reputational risk. Authorities may therefore consider taking particular care to spell out any limitations related to the available information, the analysis and the findings of mandated studies.

2.6 Joint studies with other competition authorities or regulatory authorities

If a joint study with another organization is under consideration, it is good practice to consider carefully the pros and cons of working jointly. In contemplating or planning a joint study, it is good practice to be mindful of the parameters of the study and to ensure there is clarity at the outset as to the respective roles and responsibilities of each participating organisation.

When the same concerns about a particular sector are commonly shared by several jurisdictions (for example, for markets whose geographic scope exceeds one country), multiple authorities may be interested in studying a particular sector, and may consider conducting market studies jointly.

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It is also possible for authorities to consider conducting market studies jointly with regulatory authorities in the same jurisdiction.

Joint studies may:

- provide added resources;
- help to ensure that broader perspective and experience is brought to issues;
- help to minimise burdens on stakeholders where other organisations already plan to conduct parallel work on the same, or related, issues;
- provide opportunities for convergence on policy issues and analytical approaches as between the organisations jointly conducting them; and,
- Provide additional support for any outcomes that come as a result of the market study.

Undertaking market studies jointly with one or more authorities, or regulatory bodies, requires a significant additional level of project management. Before embarking on a joint market study with another organisation, it is important to assess whether each organisation's purpose and interests in carrying out the study are sufficiently aligned. Also, an understanding of the respective decision making processes is necessary to establish an anticipated timetable for completing key stages of the project and publishing the final report. It is also helpful to identify ways in which work might be divided between the two organisations and how to resolve any disagreement.¹¹

In addition, issues can arise regarding legal responsibility for, and ownership of, information, analysis, outcomes, and draft and final reports. The ability of the two organisations to lawfully share information can also be an issue.

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Stakeholder perceptions are also a key consideration. Will stakeholders be clear about respective roles and responsibilities? Will joint work with another organisation impair the authority's independence, or perceptions of its independence?

¹¹ See also section 3.1.4 on working with other public bodies.

2.7 Summary of Good Practices

1	When authorities have discretion to select what markets to study, it is good practice for them to develop a set of flexible prioritisation principles to guide the selection process.
2	When authorities have discretion to identify what markets to study, it is good practice for them to consider how to resource and organise the collection of issues for such study.
3	When authorities have discretion to identify what subjects to study, it is good practice for them to collect information on potential subjects from sources within the authority.
4	When authorities have discretion to identify what markets to study, it is good practice for them to consider subjects for market studies from a wide range of external sources.
5	When authorities have discretion to identify what markets to study, it is good practice for them to carefully weigh different potential subjects and to select only those that best meet their objectives.
6	Where competition authorities can be required to conduct market studies, e.g. by the government or legislature, it is good practice, wherever possible, to engage in dialogue and coordinate with the mandating body prior to any requirement being imposed.
7	If a joint study with another organization is under consideration, it is good practice to consider carefully the pros and cons of working jointly. In contemplating or planning a joint study, it is good practice to be mindful of the parameters of the study and to ensure there is clarity at the outset as to the respective roles and responsibilities of each participating organisation.

3. SCOPING AND PLANNING A MARKET STUDY

This chapter looks at the allocation of resources, refinement of the scope of market studies, and management issues related to market studies.

3.1 Allocating resources

3.1.1 *Staffing a market studies team*

It is good practice at the outset of the project to establish a core team who will work on a market study, unless there are already dedicated resources in place or an authority intends to contract the work out to external providers. It is good practice to ensure that, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.

Once a market study subject has been selected, unless resources are already designated and in place, the authority will often identify a market study team leader and put together a small core team that will see the market study process to its completion. Market study teams are formed by drawing on experts from the authority that have relevant skills and experience conducting market studies and/or staff members with knowledge of the market to be studied. Commonly, teams include economists and lawyers. Statisticians and financial analysts may also be needed.

Some authorities have found it useful to designate a permanent team dedicated to developing and conducting market studies. Alternatively, some authorities give oversight of, or a lead role in, market studies to a specific office, or assign market studies to the offices with relevant enforcement experience in the sector. The decision to assign studies to a dedicated team or office may depend on how many market studies are carried out each year, the complexity of those studies, the resources required to undertake them, and the authority's staff constraints. A dedicated market studies team or office provides a fixed resource to maintain and manage the continuous flow of work associated with market studies. Such a team or office could also help the authority to:

- develop greater specialisation in market studies;
- be more efficient in selecting markets to study and preparing reports;
- create a cohesive approach to the market studies process; and,
- develop and refine prioritisation principles.

On the other hand, a risk raised by institutional designs including dedicated teams or offices is that this can lead to limited interaction between enforcement and market studies teams, which can restrict the authority's efforts to create a consistent overall policy approach encompassing market studies, competition advocacy, and enforcement activity. To alleviate this risk, it may prove beneficial to arrange a temporary detail for a member of the enforcement staff to provide perspective on how the study may relate to enforcement. This can be especially useful if that member of staff has relevant enforcement experience in the market being studied.

Even where an authority does not have a dedicated team for market studies, it can be useful to identify a group of staff with experience in conducting market studies that can provide guidance to staff members who are new to the market studies process.

3.1.2 Using external providers

In certain circumstances, authorities may wish to consider the use of external providers to carry out some or all of the external research for a market study. Where an external provider is going to be used, it is good practice for authorities to carefully consider the role and responsibilities of the provider. The credibility of an external provider's work can be improved by taking steps to ensure the provider's independence.

At times, it may be useful to bring in external providers, such as market research agencies, academics, and/or economic consultancies, to assist with a market study. Indeed, about half of the authorities that responded to the 2009 ICN Market Studies Project survey stated that they use external providers (whether always, usually, or occasionally).¹² Options include contracting out the entire market study project, or allocating discrete tasks to external consultants, for example consumer research, or the preparation of case studies that illustrate the way that the market works. Some authorities have found it useful to contract out the whole study where the subject matter of a study is politically controversial and the independence of an external provider may be beneficial.

When authorities choose to contract out only parts of their market studies work, it may be helpful to consider whether the benefits outweigh the costs, including the internal cost of managing contractors' delivery and output. In such cases, it may be useful to limit the involvement of external providers to the following scenarios:

- where external providers possess specific knowledge or expertise that the authority lacks, for example in conducting consumer market research;
- where work being contracted out is technical or theoretical in nature;
- where the work being contracted out is clearly defined in its scope and in the required deliverables, for example preparing a limited number of case studies; and,
- where the authority lacks the personnel to undertake the work itself, and requires assistance to complete the study.

Subject to appropriate laws and regulations, authorities may wish to consider putting contracts for assisting with a market study out to competitive tender to ensure a broad field and selection of the best qualified person or organisation. When selecting an external provider, authorities may consider sketching an illustrative profile of the core competencies and background the external provider needs in order to complete the market study. Ideally, this illustrative profile should be realistic and be developed considering the expected work and outcomes, the available time and resources, and the depth and scope of the study.

It is beneficial if external providers are well informed as to what is required of them when conducting research for a market study. Through contractual terms and other discussions, authorities may wish to clarify:

- how outputs will be monitored to ensure quality and that timetables are respected;
- who owns the information collected, and any reports of the research;
- how the contractor will protect personal and confidential information;

¹² See paragraph 7.23 of the 2009 *ICN Market Studies Project Report* (see footnote 2).

- in what capacity the contractor is engaged (does the contractor act independently, or as an agent of the authority?); and,
- where the responsibility lies for making any changes required to outputs, and whether the costs of making revisions will be included in the contract price.

Authorities usefully can consider whether and how to address stakeholder concerns about supplying information for the market study to external providers.

3.1.3 *Getting input from other parts of the authority, outside the market study team*

It is good practice for market study teams to identify and make contact with the other authority staff who will need to be engaged, consulted or involved in approving the work early in the process, and provide such staff with advance notice of the likely magnitude of and timeframes for their engagement and input.

Some market studies may require the input of other authority staff, for example where there is:

- an impact, overlap, synergy and/or dependency with other authority work or policy; and,
- a need to engage with specialists within the authority, such as the press office or procurement staff, or to seek higher level internal approvals.

Giving such staff timely advance notice should help avoid last minute internal delays and problems, and aid effective teamwork.

3.1.4 *Working with other public bodies*

It is good practice to identify other public bodies that may be working on or considering working on issues that could be pertinent to the market study early in the process, and to consider whether and how to best engage them in the market study process.

It is useful for authorities to identify whether it is advisable or necessary to work closely with or consult any public bodies that have responsibilities for the market in question, for example sectorial regulators. This may impact a study's scope, process and/or outcomes. This is especially important where another public body may be doing (or planning to do) related or parallel work. This may allow for efficiencies and the avoidance of duplication of staff efforts and burdens on stakeholders, *e.g.*, through information sharing if possible.¹³

¹³ For more information about carrying out joint studies with other competition authorities or regulatory authorities, see section 2.6

3.1.5 *Defining roles and responsibilities*

It is good practice to establish clear roles and responsibilities for market study team members at the outset of the study.

A key initial step for all market study teams is to establish clear roles and responsibilities for team members. Considering the full range of required skills, roles and responsibilities helps with:

- making the planning process simpler and more effective;
- making sure staff are given roles and responsibilities that play to their strengths;
- identifying whether any required skills are lacking which might require, for example, recruitment of staff or use of external providers; and,
- preventing any gaps and/or overlaps in work.

It can also be helpful to retain a degree of flexibility to manage peaks and troughs in workloads.

3.1.6 *Considering conflicts*

To the extent not already required by law, it is good practice for authorities to consider conflicts of interest for market study staff.

Some authorities are required to consider conflicts of interest as a matter of law. To the extent such requirement is not in place, it is good practice to consider conflicts of interest because, whether perceived or real, such conflicts can undermine the legitimacy of a market study, the market study process and/or the market study's outcomes.

Authorities may consider whether any of the staff proposed or appointed to a market study team have any conflicts of interest that may influence their approach to the analysis in the market study, or may be perceived to be likely to do so. To the extent staff have conflicts, it may be necessary to address them.

3.1.7 *Conducting team meetings*

Resources allowing, it is good practice for market study teams to hold regular team meetings to monitor and review project plans and development, and test and debate competitive concerns and potential outcomes, if any, among colleagues.

Having regular market study team meetings is a good way to ensure that all those involved in the market study are aware of, and have a shared sense of ownership in, the work, progress, and desired outcomes of the study. Such meetings are also a good way for team members to:

- monitor and review the project plan;
- seek the views and suggestions of their colleagues, to benefit from a plurality of individual perspectives and ideas;
- question and debate aspects of the work, analysis, and potential outcomes; and,

- monitor and review risks.¹⁴

3.2 The scope and duration of the market study

3.2.1 *Establishing the scope of the market study*

It is good practice to create a focused, manageable, and flexible scope for the market study to help ensure that the study is delivered on time and is of the right quality.

One of the first tasks for the team is to determine the scope of the market study. Deciding what should stay outside the scope of the study, and why, is as important as deciding what to include. The team and/or the authority may need to explain and/or justify inclusions and exclusions and could be called upon by stakeholders to do so publicly.¹⁵

Clear lines about the scope of the study also helps the market studies team to manage its delivery: the wider or less defined a study's scope, the more difficult it may be to achieve high quality and timely outcomes.

It is useful to retain some flexibility in the study's scope to allow for minor adjustments should these be necessary in the light of emerging findings, for instance:

- to focus on those areas of a study that look more promising if initial findings suggest that the original hypotheses need to be altered, and/or that new material should be examined;
- to expand the scope of the study if new promising avenues of research emerge;¹⁶ and,
- to cope with hardships and contingencies that could not be foreseen at the planning stage of the market study.

If modification is deemed appropriate, it may be useful to revisit the initial project plan and assess the impact of the agreed change in scope on the required resources, timescales, and work streams.

3.2.2 *Soliciting external views*

It is good practice to consult with all stakeholders on scope and possible outcomes prior to, or shortly after the launch of, a market study.

Seeking input from all stakeholders¹⁷ on the scope for the study, the potential competitive concerns, and the types of possible outcomes, by way of a consultation prior to, or shortly after the launch of, a market study¹⁸ helps the authority manage the study's scope and focus and ensure a balanced and informed approach to the market study process. When the market involved is complex, new, innovative, or dynamic, it might be advisable to gather information prior to selecting the subject for a market study.¹⁹ Gathering information early may help inform the market studies team about the level of competition in a market

¹⁴ For more information about risk management, see section 3.3.3.

¹⁵ For example in front of a committee of legislators, or at a stakeholder conference.

¹⁶ The team should keep in mind that this may result in extended deadlines and reduced manageability.

¹⁷ See chapter 4 for more on stakeholder engagement.

¹⁸ See chapter 5 for more on launching a market study.

¹⁹ See section 2.3.2 on seeking input from external sources to identify potential subjects for market studies.

without the need to undertake an in-depth investigation. Authorities may wish to consider using public consultations in this process.²⁰

3.2.3 *Duration of a market study*

It is good practice to develop at the outset an anticipated timeframe for conducting a particular market study and to communicate this to stakeholders. However, it is good practice to allow flexibility in determining the timeframe for completing individual market studies, and to leave open the possibility to consider revising the anticipated timeframe if necessary.

Setting a standard length of time for market studies is extremely difficult, and not advisable, because studies vary to such a large extent depending on the specifics of the industry and/or the issues to be studied and the time taken to collect information from stakeholders.

Furthermore, it may be important to retain a degree of flexibility within each individual study. After beginning the collection and analysis of information, authorities may discover that a market study will require more or less time than anticipated at the outset. The overwhelming majority of authorities are able to set their own timeframes in conducting a study and to alter those defined timeframes after commencing the study.²¹ If the circumstances warrant, authorities should not be reluctant to expand or truncate the scope and the timeframe for completing a market study.

Nevertheless, authorities may wish to consider publicly announcing an indicative timeframe for completion of the study, and an outline of the study's scope, when the study is launched. This may help increase transparency and manage stakeholders' expectations. However, it will be important to retain flexibility to revise the timeframe and scope at a later point if this becomes necessary. If the timeframe changes, an agency may wish to consider integrating discussion of timing with its ongoing public engagement to avoid undermining the agency's credibility – if, for example, an agency announced that it will produce a report by a certain date and that date approaches and passes with no report. There is a range of approaches among the ICN membership regarding whether the timeframe is made public. Because of the importance of flexibility on timing, some authorities may choose not to announce an expected timeframe at the time of public launch.

When following initial collection and analysis of information, it becomes clear either that the issues initially envisaged do not exist or that the issues identified do not appear to be capable of resolution by the authority or by relevant stakeholders, the agency might take one of the following decisions: (1) to curtail the study, publishing a short report or press release giving the market a 'clean bill of health', or (2) to continue with the study to issue outcomes to the competent authorities, recognizing that the agency's reflections on the competitive conditions in the sector may prove helpful to and influence the competent authorities, even if the source of concern regarding the market's performance does not fall within the competition agency's mandate. The risk of pursuing an unfounded hypothesis can be reduced through thorough discussions among authority staff at the identification and selection stage, and also through discussions with stakeholders.

²⁰ See section 5.2.4 on public consultations.

²¹ See paragraph 7.21 of the 2009 *ICN Market Studies Project Report* (see footnote 2).

3.3 Carefully managing the market study process

Having a well-defined project management process in place can enable authorities to conduct market studies consistently and successfully.

Conducting studies efficiently and with a minimum of delay is likely to help keep budgets on track, make effective use of agency resources and enhance the overall benefits of an authority's market study work. Demonstrating efficiency in market studies work can also enhance stakeholders' appreciation of the benefits of market studies, the authority's reputation, and help to deliver clear outcomes with a positive effect on the relevant market. When market studies are conducted efficiently there is also less risk that market study results will be overtaken by external events.

Through effective project management, the authority and its staff benefit from learning and, as appropriate, applying a consistent approach to their market studies work. It also ensures that accountability for delivery of the work is clear and understood by authority staff.

3.3.1 *Preparing a detailed plan*

It is good practice to prepare a detailed plan for the market study that includes anticipated actions, responsibilities, key deliverables and milestones. It is good practice to regularly review the plan and adjust it as necessary to manage developments.

Once the scope has been settled, planning is the next task in the market study process. The transition from considering scope as a set of issues and ideas to developing a set of responsibilities for activities, deliverables and deadlines is key.

When drafting a market study plan, the team may find it useful to consider and decide on the detail of the following types of factors:

- activities;
- deliverables;
- deadlines;
- staff responsible/involved in delivery;²²
- activities involving staff outside of the team who will need to provide input/advice and/or be consulted
- external dependencies – that is, reliance on events outside of the control of the market studies team;
- financial budget (including potentially applying for any necessary additional budgetary resources); and,
- initial estimates for key milestones – such as:
 - when the study will be publicly announced;
 - when information requests will be issued;
 - when responses will be required;
 - when information analysis will be complete;
 - when the team will decide on desired outcomes;
 - when findings and outcomes will be quality assured;
 - when events such as public hearings, workshops or consultations are likely to take place;
 - when drafting the final report will begin;
 - when the final report will be published; and,

²² See section 3.1 on allocating resources.

- what follow-up activities will be conducted, and in what timeframe.

As part of the planning, teams should take care not to overlook or underestimate the time it can take, for example:

- to run a procurement and/or consultation process;
- to collect and analyse information;
- to engage effectively with stakeholders;
- to take care of other work activities outside of the scope of the project that cannot be delegated or postponed;
- to ensure the quality of the findings and proposed outcomes;
- to engage in any follow-up that is needed to persuade others to implement any outcomes; and,
- to monitor impact, where relevant.²³

Because of the timing and outcome uncertainties that can be involved in conducting market studies, it may be sensible to allow time and budget for contingencies.

A project plan will ideally be reviewed and updated regularly to ensure that the progress of the market study is actively monitored, kept on course and changed as necessary. By regularly reviewing the plan, authorities benefit from:

- early warning of any difficulties in meeting deadlines;
- an understanding of the causes of any problems;
- having time to consider the options (if any) for seeking any mitigating actions (such as requesting additional resources, cutting back on requirements/activities, etc.);
- team members' awareness of progress/problems, etc.; and,
- team members' awareness that progress will be monitored, which reinforces accountability for their input and assigned tasks.

3.3.2 *Reporting progress*

It is good practice for market study teams to report internally on progress as necessary and in accordance with any agreed internal processes.

Market study teams may find it necessary or advisable, in accordance with any governance arrangements authorities may have, to keep authority staff and senior management informed about work progress and activities concluded, possibly including:

- new developments and concerns, including any proposed actions to be taken to address them; and,
- next immediate steps.

It is useful to build such progress reports into the project plan.

²³ See section 7.6 on measuring success and chapter 8 on evaluation.

3.3.3 *Risk management*²⁴

It is good practice for authorities to actively consider and manage the risks and uncertainties associated with a market study.

In any market study there might be one or more issues that pose a degree of uncertainty or risk for the study that potentially can impact the authority's reputation or relationship with stakeholders. For instance, there may be uncertainties related to the scope, the quality and consistency of the information available for analysis, the planning, timeframe, or organisation of the study, or to the financial resources necessary and available for the study.

The identification of uncertainties and risks, and of strategies to mitigate their impact, will give any study a better chance of being successful through, for example, enabling the team to be:

- alert and prepared; and,
- proactive – heading problems off so that they either do not happen or have less impact when they do.

3.3.4 *Quality assurance*

Resources allowing, it is good practice for market study teams to identify early on what elements of the market study should be quality assured and determine how the quality assurance will be carried out.

Quality assurance (QA) is the process ensuring that completed work meets appropriate standards. Having a process to quality-assure market study work, where resources allow it, is a helpful way for authorities and market study teams to ensure that a market study will be of the desired quality and therefore capable of:

- bringing about the desired outcomes; and,
- withstanding possible scrutiny and/or challenge.

The degree to which QA will need to be carried out may depend on the purpose(s) of the study and can be adjusted so that it is proportionate to the risks involved in the work. For example, a more limited QA process may be needed for a study researching a market purely with the aim of improving the authority's understanding of the sector.

The ultimate aim is that the market study process meets appropriate standards and outcomes and documentary outputs are able to stand up to scrutiny. Quality assurance review can include:

- **Evidential QA** - checking that planned research will capture evidence needed to test any relevant hypotheses, and that resulting evidence is accurate, properly referenced, and sufficient to support any final hypotheses, and any proposed outcomes.
- **Logical QA** - checking that any economic, legal or other analytical argument is robust, supported by the evidence and produces credible answers and conclusions that are logically consistent.

²⁴ See the [ICN Agency Effectiveness Practice Manual on Effective Project Delivery](#) for more information on risk management.

- **Integrated QA** - checking that the arguments put forward support the conclusions overall, that they withstand scrutiny and are likely to achieve the desired outcomes.
- **Output QA** - checking the overall output is written and presented in the correct format and style to meet the authority's standards and the needs of the intended audience.

3.4 Special considerations when conducting market studies that are required by the government or legislature

Where authorities can be required by their government or legislature to conduct market studies, it is good practice for these authorities to consider ensuring that the market study process effectively accounts for any relevant different constraints, opportunities and requirements.

The constraints, and opportunities, of market studies required by the government or the legislature may be different from those that apply when market studies are self-initiated. For example:

- planning and delivery may be dictated by an externally imposed timeframe;
- where a study is intended to examine the causes and/or effects of a particular market shock, or the volatility of prices, the authority may wish (if possible) to conduct its study over a period that would allow for a competitively functioning market to settle;
- it may be particularly important to engage government and/or legislative stakeholders in relation to findings and any proposed outcomes;²⁵
- if the market study is particularly high-profile it may be advisable or necessary to deploy additional resources (and to take into account potential effects on the authority's ability to deliver its other priorities); and,
- if non-competition aspects are mandated, it is useful for the competition agency to clarify the scope of its competences and expertise.

²⁵ See section 7.2.2 on consulting stakeholders on market study outcomes

3.5 Summary of good practices

1	It is good practice at the outset of the project to establish a core team who will work on a market study, unless there are already dedicated resources in place or an authority intends to contract the work out to external providers. It is good practice to ensure that, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.
2	In certain circumstances, authorities may wish to consider the use of external providers to carry out some or all of the external research for a market study. Where an external provider is going to be used, it is good practice for authorities to carefully consider the role and responsibilities of the provider. The credibility of an external provider's work can be improved by taking steps to ensure the provider's independence.
3	It is good practice for market study teams to identify and make contact with the other authority staff who will need to be engaged, consulted or involved in approving the work early in the process, and provide such staff with advance notice of the likely magnitude of and timeframes for their engagement and input.
4	It is good practice to identify other public bodies that may be working on or considering working on issues that could be pertinent to the market study early in the process, and to consider whether and how to best engage them in the market study process.
5	It is good practice to establish clear roles and responsibilities for market study team members at the outset of the study.
6	To the extent not already required by law, it is good practice for authorities to consider conflicts of interest for market study staff.
7	Resources allowing, it is good practice for market study teams to hold regular team meetings to monitor and review project plans and development, and test and debate competitive concerns and potential outcomes, if any, among colleagues.
8	It is good practice to create a focused, manageable, and flexible scope for the market study to help ensure that the study is delivered on time and is of the right quality.
9	It is good practice to consult with all stakeholders on scope and possible outcomes prior to, or shortly after the launch of, a market study.
10	It is good practice to develop at the outset an anticipated timeframe for conducting a particular market study and to communicate this to stakeholders. However, it is good practice to allow flexibility in determining the timeframe for completing individual market studies, and to leave open the possibility to consider revising the anticipated timeframe if necessary.
11	It is good practice to prepare a detailed plan for the market study that includes anticipated actions, responsibilities, key deliverables and milestones. It is good practice to regularly review the plan and adjust it as necessary to manage developments.
12	It is good practice for market study teams to report internally on progress as necessary and in accordance with any agreed internal processes.
13	It is good practice for authorities to actively consider and manage the risks and uncertainties associated with a market study.
14	Resources allowing, it is good practice for market study teams to identify early on what elements of the market study should be quality assured and determine how the quality assurance will be carried out.
15	Where authorities can be required by their government or legislature to conduct market studies, it is good practice for these authorities to consider ensuring that the market study process effectively accounts for any relevant different constraints, opportunities and requirements.

4. PLANNING STAKEHOLDER ENGAGEMENT

This chapter considers the meaning of the term ‘stakeholder’, explores why engaging with stakeholders is important to the success of a market studies, and offers good practice tips. Stakeholder engagement can be helpful at all stages of a market study process.

4.1 The meaning of the term 'stakeholder'

For the purposes of this Handbook, 'stakeholder' means any corporate or natural individual, group of individuals (whether internal or external to the authority), organisation or group of organisations that has an interest in the market, or can affect and/or could be affected by the market and/or the issues that are the focus of the market study, and/or any outcomes that may come out of the study. A list of common types of stakeholders can be found at section 4.3.1 below.

4.2 The importance of stakeholder engagement

It is good practice to publicly solicit broad voluntary stakeholder engagement before and during market studies, and even after completion of a market study. Information provided by stakeholders and their support for a market study's outcomes (if it can be obtained) can be key to its success.

Effective engagement with stakeholders occurs throughout the course of a study. Stakeholder inputs – in terms of information about the way the market functions – and their reactions to a study's findings and any proposed outcomes can have a large impact on the study's success. This is particularly true in jurisdictions where authorities do not have powers to compel the supply of information, and where authorities depend on the actions of others to achieve outcomes from their studies.

Thanks to their experience in the market, stakeholders can provide crucial inputs to a market study at various stages of the process by:

- helping to articulate the potential issues that may prompt a market study, or other appropriate action, in the first place;²⁶
- helping to define the scope of a particular market study prior to, or shortly after the launch of a market study;²⁷
- providing the information, both anecdotal and empirical, required to accurately analyse the market;²⁸
- providing input and critiques that help to make proposed outcomes more robust;²⁹ and,
- effecting or helping to effect desired outcomes from a study.³⁰

Engaging with stakeholders can also influence the authority's reputation by:

- increasing compliance and becoming acquainted with the key principles of competition law;

²⁶ See section 2.3.2 on seeking input from external sources to identify potential subjects for market studies.

²⁷ See section 3.2.2 and 5.2.4.

²⁸ See chapter 6 on collecting and analysing information.

²⁹ See section 7.2.2 on consulting stakeholders on market study outcomes.

³⁰ See section 7.5.1 on engaging stakeholders in support of outcomes.

- increasing transparency, collaboration, legitimacy and credibility;
- addressing potential conflicts in advance;
- ensuring that the market studies are delivered in collaboration with stakeholders and providing outcomes which meet the market needs; and,
- ensuring that the outcomes of the study may be followed-up by the stakeholders that took part in the project since the outset.

Engagement of stakeholders with diverse points of view can also foster the sense of objectivity in the study.

By contrast, there may be stakeholders who decline to supply information or engage with authorities, or who choose to undermine or attack the market study, its outcomes and any follow-up work.

Effective engagement of stakeholders may, therefore, be key to the success of a market study. However, it is important for market study teams to bear in mind that stakeholders have their own motivations and perspectives. To preserve the objectivity of a study, it is useful for teams to guard against becoming too closely identified with any one or more stakeholders and their views.

In some cases, key stakeholders may lack the capacity (e.g. resources, time, language skills, or awareness of issues) to engage with the authority effectively. In this case, and if the stakeholder input is crucial for the market study, teams may consider ways of facilitating the engagement (e.g. by improving the efforts and devoting more resources to increase awareness, broadly publicizing the solicitation of information, providing travel support, offering to meet at the stakeholder's premises, providing language assistance, etc.).

4.3 Developing a stakeholder engagement strategy

It is good practice for market study team to develop a stakeholder engagement strategy early in the process to identify relevant stakeholders and plan for how and when to engage them. It is good practice to review and update the stakeholder engagement strategy as necessary throughout the study.

A stakeholder engagement strategy can be used to:

- identify all the key stakeholders and consider whether they are going to be influential, supportive or unsupportive to the market study;
- consider the input expected from the various stakeholders, taking into account their interests and perspectives, and plan for how the authority will solicit and use this input; and,
- describe how and when the authority will seek to engage those stakeholders in the study process.

A stakeholder engagement strategy will typically be an internal working document that can be reviewed and updated as needed as the study progresses. For some agencies, it may be sufficient to simply maintain a list of the stakeholders to be involved.

4.3.1 *Identifying stakeholders*

Identifying the key stakeholders as well as their interests and knowledge, is crucial for a successful stakeholder engagement and the market study outcome.

Stakeholders may include:

- government departments, regulators and public bodies at national, regional or local levels;
- international organizations;
- business people, businesses and trade bodies involved in the affected markets, including producers, distributors/wholesalers, retailers, agents, etc. of inputs, substitutes and complements;
- consumers and/or users, consumer advocates and consumer groups;
- professional organisations, sectoral business associations and trade unions;
- chambers of trade, commerce or industry, and chambers of agriculture;
- legal and industry experts in the area studied;
- academics with expertise in the sector;
- media; and,
- other parties that may have an interest in the market.

Teams can review and list the groups they know have an interest in the study and its outcomes, including both internal and external stakeholders. It may also be useful to include influencers of stakeholders, that is, those whose advice stakeholders may seek (for example, technical experts, consultants, lobbyists).

Publicizing the upcoming market study and publicly soliciting information or input on the study's scope can help ensure that no important stakeholder is missed. For example, it may be useful to arrange public consultations, open seminars, workshops and roundtables relevant to the market study in order to get the word out to potential stakeholders.³¹

4.4 Stakeholder engagement levels and methods

Once stakeholders have been identified and an assessment made of their likely input, interests and perspectives, the team can plan how to engage with them. Different levels of engagement may be needed for different stakeholders. Stakeholders may usefully be grouped depending on their closeness to the study and the planned levels of engagement with them. Teams may also wish to consider each stakeholder's interests, willingness to engage with the authority, knowledge of and influence in the market, reputation for integrity, and potential conflicts of interest or biases.

For example, it may be sensible to engage closely from the outset, and to consider sharing emerging findings, proposed recommendations or other outcomes, with key stakeholders whose interests are likely to be most affected by the market study. For stakeholders who are slightly more distant from the market study, it may be sufficient to meet at appropriate intervals with them. For those more distant still, less frequent meetings may be sufficient. Inviting input in writing is another useful way to engage stakeholders in the market study process. If the study will take considerable time to complete, media coverage regarding the status of the study and its policy objectives can keep stakeholders engaged while the study is in progress.

Multiple engagement levels may also be considered to address different stakeholder groups / different issues. A few examples of common engagement methods and levels are listed below (the list is not exhaustive).

³¹ See section 3.2.2 on soliciting input from external sources and 5.2.4 on public consultations.

PLANNING STAKEHOLDER ENGAGEMENT

Level of engagement	Method of engagement
<p>To inform about the market study</p> <ul style="list-style-type: none"> - Stakeholders distant from the market, with no crucial information and/or moderate to low interest in the market study 	<p>One way communications, which may include:</p> <ul style="list-style-type: none"> - Publications (e.g. press releases, brochures, reports) - Marketing and social campaigns (e.g. mailing lists, blog posts, speeches)
<p>To seek information</p> <ul style="list-style-type: none"> - Stakeholders closer to the market, with relevant information and interest in the market study, but that are not crucial, significant enough or their number is too high to deal with them directly through one-to-one communication 	<p>One way communications, which may include:</p> <ul style="list-style-type: none"> - Online surveys or questionnaires - Requests for information (via email and/or formal letter) - Advisory panels and focus groups
<p>To involve and cooperate</p> <ul style="list-style-type: none"> - Stakeholders whose input, importance or interest has been identified as essential for the market study 	<p>Two ways communications, which may include:</p> <ul style="list-style-type: none"> - Conference calls - Stakeholder interviews/ bilateral meetings - Multi-stakeholder forums and roundtables - Workshops - Partnerships³²

4.5 Summary of good practices

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1	It is good practice to publicly solicit broad voluntary stakeholder engagement before and during market studies, and even after completion of a market study. Information provided by stakeholders and their support for a market study's outcomes (if it can be obtained) can be key to its success.
2	It is good practice for market study team to develop a stakeholder engagement strategy early in the process to identify relevant stakeholders and plan for how and when to engage them. It is good practice to review and update the stakeholder engagement strategy as necessary throughout the study.

³² When key stakeholders are not prepared to collaborate with the authority, it might be beneficial to explore alternative means to increase their incentives to collaborate. The possibility of working together as partners in some key outcomes could be considered. The authority should be cautious when adopting this approach, as it entails the risk of being 'captured' by a stakeholder.

5. LAUNCHING A MARKET STUDY

This chapter looks at the launch of the market study and offers tips for good practice.

5.1 Publicly launching the study

In addition to engaging stakeholders and the public while a study is being contemplated, market studies may merit a public launch. A public launch can be achieved through a variety of means, including one or more of the following:

- a published document;
- a press release and/or interview with authority leadership or staff;
- a targeted e-mail announcement to those key stakeholders known to have an interest in the sector;
- announcement at a public event or speech;
- announcement on the authority's website and/or social media; and,
- announcement at an academic event.

5.2 Providing the public with information about a market study

When a market study is launched, it is good practice for authorities to provide basic information on the study, such as the study's scope and the reasons for undertaking it, and contact points for further information.

Providing basic information about a market study and how the authority will carry it out can help stakeholders and others understand the agency's activities and the market study process better, as well as ensure that all relevant stakeholders come forward. This, in turn, can enhance the reputation of the authority by increasing its transparency and accountability and demonstrating a professional approach. It can also increase levels of stakeholder engagement in market studies.

Basic information that the authority may wish to supply to the public can include:

- the scope of the study;
- anticipated key milestones;
- an indicative timeframe for completion of the study;³³
- the reasons for undertaking the study;
- suspected issues and/or areas of interest;
- the types of possible outcomes of the study;
- contact points for further information;
- how and when stakeholders can participate in and/or provide comments on the market study; and,
- the benefits of stakeholder participation.

³³ As noted in section 3.2.3, however, it will be important to retain flexibility to revise timeframe and scope at a later point if this becomes necessary. Because of the need for flexibility on timing, some authorities may choose not to announce an expected timeframe at the time of public launch.

5.2.1 *Communicating the scope and potential outcomes of a market study*

It is good practice to communicate the reasons for conducting a market study, its scope, and the possible outcomes at the end of the study.

Authorities have differing approaches to the purpose of market studies. Some use market studies as a pure advocacy tool, others use them as a precursor to enforcement action, while others use them for both purposes.³⁴

Where market studies are (or can be) conducted for the purpose of exploring later enforcement action in the relevant market, there may be concern that a market study is being launched due to advocacy by one or a few vocal complainants and would serve their narrow interests rather than the interests of consumers as a whole. In the case where a market study may lead to possible enforcement action, stakeholders may be more guarded in their cooperation.

A statement about the reasons for a market study, its scope and its possible outcomes can help address stakeholder concerns and promote their cooperation. It can also help limit the extent to which any opponents of a study can misrepresent its purpose to serve their own purposes.

If potential outcomes may include both enforcement action and voluntary business action, a clear statement to this effect would ensure that business stakeholders are aware that enforcement action is only one of the possible outcomes, and may encourage greater engagement. Of course, it will not be possible to identify at the outset of a study what specific outcomes will result from it, but listing the range of possible outcomes may help stakeholders understand more clearly the differences between the market study process and enforcement action.

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The distinction between a market study and enforcement action can be made clear in a number of ways:

- authorities articulating the general principles they apply when deciding whether to conduct a market study or bring an enforcement action;
- when appropriate, authorities clearly communicating when a market study has finished and when a later enforcement action begins; and
- if complaints about alleged infringement of the competition law come in to market study teams, they can be forwarded to an enforcement team to consider.

Where authorities have the power to use information collected during market studies for later enforcement action, they might take a policy decision instead to issue separate requests for information to gather evidence for any later enforcement action.³⁵ The relative benefits and burdens for stakeholders could usefully be taken into account in any such policy decision.³⁶

Authorities should also be aware of the risk that an invitation to engage actively within an individual market study may lead stakeholders to conclude (wrongly) that the authority has ruled out the possibility of subsequently taking enforcement action.

³⁴ A list of possible purposes of market studies is found in section 1.1.

³⁵ OECD Directorate for Financial and Enterprise Affairs Competition Committee, 21 November 2008 (DAF/COMP (2008) 34) *Policy Roundtables: Market Studies*, page 214. A link to this report is available [here](#).

³⁶ Business stakeholders may prefer that information submitted during a market study not be relied on as evidence in any later enforcement action. On the other hand, receiving successive overlapping information requests may increase their burden.

5.2.2 *Communicating information about the benefits of stakeholder participation*

It is good practice for authorities to explain the potential benefits of stakeholder participation in market studies.

Communicating the potential benefits and importance of stakeholders' contribution can help to increase their cooperation in individual market studies, and improve the likelihood of successful outcomes. This can, for example, be achieved by way of speeches, guidance, or press statements. Authorities may also wish to consider communicating the possible benefits of stakeholder engagement in relation to specific market studies.³⁷

Potential benefits may include the following:

- consumers gaining a better understanding of the market that may improve their bargaining position vis-à-vis existing and potential suppliers;
- improving the functioning of markets;
- the opportunity for businesses to engage in voluntary compliance or other action that may help avert the costs and risks of enforcement action, adverse court decisions, or of the introduction of new, government policy or regulation; and,
- for governmental bodies, adopting regulation and/or policies that stimulate, rather than restrict, competition, thus promoting increased productivity.

Stakeholders can be made aware that by not participating in a market study they may be missing the opportunity to articulate their point of view and influence the development of an approach to resolve any concerns more quickly and at lower cost.

5.2.3 *Communicating to stakeholders what will be published at the end of the market study process*

It is good practice for authorities to communicate to stakeholders what (if anything) will be published at the end of the market study process.

Market studies typically result in written outputs. Authorities have differing approaches to publishing such output. This may include not only any written final reports, but also associated press releases, speeches and the results of any subsequent study-specific evaluations. Understanding the potential output helps guide the form and content of stakeholder input.³⁸

³⁷ This statement was the subject of significant debate and there is a divergence of views and approaches among the ICN membership, with more in favour than against the statement.

³⁸ For more on safeguarding confidential information, see section 6.4.

5.2.4 *Public consultation*³⁹

For specific issues, and if the authority has sufficient resources, a public consultation may be considered shortly after the launch of a market study. The public consultation can serve to inform stakeholders and help the market studies team gather information about the subject of the market study. Authorities can also convene public workshops dealing with the sets of issues that particular market studies may explore.

Public consultation in this way is particularly important if the study was prompted by stakeholder input or complaints, or if there is a group or groups strongly opposed to the market study. Consultation may also help avoid the waste of resources on unnecessary or inappropriate studies, and may suggest new ideas for studies.

5.3 Summary of good practices

1	When a market study is launched, it is good practice for authorities to provide basic information on the study, such as the study's scope and the reasons for undertaking it, and contact points for further information.
2	It is good practice to communicate the reasons for conducting a market study, its scope, and the possible outcomes at the end of the study.
3	It is good practice for authorities to explain the potential benefits of stakeholder participation in market studies.
4	It is good practice for authorities to communicate to stakeholders what (if anything) will be published at the end of the market study process.

³⁹ As noted in section 3.2.2, market study teams can solicit views on the scope of the study prior to, or shortly after the launch of the market study.

6. COLLECTING AND ANALYSING INFORMATION

This chapter focuses on the collection of information during the early stages of a market study. However, information collection and analysis may also play a role in later stages of a market study, particularly in conducting post-study assessments of the study's impact on market participants. The strategies presented here are equally applicable to such latter stages of a market study.

6.1 Information collection

It is good practice, before seeking any information, for the market study team to prepare by:

- **consulting with any authority staff with knowledge of the market or related markets;**
 - **considering what information is available and what is needed for the purposes of the market study;**
 - **considering possible sources of information;**
 - **considering the time that will be required for information collection and analysis;**
 - **considering the burden and costs on participating stakeholders when deciding the scope of information to be sought; and,**
 - **reaching out to the public and stakeholders through public workshops and calls for public comments.**
-

All market studies will require the collection of information. The extent and variety of techniques used when collecting information will vary due to the differences:

- in the purpose(s) of market studies;
- in the role of stakeholders in the market concerned; and,
- between authorities in terms of those that have and do not have a formal power to compel the supply of information for market study purposes.⁴⁰

Some authorities have experts, such as statisticians, financial analysts and econometricians that can advise market study teams on specific types of information that may be available and necessary for the study. Such experts can advise on the best ways to ask information in order to make the subsequent analysis more effective.

When considering and planning information collection, market study teams may find it useful to consider the following questions before any requests are made:⁴¹

⁴⁰ An authority has a formal power to compel the supply of information when any failure to comply with an information request it makes in exercise of that power attracts legal sanctions.

⁴¹ If authorities are carrying out a study purely for internal research purposes then in some circumstances all the information needed may be available from, for example, free websites and/or other free published material.

- Why is the information needed to support or refute the theories or hypotheses the team is trying to evaluate, understand, or discount?
- What information is publicly available?
- Is any or all of the information already available within the authority?
- Is any or all of the information already available from other public bodies, for example other regulators or government departments?
- If information is available publicly, is it free or will a fee be required?
- Is any or all of the information available from commercial sources, and if so what are the costs of obtaining access to it?
- Where multiple sources of information are available, which are the most reliable, and which are the easiest, quickest and cheapest to access (including expenses associated with access, formatting, etc.)?
- Will the team need to seek information from private sector stakeholders and if so who, when and how?
- How much information is needed? Is information sampling sufficient or is it necessary to contact the whole population that is of interest?
- What are the burdens and costs associated with the collection of information by participating stakeholders?
- Do specific stakeholders have motivations and interests that should be taken into account when requesting information?
- How will the information be analysed? Thinking about this early on will help authorities consider how best to phrase information requests. It may also help the authority explain its need for the information to stakeholders who might otherwise resist the request.
- What contingencies will there be if the identified sources will not or cannot supply the requested information?
- What use will be made of the information?
- What confidentiality protections apply to the information sought?

6.1.1 *Organising research*

It is good practice for market study teams to consider carefully how they conduct research, including factors such as spending decisions, organisation, and alternative routes to gather information if initial results are inconclusive.

Market studies are often exploratory or speculative in nature. For this reason, it may be hard for authorities to take a view on the value of any particular strand of research until after it is complete. When organising, commissioning and conducting research, authorities should be prepared to address potentially inconclusive research results. Authorities may find it helpful to:

- break the research into stages and/or smaller pieces so that:
 - lessons can be learned and applied in any subsequent information collection/analysis phases; and,
 - a decision can be made as to whether spending any more time and/or money on a particular research strand is worthwhile and/or justifiable.
- think about alternative routes to gather information in case the initial research is inconclusive.

6.1.2 *Sources of information*

It is good practice for market study teams to consider carefully the sources of information for the market study, including the stakeholders from whom information may be sought, taking

into account the wide range of potential sources, and the potential merits and relative efficiencies of each.

The purpose(s) of the study will ultimately determine whether information needs to be sought from stakeholders and if so from which ones. Information can be obtained from a variety of domestic, international, private and public sources, and it may be more efficient and effective to collect information from one source than it is to collect it from another.

Information about parallel sectors in foreign jurisdictions can be of benefit when trying to persuade domestic stakeholders and/or governments of the need for, or benefits and feasibility of, proposed changes, particularly regulatory changes.⁴² Information collected from sector experts and industry consultants may prove more helpful than historic information in industries where rapid innovations are common.

It is good practice for authorities to make use of publicly available information, where such information is reliable, complete and accurate.

A market study team should typically not request information that is available from sources in the public domain, unless there are indications that the publicly available information is not accurate or complete. When other regulatory bodies or other teams in the authority are engaged in parallel or overlapping work, the market study team can seek to avoid duplication by coordinating information requests and sharing information between the two bodies, where this is possible under confidentiality or other rules.⁴³

6.1.3 *Types of information collected*

To increase evidentiary rigour, it is good practice for study findings to be supported by empirical evidence where possible. Anecdotal evidence can be helpful to illustrate key points, and to support existing empirical data and findings based on it.

Authorities can choose to collect both anecdotal and empirical evidence for use in market studies, and both categories can be useful. The benefits of each type of evidence include the following:

- empirical evidence can be more persuasive than anecdotal evidence in supporting generalised findings;
- empirical evidence validates the authority's work and is more reliable should the market study result in future enforcement activities;
- empirical evidence may be less prone to editorializing or “spin”, and is easier to verify than anecdotal evidence; and,
- anecdotal evidence can provide a useful illustration of key points to support findings based on empirical evidence.

⁴² Authorities can consider consulting the ICN market studies information store to find out if competition authorities in other jurisdictions have conducted one or more studies in the same or a closely related market. The market studies information store can be accessed on the ICN website, at <http://www.internationalcompetitionnetwork.org/working-groups/current/advocacy/amsis.aspx>.

⁴³ See also section 3.1.4 on working with other public bodies.

6.1.4 *Methods of collecting information*

It is good practice for authorities to select from a range of methods for collecting information for market studies, using more than one method where appropriate, and considering the benefits, disadvantages and costs of each method.

There are a variety of ways for market study teams to collect information for use in market studies.⁴⁴ The choice of which to use will be determined by: the legal powers available to the authority; the purpose(s) of the study; and, in certain circumstances, available resources, as some methods are more resource intensive than others. Many teams find it beneficial to employ more than one method to acquire the information they need as this suits the differences in:

- the roles of different stakeholders in the market;
- the willingness of different stakeholders to cooperate with the authority; and,
- possible market factors authorities are seeking to understand and evaluate.

The variety of methods that authorities can use includes the following:

Collecting existing information

- reviewing literature, including of existing market research; and,
- examining existing information either held by the authority and/or other government departments/regulators;

Collecting new information

- designing and issuing questionnaires;
- conducting focus groups, workshops, seminars, meetings and/or in-depth interviews;
- carrying out consultations;
- targeting information requests at individual market participants;
- carrying out large surveys involving a broader range of stakeholders, consumers or parties that are more distant from the market in question;
- public calls for submissions on identified topics;
- conducting mystery shopping;⁴⁵ and,
- (where authorities have the necessary legal powers) carrying out on-site inspections, with or without notice;

When the methods used involve the creation of new, or tailored, materials, such as questionnaires, focus groups and surveys, it can be useful to road-test them internally and/or externally before they are put to use. This may help to highlight and resolve potential problems.

The above methods have advantages and disadvantages. For example:

⁴⁴ External providers can also be used to collect information, see section 3.1.2.

⁴⁵ 'Mystery shopping' refers to instances when external contractors, or an authority's own staff, pose as customers making enquiries about a purchase to see how they are dealt with by businesses.

- **Existing market research and administrative information** – on the plus side these are the quickest and least resource-intensive methods by which to obtain information. They may also provide the authority with insight into potential sources of information that could be used. The downside is that using these methods might mean that the information is dated or not in the most beneficial or complete format for an authority's purposes, which might lead to the work being less informed.
- **Use of questionnaires, focus groups, in-depth interviews and mystery shopping** – on the plus side these methods allow authorities to explore qualitative issues in a tailored and relatively short period of time. Questionnaires can additionally be used to produce quantitative information. Focus groups and in-depth interviews are methods, which can also bring out other issues as a result of the interactions between the groups of interviewers and interviewees. The downside of focus groups, in-depth interviews and mystery shopping is that these methods only produce qualitative information, so they cannot be relied upon to support quantitative findings.
- **Large surveys** – on the plus side these can produce statistically robust data, such that general statements can be made about the population from which the relevant sample was drawn. The main downside is that large surveys may require more resources (in terms of time, human, and financial resources) relative to the other methods. Surveys must also be carefully designed to avoid issues of self-selection bias or inconsistency in the content or completeness of responses.

Where authorities decide to use focus groups, seminars and/or workshops they will need to consider whether a sufficient number of participants will be invited, and whether those participants will provide a variety of informed perspectives. Authorities should also consider the format or style of the event, which may impact the way information is gathered and shared. Other items such as venue, hospitality, and other administrative issues and costs should also be considered when conducting this type of event.

6.1.5 *Consulting on draft information requests*

With a view to minimising burdens, it is good practice for market study teams to consider consulting with stakeholders on the scope and range of information requests for a market study, as well as on the proposed timeframes for responding, and the format in which information is to be supplied.

Whether voluntary or compulsory, it is good practice for authorities to keep in mind the burden that information requests impose on respondents. To this end, it may be helpful to consider consulting with stakeholders as to the range and scope of information requests, the timeframes in which responses are requested, and the formats in which information is requested, to ensure that information requests address the relevant issues, are properly tailored, are not unduly burdensome for their recipients, and can be responded to effectively and within anticipated deadlines.

Consulting with stakeholders may also help authorities to understand how the stakeholders manage their information. Authorities may consider requesting sample data, which may help the authority determine whether the information held by the stakeholder is useable and/or relevant.

6.1.6 *How to request information*

When making an information request for a market study, it is good practice for authorities to make clear, as applicable:

- **what information is being sought;**
 - **why the information is being sought;**
 - **how information is to be submitted – that is, the required format;**
 - **the timeframes for submission;**
 - **the consequences, if any, of not supplying the information – these could be legal or more general such as missing the opportunity to inform the study and its outcomes;**
 - **any protections for confidential information submitted; and,**
 - **a contact point for questions about the information request.**
-

Authorities may wish to consider how prescriptive to be about the form and/or format in which they request information to be submitted. For example, if authorities want information to be submitted electronically, then it may be helpful either to specify the required format, or to ensure that appropriate technology is available to review and analyse information submitted in multiple electronic formats.

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When stakeholders wish to provide verbal responses, meetings or telephone interviews may be best held with each stakeholder individually, in order to provide protections from the disclosure of commercially sensitive or confidential information. In such cases, the market studies team should decide whether it is advisable to take minutes from the meeting or conference call and send them to the stakeholder for comment.

It is good practice for authorities to be clear about the timeframes in which they wish the information to be supplied. It may also be helpful to explain any consequences for the recipient of the request of failing to respond within specified timeframes, or of failing to respond at all, whether such consequences are legal or more general (such as loss of the opportunity to inform the study and its possible outcomes). Providing the possibility to extend the response deadline, under specific circumstances, also is recommended to allow for appropriate flexibility.

Care needs to be taken to avoid the risks of requesting too much information and/or framing information requests too broadly. Addressing these risks at the outset will mean that authorities avoid requesting or receiving excessive and irrelevant information.⁴⁶ This, in turn, avoids placing unnecessary burdens on either the authority concerned or the stakeholders associated with the market study.

⁴⁶ In some (if not many) cases, there will need to be follow-up requests later in the study as understanding of the market develops. It is preferable, to manage the scope of any follow-up requests so as to reduce burdens on those to whom requests are addressed.

6.1.7 *Understanding and communicating how information might be used*

When seeking information for a market study, it is good practice for authorities to explain how the information may be used and how sensitive or confidential information will be handled. To assist in classifying information, it is helpful for authorities, when requesting information for a market study, to invite respondents to indicate whether any of the information they supply is of a sensitive or confidential nature.

Barring any legal and other constraints (such as prior commitments to stakeholders), authorities may be able to use information collected during a market study to help further their understanding of a sector for enforcement, advocacy and consumer and business education efforts. It is good practice for authorities to explain the possible uses to which the information may be put, including whether the information could be used for future enforcement action.⁴⁷ Where information may be included in any published market study report, it is also useful to say so.

When publishing market study reports, authorities should consider whether any of the information contained in them is sensitive and/or confidential, and create non-confidential drafts as necessary. To assist in this consideration, it is helpful for market study teams, at the time of making any information requests, to invite respondents to indicate whether any of the information they supply is of a sensitive or confidential nature. Market study teams should inform stakeholders of any protections that will apply to sensitive or confidential information that might be submitted.⁴⁸

Where information is sought, citing the laws and/or policies that require the authority to safeguard confidential information will not only encourage stakeholders to disclose information that they might otherwise withhold, but also provide the proper incentives for market study teams and other authority staff and leadership to be vigilant in the handling of confidential or sensitive information.

6.1.8 *Use of formal powers (where available) to compel the supply of information*

Where authorities have powers to compel the supply of information for market studies, some authorities consider seeking information on a voluntary basis first, whereas other authorities use the power to compel information at the initial request.

Even where authorities have the legal power to compel the supply of information for market studies, seeking information on a voluntary basis first may help to:

- reinforce the separation between market studies and enforcement actions;
- build cooperation from stakeholders; and,
- save agency resources in complying with the more burdensome procedures of a compulsory process and/or handling appeals from parties opposing the compulsory process;

Voluntary requests may not be a sensible first step where an authority has reason to believe that the information will not be forthcoming unless it exercises compulsory powers.

⁴⁷ See also section 5.2.1 on differentiating between market studies and enforcement action.

⁴⁸ See also section 6.4 on how to safeguard information.

Throughout the process of requesting, collecting, and analysing information, it is important to understand stakeholders' interests and incentives in supplying information and engaging with the authority on the market study. For example, some stakeholders may desire a particular outcome and submit information that is one-sided and/or designed to promote or support the status quo, or the particular changes they would like to see. This may be less of a problem when formal powers have been used to compel the supply of information in a complete and accurate form. In a context without formal powers to compel information, soliciting voluntary submissions for a market study from a wide variety of stakeholders and market participants will help provide a range of views with which to assess potential biases and differences in perspectives.

If authorities run a market study in parallel with an enforcement investigation in the same market, it is good practice to consider carefully any interaction or duplication between the gathering and use of information in the different contexts.

If an authority is running a market study in parallel with an enforcement investigation, it is good practice for the authority to consider carefully the interactions between the two contexts so as to avoid duplicative requests if and where possible. It is also helpful for authorities to be very clear about the relevant legal constraints on the use of information in each context, the purposes for which information supplied pursuant to each request can be put and the assurances, if any, about the use of information in each context.

6.2 Managing information

It is good practice for market study teams to carefully consider how they manage information gathered during a market study, including the receipt, review and organisation of information and to identify confidentiality protections.

It is good practice to acknowledge receipt of all market study information supplied to the authority as a result of requests, where feasible, soon after it has been received. Where input is received verbally via meetings, workshops etc. it is good practice to write it up soon afterwards while it is still fresh in team members' minds. Authorities may consider making recordings and taking transcripts of verbal sessions where the benefits of doing so appear to outweigh the associated administrative burdens on market study teams.

It is good practice for market study teams to systematically log and record information received. This includes noting whether confidential information has been submitted or whether permission has been given to disclose it. Authorities may keep information in physical paper files and/or electronically.

Whatever ways authorities choose to keep information gathered for a market study, whether in physical paper files and/or electronically, they may wish to:

- organise information for ease of use, for instance in chronological order or by topic;
- be disciplined and consistent in the titling of documents so that they can easily be located in the future;
- indicate whether the information is confidential; and,
- highlight where stakeholders have agreed/not agreed to the disclosure of confidential information.

6.3 Analysing information

When analysing information received, it is good practice for authorities to consider how it fits with their understanding of the market. Where information collected does not support a hypothesis or theory, it is good practice to state that the hypothesis is not supported, and consider whether to modify or abandon the hypothesis or theory, or whether to seek more information. Specific stakeholders' motivations and interests should also be taken into account when evaluating the information they provide.

As information is received for a market study, teams can start to analyse it. It is beneficial to begin analysis of information as it is received so that the team can assess sufficiency of responses and keep the project on track. Where external providers have been engaged to conduct research or surveys, it may be best for any reports of the results to put forward a neutral presentation of findings, leaving the authority to interpret how these findings relate to other conclusions and their implication in terms of the study's outcomes.

The sequence for analysing market study information is broadly as follows:

- assess whether the information meets requirements (if not, consider making modifications, or accept that this is the best that can be obtained in the time available);
- consider how the information fits with the authority's ideas, theories or hypotheses about or understanding of the market; and,
- if the requested information is determined to be of questionable quality, consider whether to seek further information.

In complex market studies, there might be multiple markets or aspects of markets under analysis. The robustness of the findings will typically need to be checked and then considered and combined into a collective analysis of the bigger picture in order for the team to develop possible outcomes.

6.3.1 *Techniques for data analysis*

Market study teams can employ a range of different methods to analyse the quantitative and qualitative evidence they receive. The [ICN Investigative Technique Handbook for Merger Review](#) describes in detail a number of techniques for assessing economic evidence in the context of merger analysis, and many of these techniques may be applicable in the context of a market study.

Some quantitative techniques which market studies teams may wish to employ include:

Descriptive statistics

Descriptive statistics can be used as a means of presenting quantitative data collected. This method can be useful as a way of clearly displaying the information which has gathered and can help the market study team to identify further issues to explore in more detail. However, descriptive statistics may be of limited value in drawing inferences from the data by understanding how the data collected from the sample relates to a larger population.

Econometric modelling

Econometric modelling can be used to statistically separate out the effects of different potential explanations for market outcomes and to quantify the relative weight and likelihood that observed

relationships in a sample reflect the relationships in the whole population. However, econometric modelling can be complex, it may be difficult to convey results to policy makers and the public, and results are sensitive to assumptions, techniques applied, and to data errors. In addition it can be difficult to resolve technical differences in results between multiple econometric studies. Generally, it is a good idea to ensure that econometric modelling is used in conjunction with other quantitative and qualitative analysis.

6.4 How to safeguard confidential information

It is good practice for market study teams to ensure that appropriate internal procedures are in place to safeguard sensitive or confidential information once it is received.

Authorities will have their own policies and procedures for safeguarding confidential information gathered in a market study. It is good practice for authorities to ensure that appropriate internal procedures are in place for handling sensitive or confidential information obtained during a market study, and for storing, disposing or returning such information to the relevant parties where applicable. Such a process will typically be pursuant to some (externally or internally) imposed obligation to safeguard confidential information. In most instances, authorities are legally obliged to protect sensitive or confidential information supplied. In the event that there are no legal obligations, it is good practice for authorities to consider adopting appropriate policies that offer such protections.

Further, subject to appropriate laws and policies, it is good practice for authorities to review any confidential information they receive for a market study before publishing or otherwise disclosing it, to ensure that any necessary permissions can be sought and obtained.

Where permission to disclose is not provided, market study teams should take the necessary steps to protect sensitive or confidential information. In the case of a market study report, this may involve making appropriate redactions from the report. If redactions to the report are needed, authorities may wish to consider maintaining two versions of a market study: a private confidential version (for internal use) and a public non-confidential version (for external viewing). Authorities may also consider aggregating confidential or sensitive information so that conclusions may be drawn from the information without revealing the confidential information. Care must be taken to ensure that the aggregation is performed at an appropriate level, and drawn from a sufficient number of participants, to preserve the confidentiality of the information used.

6.5 Summary of good practices

1	<p>It is good practice, before seeking any information, for the market study team to prepare by:</p> <ul style="list-style-type: none"> - consulting with any authority staff with knowledge of the market or related markets; - considering what information is available and what is needed for the purposes of the market study; - considering possible sources of information; - considering the time that will be required for information collection and analysis; - considering the burden and costs on participating stakeholders when deciding the scope of information to be sought; and, - reaching out to the public and stakeholders through public workshops and calls for public comments.
2	<p>It is good practice for market study teams to consider carefully how they conduct research, including factors such as spending decisions, organisation, and alternative routes to gather information if initial results are inconclusive.</p>
3	<p>It is good practice for market study teams to consider carefully the sources of information for the</p>

	market study, including the stakeholders from whom information may be sought, taking into account the wide range of potential sources, and the potential merits and relative efficiencies of each.
4	It is good practice for authorities to make use of publicly available information, where such information is reliable, complete and accurate.
5	To increase evidentiary rigour, it is good practice for study findings to be supported by empirical evidence where possible. Anecdotal evidence can be helpful to illustrate key points, and to support existing empirical data and findings based on it.
6	It is good practice for authorities to select from a range of methods for collecting information for market studies, using more than one method where appropriate, and considering the benefits, disadvantages and costs of each method.
7	With a view to minimising burdens, it is good practice for market study teams to consider consulting with stakeholders on the scope and range of information requests for a market study, as well as on the proposed timeframes for responding, and the format in which information is to be supplied.
8	When making an information request for a market study, it is good practice for authorities to make clear, as applicable: <ul style="list-style-type: none"> - what information is being sought; - why the information is being sought; - how information is to be submitted – that is, the required format; - the timeframes for submission; - the consequences, if any, of not supplying the information – these could be legal or more general such as missing the opportunity to inform the study and its outcomes; - any protections for confidential information submitted; and, - a contact point for questions about the information request.
9	When seeking information for a market study, it is good practice for authorities to explain how the information may be used and how sensitive or confidential information will be handled. To assist in classifying information, it is helpful for authorities, when requesting information for a market study, to invite respondents to indicate whether any of the information they supply is of a sensitive or confidential nature.
10	If authorities run a market study in parallel with an enforcement investigation in the same market, it is good practice to consider carefully any interaction or duplication between the gathering and use of information in the different contexts.
11	It is good practice for market study teams to carefully consider how they manage information gathered during a market study, including the receipt, review and organisation of information and to identify confidentiality protections.
12	When analysing information received, it is good practice for authorities to consider how it fits with their understanding of the market. Where information collected does not support a hypothesis or theory, it is good practice to state that the hypothesis is not supported, and consider whether to modify or abandon the hypothesis or theory, or whether to seek more information. Specific stakeholders' motivations and interests should also be taken into account when evaluating the information they provide.
13	It is good practice for market study teams to ensure that appropriate internal procedures are in place to safeguard sensitive or confidential information once it is received.

7. DEVELOPING AND SECURING OUTCOMES

This chapter looks at achieving the desired outcomes for market studies and offers tips for good practice.

7.1 Types of outcomes

It is good practice for authorities to develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes.

Given the variety of the goals of market studies that exist, it is neither feasible nor sensible to judge whether one type of outcome is generally better than any other. A decision as to what, if any, outcomes are appropriate for an individual market study will depend on a range of factors, including:

- the purpose(s) of the market study;
- the issues/problems found, if any;
- the policy/regulatory landscape; and,
- consumer and/or business incentives.

Types of possible outcomes from market studies can include:

- no action, because a market is working well, or is already improving, or because remedies are more costly than their likely benefits;
- recommendations to government for changes to existing, draft, or proposed laws, policies, or regulations;
- competition enforcement and/or advocacy;
- where authorities have consumer enforcement powers, consumer enforcement;
- further market monitoring or market study;
- voluntary action by business;
- business and/or consumer education;
- referral to a third party for action; and/or,
- action by the authority to restructure the market where the authority possesses that power.

Market studies can often involve more than one outcome, especially where outcomes complement each other. For example, a market study may lead to recommendations to change regulation, combined with suggested supplementary voluntary action by business. Similarly, a market study that reaches findings that justify opening an enforcement investigation may also serve to educate businesses to increase their compliance with competition laws and/or educate consumers to make better purchasing decisions.

7.2 Developing outcome options

When authorities are developing outcome options, it may be helpful for them to consider the following questions:

- did the information gathered and subsequent analysis suggest there is a competitive problem?
- if so, how could the issues(s) be resolved?
- are there existing proposals to resolve the issue(s)?
- is there a sufficient link between the issue(s) found and the possible outcomes under consideration?

- how should the possible solutions be ranked?
- what are the pros and cons of each?
- is there sufficient information to justify the findings that support the option(s)?
- what are the costs involved?
- do the benefits outweigh the costs and burdens?
- what steps would be necessary to encourage adoption or implementation of the option(s)?
- how likely is it that the option(s) will be implemented? Is the authority reliant on others to do so?
- are there factors other than competition that will influence the selection of an option?
- how might the option(s) fit (or not) with other government regulation and or policy?

Considering these questions will help to ensure that the analysis is thorough, that outcomes are appropriately linked to findings, and that there is persuasive narrative to support the recommendations and/or any actions subsequently made or taken.

By keeping options under review throughout the course of the study, the authority allows room for the options to evolve as necessary in response to on-going stakeholder engagement, information collection and analysis, changes in government policy, etc. Information collected during the study may suggest outcomes not considered at the outset.

7.2.1 *Benefits and costs*

It is good practice for authorities to assess the costs and benefits, when relevant, of proposed market study outcomes.

When deciding on the outcomes of a market study, it is good practice for market study teams to consider, where applicable,⁴⁹ whether the envisaged benefits will exceed the costs for businesses and other parties. If possible, it is helpful to try to take into account business costs of implementing any outcomes within the context of considering overall benefits to consumers, being mindful of whether costs may be passed on to consumers.⁵⁰

Assessing costs and benefits is important throughout the market study process. Many authorities appreciate that this assessment can be particularly important when recommending market study outcomes. Conducting a cost-benefit analysis or impact assessment of outcomes can help build the case for intervention in the market, especially when the intervention involves making regulatory changes.

Even where recommendations entail only the removal of restrictions on competition, conducting some form of cost-benefit analysis or impact assessment may help the authority counter arguments from those that currently benefit from the effects of those restrictions.

⁴⁹ Some authorities may not wish to conduct cost benefit analyses or impact assessments if their studies are purely fact-finding in nature and outcomes do not impose implementation costs.

⁵⁰ Business costs may be passed on to consumers through higher prices or reduced quality or choice.

7.2.2 *Consulting stakeholders on market study outcomes*

Where relevant for a market study, it is good practice for market study teams to consult stakeholders in developing market study outcomes, and test possible outcomes to assess their feasibility and their likelihood of implementation. This can also help build consensus for outcomes.

Market study teams should ensure that any market study report presents the evidence, identifies and articulates relevant stakeholder views, and responds to views where appropriate. This not only ensures that the market study is well informed and objective, but also signals to stakeholders that the views and information that they submitted have been taken into account.

Engagement with stakeholders should not give them control over the study. Where they choose to engage stakeholders in developing and/or testing possible outcomes, market study teams will wish to maintain their independence and objectivity. Inevitably, some market study findings, recommendations or outcomes, may differ from some stakeholders' views, and the best results for stakeholders may not be the best results for consumers and competition. Market study teams should retain full control over the content of final written materials. Productive outcomes and cooperation from stakeholders in implementing recommended changes may still be possible if stakeholders are confident that their views and contributions were taken into consideration.

Releasing initial findings and/or potential outcomes

Some authorities have found it useful to release initial market study findings and/or proposed or possible outcomes. Discussion of initial findings and/or proposed or possible outcomes can be arranged via publication of an interim report, public consultations, bilateral meetings, workshops, focus groups or seminars. The value here is that stakeholders with specialised knowledge/expertise, who may or may not have previously supplied information, would be given a further opportunity to contribute information and have an opportunity to respond to or comment on the information put forward by others. There are, however, risks associated with the release of initial findings, including delays in the study process and the risk that some stakeholders may react negatively to initial findings and refuse further cooperation.

This type of consultation and input can help authorities to:

- validate the market study findings;
- build consensus for proposals;
- identify and fill any gaps in the analysis;
- discuss potential remedies for any problems identified;
- recognise any potential biases not identified in earlier stages of the market study; and,
- test the relative merits and feasibility of proposed or possible outcomes.

7.3 **Drafting written findings and reports**

It is good practice for written outputs of a market study to be in a form and format that reflects their purpose and the needs of the target audience.

Market study teams will often produce written outputs, some or all of which may be made publicly available, such as consultation documents, summaries of stakeholder input, detailed evidential reports and a final market study report that may include outcomes. It is good practice for written outputs to reflect:

- their purpose (for example, to inform, guide, consult, obtain support, seek decisions, advocate certain outcomes); and,
- the needs of the target audience (how informed are they, what their interests in the subject matter are and whether those interests are broad or narrow).

Authorities may wish to consider whether tracking changes between drafts is useful for audit and accountability purposes. If so, appropriate redlined versions of papers and reports can be logged, dated and filed.

7.4 Releasing market study findings and reports

Before a market study is completed, it is good practice for a market study team to consider whether to release its findings, and if so to plan for the release.

Market study teams will usually consider whether some or all of the findings of a market study will be released, and if so, plan how they will be released in a way that maximises their likely impact.

When the findings of a market study are to be published, the team will usually draft a final report containing the study's findings and outcomes.⁵¹

To support the findings of the report, and to promote transparency, it may also be useful to publish separately the non-confidential information, empirical data and/or research that support the market study's findings. Such a publication can help the market study team and authority demonstrate any competitive problems that have been identified in the market study, and can lend the findings and outcomes additional persuasive force.

Prior to any publication, market study teams should carefully consider and apply any relevant laws and policies governing the protection of confidential or other sensitive information (for example, relating to personal data and/or defamation), to guard against legal risks arising from publication.⁵²

7.5 Securing market study outcomes

7.5.1 *Engaging stakeholders in support of outcomes*

It is good practice for authorities to plan for and include relevant stakeholder engagement in their advocacy efforts in support of market study outcomes.

Stakeholders have various, and possibly conflicting, interests in market study outcomes. Authorities can carefully weigh the pros and cons of engaging stakeholders in advocating in support of market study outcomes. Stakeholders may choose to support or disagree with market study outcomes, in pursuit of their own objectives, whether or not authorities engage with them. In some cases it may be advantageous to engage supportive stakeholders in advocacy efforts.

Certain types of stakeholders may be more likely to support certain market study outcomes. For example:

⁵¹ Where the authority finds there are no problems in the market it may wish simply to issue a press release to that effect. Also, some studies may be pure information gathering exercises, in which case an authority may decide not to publish a final report.

⁵² See section 6.4.

- businesses that have recently entered or expanded in a market (or are likely to do so) may support an authority's calls for regulatory change that would open up the market;
- businesses and business groups may support recommendations for changes in law or policy that would reduce their regulatory burden;
- consumer groups and other civil society organisations may support a recommended regulatory change aimed at increasing the benefits to consumers, increasing transparency, increasing consumer protections, and/or the availability of redress, for consumers;
- business and/or consumer groups and/or other regulators or public bodies may support educational messages and materials aimed at securing increased compliance by business, or advising consumers of their rights and of how to shop around for the best products or services; and,
- governments or other agencies may support voluntary action where this is in line with their policy objectives.

Examples of how stakeholders may contribute to the success of market study outcomes are:

- advocating to government and others to make the necessary changes;
- providing speaking opportunities and/or stands at their events;
- referring to the results of the study in the media or in publications;
- helping deliver education to businesses and/or consumers, for example by allowing the use of their premises for posters/leaflets/guidance; and,
- hosting roundtables, workshops and/or conferences that publicise the outcomes.

Authorities should take care to ensure that any support from stakeholders does not raise conflict or reputational harm for the authority.⁵³ For example, a business may want to refer to working in partnership with an authority in such a way as to suggest that the authority endorses its products or approves its business ethics.

Depending on the type of market study carried out and the outcomes identified, authorities may wish to consider the use of roundtables and public events as a means of providing an opportunity for supporting and opposing stakeholders to express their views on the outcomes.

7.5.2 *Effective use of the media*

It is good practice for authorities to recognise the potential effect of media coverage on market study outcomes. A well thought through communications strategy can help drive successful outcomes.

Press and other media coverage can strongly influence the success of a market study and its outcomes. An effective negative press campaign can quickly extinguish enthusiasm for proposed outcomes. Conversely, supportive press coverage can help to build and support the case for change. In the light of this, authorities can develop and regularly review a communications strategy for market studies, and/or promote market studies within broader advocacy efforts.

As with at the launch of the study,⁵⁴ effective media coverage will be important at the end of the market study, when findings and outcomes are tested publicly and when the final report and outcomes are published. Where a study calls on stakeholders (whether government, business, consumer bodies or others)

⁵³ For example if a key third party advocate was the subject of an on-going enforcement investigation.

⁵⁴ See chapter 5.

to take action, supportive press can raise the political and reputational stakes, increasing the incentives for stakeholders to deliver the desired outcomes.

Media platforms are increasingly diversified, and authorities can consider securing coverage across the range of platforms, including:

- press releases and articles on the authority's own and others' websites, blogs, and social media.
- print and online newspapers, magazines, periodicals, competition-specific press;
- seminars, workshops and conferences;
- television; and,
- radio.

Speaking engagements that will be covered by, or published in, professional or other press may present a good opportunity to deliver high-level messages.

Where findings are published, some form of information specifically aimed at the press, clearly explaining the reasons for conducting the study and its results, may be valuable. The language required to describe the key points of a report to the media is often very different from the language required in report drafting, and care is needed to ensure that findings are not selectively or inaccurately reported.⁵⁵ Building momentum by using media can be particularly helpful to authorities who lack the means and/or powers to bring about implementation of a study's recommendations.

If information is to be provided to the media, ensuring that relevant staff have the necessary media skills to draft press releases and conduct interviews may be important. Such staff may also benefit from internal practice sessions, and having answers prepared in advance for anticipated questions.

7.5.3 *Considerations for certain types of outcomes*

Recommendations to government

Where market study recommendations are addressed to government, it is good practice for authorities to carefully consider how to present the recommendations to effectively advocate for change.

In many jurisdictions, other government agencies and decision-makers are not obligated to follow the competition authority's recommendations. This highlights the importance of accompanying market studies with effective advocacy efforts.

The advocacy efforts can include, where possible, engaging with other government departments, legislators and other interested third parties, by presenting findings, explaining the analysis, presenting the possible costs and benefits of the proposed remedies and liaising on government proposals for implementation. Where legislative change is needed, authorities can work to ensure that appropriate resources are made available to respond to consultations by government departments or by legislators. If possible, authorities may also provide advice to courts hearing disputes that raise competition policy issues informed by the findings of the study.

⁵⁵ This can be damaging to affected stakeholders, as well as diminishing public understanding of the study.

When seeking to change government regulations and/or policy, authorities can prepare for possible objections. Authorities can usefully adopt a pragmatic approach that recognises that, in certain circumstances, other governmental policy objectives may override competition concerns. Where this is the case, authorities can consider working with policy makers to seek policy outcomes that produce the least negative effect on competition, and to encourage policy makers to quantify and objectively justify any harm to competition.

If authorities are considering introducing a market study programme, and they have the opportunity to provide input into the design of the regime, they may wish to consider seeking a public government commitment to respond to their recommendations.

Voluntary business action

It is good practice for authorities to engage effectively with business and industry where voluntary action is a desired market study outcome. Being aware of individual and collective business interests can help to encourage cooperation.

Where voluntary business action is the desired outcome of a market study, communication and interaction among the authority and stakeholders—including the affected business interests—is even more important. Steps that authorities can take to facilitate “business buy-in” include:

- testing market study findings with business prior to publishing a final report;⁵⁶ and,
- working with business to try to secure voluntary commitments that can be announced when announcing market study.

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When an authority is suggesting voluntary measures, it is helpful to consider and identify the particular or collective interest of the business or industry in the measures. Engaging with businesses and industry through trade associations or bodies may help to build consensus. It may be useful to initiate a working group to look for common ground between the authority and key stakeholders and/or to discuss principles of voluntary action that may be taken.

Where authorities suspect, or it becomes clear, that businesses are unlikely to offer voluntary action or compliance that will address the findings of the market study, the authority may wish to consider and explore, if relevant, options for advocating for government to change existing or draft new policies or regulations and/or enforcement action by the authority, as appropriate.

Action by the authority

It is good practice for market study teams to secure internal clearances and consider feasibility before announcing any outcomes that involve the authority itself taking further action.

When one or more of the proposed outcomes from a market study involves action to be taken by the authority itself (for example, conducting an education campaign, taking enforcement action, monitoring the market, or re-examining the market at a later date), it is helpful to consider whether teams that may be called upon to undertake such action have sufficient resources to do so. It can be reputationally damaging if an authority does not implement commitments that it has made itself.

⁵⁶ See section 7.2.2 on consulting stakeholders on market study outcomes.

7.6 Measuring success and deciding when to stop follow-up advocacy

Authorities should recognise that successful market study outcomes may take time and require well-resourced follow-up.

In some cases it will be clear early on when market study outcomes have been achieved. For example, the government may immediately accept the recommendations. This is very likely when there was desire for change at the outset, perhaps because the government itself suggested the study.

In other cases, the effects of a market study are not always immediate. Nevertheless, studies enjoy a measure of success:

- whenever they contribute to a debate providing increased clarity and/or useful proposed outcomes that may lead to future change;
- whenever recommendations or proposed outcomes (even though they are not fully accepted) are taken up in part, or prompt introduction of alternative measures to resolve the issues identified;
- whenever they shine a light on a market that was previously poorly understood – e.g., a study that gives a market a clean bill of health can reduce business and consumer uncertainty, and may lead to fewer complaints; and,
- whenever they provide an authority and stakeholders with enhanced understanding of a specific market or sector.

It is important for authorities not to lose momentum in seeking to advocate for changes once a market study has concluded. Sometimes it will take time to persuade those concerned of the value in implementing recommendations and reaching desired outcomes. It will help if authorities recognise this and ensure that there are adequate resources, and a coherent plan, for engaging in any necessary follow-up. It may also help if authorities look out for future opportunities for advocacy, and capitalise on these where possible.⁵⁷ In some cases, updating a market study may be appropriate if doing so will add to the effectiveness of protracted competition advocacy efforts.

There will inevitably be times when, perhaps in spite of carefully planned and executed follow-up activities, continued advocacy for market study recommendations and outcomes seems unlikely to produce any, or any significant, results. In such circumstances, it may be sensible for authorities to weigh potential benefits of future success against the costs of continuing to push for outcomes, including the opportunity costs of not pursuing other potential projects that may have a greater impact.

⁵⁷ The degree and methods used by authorities for follow up advocacy work will depend on their resources and priorities. Some authorities have a dedicated small advocacy team.

7.7 Summary of good practices

1	It is good practice for authorities to develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes.
2	It is good practice for authorities to assess the costs and benefits, when relevant, of proposed market study outcomes.
3	Where relevant for a market study, it is good practice for market study teams to consult stakeholders in developing market study outcomes, and test possible outcomes to assess their feasibility and their likelihood of implementation. This can also help build consensus for outcomes.
4	It is good practice for written outputs of a market study to be in a form and format that reflects their purpose and the needs of the target audience.
5	Before a market study is completed, it is good practice for a market study team to consider whether to release its findings, and if so to plan for the release.
6	It is good practice for authorities to plan for and include relevant stakeholder engagement in their advocacy efforts in support of market study outcomes.
7	It is good practice for authorities to recognise the potential effect of media coverage on market study outcomes. A well thought through communications strategy can help drive successful outcomes.
8	Where market study recommendations are addressed to government, it is good practice for authorities to carefully consider how to present the recommendations to effectively advocate for change.
9	It is good practice for authorities to engage effectively with business and industry where voluntary action is a desired market study outcome. Being aware of individual and collective business interests can help to encourage cooperation.
10	It is good practice for market study teams to secure internal clearances and consider feasibility before announcing any outcomes that involve the authority itself taking further action.
11	Authorities should recognise that successful market study outcomes may take time and require well-resourced follow-up.

8. EVALUATION OF MARKET STUDIES

This chapter considers different aspects of evaluation of market studies and offers tips for good practice.

8.1 What is meant by evaluation?

Evaluation, in the context of market studies, means any activity designed to measure the effectiveness and/or the costs and benefits of conducting one or more market studies, or the effectiveness and/or costs and benefits of a market studies regime as a whole.

8.2 Why evaluate market studies?

Where resources permit, it is good practice for authorities to consider evaluating the effectiveness of their market studies. This can help authorities demonstrate:

- **that individual studies have met their objectives in a cost-effective manner; and,**
- **the value of market studies more generally.**

It can also inform future market study selection, and the market study process.

Where resources permit, evaluation is a good way for authorities to demonstrate that they have met their objectives in a cost-effective manner, and that they are accountable. Evaluating market studies work specifically allows an authority to demonstrate the value of individual market studies and of the market study process. It also helps an authority take informed decisions about future selection of subjects for market study and ways it can improve its market study processes.

In addition, evaluation can:

- shed light on what types of intervention following a market study work best to bring about desired outcomes;
- help to identify whether post-study follow-up action is needed; and,
- help persuade governments to change policy or legislation, or business or consumers to change their practices in markets.

The use of evaluation tools for market studies is relatively new, and as such, good practice in their design and application continues to develop.

8.3 Approaching market study evaluation

When deciding how to approach evaluating market studies, it is good practice for authorities to take into account:

- **the purpose of the evaluation;**
- **the scope of the evaluation; and,**
- **available resources.**

There are multiple ways to carry out a market study evaluation. What method works best will be influenced by the purpose of the evaluation, its scope (whether it is intended to capture market studies alone or also other parts of an authority's portfolio) and the available resources to dedicate to evaluation activities.

Evaluation of market study impact can be conducted ex post – once the outcomes and/or effectiveness are known and some attempt can be made at measuring them. Alternatively, mechanisms to estimate impact ex ante – before the outcomes and/or effectiveness of one or more studies is known – can be built into the market study process. Choosing either an ex post or ex ante criterion will determine what elements will be evaluated.

A full evaluation programme⁵⁸ can systematically introduce both ex post evaluation and ex ante impact estimation. It can also seek to evaluate the wider benefits from market studies and other work.

8.4 Summary of good practices

1	<p>Where resources permit, it is good practice for authorities to consider evaluating the effectiveness of their market studies. This can help authorities demonstrate:</p> <ul style="list-style-type: none"> - that individual studies have met their objectives in a cost-effective manner; and, - the value of market studies more generally. <p>It can also inform future market study selection, and the market study process.</p>
2	<p>When deciding how to approach evaluating market studies, it is good practice for authorities to take into account:</p> <ul style="list-style-type: none"> - the purpose of the evaluation; - the scope of the evaluation; and, - available resources.

⁵⁸ If an authority plans to develop a programme of evaluating market studies, it can be beneficial to create a dedicated in-house evaluation team or in-house responsibility for evaluation in a specific section or office. This ensures evaluation activity is given due attention and establishes a centre of expertise. An evaluation team can be used to evaluate a variety of authorities' work and need not be used solely for market studies evaluation. Where authorities choose to use the ex post evaluation and/or the ex ante impact estimation tools, described below, an evaluation team can also provide dedicated resource to conduct or contract for ex post evaluation and specialist training and support to market study teams in drawing up ex ante impact estimation plans. The costs of the team and its work need not be excessive. One authority estimates that it spends around 1 per cent of its budget on staff and research costs for a full evaluation programme spanning its entire portfolio of activities.